

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ESTABLISHING AN ANTI-DISPLACEMENT TENANT PREFERENCE PROGRAM IN CITY AFFORDABLE HOUSING PROJECTS

WHEREAS, the City of San José (“City”) is experiencing significant growth and densification through redevelopment, most of which is, and will continue to be, in Urban Villages and other specified areas of the City; and

WHEREAS, San José ranks among the highest rents in the country. In January 2024, San José’s median rent was the second-highest among big cities in the country at \$2,699 per month; and

WHEREAS, San José’s rising rents have placed additional pressure on lower-income residents’ ability to afford housing. Since 2010, rents have increased on average 70% compared to inflation adjusted average earnings in San José increasing by only 39%;¹ and

WHEREAS, from June 2021 to June 2023, the San José Housing Department received 26,569 termination of tenancy notices served by landlords to their tenants, of which ninety-three percent (93%) were issued for nonpayment of rent and were densely concentrated within Downtown, East San José and West San José. The City of San José’s 2022 bi-annual Point in Time Homelessness Census reported that homeless residents in the City increased by 11% over 2019’s count, to 6,739 residents experiencing homelessness. When asked what has prevented them from obtaining

¹ [California.reaproject.org/analysis/comparative-trends-analysis/average_earnings_per_job/reports/94250000/60000/](https://california.reaproject.org/analysis/comparative-trends-analysis/average_earnings_per_job/reports/94250000/60000/)

housing, homeless residents' most common response was "can't afford rent," reported by 71% of survey respondents;² and

WHEREAS, the City of San José 2040 General Plan states the City's policy is to enhance the public welfare by developing tools to assess and identify neighborhoods and planning areas that are experiencing or that may experience gentrification in order to identify where anti-displacement and preservation resources should be directed. Further, the City's policy is to identify, assess, and implement potential tools, policies, or programs to prevent or to mitigate the displacement of existing low-income residents due to market forces or to infrastructure investment; and

WHEREAS, in March 2017, the City Council voted as a priority in fiscal year 2017-2018 the exploration of developing a policy to allow for a set-aside in affordable housing developments that prioritizes residents living in low-income neighborhoods that are undergoing displacement and/or gentrification; and

WHEREAS, on September 22, 2020, the City Council adopted the Citywide Residential Anti-Displacement Strategy listing as a top strategy adopting local tenant preferences that help fight displacement; and

WHEREAS, the City of San José is experiencing ongoing gentrification and displacement of residents in nearly a third of its census tracts as identified by the University of California at Berkeley's Urban Displacement Project, which analyzed regional data on housing, income, and demographics to understand and predict where gentrification and urban displacement is occurring; and

WHEREAS, the U.C. Berkeley Urban Displacement Project's California Estimated Displacement Risk Model indicates San José has 33 low-income census tracts that are

² <https://www.sanjoseca.gov/home/showpublisheddocument/92524/638054026112130000>

experiencing “ongoing displacement” and 25 low-income tracts that are “at risk of displacement.” Together, these 58 census tracts are concentrated in Downtown, East San José, West San José, and parts of North San José, many of them being in Priority Development Areas, Urban Villages, and Downtown; and

WHEREAS, requiring an affordable housing set-aside for lower-income residents is consistent with both the 2040 General Plan and the 2023-2031 Housing Element to mitigate the negative impacts resulting from market forces and to also develop concomitant policies to enhance the public welfare by identifying, assessing, and implementing tools, policies, or programs to prevent or to mitigate the displacement of existing low-income residents; and

WHEREAS, the purpose of establishing a tenant preference program for affordable housing is to prevent and mitigate displacement and gentrification impacts of development activities in San José, and to provide an opportunity for existing San José residents to continue to stay in San José, thereby encouraging family health, neighborhood stability and preserving existing residents’ continued ties to local institutions, services, schools, community business centers, and health care providers; and

WHEREAS, the Local Tenant Preferences to Prevent Displacement Act codified under California Government Code section 7061 et seq. creates a statewide policy supporting access to housing that assists lower-income individuals residing in neighborhoods and communities experiencing significant displacement pressures and gentrification due to rapid growth or increasing housing prices in avoiding displacement, and further permits the low-income housing tax credit program and tax-exempt bonds for qualified residential rental properties defined under subsection (d) of Section 142 of the Internal Revenue Code used to create and preserve affordable housing to be used to support

access to housing that would allow households facing or at risk of displacement to remain in the community; and

WHEREAS, tenant preferences established by this Resolution are intended to support access to housing for households facing or at risk of displacement so they can remain in their communities;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

I. Findings and Purpose of Tenant Preferences

- A. The City of San José 2040 General Plan states the City’s policy is to enhance the public welfare by developing tools to assess and identify neighborhoods and planning areas that are experiencing or that may experience gentrification in order to identify where anti-displacement and preservation resources should be directed. Further, the City’s policy is to identify, assess, and implement potential tools, policies, or programs to prevent or to mitigate the displacement of existing low-income residents due to market forces or to infrastructure investment.
- B. The City of San Jose’s 2023-2031 Housing Element includes the establishment of anti-displacement tenant preferences in order to mitigate the impacts of displacement on vulnerable lower-income residents.
- C. The California Estimated Displacement Risk Model indicates San José has 33 low-income census tracts that are experiencing “ongoing displacement” and 25 low-income tracts that are “at risk of displacement.” Together, these 58 census tracts are concentrated in Downtown, East San

José, West San José, and parts of North San José, many of them being in Priority Development Areas, Urban Villages, and Downtown.

- D. The Bay Area Regional Health Inequities Initiative (BARHII) found that displacement risk is more concentrated in low-income households because of rising rents, lack of affordable housing choices, and stagnant wages.³

- E. San José residents, both owners and renters, have been denied opportunities to build wealth through property ownership due to discriminatory housing policies and practices of redlining that continues to impact successive generations of San José residents. According to the Center for Responsible Lending, during the foreclosure crisis from 2004-2008, African Americans and Latino/a/x in California were more than twice as likely as non-Hispanic Whites to lose their homes to foreclosure.⁴ Now affording a home has become further out of reach for most of the City's residents. According to the Santa Clara County Association of Realtors, between 2012 and 2023 Quarter 3, the median price of a single-family home rose by \$1,054,916, a 293 percent increase. Currently, the median single-family home costs \$1,598,888 and requires an income of approximately \$ 409,742 to purchase, assuming the buyer obtains a 30-year fixed-rate loan and puts down 20% of the purchase price. The median price of a condominium/ townhome rose by \$552,500, a 284 percent increase during this time, with a median cost of \$852,500 requiring an income of approximately \$230,468 to purchase.

³ <https://mtc.ca.gov/sites/default/files/BARHII.pdf>

⁴ <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/Effects-of-Foreclosure-Crisis-on-CA-African-Americans-and-Latinos-June-2012.pdf>

- F. Displacement from housing is associated with a wide range of adverse effects for lower-income households. Displacement leads to stress and depression, can lead to additional long-term financial strains on households.⁵ A 2018 Urban Displacement Project study that tracked displacement in Santa Clara County, found that only 10 percent of displaced households found a new home in the same neighborhood, and based on the federal McKinney-Vento Homeless Assistance Act definition of homelessness, 25% of displaced households became homeless. Numerous studies have found that residential displacement and even constant worry over housing instability, significantly hurts lower-income residents' health and educational outcomes. BARHII noted that displaced children experience more absences, lower school completion rates, and increased educational delays or behavioral problems.⁶ A study on Housing Instability and Educational Outcomes of San Mateo County Youth found that youth facing housing instability experienced four-year high school noncompletion rates three times higher than peers who were both housing and income stable. The emotional toll of displacement and living with the threat of displacement is significant, affecting mental wellbeing, sense of belonging and community cohesion.⁷ BARHII also indicated that people experiencing housing insecurity are almost three times more likely to be in frequent mental distress than those who have secure housing.⁸ Evictions are very detrimental for mental health, as mothers who experienced an eviction were more likely to report depression even two years after the

⁵ <https://www.urbandisplacement.org/pushedout>

⁶ Housing Stability and Family Health: An Issue Brief https://bd74492d-1deb-4c41-8765-52b2e1753891.filesusr.com/ugd/43f9bc_0f5129be91c84eca86dd52e408b2821b.pdf

⁷ Bay Area Regional Health Inequities Initiative (BARHII) and the Federal Reserve Bank of San Francisco, "Housing Stability and Family Health: An Issue Brief," Sep. 2018. http://barhii.org/wp-content/uploads/2018/09/Housing_Stability_and_Family_Health.pdf

⁸ Liu, Y., Njai, R. S., Greenlund, K. J., Chapman, D. P., & Croft, J. B. (2014). Relationships Between Housing and Food Insecurity, Frequent Mental Distress, and Insufficient Sleep Among Adults in 12 US States, 2009. Preventing Chronic Disease, 11, E37. doi:10.5888/pcd11.130334

eviction, as found by Matthew Desmond and Rachel Tolbert Kimbro of Harvard University and Rice University, respectively.⁹ Residents' who move away from their neighborhoods can also be removed from their personal support networks, adversely affecting their access to resources that help to reduce stress and to stabilize families such as babysitters, doctors, friends, and family.

- G. The Institute of Governmental Studies found that displacement of residents from their homes often results in moves to areas with more polluted, lower air-quality areas with fewer local job opportunities and increased commutes.¹⁰ Displaced workers' longer commutes, in turn, generally increase traffic and greenhouse gas emissions. The increase in greenhouse gas emissions is in opposition to the City's goals under Climate Smart. According to the Bay Area Council, in 2017, more than 86,445 workers traveled a minimum of 60 miles, a 43% increase from 2010.¹¹ Increases in commuting associated with displacement of workers are also contrary to the State of California's goals to reduce greenhouse gas emissions and the effects of climate change. The City's Climate Smart 2021 Inventory of Communitywide Greenhouse Gas Emissions reported that transportation was the largest contributor of greenhouse gases, comprising of 49 percent of total emissions.
- H. In 2022, the California Governor signed into law the Local Tenant Preferences to Prevent Displacement Act codified under California Government Code section 7061 et seq.(the "Act"), creating a statewide policy supporting access to housing that assists lower-income individuals

⁹ Matthew Desmond and Rachel Tolbert Kimbro, Harvard University and Rice University, "Eviction's Fallout: Housing, Hardship, and Health," Feb. 2015,

http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf

¹⁰ http://www.rajchetty.com/chettyfiles/movers_paper1.pdf

¹¹ <https://extras.mercurynews.com/megaregion/?userCheck=true>

residing in neighborhoods and communities experiencing significant displacement pressures and gentrification due to rapid growth or increasing housing prices in avoiding displacement.

- I. The Act codified that the low-income housing tax credit program and tax-exempt bonds for qualified residential rental properties defined under subsection (d) of Section 142 of the Internal Revenue Code used to create and preserve affordable housing may be used to support access to housing that would allow households facing or at-risk of displacement to remain in the community.
- J. The purpose of establishing a tenant preference policy for affordable housing is to prevent and mitigate displacement impacts to vulnerable residents in San José, providing an opportunity for such residents to continue to stay in San José, thereby encouraging family health, neighborhood stability and preserving existing residents' continued ties to local institutions, services, schools, community business centers, and health care providers, and thereby enhance the public welfare by further implementing the goals and objectives of the Housing Element to prevent or mitigate displacement of low-income residents and affirmatively further fair housing goals.

II. Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Resolution. Words and phrases not defined in this Section shall be interpreted so as to give this Resolution its most reasonable application.

- A. "Affordable Housing" shall mean deed-restricted residential property where the rent is limited to no more than affordable rent, as such term is

defined in California Health & Safety Code Section 50053, for lower-income households pursuant to legally binding restrictions recorded for the benefit of a government agency.

- B. “City Affordable Housing Property” shall mean Affordable Housing that receives financing or ground lease property interest from the City of San José or other governmental entity for new construction or acquisition rehabilitation; or is required to provide Affordable Housing under a development agreement with the City of San José.
- C. “High-Displacement Area” shall mean a census tract located in San José that is undergoing probable or definitive displacement for Lower-Income households, as determined and periodically updated by the City of San José Housing Department.
- D. “Lower-Income Household” shall have the definition given in California Health & Safety Code section 50079.5.
- E. “Owner” shall mean any person or entity having a legal right of ownership or rights under a ground lease in real property, or their agents responsible for the management and leasing of the property to residential tenants.
- F. “Qualifying Documents” shall mean documentation establishing an applicant’s first and last name and current address where they reside, as further defined in the Tenant Preference Guidelines.
- G. “Tenant Preference Guidelines” shall mean the requirements for implementation and administration of this Resolution adopted by the City Manager pursuant to Section VIII of this Resolution.

III. Tenant Preferences to Prevent Displacement

- A. Owners of a City Affordable Housing Property shall give preference in occupying or renting a percentage of their units. Each preference shall be applied as of the effective date of the legislation establishing each preference. The preferences shall apply to 35% of the restricted-affordable rental units not otherwise designated for a set-aside population at initial lease-up of the residential development and continuing thereafter throughout the term of the affordability restriction.
- B. The preference requirements are intended to have a prospective effect only and shall not be interpreted to impair the obligations of any pre-existing contract entered into by the City.
- C. Notwithstanding paragraph III.B, the preference requirement shall apply to contracts entered into by the City on or after the effective date of the legislation establishing each preference, including contracts materially amended on or after the effective date.
- D. Rental application preference shall apply to 35% of the rental units in a City Affordable Housing Property and be given to Lower-Income Households who are at risk of displacement, meet all of the qualification requirements for renting the unit, and either:
 - (i) Reside in a High Displacement Area.
 - (ii) Reside within the Council District of the Affordable Housing Property.

IV. Implementation

- A. The Owner of a City Affordable Housing Property shall be responsible for including information about tenant preferences in their marketing materials, including the documentation needed to qualify applicants and determine eligibility for one or more tenant preferences. The marketing materials must not exclude individuals based upon their citizenship status (unless otherwise prohibited based upon funding source) and must allow alternative forms of documentation that establishes their residency and income.

- B. The City of San José Housing Department shall set eligibility requirements and make available an online rental portal to identify potential eligible applicants and assist properties to implement the preferences. The requirements of this resolution shall be included as a term in the regulatory agreement, affordability agreement, or other agreement between the City and/or other governmental entity and the Owner of a City Affordable Housing Property.

- C. Eligibility is not limited to United States citizens. Owners of City Affordable Housing Properties must consider non-citizens for eligibility and must advertise to the public its acceptance of alternative documentation. Advertising and eligibility shall not exclude non-citizens or any other protected classifications recognized under State or Federal law, unless otherwise expressly prohibited by a funding source.

V. Proof of Eligibility for Preferences

- A. Eligibility for preference shall be established through proof of occupancy and income by documentation as further defined in the Tenant Preference Guidelines. The Owner of a City Affordable Housing Property shall verify that the applicant's address makes them eligible for one or more preferences using an interactive web portal or other tool provided by the City of San José Housing Department.
- B. Upon determining eligibility, the Owner of a City Affordable Housing Property shall notify the applicant of their eligibility for one or more tenant preferences. Any disagreement over the eligibility of the applicant for preference shall be petitioned to the Director of Housing as defined in the Tenant Preference Guidelines.

VI. Limitations & Exclusions

- A. Owners of a City Affordable Housing Property are not required to approve applicants who are otherwise not qualified for renting the unit. Unless otherwise expressed herein, preferences shall be non-durational, i.e., there shall be no minimum time-period for residency to qualify for the preference.
- B. This Resolution or any successor Resolution shall be applied only if and to the extent that other funding sources for the project do not prohibit the preference. This preference program shall be applied only if and to the extent that the program does not violate federal and state fair housing law.

VII. Periodic Review

The City shall conduct a review of its tenant preference program for consistency with its affirmatively furthering fair housing goals under state and federal law and provide a report and possible recommendations to City Council every three years following the effective date of this resolution.

VIII. Guidelines

The City Manager or designee is hereby authorized to adopt and, from time to time, amend Guidelines for the administration and implementation of tenant preferences as provided by this resolution.

ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI TABER, CMC
City Clerk