REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date:	December 4, 2015	CAO File No. Council File No. Council District:	0220-04985-0000 14-1697-S2 ALL
To:	The Council		
From:	Miguel A. Santana, City Administrative Officer		
Reference:	Seismic Retrofit Program		
Subject:	**OTHER FINANCING OPTIONS FOR THE SEISMIC RETROFIT PROGRAM**		

SUMMARY

The Office of the City Administrative Officer ("CAO") was instructed by the Mayor and Council to report back on financing options and tools for the seismic retrofit program, specifically working with lenders to explore low-interest loan programs (C.F. 14-1697-S1). This report identifies potential financial options, including the option of working with lenders, as possible tools to support the proposed seismic retrofit program. The intention of this report is to serve as the first step in starting the discussion about possible options; most options will require much more input and analysis to fully develop. Undoubtedly, there are many other options not discussed herein which may also be considered and options that may evolve or develop in the future over the course of the seismic retrofit program that may be addressed in future discussions.

BACKGROUND

The Mayor commissioned a report under the leadership of seismologist Lucy Jones, Ph.D. entitled "Resilience by Design" that was released in December of 2014. This report addressed the City's seismic vulnerabilities in the following areas: pre-1980 "soft-first-story" buildings; pre-1980 "non-ductile reinforced concrete" buildings; water system infrastructure; and, communications infrastructure. The Mayor's report made multiple recommendations and suggested various incentives to move the City forward on a path towards resilience.

The Housing Committee held multiple meetings throughout 2015 to evaluate the recommendations included in the "Resilience by Design" report, culminating with the recent adoption by the City Council of the City's most comprehensive mandatory seismic ordinance, which became effective on November 22, 2015 (C.F. 14-1697-S1).

The City Council also took several actions to implement the Property Assessed Clean Energy program ("PACE") within the City as an option available to property owners to finance seismic retrofits. The CAO report dated June 4, 2015 and approved by the Mayor and Council on July 2, 2015 provided for the actions necessary to opt-in to PACE programs offered by

AllianceNRG, Figtree Company Inc. and Renewable Funding (CaliforniaFIRST). The CAO report dated September 4, 2015 and approved by the Mayor and Council on September 24, 2015 provided for the actions necessary to opt-in to PACE programs offered by Ygrene Energy Fund and Energy Efficient Equity (C.F. 14-1697-S2). The City previously took action to opt-in to the PACE program offered by the County of Los Angeles (C.F. 14-0812).

Options and tools for the mandatory seismic retrofit program can be divided into several categories: 1) financial incentives, such as grants, rebates, loans, and fee waivers; 2) policy incentives, such as expedited permit processing and waiver of certain zoning requirements; and, 3) informational tools, such as technical advice on retrofitting, guidance on selecting a contractor, and help with obtaining loans or financial incentives. This report focuses on financial incentives pursuant to Council direction.

MANDATORY SEISMIC RETROFIT ORDINANCE

The mandatory seismic retrofit ordinance that became effective on November 22, 2015 applies to all: 1) pre-1978 wood-frame, first-soft-story, buildings excluding residential buildings that contain three dwellings or less; and, 2) pre-1977 concrete buildings excluding detached single-family residences and detached duplexes (C.F. 14-1697-S1; Ord. No. 183893). The ordinance also addresses requirements for tenant/occupant notices, tenant habitability plans pursuant to the Rent Stabilization Ordinance, and engineering analysis.

First-Soft-Story Buildings

The Department of Building and Safety Department ("DBS") will prioritize enforcement for first-soft-story buildings based on the number of units and stories of the targeted buildings. Property owners will have one year from notice to submit to DBS:

- Structural analysis and plans that demonstrate the building is in compliance;
- Structural analysis and plans for a retrofit that will meet or exceed requirements; or
- Plans for the demolition of the building.

Property owners will have two years from notice to obtain all necessary permits. Property owners will have seven years from notice to complete construction or demolition.

Concrete Buildings

Regarding concrete buildings, property owners are required to submit a completed checklist to DBS within three years of notice. If the building is determined to be a non-ductile concrete building, the property owner will have ten years from notice to submit a detailed evaluation including one of the following:

- Proof that the building was previously retrofitted in compliance with prior building codes;
- Proof that the building was retrofitted in compliance with this ordinance;
- Structural analysis that demonstrates the building meets the requirements of this ordinance;

- Structural analysis and plans for a retrofit that will comply with this ordinance; or
- Plans for the demolition of the building.

Property owners will have twenty-five years from notice to complete construction or demolition.

Analysis

DBS estimates that the number of buildings impacted by this ordinance is approximately 13,472 first-soft-story buildings (i.e. 12,100 apartment buildings and 1,372 condominiums) and 1,500 non-ductile concrete buildings, for a total of approximately 15,000 buildings. Of the first-soft-story buildings identified, approximately ninety-nine percent of the buildings are subject to the City's Rent Stabilization Ordinance, according to the Housing and Community Investment Department ("HCID"). HCID has reported separately on the various issues associated with the pass through of retrofit costs pursuant to the Rent Stabilization Ordinance (C.F. 14-0268-S7).

This Office reached out to various PACE providers to obtain real-time cost information for typical seismic retrofit projects. Most providers responded that they did not yet have significant cost data for Southern California retrofit projects since the various seismic retrofit programs are in the early phases of being rolled out. In general, the cost of a seismic retrofit will vary based on multiple factors specific to each project. HCID reports that the average per unit cost is approximately $4,300; however, it is important to note that this is an estimate based on assumptions that may vary and significantly alter average costs (C.F. 14-0268-S7).

SEISMIC RETROFIT PROGRAMS IN OTHER JURISDICTIONS

In recent years, there has been a renewed movement in support of the seismic strengthening of homes and infrastructure, particularly in West Coast cities that face serious seismic risk. Portland and San Francisco are two examples of cities that have developed seismic retrofit programs. There has been a wide range of financial incentives and assistance offered by cities. In several cases, no financial assistance is being provided and the city has taken the approach of pursuing penalties and enforcement. Other jurisdictions have made grant funds available, waived permit fees, or offered rebate programs. Examples of funding sources include the general fund, grant funds or tax increment funds prior to the dissolution of Community Redevelopment Agencies in California in 2011.

Portland

The City of Portland, Oregon established a residential seismic retrofit program with the creation of a non-profit, Enhabit, that partnered with the city's Bureau of Emergency Management. Enhabit provides assistance to property owners interested in a variety of upgrades, including seismic retrofit, and connects property owners to local contractors, financing and third-party quality oversight. Portland initiated a pilot program in 2014 that obtained a $100,000 Federal Emergency Management Agency (FEMA) grant to assist property owners pay for a portion of their seismic retrofits and is in the process of pursuing a second grant for $500,000. Portland established a Seismic Retrofit Support Committee that is in the process of further developing their retrofit assistance program.

San Francisco

In 2011, San Francisco adopted a 30-year seismic retrofit program that outlines 50 tasks based on an extensive ten-year study. The Earthquake Safety Implementation Program (ESIP) identifies soft-story apartment buildings as its most severe immediate problem and is currently concentrating efforts to address the risk by adopting updated seismic building standards, implementing a voluntary seismic upgrade of single and two-family dwellings and a mandatory retrofit program for pre-1978 soft-story wood frame residential buildings of three or more floors and five or more units. San Francisco also implemented a PACE program administered by AllianceNRG that offers financing options to property owners by having an assessment added to the property tax bill as the method for the loan repayment. In 2013, San Francisco, in conjunction with the San Francisco Apartment Association, co-hosted a finance workshop for property owners with questions about financing their mandatory retrofits. The workshop was attended by a dozen banks and their contact information was posted on the ESIP website so property owners could contact these lenders directly.

FINANCIAL OPTIONS

The Mayor and Council instructed the CAO to provide a menu of financing options in support of the seismic retrofit program. It should be noted that many of these options require the development of criteria, implementation plans, and the dedication of funds and staff resources. The seismic retrofit program should be managed by a single department to maximize coordination and efficiency. This Office urges the Mayor and Council to consider these issues in the context of the annual budget as one of the many policy decisions made about the allocation of City resources.

State Tax Credit

Assembly Bill 428 (Nazarian) would have provided for a personal or corporate income tax credit of 30 percent of the qualified costs of a completed seismic retrofit that would sunset in 2022. The proposed tax credit was capped at $12 million annually and allowed for the tax payer to claim one-fifth of the credit each taxable year for five years, subject to the cap and in lieu of other eligible tax credits. The bill passed the Legislature in September of 2015 but it was vetoed by Governor Brown in October of 2015 based on fiscal concerns about adding new tax credits in light of the State's continuing budget challenges. This Office understands that there is a possibility that this bill may be reintroduced for consideration during the next legislative session. The City has previously adopted Resolutions in support of this legislation and could do so again when the legislation is reintroduced in the future (C.F. 15-0002-S17). The Mayor's Office continues with lobbying efforts in Sacramento in support of this proposal and others that relate to seismic retrofits.

Grants

There are a variety of potential grant opportunities that could be further explored. Grants could be used to pay for a portion of qualified expenditures for building assessment, engineering and design, and construction. Grants could also be used as the funding source for a rebate program or a low-interest loan program. Assuming the City was to receive or decide to dedicate grant funds to offset retrofit costs, a working group would need to be formed to identify the lead department, develop the criteria, and create an implementation plan to execute a seismic retrofit assistance program. The following is a brief discussion of some options.

California Residential Mitigation Program

The California Residential Mitigation Program (CRMP) is a joint powers authority (JPA) entity of the California Earthquake Authority (CEA) and the Governor's Office of Emergency Services (Cal OES) formed in 2011. CRMP was established to carry out mitigation programs to assist property owners seeking to seismically retrofit their homes by providing grants and other types of assistance and incentives. The Earthquake Brace+Bolt (EBB) program is CRMP's first of such mitigation programs. EBB provides grants of up to $3,000 to property owners of detached residential buildings composed of one to four units in specific zip codes selected based on earthquake hazard risk and the seismic vulnerability of structures. Several City zip codes are included in the program. The EBB website includes a contractor directory of California-licensed contractors who have successfully completed the Federal Emergency Management Agency (FEMA) training for seismic retrofit of single-family wood-frame homes. The directory is offered as a service and EBB does not assume responsibility for the work of contractors on the list.

CRMP reports that as of July of 2015, 144 retrofits throughout the State have been completed, 169 additional retrofits obtained permits and 699 projects were waitlisted. CRMP projects 600 retrofits will be completed by the end of the year. Additional research would be needed to identify the number of projects within the City. The 2015-16 California adopted budget includes $3 million in funding to expand EBB and CRMP is pursuing FEMA grant funds of $300,000 to expand the program in Napa. Legislation adopted this year authorizes CRMP to offer grants to buildings with up to 10 residential units in the future and exempts grants, credits, rebates or other financial incentive received from CRMP or the CEA from gross income for tax purposes (SB 102).

The City could pursue developing a partnership with CRMP to expand or create a grant program targeting the properties identified in the mandatory retrofit ordinance and pursue other State funding opportunities.

Community Development Block Grant

The City receives Community Development Block Grant (CDBG) funding and develops an annual plan for expenditures. HCID reports that 99 percent of the soft-story properties subject to the mandatory retrofit ordinance are affordable housing properties. CDBG funds qualify to reimburse property owners for seismic retrofits where 51 percent of the property's residents are low and moderate income individuals. As part of the annual Consolidated Plan, the City could identify and set aside grant funds to reimburse qualified property owners for retrofits. This should be reviewed in the context of all the competing demands for grant funds and consideration should include the need to identify a lead department, staff, develop criteria and create a work plan for implementation.

Federal Emergency Management Agency

Federal funding for hazard mitigation activities is available under the Robert T. Stafford Emergency Assistance and Disaster Relief Act (Stafford Act) through FEMA and Cal OES. Cal OES is responsible for reviewing applications for the Hazard Mitigation Grant Program and forwarding funding recommendations to FEMA. As previously mentioned, Portland has obtained grant funds to assist property owners with a portion of their retrofit costs. The City's Emergency Management Department (EMD) prepares the City's Local Hazard Mitigation Plan and is required to submit an updated plan every five years. Adoption of this plan is required in order for jurisdictions to be eligible for hazard mitigation assistance from FEMA. The plan must include any project that may be seeking hazard mitigation grant funds. EMD is in the process of updating this plan and would need input about a possible seismic retrofit grant program to include in the next plan update. A lead department would need to be designated to develop a grant-funded financial assistance program and prepare the grant application.

CITY INCENTIVES

There are several possible incentives that the City can pursue; most will likely have an impact on the City's General Fund from the loss of revenue and/or added expenditures. These incentives range from fee waivers to workshops with lenders to encourage private, low cost loans. Additional information is needed to quantify the impact for most options, such as the number of businesses located in targeted buildings, the average business tax receipts of the tenants in each impacted building; of those buildings, how many retrofits will result in the need for businesses to relocate or be displaced. The City also needs to take into consideration limitations imposed by Propositions 26 and 218.

Fee Waivers

Property owners will be responsible for various DBS permit, plan check and inspection fees related to seismic retrofit projects. The Mayor's Office has raised the possibility of waiving these fees as a means of offsetting the retrofit costs. DBS and City Attorney input is necessary to address fee waivers and the financial impact to the General Fund from the loss of that revenue. This issue should be addressed as part of the annual budget by DBS.

Tax Incentives

There has been discussion about the possibility of offering tax incentives, such as a five-year business tax exemption for tenants that move to buildings that have been seismically retrofitted and business tax exemptions for the property owners of buildings that retrofit above minimum code requirements. The City collects business taxes from residential properties of four or more units and commercial property owners that earn annual gross receipts in excess of $20,000 at a rate of $1.27/$1000 or .0127 percent. The City has approved a number of modifications to the City's business tax structure, including exemptions for small businesses, new car dealerships, tax relief for production companies, and reductions in business tax rates. Those targeted exemptions have been to incentivize business development within the City and structured to minimize revenue impacts to the General Fund. In the case of a tax exemption related to a seismic retrofit, additional analysis would be needed to determine if additional sales tax, utility or other tax growth would be generated and offset the loss of business tax revenue due to the exemption.

In discussions with the Office of Finance (Finance), it was learned that the fund class that covers residential and commercial real property rental also includes properties such as hotels and swap meet operators. In reviewing other data and in further discussions with Finance and DBS, it was determined that an analysis comparing DBS' unreleased list of identified buildings to Finance's tax reports would be needed to determine the potential General Fund impact of any tax exemption structure.

The City Attorney's Office has advised that City Charter Section 104 prevents discriminatory tax measures on taxpayers engaged in the same business and that this issue should be vetted carefully. If an exemption is only offered to businesses that relocate to a retrofitted property to incentivize their return to the City, but not to other businesses engaged in the same activity but not impacted by the retrofit mandate, it provides the returning businesses a preferential business tax rate and may be construed as discriminatory.

Charter Section 104:

> *It shall require an ordinance adopted by a two-thirds vote of the Council to levy a license tax. No discrimination in the amount of license tax shall be made between persons engaged in the same business, other than by proportioning the tax to the amount of business done, except that the Council by ordinance may provide for license tax exemptions and decreases to promote City economic development under the following circumstances. Any incentives shall be limited to predefined areas of the City, such as redevelopment areas, enterprise zones, employment and economic incentive areas, or revitalization zones, where other federal, state, or local economic incentive areas have been established by the Council, by ordinance or by other method required by state or federal law. In addition, any business tax exemptions or reductions shall require the adoption of an ordinance by the Council specifying the amount of the exemption or reduction; the period of time for which the exemption or reduction will be allowed; the specific business tax classification, or classifications, which will be eligible for the exemption or reduction; and the geographical boundaries within which the exemption or reduction will be applicable.*

Any tax exemption will impact the General Fund and present the need to identify other funding sources to offset the revenue loss. Should the Mayor and Council decide to pursue this option, it is recommended that Finance and City Attorney's Office be instructed to develop the analysis, with stakeholder input, and report back with options for consideration. In the alternative, other options may be developed that offer support to property owners and avoid the possible complications associated with tax exemptions.

Rebates

Generally, rebate programs can be effective tools that help offset the financial burden of potentially very expensive projects and incentivize property owners to expeditiously complete the work in order to receive the rebate. Rebates could be used to pay for a portion of qualified expenditures for building assessment, engineering and design, and construction. There may be tax implications associated with rebates and property owners should consider obtaining tax advice prior to applying for any rebate. The Department of Water and Power (DWP) offers several rebate programs related to various improvements, such as solar incentives, water conservation and turf replacement rebates. The City of Berkeley created a rebate program to refund up to one-third of the property transfer tax for eligible, voluntary seismic upgrades to qualified residential properties. As previously discussed, Portland obtained FEMA grant funds for their rebate program.

The development of a rebate program would entail the identification of a funding source, administering department, criteria and a work plan. There are several possible options to fund a rebate program, but additional investigation is needed to determine availability and develop the parameters for the use of funds from each grant source. Should the Mayor and Council decide to pursue this option, it is recommended that a task force be formed by representative from this Office, City Attorney, HCID and DBS, with stakeholder input, to report back with options for consideration.

Bank workshop

As previously discussed, San Francisco hosted a finance workshop that was attended by a dozen banks whose contact information was later posted on the ESIP website so property owners could contact these lenders directly.

This Office, with assistance from the Mayor's Office, DBS and HCID, could host a workshop for banks and lenders with interest in potentially offering low-interest loans for seismic retrofit projects. This Office has long-standing relationships with many lenders and has already informally reached out to many of the banks on the current list of qualified underwriters to discuss the seismic retrofit program and the City's interest in their assistance to help property owners. The City could post the attendee contact information on the DBS website about the seismic retrofit ordinance, absent a dedicated website similar to those developed by San Francisco and Portland.

Debt Financing

The issuance of bonds to fund grants or loans is an option, although it would be a very challenging option to execute. General Obligation bonds would require the two-thirds majority vote of the City electorate. Non-voter approved bonds issued by the Municipal Improvement Corporation Los Angeles (MICLA) may also be an option, but there are multiple, high priority demands on MICLA that would likely need to be delayed in order to support a MICLA bond issuance for seismic grants. Special Assessment or Mello-Roos Districts could be established, but also require two-thirds majority vote of the properties in the District. Further, once a District is formed, properties cannot be added without a revote.

Summary of Recommendations

Attachment A provides a brief summary of options and instructions needed for further action, should the Mayor and Council choose to pursue any of these options. Alternatively, this entire report may be received and filed.

These recommendations are in compliance with the City's Financial Policies.

RECOMMENDATIONS

That the City Council, subject to approval of the Mayor:

1. RECEIVE and file this report; or

2. ADOPT the instructions for each option summarized in Attachment A that is selected by the Mayor and City Council for further analysis.

FISCAL IMPACT STATEMENT

There is no fiscal impact to the City from the recommendations contained in this report. The financial impact of any options contemplated by the Mayor and City Council will be addressed in future reports, if necessary.

DEBT IMPACT STATEMENT

There is no debt impact to the City from the recommendations contained in this report. The financial impact of any options contemplated by the Mayor and City Council will be addressed in future reports, if necessary.

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Attachments:
Attachment A – Summary of Options Under Recommendation No. 2