



*Housing*

# Disparate Impact Analysis for Proposed Anti-Displacement Tenant Preferences

SV@Home PIA – 09/29/23

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# Disclaimer

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- 🏠 Methodology more than policy
- 🏠 Wonky, but not TOO wonky



# Tenant Preferences

- 🏠 Definition: Set aside a portion of restricted affordable apartments otherwise available to the general population for a particular type of applicant



# Recent History

- 🏠 Citywide Residential Anti-Displacement Strategy: passed in September 2020
- 🏠 SB 649 (Cortese): Signed in October 2022
  - People at-risk of displacement
  - Can be served by low-income housing tax credit and tax-exempt bond financed affordable housing
  - Fair housing still applies



# Two Proposed Preferences to Deter Displacement

## 1. Citywide Anti-Displacement Tenant Preference

**Definition:** Requires a portion of affordable apartments in subject properties be reserved for applicants from census tracts experiencing definitive or probable displacement

## 2. Neighborhood Tenant Preference

**Definition:** Requires a portion of affordable apartments in subject properties be reserved for applicants already living in the same Council District of the property

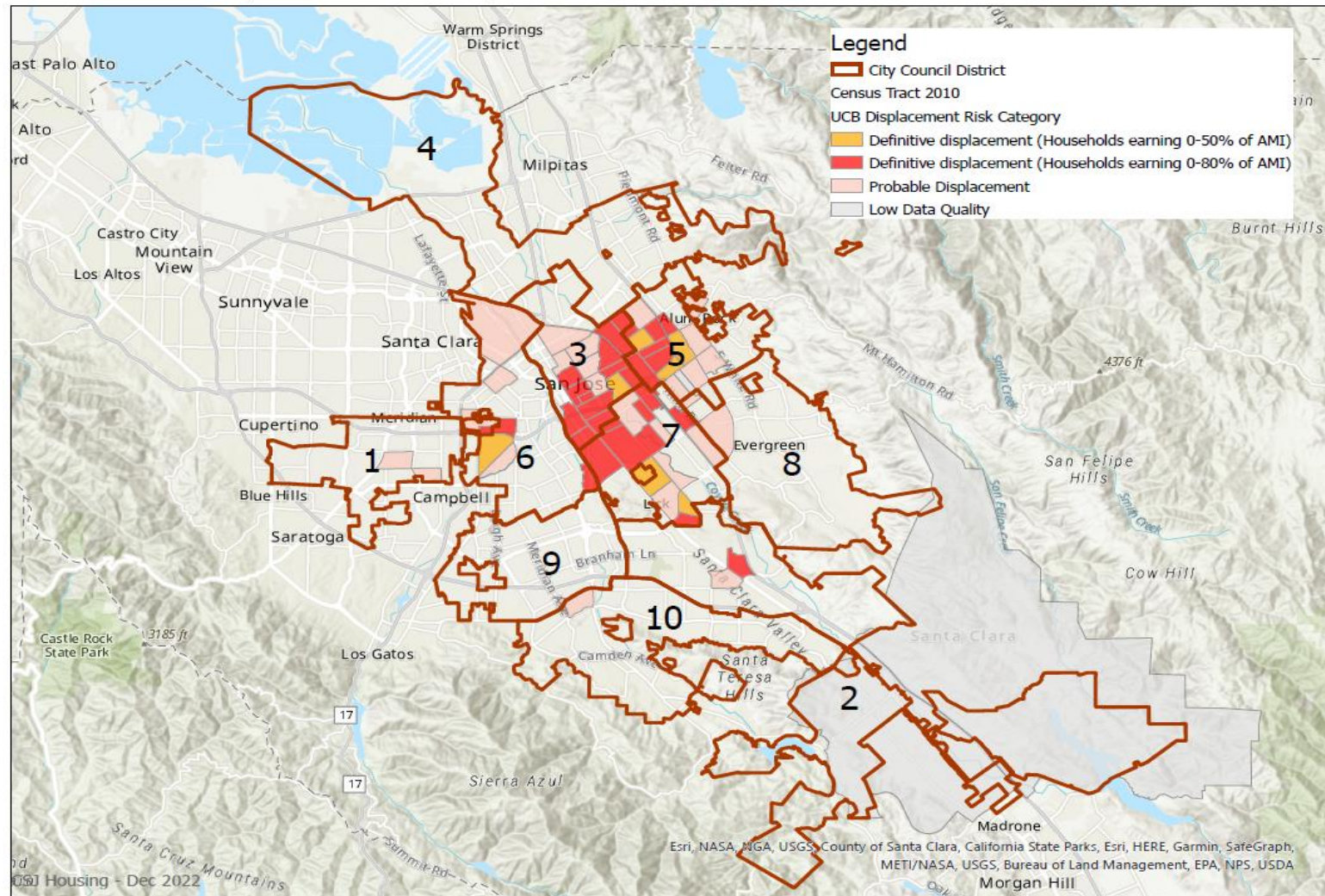
**Preferences will apply to 35% of general population units:** Limit of 15% of units for Neighborhood Preference and 20% for Anti-Displacement Preference

**Applicants:** Lower-income ( $\leq 80\%$  AMI) and otherwise meeting eligibility criteria for apartments



# Displacement Tract Maps

UC Berkeley CA Estimated Displacement Risk Model - June 2022 - San José Census Tracts



City of San José Housing - Dec 2022

# Fair Housing

- 🏠 Preferences can not burden or benefit anybody on the basis of a protected class
  - Race, color, religion, sex/gender, sexuality orientation, gender identity/expression, marital status, family status, disability, etc.
- 🏠 Intent does not matter, only impact



# Disparate Impact Testing

## 🏠 Four-Fifths Test

- Developed by US Equal Employment Opportunity Commission to test employment discrimination
- Adopted by HUD for housing discrimination
- HUD and Courts will still look at other tests/context, as appropriate
  - Langlois
  - Standard Deviation
- Does the preference create a change in demographic results that is within 20% of what would be expected without the preference?  
Is the result 4/5 similar?





# Schematic example

Smiley Town is 50% 😊 Green Smileys

And 50% 😊 Purple Smileys

For a hypothetical 100-unit apartment building in Smiley Town, you would predict a building with 50 😊 households and 50 😊 households.

50 😊 households + 50 😊 households = PASS

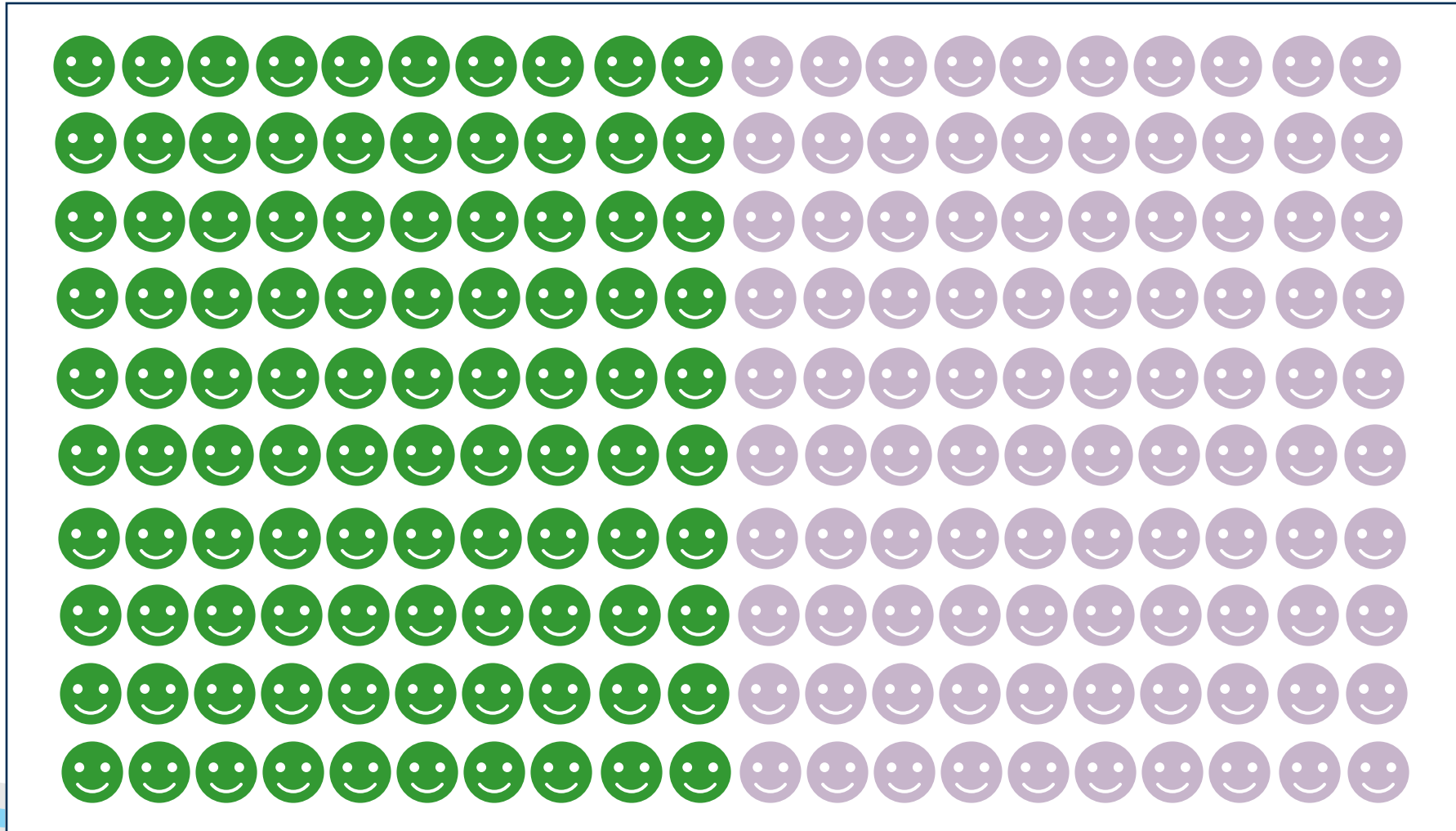
40 😊 households + 60 😊 households = PASS

60 😊 households + 40 😊 households = PASS

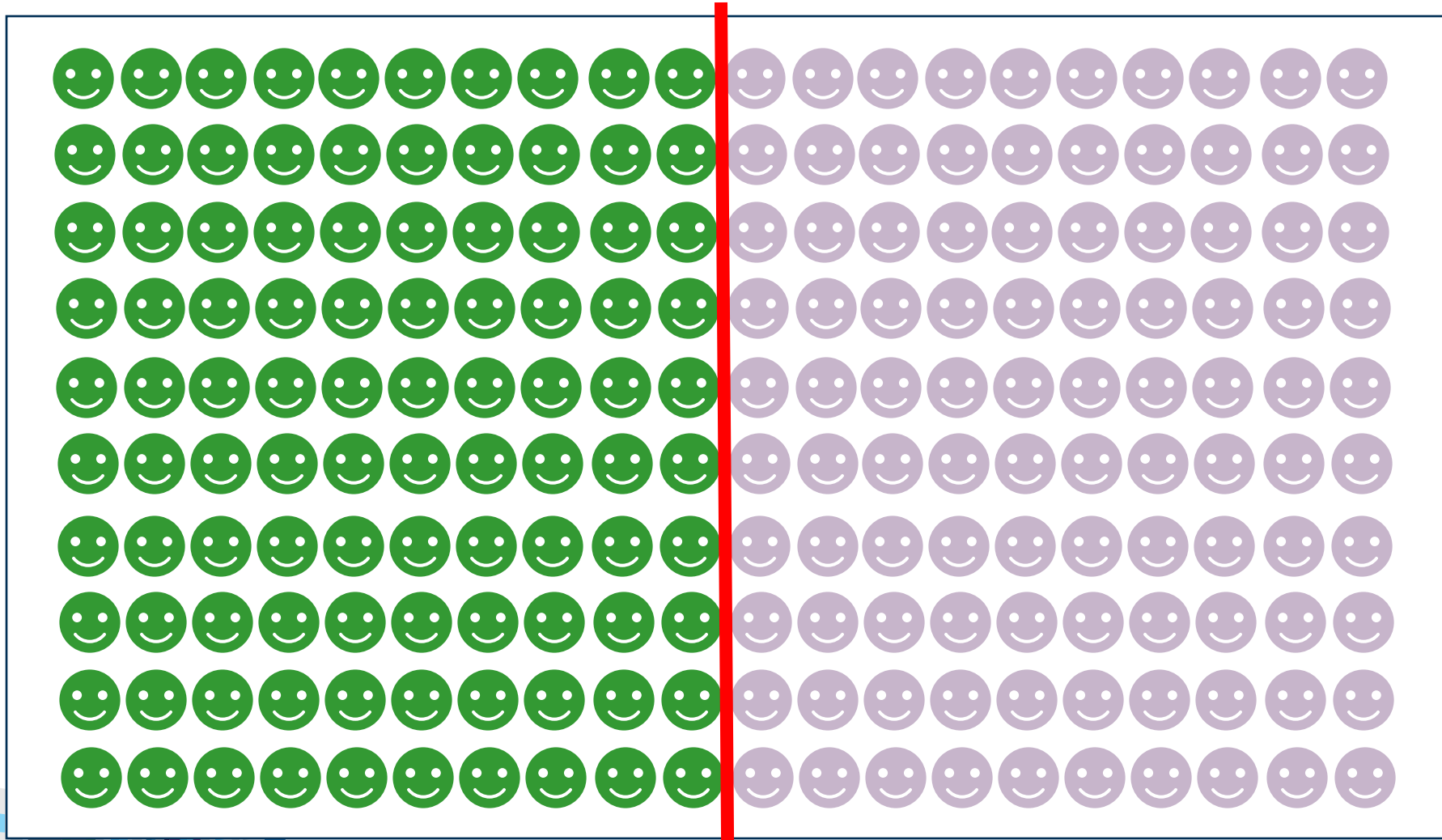
Anything else = FAIL



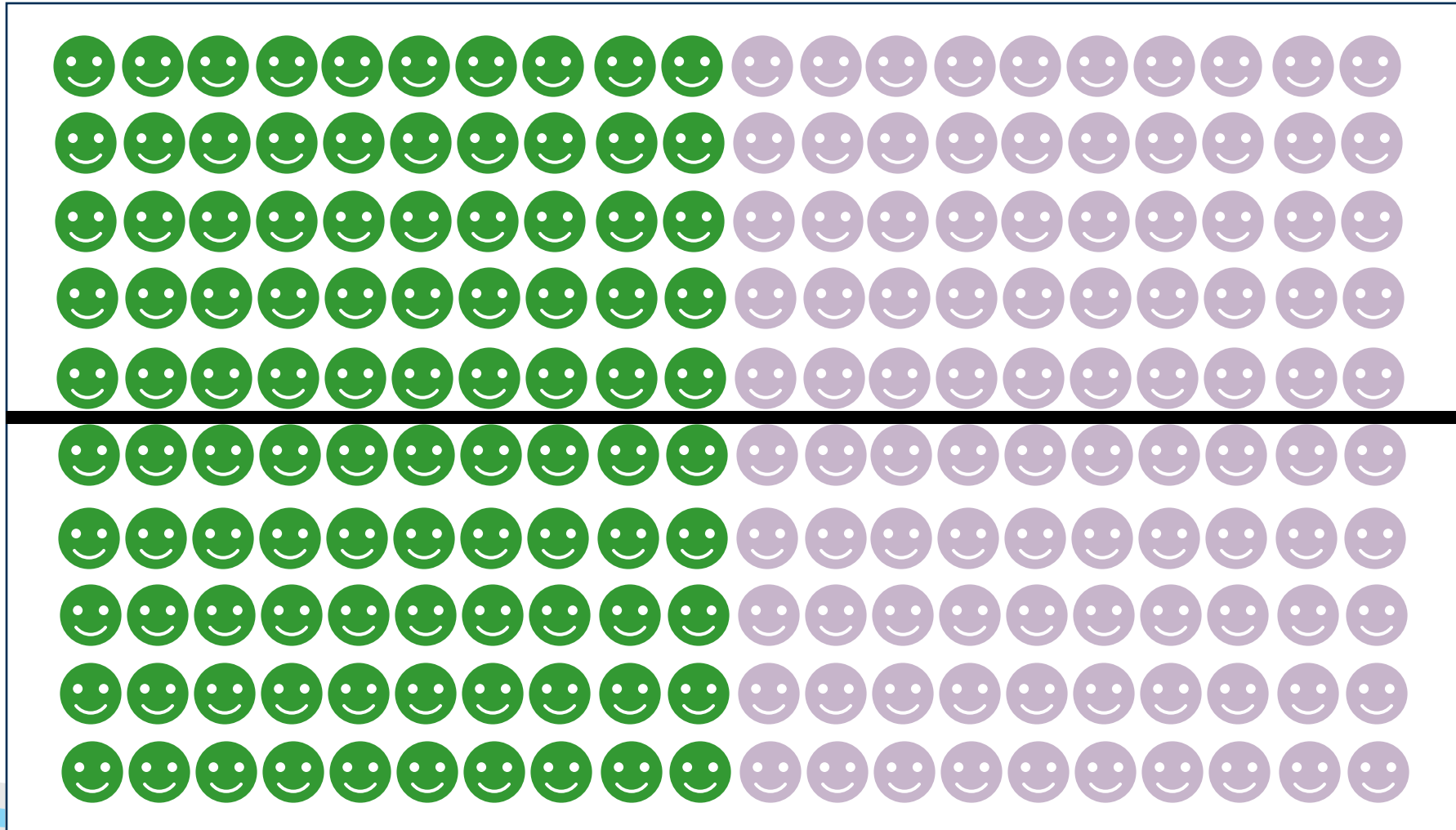
# Smiley Town



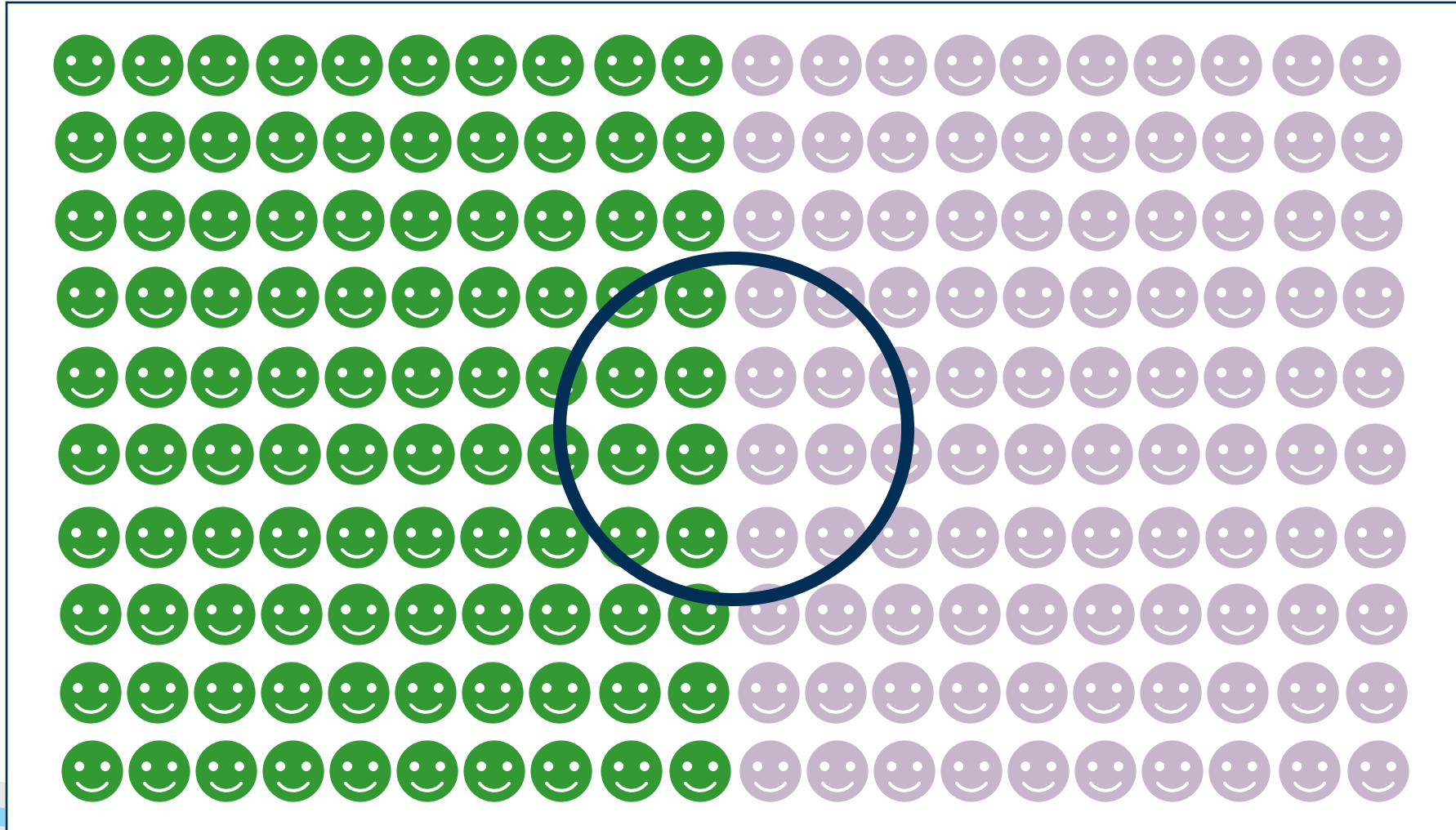
# Geographic 4/5s Test = **FAIL**



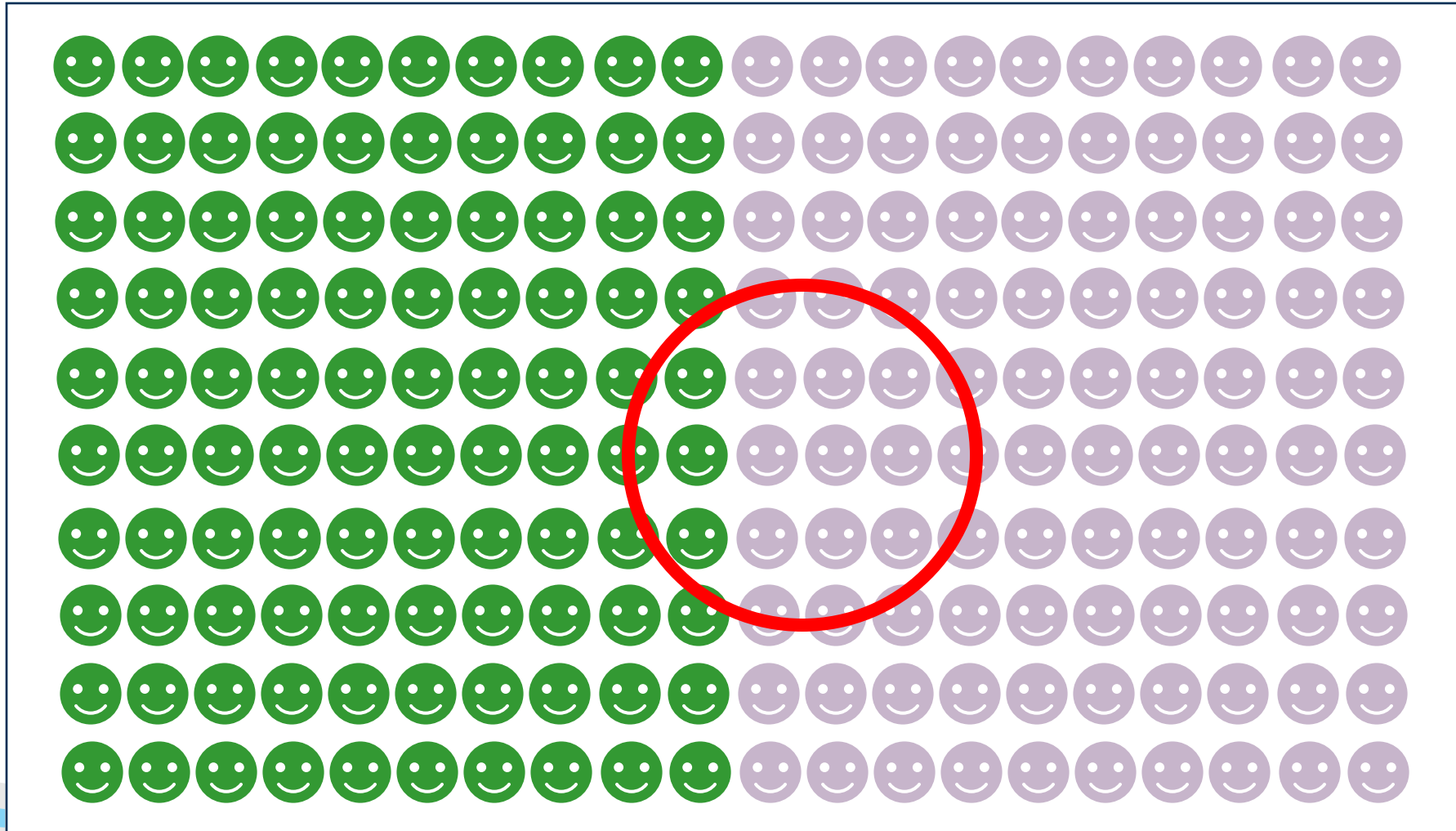
# Geographic 4/5s Test = PASS



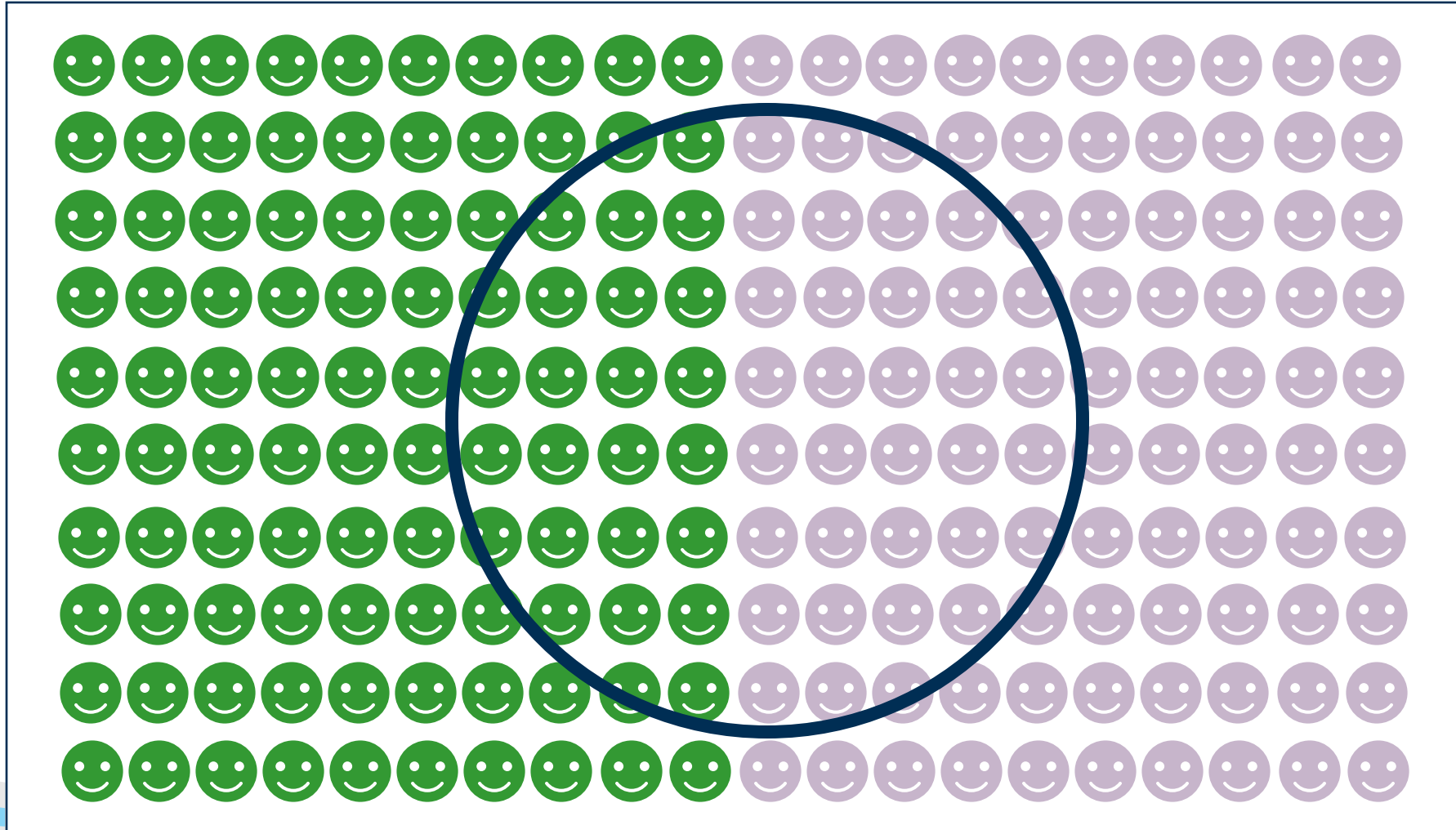
# Geographic 4/5s Test = PASS



# Geographic 4/5s Test = **FAIL**



# Geographic 4/5s Test = PASS



# Many, many test runs

## 🏠 Variables

- Geographic definition: 1-mile radius, 2-mile radius, Council Districts
- % of units set aside

## 🏠 Protected class categories that have tract level data

- Race (for households at 80% AMI and below), seniors, disability, veteran status, woman HOH

## 🏠 Tested against households at 80% AMI and below

- Citywide, county, Metropolitan Statistical Area





# Some observations

- 🏠 Preference pool should be demographically similar to larger population to extent possible
- 🏠 Larger areas with more people are more likely to be similar to the larger population (e.g., SJ Council Districts are ~100k people)
- 🏠 What works in one jurisdiction doesn't necessarily work in another (e.g., size of radii in SF vs. SJ)
- 🏠 In SCC, race is more determinative than other factors
- 🏠 Anti-displacement preference tests better than the Neighborhood preference



# Other factors we considered

- Maximize % of units and still pass the tests
- Maximize Neighborhood Preference to extent possible
- Apply uniformly across the City as much as possible
- Think about ease of ongoing implementation
- Flexibility to adjust to fit changing conditions



# Timeline/Next steps

- 🏠 Nov - Dec 2022: Re-engaged with stakeholders
- 🏠 Jan - May 2023: Analyzed fair housing/disparate impact; drafted proposal
- 🏠 Jun - Sep 2023: Presented draft framework to public, stakeholders, HCDC
- 🏠 Oct 2023: Framework adjustments, follow-up with interested stakeholders
- 🏠 Nov - Dec 2023: Seeking public approvals
  - Community and Economic Development Committee: Nov 27
  - City Council in mid-December (tent. Dec 12)
- 🏠 Dec 2023: Tenant preferences into Doorway, online affordable housing portal
- 🏠 Q1 2024: Create implementation materials and public info for distribution
- 🏠 Q2 - Q4 2024: Hold property manager info sessions and present to community members near new affordable housing sites