



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmember David Cohen

SUBJECT: SEE BELOW

DATE: 9/28/2021

Approved

Date: September 28, 2021

SUBJECT: EVICTION MORATORIUM – RIGHT TO LEGAL COUNSEL

RECOMMENDATION

Accept staff's report and the 9/27/2021 memorandum from Councilmember Esparza, with the following additional recommendations:

1. Direct staff to report back to Council monthly through information memorandum on its progress in bringing targeted rental assistance to residents who are most at risk of being evicted or displaced after the expiration of the eviction moratorium.
2. Direct staff to develop a workplan establishing a Tenant Right to Legal Counsel program for low-income residents facing eviction, as proposed in my FY2021-22 Budget Document #14 and return to the Neighborhood Services and Education Committee with recommendations for consideration, including options for ongoing state and federal funding sources for the program.

BACKGROUND

I want to first and foremost thank Councilmembers Peralez and Arenas for bringing forward a memo that directs staff to develop a right-to-counsel program for tenants facing eviction and displacement. We are in absolute agreement on the necessity of this program: my office has been pushing for right to counsel since March, when we had our first conversations with Housing about it and requested funding for the development of a right to counsel workplan in the FY 2021-22 budget. I fully support enshrining a guarantee of legal counsel and representation for our most vulnerable communities in our city code.

However, I must respectfully disagree with my colleagues' focus on COVID-19 as the nexus for this program. While the pandemic has certainly exacerbated housing instability and the threat of displacement, the roots of those problems predate the pandemic, and they will outlast it. I'm concerned that focusing a prospective right to counsel program on COVID-19 will undercut our efforts to create an ongoing, continuously funded solution. Rather than setting up a program

funded by one-time COVID stimulus, I would like to see a program that can depend on a consistent source of funding.

We need to look at right to counsel not as a short-term salve for the effects of COVID-19, but as a long-term program that will address historical inequities suffered by working families and communities of color for years to come. Our city, as Councilmember Arenas and others have pointed out, has been fragmented by the legacies of discriminatory redlining practices, legacies for which our most vulnerable residents continue to pay the price; right to counsel can be a vital tool for dismantling those legacies. As we look forward to building back better from the pandemic, as we look towards upcoming developments that have the potential to spur unprecedented investment in our communities, create thousands of units of housing, and redefine the landscape of Silicon Valley, we need lasting, reliable safeguards in place to protect residents from displacement and gentrification.

Thus, I am recommending that staff develop a workplan for a program that guarantees a right to legal counsel for *all* low-income residents in San José, and that staff return to the Neighborhood Services and Education Committee so that the committee has an opportunity to vet the recommendations. It's critical that staff recommendations also include options for ongoing, consistent sources of funding for the program such as AB 1487, and that they provide clear metrics for measuring success.

Furthermore, while we work to build a program that can serve working families and prevent displacement in the long-term, we also need to ensure the most immediate needs of tenants threatened by the expiration of the moratorium are met. A right to counsel program would take time to set up, and it could be years before the program is ready to connect residents with legal services; it will not be available in time to protect residents once the eviction moratorium expires. While setting up the program, I recommend that staff continue to report back monthly on the Rental Assistance Program and its progress. I also fully support the recommendations in Councilmember Esparza's memorandum, which proposes strengthening our rental assistance outreach efforts in areas that have been most heavily impacted by the pandemic's health and economic effects.

While I agree wholeheartedly with Councilmembers Peralez and Arenas about the need for a right to counsel program, we cannot limit that program to COVID response. It must be a long-term solution to problems that our city has struggled with for generations. The need existed before the pandemic, and it will continue to exist after recovery. Let's build a program that will protect our working families now, and for years to come.