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Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Chris Burton
Rosalynn Hughey
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SUBJECT: SEE BELOW

DATE: March 15, 2024

Approved

Date

3/17/2024

**SUBJECT: PROPOSED SOFT STORY SEISMIC RETROFIT IMPLEMENTATION
PROGRAM**

RECOMMENDATION

Accept the status report for the proposed Soft Story Seismic Retrofit program.

SUMMARY AND OUTCOME

The Community and Economic Development Committee's acceptance of the status report, feedback, and cross-reference to City Council would provide the opportunity to consider the proposed Soft Story Seismic Retrofit Program to require property owners to retrofit their buildings to avoid collapse, and reduce damages sustained in a major earthquake and very importantly, avoid or limit harm to people living in the units.

Staff engaged with a structural engineering consultant to develop an analysis of potential soft story buildings in San José. This study found approximately 3,500 buildings in San José that potentially may be impacted by the proposed ordinance. These properties house approximately 72,000 people. Failure of these soft story buildings in the event of a high-magnitude earthquake could result in a devastating loss of life and property and impede the City's disaster recovery.

The proposed program would require adoption of an ordinance to mandate retrofitting of all qualified soft story buildings that were built pre-1990, are multi-storied, and contain three or more dwelling units. Approval of the proposed program will allow City staff to implement the Soft Story Seismic Retrofit program to enhance the health and safety of residents living in potentially impacted properties. Program implementation would include notification to property

owners and tenants, tenant coordination plans, compliance groups and schedules, rebates, and other financial assistance to property owners.

BACKGROUND

The City of San José 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 collapse-prone building is commonly known as “soft story.” The term “soft story” refers specifically to older, wood-frame multi-story buildings with an especially weak, flexible, or otherwise vulnerable ground story. Often, the soft story deficiency is indicated by large openings in the ground story walls, typically due to garage doors, open parking stalls, or large storefront windows. These buildings built before current building codes have ground stories with a tendency to collapse when shaken hard enough.¹

A major earthquake could cause significant impacts in San José in terms of loss of life, response, and recovery costs. Soft story buildings pose risks that may be disastrous as they can:

- Threaten the lives of many residents;
- Possibly start fires that spread to nearby buildings;
- Cause substantial financial loss to building owners and tenants;
- Displace people or force tenant relocation; and
- Delay recovery of housing and community services citywide.

Table 1 provides a history of City Council’s direction to staff for the development of a retrofit program.

Table 1: City Council Direction to Develop a Soft Story Seismic Retrofit Program

Date	Action
2014	City Council directed staff to explore ways to incentivize soft story building retrofits.
2017	City Council ranked development of a soft story retrofit program as the City’s overall eighth policy priority.
2018	City submitted \$6 million <i>Hazard Mitigation Grant Program (HMGP)</i> application to California Governor's Office of Emergency Services (Cal OES)
2019	Grant application forwarded to Federal Emergency Management Agency (FEMA).
2021	Phase 1 grant (ordinance development) awarded after completing requested modifications and re-submitting grant application.

¹ [soft_story_report_web_version_v2_1.pdf \(ca.gov\)](#)

Date	Action
2022	City entered into a consultant agreement for a soft story inventory analysis and for assistance with mandatory ordinance development and program implementation.
2023	City begins pre-ordinance outreach with building/property owners and residents. Research is conducted on funding mechanisms and similar programs in San Francisco, Oakland, and Los Angeles. In August 2023, the City applied for an additional \$25 million FEMA grant.

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 worked with the consultant to develop an inventory and analysis of potential soft story properties in San José, review existing seismic risk reduction policies, and conduct cost-benefit analysis. In addition, with the assistance of Promotores, staff has conducted outreach and engagement with residents and has also engaged building/property owners in developing the proposed program.

ANALYSIS

With the high risk of earthquakes in the Bay Area, retaining housing is crucial to expediting and ensuring effective recovery. Limiting catastrophic housing damage and allowing residents to stay in their homes not only helps people who may lack the resources to quickly recover from a disaster but also keeps communities intact. In the aftermath of natural disasters, the recovery of the region's economy is interdependent with the recovery of the region's housing. If residents can stay in their homes, they will be better able to participate in the rebuilding of their neighborhoods and cities, go to work and school, support local businesses, and improve the recovery trajectory of the entire region. Re-allocating limited City resources to response and recovery activities may be reduced so that there may be continuity of regular community services.

Throughout the development of the proposed program, staff followed three guiding principles:

- 1) Health and safety of residents;
- 2) Equity and inclusion of vulnerable and disadvantaged residents and property owners; and
- 3) Cost avoidance for mass care and shelter in the event of an earthquake.

The proposed program is intended to reduce earthquake-related deaths and injuries, improve the durability of the existing housing stock—particularly affordable units, 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.

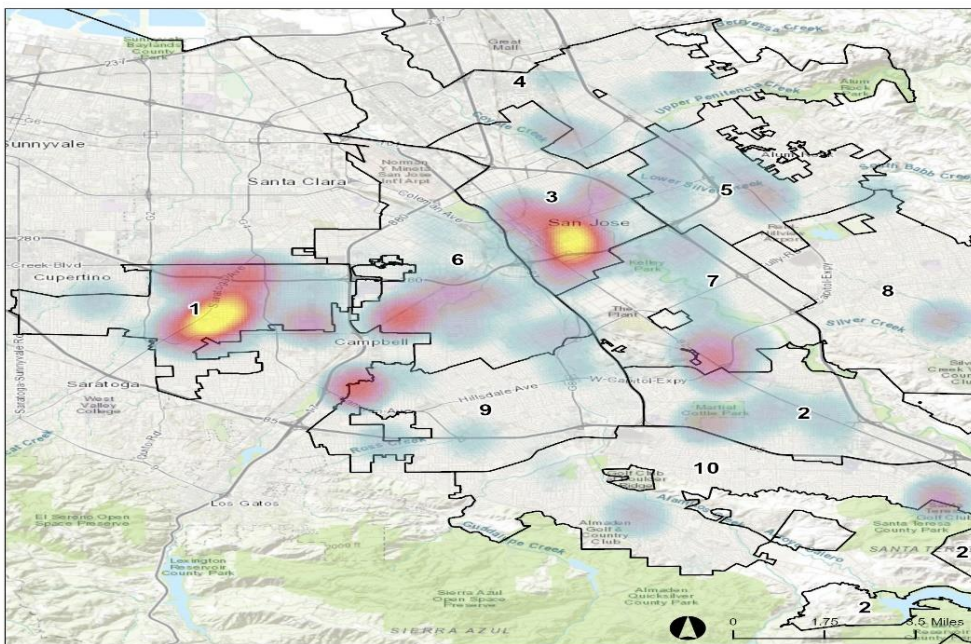
Preserving health and safety during an earthquake is critical. Reducing the number of displaced individuals who require mass care and shelter enables neighborhoods and the entire City to

recover quicker. The cost of mass care and shelter is estimated at \$222 per person per day. This equals \$666,000 for 100 people per month.

Existing Building Inventory

San José's permanent housing stock comprises approximately 206,000 buildings containing about 351,000 units. Of those, about 17,000 buildings (156,000 units) are apartment and condominium buildings containing three or more units. Buildings constructed before 1990 with a soft story pose a widely recognized seismic risk to tenants, owners, and the City. San José has between 2,600 and 3,600 such buildings (Table 2 in Section "Policy Considerations" Subsection "Subject Buildings" below), containing between 18,000 and 25,000 units. This represents approximately five to seven percent of the total housing stock. In some neighborhoods, the pre-1990 soft story buildings comprise up to 20% or more of the local housing stock, comparable with other Bay Area cities that have already adopted mandatory soft story retrofit programs.

Attachment A is a summary of the consultant's report on the inventory findings. The heat map below shows the distribution of soft story properties in San José.



Relative distribution of units in suspected wood-frame target story buildings
(Pre-1990, 3 or more unit buildings, up to 25,000 units)



Sources: David Bonowitz, S.E., 2023; Biggs Cardosa Associates, 2023; City of San Jose, 2023; Strategic Economics, 2023.

Learning from Other Cities

The City's consultant researched soft story retrofit programs in cities in the Bay Area and in the state. **Table 2** provides a summary of comparison cities.

Table 2 – Summary of Retrofit Programs in Comparison Cities

City	Program Type	# of Stories	# of Units	Year built	Pass-through Percentage	Pass-through Period
San Francisco	Mandatory	3+	5+	Pre-1978	100%	20 years
Los Angeles	Mandatory	2+	4+	Pre-1978	50%	10 years +
Oakland	Mandatory	2+	5+	Pre-1991	70%	25 years
Berkeley	Mandatory	2+	5+	Pre-1978	100%	8 years – applies only to owners of up to 12 units
Hayward	Mandatory Screening only	2+	3+	Pre-1979	N/A	N/A
Mountain View	Voluntary (No program)	TBD	TBD	Pre-1980	By # Units 90% (1-5) 75% (6-20) 50% (>20)	20 years

Subject Buildings

Table 3 shows the breakdown of the soft story buildings by age, size, and ownership type. Each of the four rows represents the scope of a possible mitigation program. For example, the top row shows the smallest program, which would consider only the oldest (pre-1978) and largest (5 or more units) buildings and would ignore newer and smaller buildings even if they are also collapse-prone. The bottom row includes all the buildings that the City considers likely to have soft story deficiencies; this row corresponds to the range of 2,600 to 3,600 buildings mentioned above.

Table 3: Soft Story Buildings by Age, Size, and Ownership Type

Buildings	Apartments	Condominiums	Total
Pre-1978 5+ units	949 – 1,273 buildings 9424 – 12,063 units	103 – 222 buildings 700 – 1,502 units	1052 – 1495 buildings 10,124 – 13,565 units ~40,000 people*

Buildings	Apartments	Condominiums	Total
Pre-1990 5+ units	1,118 – 1,441 buildings 10,716 – 13,355 units	523 – 831 buildings 3,382 – 5,729 units	1,641 – 2,272 buildings 14,098 – 19,084 units ~56,000 people
Pre-1978 3+ units	1487 – 2,008 buildings 11,467 – 14,773 units	160 – 355 buildings 929 – 1,990 units	1,647 – 2,363 buildings 12,396 – 16,763 units ~49,000 people
Pre-1990 3+ units	1,665 – 2,185 buildings 12,792 – 16,098 units	901 – 1,392 buildings 5,391 – 8,508 units	2,566 – 3,577 buildings 18,183 – 24, 606 units ~72,000 people

* Average Household: 2.92 per unit

Policy Considerations

Retrofit Costs and Funding Options

The cost of retrofitting properties could range from \$30,000-\$180,000 per building depending on the building age and nature and severity of the soft story deficiency. Pricing elements include both soft costs (pre-design screening or evaluation, design, permits, and inspection) and hard (construction) costs. Parcels or developments with multiple buildings should be able to realize substantial cost savings (relative to the estimated per-building costs) if the retrofit is designed and constructed by the same team at the same time.

Before a retrofit is undertaken, costs will be incurred during the building screening and permitting process. Where the screening requires a licensed design professional, a cost between \$250 (for a single small building) and \$1,000 (for large, complex, or multiple buildings) can be expected, based on a billing rate of \$250 per hour. In some cases, a deeper evaluation of the property may be required before an exemption can be granted. In these cases, the subject building can comply with an evaluation, which is estimated to cost \$10,000 to \$20,000. More information on these processes is found in the Proposed Implementation Program section of this memorandum under “Building Screening, Permitting, and Construction Process.”

- **Prevailing Wages:** Any individual project that receives a subsidy or a rebate from the City towards the total cost of the project will be subject to the City’s Prevailing Wage policy for construction costs. Adherence to the City’s Prevailing Wage policy is not required if projects do not utilize City subsidies or rebates. Prevailing wage is anticipated to increase construction costs in the range of 10% to 30%, depending upon labor classification. However, the overall retrofit project cost (soft and hard costs) is anticipated to increase by approximately 10% to 15% with the prevailing wage.
- **Financing:** When retrofit is required, each property owner is responsible for securing the necessary funding. Property owners may need to seek private financing, such as lines of credit secured through their properties. In addition, assistance may be available through the following sources:
 - **City Rebates:** \$4 million is available from the existing Hazard Mitigation Grant Program (HMGP) award from FEMA to cover a limited number of rebates to

property owners. Based on the cost range of \$30,000 to \$180,000 for each retrofit, rebates could be offered for 22 to 133 buildings. Staff is working on finalizing eligibility rules, prioritization criteria, and rebate amounts.

- **Additional City Rebates:** In August 2023, the City applied for another HMGP grant in the amount of \$25 million. Should this grant be awarded, rebates could be offered for an additional 138 to 833 buildings. Staff anticipates notification from FEMA on this award in the fall of 2024.
- **Low- and/or No-Interest Loans:** Working in partnership with the Office of Economic Development and Cultural Affairs and its contacts, staff is exploring the creation of low- and/or no-interest loan programs with financial institutions, including community development financial institutions.
- **Capital Pass-Throughs:** Properties covered by the City's Apartment Rent Ordinance (ARO) are limited to a five percent annual rent increase. Owners of these properties can apply to the Rent Stabilization Program to recoup some or all retrofit costs over a 20-year period through a monthly pass-through to tenants. This would be in addition to the five percent rent increase, capped at no more than 3% of a tenant's baseline rent, which does not increase annually. The pass-through amount may be reduced if owners receive a publicly funded grant to subsidize the cost of the seismic retrofit.
- **Property Taxes:** Normally, building improvements that increase a property's value can result in an assessment that may trigger an increase in the property value and taxes. However, the Santa Clara County Assessor's Office provides a tax exemption (BOE 64) for seismic safety construction.²

Impact of Retrofit Costs on Rents

Most of the apartments proposed to be covered by the proposed program are also covered by the City's ARO.³ This rent stabilization ordinance limits annual rent increases to five percent and restricts any additional amounts that owners may petition the Rent Stabilization Program to pass through to tenants. Staff's design of the proposed rebate program could reduce the impacts of additional capital pass-throughs for properties qualifying for the rebate.

Notification to Property Owners

As with any new mandate and program for property owners, sufficient notification will be required. Upon the effective date of the proposed ordinance, property owners will receive a letter from the City stating that their property is potentially subject to the proposed program. Property owners will receive information regarding the City's soft story online platform, along with information on the retrofit process. The Proposed Implementation Program section of this

² [CAA e-Forms Service Center - Santa Clara: BOE-64 \(capropeforms.org\)](https://www.santacleara.org/CAA-e-Forms-Service-Center-Santa-Clara-BOE-64-capropeforms.org).

³ The City's rent stabilization ordinance (or Apartment Rent Ordinance) provides protections to tenants in buildings with three or more units completed prior to September 7, 1979. A fact sheet on the Apartment Rent Ordinance can be found here: <https://www.sanjoseca.gov/home/showpublisheddocument/50281/637358528771630000>.

information provides details on the screening, permitting, and construction process for property owners.

Tenant Notification and Tenant Coordination Plans

Staff will coordinate with property owners to create Tenant Coordination Plans for each of the properties identified as soft story at the end of the screening phase. These Plans would facilitate communication with residents on the expected impact of retrofit work. Details would include how the property would be affected during retrofit work and how much notice residents would be given before work starts.

Included in the Plans would be the owners' schedule of required notifications to residents at multiple times during the retrofit process including soft story screening status, retrofit work process, retrofit completion, and any potential rent increase.

Potential of Temporary Tenant Relocation

The proposed program will solely require retrofit of the soft story condition. Therefore, in nearly all cases, the work will affect only the critical story and crawl spaces. The uses of these areas, typically parking or storage, are likely to be disrupted temporarily during construction, but not to a degree that would prevent continuous occupancy by building tenants. For most tenants, the level of disruption—potentially involving some noise and dust—is similar to that of other normal building repair maintenance projects, such as painting and re-roofing.

The screening phase of the program could identify some San José buildings, with the critical story that contains both an open area and occupied units or other building services. Even these buildings can usually be retrofitted without disrupting use or occupancy. In these very limited cases, an effective retrofit will require work in occupied spaces, possibly requiring the temporary relocation of tenants, either to another unit in the building or off-site. If any apartments become temporarily uninhabitable due to retrofit work, property owners are required to locate alternative temporary housing or compensate the tenants in accordance with *San José Municipal Code* Section 17.20.2100. The temporary relocation assistance provisions will be detailed in the Tenant Coordination Plan.

No Permanent Loss of Housing Units Due to Retrofit is Expected

The nature of soft story buildings allows them to be retrofitted without permanent loss of any existing units.⁴ In many buildings, the work mostly involves strengthening existing walls or adding wall segments along existing perimeter lines without reconfiguring any of the occupied or usable spaces. Where new wall segments would block parking access, steel retrofit elements are commonly used instead, preserving the existing look and functionality.

⁴ In the unlikely event a tenant is permanently dislocated from their unit or for a period longer than 60 days, the owner must comply with SJMC 17.23.2110 et seq. which includes paying relocation assistance, moving expenses

Temporary or Permanent Decrease of Housing Services

Retrofit work is likely to temporarily disrupt the use of parking areas and possibly other spaces (laundry, storage, etc.) that provide housing services. For temporary reductions in services caused by seismic retrofit projects, the proposed program provides that the Apartment Rent Ordinance regulations be amended to provide:

- No reduction in rent should be awarded in a tenant petition based on housing services filed pursuant to Section 17.23 of the *San José Municipal Code* in which all the following apply:
 - The reduction in services is caused by the mandatory seismic retrofit project.
 - The reduction in services occurs only while work is being performed to complete the mandatory project.
 - The length of time of the reduction in services is reasonable and was communicated to tenants in advance through the approved Tenant Coordination Plan.
 - The reduction in services is temporary (occurring during retrofit work).
 - The property owner is in compliance with the City's ARO.

This provision acknowledges that because of the retrofit, tenants receive the benefit of a much safer structure, which outweighs potential temporary inconveniences. It would prevent what could be hundreds of petitions from being filed for expected, reasonable, limited, and temporary conditions related to the retrofit work.

In limited cases, a reduction in housing services might be permanent if only because the retrofit elements (walls or columns) take up space that was previously available for other uses. In these cases, properties covered by the City's ARO could be subject to tenant petitions for rent decreases based on permanent reductions in housing services.

Proposed Implementation Program

Post-Ordinance Outreach

Extensive outreach to owners whose properties may be impacted by the program. This outreach will provide information on the program, compliance methods, and schedules, the City's permitting process, and Soft Story Seismic Online Portal Access. It will also provide information on funding mechanisms and any rebates available. This information will be provided through in-person and online meetings, presentations at commission meetings, and the City website.

Notification to Property Owners

Upon the effective date of the proposed ordinance, all potential property owners will receive a letter from the City stating that their property is potentially subject to the program. Owners will be invited to open an online account within the City's Soft Story Online platform. This online

tool is being designed to provide one-stop access to property owners to assist them with the mitigation process and for interaction between City staff and the property owners.

Notification to Tenants and Tenant Coordination Plans

The Program's administrative guidelines will establish the required contents for Tenant Coordination Plans, including notification details regarding the retrofits. Requirements will also include notifications in multiple languages. Staff will coordinate with the property owners to create a Tenant Coordination Plan for each of the properties identified as soft story at the end of the screening phase. These plans would facilitate communication with residents on the expected impact of retrofit work. Details would include how the property would be affected during retrofit work and how much notice residents would be given before work starts. Included in the plans would be the owners' schedule of required notifications to residents at multiple times during the retrofit process. Staff proposes the following notification schedule:

- **Soft Story Status:** Owners must notify residents within 45 days after screening completion and the property is confirmed to be a qualifying soft story building.
- **Retrofit Process:** Owners would notify residents at least 30 days prior to the start of construction. Notices would include the anticipated length of construction, active construction work hours, and areas where residents will temporarily have limited or no access.
- **Retrofit Completion:** Owners must notify residents within 30 days of notification from the City that the completed work has been approved and the property is in compliance with the Soft Story Retrofit Program.
- **Rent Increase:** Owners petitioning for a rent increase due to capital improvement pass-through will comply with all notice and hearing requirements of the existing process, as modified by staff to suit the retrofit program.

Building Screening, Permitting, and Construction Process

The process for the retrofit work will include three steps: 1) screening, 2) design and building permits, and 3) construction and inspection.

1. **Screening Phase:** The purpose of the screening phase is to confirm information about each potential subject building and to grant exemptions where appropriate. This phase typically will not require a detailed investigation, material testing, document review, or calculation. In almost all cases, it is a simple exercise for a design professional based on an in-person visual observation.

Property owners may opt to self-certify their properties under the proposed program. In such cases, they will not be required to get a licensed engineer's certification. Property owners who believe that their properties are not soft stories or have already completed the seismic retrofit of their property will be required to obtain an engineer's certification.

In some cases, a deeper evaluation of the property may be required before an exemption can be granted. A subject building will already have enough structural strength and stiffness (or might have already been retrofitted) that it can comply with the retrofit criteria with no additional retrofit. In these cases, the subject building can comply with an evaluation. An evaluation of this nature typically will involve a detailed investigation, including material testing, document reviews, and calculations. The cost of evaluation will vary significantly with the building's age, complexity, and available documentation, but it will normally be similar to the cost of retrofit design, on the order of \$10,000 to \$20,000. If a prior voluntary retrofit was already well documented, the cost of complying by evaluation should be even lower, especially if the engineer of record for the prior retrofit is available to confirm their work.

2. **Design and Building Permits:** Property owners will work with their respective design consultants in producing mitigation designs for their buildings which will be submitted to the City's Building division for permit issuance. All normal permit issuance processes will be followed except in cases where the property owner may receive a subsidy from the City for the mitigation work. In such cases, permits will be issued only after designs are approved through FEMA National Environmental Policy Act (NEPA) and the Environmental and Historical Preservation compliance requirements. Property owners who receive a City rebate funded by the FEMA grant will be subject to requirements of the National Environmental Policy Act (NEPA). As such, building permits will be issued after the NEPA process is completed.
3. **Construction and Inspection:** Property owners will engage with contractors to start the retrofitting of their properties and submit to the City's Building Division a certificate of completion. Upon approval by City inspectors, the City will issue a Certificate of Compliance.

Outreach and Engagement

More than a dozen meetings were conducted from May 2023 to February 2024. The following stakeholders were engaged:

- **Residents**
 - Staff trained 12 Promotores on the proposed program who conducted neighborhood outreach. These 12 individuals, who are paid for their services, are part of the City's pilot Promotores Program administered through contracts with the several non-profit organizations including CommUniversity, Si Se Puede Collective, Veggjelution, Amigos de Guadalupe, Community Health Partnership, Latinos United for a New America/LUNA, Asian Americans for Community Involvement (AACI), Vietnamese Voluntary Foundation (VIVO), Vietnamese American Roundtable (VAR), and Lead Filipino;
- Housing Providers Roundtable;
- California Apartment Association;
- Bay Area Housing Network;

- Building and Trades Council; and
- Individual property owners

Additionally, staff provided presentations at three meetings of the Housing and Community Development Commission: May 11, 2023; November 9, 2023; and February 8, 2024.

The following is a summary of stakeholder feedback:

- City should prioritize health and safety concerns.
- Tenants are very concerned about increased rents due to pass-throughs and increased risk of displacement.
- Tenants want to understand the process for retrofit work.
- Housing providers want a reasonable timeframe for compliance and streamlined City processes.
- Housing providers are concerned about retrofits' cost and ability to be financed.
- Housing providers are concerned about the increasing state and local mandates and regulation that drive costs up, such as balcony upgrades (Senate Bill 721) and building electrification.
- Concern from housing providers that other building requirements will be triggered due to retrofit work. The City should clearly communicate that this is not the case.
- Housing providers are interested in connections/referrals to qualified contractors and engineers.
- Staff should conduct more outreach and engagement with housing providers and tenants.
- City should seek more funding for rebate programs to subsidize more buildings.

Racial Equity Impact Analysis

The people most impacted by the proposed program are the renters living in the soft story buildings and the owners of these buildings. Most soft story buildings subject to the proposed program are rent-stabilized buildings covered by the City's ARO.

According to the most recent analysis,⁵ ARO renters are primarily people of color, with Latinx households comprising the largest share (47%), Asian American Pacific Islander households (26%), and African American households (5%). Fifty-two percent of ARO households are housing cost-burdened⁶ and are more likely to live in overcrowded conditions. Forty-three percent of ARO renters are immigrants, and many speak English "Not Well" or "Not at All" (27%).

Properties subject the ARO are often owned by individuals who own only a few units and rely on rental income for their livelihoods and/or retirement savings. These owners are often referred to small "mom and pop" housing providers. Unlike properties owned by large corporate entities,

⁵ Outcomes from Rent Stabilization in San José (2019); Economic Roundtable; Burns, Patrick; Flaming; Daniel: [637257392314200000 \(sanjoseca.gov\)](https://sanjoseca.gov/637257392314200000)

⁶ Cost burden is defined by the federal government as paying more than 30% of household income for rent plus a reasonable utility allowance.

small “mom and pop” property owners often have limited capital improvement reserves and/or slim profit margins. While staff does not have access to racial demographic data for property owners, including small “mom and pop” owners, staff has engaged with many owners who are persons of color.

Given the demographics for renters and property owners, it is important assess the racial equity implications of the proposed program and implementation.

Equity Considerations in Proposed Program and Implementation

- **Prevent Loss of Life and Displacement:** The proposed program would help prevent loss of life and displacement in a major earthquake by defending against building collapse. Building collapse would also lead to mass sheltering of displaced individuals in community centers, libraries and other public facilities. Implementing the proposed program would enhance the safety of up to 72,000 people during a major earthquake. It is important to note that the affected group of renters would also have fewer personal resources for post-disaster recovery and certain types of post-disaster assistance are limited to U.S. citizens only.
- **Preserve Existing Housing Stock:** Soft story retrofits would prevent the loss of homes after an earthquake. The number of soft story buildings in San José is estimated to be approximately 3,500, containing nearly 25,000 units, or five to seven percent of the total housing stock. Many of these buildings include rent-stabilized apartments, many of which have deeply affordable or below-market rents.
- **Prevent Illegal Evictions through Tenant Coordination Plans and Tenant Notifications:** While retrofit construction is not expected to require tenant relocation, there is a concern for the potential of certain property owners to use seismic retrofit construction as a means to illegally evict tenants, in order to raise rents through vacancy decontrol.

This risk combined with a potential associated rent increase expected with a capital improvement pass-through cost could be a burden from the proposed program to the renters living in subject soft story buildings. To address this concern, Housing staff will implement a proactive, comprehensive education and outreach program. The outreach staff will provide detailed information about the proposed program, the retrofit process, the maximum allowable annual passthrough cost, tenant coordination plans and notifications, and inform renters of their rights.

Additionally, renters will be made aware if they suspect wrongful eviction, they can seek assistance from the City’s Rent Stabilization Program, and in certain instances, the FEMA External Civil Rights Division. An essential equity component of this approach will be to ensure language accessibility for limited-English proficient residents. It will be useful for staff to start to track if there is an increase in the number of eviction notices submitted to the Housing Department throughout the proposed implementation program.

Equity Considerations in the Proposed Rebate Program and Other Financial Resources for Property Owners

It is important to support small “mom and pop” housing providers in offsetting the costs of retrofit projects. While the current available funding for the proposed rebate program is \$4 million, this amount would only fully cover retrofits. The potential FEMA award of an additional \$25 million will provide more rebates. In addition, staff will continue to explore partnerships with financial institutions to create low- and/or no-interest loans. While the capital pass-through allowed to property owners under the ARO would help defray costs over a 20-year period, it would modestly increase rents. Yet, the end result is units are structurally secure, providing safety to residents during the event of an earthquake.

To promote equity in the distribution of the limited rebates, the rebate program could be designed to prioritize smaller-sized properties with slim profit margins and a smaller number of units and/or prioritize properties where renters would be most likely to become economically displaced by potential rent increases.

Staff Recommendation for the Proposed Program and Implementation

Subject Buildings

Staff recommends that the proposed program would apply to residential buildings constructed or permitted for construction before January 1, 1990, or designed based on an adopted version of the 1985 or earlier edition of the Uniform Building Code, that contain two or more stories, three or more dwelling units, and have a wood-frame target story. Based on the analysis and consultant report, the following is staff’s rationale for this range of buildings:

- Ensures the health and safety of the maximum number of residents, as this range includes all the buildings that staff considers to have likely soft story deficiencies. This range represents up to 3,577 buildings or up to 24,606 units and approximately 72,000 people (based on the average household size of 2.92 people per unit);
- Captures the majority of condominium buildings that were built in the 1980s;
- Reflects the effective date of January 1990 for the City-adopted 1988 Uniform Building Code. This Code provided more stringent requirements for the design and construction of buildings with soft/weak story attributes. Buildings built after January 1990 do not pose the same seismic risk; and
- Corresponds to the high number of three- to four-unit buildings, 64%, that meet soft story building criteria.

Compliance Groups

Focusing efforts on the most vulnerable buildings within vulnerable communities will reduce casualties and property damage during an earthquake event. This keeps people safe in their homes while response and recovery efforts may be focused on areas needed most. To that end, multiple factors such as age and type of building, number of dwelling units, potential seismic vulnerabilities or risk, occupancy and impact on residents, and resource allocation must be

considered when the implementation program is being developed. Staff recommends a compliance schedule consisting of three groups across multiple years to:

- Focus on older buildings with structural vulnerabilities that may impact the most vulnerable residents;
- Allow more time for buildings with more complex circumstances; and
- Provide efficient resource allocation – soft story buildings that may impact San José vulnerable residents receive attention sooner, ensuring that critical safety improvements are made sooner.

Staff recommends that each subject building be assigned to one of three compliance groups:

- | | |
|---------|--|
| Group 1 | A subject building built before January 1, 1978, and containing five or more dwelling units (up to 1,495 buildings) |
| Group 2 | A subject building built after January 1, 1978 and before January 1, 1990, and containing five or more dwelling units (up to 777 additional buildings) |
| Group 3 | A subject building built before January 1, 1990, and containing three or more dwelling units (up to 1,305 buildings) |

Subject buildings receiving rebates (grant funds) from the City must adhere to grant requirements set by Cal OES and FEMA. Grant requirements may vary and will supersede schedule requirements and grouping assignments set forth in the proposed program. Grant related information will be specified in grant availability notifications or applications.

Compliance Schedule

Staff recommends that each of the compliance groups have a different set of deadlines. **Table 4** provides a program schedule for each of the compliance groups. Note that all groups would have the same one-year period for the screening process. Among other things, the screening process confirms the building's compliance group assignment. After the screening phase, the group deadlines for the design and construction phases are spaced at one-year increments.

Table 4: Proposed Compliance Deadlines Relative to the Program's Effective Date

Compliance Group	Screening	Permit Issued	Construction
Group 1	One year from ordinance effective date	Three years from ordinance effective date	Four years from ordinance effective date
Group 2	One year from ordinance effective date	Four years from ordinance effective date	Five years from ordinance effective date

Compliance Group	Screening	Permit Issued	Construction
Group 3	One year from ordinance effective date	Five years from ordinance effective date	Six years from ordinance effective date

Policy Alternatives

Table 5 provides the four subject building options that staff considered for the proposed program. Staff recommends Option #4 as indicated in the Staff Recommendation section of this memorandum. Should either of the other three options be decided upon by the City Council, more residents would be at risk and harmed during an earthquake event, more buildings would be damaged—reducing the stability of the housing stock, and more costs would be incurred during recovery.

Table 5: Subject Buildings Options for Proposed Program

Option #	Building Age/Size	Buildings/Residents
1	Pre-1978, five or more units	Up to 1,495 buildings, 13,565 units ~ 40,000 people (Avg. household: 2.92 per unit)
2	Pre-1990, five or more units	Up to 2,272 buildings*, 19,084 units ~ 56,000 people
3	Pre-1978, three or more units	Up to 2,363 buildings, 16,763 units ~ 49,000 people
4	Pre-1990, three or more units	Up to 3,577 buildings*, 24,606 units ~ 72,000 people

*Buildings are cumulative for a range of years

EVALUATION AND FOLLOW-UP

Staff anticipates bringing forward a status report on the proposed program and implementation in Q1 2025. At that time, staff will provide an update on the closeout of the FEMA Phase I grant, the application for the Phase II grant, progress on post-program outreach and education to residents and property owners, and other initial phases of implementation.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's

Budget Office.

PUBLIC OUTREACH

This memorandum will be posted for the March 25, 2024, Community and Economic Development Committee meeting. Staff engaged the community from May 2023 through February 2024 in developing the proposed ordinance and implementation program. Feedback from these meetings is included in the Outreach and Engagement section of this memorandum.

COMMISSION RECOMMENDATION AND INPUT

At the May 11, 2023, meeting of the Housing and Community Development Commission, staff provided an informational briefing on the approach to the proposed program and implementation. Commissioners shared the importance of completing retrofits to keep residents safe during an earthquake and to maintain the affordable housing stock in the City.

At the November 9, 2023, meeting of the Housing and Community Development Commission, Commissioners considered a report⁷ on the findings and recommendations from its Ad Hoc Committee on Seismic Retrofit. Commissioners discussed the effect of soil liquefaction on soft story buildings during an earthquake. The report *titled “HCDC Ad Hoc Seismic Retrofit Committee Preserve Affordable Housing Short Term and Long-Term Overview & Policy Framework Recommendation, November 1, 2023”* can be found at [638345374658330000 \(sanjoseca.gov\)](https://www.sanjoseca.gov/your-government/departments-offices/housing/housing-community-development-commission/agendas-synopses).

At the February 8, 2024, meeting of the Housing and Community Development Commission, staff provided a presentation on the policy framework for the proposed program and implementation. Commissioners shared concerns about potential rent increases and the importance of providing rebates to property owners and seeking other financial resources. They also stressed the importance of education to residents and property owners.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment; Statutorily Exempt, File No. ER23-173, CEQA Guidelines Section 15301, Existing Facilities. **Attachment B** provides a statement of exemption.

⁷ Commission meeting packet and written public comment, Nov. 9, 2023, at <https://www.sanjoseca.gov/your-government/departments-offices/housing/housing-community-development-commission/agendas-synopses>.

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/	/s/	/s/
CHRISTOPHER BURTON	ROSALYNN HUGHEY	RAYMOND RIORDAN
Director,	Deputy City Manager, and	Director,
Planning, Building and	Acting Housing Director	Office of
Code Enforcement		Emergency Management

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ATTACHMENTS:

Attachment A – Summary of Consultant Report on Inventory and Findings

Attachment B – Statement of Exemption