



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** September 25, 2023

Approved

Date

10/3/23

**SUBJECT: AUTHORIZATION TO APPLY FOR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S NOTICE OF FUNDING OPPORTUNITY FOR THE PATHWAYS TO REMOVING OBSTACLES TO HOUSING**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager or designee to apply for a grant up to \$10,000,000 and submit all required documentation for the U.S. Department of Housing and Urban Development's Pathways to Removing Obstacles to Housing to address the barriers to preserving affordable housing in San José through acquisition, rehabilitation, and operations of existing housing.

## SUMMARY AND OUTCOME

Approval will authorize the City of San José to apply for and submit all required documents for a grant application through the U.S. Department of Housing and Urban Development's (HUD) Notice of Funding Opportunity (NOFO) for the Pathways to Removing Obstacles to Housing (PRO Housing). The grant award proceeds will partially fund the acquisition, rehabilitation, and operations of existing housing.

## BACKGROUND

### *Pathways to Removing Obstacles to Housing*

On July 27, 2023, HUD released a NOFO announcing \$85 million in available funds for the PRO Housing program. As the title indicates, PRO Housing funds are made available for recipient communities to identify and remove barriers to affordable housing production and preservation. These barriers may include restrictive land use policies, inefficient permitting processes,

inadequate infrastructure, a lack of financial resources, a lack of development capacity, environmental hazards, or other impediments to affordable housing. PRO Housing is the first program of its kind to be administered by a federal agency.

Funding for PRO Housing is sourced from the 2023 Consolidated Appropriations Act and will use the statutory and regulatory framework of the Community Development Block Grant (CDBG) program. As such, statutes and regulations governing the CDBG program, including Title I of the Housing and Community Development Act of 1974 and 24 CFR part 570, apply to PRO Housing funds, with a handful of exceptions and waivers. Local governments, states, as well as multijurisdictional entities may apply for PRO Housing awards. HUD expects to award up to 20 recipient grants ranging from \$1 million to \$10 million; grant awards are expected to cover a six-year period of performance beginning on January 31, 2024, running through September 30, 2029. HUD expects applicants to identify the barriers to affordable housing production that are unique to their own communities and will prioritize applicants that demonstrate both a) progress and commitment to overcoming local barriers to affordable housing, and b) an acute demand for housing options that are affordable to households with incomes below 100 percent of the area median income. Applications are due to HUD on October 30, 2023.

### ***PRO Housing Program Components***

PRO Housing funds, beyond general administrative and planning activities, must be used for activities that meet one of the three CDBG national objectives, as outlined in section 101(c) of the Housing and Community Development Act of 1974. These objectives are 1) to benefit low- and moderate-income persons, 2) to prevent or eliminate slums or blight, and 3) to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community. While new construction is not an eligible activity under CDBG objectives, HUD is waiving sections 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) and adopting alternative requirements to the extent necessary to permit new construction of housing for the PRO Housing program. As stated in the NOFO, "Eligible activities must identify and seek to remove one or more barriers to affordable housing production and preservation." In addition, each use of funds must achieve one or more of the following: a) further developing or executing housing policy plans, b) improving housing strategies, or c) facilitating affordable housing production and/or preservation.

The NOFO eligible activities related to preservation include, but are not limited to, the following:

- Acquiring or subsidizing housing in order to preserve affordability;
- Establishing loan or grant programs that finance existing affordable housing rehabilitation (establishing a preservation seed fund is eligible);

- Creating anti-displacement policies, including but not limited to, curtailing property tax increases for existing homeowners, providing relocation assistance, and providing resources to tenants at risk of displacement;
- Establishing a right of first refusal policy;
- Building capacity and/or providing technical assistance for non-profit entities or community land trusts undertaking rehabilitation activities; and/or
- Providing housing counseling to low- and moderate-income households.

PRO Housing does not require cost-sharing or matching funds; however, the application provides up to 10 points for financial leverage. Similar to CDBG program administration, PRO Housing grantees must provide a budget identifying the specific use of all grant funds at the CDBG activity level. Grantees may receive anywhere between \$1 million and \$10 million, meant to cover a six-year period of administration. All PRO Housing funds must be expended by the end of HUD's 2029 fiscal year, September 30, 2029.

Given this set of requirements and the timeline, the Housing Department is applying for funding that would support San José's efforts to fund the preservation of affordable housing through an acquisition and rehabilitation program. The goal to develop this program grew out of the Citywide Anti-displacement Strategy accepted by City Council in 2020 as well as recent findings for the updated Housing Element and Fair Housing Assessment. Through several years of engagement with community groups, non-profit organizations, and landlords, there is a clear interest in pursuing housing preservation strategies. To overcome these obstacles the Housing Department is preparing a Notice of Funding Availability utilizing Measure E dollars to provide funding to acquire and rehabilitate existing buildings in anti-displacement target areas. HUD's PRO Housing NOFO funding would serve as an additional "seed" funding for the acquisition and rehabilitation program that will be initially rolled out in fall 2023 and later expanded should HUD award the PRO Housing funding. It is anticipated that HUD will announce grant awards in early 2024. Should the City receive the PRO Housing grant, staff will return to City Council to accept the award and expand the acquisition and rehabilitation program in spring 2024.

## **ANALYSIS**

### *Affordable Housing and Household Data*

The City of San José faces one of the most severe affordable housing crises among major U.S. cities. HUD ranked the County of Santa Clara (County) amongst the highest need in the country with San José accounting for the largest share of cost-burdened households in the county; 65% of all lower-income households in San José are housing cost burdened.<sup>1</sup> Additionally, in 2021, the median rent affordable to the typical San José renter was \$2,239, while the actual median rent

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<sup>1</sup> American Community Survey, 2021 5-year estimates.

stood at \$2,737. To afford these rents, a household would need to earn approximately \$110,000 a year.

A staggering 74% of extremely low-income households in the County dedicate over half of their income to housing costs<sup>2</sup>, compared to just 1% of moderate-income households. This reflects a dramatic increase in the last decade. Between 2010 and 2020, the distribution of cost-burdened households rose from 17% to 51% for those earning between \$75,000 and \$100,000, and from 39% to 75% for households earning between \$50,000 and \$75,000. This has led to many households doubling up with nearly 10% of San José's households living in overcrowded situations.<sup>3</sup> These trends indicate that the risk of displacement is rising for many households suggesting a critical need to develop near-term strategies to preserve affordable housing and continuing to build new housing.

One of the contributing factors to the local crisis is the loss of deed-restricted affordable housing units. The County, which boasts the largest affordable housing stock in the five-county Bay Area, faces the risk of losing 2,059 units, representing 7% of its current restricted affordable housing stock<sup>4</sup>. This is because many affordable properties are approaching the time at which their affordability restrictions will end, meaning that owners can choose to opt-out, sell, or convert their units to market rate<sup>5</sup>. While the County added 1,596 new units for low- and very low-income families between 2015 and 2017, the pace of new market-rate and affordable development has not kept up with the growing demand. This has led to continued loss of unsubsidized affordable housing (also known as naturally occurring affordable housing). For instance, between 2012 and 2017, the County lost nearly half of its unsubsidized affordable housing stock, and as of 2023, nearly 39% of the existing unsubsidized<sup>6</sup> stock is at risk of conversion from affordable to market rate. In line with trends in the County, San José is also losing these unsubsidized affordable units because housing costs are rising significantly faster than wages, particularly for many working-class job categories.

To date, the outcome has been high displacement, resulting in lower-income groups and people of color being displaced from San José. Between 2018 and 2020, nearly 5,000 people with incomes below \$45,000 moved out of San José while the Citywide population grew overall and the number of people earning more than \$75,000 increased by around 10,000.<sup>7</sup> This data strongly suggests that lower-income people are moving out due to the lack of affordable housing options. Furthermore, people of color are disproportionately represented in lower-income groups due to racialized histories of private and public disinvestment and other contemporary racial inequities locally, meaning that communities of color are disproportionately at risk of displacement. Data

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<sup>2</sup> [https://chpc.net/wp-content/uploads/2021/05/Santa-Clara\\_Housing\\_Report.pdf](https://chpc.net/wp-content/uploads/2021/05/Santa-Clara_Housing_Report.pdf)

<sup>3</sup> Page 67, <https://www.sanjoseca.gov/home/showpublisheddocument/89567/637989408773530000>

<sup>4</sup> [https://chpc.net/wp-content/uploads/2019/02/2019-State-Risk-Assessment\\_Final.pdf](https://chpc.net/wp-content/uploads/2019/02/2019-State-Risk-Assessment_Final.pdf)

<sup>5</sup> Association of Bay Area Governments, 5<sup>th</sup> Cycle. Regional Housing Needs Allocation

<sup>6</sup> [https://chpc.net/wp-content/uploads/2023/03/NOAH-2023\\_final-3.23.pdf](https://chpc.net/wp-content/uploads/2023/03/NOAH-2023_final-3.23.pdf)

<sup>7</sup> See Attachment H, Figure 22, page 24 of

<https://sanjose.legistar.com/View.ashx?M=F&ID=11886297&GUID=4CC6BF9E-7F47-4665-AAEE-1A2C831F0D54>

from the Urban Displacement Project<sup>8</sup> confirms this; in San José, it reported that “Southeast Asian and Latino/a/x households are the most vulnerable to displacement. The result is that despite being the capital of the economic engine of Silicon Valley, many households in San José face high costs, lack of opportunity, and housing insecurity.”

### ***Preservation Component of the 3Ps Affordable Housing Framework***

Affordable housing acquisition and rehabilitation is a key component of affordable housing preservation, which is one of the three components in the 3Ps affordable housing framework (production, preservation and protections). Acquisition and rehabilitation strategies prevent displacement by addressing the growing structural mismatch between incomes and rents at a lower overall cost than the cost of developing new units. Through acquisition and rehabilitation, lower-cost housing – “unsubsidized affordable housing” – which happens to be affordable to lower-income households – is converted to deed-restricted affordable housing. Deed-restricted affordable homes require that rents are set so that housing costs are affordable to the renter households that are living there in the long-term.

There are three elements of a strong affordable housing preservation ecosystem:

1. Local organizations’ capacity for acquiring properties at market value and operating them as deed-restricted affordable homes, ensuring lasting affordability;
2. Public funding to support nonprofit property acquisitions; and
3. A policy environment that supports nonprofit housing acquisitions of market-rate properties.

### ***PRO Housing Application Strategy for San José***

The central goal of the intended strategy for PRO Housing funds is to establish an acquisition and rehabilitation program that will be designed to preserve naturally occurring affordable housing stock in areas experiencing displacement pressure. Enabling this investment strategy requires gap financing to support the cost of rehabilitation projects without significantly raising rents for residents.

In October 2023, the Housing Department will be releasing a Notice of Funding Availability offering gap funding to property owners of naturally occurring affordable housing buildings. The Housing Department’s Notice of Funding Availability utilizes Measure E funding as a source that could provide long-term funding for acquisition and rehabilitation efforts. This funding source will ensure that organizations are well positioned to acquire and manage unsubsidized residential buildings and maintain long-term affordability of the units. These efforts would create a robust support program for housing preservation in San José that could offer both affordable housing and anti-displacement benefits.

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<sup>8</sup> [https://www.urbandisplacement.org/wp-content/uploads/2021/08/bay\\_area\\_re-segregation\\_rising\\_housing\\_costs\\_report\\_2019.pdf](https://www.urbandisplacement.org/wp-content/uploads/2021/08/bay_area_re-segregation_rising_housing_costs_report_2019.pdf)

Should HUD award the PRO Housing grant to the City, the funding will be used to expand the acquisition and rehabilitation program created by the Housing Department's Notice of Funding Availability. The additional funding will enable the acquisition and rehabilitation of more existing rental housing projects that will provide housing for low- to moderate-income individuals and families. The City will provide gap financing in the form of a low-interest rate loan to applicants to acquire and/or rehabilitate small multifamily housing sites—four to 40 units—located in specified preference areas experiencing high level of displacement, according to the California Estimated Displacement Risk maps produced by the Urban Displacement Project. Eligible applicants include non-profit organizations, for-profit housing corporations, joint ventures, limited liability corporations, and partnerships. The acquisition and rehabilitation program units will be deed-restricted for up to 20 years for households earning up to 80% area medium income. The program will enable long-term housing affordability for residents who are at risk of displacement.

### ***PRO Housing Application Process***

There are five components of the PRO Housing application that must be completed before HUD's October 30, 2023 submission deadline.

1. A narrative, to total no more than 40 pages, describing San José's present barriers to affordable housing, efforts (to date) to mitigate these barriers, and plans to use PRO Housing funds to further address these barriers.
2. A collection of seven forms affirming threshold requirements, using HUD or Office of Management and Budget templates.
3. A detailed budget worksheet (424-CBW) corresponding to San José's plans for administration of PRO Housing funds.
4. A collection of letters, including leverage documents and resource commitment letters (if applicable), as well as an updated code of conduct to HUD grant programs.
5. A draft of the application narrative, which must undergo a traditional HUD public notice and 15-day comment period, including at least one hearing with at least 15 days' notice.
  - a. All public comments on the draft narrative must be summarized in an attachment to the application.
  - b. Taken together, this means that a draft of the application will be finalized no later than October 2, 2023, with the application posted online by October 3, 2023, commencing the 15-day public comment window.
  - c. With an estimated closing date of October 20, 2023 for the public comment window, the Housing Department plans to submit a finalized application to HUD on October 26, 2023.

### *Next Steps*

Staff's due diligence is ongoing. Over the coming weeks, staff will work with partners to develop and finalize the application materials including a detailed budget and letters of support. A webpage<sup>9</sup> has been developed to provide the public with information on the HUD PRO Housing program and to review the City's application. The public comment period will commence on October 3, 2023 and will end on October 20, 2023. A virtual community meeting has been scheduled for October 18, 2023. Staff anticipates submitting the application to HUD on October 26, 2023.

### **EVALUATION AND FOLLOW-UP**

If HUD approves the City's application, staff will return to City Council for authority to accept the grant and execute HUD agreements and any other necessary related documents to accept terms and agreements of the grant award.

### **COST SUMMARY/IMPLICATIONS**

The approval of this action will authorize staff to submit an application for HUD's PRO Housing grant fund program for an amount not to exceed \$10,000,000 for the acquisition and rehabilitation of existing affordable housing. As part of the application, staff will identify funding sources to provide a local contribution to both acquisition and rehabilitation and capacity building costs for the six-year grant period.

### **COORDINATION**

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

### **PUBLIC OUTREACH**

This memorandum will be posted for public review on the City's Council Agenda website for the October 17, 2023 City Council meeting. On October 3, 2023, the public comment period will open, making the draft application available for review on the Housing Department's webpage. In addition, a virtual community meeting has been scheduled for October 18, 2023 to fulfill the public hearing requirement. Staff is working closely with community-based organizations and developing multilingual outreach materials to ensure broad engagement of the community. Staff

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<sup>9</sup> <https://www.sanjoseca.gov/your-government/departments-offices/housing/nonprofit-grant-programs>

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is on schedule to meet the public participation requirements of the HUD PRO Housing grant program. Important dates are noted in the timeline below:

<b>Dates</b>	<b>Activity</b>
October 3, 2023	Housing Department webpage goes live and public comment period opens
October 18, 2023	Virtual community meeting
October 20, 2023	Public comment period closes

### **COMMISSION RECOMMENDATION AND INPUT**

This item was not heard by the Housing and Community Development Commission, as approvals of affordable development financing and acquisition do not fall under the functions, powers, and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

### **CEQA**

Not a Project, File No. PP17-006, Grant Application with no commitment or obligation to enter into an agreement at the time of application.

### **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/

ROSALYNN HUGHEY  
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Acting Housing Director

The principal author of this memorandum is Mindy Nguyen, Development Officer. For questions, please email [mindy.nguyen@sanjoseca.gov](mailto:mindy.nguyen@sanjoseca.gov).