

City of San José Tenant Preference Program
(TPP)
DRAFT Administrative Guidelines

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I. Introduction

In September 2020, City Council approved the Citywide Residential Anti-Displacement Strategy (Anti-Displacement Strategy) to promote inclusivity and attempts to integrate all types of people into the community. Recommendation #2 from the Anti-Displacement Strategy was to “Establish a Neighborhood Tenant Preference and Anti-Displacement Preference for Affordable Housing.”

On March 26, 2024, the San José City Council approved the Tenant Preferences Program (TPP) to Fight Displacement (item 8.2) to help mitigate residential displacement of lower-income households. Its implementation in affordable housing developments is effective immediately.

Resolution No. 2024-84 establishes that rental application preference shall apply to 35% of the general 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:

- reside in a High Displacement Area
- reside within the Council District of the Affordable Housing Property.

The purpose of the administrative guidelines is to clarify details regarding implementation of Resolution No. 2024-84. The City reserves the right to modify or supplement this document as needed and further information is developed. The TPP expressly calls for the adoption of the administrative guidelines by the City Manager or their designee.

II. Definitions

“Affordable Housing”

A 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.

“City Affordable Housing Development”

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.

“Doorway Housing Portal”

An online housing portal for prospective affordable apartment applicants to search for available units and join waitlists. Property owners are required to use the portal for managing and listing affordable housing units in San Jose.

“High-Displacement Area”

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.

“Lower-Income Household”

The definition given in California Health & Safety Code section 50079.5.

“Property Owner”

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.

III. Tenant Preferences Program Overview

The Tenant Preferences Program requires that an affordable housing developer set aside a portion of affordable units to assist in mitigating displacement of lower-income households in San Jose. The units will be set aside for two qualifications of lower-income residents:

Residents in High-Displacement Areas: Designates 20% of apartments in new and existing affordable housing properties for lower-income applicants who live in San José census tracts categorized as ‘high-risk’ or ‘undergoing displacement’ by the Urban Displacement Project at University of California, Berkeley.

Map of Census Tracts Undergoing Displacement or At-Risk of Displacement: https://urban-displacement.github.io/edr-ca/maps/CA_estimated_displacement_risk_map_v20.html

Residents in Same Neighborhood: Designates 15% of apartments in new and existing affordable housing properties for lower-income applicants who already live in the same San José City Council District as the subject property.

Map of Council District Boundaries:

<https://experience.arcgis.com/experience/3ee980128dcc4019b8b36a1fabc511e3>

IV. Preference Eligibility Criteria

Applicants will be eligible for a set-aside unit if they meet either/both TPP qualifications and the affordable housing property’s income limits. Applicants must provide proof of:

- A. Residential address
- B. Household size
- C. Income.

If an applicant is unhoused and is currently not prioritized for a Permanent Supportive Housing unit, the applicant in addition to alternative forms of documentation, may submit a letter from a support service agency stating applicant's stay in the Council District boundary.

California law prohibits housing discrimination on a number of protected characteristics, including immigration status. California housing providers may not require U.S.-issued identification, such as a driver's license, visa, or Social Security Number.

Property managers on subject properties are required to accept alternative forms of documentation to determine proof of address, household size, and income. Marketing must also advertise that alternative documents are accepted.

A list of allowable documents can be found in Attachment A: Acceptable Forms of Alternative Documentation.

The City may amend eligibility from time to time and will work with Borrower on transition procedures.

V. Applying Tenant Preferences Program in Affordable Housing Developments

Subject Properties

The following types of affordable housing properties are subject to the TPP and will be required to implement:

- A. City-funded affordable developments, including those for seniors;
- B. Developments negotiated through Development Agreements;
- C. Existing affordable housing properties when documents are updated;
- D. Any affordable housing development in San José on which public agencies want to apply preference, even if no City funding; and
- E. State-funded affordable developments that meet the above criteria

Applicability: Units

35% of general units will be set aside for the TPP:

- A. No more than 15% of apartments will be set aside for applicants living in the same neighborhood (City Council District) as the property, and

- B. 20% of apartments will be set aside for applicants living in census tracts categorized as 'high-risk' or 'undergoing displacement.'

To comply with fair housing laws and determined by fair housing analysis, apartments set aside for applicants living in the same neighborhood must not exceed 15% of the apartments available to the general public. The set-aside of apartments will be a commensurate mix of all apartments for the general public, varying in number of bedrooms and affordability levels. When determining the number of set-aside units results in a partial unit, owners are allowed to round down.

Excluded Affordable Housing Developments/Units

Set-aside units will exclude units that are restricted affordable units for special populations, such as units reserved for veterans, rapid rehousing, or permanent supportive housing. Set-aside units will not apply to units with Project Based Vouchers. Developments that receive federal funding will be excluded from TPP, with the exception of federal HOME funds allocated by the City of San José or other public entity receiving funds on a formula basis.

Developments that yield less than 4 units set aside for the Tenant Preferences Program will be exempted from implementing TPP.

Marketing

Marketing efforts shall be conducted in to affirmatively further fair housing opportunities and shall follow the requirements set forth in the City's loan agreement. Marketing plans for subject properties also must require advertisement of a property's acceptance of alternative documentation to evidence current address and income.

VI. Leasing

The property's management plan and tenant selection plan should incorporate the following details.

Tenant Selection Procedures

Qualified applicants should be placed in the following up order at initial lease up:

1. Applicants who qualify for both categories will be first placed in units reserved in the 15% set aside.
2. If the 15% set aside has not been filled, fill the remaining units in the 15% set aside with applicants who only reside within the same Council District of the subject property.
3. Fill the remaining 20% set aside with residents who only reside in census tracts at risk/experience high displacement.

Implementing After Initial Lease-up

TPP must also be implemented on existing affordable properties that meet the program's applicability criteria. Implementation on existing properties will start when there is an opportunity for the City's loan documents to be refreshed to reflect the TPP requirement.

Set-aside Unit Vacancy

If property owner cannot fill a set aside unit with a qualified applicant and it leaves a vacancy for at least 7 days, Housing Department staff must be notified. Staff may be able to assist outreach with engage in collaborative marketing for an additional 7 days.

After 15 days, if a property owner is unable to find an eligible TPP applicant to fill a vacant set-aside unit, they may fill the unit with an applicant from the general waitlist. The next available unit of similar size and affordability level must then be filled with an eligible TPP applicant.

VII. Waitlist Management and Screening

It is incumbent upon the property owner to ensure that property management actively manages opening of waitlists throughout the term to ensure an adequate supply of candidates for TPP. Property owners should open and maintain waitlists in full compliance with fair housing laws.

If applicants qualify for both eligibility criteria for TPP, the property manager should maintain the waitlist in a way that gives highest position to those dual-eligible TPP applicants.

When managing the waitlist, in the event the preferences units are filled, remaining applicants who qualify for TPP must be considered for the remaining general units alongside the general population.

When conducting screening and it is found that an applicant is ineligible for TPP, the applicant must be considered in the general applicant pool at a commensurate priority as had they not been identified as a preference candidate. As the entire group of applicants should be lotterized as a whole, unsuccessful TPP applicants should be considered in the order they were originally placed during the generalized lottery. An applicant that does not qualify for TPP may not receive a lower pool placement than had they not applied for TPP.

If the subject property has an existing waitlist, property owners may first exhaust the current waitlist before placing qualified applicants into TPP set-aside units.

VIII. Doorway Housing Portal (Doorway)

Property owners are required to list initial lease-ups and waitlist openings on the Doorway Housing Portal (<https://housing.sanjoseca.gov/>) and use Doorway to determine applicants eligible for TPP based on location of their existing residence.

The Doorway Housing Portal has programmed the geographic data to determine TPP eligibility. The geographic data consists of the census tracts that have been identified as at high-risk or experiencing displacement determined by UC Berkeley’s Urban Displacement Project and the City’s Council district boundaries. The geographic data will be updated from time to time to reflect the most current information.

Based on address(es) provided by the applicant on the application, Doorway will automatically make a preliminary determination whether an applicant is eligible for a preference. The applicant data can then be exported to the property management system. Property owners are required to verify applicants who qualify for TPP.

The Housing Department will monitor that all affordable housing properties are in the Doorway system and listing openings.

IX. Petition Process

An appeal of an applicant’s ineligibility determination for TPP may be petitioned to the Director of Housing. Applicants may file a written appeal to the Director of Housing at [email]. Applicant must include copies of documents showing proof of income and residency that were provided at the time of application. A determination will be made within XX days of the complaint.

X. Compliance

The objective of monitoring is for the property owner to comply with TPP guidelines. Compliance with TPP will be monitored through the City’s annual compliance monitoring process. Unless there is evidence of noncompliance, this monitoring shall not occur more than once a year.

Annual Compliance Process

Property owners will need to demonstrate annually:

- A. Commensurate Unit Mix is met as indicated on rent rolls;
- B. Waitlist procedures adhere to program guidelines;
- C. Tenant selection plan describes tenant preferences procedures;
- D. Marketing Plan includes advertisement that alternative documents are accepted; and

- E. Property listing is active in the Doorway tenant portal and online digital application is being used for initial lease-up, waitlist openings, and units that become vacant.

Non-compliance Penalties

The following is the City's plan to address violations with a focus on education so that the program's desired outcomes can be achieved.

First Violation

- A. City staff will meet with property managers to re-educate staff on TPP
- B. Six-month follow up with City staff and property managers.

Second Violation

- A. City issues formal letter of non-compliance to owner and property manager.

Third Violation

- B. City issues formal letter of non-compliance to owner, property manager, lenders, and other funders; and the City reserves the right to pursue any of its remedies under loan documents in the event of continued non-compliance.

XI. Contact

TPP-related inquiries should be addressed to the San José Housing Department's Production Team or Policy & Planning Team at XXX.

For technical assistance with the Doorway Housing Portal, contact: XXX

ATTACHMENT A: List of Acceptable Alternative Documents

Proof of Identity:

- State Issued ID Card
- State Issued Driver's License
- Passport
- Green Card or Residency Card
- Military ID
- Foreign Government Identification Card

Proof of Residency:

- A bill with your name: a household bill (lights, water, gas, or electric bill, etc.), or a utility bill (phone, cable, or internet bill, etc.)
- Paystub
- Public benefits record
- Insurance document
- Bank statement
- Personal checks
- Letter from utility company
- Copy of lease
- Letter from former landlord
- School records/registration
- Day care or nursery school records

Proof of Income:

- Paycheck stubs or earning statements
- Wage and Income Tax Statement
- Bank statements
- Verification form completed by Employer
- Form 1040/1040A