



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: November 21, 2022

Approved

Date

12/2/22

SUBJECT: GRANT AGREEMENT WITH SACRED HEART COMMUNITY SERVICE FOR THE EVICTION DIVERSION AND SETTLEMENT PROGRAM AND APPROPRIATION AMENDMENTS

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager or her designee to negotiate and execute a grant agreement, including any amendments or revisions thereto, with Sacred Heart Community Services for an amount up to \$2,286,900, retroactive to October 1, 2022 and through June 30, 2023, to continue the Eviction Diversion and Settlement Program.
- (b) Adopt the following 2022-2023 Appropriation Ordinance Amendments in the General Fund:
 - 1) Decrease the Measure E – 10% Homeless Prevention and Rental Assistance Reserve by \$1,851,565; and
 - 2) Increase the Measure E – Rental Assistance (10% HPRA) appropriation to the Housing Department by \$1,851,565.

OUTCOME

City Council approval of this item allows the Housing Department to continue the Eviction Diversion and Settlement Program, addressing the ongoing need for financial assistance to prevent eviction, displacement, and homelessness for very low-income households in San José

The program prioritizes our most vulnerable residents who have been hardest hit by the COVID-19 pandemic. This program focuses on very low-income renters (incomes below 50% of the area median income) who are at high risk of displacement due to unpaid rent, but have the ability to pay rent going forward and remain stably housed.

BACKGROUND

End of State Eviction Protections and CA COVID-19 Rent Relief Program

On June 28, 2022, the Housing Department provided the City Council with an update¹ on the June 30, 2022 expiration of Assembly Bill 2179 (Grayson) COVID-19 Relief: Tenancy, the last State legislation to provide eviction protections related the COVID-19 pandemic. The Housing Department also provided an update on its programs to prevent evictions and the State's rental assistance program. Table 1 on **Attachment A** provides a summary of key legislation regarding statewide eviction protections and the CA COVID-19 Rent Relief program. The State's strongest eviction protections ended on September 30, 2021 and limited protections for tenants with pending CA COVID-19 Rent Relief program applications ended on June 30, 2022. The CA COVID-19 Rent Relief Program closed to new applications on March 31, 2022 and would not cover rent that came due on April 1, 2022 or later.

Eviction Prevention Help Center

In response to the pandemic, the Housing Department launched the Eviction Prevention Help Center to provide help to tenants and landlords with emergency rental assistance applications and other eviction prevention resources. Since the center opened in August 2021, rental assistance navigators have helped tenants throughout the lengthy rental assistance application process. Assistance was provided in multiple languages including English, Spanish, Vietnamese, and Mandarin. The Eviction Prevention Help Center program was a significant part of the effort to connect more than 13,000 San José households and their landlords with over \$157 million of federal rent relief funds. During this time, the help center program has also offered on-site access to legal services from the Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley. These efforts helped at least 2,000 San José households avoid eviction and homelessness due to pandemic-related impacts.

Though the State's stronger eviction protections ended September 30, 2021, the COVID-19 pandemic was far from over. In winter 2021-2022, the world saw another surge of the COVID-19 virus² leading to a new wave of cases, extension of masking requirements, and additional vaccine mandates³. Many workers sustained additional financial impacts by not being able to work due to testing positive for COVID-19 or staying home with a dependent who tested positive. Some residents also suffered an increase in medical costs when treated or hospitalized due to COVID-19. The State eviction protections for unpaid rent after September 30, 2021 were only available to those who had submitted an application for State COVID-19 rent relief funds and the protections only applied while the application was pending. On March 31, 2022 the protections from eviction for tenants with pending State COVID-19 rent relief applications that included rent due after October 1, 2021 expired. Thus, households with unpaid rent that came due after October 1, 2022 have no protection from eviction, regardless of whether they applied for rent relief or not.

¹ City Council staff memorandum June 28, 2022:

<https://www.sanjoseca.gov/home/showpublisheddocument/88067/637939944468900000>

² <https://www.latimes.com/california/story/2021-12-23/omicron-sweeping-through-california-with-staggering-speed-bringing-alarm-and-questions>

³ <https://www.sanjoseca.gov/Home/Components/News/News/3607/4699>

The Housing Department focused on three eviction prevention efforts to target residents most at risk of displacement after March 31, 2022. A primary effort by the Housing Department was to launch the Eviction Diversion and Settlement Program (Diversion Program)⁴.

The Diversion Program

The Housing Department and the County of Santa Clara's (County) Office of Supportive Housing, in coordination with Sacred Heart Community Services, Destination: Home, and the Project Sentinel Court Mediation Program, successfully launched the Diversion Program. The Diversion Program was originally developed to mitigate the delays in rent relief application processing that put some tenants at imminent risk of eviction. The program used the City and County's remaining funds from U.S. Treasury Emergency Rental Assistance Round One to stop evictions based on nonpayment of rent by quickly paying the landlords unpaid amounts on behalf of tenants who were waiting for their State rent relief applications to be processed and paid.

The County's Office of Supportive Housing could no longer support Diversion Program case review and payment processing after June 30, 2022. Since July 1, 2022, the Housing Department performed all levels of Diversion Program case review and Sacred Heart Community Services has been supporting the Diversion Program by conducting a final review of cases and issuing payments.⁵

The primary funding source used for the Diversion Program, U.S. Treasury Emergency Rental Assistance Round One funds, had to be obligated by September 30, 2022. As such, the initial phase of the Diversion Program was limited to specific circumstances due to constraints of the Federal funding source, State law, and processing capacity. Despite the limitations, the initial phase of the Diversion Program successfully covered \$890,000 of unpaid rent for 63 households, preventing forced evictions and displacement of hundreds of San José residents. After the expiration of U.S. Treasury Emergency Rental Assistance Round One funds, the Housing Department had to identify a funding source to continue the Diversion Program.

ANALYSIS

The Need for the Diversion Program Continues

Since the end of the rent relief program and eviction protections on March 31, 2022⁶, unlawful detainer (eviction) filings with the Santa Clara County Superior Court have soared past pre-pandemic levels⁷. Since October 2021, the Housing Department has regularly been present at the Superior Court during unlawful detainer calendars. From this experience, staff has observed that 90-95% of these filings were based in whole or in part on non-payment of rent. The City requires that property owners file with the

⁴ The other two primary efforts were proactive outreach to tenants and increasing staff presence at the Santa Clara County Superior Court.

⁵ Sacred Heart Community Services holds the remaining funds Emergency Rental Assistance monies directly allocated to the City pursuant to the contract to administer the local emergency rental assistance program that ran from May 2021 to September 2021. The Housing Department will work with Sacred Heart on a final closeout.

⁶ The ending dates of the CA COVID-19 Rent Relief Program and eviction protection are detailed on Attachment A.

⁷ See Table 1 on **Attachment B** - Unlawful Detainers and Notices of Nonpayment

City all notices of termination and all unlawful detainer (eviction) lawsuits pertaining to units covered by its Tenant Protection Ordinance. From the data regarding notices of non-payment of rent staff have seen the number of notices increase since the end of eviction protections and the March 31, 2022 cut-off of the CA COVID-19 Rent Relief program. More detailed data on unlawful detainer lawsuits and notices of nonpayment is provided in **Attachment B**. This data demonstrates that thousands of City residents are at risk of eviction and possible homelessness.

The Housing Department and the County and community partners first developed the Diversion Program in early spring 2022 to mitigate the delays in the CA COVID-19 Rent Relief application processing that put some tenants at imminent risk of eviction after March 31, 2022. Another benefit of the Diversion Program was that it would also assist households that continued to struggle with paying rent that came due after April 1, 2022. The CA COVID-19 Rent Relief Program only covered rent accruing between April 1, 2020 and March 31, 2022.

Proposed Continuation of the Diversion Program

As an interim step, the Housing Department worked with Sacred Heart and Destination: Home to support continuing the Diversion Program past September 30, 2022. Based on the increase in unlawful detainer filings, the Housing Department explored funding options to continue the Diversion Program. Staff identified Measure E Funds designated for homelessness prevention efforts that could be used to continue the Diversion Program. It also identified unused U.S. Treasury Emergency Rental Assistance Round Two funds as a potential funding source.

The Measure E and U.S. Treasury Emergency Rental Assistance Round Two funds would allow the program to continue, with the program operating as follows:

- To be eligible, a tenant household must (a) be at imminent risk of eviction due to unpaid rent, (b) have sustained some impact beyond their control⁸ which led to the rental arrearage, (c) earn less than 80% of the area median income⁹, and (d) be in a financial position to pay rent going forward or otherwise remain stably housed.
- Landlords must agree to dismiss the unlawful detainer action within two weeks (or not proceed with an unlawful detainer action, where applicable) once they receive payment from the Diversion Program.
- Both landlord and tenant agree to provide all documentation necessary to the Diversion Program to process the application and agree to return any duplicated funds.
- When necessary, tenants and landlords work with the day-of-court mediators and/or landlord and tenant attorneys to enter into a stipulated settlement agreement that is presented and approved by the judge assigned to the unlawful detainer calendar.
- Sacred Heart Community Services also supports participants in the program when further financial or other resources are needed to resolve the case.

⁸ For cases funded with State Emergency Rental Assistance Round Two funds, the impact will have to be directly or indirectly related to the COVID-19 pandemic in order to comply with U.S. Department Treasury guidance.

⁹ In 2022, 80% of area median income equates to \$134,800 for a household of four in Santa Clara County and is considered low income.

- The program will prioritize tenant households earning less than 50% of the area median income¹⁰ and households earning more than 50% but less than 80% of the area median income where there are special circumstances – e.g., minor children, elderly, or disabled individuals in the household.

As detailed in Table 1 below, staff determined that \$2,286,900 of available funding would allow the Diversion Program to continue assisting San José households at imminent risk of eviction. With these funds, the Diversion Program expects to assist roughly 150 households with an average of \$15,000 being paid out for each case. Intake, document gathering, and case management functions are performed by Housing Department staff. Consistent with the initial phase of the Diversion Program, Sacred Heart Community Service Homelessness Prevention System Network Coordination will perform tasks related to entering information into the Homeless Management Information System, processing financial assistance, and preparing required reporting. Sacred Heart Community Services performed these functions in the initial phase of the Diversion Program pursuant to an existing contract with the City to administer the U.S. Treasury Emergency Rental Assistance Round One funds. The Housing Department recommends a new contract be negotiated with Sacred Heart Community Services to administer the new phase of the Diversion Program using Measure E and U.S. Treasury Emergency Rental Assistance Round Two funds. Sacred Heart Community Services estimates direct and indirect costs totaling less than \$35,000 to perform these services for approximately 150 cases.

Table 1: Diversion Program funding details

	Funding Source		Total
	Measure E	U.S. Treasury Emergency Rental Assistance Round Two	
Rental Assistance and Housing Stability	\$1,851,565	\$400,335	\$2,251,900
Sacred Heart Community Services administration cost for ~150 cases		\$35,000	\$35,000
		Total:	\$2,286,900

CONCLUSION

With approval of the recommendation, the Housing Department, together with the City’s partners at the County, Sacred Heart Community Services, and Destination: Home, will continue to help San José’s lowest income residents avoid eviction and prevent displacement.

¹⁰ 50% of area median income, which is considered very low income, in Santa Clara County in 2022 for a household of four is \$84,250

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EVALUATION AND FOLLOW-UP

An update on the Diversion Program will be brought to the Neighborhood Services and Education Committee on February 9, 2023.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 13, 2022 City Council meeting.

COORDINATION

The memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The recommendation outlined here is in alignment with the Citywide Residential Anti-Displacement Strategy goal to support equitable COVID-19 recovery and impact mitigation measures for renters.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$2,286,900
2. SOURCE OF FUNDING: General Fund (001) – Measure E proceeds; Emergency Reserve Fund (406) – U.S. Treasury Emergency Rental Assistance Round Two funds.
3. FISCAL IMPACT: This action combines \$435,335 in U.S. Treasury Emergency Rental Assistance Round Two funds for the direct allocation of emergency rental assistance funds intended to assist households that are unable to pay rent and utilities with \$1,851,565 in Measure E funds allocated for the Eviction Diversion and Settlement Program.

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BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum.


Fund #	Appn #	Appn. Name	Total Appn	Rec. Budget Action	Amt. for Contract	2022-2023 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	8747	Measure E – 10% Homeless Prevention and Rental Assistance Reserve	\$6,353,750	(\$1,851,565)		919	10/18/2022 Ord. No. 30833
001	214D	Measure E – Rental Assistance (10% HPRA)	\$10,065,429	\$1,851,565	\$1,851,565	N/A	10/18/2022 Ord. No. 30833
406	222N	Resident Relief: Rent Relief Program	\$435,335	\$0	\$435,335	985	06/21/2022 Ord. No. 30790

CEQA

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

/s/

JACKY MORALES-FERRAND
Director of Housing



JIM SHANNON
Budget Director

The principal author of this memorandum is Emily Hislop, Division Manager. For questions, please contact Ragan Henninger, Deputy Director, at ragan.henninger@sanjoseca.gov.

Attachments:

Attachment A: Summary of State Legislative Action on COVID-19 Tenant Protections

Attachment B: Unlawful Detainers and Notices of Nonpayment

Attachment A

Summary of State Legislative Action on COVID-19 Tenant Protections

Table 1: Dates State legislative bills were signed into law, what they covered as to tenant protections and rent relief, and when the provisions expired.

BILL DATE	EXPIRATION	EVICITION PROTECTIONS
The Tenant, Homeowner and Small Landlord Relief Act of 2020 (Assembly Bill 3088)		
Aug. 30, 2020	Jan. 31, 2021	<ul style="list-style-type: none"> Just cause for eviction extended to all residential tenancies with some additional limitations If tenant submits hardship declaration and pays at least 25% of the rent due between September 1, 2021 and expiration of protections, they can never be evicted for the unpaid rent from that period Tenants can never be evicted due to unpaid rent between March 1, 2020 and August 31, 2020
The COVID-19 Tenant Relief Act (Senate Bill 91)		
Jan. 29, 2021	Jun. 30, 2021	<ul style="list-style-type: none"> Extended Assembly Bill 3088 protections until June 30, 2021 Established the CA COVID-19 Rent Relief Program Applying for rent relief tied into eviction protections
The COVID-19 Rental Housing Recovery Act (Assembly Bill 832)		
Jun. 28, 2021	Mar. 31, 2022	<ul style="list-style-type: none"> Just cause for eviction protections for all residential tenancies would sunset September 30, 2021 Tenants with unpaid rent coming due after October 1, 2021 only protected if they apply for rent relief and, the protection would end March 31, 2022 unless the application was approved
COVID-19 relief: tenancy (Assembly Bill 2179)		
Mar. 31, 2022	Jun. 30, 2022	<ul style="list-style-type: none"> CA COVID-19 Rent Relief Program closed to new applications March 31, 2022 and only covered rent through March 31, 2022 Protections for tenants with unpaid rent between March 1, 2020 and September 30, 2021 remained Tenants with pending rent relief applications for rent accrued after October 1, 2021 would be protected from eviction until June 30, 2022 <i>unless</i> a final decision denying the application was issued

Attachment B

Unlawful Detainers and Notices of Nonpayment

Since the Tenant Protection Ordinance (TPO) took effect in late 2018, the Housing Department has been receiving, processing, and tracking termination notices and unlawful detainer filings for properties covered by the TPO. Owners of units covered by the TPO are required to submit to the Housing Department copies of all termination notices and unlawful detainer lawsuits. Table 1 shows the monthly totals of unlawful detainers based in whole or in part on nonpayment of rent involving rental units covered by the TPO filed with the Housing Department since state CA COVID-19 eviction protections ended on March 31, 2022. Also shown is the total number of residential unlawful detainers filed countywide with Santa Clara County Superior Court during that same period as compared to the pre-pandemic monthly average.

Table 1: Unlawful Detainers Filed Pre-Pandemic and after Protections Ended March 31, 2022

	Unlawful Detainers Filed with Housing Department for Units Covered by the Tenant Protection Ordinance	Residential Unlawful Detainers Filed with Santa Clara County Superior Court**
Monthly average 2019 <i>Pre-pandemic calendar year</i>	N/A*	avg. 202/month
April 2022	22	162
May 2022	128	128
June 2022	126	296
July 2022	77	318
August 2022	109	370
September 2022	139	346
October 2022	104	N/A

*The number of landlords in compliance with the TPO requirement to file unlawful detainer actions for covered units, which became required in late 2018, did not become meaningful until late 2020 or so when more landlords and landlord attorneys became educated on the requirement. Thus, the data for unlawful detainers filed with the City in 2019 is not meaningful for this analysis.

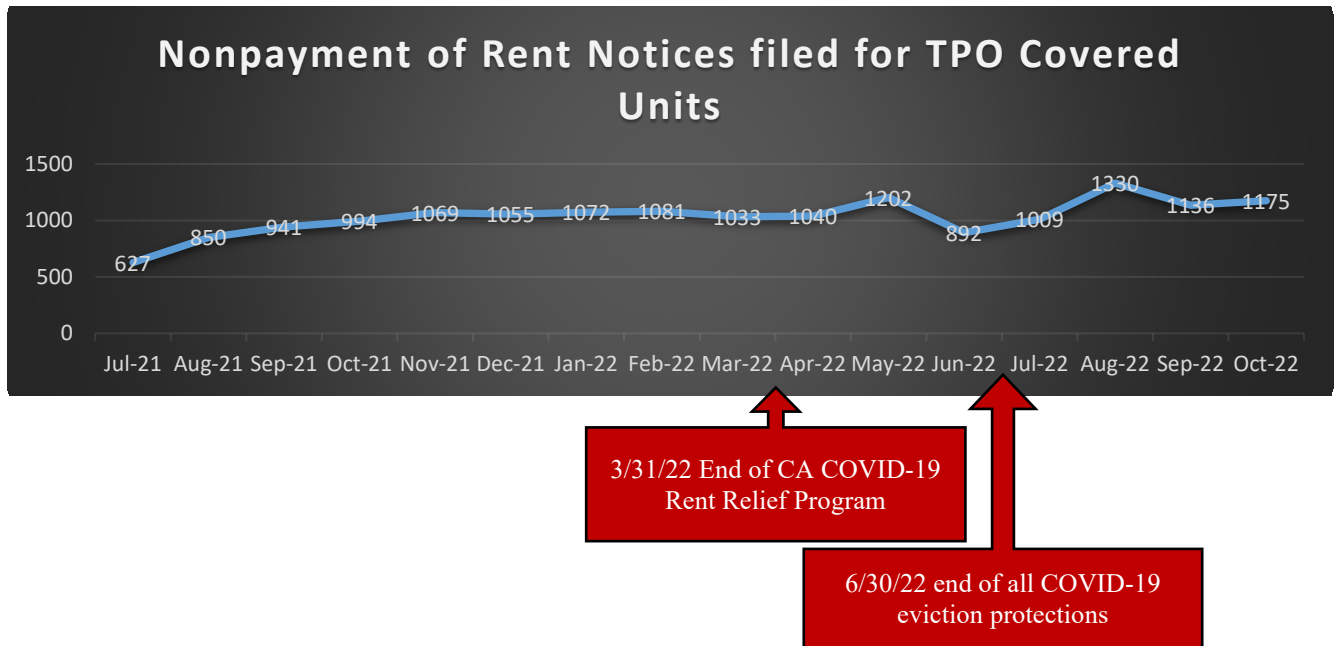
**Note: Housing Department staff was able to obtain residential unlawful detainer filing statistics from Santa Clara County Superior Court for April through October 2022, but due to lack of required reporting by courts, getting these numbers is difficult.

In addition to the dramatic increase in filings with the Court, the Housing Department has also seen an increase in unlawful detainer filings submitted for units covered by the TPO¹¹. There can be a lag between when an unlawful detainer lawsuit is filed with the Court and when a copy

¹¹ There was a decrease in submittals of these filings and of termination notices which is not reflective of the trend seen with Santa Clara County Superior Court. The Housing Department received information indicating an attorney for a landlord was taking the position that notices to pay or quit is not a notice that is required to be filed with the City pursuant to the TPO and that an unlawful detainer lawsuit based on such a notice also is not required to be filed with the City. After a preliminary review of the database that stores information on TPO related submissions, staff noted that there were far less unlawful detainer filings submitted by two or three prominent landlord attorneys

is submitted to the Housing Department due to Court back logs and because the unlawful detainer does not have to be submitted until after it is given to the resident. Notably, 60 of the 104 unlawful detainer submissions to the Housing Department in October 2022 were submitted during the last 10 days of the month. In contrast, the Housing Department receives copies of notices of nonpayment of rent for TPO units from landlords within a few days of when the notice was given to the resident. Figure 1 shows the number of notices related to nonpayment of rent submitted to the Housing Department by month to show the trend.

Figure 1: Data Housing Department Received Regarding Nonpayment of Rent Notices and Unlawful Detainers Based in Whole or Part on Nonpayment of Rent, April – October 2022



during June and July. The Housing Department is monitoring submittals related to nonpayment and researching this possible issue of how landlords might be interpreting the TPO’s requirements.