CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: May 8, 2018

Approved _____ Date _____

SUBJECT: **PRIORITIZATION FOR TENANTS OF AFFORDABLE HOUSING**

RECOMMENDATION

1. Accept the staff and City Attorney's report on issues involved in establishing City-wide policies to prioritize certain types of residents for tenancy in affordable housing ("Tenant Preferences"), and

2. Approve staff's recommendation to authorize creation of City-wide Tenant Preference policies for City Council consideration for the following types of low-income tenants: 1) those who live or work in San José; 2) those who have experienced certain types of displacement; and, 3) those residing in gentrifying areas that are highly likely to result in tenant displacement, and

3. Authorize staff and the City Attorney's Office to conduct in-depth legal analysis, to do additional stakeholder outreach, and to develop the three recommended City-wide Tenant Preference policies and return to the City Council for consideration and approval.

OUTCOME

Per the Community and Economic Development Committee's (CEDC) recommendation, staff and the City Attorney will research and develop final draft Tenant Preferences policies for the three recommended types of tenants, and will return to the City Council for final consideration and approval by early Fall 2019.

BACKGROUND

In March 2017, the City Council voted on Council priorities for staff work in FY 2017-18. One of the City Council's priorities was for staff to "Explore the development of policy that will

allow a set-aside in affordable housing developments that prioritizes residents who are being displaced that live in low-income neighborhoods undergoing displacement and/or gentrification."

On October 12, 2017, the City's Housing and Community Development Commission (HCDC) and the public provided input on possible types of Tenant Preference policies to develop, as well as types of special populations for which the City should subsidize affordable housing developments. Commissioners voted for desired Tenant Preferences, and recommended that staff also provide housing needs data for the different populations.

On October 23, 2017, CEDC considered possible Tenant Preference policies, as well as special populations to subsidize. Committee members received Commissioners' voting results. The HCDC-recommended housing needs data was also provided in a supplemental memorandum. The staff memos and attachments provided to CEDC last October are included as **Attachment A** to this memorandum. CEDC directed the City Attorney's Office to return to the Committee with an overview of the legal issues related to Tenant Preferences, in order to help narrow possible Tenant Preferences to pursue. CEDC also voted to add Public Safety City Employees as a possible City-wide Tenant Preference policy. At the CEDC meeting, the Director of Housing stated that HCDC should also be apprised of the additional legal analysis prior to the item's return to CEDC.

As directed, the City Attorney's Office prepared a legal analysis memo (Analysis), included as **Attachment B** to this memorandum. The Analysis reviews the relevant federal and State laws that pertain to establishing Tenant Preference policies. Per this analysis, the City Attorney's Office also ranked each of the possible Tenant Preferences based on the potential legal issues (high, medium, and low) related to establishing each preference. The chart of Possible Types of Tenant Preferences is included as **Attachment C** to this memorandum.

Note that this memorandum's focus is on the establishment of City-wide Tenant Preference policies. This action does not address which populations to serve through City subsidies provided to help finance specific affordable housing developments. Therefore, **Attachment C** only contains populations under consideration for possible City-wide Tenant Preference policies.

ANALYSIS

Tenant Preferences are used to establish a hierarchy among applicants, or a rotation between waitlists, during a property's initial or subsequent leasing process. Cities that administer multiple Tenant Preferences often create a point system for the stacking of preferences. Applicants are awarded points for each type of Tenant Preference that applies to a particular property for which they qualify. In cities that have adopted tenant preference policies, a certain percentage of apartments in a given development are usually set aside for each of the defined populations.

Legal Analysis

The Overview on potential legal constraints in Attachment C is intended to provide further guidance on which Tenant Preferences would be legally difficult to pursue. The City Attorney's Office Overview shows that, of the populations in Attachment C, only a preference for Rent-burdened tenants was deemed a High degree of legal issues at the first level of review. The others identified were assessed as Low difficulty at initial review.

It is important to note that this review is only the first level of analysis for Tenant Preferences' development. This Analysis is based on an initial definition of who each policy would cover and how that eligibility would be determined. If the specific definition of the population were to change, the relevant analysis required might also change. An example is the definition of a neighborhood's boundaries. Giving a preference to residents of a larger area may include a greater diversity of residents. As a result, this type of preference program may be less likely to have a disparate impact on a particular race or ethnic group than would a program with a smaller neighborhood definition.

Further legal review of disparate impact might include detailed data analysis. For a given population, it is possible that providing a preference would continue or exacerbate either advantages or disadvantages for the population. For instance, if there was a concentration of people of a certain race in buildings covered by the Ellis Act, and Ellis Act evictees are included in a Displacement priority, further analysis would be required as to whether there is a "legitimate and non-discriminatory reason"[1] to give them a preference. In addition, the greater the number of Tenant Preferences, the greater the need for analysis of how they interrelate.

Therefore, the development of further legal analysis relevant to the specific language and requirements of the identified Tenant Preferences is the necessary next step after staff is given approval to proceed with policy development.

Recommended Tenant Preference Policies to Develop

All residents of San José should have access to reasonably-priced housing. Further, all the subpopulations identified have significant housing challenges in our local market. However, the number of Tenant Preferences that staff and the City Attorney's Office could develop and administer in the near-term is limited. In narrowing potential types of populations, staff considered several factors:

1. City Council direction: Staff has been directed to pursue both Displaced Tenant and Anti-displacement Tenant Preferences.

2. Qualification as Low-income: The affordable apartments in which tenants would be prioritized are generally limited to low-income households. These encompass households at or below 30%, 50%, and 60% of Area Median Income (AMI), with

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[1] San José City Attorney's Office, "Legal Analysis for Tenant Housing Preferences," May 3, 2018, p.3.

maximum incomes defined by family size. For a household of one person in 2018, the maximum income for 30% AMI is $27,950, and for 60% AMI it is $55,860. For a household of four people in 2018, the maximum income for 30% AMI is $39,900, and for 60% AMI it is $79,800. Therefore, the populations to prioritize should be likely to qualify under maximum income levels.

3. <u>Urgency</u>: San José is experiencing significant growth and densification, most of which should occur in Urban Villages and other growth areas. These areas have existing lower-density apartments with potential for rehabilitation or redevelopment. These real estate investments may result in displacement of existing residents. San José also has some of the highest rents in the U.S., with rent growth over time far outpacing income growth. A significant number of residents also pay a high proportion of their income towards rent. For all these reasons, staff is keenly aware that a broader set of protections is urgently needed to help protect people in our community who are currently experiencing displacement, or are at high risk of experiencing displacement in the next few years.

4. <u>Prioritization of resources for our local community</u>: As the City has very limited resources to subsidize new restricted affordable residences, staff recommends that the resources we do have should be spent helping San José's residents and workers to stay in our community.

For these reasons, staff recommends limiting the development of Tenant Preferences to the following population categories:

1. ***Live or Work***: those who live or work in San José;
2. ***Displacement***: those who have experienced certain types of displacement caused by disasters, Ellis Act evictions, and expiration of affordability restrictions (combines rows 2 and 3 in Attachment C's chart); and,
3. ***Anti-displacement***: those residing in gentrifying areas that are highly likely to result in tenant displacement.

Next Steps

Once staff gets final direction on the types of Tenant Preferences to draft, establishing the policies would involve the following tasks:

- Staff and City Attorney definition of details and analysis of feasibility based on number, scope and type of Preferences, interaction with City funding sources, best practices research, and stakeholder input;
- City Attorney analysis for legal constraints and refinement of proposal(s);
- City Attorney drafting of policies;
- Outreach to stakeholders and the public to solicit feedback;
- City Council consideration of proposed Tenant Preference policies;

- City Attorney drafting of appropriate language for City's loan documents;
- Staff implementation of the Tenant Preferences, together with affordable housing property owners and managers; and
- Broader education to the public on approved Preference policies.

The following is an outline of work that is anticipated to be involved in establishing up to three Tenant Preferences. If fewer or more Preferences were desired, the timeframe would alter accordingly. These are rough estimates of the work involved. Some Tenant Preferences will involve more analysis than others. In addition, some tenant preferences may require approval from the U.S. Department of Housing and Urban Development ("HUD").

Another option is for staff to focus on drafting and completing the simpler Preferences, such as Live or Work, while continuing work on the more complicated Preferences, such as Anti-displacement, on a separate schedule. This could result in earlier rollout of one or two of the policies.

Draft Workplan for Tenant Preferences

#	Task	Potential Timing	Level of Effort	Notes
1	Conduct additional research on Preferences	June to Oct.	Med	Types of Preferences, mechanisms, legal analysis, rules on the City's funding sources, and implementation issues
2	Obtain HUD's guidance	June to Oct.	Med	Depends on selected Preferences; analysis may require HUD consultation
3	Create draft structure, definitions, and rationales	July to Oct.	High	Staff and CAO together define specific findings and structure of policies
4	Refine definitions and analyze legal issues	Oct.	High	Staff and CAO together refine definitions and analyze legality
5	Conduct initial public outreach	Nov.	Med	Staff informs public of upcoming actions; gets feedback from public, other cities on content and implementation
6	Prepare draft policies/ ordinances	Dec. to Feb. 2019	High	Drafting by CAO
7	Hold stakeholder feedback meetings on drafts	Mar. to May 2019	Med	Includes a formal public comment period and follow-up HCDC meeting
8	Edit draft policies/ ordinances	Mid-2019	Low	Editing by CAO
9	Request City Council approval of draft policies	Early Fall 2019	Med	Staff and CAO
10	Implement and educate stakeholders and public	Late 2019 and ongoing	Med	Staff and CAO

EVALUATION AND FOLLOW-UP

As directed by CEDC, staff will conduct the work outlined above for identified preferences and will return to the City Council for its consideration of draft policies.

PUBLIC OUTREACH

On September 15, 2017, Housing staff sought initial feedback on this topic at a City-convened meeting of representatives from six property management companies that oversee tens of thousands of apartments. On October 12, 2017, HCDC held a public meeting at which Tenant Preferences was discussed. On October 23, 2017, CEDC held a public meeting with a Tenant Preferences item. HCDC will consider Tenant Preferences again at its meeting on May 10, 2018.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

CEDC received HCDC's feedback on preferred tenant preferences in October 2017. After HCDC hears this item again on May 10, 2018, staff will provide the latest HCDC's feedback to CEDC for consideration via supplemental memo.

FISCAL/POLICY ALIGNMENT

The proposed Tenant Preferences may be consistent with the City's *Analysis of Impediments to Fair Housing 2016-2020* in that they could make available affordable apartments for certain very low and extremely low-income populations such as those displaced by gentrification.

COST SUMMARY/IMPLICATIONS

There are no cost implications associated with this action.

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, Housing Department

For questions, please contact Kristen Clements at (408) 535-8236.

Attachments:

Attachment A: Memorandum and attachments for CEDC item on October 23, 2017

Attachment B: City Attorney's Office Memorandum, Legal Analysis for Tenant Housing
Preferences

Attachment C: Chart of Possible Types of Tenant Preferences and Legal Issues Assessment