



COUNCIL AGENDA: 6/28/2022

ITEM: 3.3

FILE NO: 22-1035

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: June 28, 2022

SUBJECT: Citywide Residential Anti-Displacement Strategy Quarterly Status Report

Recommendation

As recommended by the Neighborhood Services and Education Committee on June 9, 2022, accept the quarterly status report on the Citywide Residential Anti-Displacement Strategy.

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

[Neighborhood Services and Education Committee referral 6/9/2022 - Item (d)2]



Memorandum

TO: NEIGHBORHOOD SERVICES
AND EDUCATION COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: May 25, 2022

Approved

Date

06/01/22

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

RECOMMENDATION

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

OUTCOME

The Neighborhood Services and Education (NSE) Committee 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 near-term priorities.

BACKGROUND

On September 22, 2020, the City Council approved¹ staff's 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:

1. Support COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners,
2. Create a Neighborhood-based tenant preference, and
3. Explore a Community Opportunity to Purchase Program (first right of offer to purchase).

The City Council also directed staff to return to City Council in six months with an update on progress on the first three recommendations as well as provide quarterly updates to both the

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

Community and Economic Development (CED) Committee and the NSE Committee. Accordingly, Housing Department staff has provided several updates, as follows:

- NSE Committee on March 11, 2021
- CED Committee on March 22, 2021
- City Council on March 30, 2021
- NSE Committee on August 12, 2021
- CED Committee on August 23, 2021
- NSE Committee on November 4, 2021
- CED Committee on November 22, 2021
- NSE Committee on March 10, 2022
- CED Committee on March 28, 2022

In addition, staff gave an update on their work to develop a Community Opportunity to Purchase Program to the CED Committee on October 25, 2021.² On March 30, 2021, the City Council staff's recommendation to amend the top three Anti-Displacement Strategy recommendations by:

4. 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 (HCDC) 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 recommendations of the Anti-Displacement Strategy and looks forward to the anticipated work.

ANALYSIS

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

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

Over the past quarter, Housing Department staff continued efforts to keep vulnerable San José residents housed despite the state's COVID-19 eviction protections ending and the closure to new applicants for the state COVID-19 Rent Relief Program on March 31, 2022. Staff has continued the strategies focused on assisting tenants and landlords with the emergency rental assistance application process, staffing the court during unlawful detainer hearings, and outreach to

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

households that received three-day notices and unlawful detainers. In addition, staff has partnered with the County of Santa Clara (County), superior court, Sacred Heart Community Services, and Destination: Home on two new initiatives to assist parties in active unlawful detainer actions and divert potential evictions.

Emergency Rental Assistance

Housing Department staff continued to help tenants and landlords apply for emergency rental assistance through the state COVID-19 Rent Relief Program, as well as provide support to applicants with tasks and issues related to their pending application. This work was crucial during the past quarter with the passage of Senate Bill 115, which ensures funding for pending rent relief applications even if the program was oversubscribed and the federal allocations of emergency rental assistance were exhausted³. As part of Senate Bill 115, the state COVID-19 Rent Relief Program closed the program to new applications as of March 31, 2022, and would not fund any rent relief requests for rent due April 1, 2022 and forward.

There were two rounds of federal Emergency Rental Assistance funding in response to the COVID-19 pandemic. On February 9, 2021, 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 (City) 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 program⁴. Funds allocated to the County are also available to assist City residents. Tables one to three below summarize the full allocations for the state, City, and County for ERA1 and ERA2 funding.

Table 1: Direct ERA1 allocations

Allocated to:	ERA1 Direct
City of San José	\$30,380,000
County of Santa Clara	\$27,100,000
Total:	\$57,480,000

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	\$81,232,002
Total*	\$62,460,000	\$46,400,000	\$66,339,890	\$175,199,890

³ See Citywide Residential Anti-Displacement Strategy Quarterly Status Report, File # CC 22-032, Mar. 10, 2022, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5449138&GUID=A70E82BC-2E08-44EB-BD9B-8BAFC4FF4C3C&Options=&Search=>

⁴ Staff report Oct. 5, 2021: <https://www.sanjoseca.gov/home/showpublisheddocument/77821/637689311589630000>

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	\$108,332,002
Total:	\$232,679,890

State Program Progress

The state COVID-19 Rent Relief Program has stepped up its processing times for applications. As of May 19, 2022, 13,506⁵ San José households completed applications requesting approximately \$214.5 million in rental assistance.⁶ The state has paid a total of \$101.3 million in assistance on behalf of 9,054 San José households. Countywide, including San José, 20,655 households completed applications, with \$157.1 million paid to 13,803 households.⁷ The number of applications paid out since the last report to the NSE Committee in March has almost doubled. The state's rate of processing and approving applications from City residents is now about 500 a week, with landlords being paid approximately \$5.5 million a week.

Local Program

To administer ERA1 direct allocation funds, City staff partnered with the County, and the Homelessness Prevention System co-led by Sacred Heart Community Services and Destination: Home. This local program, known as the Santa Clara County Homelessness Prevention System COVID-19 Response, was comprised of a network of 46 trusted 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 to new applications on September 7, 2021.⁸ The local program paid 2,769 San José households a total of \$29.5 million, 98% of which were households with extremely-low incomes.

Rent Relief Applicants Assisted by the City's Eviction Prevention Help Center

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 (EHC) locations. At these sites, rental assistance navigators helped tenants submit rental assistance applications with assistance provided in multiple languages including English, Spanish, Vietnamese, and Mandarin. The

⁵ The total number of completed applications is lower than previously reported. In addition to meeting weekly with state rent relief program managers, Housing Department staff receives weekly status updates concerning San José rent relief applications. The status updates show that approximately 26% of applications received by the program were duplicates. As such, as more applications are processed and more duplicates are discovered and closed out, resulting in a lower number of completed applications.

⁷ CA COVID-19 Rent Relief Program dashboard: https://housing.ca.gov/covid_rr/dashboard.html.

⁸ 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, which resulted in closing the local program

EHCs also offer access to legal services, with staff from the Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley present on-site, and available virtually, Monday through Friday.

At least 1,600 of the San José households that applied to the state COVID-19 Rent Relief Program were supported through the entire application process by EHC staff. After their initial visit and application submission, applicants visit EHCs two to three more times on average. Some of the reasons that applicants return to EHCs are to check the status of their application, upload more information or documentation, request additional funds, get help understanding a message from the program, appeal a decision, or upload an eviction notice or lawsuit so that their application will be expedited. EHC staff also assist applicants with these tasks by phone. To ensure that applications of households assisted by EHC staff were moving forward in the process, EHC reached out to all 1,600+ households to follow up and offer further support. EHC has logged more than 3,200 calls since the beginning of 2022.

Of these 1,600 applicant households, 64% were assisted in Spanish and at least 5% in Vietnamese. At least 68% of the applicant households EHC has assisted are extremely-low-income⁹ households. State COVID-19 Rent Relief Program status reports show that 64% of San José applicants are from households with extremely-low-income. This difference suggests that the EHC program has been meeting its goal of connecting the City's households most at risk of eviction to rental assistance funds and resources.

Eviction Protections Ended March 31 and Assembly Bill 2179

Though the statewide eviction moratorium ended on September 30, 2021, Assembly Bill 832 (AB 832) included additional protections through March 31, 2022, for tenants still experiencing financial impacts related to COVID-19. These protections created procedural conditions on landlords prior to a court issuing a 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 had received no response from the rental assistance program or tenant within 20 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 were to end on March 31, 2022, which would have put thousands of tenant households with pending rent relief applications at risk of eviction beginning April 1, 2022. Tenants would still have the recourse of delayed sheriff's lockouts and having their tenancy reinstated if the rental assistance payments were approved and simply awaiting disbursement to the landlord.

In response to the ending of procedural protections under AB 832, on March 22, 2022, the City Council directed the Housing Department to return to Council on April 5, 2022, with a local residential eviction moratorium urgency ordinance.

⁹ For a family of four in Santa Clara County, extremely-low-income (30% of Area Median Income) is an annual household income that is less than \$49,700.

On March 24, 2022, Assemblymembers Grayson and Wicks introduced Assembly Bill 2179 (AB 2179), entitled “COVID 19 Relief: Tenancy.” At the March 29, 2022 City Council meeting, the City Manager’s Office of Administration, Policy and Intergovernmental Relations¹⁰ provided a report on AB 2179. This bill was introduced to address the eviction moratorium that was scheduled to expire on March 31, 2022. On March 31, 2022, Lieutenant Governor Eleni Kounalakis, serving at the time as Acting Governor, signed AB 2179 into law. AB 2179, representing a compromise crafted by legislative leadership, passed the legislature with bipartisan support. AB 2179 does the following:

- Extends, through June 30, 2022, legal protections against eviction based on nonpayment of rent or other financial obligations under the lease that accumulated between March 1, 2020, and March 31, 2022, provided that, as of March 31, 2022, there is an application pending for emergency rental assistance;
- Updates the content of notices that landlords must provide to tenants after March 31, 2022, and before July 1, 2022, prior to seeking a court order for eviction based on nonpayment of rent; and
- Extends, through June 30, 2022, a statewide preemption of local laws. Local jurisdictions are preempted from applying new or additional local protections against eviction for nonpayment of rent, if that rent accrued on or before June 30, 2022.

The existing protections for tenants with unpaid rent between March 2020 and September 2021 due to COVID-19 related financial impacts¹¹ remain in place.

The City Council directed the Administration to provide an informational memorandum on the outcome of AB 2179 as well as the Housing Department’s efforts related to an eviction diversion program instead of a local moratorium that was anticipated to be preempted by state law. Even though the passage of AB 2179 extended protection for tenants, the Housing Department still moved forward to implement the Eviction Diversion and Settlement Program to avoid evictions based on COVID-19 related rent debt. For example, there are instances where tenants have initiated or submitted rent relief applications and believed their application was in process, when in fact their application was deemed inactive or non-responsive because the state requested further information or documents and the tenant did not respond. Also, many tenants believed the protections were still in place for April 2022 rent, did not pay April rent, and could now be subject to an unlawful detainer. There are also tenants who were hesitant to pay April or May rent out of fear that their pending rent relief application may not be approved, and they would be evicted anyway. These are all instances where the Eviction Diversion and Settlement Program can intervene and avoid evictions based on nonpayment of rent. Details of the Eviction Diversion and Settlement Program are outlined further throughout this memorandum.

¹⁰ Staff report March 29, 2022: <https://sanjose.legistar.com/View.ashx?M=F&ID=10676573&GUID=D7AB094C-0E87-42FD-97A6-52E14EB3BE2F>

¹¹ Tenants must have signed and submitted a Declaration of COVID-19 Related Financial Distress to their landlord and must have paid at least 25% of the total rent due between September 2020 and September 30, 2021 to ensure protection.

Active Outreach to Tenants and Property Owners

Last quarter, Housing Department staff continued to actively communicate with the public regarding tenant protections and available programs to help them keep their housing. With the end of most COVID-19 related tenant protections and closure of the state COVID-19 Rent Program to new applications on March 31, 2022, staff stepped up efforts to ensure tenants were aware of the need to apply before the deadline and that April rent and forward must be paid on time. EHC staff worked with County partners to update the multilingual flyers that communicate the end of some eviction protections, how to check the status of rent relief applications, and where to get help. Since the last quarterly report to the NSE Committee, Housing Department staff engaged with community partners, schools, and other groups to participate in over 20 meetings, presentations, and flyer-distribution efforts at resources fairs and other community events.

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 ending most COVID-19 eviction protections, the Tenant Protection Ordinance, and available state rent and landlord assistance programs. Media used included public service announcements on Spanish and Vietnamese radio, short videos in English, Spanish and Vietnamese, social media platforms, webinars, and mailers in multiple languages.

Housing Department staff also continued the weekly practice of mailing informational flyers in English, Spanish, and Vietnamese to tenants in rent-stabilized units whose landlords filed three-day Notices to Pay with the City as required by the Tenant Protection Ordinance. This was an important tool to communicate the end of eviction protections and the importance of paying current rent. Since March 1, 2022, staff has sent 3,057 mailers to these vulnerable tenants.

Eviction Prevention Help Center and the Court

Since October 2021, EHC staff has been on-site at the downtown Santa Clara Superior Courthouse during the unlawful detainer calendars on Wednesday and Thursday mornings to assist tenants and landlords in applying for rental assistance and checking the status of pending state COVID-19 Rent Relief Applications. During the last quarter, EHC staff has also coordinated with the Sacred Heart Community Services and the court to have staff members from Sacred Heart also be present during the unlawful detainer calendars. By working with EHC staff and court mediators, Sacred Heart has been able to screen tenants involved in unlawful detainer actions for the Homelessness Prevention System and other programs to keep them housed or support transition to more stable housing. This has been critical in matters where state COVID-19 rent relief funds are either unavailable to the tenant or the tenant is not in a position to make future rent payments, even with a rent relief award.

Eviction Diversion and Settlement Program (EDSP) Launch

The Housing Department provided an update to City Council on March 22, 2022,¹² and to the Intergovernmental Relations Team on March 29, 2022¹³ on the status of tenant protections and the Administration's efforts to prevent evictions through initiating the EDSP.

The City of San José Housing Department and the Santa Clara County Office of Supportive Housing, in coordination with Sacred Heart Community Services, Destination: Home, and the Project Sentinel Court Mediation Program, developed the EDSP to mitigate the delays in rent relief application processing that has put some tenants at imminent risk of eviction. The program utilizes the City's and County's remaining ERA1 funds to stop a pending unlawful detainer (eviction) action, based in whole or in part, on nonpayment of rent by quickly paying directly to the landlord unpaid amounts on behalf of tenants with pending state rent relief applications. This voluntary program operates as follows:

- To be eligible, a tenant must (a) have an unlawful detainer action filed against them for nonpayment of rent due between October 1, 2021, and March 31, 2022, (b) have a completed pending rent assistance application that includes rent between October 2021 and March 2022, and (c) have resided in their unit since before October 1, 2021.
- Landlords must agree in a stipulated settlement filed with the court that they will dismiss the unlawful detainer action once they receive payment from the EDSP within two weeks.
- Both landlord and tenant sign an agreement with the City and County stating they will work with EDSP staff to provide all documentation necessary to process the application and will withdraw their pending application with the state, to avoid any duplication of federal funds.
- 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.

Candidates for the EDSP are sought out primarily during the unlawful detainer calendar Wednesday and Thursday mornings, when tenants and landlords are appearing in court. Housing Department staff attends these calendars and works with day-of-court mediators, tenant and landlord attorneys and unrepresented parties to identify and screen possible EDSP participants. When parties are found eligible and agree to participate, a mediator assists them with entering into a stipulated settlement agreement. Once the stipulation is signed, Housing Department staff

¹² File No. 22-369, <https://sanjose.legistar.com/LegislationDetail.aspx?ID=5520243&GUID=0784326F-C9CD-42D0-BABC-AEE01BAE207E&Options=&Search=>.

¹³ Staff report March 29, 2022: <https://sanjose.legistar.com/View.ashx?M=F&ID=10676573&GUID=D7AB094C-0E87-42FD-97A6-52E14EB3BE2F>

works with the parties to obtain paperwork and schedule follow ups to finalize processing and withdrawal of the pending state rent relief application. As described in the EDSP overview (**Attachment A**), referrals to the Program may come from other partners listed on the flyer or when a tenant who has an unlawful detainer lawsuit visit or contacts the EHC. Referrals will also be expected from the weekly unlawful detainer courthouse clinic described below is launched.

Legal and Unlawful Detainer Assistance

Since the state's stronger eviction protections ended on September 30, 2021, there has been an increase in unlawful detainer filings. With the recovery period protections related to applying for rent relief ending March 31, 2022, there has been an additional increase in filings in recent weeks. Staff continues to receive, process, and track termination notices and unlawful detainer filings received since March 18, 2020. Figure 1 summarizes preliminary data on termination notices related to nonpayment of rent and unlawful detainers by month to show the trend. Table 4 shows the monthly averages of unlawful detainers based in whole or in part on nonpayment of rent involving units covered by the Tenant Protection Ordinance that are filed with the Housing Department during periods before the pandemic, during the protection periods, and since protections ended March 31, 2022. Also shown is the total number of residential unlawful detainers filed countywide with Santa Clara County Superior Court during those same periods.

Figure 1: Preliminary Data Housing Department Received Regarding Nonpayment of Rent Notices and Unlawful Detainers Based in Whole or Part on Nonpayment of Rent October 2021 – May 19, 2022

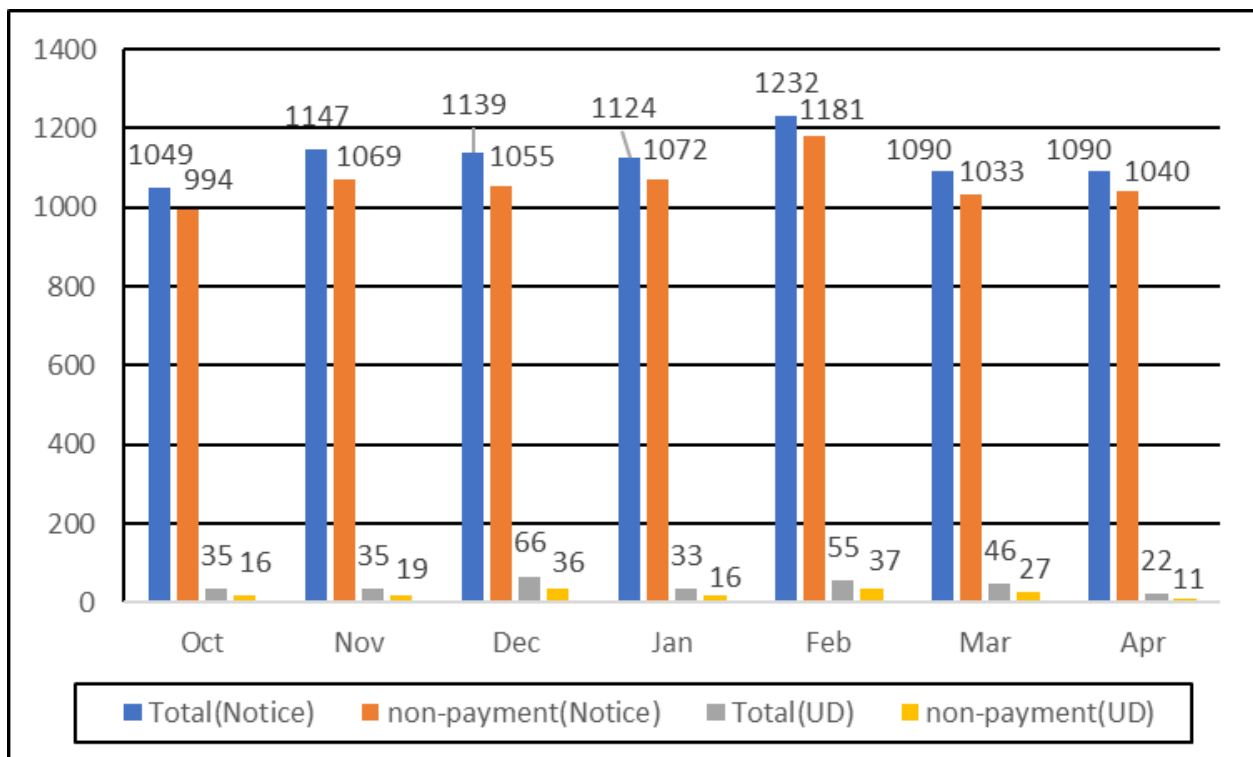


Table 4: Unlawful Detainers filed Pre-Pandemic, During Moratoria, During Recovery Period Limited Protections and after Protections ended March 31, 2022

	Unlawful Detainers Filed with Housing Department Based in Whole or Part on Nonpayment of Rent	Total Residential Unlawful Detainers Filed with Santa Clara County Superior Court*
Jan 2020 – Feb 2020 <i>Pre-Pandemic Activity</i>	8 (avg. of 4/month)	405 (avg. of 202.5/month)
Mar 2020 – Sept 2021 <i>During City and State Eviction Moratoria</i>	140 (avg. of 7.4/month)	1173 (avg. of 68.7/month)
Oct 2021 – March 2022** <i>During Recovery Period of State Eviction Moratorium</i>	151 (avg. of 25.2/month)	667 (avg. 111.2/month)
April 2022	11	162
May 1 – May 20 2022*	37	123

*Note: Housing Department staff obtained basic residential unlawful detainer statistics from Santa Clara County Superior Court for 2020 through May 20, 2022, but does not have data on outcomes of these filings. The May numbers from Superior Court are likely reflective of filings through about May 17, 2022 due to the lag of some filings getting entered into the court's case management system.

The data in Figure 1 shows a trend of an increase in unlawful detainer filings based on nonpayment of rent. Also notable in Figure 1 is that the number of notices for nonpayment did not decrease in April 2022 despite protections ending March 31, 2022. In Table 4 the data indicates that unlawful detainer filings with the court are getting closer to pre-pandemic numbers.

The Housing Department oversees the City's current contracts with Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley to provide services at the EHCs and remotely. The Law Foundation provides legal consultations for walk-in tenants at the City's EHC. 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 because of COVID-19, and assistance developing a legal defense for small claims court.

At least 272 unduplicated households have received legal services through the EHC walk-in and virtual daily legal service hours staffed by Law Foundation of Silicon Valley and Bay Area Legal Aid Silicon Valley.

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

Weekly Unlawful Detainer Courthouse Clinic: As reported to NSE in its last status update, 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 for an

eviction diversion program.¹⁴ The program would have funded a full-time position at the court to manage a collaborative eviction diversion program. Unfortunately, the court was not awarded the National Center for State Courts grant. Although the court was unable to fund a position to coordinate a program, Housing Department staff continued to collaborate with the County, Sacred Heart Community Services, Destination: Home, court administration, Superior Court Self-Help Center staff, and Project Sentinel to establish a holistic weekly clinic that offers a spectrum of resources to parties involved in unlawful detainer actions. In an exciting development, in early May, the court confirmed that the partners have use of a courtroom space in the Downtown Superior Court courthouse on Wednesday mornings to hold a weekly unlawful detainer clinic. The weekly clinic is open to all parties and strives to provide as many opportunities as possible to help parties resolve their disputes and, ideally, avoid evictions.¹⁵ The following partners are slated to staff the clinic:

- Housing Department staff will be available to assist with tasks and questions related to pending state rent relief applications and to screen for eligibility for EDSP
- Sacred Heart Community Services will be available to screen tenants for the Homelessness Prevention Program and other resources that could help them avoid eviction or transition to more stable housing
- Superior Court Self-Help staff will assist tenants with preparing and filing answers to unlawful detainer actions
- Project Sentinel's Court Mediation program will counsel tenants and landlords about dispute resolution options that could avoid parties going to trial or assist landlords in resolving their issues with a tenant without filing an unlawful detainer action
- Legal aid organizations are in discussions with Housing Department staff to have different organizations and programs staff the clinic on a rotating basis. Attorneys would provide tenants legal counseling and possibly representation in certain circumstances

Detailed flyers about the clinic are being finalized by Housing Department staff and its partners with the goal of a soft launch on June 1, 2022. The clinic is not intended to be a temporary program, and it is the goal of the partners to make the weekly clinic a fixture at the court that will lead to a significant decrease in eviction judgments and tenant displacement.

Law School Legal Clinic: The establishment of the weekly unlawful detainer clinic creates an opportunity for launching a pilot law clinic program with the Katherine and George Alexander Community Law Clinic (KGACLC) of Santa Clara University. The legal clinic model could supplement the rotating participation of legal-aid organizations that will provide legal counseling to tenants at the weekly unlawful detainer clinic. The Court Self-Help Center is also working with the Housing Department on the effort to establish this legal clinic with KGACLC. The Court

¹⁴ <https://www.ncsc.org/information-and-resources/improving-access-to-justice/eviction-resources/eviction-diversion-initiative-grant-program>

¹⁵ Note that a Housing Collaborative Court was included in Recommendation 1 of the Citywide Residential Anti-Displacement Strategy.

Self-Help Center has an existing partnership with KGACLC to hold the long running KGACLC consumer rights law clinic and has offered to partner with the Housing Department and KGACLC towards the goal of launching a pilot program when the law school begins its 2022-2023 academic year. Housing Department staff, court Self-Help Center staff and KGACLC faculty will be meeting in the coming weeks to discuss a plan.

Right to Counsel: In addition, pursuant to 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.¹⁶ Given the staff capacity that was needed to launch the EDSP and the new weekly unlawful detainer clinic, staff has deferred issuing the Right to Counsel Request for Proposal to this summer.

Recommendation 2. Create Tenant Preferences to Prevent Displacement

In the past quarter, staff has focused its extremely limited capacity on advancing tenant preferences by maintaining momentum behind cosponsored legislation to support the use of tenant preferences. Staff capacity in the past quarter was consumed by outreach and developing analysis and chapters for the Assessment of Fair Housing and next cycle Housing Element, which has its first pressing deadline at the end of June.

Definition: 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 a 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

¹⁶ 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>.

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

This work consists of several parts:

- **Legislation:** advancing state legislation to reliably use these preferences on bond and tax-credit-financed developments
- **Housing and Community Development (HCD) Approval:** obtaining the state HCD's approval of the City's proposed preferences
- **Program:** designing the City's program, working with stakeholders, and obtaining the City Council's approval
- **Implementation:** creating user guidance and tools, conducting outreach to users, and ensuring the programs are properly implemented, and
- **Reapprovals:** collecting improved data for required analysis and seeking annual program-level reapproval from HCD.

Updates on the first two parts are as follows:

Legislation: SB 649 (2021), 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 private activity bonds are able to reliably administer tenant preferences that help prevent displacement by recognizing this population under the law.

Legislation Update: SB 649 is a two-year bill that already passed out of the Senate to the Assembly. Therefore, it must be heard in Assembly policy committees in June, passed by the full Assembly by August 31, and signed by the Governor by September 30.

Staff met with Senator Cortese's office and HCD representatives on March 9 and May 2, 2022 to review the legislation and receive any potential guidance from HCD. In March, HCD staff expressed willingness to work with the bill's sponsors and author on language edits later in the spring and clarified that HCD's approval was not technically required for the bill to advance. Staff from the California Department of Fair Employment and Housing also attended the May 2, 2022, meeting. They asked clarifying questions about the intent of the bill.

Staff continues to work with the City Attorney's office, the Office of Intergovernmental Relations, and the City's state lobbyist on advancing SB 649. Currently, staff and the City Attorney's office are in the process of answering Assembly Housing Committee staff questions about the bill.

HCD Approval: HCD's approval of the City's proposed tenant preferences is important to obtain for three reasons: 1) HCD's approval is required if it makes a loan to affordable apartments using the preference; 2) HCD is reviewing the adequacy of jurisdictions' fair housing strategies in

forthcoming Housing Elements; and, 3) HCD is the governor's ultimate advisor on housing legislation, including SB 649.

In August 2020, HCD staff indicated that the agency 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. Key HCD staff reported in mid-October 2021 that HCD's guidance memo was in final stages of review and was expected to be released by the end of 2021. City staff determined that HCD's release of official guidance was necessary to obtain before doing preliminary analysis in order to prevent later rework.

HCD Update: As of mid-May 2022, HCD has not released guidance for lawful preferences analysis.¹⁷ At the meeting with HCD on March 9, 2022, HCD staff clarified that its review of the City's tenant preferences will focus on its role as a lender rather than under broader powers to review policies under fair housing law. HCD declined to give an estimate on the timing for the release of its guidance at both the March and May meetings.

Staff's analysis and design of both tenant preferences remain on hold until the state's release of the guidance. This is to avoid rework, but also due to staff's intense current focus on the sixth cycle Housing Element. The Housing Department is applying for a FUSE Fellow to start in October 2022 to help the tenant preferences work. Once adequate staffing is available, staff will reassess the wisdom of continuing to wait for HCD guidance versus proceeding with a City program that may not be used on affordable housing deals with state financing.

See **Attachment B** 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

Definition: A Community Opportunity to Purchase (COPA) program would give a qualified nonprofit buyer the right to make the 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 income-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 intensive work had continued on COPA – outreach, analysis, writing, and preservation financing – but that staff was about to enter a period in which COPA work would need to be put on hold temporarily due to the need to focus on the extraordinary amount of work needed to produce a draft sixth-cycle Housing Element including the Assessment of Fair Housing. As expected, the amount of work done on COPA in the past quarter was extremely limited, focusing mainly on partner work and staffing.

¹⁷ Once HCD issues guidance, staff plans to seek HCD's approval of the Anti-Displacement Tenant Preference first, as HCD is more likely to easily accept the specific data and findings for this preference given its structure.

Outreach: Given staff's need to pause COPA work, it updated the City's COPA webpage¹⁸ with revised timelines. Once future approval dates are more clearly known, staff will communicate further through an information memorandum and to those who signed up for the COPA email list.

Community Partner: In the past quarter, staff continued to meet weekly or biweekly with SOMOS Mayfair, the City's community partner receiving funding by the Partnership for the Bay's Future through the San Francisco Foundation. Staff also participated in a large meeting with SOMOS Mayfair and other community partners in its coalition in March 2022 about next steps in the COPA approval process, and priorities for all parties in this work. Another large coalition meeting is scheduled for June 2022.

Staffing: The City/SOMOS Mayfair team was successful in being awarded a new two-year Breakthrough Grant Fellow by the Partnership for the Bay's Future through the San Francisco Foundation. The Fellow was awarded to continue work on the COPA proposal, conduct community outreach, and help to implement the program (assuming the City Council approves COPA). The Fellow will also help to support strategies for Community Land Trusts, other preservation initiatives, and potentially the tenant preferences work. The Coro Foundation is overseeing the Fellow's hiring and will technically employ the Fellow. Staff and SOMOS Mayfair participated in hiring panels for the Fellow, and staff is working with the City Attorney's office to negotiate documents with the San Francisco Foundation and Coro to support the hiring. The Fellow will start at the City in mid-June.

The following are updated milestones for COPA program development:

Table 2: COPA Revised Milestones

Actions	Timing
Prepared draft program description for public review	Nov. 2021
Held public review period of the draft program description	Nov. 30, 2021 to Feb. 1, 2022
Held seven broad community meetings, took comments on the draft proposal	Dec. 2021 to Jan. 2022
Synthesized feedback, began writing decision memo, met with stakeholders	Feb. to Mar. 2022
<i>Hiatus due to Housing Element deadlines</i>	<i>Apr. to Aug. 2022</i>
Draft program to HCDC	Early fall 2022 (est.)
Key elements to CED Committee in conjunction with scheduled Anti-Displacement Update	fall 2022 (est.)
Draft program to City Council	late 2022 (est.)

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

¹⁸ <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/copa>

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

Definition: Recommendation 4 of the Citywide Anti-Displacement Strategy involves an analysis of the membership composition of HCDC 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. The near-term focus of this work is to create a designated lived experience with homelessness (lived experience) member seat on HCDC pursuant to City Council direction on January 12, 2021. Staff's work plan focused on: 1) researching and developing new guidelines and resources for onboarding lived experience commissioners, and 2) establishing a recommended stipend model for the lived experience commissioner seat.

Approval update: Major milestones reached during the past quarter were:

- On April 14, 2022, Staff brought to the City Council a municipal code amendment to add an HCDC commissioner seat for a person with lived experience with homelessness. The City Council approved the amendment with the addition of an alternate member, who would be entitled to a stipend for attending meetings, to reduce pressure on the lived experience commissioner in case they could not make all meetings.

Mayor Liccardo, who will appoint the commissioner and alternate, also expressed interest in prioritizing female candidates and those with lived experience in San José, based on community feedback and the City Council's comments. However, these qualities are not requirements of the seat.

In the next quarter, staff will work with the Clerk's office to amend the HCDC application to include questions pertinent to this seat. Staff also will reach out to organizations that gave feedback during this process to help start recruiting candidates for this seat. However, the staff person who was working on this initiative recently left the City. This will delay the Housing Department's ability to fully implement development of compensation, supportive training, and systems needed for the lived experience seat by up to several months.

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 EHCs, and obtained approval of the lived experience seat for HCDC. Work to support the City's tenant preferences state legislation continued. However, work on the COPA program had to pause due to intense work required of the Housing Policy Team to produce a draft sixth-cycle Housing Element/Assessment of Fair Housing together with staff from the Planning Division, the Office of Economic Development, and Cultural Affairs. After the first draft Housing Element is submitted to the state in August, Housing staff will resume working on COPA.

EVALUATION AND FOLLOW-UP

Staff will continue to provide regular updates on its work under the Citywide Anti-Displacement Strategy to City Council committees in the coming fiscal year. The next briefing will be to the CED Committee in late June.

CLIMATE SMART SAN JOSÉ

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

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the June 9, 2022NSE Committee meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

Staff will engage HCDC and solicit feedback on specific recommendations of the Anti-Displacement Strategy as each one is developed.

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

The primary author of this memorandum are Kristen Clements, Division Manager and Emily Hislop, Division Manager. For questions, please contact Kristen Clements at Kristen.clements@sanjoseca.gov.

NEIGHBORHOOD SERVICES AND EDUCATION COMMITTEE

Subject: Citywide Residential Anti-Displacement Strategy Status Report

May 25, 2022

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Attachment A: Eviction Diversion and Settlement Program

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

ATTACHMENT A:



CITY OF SAN JOSÉ AND COUNTY OF SANTA CLARA EVICTIION DIVERSION AND SETTLEMENT PROGRAM

The City of San José and Santa Clara County, in coordination with Sacred Heart Community Services, Destination: Home, and the Project Sentinel Court Mediation Program, have developed the Eviction Diversion and Settlement Program (EDSP). This program utilizes remaining COVID-19 emergency rental assistance funds to stop a pending unlawful detainer (eviction) action based in whole or in part on nonpayment of rent by quickly paying directly to the landlord unpaid amounts on behalf of tenants with pending state rent relief applications.

EDSP qualifications:

- Eligibility: tenant in an active unlawful detainer action that has a state rent relief application pending where parties are open to settlement and the tenancy began before October 1, 2021
- Rent Covered: all of the back rent sought in the rent relief application, plus any rent accrued April 1 – June 30, 2022, if permitted (Federal regulations allow a max of 15 months assistance)
- Landlord: must agree to dismiss unlawful detainer action once the program makes the payment (~2 weeks) and not take any action to evict during the period covered by the Program award
- Landlord and Tenant: must withdraw their pending rent relief application with the state, to avoid any duplication of federal funds

How the EDSP take cases:

- Day of Court: Tenant and landlord work with Court mediators and City of San José staff to determine eligibility for program. Tenant and landlord enter into a stipulation which includes language about the Program and then sign releases with the Program. Representatives from Sacred Heart Community Services will be on hand to screen tenants for eligibility in the County's Homelessness Prevention System or other programs if the tenant is not eligible for state rent relief funds. Participation in the Homelessness Prevention System could also be a condition of a stipulation where the parties are agreeing to an extended move-out date.
- Referrals before trial: The EDSP may receive referrals of tenants who received unlawful detainer actions and submitted rent relief application by March 31, 2022. City staff will contact the landlord or their attorney about the program. If the parties wish to participate City Staff assists with obtaining the application information and a Project Sentinel Court mediator will assist the parties in entering into a stipulation. The Program expects to receive referrals from:

City of San José Eviction Help Centers Mountain View Eviction Help Center County of Santa Clara	Superior Court Self-Help Center Law Foundation of Silicon Valley Bay Area Legal Aid
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Organizations making referrals should fill out a referral checklist form to send to the Program (instructions on form). For questions about EDSP eligibility email UDRentHelp@sanjoseca.gov

ATTACHMENT B:
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 and 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-19 relief and recovery	Completed and ongoing
	Seek advice and assistance from universities and think-tanks 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 the City of Los Angeles on COVID-19 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
	Release Request for Proposals to study estimated cost of Right to Counsel for Santa Clara County per City Council direction	2022
Community Outreach	Interview community-based organizations (CBO) 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

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: 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 and coordinate CBOs together with the 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 and 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 a timeline for its issuance of final guidance on tenant preferences	TBD
	Perform disparate impact analysis and do other HCD-required analysis	
	Determine how to prioritize and administer different preferences and 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
	Apply for FUSE Fellow to support advocacy, analysis, and outreach	Q1-Q3 2022
	Work with City Attorney's office to create legal findings in support of legislation and ordinance and approve proposed parameters	Q3 2022

Community Outreach and 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 and incorporate HCD feedback on City's analysis and submissions	
	Obtain HCD approval of the City's methodology and analysis	TBD
	Decide timing to seek HCD approval for second preference	TBD
	Stakeholder meetings on the draft program (community and neighborhood, property owners and managers, residents/advocates)	TBD
	Hold public meetings on the draft program to get input	
Program Finalization and 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 HCDC	
	Present draft program to CED Committee	
	City Council approves program and Ordinance	
Program Implementation	Issue guidance for property owners and 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 protected class 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) and market research	Completed
	Hold Request for Proposal and hire community engagement consultant for Anti-Displacement Working Group; focus technical team on COPA	
Community Outreach and Policy Feedback	Meet with specialized stakeholders (property owners, realtors, brokers, lenders, other experts)	Completed
	Meet with qualified potential nonprofit developers	
	Prepare analysis of long-term funding needs and possible sources for financing acquisition and rehabilitation/permanent	
	Hold Working Group meetings – Technical Advisory Committee and broader Stakeholder Advisory Committee (ongoing)	
	Create the first draft of program and supporting materials incorporating community feedback and study findings	
	Hold stakeholder public review period and feedback	
Program Finalization and Approvals	Make refinements based on first public review feedback	Q3-Q4 2022
	Hold meetings with key stakeholders on refinements	
	Present to HCDC	
	Present to CED 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 and 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
	Create draft regulations and guidance – get public feedback	
	Conduct webinars for the public (multiple languages)	
	Hold cohosted educational meetings for property owners	
	Issue call for qualifications and approve qualified nonprofit developers to participate in the program	
	Begin program implementation (later than 12 months after approval or qualified nonprofit partner approvals)	Q1 2024
	Info memo on progress to the City Council six months after the start	Q3 2024
	Continue outreach and education to the community	2023-24
	Assess Program performance in a report to City Council after one year	Q2 2025

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