CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Erik L. Soliván

SUBJECT: **See Below**

DATE: April 16, 2026

Approved

Date: 4/17/26

COUNCIL DISTRICT: Citywide

SUBJECT: Affordability Restrictions for Project-Based Subsidy Contracts or Foreclosure

RECOMMENDATION

Adopt a resolution authorizing the Housing Director, or their designee, to allow, on a case-by-case basis for any City funded affordable housing development, rent and income restrictions to increase up to 60% of the Area Median Income for units funded by Low and Moderate Income Housing Asset Fund and up to 120% of the Area Median Income for units funded by Measure E Area Median Income as permitted under the City of San Jose's affordability restrictions for the project, but not to exceed Area Median Income caps, based on funding sources for new tenants in Project-Based Voucher-subsidized units upon expiration or termination of the applicable Project-Based Vouchers and for all tenants in the event of foreclosure or impeding feasibility to preserve unit affordability, if the City of San José has determined that such approval is needed if, and only to the extent, and only for the period of time necessary for the financial feasibility of the affordable housing development, provided the City of San José has determined such increase is necessary for the financial feasibility of the affordable housing development and the increase is permitted under all other applicable funding sources.

SUMMARY AND OUTCOME

In the event of loss of Project-Based Vouchers or foreclosure of any deed of trust secured against a property that is senior to the City's deed of trust, on a City-financed affordable housing development, approval of the recommended action will authorize the Housing Director, or their designee, to negotiate increases to the maximum rents and income limits permitted under the City's affordability restrictions, but not to exceed Area Median Income caps, based on funding source, to the extent necessary to maintain financial feasibility of affected developments. Such increases will apply to new tenants in Project-Based Voucher units upon expiration or termination of subsidy contracts, and to all tenants in the event of foreclosure, only to the extent and for the period of time required for project financial feasibility.

BACKGROUND

Developments with Project-Based Vouchers operate successfully in large part due to the rental subsidy revenue these vouchers provide. The potential loss of that revenue could cause an affordable housing development to operate at a deficit, eliminating critical resident services and ongoing expenses necessary to sustain operations. Project-Based Voucher contracts also carry shorter terms than the long-term financing instruments typically recorded against affordable housing developments.

In addition to underwriting for a potential loss of rental subsidies, foreclosure, and other material events that impact project financing are events that must be assessed and planned for by the City and other lenders of affordable housing developments. To mitigate the impacts of these events, lenders require additional language within affordability restrictions to allow for an emergency increase in maximum rents and incomes, limited to new tenants of Project-Based Voucher units in the event of loss of rental subsidies, and for all tenants in the event of foreclosure. This is typically referred to as the “float up” component of the affordability restrictions recorded on affordable housing developments.

ANALYSIS

Currently, an affordable housing development seeking City funding must include a resolution to City Council approving loan terms to allow an increase in the Area Median Income rents and income restrictions within the City’s affordability restrictions. A potential future request by the developer for an increase in maximum rents or maximum income levels (i.e., “float up”) in the event of loss of subsidy or foreclosure would require the City to execute an amendment to the loan documents as governed under the City of San José Municipal Code Section 5.06.340(A)(2). The current ordinance language requires City Council approval when the request is to change more than 10% of units approved in the affordability mix authorized in the adopted City Council resolution setting forth general parameters for the development under Section 5.06.215, exceeding the Director of Housing’s delegation of authority under Sections 5.06.335 and 5.06.340(A)(2).

This recommendation will grant the Housing Director, or their designee, authority to approve the inclusion of float-up language for a future increase of maximum rents and maximum income levels on a case-by-case basis for any City funded affordable housing development if it is determined that such approval is needed if, and only to the extent, and only for the period of time, necessary for project feasibility. The additional flexibility allows for discretion regarding financial feasibility and the sustainability of a project.

EVALUATION AND FOLLOW-UP

No additional follow-up action with the City Council is expected at this time.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the April 28, 2026 City Council meeting.

BOARD, COMMISSION, COMMITTEE RECOMMENDATION AND INPUT

No board, commission, or committee recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

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/
Erik L. Soliván
Director, Housing Department

For questions, please contact Banu San, Deputy Director, Housing Department, at Banu.San@sanjoseca.gov.