



Memorandum

TO: NEIGHBORHOOD SERVICES AND
EDUCATION COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: February 25, 2022

Approved

Date

3/3/22

**SUBJECT: CITYWIDE RESIDENTIAL ANTI-DISPLACEMENT STRATEGY
QUARTERLY STATUS REPORT**

RECOMMENDATION

Accept the quarterly status report on the Citywide Residential Anti-Displacement Strategy.

OUTCOME

Committee members will receive an update on the status of staff's work on the top four priority recommendations in the Citywide Residential Anti-Displacement Strategy, and priorities for the next quarter.

BACKGROUND

On September 22, 2020, the City Council approved¹ the proposed Citywide Residential Anti-Displacement Strategy (Anti-Displacement Strategy). The City Council's direction included that staff should focus its work on the top three recommendations:

- Support COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners
- Create a Neighborhood-based Tenant Preference

¹ File no. 20-1094, item 8.1, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4635014&GUID=843B7A57-FFCE-411F-81C5-49D3378215A5&Options=&Search=>

- Explore a Community Opportunity to Purchase Program (First Right of Offer to Purchase).

The City Council also directed staff to return to the City Council with an update on progress on the first three recommendations in six months, as well as provide quarterly updates to both the Community and Economic Development Committee and the Neighborhood Services and Education Committee. Accordingly, Housing Department staff have provided several general updates, as follows:

- Neighborhood Services and Education Committee on March 11, 2021
- Community and Economic Development Committee on March 22, 2021
- City Council on March 30, 2021
- Neighborhood Services and Education Committee on August 12, 2021
- Community and Economic Development Committee on August 23, 2021
- Neighborhood Services and Education Committee on November 4, 2021
- Community and Economic Development Committee on November 22, 2021.

In addition, staff gave an update on its work to develop a Community Opportunity to Purchase Program to the Community and Economic Development Committee on October 25, 2021.²

As part of the City Council's March 30, 2021, approval of staff's update report, it also supported staff's recommendation to amend the top three Anti-Displacement Strategy recommendations by:

- Incorporating existing City Council Policy Priority #11, the Anti-Displacement Tenant Preference Ordinance, into the Citywide Residential Anti-Displacement Strategy Recommendation #2, Create a Neighborhood-based Tenant Preference; and
- Incorporating City Council's direction from January 12, 2021, to add a seat to the Housing and Community Development Commission for a commissioner with lived experience in homelessness into the Citywide Residential Anti-Displacement Strategy's Recommendation #4, Increase Equitable Representation of Historically Underrepresented Communities on City Commissions, and add it to staff's top priorities.

Accordingly, this report updates recent work on the top four priorities of the Anti-Displacement Strategy, and looks forward to next quarter's anticipated work.

ANALYSIS

The following information provides updates on work being done to further the top priority work efforts under the top four strategies of the Anti-Displacement Strategy.

²² File No. CC 21-279, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5152386&GUID=B751E6D2-EA01-4AF6-B442-752CDC3FB8FD&Options=&Search=>.

1. Item agendaized for City Council Consideration – Recommendation 4

Recommendation 4 is scheduled to go before the full City Council in March and so is the first item addressed.

Recommendation 4: Increase Equitable Representation of Historically Underrepresented Communities on City Commissions

Recommendation 4 of the Citywide Anti-Displacement Strategy involves an analysis of the membership composition of the Housing and Community Development Commission (Commission) and the Neighborhoods Commission. The purpose of Recommendation 4 is to determine whether membership is representative of the full range of San José residents and to identify any barriers to participation. At the City Council meeting on January 12, 2021, the City Council directed staff to create a designated Lived Experience with homelessness (Lived Experience) member seat on the Commission for a Commissioner who is currently experiencing or previously experienced homelessness. Per the City Council's direction, the workplan for this commissioner role focused on: 1) researching and developing new guidelines and resources for onboarding Lived Experience Commissioners and 2) establishing a recommended stipend model for all Commissioners.

To address Recommendation 4 and the City Council's direction, over the past quarter, the Housing Department continued its comprehensive review of the current special eligibility requirements and designated seats, examined the appointment process, and conducted more community outreach on the Lived Experience seat.

Based on updates from the City Clerk's Office, staff ultimately determined that it would be best to first move forward with adding the Lived Experience seat at this time while Housing Department staff continues its broader work to ensure greater diversity of community voices represented on the Commission and to reduce barriers to participation. Further work on reexamining the Commission's composition and appointments process will need to be closely coordinated with other City changes to Boards and Commissions to be most impactful.

During the past quarter, staff sought input from various community stakeholders on this work. Stakeholders included homeless services and advocacy organizations with a focus on groups comprised of individuals who are or have been unhoused, as well as tenants and staff of permanent supportive housing developments. Current and former Commissioners were also engaged via surveys and interviews to gain a better understanding of supports and other needs for Commissioners. Finally, this item was heard by the Commission at its monthly meeting held virtually on February 10, 2022 at 5:45 p.m. The Commission's feedback is reflected in the relevant topical sections below.

The following sections lay out the preliminary proposal for recruiting and appointing the Commissioner with Lived Experience, resources for the Commissioner, and stipends for the Commission, reflecting feedback from various stakeholders.

Recruitment and Nomination of Commissioner with Lived Experience

Outreach and Recruitment: Throughout our community stakeholder engagement, staff received significant interest about the role and the opportunity to have Lived Experience representation on the Commission. Should the new seat be approved by the City Council, staff will conduct outreach to our partners – lived experience advisory boards, homeless service providers, homeless advocates, permanent supportive housing, and interim housing providers – and do outreach via social media and through e-blasts to the Department mailing lists to obtain a diverse pool of applicants. Flyers will be shared with agencies, as we had heard word of mouth is expected to be one of the most effective way to reach interested residents. Housing staff also received feedback to make sure to clearly communicate what the role is, why it is important, and what the expectations of the role would be.

Nomination and Criteria: The Department’s preliminary recommendations were that the Lived Experience Commissioner be nominated by the Mayor at this time, as the Mayor currently nominates citywide Commissioner seats. Staff had considered the Council Appointment Advisory Commission as the nominating body; however, the Council Appointment Advisory Commission recently has been unable to meet quorum and is currently unable to meet. Based on feedback from the Commission and community members, staff are currently exploring additional options for the nominating body for the Lived Experience Commissioner and will have final recommendation for the Council consideration in March.

Commission feedback - In addition, at its February 10, 2022 meeting, the Commission passed the following two motions regarding criteria for the Lived Experience Commissioner:

- Lived Experience should be recent, within the last three years (motion passed 10-0)
- The first appointment to the Lived Experience seat [should] be a woman (motion passed 10-0).

The second motion followed public comment and discussion that one’s gender can significantly impact one’s experience of homelessness. There may be issues with limiting any appointments by sex/gender as this restricts access based upon membership of a protected class (i.e. sex/gender) under civil rights laws such as the California Constitution, Equal Protection Clause, and California’s Unruh Act. The recommendations are undergoing review with the City Attorney’s Office to determine if and how they may be incorporated into any final recommendations.

Onboarding and Resources for Commissioners

Staff is finalizing recommendations on additional resources to help lower barriers to participation for the new Commissioner with Lived Experience. These resources include technology needs, enhanced training and onboarding, a new Commissioner buddy system, and other general Housing staff support, as follows.

- **Meeting Commissioner’s Technology Needs:** Staff heard that ensuring access to appropriate technology is a priority, especially since meetings are currently virtual. Commission meeting packets are also shared electronically, which is easier to access and view for some Commissioners for accessibility reasons. If needed, the Housing Department would provide tablets and Wi-Fi hotspot devices to ensure reliable access to virtual meetings and documents prior to the meeting.
- **Onboarding and Training:** Trainings and resources would be offered to all Commissioners. While some resources are already being provided, the Department would be able to provide comprehensive training and resources, with additional staff support. The Department would provide a Housing Department orientation and an onboarding guide for all newly-onboarded Commissioners, video recordings of prior Commission meetings, and if requested, would periodically provide trainings on key policies, ordinances, homelessness support system, and other related topics.
- **Peer-to-Peer Support through a Buddy System:** The Housing Department plans to start a buddy system where new Commissioners are paired with a “buddy” current Commissioner. The buddy system is intended to be a space for informal conversation during the first several months of joining the Commission, where the buddy can be the new Commissioner’s go-to person for fielding questions and explaining what to expect. Staff received positive feedback from many stakeholders and Commissioners about the introduction of a buddy system. The buddy system is intended to be informal and would not be replacing any formal training or supports that the Clerk’s Office or Housing Department staff would provide. Housing staff will prepare guidelines for the buddy to follow to also ensure voting independence.

Stipend for all Commissioners

Per Council direction, Housing Department staff recommends a nominal stipend for Housing and Community Development Commissioners to help reduce financial barriers to participation by a Lived Experience Commissioner or any other Commissioner. Research supports stipends as a way to ensure that diverse voices are heard and to further the idea that everyone’s time and contributions are valued.

Housing Department staff recommends a stipend of \$200 per month for Commissioners, dependent on attending meetings for that month. The maximum stipend cost for the full 14-member Commission would be \$33,600 annually, in the case of full attendance at all meetings. Attendance is defined as attending more than 50% of the meeting. This nominal stipend amount was determined based on interviews and desk research of lived experience advisory boards and other similar bodies. In addition, staff conducted a survey of and interviews with current Commissioners to understand their monthly time commitment.

From the research conducted, stipends typically range from \$20-\$25 an hour, with more organizations moving toward a \$25 an hour stipend. Organizations such as the Destination: Home Lived Experience Advisory Board, the NYC Continuum of Care Persons with Lived Experience

Committee,³ and the Homeless Youth Forum of Los Angeles County⁴ provide \$25 an hour for meeting attendance. In some cases, they also fund an amount to reflect effort spent on necessary meeting preparations and transportation costs to meetings.⁵ Commissioners and Housing staff indicated that Commissioners average eight (8) hours per month on Commission business.⁶ Based on this research, staff recommends providing a nominal stipend to Commissioners of \$25 an hour for eight (8) hours, which includes meeting participation and preparation time, for a total of \$200 per month, dependent on meeting attendance. The compensation is intended to broadly support travel, printing, or other costs that may be associated with Commission participation to reduce financial barriers. The City would also have a mechanism for Commissioners to opt-out of receiving a stipend if a Commissioner chooses to do so. Any Commissioner eligible to receive a stipend would be required to complete the AB 1234 Ethics Training and AB 1661 Sexual Harassment Prevention Training.

The proposed stipend is within the range provided to other City Commissions (Planning Commission and Civil Service Commission) and Boards (Appeals Hearing Board) that provide stipends. Stipends range from \$100 per meeting for up to \$200 per month, to \$250 per month.⁷

Commission feedback – Commissioner feedback included a recommendation for a higher stipend for the Commission Chair, recognizing the additional work that goes into coordination and preparation for meetings. In addition, some Commissioners discussed the option to provide a stipend based on need of Commissioners and the option to decline to receive or donate the stipend to another Commissioner based on need. Staff are evaluating Commission feedback for the final recommendations to the City Council.

Staff will continue stakeholder outreach and coordination with the City Clerk and City Attorney's Office in finalizing its proposal for consideration by the City Council, expected in March 2022.

2. Update on Workplans for Recommendation 1, 2, 3

Recommendation 1: Support COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners

Over the past quarter, Housing Department staff have continued to work hard to keep vulnerable San José residents housed despite COVID-related challenges. Strategies have focused on the

³ Interview with representatives from Destination: Home Lived Experience Advisory Board (4/6/2021), NYC Continuum of Care Persons with Lived Experience Committee (NYC Department of Homeless Services, 5/28/2021)

⁴ https://www.sbceh.org/uploads/4/5/0/7/45075441/8-26-19_lahsa_hyfla_2019_application_8.13.19.pdf

⁵ Baltimore City Continuum of Care Lived Experience Advisory Committee.

<https://www.hudexchange.info/news/snaps-in-focus-integrating-persons-with-lived-experiences-in-our-efforts-to-prevent-and-end-homelessness/>

⁶ Survey and interviews with Commissioners took place October – November 2021

⁷ https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT2AD_CH2.08BOBUCO

provision of emergency rental assistance, staffing the Court during unlawful detainer hearings and outreach to households that received three-day notices and unlawful detainers.

Emergency Rental Assistance

On February 9, 2021, the City Council approved the Administration’s proposed hybrid strategy for deploying \$30.38 million in federal Emergency Rental Assistance round 1 (ERA1) funds that the City of San José received directly from the U.S. Department of Treasury through the Consolidated Appropriations Act of 2021. In a second phase of rental assistance, the City received \$66.34 million in Emergency Rental Assistance round 2 (ERA2) funding and on October 5, 2021 the City Council approved participating in the State rental assistance program.⁸ Funds allocated to the County of Santa Clara are also available to assist City residents. Tables 1 to 3 below summarize the full allocations for the State, City and County for ERA1 and ERA2.

Table 1: Direct ERA1 Allocations

Allocated to:	ERA1 Direct
City of San José	\$30,380,000
County of Santa Clara	\$27,100,000
Total:	\$57,280,000

Table 2: Allocations Administered through State COVID-19 ERAP

Allocated to:	ERA1 State Reservation	ERA2 State Reservation	ERA2 Direct and High-needs	Total
City of San José	\$33,100,000	\$24,590,000	\$36,277,888	\$93,967,888
County of Santa Clara	\$29,360,000	\$21,810,000	\$30,062,002	\$81,232,003
Total*	\$62,460,000	\$46,400,000	\$66,339,891	\$175,199,891

Table 3: Total ERA1 and ERA2 Funds Allocated to City and County

Allocated to:	Total ERA1 + ERA2 Funds
City of San José	\$124,347,888
County of Santa Clara	\$108,132,003
Total:	\$232,479,891

Local Program

To administer ERA1 direct allocation funds, City staff actively partnered with the City, County of Santa Clara, and the Homelessness Prevention System co-led by Sacred Heart Community Service and Destination: Home. This local program, known as the Santa Clara County Homelessness Prevention System COVID-19 Response, is comprised of a network of 46 trusted

⁸ Staff report October 5, 2021:

<https://www.sanjoseca.gov/home/showpublisheddocument/77821/637689311589630000>

community and grassroots partners to provide homelessness prevention services including rental assistance, utility assistance, outreach and case management. The local program soft-launched on May 1, 2021, publicly launched on May 19, and closed for new applications on September 7. The program is in the process of winding down and closing. As of February 18, the local program had paid 2,769 San José households a total of \$29.5 million. A handful of application payments remain in process before the program using ERA1 funds can officially close.

State Program

For the State program, as of February 20, 2022, 14,762 San José households had completed applications requesting approximately \$201 million in rental assistance.⁹ The State has paid 4,710 San José households a total of \$62 million in assistance. Countywide including San José, 22,731 households had completed applications requesting approximately \$321.3 million¹⁰, with \$91.2 million distributed to 7,226 households.^{11,12} Though the State has improved its application processing time in the last few months, currently about 200-250 applications from City residents are approved each week, with approximately \$2 to \$2.5 million being paid to landlords weekly. On October 5, 2021, the City Council supported staff's recommendation to have the State administer all the City's ERA2 funds for the benefit of San José's residents.

U.S. Treasury Allocations & SB 115

In November 2021, the U.S. Department of Treasury began the process of reallocating unused ERA1 funds. These unused federal funds are being recaptured and reallocated about every two months to grantees like California that have a continued demand for resources. As part of this reallocation process, California requested \$1.9 billion in additional funding. In early January, California received \$62 million in additional funding¹³ from Round 1 of the ERA1 reallocation, with Round 2 expected in the coming weeks. The reallocation process for unused ERA2 funds will not begin until April 2022. Legislative members are urging the Treasury to expedite the ERA2 reallocation process and prioritize reallocating towards communities with the highest needs.¹⁴

⁹ Conversations with the State indicate that the actual total amount requested is likely about 40% lower due to duplicate applications and matching up of Landlord-initiated and Tenant-initiated applications. This suggests an actual amount closer to \$120 million.

¹⁰ Same comment as above. Actual amount likely closer to \$192 million.

¹¹ CA COVID-19 Rent Relief Program dashboard: https://housing.ca.gov/covid_rr/dashboard.html.

¹² The State is in the process reallocating ERA funds to direct unused funding to California cities with the highest need, like San José. The first round of ERA funds was allocated based on a population formula rather than according to geographic areas with the highest need. The data collected since the pandemic has helped to identify areas in high need of rental support. As the identified need from some California metro areas is exceeding the funds allocated to California, the State is working with the Department of the Treasury to access more funding so as to not leave some of the nation's highest need and most vulnerable renters without support.

¹³ <https://www.hcd.ca.gov/about/newsroom/docs/treasuryallocationrelease.pdf>

¹⁴ <https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=1AD5F92B-58B0-4AEA-A769-846EDAABF6E1>

On February 10, 2022, Governor Newsom signed into law SB 115, the Budget Act of 2021.¹⁵ This bill authorizes the allocation of funds from the State's General Fund to provide a temporary cashflow loan to the State Emergency Rental Assistance Program (ERAP) for the purpose of providing immediate cash to the program to maximize rental relief. This would allow the State ERAP to continue funding approved applications while the State is awaiting further reallocated ERA1 and ERA2 monies from the Treasury Department and could cover any deficit resulting from oversubscription of federal ERA funds. This State funding will only be available to fund ERAP rental assistance applications received on and before March 31, 2022.

Eviction Protections Ending March 31

Though the statewide Eviction Moratorium ended on September 30, 2021, Assembly Bill 832 ("AB 832") added additional protections through March 31, 2022 for tenants still experiencing COVID-19 related financial impacts. These protections created procedural conditions on landlords prior to a Court issuing summons in Unlawful Detainer actions. Under AB 832, until March 31, 2022, Courts could not issue a summons unless the landlord declared under penalty of perjury that they applied for rental assistance and were denied or received no response from the rental assistance program or tenant within twenty days after the notice expired. Additionally, AB 832 gave Courts the ability, upon a tenant's application, to delay sheriff's lockouts and reinstate tenancies if rental assistance payments were approved and simply awaiting disbursement to the landlord. These procedural conditions for an Unlawful Detainer summons will end on March 31, 2022. On and after April 1, 2022, a tenant with a pending rent relief application for rent due between October 1, 2021 and March 31, 2022 could be subject to an Unlawful Detainer action based on nonpayment of rent that accrued between October 1, 2021 and March 31, 2022. Tenants, upon successful application to the Court, would still have the recourse of delay sheriff's lockouts and having their tenancy reinstated if the rental assistance payments were approved and simply awaiting disbursement to the landlord. The protections for tenants with unpaid rent between March 2020 and September 2021 due to COVID-19 related financial impacts¹⁶ will remain in place.

The Housing Department will provide an update on tenant protections and policy options for potentially expanding protections to City Council in late March.

Eviction Prevention Help Centers

In August 2021, the City launched two permanent locations for tenants to get help with rental applications: the 12th Floor of City Hall; and the Franklin McKinley School District facilities. These sites are referred to as Eviction Prevention Help Center locations. At these sites, Rental Assistance Navigators help tenants submit rental assistance applications, with assistance provided in various languages including Spanish, Vietnamese, Mandarin, and English. Additional language

¹⁵ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB115

¹⁶ Tenants must have signed and submitted a Declaration of COVID-19 Related Financial Distress to their landlord and also had the additional requirement of paying at least 25% of the total rent due between September 2020 and September 30, 2021 to ensure protection.

assistance is also available. The Centers also offer access to legal services, with staff present onsite from the Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley.

In addition to these two permanent locations, City staff have coordinated with organizations across the City to host pop-up events offering information regarding the Eviction Moratorium and rental assistance application help. In the last six months, Housing Department staff participated in more than 300 pop-up and outreach events.

Since the launch of the Eviction Help Center, through pop-up events and at the two permanent locations, staff has assisted over 1,000 families in applying for rental assistance. Over 64% of households were assisted in Spanish and over 5% in Vietnamese. At least 70% of the households were extremely low-income.

City staff has also coordinated with Santa Clara Superior Court in efforts to connect eligible tenants and landlords to rental assistance. These efforts include having Rental Assistance Navigators onsite at the downtown Superior Courthouse during the Unlawful Detainer calendars on Wednesday and Thursday mornings.

Active Outreach to Tenants and Property Owners

Last quarter, Housing staff continued to actively communicate with the public regarding tenant protections and available programs to help them keep their housing. With the end of the stronger tenant protections on September 30, 2022, staff stepped up efforts to reach tenants that may continue to struggle and would benefit from further rental assistance. During this time, staff partnered with vaccine clinics, community partners, schools, and other groups to participate in 34 pop-up clinics, presentations, and flyering efforts at resources fairs and holiday events. In addition to these outreach efforts, staff fielded over 3,500 inquiries about COVID-19 rent relief applications and tenant protection from residents in person and by phone, and regularly directed residents to available resources. During the City Hall shutdown at the end of 2021, Housing staff continued to provide these services by phone.

Housing Department staff continues to coordinate its housing-related outreach and education campaigns with the County of Santa Clara and other community partners. Topics include: the State's eviction protections during the COVID-19 Recovery Period, the Tenant Protection Ordinance, and available State rent and landlord assistance programs. Media used include social media, webinars, and mailers in multiple languages.

Additional outreach campaigns in the past quarter include the following areas of focus:

- ***Tenants of rent-stabilized apartments who have received a Notice of Termination for Nonpayment of Rent submitted to the Rent Stabilization Program*** – On a weekly basis, Housing staff sent mailed informational flyers in English, Spanish and Vietnamese to tenants of landlords that filed three-day Notices to Pay with the City as required by the Tenant Protection Ordinance. Over the past two quarters, staff sent 6,425 mailers to vulnerable tenants.

- ***Owners and property managers of restricted affordable developments*** – Housing staff reached out to owners and property managers of restricted affordable housing through an e-blast, requesting information about outstanding rental assistance applications and rental arrearages. Staff offered to assist contacting tenants had not submitted their portion of the rental assistance application. As a result of this effort, Staff was able to connect with several tenants identified by a housing provider at two properties and assist them with submitting their applications.

Legal Assistance

The Housing Department oversees the City’s current contract with Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley to provide services at the Eviction Prevention Help Centers and remotely. The Law Foundation provides legal consultations for walk-in tenants at the City’s Eviction Help Center. This includes assistance in drafting responses to Unlawful Detainer complaints, advocacy and counseling related to completing or responding to a Notice of Termination of Tenancy, legal referrals to Fair Housing Agencies, client advice/education regarding City ordinances and rent moratoriums enacted as a result of COVID-19, and assistance developing legal defense for small claims court.

In addition to providing legal assistance through funded City contracts, following is an update on the progress of other work on legal systems to help reduce evictions:

Right to Counsel: In addition, per the City Council’s direction, staff is developing a Request for Proposal to engage a consultant to create a cost estimate for a potential Right to Counsel program in San José. Having legal counsel to represent low-income tenants going through the evictions court process is just one way to help lower-income people stay housed and healthy. However, it is a strategy that several other communities have employed and studied. Early indications are that Right to Counsel programs can be both cost-effective and effective at reducing evictions.¹⁷

Eviction Diversion Program: In addition, the Housing Department partnered with Santa Clara County Superior Court and other unlawful detainer court stakeholders on a grant application to the National Center for State Courts (NCSC) for an eviction diversion program.¹⁸ The program would fund a full-time position at the Court to manage a collaborative Eviction Diversion program. Building on the existing collaborative efforts, this Court position would create and coordinate a holistic weekly workshop designed to offer a spectrum of resources to all parties. Workshops would include help with ERAP and other rental assistance, social services assistance, mediation, and legal assistance. Open to all parties, workshops would be designed to offer help to each litigant and to provide as many opportunities as possible to help parties resolve their disputes

¹⁷ Ingrid Gould Ellen et al., “Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City,” *Housing Policy Debate*, vol. 31, pp. 540-561, Nov. 25, 2020, <https://www.tandfonline.com/doi/full/10.1080/10511482.2020.1825009>.

¹⁸ <https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program>

and, ideally, avoid evictions. If the workshop does not reach enough litigants, it will be transformed into a Collaborative Court model held one week before a scheduled unlawful detainer trial. Collaborative Courts typically require mandatory pre-trial conferences and on-site connections to tenant services. The goal of both the proposed Eviction Diversion Program and Housing Collaborative Courts is to maximize the likelihood that tenants facing evictions and landlords reach a settlement before trial.¹⁹

The Court's proposal has entered the next level of NCSC review. In mid-March, Housing Department staff will participate in a virtual "on-site" interview NCSC is holding with the Court and its grant proposal partners. Partners involved in this work include the County, Sacred Heart Community Services, Destination: Home, Court administration, and Self-Help staff at the Court. Partners meet weekly to discuss Collaborative Court options that could be implemented even in the event the Court is not awarded the grant proposal.

Legal Clinic: Finally, the Housing Department is working with Santa Clara University on a legal clinic model that would support tenants' legal services needs. In light of the new opportunities with the Court, the legal clinic model could serve a crucial role in staffing a weekly workshop for unlawful detainer litigants. The Housing Department is revising the initial outline of services to reflect and integrate the collaborative efforts with the Court and community partners.

Recommendation 2. Create Tenant Preferences to Prevent Displacement

In the past quarter, staff has focused its limited capacity on advancing tenant preferences by maintaining momentum behind co-sponsored legislation to support the use of tenant preferences.

As a reminder, tenant preferences set aside a percentage of restricted affordable apartments that would otherwise be available to the general public for people who meet certain criteria and are income eligible. Those people would apply for the affordable apartments and would meet all other requirements as usual, but because of the preference, would have a better chance at being accepted in the set-aside of apartments. The two preferences being designed are:

- **Anti-Displacement Tenant Preference:** Sets aside a portion of affordable apartments for low-income applicants who live in certain identified areas that have a high likelihood of displacement. The advantage to an Anti-Displacement Tenant Preference is that it increases the likelihood that low-income renters at the highest risk of displacement can access affordable homes and stay in the City, either in their neighborhoods or wherever they choose.
- **Neighborhood Tenant Preference:** Sets aside a portion of newly available affordable apartments for low-income applicants who already live in the vicinity of the newly available affordable homes. Neighborhood Tenant Preferences can be popular with area residents and local leaders; however, because they operate at a more localized scale, they can have a higher

¹⁹ Note that a Housing Collaborative Court was included in Recommendation 1 of the Citywide Residential Anti-Displacement Strategy.

likelihood of keeping people with similar protected class characteristics in a neighborhood, which can create issues under fair housing law.

In the past quarter, staff's tenant preference work has mainly focused on continued efforts of sponsoring State legislation that supports local tenant preferences. HCD has not yet released guidance for lawful preferences analysis, and staff capacity has been consumed by advancing the Community Opportunity to Purchase program proposal and work for the Assessment of Fair Housing for the next cycle Housing Element. Updates on the main areas of the current tenant preferences work are as follows.

Legislation: SB 649, co-sponsored by the City and authored by Senator Dave Cortese, would ensure that affordable housing developments using State and federal tax credits and federal tax-exempt private activity bonds are able to reliably administer tenant preferences that help prevent displacement. In mid-June 2021, SB 649 became a two-year bill due to rules limiting the number of bills allowed out of each chamber of the State Legislature. Prior to its deferral, the bill was approved unanimously in two Senate policy committees and was approved 37-0 on the floor of the floor of the State Senate, garnering no official opposition.

Legislation Update: In summer 2021, HCD staff expressed their desire that the bill follow HCD's tenant preferences guidance, rather than precede it, because of HCD's intention of issuing guidance on tenant preferences to be consistent with State fair housing law. However, HCD has not yet issued its guidance, nor has staff responded to requests for meetings. Housing staff are currently strategizing with the City Attorney's Office, the City's Intergovernmental Relations team, the City's external lobbyists, Senator Cortese's office, and the bill's co-sponsors on strategies and next steps on advancing the bill with HCD's support ahead of the Assembly's hearings this spring.

HCD Approval: HCD's approval of the City's proposed tenant preferences is vitally important to obtain for three reasons. First, HCD must approve the use of preferences on affordable apartments using HCD funding. Second, HCD is the State's fair housing oversight agency, and will be actively analyzing the adequacy of jurisdictions' fair housing strategies in their forthcoming Housing Elements. Third, HCD is the Governor's primary advisor on legislation regarding housing, including the City's bill, SB 649. In approving tenant preferences, HCD carefully reviews the data and findings that are specific for each jurisdiction to see if it is adequate to permit the preference to be administered. The reason for their intense scrutiny is that tenant preferences can easily cause greater segregation and can be used to illegally discriminate against people in protected classes (whether intentional or unintentional).

In August 2020, HCD indicated that it was going to issue formal guidance to jurisdictions before the end of 2020 on analysis it would require to ensure that tenant preferences were lawful. HCD key staff reported in mid-October 2021 that its guidance memo is in its final stages of review and was expected to be released by the end of 2021. While waiting for guidance, staff made the determination that HCD's release of official guidance was necessary to obtain before doing preliminary analysis, in order to prevent later rework.

As was noted in staff's last update, after HCD issues guidance on analysis required for tenant preferences, staff will first prioritize approval of the Anti-Displacement Tenant Preference with the State, as HCD is more likely to easily accept the specific data and findings for this preference.

HCD Update: HCD has not yet released its guidance memo, nor was the City's lobbyist successful in arranging in a meeting with key HCD staff in late 2021 to check on status. Staff's analysis and design of both preferences remains on hold until the State's release of guidance.

Demographic information: Staff last reported on success in amending its reporting systems and gathering demographic information from tenants in the City's portfolio of restricted affordable apartments. The demographic information is necessary for staff to do required quantitative disparate impact analysis on protected classes of existing residents in the City's affordable housing portfolio. This analysis is required by HCD for approval of tenant preferences. The improvements made to the City's annual reporting system also better prepare the City for its implementation of the Doorway affordable housing portal. Further, the improvements enable future fair housing analysis of the City's affordable housing portfolio to proactively identify outlier properties to target for technical assistance to achieve more equitable fair housing outcomes. This initiative would require adequate staffing.

Demographics Update: Accessing additional demographic information needed for HCD analysis was completed in late 2022. Further refinements to the City's reports to capture more specific household data is possible, if required by HCD or deemed useful for fair housing strategies. This work would require additional consulting assistance and expenditures.

See **Attachment A** for an overview of the steps involved in creating the draft program and educating the community about it.

Recommendation 3. Explore a Community Opportunity to Purchase Program

A Community Opportunity to Purchase (COPA) program would give a qualified nonprofit buyer the right to make a first offer on a residential property covered by the program that is up for sale. The purpose of COPA is to enable more properties to become restricted affordable, to the extent that City subsidies were available, and be owned by mission-oriented nonprofit organizations that would cooperate with the City to keep them affordable in perpetuity. Staff reported last quarter that it had mostly concluded the following work:

- Research on comparable existing and proposed programs in other jurisdictions.
- A seven-month, two-tier stakeholder meetings process co-facilitated by community engagement consultants to help design a proposed COPA program, involving over 50 organizations, 167 different attendees, and more than 200 people on the regular invitation lists. From April to October 2021, staff held 16 formal large stakeholder meetings with translation services regularly available.

- Twenty five small stakeholder meetings to discuss program design issues in greater depth.

Staff continued to work intensively on COPA in the past quarter. Focus areas were broad public outreach on the draft program proposal, analysis and writing, and advancing work on acquisition financing for preservation.

Outreach: In the past quarter, staff focused on conducting the second phase of broader public outreach on the COPA program proposal. Staff finalized a draft program proposal for a public review period that ran from the end of November 2021 until February 1, 2022.²⁰ Staff then conducted seven broad community meetings on the proposed framework, including one conducted in Vietnamese with Viet Unity and SOMOS Mayfair as partners. Unfortunately, given the resurgence of COVID, all meetings had to be held remotely on Zoom. Overall, 191 different people attended these meetings (over 300 attendees in total), and staff received 228 questions/comments during the meetings. Staff received approximately 40 emails containing questions or comments and 6 letters of support or opposition via email during the two-month public review period.

To advertise outreach events and the public notice period, staff regularly used eblast emails, social media, and distribution of meeting notices through community partners. The City sent update eblasts to a (duplicated) total of 9,154 email addresses of members of the public interested in COPA and displacement strategies. During this time, staff also kept its informative COPA webpage²¹ frequently updated with public meeting dates and recordings of meetings.

Program analysis: Staff's work has also focused on synthesizing research and analysis with the feedback received from stakeholder outreach to inform a final program proposal. Staff began writing the long COPA decision memo for the Housing and Community Development Commission and the City Council.

Financing: Acquisition financing for preservation properties is also part of the COPA recommendation in the Citywide Residential Anti-Displacement Strategy. Last quarter, staff also held a series of meetings with the Housing Trust of Silicon Valley to discuss preservation financing, and the need for acquisition funds to enable nonprofit developers to quickly acquire buildings listed for sale to turn them into restricted affordable housing. Finally, changes to the Measure E Allocation plan approved by the City Council in February 2022 clarified that preservation is an eligible use of those funds.

Note that over the next quarter, the Housing Department's small Policy Team staff will not have capacity to advance the COPA proposal further, given the need to devote itself full-time to the

²⁰ Per feedback at the Community and Economic Development October 2021 meeting, staff extended the COPA public review period to accommodate participants who could not or chose not to participate during the November/December timeframe.

²¹ <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/copa>

extraordinary amount of work needed to create a draft Assessment of Fair Housing and new Housing Element. Intense focus on producing a draft Housing Element, which is far more complicated than the current cycle’s requirements, unfortunately will need to take precedence over advancing COPA to its final approvals stage at this time. After the first Housing Element draft is submitted to the State for review, anticipated by July 2022, staff will plan to resume its COPA work in tandem with the ongoing Assessment of Fair Housing and Housing Element work.

Given this necessary shift in staff’s priorities, the following are revised milestones for the COPA program development:

Table 2: COPA Revised Milestones

Actions	Timing
Prepare draft program description for public review	Nov. 2021
Held public review period of draft program description	End Nov. 2021 to Feb. 1, 2022
Held 7 broad community meetings on draft proposal	Dec. 2021 to Jan. 2022
Draft program to Housing & Community Development Commission	fall 2022 (est.)
Draft program to Community & Economic Development Committee	fall 2022 (est.)
Draft program to City Council	late 2022 (est.)

Also see **Attachment A** for an overview of the steps involved in creating the draft program and educating the community about it.

CONCLUSION

Staff continues to make progress on the top four anti-displacement priorities directed by the City Council. In the last quarter, staff focused heavily on assisting households to apply for emergency rental assistance, providing access to legal services at the City’s Eviction Help Centers, and public outreach on the proposed design for a COPA program. Work on equitable Commission composition and support for the State tenant preferences legislation also progressed.

Continued focus on emergency assistance to lower-income renters displacement remains the Housing Department’s top priority for the near future. However, Housing staff’s work on COPA will need to pause so staff can focus completely on creating a draft Housing Element together with the Department of Planning, Building and Code Enforcement. After the first draft Housing Element is submitted to the State this summer, Housing staff will resume work on COPA.

EVALUATION AND FOLLOW-UP

Per the City Council's direction, staff will continue to provide quarterly progress updates on its work under the Citywide Anti-Displacement Strategy to both the Community and Economic Development Committee and the Neighborhood Services and Education Committee.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more of Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the March 10, 2022, Neighborhood Services and Education Committee meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

The City Council's direction did not include status reports back to the Housing and Community Development Commission; therefore, this status report is outside the scope of the Commission's duties. Commission recommendations on the Lived Experience seat are reflected in this memorandum's Analysis section under Recommendation 4. Staff will continue to engage the Commission and solicit feedback on specific recommendations of the Anti-Displacement Strategy as each one is developed further.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

JACKY MORALES-FERRAND
Director, Department of Housing

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NEIGHBORHOOD SERVICES AND EDUCATION COMMITTEE

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February 25, 2022

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Attachment A: Updated Workplans for Top Three Highest Priority Anti-Displacement Recommendations

**ATTACHMENT A:
Updated Workplans for Top Three Highest Priority
Anti-Displacement Recommendations**

1. Equitable COVID-19 Recovery and Impact Mitigation Measures for Renters and Homeowners Workplan		
Task	Description	Timeline
Advocacy	Support active federal and State legislation and budget proposals to repay and subsidize back rent and mortgages, to help mitigate the economic impact of COVID-19 on housing providers and prevent displacement of residents.	Completed & ongoing
	Express City support for legislation on eviction and foreclosure prevention and housing recovery from COVID-19 on the 2021 Citywide Legislative Priorities	
Program Development and Research	Plug into coordinated response across City Departments for COVID relief and recovery	Completed & ongoing
	Seek advice & assistance from universities & thinktanks on tracking outcomes	
	Survey existing anti-displacement housing programs to identify impediments to eligibility for immigrant households most at risk of homelessness and displacement	Completed
	Assist Bloomberg/Harvard to survey San José small property owners	Completed
	Research COVID-19 housing recovery strategies of other large cities and recovery metrics they are tracking	
	Work with Urban Institute and City of LA on COVID response study	
	Pinpoint possible administrative program changes to remove barriers for immigrant households	Completed
	Develop a plan to track data on the success of repayment plans to avoid resident displacement from their homes and from the City, and on the financial condition of small property owners.	Ongoing
	<i>Release Request for Proposals to study estimated cost of Right to Counsel for Santa Clara County per City Council direction</i>	<i>Q4 2021</i>
Community Outreach	Interview CBOs serving COVID-19 impacted residents to determine needs	Q4 2020-ongoing
	Participate in existing working groups driving COVID-19 response and recovery to align efforts and eliminate duplication	
	Interview community leaders in highly COVID-19 impacted neighborhoods with renters at risk of displacement in zip codes 95233, 95127, 95116, and 95148	Completed

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Community Outreach	Prior to the end of the eviction moratorium, hold or attend COVID-19 housing and displacement meetings led by elected leaders convening civic and private sector leaders, residents, and CBOs to: <ol style="list-style-type: none"> 1. Hear experiences of stakeholders re. housing needs and COVID-19 and identify urgent housing problems that must be addressed 2. Develop equitable short-term and long-term housing recovery strategies 	Deleted
	Analyze feedback and community-led recommendations to inform future Housing funding priorities and develop recommendations on policy changes for City Council consideration	Ongoing
Funding	Design system and administer emergency rent assistance for extremely low-income and undocumented local residents & coordinate CBOs together with County	Q1 2020 to current
	Identify available and possible new sources of ongoing funding for legal services to prevent eviction, Housing Collaborative Court positions, and housing mediation services if County resources are insufficient	Completed / Ongoing
	Identify available funding sources, including philanthropic and private grants, for emergency planning and preparedness activities for communities most vulnerable to disaster and/or highly impacted by COVID-19	2022

**Note: Italicized items indicate additions to the Workplan.*

2. Tenant Preferences to Prevent Displacement Workplan		
Phase	Description	Timeline
Program Development & Research	Meet with State HCD to clarify policy parameters and necessary fair housing analysis	Completed
	Receive additional guidance from HCD on its revised fair housing analysis framework	
	Work with HCD to identify timeline for its issuance of final guidance on tenant preferences	TBD
	Perform disparate impact analysis & do other HCD-required analysis	
	Determine how to prioritize and administer different preferences & finalize determination on which production programs will incorporate preferences	
	Update rent roll online systems programming to incorporate demographic data for existing affordable housing residents	Completed

Legislation	Work with City Attorney's Office to create draft legislation	Completed
	Support the bill through meetings with potential authors, stakeholders, HCD, Assembly and Senate policy committee staffs	Ongoing
	<i>Apply for FUSE Fellow to support advocacy, analysis and outreach</i>	Q1 2022
	Work with City Attorney's Office to create legal findings in support of legislation and Ordinance and approve proposed parameters	Q2 2022
	Work with Intergovernmental Relations to achieve approval of legislation by 2022 (two-year bill)	By Q3 2022
Community Outreach & Feedback	Provide revised information, legal analysis, and disparate impact analysis to HCD for both proposed preferences	On hold pending HCD guidance
	Update draft Ordinance; create program descriptions	
	Issue survey to owners of properties with affordable apartments that would be subject to the program	
	Seek & incorporate HCD feedback on City's analysis & submissions	
	Obtain HCD approval of City's methodology & analysis	TBD
	Decide timing to seek HCD approval for second preference	TBD
	Stakeholder meetings on draft program (community and neighborhood, property owners & managers, residents/advocates)	TBD
	Hold public meetings on draft program to get input	
Program Finalization & Approvals	Hold next round of meetings with key stakeholders on drafts	TBD
	Make final program revisions based on feedback	
	Post final draft program for public review	
	Present draft program to Housing & Community Development Commission	
	Present draft program to Community & Economic Development Committee	
	City Council approves program and Ordinance	
Program Implementation	Issue guidance for property owners & the public	TBD
	Hold educational meetings for property owners/managers	
	Host public meetings to inform about new preferences	
	Conduct webinars for the public (multiple languages)	
	Conduct community outreach (neighborhood meetings, tabling, associations)	
	Fully implement renter online portal (to get applicant racial data, screen applicants for preference eligibility)	TBD
	Do analysis annually and submit for HCD reviews	Ongoing

***Note:** *Italicized items indicate additions to the Workplan.*

3. Community Opportunity to Purchase Workplan		
Phase	Description	Timeline
Program Development	Research COPA results and management in comparable cities	Completed
	Meet with counterparts in comparable cities and assess best practices and processes	
	Work with City Attorney's Office to identify legal issues and approve proposed parameters	
	Compile data to determine program parameters (applicability, terms, process, timelines, qualification of purchasers, City staffing needs) & market research	Completed
	Hold RFP and hire community engagement consultant for Anti-Displacement Working Group; focus Technical Team on COPA	
Community Outreach & Policy Feedback	Meet with specialized stakeholders (property owners, realtors, brokers, lenders, other experts)	Completed
	Meet with potential qualified nonprofit developers	
	Prepare analysis of long-term funding need and possible sources for financing acquisition & rehabilitation/permanent	
	Hold Working Group meetings – Technical Advisory Committee and broader Stakeholder Advisory Committee (ongoing)	
	Create first draft of program and supporting materials incorporating community feedback and study findings	
	Hold stakeholder public review period and feedback	
Program Finalization & Approvals	Make refinements based on first public review feedback	Q3-Q4 2022
	Hold meetings with key stakeholders on refinements	
	Present to Housing & Community Development Commission	
	Present to Community & Economic Development Committee	
	Program revisions based on Commission/Committee comments	
	Consult with stakeholders and community	
	Post final Council memo with draft program parameters for public review	
	City Council approves program & directs staff to return with Ordinance	Q4 2022
	City Council approves Ordinance	Q4 2022

Program Implementation	Begin 12-month period before implementation	Q1 2023 to Q1 2024
	<i>Create draft regulations and guidance – get public feedback</i>	
	Conduct webinars for the public (multiple languages)	
	Hold co-hosted educational meetings for property owners	
	<i>Issue call for qualifications and approve Qualified Nonprofit developers to participate in program</i>	Q1 2024
	Begin program implementation (<i>later of 12 months after approval or QNP approvals</i>)	
	Info memo on progress to the City Council 6 months after start	Q3 2024
	Continue outreach and education to community	2023-24
	Assess Program performance in report to City Council after 1 year	Q2 2025

***Note:** *Italicized items indicate additions to the Workplan.*