CED AGENDA: 8/26/19
ITEM: D (2)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: AFFIRMATIVELY FURTHERING FAIR HOUSING PLAN

DATE: August 9, 2019

Approved [signature] Date August 16, 2019

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Accept the report and work plan to develop the Affirmatively Furthering Fair Housing Plan.

OUTCOME

Members of the Community and Economic Development Committee will receive an update on the federal and State fair housing obligations and the Assessment of Fair Housing (AFH) process. Committee members will have an opportunity to provide feedback on the AFH community engagement plan.

BACKGROUND

The 1968 Civil Rights Act, also known as the Fair Housing Act, was intended to reduce social inequities by prohibiting discrimination in housing. Access to housing is important because it greatly impacts a person's access to important opportunities such as high quality education, employment, transit, health care, healthy food, clean air, and parks for recreation.

The Civil Rights Act helped to reduce overt discrimination and segregation in American cities; however, lingering impacts and issues remain more than 50 years later. In San José, Black residents comprise 3% of the of general population, but represent 19% of the homeless population.[1] The homeownership rate for Black households is only 37% and is 39% for Latinx households, as compared to 67% of White households and 62% for Asian households.[2] Latinx

[1] 2019 San José Homeless Census & Survey http://www.sanjoseca.gov/DocumentCenter/View/85898.
[2] National Equity Atlas, IPUMS - Percent owner-occupied households by race/ethnicity: San Jose City, CA, 2015p

households experience housing cost burden at a greater rate than all other race groups in San José (60%),[3] and are the most likely to live near environmental hazards.[4]

Cities and counties that receive entitlement funding from the U.S. Department of Housing and Urban Development (HUD) are obligated by law to reduce barriers to fair housing in observance of the 1968 Fair Housing Act. Jurisdictions must prepare an Analysis of Impediments to Fair Housing (AI). The Analysis of Impediments is used to inform how communities spend federal dollars in the Consolidated Plan.

In 2015, the United States Supreme Court concluded that the Fair Housing Act embodies the concept of "disparate impact," meaning that color-blind policies resulting in unequal outcomes can be discriminatory.[5] Following this decision, HUD created the Affirmatively Furthering Fair Housing Rule (AFFH) to implement the Fair Housing Act of 1968 more fully. HUD created a new planning tool known as the Assessment of Fair Housing (AFH) to replace the Analysis of Impediments.

The AFH provided a new process that relied more heavily on data and input from impacted communities to identify patterns of segregation and a commit to meaningful actions. The AFFH Rule required HUD to certify AFH plans prior to approving jurisdictions' Five-Year Consolidated Plans for spending federal Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), and Housing Opportunities for Persons with Aids (HOPWA) funds.

In 2018, members of the U.S. Congress introduced legislation to nullify the AFFH Rule. That same year, HUD published a notice to withdraw the AFH planning tool it had posted on its website. This occurred just as Santa Clara County jurisdictions were preparing to work on their first AFH. Santa Clara County jurisdictions have decided to move forward with the AFH, despite federal changes, to more fully understand and address issues of segregation and discrimination in their communities.

In response to the federal government's withdrawal of its implementation of AFH, the State of California's Legislature passed Assembly Bill 686 (Attachment A) in 2018 (Santiago), which was then signed into law. This law requires public agencies in California to administer housing and community development programs in a manner that affirmatively furthers fair housing. Agencies cannot take actions that are inconsistent with this obligation. The law states that it must be interpreted consistent with HUD's AFFH Rule.

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[3] Housing burden by tenure and race/ethnicity: San Jose City, CA, Renters, 2015, https://nationalequityatlas.org/indicators/Housing_burden.

[4] USC PERE Environmental Justice Screening Method (2014); American Community Survey 5-Year Estimates Table B03002 (2010-2014).

[5] Texas Dept. of Housing and Community Aff., et al. v. Inclusive Comm. Proj., 135 S.Ct. 2507 (2015). An example of a disparate impact case: June 2018, Bank of America and Safeguard Properties Management were sued by the National Fair Housing Alliance for intentionally failing to provide routine exterior maintenance and marketing for Bank of America-owned homes in African American and Latino neighborhoods across 37 metro areas, while consistently maintaining similar bank-owned properties in white neighborhoods.
https://www.housingwire.com/articles/49596-housing-discrimination-lawsuit-against-bank-of-america-gets-green-light

The law further requires that a jurisdiction's housing element, "affirmatively further fair housing opportunities and promote housing throughout the community…for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familiar status, or disability and other characteristics as protected by FEHA and other state and federal laws."[6] The law requires that after January 1, 2021, all California jurisdictions' housing elements must include a fair housing program that includes an assessment of fair housing, discussed further below. The housing program must include an inventory of land showing that housing can be built throughout the community.

ANALYSIS

What is an Assessment of Fair Housing?

On September 30, 2018, the Governor signed AB 686 (Santiago) into law amending sections of the California Government Code. The new law requires that a city's fair housing assessment include the following:

- A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity;
- An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs within the jurisdiction, including displacement risk;
- An assessment of the contributing factors for the fair housing issues identified above;
- An identification of the jurisdiction's fair housing priorities and goals, giving highest priority to those factors identified above, that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance, and identifying the metrics and milestones for determining what fair housing results will be achieved; and
- Strategies and actions to implement those priorities and goals, which may include but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.

In addition, the law requires that the housing element site inventory affirmatively further fair housing. HCD currently is developing guidance on this requirement. Housing Department and Planning Department staff will complete this section as part of the next Housing Element update.

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[6] AB 686 (2018), California Assembly Floor Analysis, 8/23/18,https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB686

As currently written, State law does not require the AFH as a precondition of approval for State grants or funding. However, to the extent that fair housing analysis will be a requirement for certification of housing elements, and as certified housing elements are preconditions for funding eligibility for many State programs, there is a financial rationale to do the AFH to meet State law obligations. The State AFH will also satisfy HUD's AFFH requirement of Analysis of Impediments.

This Assessment of Fair Housing will be the first time that San José studies the extent and impacts of residential segregation. The AFH will help clarify these conditions and will put forward potential solutions to alleviate disparities in access to opportunity.

HUD encourages jurisdictions to complete a regional or joint AFH because fair housing issues typically cross jurisdictional boundaries. Conducting a regional analysis may also reduce costs and result in goals that are consistent across the region potentially leading to better outcomes. For this reason, Los Angeles, San Mateo County, and other areas have conducted regional AFHs. San José is collaborating with Santa Clara County, the Santa Clara County Housing Authority, and six other cities to complete a regional AFH. To ensure this analysis is thorough and San José-specific, staff will conduct additional community engagement and analysis.

Status Update on the Assessment of Fair Housing

The Santa Clara County Office of Supportive Housing (OSH) convened a working group that includes representatives from the Santa Clara County Housing Authority, five cities and the Housing Department. The working group selected two consultants; one for the 2020-25 Consolidated Plan and the FY 2020-21 Annual Action Plan and one for the regional Assessment of Fair Housing. The County of Santa Clara, on behalf of the working group, issued a request for proposals as part of the selection process. The County Board of Supervisors is scheduled to consider for approval the two consultants selected by the working group at their August 27, 2019 meeting. The consultants will begin working soon after.

AFH Timeline

The following timeline provides an overview of the AFH process. These dates may change based on community and consultant feedback.

Table A: Assessment of Fair Housing Process

Activity	Date	Done
Convene Housing Working Group	September 2018	✓
RFP Released	Spring 2019	✓
County Awards Contract	August 27, 2019	
County and City Revenue Agreements	August – September 2019	

AFH Initial Analysis	August – September 2019	
AFH Outreach	October – February 2019	
AFH Draft to Commissions & City Council Committees	Early 2020	
AFH Draft published for public comment	Spring 2020	
HUD Consolidated Plan and AFH to City Council	May 2020	
HUD Consolidated Plan and AFH Submitted to HUD	May 2020	
Integrate AFH into next Housing Element	2021	

AFH Community Engagement

One of the key objectives of an AFH is a robust community process which meaningfully engages those who are most impacted by discrimination, segregation, and who struggle to access opportunities. Staff is planning for an extensive community engagement process from July 2019 – February 2020. Stakeholder engagement will include the following work from Housing Department staff and the consultant:

- Plan and facilitate an array of community engagement strategies across the County at a variety of times, locations and formats to encourage robust and accessible public engagement;
- Convene an AFH Advisory Group comprised of individuals and organizations from various backgrounds to address impediments and receive advice on recommendations about impediments to fair housing choice;
- Develop training materials and then train and support key stakeholders who will then inform a broader set of stakeholders and residents about the AFH process and opportunities for public participation;
- Create a mechanism for receiving written comments at all stages of the AFH process;
- Conduct one-on-one and in-person stakeholder interviews;
- Convene 10-12 additional stakeholder focus groups in San José;
- Perform stakeholder interviews with government partners and other regulatory agencies and public/private partners; and
- Convene 2-3 large format community meetings in San José.

EVALUATION AND FOLLOW-UP

Staff will also provide this update to the City Council's Neighborhood Services and Education Committees on October 10, 2019. Future presentations to City Council Committees and to the full City Council are anticipated as outlined in the timeline above.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the August 26, 2019 Community and Economic Development Committee meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

A briefing on the Assessment of Fair Housing process will be agendized for the Housing and Community Development Commission meeting on September 12, 2019.

CEQA

Not a project, Preliminary direction to staff and eventual action requires approval from decision-making body, Public Project number PP17-007.

/s/
JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Ragan Henninger, Deputy Director, at (408) 535-3854.

Attachment
Assembly Bill 686 - 2018 (Santiago)