

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING
CHAPTER 17.41 TO TITLE 17 OF THE SAN JOSE
MUNICIPAL CODE TO REQUIRE MANDATORY SEISMIC
RETROFIT OF CERTAIN WOOD-FRAME TARGET STORY
(SOFT STORY) RESIDENTIAL BUILDINGS**

WHEREAS, the City of San José (“City”) is acknowledged to be subject to severe earthquakes in the foreseeable future, with a roughly seventy percent (70%) chance of a Northridge-sized earthquake with a magnitude of six (6) or more on the Richter scale in the Bay Area in the next thirty (30) years; and

WHEREAS, older multi-unit residential wood frame buildings with soft, weak, open, or otherwise vulnerable lower stories, sometimes known as “soft story” buildings or “Wood-Frame Target Story”, are acknowledged to be among the most earthquake collapse-prone structures in the City; and

WHEREAS, the number of wood-frame residential buildings with soft, weak, open, or otherwise vulnerable lower stories in the City is estimated to be up to 3,500 buildings containing about 25,000 housing units, with up to 1,700 of those buildings containing about 15,000 rent stabilized apartments; and

WHEREAS, the San José Municipal Code and the California Existing Building Code (California Code of Regulations, Title 24, Part 10) require seismic retrofit only in exceptionally rare cases; and

WHEREAS, California Health and Safety Code Section 19160(n) encourages the City “to initiate efforts to reduce the seismic risk in vulnerable soft story residential buildings;” and

WHEREAS, it is acknowledged to be in the best interests of the City's building owners, commercial and residential tenants, and all residents to apply retrofit standards that balance the benefits of reduced earthquake losses with the costs and disruptions of seismic retrofit; and

WHEREAS, other Bay Area cities have implemented "soft story" retrofit programs and have identified cost-beneficial improvements and interpretations of existing model codes and standards; and

WHEREAS, in 2014, the City Council directed City staff to develop a mitigation plan for the City's "soft story" buildings and in 2017 ranked the development of a "soft story" retrofit program as a policy priority; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new Chapter is added to Title 17 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

Chapter 17.41

Mandatory Seismic Retrofit of Wood-Frame Target Story Residential Buildings

17.41.500 Purpose

- A. This Chapter 17.41 shall be known as the “Mandatory Seismic Retrofit of Wood-Frame Target Story Residential Buildings,” may be cited as such, and hereinafter also referred to in this Chapter as “this Chapter.”
- B. The purpose of this Chapter is intended to promote public safety and welfare through a program of mandatory seismic retrofit of older multi-unit residential wood frame buildings with soft, weak or open, or otherwise vulnerable lower stories potentially susceptible to earthquake damage and collapse. The program is intended to reduce earthquake-related deaths and injuries, improve the durability of the existing housing stock, 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.

17.41.510 Findings

The City Council finds and declares as follows:

- A. The City is authorized to assess its earthquake hazard and identify potentially seismically hazardous buildings through a licensed architect, civil engineer, or by the staff of a local building department when supervised by a licensed architect

- or civil engineer. (California Health and Safety Code Section 19161(a), as may be amended.)
- B. The California Building Standards Commission adopted Section 317 of the California Existing Building Code, allowing a local jurisdiction to adopt standards for earthquake evaluation and retrofit based on the national standard known as ASCE 41, titled “Seismic Evaluation and Retrofit of Existing Buildings.”(California Health and Safety Code Section 19162(b)(1), as may be amended.)
- C. The City adopted Section 24.07.120 of the San José Municipal Code, the 2022 edition of Chapter A4 of the California Existing Building Code, titled “Earthquake Risk Reduction in Wood-Frame Residential Buildings with Soft, Weak or Open Front Walls.” (California Health and Safety Code Section 19162(b)(1), as may be amended.)
- D. The City may adopt FEMA procedure FEMA P-807, titled “Seismic Evaluation and Retrofit of Multi-Unit Wood-Frame Buildings with Weak First Stories,” with model code provisions in its Appendix B as “substantially equivalent standards” relative to California Existing Building Code Chapter A4 or ASCE 41. (California Health and Safety Code Section 19163(b), as may be amended)
- E. Local ordinances and mitigation programs for “potentially hazardous buildings” identified under California Health and Safety Code Section 19161(a)(2) are exempt from making express findings otherwise required by California Health and Safety Code Section 19163(b) citing Sections 17958.5 and 17958.7. (California Building Code Section 1.1.8.1)

17.41.520 Definitions

The definitions set forth in this Chapter shall govern the application and interpretation of this Chapter.

- A. “Apartment Rent Ordinance Regulations” shall have the meaning provided in Section 17.23.165 of the San José Municipal Code.
- B. “Building Official” shall have the meaning provided in Section 24.01.227 of the San José Municipal Code.
- C. “Capital Improvement Petition” shall have the meaning provided in Section 17.23.330 of the San José Municipal Code.
- D. “Dwelling Unit” means a single unit, whether rented or owner-occupied, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; or any individual residential unit in a building with R-1 or R-2 occupancy, including short-term rental units; or any guestroom, with or without a kitchen, in either a tourist or residential hotel or motel; or any unit in a townhouse building. Any unit occupied as a Dwelling Unit, whether approved or not approved for such use, shall be counted as a Dwelling Unit.
- E. “Owner” means the owner of record as shown on the last assessment on the county tax roll. For purposes of providing notice to an Owner of any action or proceeding under this Chapter, the term Owner includes the actual Owner of record, sole or part Owner, or such Owner’s agent, employee, or other legal representative.

- F. “Rental Housing Unit” means a Dwelling Unit that is not Owner-occupied.
- G. “Specified Capital Improvement” shall have the meaning provided in Section 17.23.330 of the San José Municipal Code.
- H. “Subject Building” means 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 (2) or more stories, three (3) or more Dwelling Units, and have a Wood-Frame Target Story; or any building for which the Owner is sent notification or screening instructions until it is found to be exempt through the screening process.
- I. “Wood-Frame Target Story” means either: (1) a basement story or underfloor area that extends above grade at any point; or (2) any story above grade, where the wall configuration of such basement, underfloor area, or story is substantially more vulnerable to earthquake damage than the wall configuration of the story above; and (3) a significant portion of lateral or torsional story strength or story stiffness is provided by wood-frame walls; except that a story is not a Wood-Frame Target Story if it is the topmost story or if the difference in vulnerability is primarily due to the story above being a penthouse or an attic with a pitched roof.
- J. “Technical Codes” shall have the meaning provided in Section 24.01.272 of the San José Municipal Code.
- K. “Tenant” shall have the meaning provided in Section 17.20.2020 of the San José Municipal Code.

17.41.530 Wood-Frame Target Story Seismic Retrofit Requirements

- A. The Owner shall complete the design and permit of, and construction of the seismic retrofit of the Subject Building by each deadline under Section 17.41.550.
- B. The Owner shall complete the screening phase by submitting a screening form to the department of Planning, Building and Code Enforcement for review by the Building Official or designee. Failure to complete one of the following by the deadline under Section 17.41.550 will result in the building being designated as a Subject Building subject to Section 17.41.530.A.
 - 1. The Owner may opt-in on a screening form, following procedures to be prescribed by the Building Official, that the building is a Subject Building. If opting-in, the screening form does not require the seal of an architect, civil engineer, or structural engineer; or
 - 2. The Owner may certify on a screening form, following procedures to be prescribed by the Building Official, that the building is not a Subject Building. The screening form shall be sealed by an architect, civil engineer, or structural engineer licensed in California; or
 - 3. The Owner may certify on a screening form, following procedures to be prescribed by the Building Official, that the building is a Subject Building and has completed the seismic retrofit work consistent with the requirements of Section 17.41.620. The screening form shall be sealed by an architect, civil engineer, or structural engineer licensed in California.

17.41.540 Tenant Coordination Plan

- A. The Owners shall submit to the City a Tenant coordination plan. The purpose of the coordination plan is to facilitate communication with Tenants on the expected impact of seismic retrofit work and shall be submitted at least fourteen (14) days before the notification required in Section 17.41.540.B.1.
- B. The Tenant coordination plan shall include how the Subject Building will be affected during retrofit work, how much notice Tenants will be given before work starts, and the schedule of required notifications to Tenants during the retrofit process. The required notifications for each phase of the retrofit process is set forth below:
1. Screening Phase: Tenants shall be notified within forty-five (45) days of the Building confirmed as a Subject Building or completion of the screening process under Section 17.41.550.B.
 2. Design and Permit Phase: Tenants shall be given a three (3)-day notice of any walk-throughs or inspections being done on the building including for construction bids, pre-design evaluations, pre-construction walk-throughs and inspections.
 3. Construction Completion Phase: Tenants shall be notified at least thirty (30) days prior to the start of construction regarding the anticipated length of construction, active construction work hours, and areas where residents will temporarily have limited or no access.

4. Retrofit Completion: Tenants shall be notified within thirty (30) days of notification from the City that the seismic retrofit work has been completed and approved and the Subject Building is in compliance with this Chapter.
5. Rent Increase: Tenants shall be notified in accordance with Chapter 9 of the Apartment Rent Ordinance Regulations of any pass-through amount approved under a Capital Improvement Petition for seismic retrofit mitigation work required by this Chapter.

17.41.550 Subject Building Compliance Group and Schedule

- A. Each Subject Building shall be assigned to one of the following compliance groups.

Group 1. A Subject Building built before January 1, 1978 and containing five (5) or more Dwelling Units and not assigned to Groups 2 or 3 shall be assigned to Group 1.

Group 2. A Subject Building built after January 1, 1978 and before January 1, 1990 and containing five (5) or more Dwelling Units and not assigned to Group 1 shall be assigned to Group 2.

Group 3. A Subject Building built before January 1, 1990 and containing three (3) or more Dwelling Units and not assigned to Group 1 or Group 2 shall be assigned to Group 3.

- B. A Subject Building in each compliance group must complete the required screening and construction by the dates listed in Table 1.

TABLE 1. Compliance deadlines in total years commencing from the effective date of this Chapter

Compliance Group	Screening Phase	Construction Completion
Group 1	18 months (October 1, 2026)	4 years (April 1, 2029)
Group 2	18 months (October 1, 2026)	5 years (April 1, 2030)
Group 3	18 months (October 1, 2026)	6 years (April 1, 2031)

- C. The City may waive or require an amended schedule of Table 1 and grouping assignments under this Section to comply with funding requirements by an agreement between the City and the Owner to facilitate compliance with this Chapter.
- D. Hardship Extension.
1. If an applicant for a Subject Building believes that the physical site conditions, necessary operational requirements, or the public health, safety, or economic welfare make it a hardship or infeasible to meet the requirements of this Section, then the Owner may request a modification to the compliance schedule from the Building Official. The burden shall be on the Owner to demonstrate the grounds for any extension.
 2. In making a determination in response to an application under Subsection 1 above, if the Building Official determines that the facts offered in support of an application demonstrate that the purposes of this Chapter will have been achieved to the maximum extent reasonably allowed by the

circumstances, then the Building Official may extend the schedule for compliance deadline in Table 1 above.

3. The Building Official's decision shall contain a statement of the facts upon which the decision was based.
4. The Building Official's decision shall be mailed or electronically mailed to the Owner at the address shown on the application.

17.41.560 Building Official and Administration

- A. The Building Official is responsible for the administration of this Chapter including the development of forms, other tools, and administrative regulations to implement and facilitate compliance with the requirements of this Chapter.
- B. The Building Official shall retain an official copy of any approved Wood-Frame Target Story evaluation report and retrofit design plans submitted to comply with this Chapter.
- C. The Building Official shall maintain a Subject Buildings list and shall make the list readily accessible to the public. The list shall contain property details and a summary of the compliance status of each Subject Building.
- D. The Building Official may withhold approval of work performed required under this Chapter, including Section 17.41.530, for unsafe conditions even if the unsafe building condition does not relate to the retrofit work.

17.41.570 License and Documentation

The Owner shall retain professionals licensed in California to perform any work that requires a license, and document compliance of the work performed with by the professionals such as an architect, civil engineer, structural engineer, geotechnical engineer, or engineering geologist.

17.41.580 Limited Exemption Period

Any Subject Building that has completed seismic retrofit work in compliance with this Chapter is exempt from additional retrofit of its seismic force-resisting system for fifteen (15) years after the effective date of this Chapter. This exemption does not apply to requirements of Title 17 or Title 24 related to addition, alteration, repair, or change of occupancy.

17.41.590 Enforcement

The Owner of a Subject Building who fails to comply with the requirements of this Chapter 17.41 may be subject to enforcement remedies including fines and penalties under Chapter 1.14 of Title 1.

17.41.600 Warning Notice Requirement

- A. The City shall post sign(s) that informs the public and tenants that a Subject Building has not completed required seismic retrofit work in accordance with Section 17.41.550.B at the end of the Construction Completion deadline. Owner shall maintain the sign(s) until the work is completed. The sign(s) shall conform to the standards established by the City.

- B. The Owner may be issued an administrative citation for failure to post and maintain the sign(s). The amounts of the fines shall be set forth in the schedule of fines established by resolution of the City Council.

17.41.610 Appeal

- A. The Owner must request an appeal, within fourteen (14) calendar days of the Building Official or designee determination that the building is a Subject Building or the building has been deemed a Subject Building for failure to comply with the screening, to the Appeals Hearing Board pursuant to the administrative remedies procedures under Chapter 1.14 of Title 1. If the Owner fails to file an appeal, the building being designated a Subject Building subject to the requirements of this Chapter will be a fact deemed admitted in any subsequent proceedings.
- B. The Owner subject to an administrative remedies enforcement action for failure to comply with Section 17.41.530.A may appeal to the Appeals Hearing Board pursuant to procedures under Chapter 1.14 of Title 1.
- C. The Owner may appeal the Building Official or designee determination relating to requirements of Title 24 of the California Code of Regulations to the Appeals Hearing Board pursuant to the procedures under Part 7 of Chapter 24.02.

17.41.620 Structural Engineering Criteria and other Applicable Standards

- A. Structural seismic evaluation of each Subject Building shall comply with one (1) of the following criteria:
 - 1. The latest edition of “Seismic Evaluation and Retrofit of Existing Buildings”, Standard ASCE/SEI 41, with a performance objective of

Structural Life Safety with the Basic Safety Earthquake-1E (“BSE-1E”) hazard or Structural Collapse Prevention with the Basic Safety Earthquake-2E (“BSE-2E”) hazard, as interpreted by the Building Official;
or

2. “Seismic Evaluation and Retrofit of Multi-Unit Wood-Frame Buildings with Weak First Stories”, (FEMA P-807, May 2012), with an evaluation objective essentially equivalent to the ASCE41 objectives, as interpreted by the Building Official.

B. Structural seismic retrofit of each Subject Building shall comply with one (1) of the following criteria:

1. Chapter A4 of the California Existing Building Code, as interpreted by the Building Official;
2. The latest edition of “Seismic Evaluation and Retrofit of Existing Buildings”, Standard ASCE/SEI 41, with a performance objective of Structural Life Safety with the BSE-1E hazard or Structural Collapse Prevention with the BSE-2E hazard, as interpreted by the Building Official;
3. “Seismic Evaluation and Retrofit of Multi-Unit Wood-Frame Buildings with Weak First Stories”, (FEMA P-807, May 2012), with a retrofit objective essentially equivalent to the ASCE 41 objectives, as interpreted by the Building Official; or
4. For Subject Buildings qualified as historic, alternate building regulations of the California Historical Building Code (California Code of Regulations, Title 24, Part 8), as interpreted by the Building Official.

- C. When considering the work required by this Chapter as an alteration, the Building Official is authorized to waive any of the 2022 California Existing Building Code Sections 503.4 through 503.12 and their successor provisions, as adopted and amended by the City.
- D. When considering the work required by this Chapter as an alteration, the Building Official is authorized to waive any of the 2022 California Green Building Standards Code under Chapter 24.10 and its successor provisions as adopted and amended by the City.
- E. A Subject Building that is also an historic building must also comply with other Code sections including Sections 13.48.210 and 20.100.500.

17.41.630 Occupied Rental Housing Units

- A. Tenants residing in a Rental Housing Unit subject to Chapter 17.23 who must temporarily vacate in order for the Owner to perform the requirements under this Chapter shall not be subject to termination of their tenancy and will not qualify as just cause to evict under San José Municipal Code Section 17.23.1250. Tenants shall have the right to reoccupy the Rental Housing Unit immediately upon the City's issuance of the certificate of completion or whenever the City determines the Rental Housing Unit may be re-occupied by the Tenants.
- B. Where any unit contained in a Subject Building must be vacated to comply with this Chapter, the relocation provisions under San José Municipal Code Sections 17.20.2100 through 17.20.2150 shall apply.

- C. An Owner of a Subject Building regulated by Parts 1-9 of Chapter 17.23 who has complied with this Chapter may petition for a pass-through of their incurred costs as a Specified Capital Improvement in accordance with San José Municipal Code Section 17.23.320.B. The City Manager is authorized to develop additional regulations, procedures, and forms related to its implementation under Part 9 of the Apartment Rent Ordinance Regulations.

17.41.640 Severability

Should any provision of this Chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 2. Effective Date

This Ordinance shall be effective on April 1, 2025.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk