

Title:	Zoning Exceptions for Mandatory Seismic Retrofits
Location:	Citywide
Proposal:	Amend the Planning Code to add new zoning exceptions for projects undergoing mandatory seismic retrofits.
Applicant:	City of Oakland
Environmental Determination:	The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, “EIRs”). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).
City Council District:	All
Action to be Taken:	Recommendation to City Council
Staff Recommendation:	Take public testimony; close the public hearing; and recommend approval of the proposal to the City Council.
Finality of Decision:	Recommendation to City Council
For Further Information:	Contact Ed Manasse at 510-238-7733 or emanasse@oaklandca.gov.

SUMMARY

At a future date to be determined, the Oakland City Council will be considering a proposed ordinance requiring property owners to make seismic retrofits to “soft-story” buildings, which are structurally vulnerable in the event of a major earthquake. The ordinance would primarily modify areas of the Oakland Municipal Code outside the jurisdiction of the Planning Commission. One piece of the ordinance – concerning zoning incentives to property owners – would involve changes to the Oakland Planning Code and, therefore, falls under the jurisdiction of the Planning Commission. The Planning Commission is being asked to review the proposed amendments to the Planning Code and to make a recommendation to the City Council concerning those amendments for the City Council’s consideration when it reviews the comprehensive ordinance. The Planning Commission should limit its review and recommendation to the proposed Planning Code amendments.

Staff recommends that the Planning Commission recommend approval of the proposed Planning Code amendments to the City Council because they would: facilitate seismic retrofits to make housing safer in the city; could result in additional needed housing through a proposed density bonus provision; and are unlikely to result in significant impacts.

BACKGROUND

Soft-Story Buildings in Oakland

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

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

Previous Policy Actions

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

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

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

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

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

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

City Councilmember Dan Kalb (District 1) has been the lead proponent in developing the soft-story seismic retrofit program for the City, which is described below.

PROGRAM DESCRIPTION

The elements of the proposed soft-story seismic retrofit program are described below. Although the Planning Commission's scope of review in this matter is limited to the proposed zoning exceptions discussed below, an overview of the broader program is provided so that the Planning Commission has the proper context for considering the zoning exceptions.

Evaluation

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

Retrofit Compliance

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

- Tier 1: The largest buildings, those with 20 or more residential units (without ground-floor residential units or commercial space), would be required to comply first. They would be required to obtain retrofit permits within three years of the ordinance effective date and to complete construction within four years of the ordinance effective date. In lieu of fines, owners who failed to comply with the 2009 mandatory screening (Ordinance 12966 C.M.S.; O.M.C. Chapter 15.26) would be assigned to Tier 1 as well.
- Tier 2: Buildings with at least five units and fewer than 20 units (without ground-floor residential units or commercial space), would be required to obtain retrofit permits within four years of the ordinance effective date and complete construction within five years of the ordinance effective date.
- Tier 3: Buildings with ground-floor residential units or commercial space are expected to need more time to plan the retrofit work. These buildings would be required to obtain permits within five years of the ordinance effective date and complete construction within six years of the ordinance effective date.

Tenants

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

Certain tenants may need to be temporarily relocated during seismic retrofit work if the work impacts their unit. In that case, the City's Code Compliance Relocation Program would require property owners to make payments to residential tenants to cover the cost of temporary housing elsewhere.

Seismic retrofits are considered capital improvements under the City's Rent Adjustment Program (RAP). Under existing RAP regulations, up to 70 percent of the cost of a capital improvement may be transferred to the tenant. The Rent Adjustment Board could decide to adjust this cost pass-through. Depending upon the Rent Adjustment Board's action on the pass-through, the City may decide to use Community Development Block Grant (CDBG) funding to provide financial assistance to lower income tenants that experience a financial hardship from the program.

When the complete soft-story seismic retrofit ordinance goes to the City Council for consideration, it is expected to contain a proposal to modify the City's RAP Ordinance regarding the exemption for substantial rehabilitations. Under the proposal, owner expenditures on seismic retrofit work would not be included in calculating the costs related to RAP exemptions based on substantial rehabilitations. Up until recently, buildings that were substantially rehabilitated could be exempted from RAP requirements. Earlier this year, however, the City Council imposed a moratorium on RAP exemptions based on substantial rehabilitations. The City Council is currently considering an extension of the moratorium (final passage was scheduled for October 2, 2018) and has directed staff to prepare proposed legislation for the permanent removal of the substantial rehabilitation exemption.

Financial Assistance to Owners

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

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

Zoning Exceptions

In addition to the financial assistance described above, the retrofit program would also include certain exceptions to the City's zoning regulations to provide further incentives to property owners and make the retrofit work more financially feasible. This feature is the focus of the Planning Commission's review of the proposed program and is further discussed below under "Key Issue – Zoning Exceptions."

Implementation

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

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

Community Engagement

The City, led by Councilmember Dan Kalb and his staff, has engaged with the public extensively to develop and receive feedback on the proposed program. Since 2014, the City has held 12 meetings with a community stakeholder committee and with the larger community. In addition, staff conducted an online survey.

KEY ISSUE – ZONING EXCEPTIONS

The proposed retrofit program would include certain exceptions to the City's zoning regulations. The goal of these exceptions is to provide further incentives to property owners performing seismic retrofit work and to make the retrofit work more financially feasible. ***Attachment A*** contains the proposed amendments to the Oakland Planning Code.

Planning staff is proposing the following zoning exceptions:

1. Parking, setback, and height requirements – The parking, setback, and height requirements normally applicable to a building would be waived in conjunction with mandatory seismic retrofit work.

Staff rationale: Seismic retrofitting a building sometimes requires work that can impact a building's ability to meet parking, setback, or height requirements. For example, structural bracing may be required in the ground-floor garage of the building necessitating the removal of a parking space. In these cases, existing zoning regulations may allow the owner to seek a variance from the standard. However, in cases where multiple variances are anticipated for the same type of project, rather than subject all owners to the variance process and direct additional caseload through the City, it is more efficient to amend the code so that variances are not required.

2. Density bonus – The residential density limitation applied to properties undergoing mandatory seismic retrofit work would be increased by one dwelling unit, if the additional unit is located either within: (a) the building envelope; or (b) the height and setback requirements normally applicable to the building. If the additional unit is not constructed at the same time as the retrofit work, the building permit for the additional unit would need to be issued within three years of the completion of the retrofit work. Parking requirements that would normally apply to the additional unit would be waived if the property is located within a Transit Accessible Area as defined in the Planning Code (see map in **Attachment B**). Open space requirements would also be waived, regardless of the location.

Staff rationale: The cost of retrofit work can be offset through the additional revenue received from an additional unit. Impacts are expected to be minimal because the new unit would be located within the building envelope or within the normally applicable height and setback requirements. The impact of waiving parking requirements would be limited due to the proximity of transit in Transit Accessible Areas. This provision would be similar to the existing provision for Secondary Units where parking requirements are waived near transit. Furthermore, although parking and open space requirements would be waived in certain circumstances, the new unit would still be subject to public notice and design review and would need to satisfy the design review criteria for approval.

Planning staff believes these zoning exceptions are appropriate because they would facilitate seismic retrofits to make housing safer in the city, could result in additional needed housing (through the increased density provision), and are unlikely to result in significant impacts. Furthermore, any impacts that do occur would be offset by the larger benefit of providing safer housing in the city.

GENERAL PLAN ANALYSIS

The proposed amendments to the zoning regulations are consistent with and implement the policies of the Oakland General Plan. Both the Safety Element of the General Plan (through the Local Hazard Mitigation Plan) and the Housing Element of the General Plan call for the creation of a soft-story seismic retrofit program; and the Safety Element, specifically, calls for financial and land use incentives for property owners to comply with the program. In addition, the proposal is consistent with other City policies, including the Housing Equity Roadmap and the Resilient Oakland playbook.

ENVIRONMENTAL REVIEW

The proposal relies on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan (2013); Land Use and Transportation Element of the General Plan (1998); Oakland Estuary Policy Plan (1998); West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; 1998 Amendment to the Historic Preservation Element of the General Plan; 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

The proposal would not result in any significant effect that has not already been analyzed in the above EIRs, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIRs. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3). In addition, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment).

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. Affirm staff's environmental determination; and
2. Recommend approval to the City Council of the proposed amendments to the Planning Code.

Prepared and approved by:



ED MANASSE
Interim Deputy Director, Bureau of Planning

ATTACHMENTS:

- A. Proposed Planning Code Text Amendments
- B. Map of Transit Accessible Areas

ATTACHMENT A

Proposed Amendments to the Oakland Planning Code

Amendments to Oakland Planning Code Chapter 17.102. Oakland Planning Code chapter 17.102 is proposed to be amended as follows (the entirety of Section 17.102.250 is new; new text is underlined and deleted text is ~~struck-out~~):

Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

Sections:

17.102.010 Title, purpose, and applicability.

17.102.020—17.102.080 Reserved.

17.102.090 Shared access facilities.

17.102.100 Reserved.

17.102.110 Expansion of use into adjacent zones.

17.102.120 Removal of dirt or other minerals—Residential and S-1, S-2, S-3 and OS Zones.

17.102.130 Reserved.

17.102.140 Private stables and corrals.

17.102.160 Adult Entertainment Activities.

17.102.170 Massage Activities.

17.102.180 Restriction on vertical location of activities in buildings containing both Residential and Nonresidential Activities—Commercial Zones.

17.102.190 Joint Living and Work Quarters.

17.102.195 Residentially-Oriented Joint Living and Working Quarters.

17.102.200 Pedestrian bridges constructed over City streets.

17.102.210—17.102.220 Reserved.

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

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

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

17.102.255~~17.102.250~~—17.102.265 Reserved.

17.102.270 An additional kitchen for a single dwelling unit.

- 17.102.280, 17.102.290 Reserved.
- 17.102.300 Dwelling units with five (5) or more bedrooms.
- 17.102.310—17.102.335 Reserved.
- 17.102.340 Electroplating Activities in the Industrial Zones.
- 17.102.350 Tobacco-oriented activities.
- 17.102.360—17.102.390 Reserved.
- 17.102.400 Exterior security bars and related devices.
- 17.102.420—17.102.430 Reserved.
- 17.102.440 Crematories.
- 17.102.450 Laundromats.

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

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

- A. Parking, Setback, and Height. The parking, setback, and height requirements normally applicable to any building undergoing permitted retrofit work shall be waived in conjunction with retrofit work required by Chapter 15.27 of the Oakland Municipal Code.
- B. Additional Unit. The number of legal living units in any building undergoing permitted retrofit work may be increased by one (1) unit, regardless of any resulting nonconformity as to the normally required maximum density, as long as the additional unit is located either within the building envelope resulting from the permitted retrofit work; or outside of such building envelope, but within the height and setback requirements normally applicable to the subject building. The building permit for the additional unit must be issued no later than three (3) calendar years from the date of the final inspection of the retrofit work.
 - 1. Parking. The normally required parking requirements of the Oakland Planning Code shall not apply to such additional unit if the site is located within a Transit Accessible Area, as defined in Chapter 17.09.
 - 2. Open Space. The normally required open space requirements of the Oakland Planning Code shall not apply to such additional unit regardless of site location.

