

District 1 — Justin Lardinois
District 3 — Barry Del Buono
District 5 — Ruben Navarro
District 7 — Vacant
District 9 — Julie Quinn
Mayor — Nhi Duong

(VC) Alex Shoor — District 2
Huy Tran — District 4
(C) Andrea Wheeler — District 6
Vacant — District 8
Michael Fitzgerald — District 10
Martha O’Connell — CAAC MR
Ryan Jasinsky — CAAC ML

*Commissioners are appointed by corresponding Council Members, but do not represent the Council District.

***AMENDED* MEETING AGENDA**

5:45 PM

JUNE 13, 2019

CITY HALL WING ROOMS 118-119

- I. Call to Order & Orders of the Day**
- II. Introductions**
- III. Consent Calendar**
 - A. Approve the Minutes for the Meeting of May 9, 2019
ACTION: Approve the May 9, 2019 action minutes
- IV. Reports and Information Only**
 - A. Chair
 - B. Director
 - C. Council Liaison
- V. Open Forum**

Members of the Public are invited to speak on any item that does not appear on today’s Agenda and that is within the subject matter jurisdiction of the Commission. Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Commission.
- VI. Old Business**
 - A. Policy 0-4 regarding Commissioners’ Use of their Titles and Process for Possible Future Edits (K. Clements, Housing Department and Chair A. Wheeler)**

Staff to present prior guidance regarding Commissioners’ use of their titles

ACTION: 1) Review and edit a draft letter prepared by Chair Wheeler to the City Council regarding the City Council’s prioritization of staff work on potential edits to Policy 0-4; and, 2) Make possible motion for staff to submit the letter on behalf of the Commission.

VII. New Business

A. Voting for Chair and Vice Chair for FY 2019-20 (Chair A. Wheeler)

ACTION: Vote for positions of Chair and Vice Chair, nominees being Andrea Wheeler for Chair and Alex Shoor for Vice Chair, and any other Commissioners nominated at the June Commission meeting, to serve in Fiscal Year 2019-20 commencing with the August 2019 Commission meeting. (No memo.)

B. Housing Payment Equality Ordinance (formerly known as the Source of Income Discrimination Ordinance) and Update on Santa Clara County Housing Authority Rental Subsidy Program Improvements (R. VanderVeen, Housing Department)

ACTION: 1) Review the staff report and provide feedback on the draft housing payment equality ordinance including, but not limited to, staff's recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement; and 2) Accept staff recommendation of a limited position to research subsidy program incentives for participation and program improvements.

C. Tenant Preference to Prevent Displacement (A. Marcus, Housing Department)

ACTION: Review the staff report, provide input to staff, and make possible recommendation to the City Council to approve an ordinance based on this framework for a preference for applicants to affordable apartments in order to help prevent displacement.

D. Update on Status of Work on a Citywide Anti-Displacement Strategy (K. Clements and J. Joanino, Housing Department)

ACTION: Consider staff update on Anti-displacement work and make possible recommendation to staff on outreach and/or priorities to examine. (No memo.)

E. Ad hoc Committee Report-back on Potential Vacant Residential and Commercial Properties (Vice Chair A. Shoor and Commissioner H. Tran)

ACTION: 1) Review, edit and approve the draft letter to the City Council prepared by the ad hoc committee regarding vacant residential properties; 2) Make a possible motion for staff to submit the letter on behalf of the Commission; 3) Discuss the report back of the ad hoc committee regarding vacant commercial land and buildings; and, 4) Authorize the ad hoc committee to return to the Commission at a future meeting with a draft letter to the City Council regarding potential strategies for vacant commercial properties, or otherwise amend the draft letter on residential properties to include the Commission's comments on commercial properties.

F. Potential Policy/Program for Affordable Housing that Encourages Transportation Mobility – Commissioner-initiated Item (Vice Chair Shoor)

ACTION: 1) Consider information presented by Commissioner Shoor and discuss potential policy recommendations regarding affordable housing policies or programs that encourage transportation mobility; 2) Possibly authorize the creation of an ad hoc subcommittee to do further research and/or to draft a letter for staff to submit to the City Council, and return with information and any letter for consideration by the Commission at a future meeting.

VII. Open Forum

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VIII. Meeting Schedule

The annual Commission retreat will be held during summer 2019 at a time and place TBD. The next regular Commission meeting is scheduled to be held on Thursday, August 8, 2019 at 5:45 p.m. in Wing Rooms 118-120 at San José City Hall, 200 E. Santa Clara St, San José, CA 95113.

IX. Adjournment

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

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Agendas, Staff Reports and some associated documents for the Commission items may be viewed on the Internet at <http://www.sanjoseca.gov/hcdc>.

Correspondence to the Housing & Community Development Commission is public record and will become part of the City's electronic records, which are accessible through the City's website. Before posting online, the following may be redacted: addresses, email addresses, social security numbers, phone numbers, and signatures. However, please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the Housing & Community Development Commission, will become part of the public record. If you do not want your contact information included in the public record, please do not include that information in your communication.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk, 200 East Santa Clara Street, 14th Floor, San José, California 95113, at the same time that the public records are distributed or made available to the legislative body. Any draft resolutions or other items posted on the Internet site or distributed in advance of the commission meeting may not be the final documents approved by the commission. Contact the Office of the City Clerk for the final document.

On occasion, the Commission may consider agenda items out of order.

The Housing & Community Development Commission meets every Second Thursday of each month (except for July and December) at 5:45pm, with special meetings as necessary. If you have any questions, please direct them to the Commission staff. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events, or printed materials, please call (408) 535-1260 as soon as possible, but at least three business days before the meeting.

Please direct correspondence and questions to:

City of San José
Attn: Viviane Nguyen
200 East Santa Clara Street, 12th Floor
San José, California 95113
Tel: (408) 975-4462
Email: viviane.nguyen@sanjoseca.gov

Para residentes que hablan español: Si desea mas información, favor de llamar a Theresa Ramos al 408-975-4475.

Riêng đối với quý vị nói tiếng Việt : Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Viviane Nguyen, Đ.T. 408-975-4462.

對於說華語的居民: 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

Para sa mga residente na ang wika ay tagalog: Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Shirlee Victorio sa 408-975-2649. Salamat Po.

HOUSING & COMMUNITY DEVELOPMENT COMMISSION

MEETING ACTION MINUTES

MAY 9, 2019

MEMBERS PRESENT: Andrea Wheeler Chair
Alex Shoor Vice Chair
Martha O’Connell Commissioner
Justin Lardinois Commissioner
Huy Tran Commissioner
Ruben Navarro Commissioner
Barry Del Buono Commissioner
Ryan Jasinsky Commissioner
Julie Quinn Commissioner

MEMBERS ABSENT: Nhi Duong Commissioner
Michael Fitzgerald Commissioner
District 7 Vacant
District 8 Vacant

STAFF: Helen Chapman Council Liaison
Kristen Clements Housing Department
Selena Copeland Housing Department
Viviane Nguyen Housing Department
Robert Lopez Housing Department

(I) Call to Order & Orders of the Day

Chair Wheeler called the meeting to order at 5:47 PM.

(II) Introductions – Commissioners and staff introduced themselves.

(III) Consent Calendar

A. Approve the minutes for the meeting of April 11, 2019

ACTION: Approve the April 11, 2019 action minutes

Commissioner O’Connell made the motion to approve the minutes and correct the record to reflect Commissioner Del Buono’s attendance as he was inadvertently omitted, with a second by Commissioner Navarro. The motion passed 8-0-1.

Yes: Wheeler, O’Connell, Lardinois, Tran, Navarro, Del Buono, Jasinsky, Quinn

Abstain: Shoor

(IV) Reports and Information Only

A. Chair: No report.

B. Director: Ms. Clements provided the following update. The Ellis Act item is now expected to heard at City Council in September along with items on changes to the Inclusionary Housing framework and the Cost of Development for both affordable housing and market-rate housing. There was a study session with the City and Santa Clara County on Housing & Homelessness at

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which homelessness response strategy updates were discussed, and the County and the City discussed the tension between the need to provide services and the need to clear encampments. At the May 14th City Council meeting, there was a General Plan change to allow 100% affordable housing developments to access an extra General Plan hearing each year. The City Council also heard the North San Jose Area Development Plan updates, which should result in the release of 8,000 units of housing capacity once changes to the Plan are approved, expected in summer 2019. The Housing Department is working on strategies to encourage the integration of affordable housing as market-rate homes are built in that area. Staff presented an update on the new Soft Story program at CEDC on April 22nd and at City Council on May 7th. The City's State grant request remains pending and, once it is approved, staff will return to HCDC with a program framework.

C. Council Liaison: Ms. Helen Chapman noted that the first landlord engagement initiative (RLEI) case in a mobilehome park has been opened.

(V) Open Forum

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(VI) Old Business

None.

(VII) New Business

A. Ad hoc committee Report-back on Mobilehome Resident Evictions Tracking (Chair A. Wheeler)

ACTION: Review and edit the draft letter prepared by Chair Wheeler for the ad hoc committee on tracking mobilehome resident evictions, and make possible motion to send the letter to the City Council on behalf of the Commission.

Commissioner O'Connell made the motion to approve the draft letter as amended, with a second by Commissioner Navarro. The motion passed unanimously (9-0).

Yes: Lardinois, Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Del Buono, Navarro

B. Public Hearing for the draft 2019-2020 Annual Action Plan (R. Lopez, Housing Department)

ACTION: 1) Conduct a Public Hearing on the Draft FY 2019-2020 Annual Action Plan (Plan), as required by the U.S. Department of Housing and Urban Development (HUD); 2) Provide Housing Department staff with input on the draft FY 2019-2020 Annual Action Plan and funding priorities; and, 3) Make possible recommendation to the City Council to approve the Draft Plan.

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Commissioner Del Buono made the motion to approve the draft Plan with the proposed changes and recommend the City Council approve the staff plan, with a second by Commissioner Tran.

Commissioner Jasinsky made a substitute motion to increase funding for Meals on Wheels by the Health Trust and housing rehabilitation programs by Habitat for Humanity East Bay Silicon Valley and Rebuilding Together, with a second by Commissioner O’Connell. The motion failed 3-6.

Yes: Lardinois, Jasinsky, O’Connell

No: Tran, Quinn, Wheeler, Shoor, Del Buono, Navarro

The commissioners then voted on the original motion. Motion passed 7-2.

Yes: Lardinois, Tran, Quinn, Wheeler, Shoor, Del Buono, Navarro

No: O’Connell, Jasinsky

C. Moderate-income Housing Strategy Update (K. Clements, Housing Department)

ACTION: Review the staff report on current strategies to support the creation of housing for moderate-income and other “missing middle” residents in San José, and make possible recommendation to staff on moderate-income housing strategies.

Commissioners asked questions and gave feedback on the staff report but did not make a formal recommendation. Commissioner Quinn recused herself from the discussion as her employer, the Housing Trust of Silicon Valley, was mentioned in the staff report.

Commissioner O’Connell requested that staff resend her the Council memos on General Plan land use changes for mobilehome parks from 2018.

D. Nominations for Chair and Vice Chair for FY 2019-20 (Chair A. Wheeler)

ACTION: Nominate Commissioners for positions of Chair and Vice Chair to serve in Fiscal Year 2019-20 in preparation for voting at the June 2019 Commission meeting (no memo).

Commissioner O’Connell nominated Chair Wheeler for the position of Chair. Chair Wheeler accepted the nomination.

Commissioner Quinn nominated Vice Chair Shoor for the position of Vice Chair. Vice Chair Shoor accepted the nomination.

E. Ad hoc committee Report-back on Potential Vacant Housing Tax (Commissioners A. Shoor and H. Tran)

ACTION: 1) Discuss the report back of the ad hoc committee on a potential vacant housing tax; 2) Consider an expansion of the ad hoc committee’s scope also to include vacant land entitled for residential uses, vacant land entitled for commercial uses, and empty existing commercial spaces;

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and, 3) Authorize the ad hoc committee to return to the Commission in June with a draft letter to the City Council supporting potential strategies.

Chair Wheeler made a motion for the ad hoc to draft a letter suggesting that City Council prioritize the issue of vacant residential units and lots, including investigating causes of vacancies and means to reduce them, with a second by Commissioner Lardinois. The motion passed unanimously (9-0).

Yes: Lardinois, Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Del Buono, Navarro

Commissioner Tran made the motion to expand the ad hoc committee scope to include vacant land entitled for residential uses, vacant land entitled for commercial uses, and empty existing commercial spaces, with a second by Vice Chair Shoor. The motion passed unanimously (9-0).

Yes: Lardinois, Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Del Buono, Navarro

Commissioner Tran made a motion to approve the ad hoc committee to return to the Commission in June to report back on commercial properties with a possible draft letter to City Council supporting potential strategies on the expanded scope of the ad hoc committee, with a second by Commissioner Lardinois. The motion passed unanimously (9-0).

Yes: Lardinois, Tran, Quinn, Jasinsky, O'Connell, Wheeler, Shoor, Del Buono, Navarro

(VIII) Open Forum

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Commissioner Quinn shared an update that Affordable Housing Week in Santa Clara County runs May 3-17, with multiple events and workshops listed on SV@Home's calendar.

Chair Wheeler reminded Commissioners of the importance of promptness and attendance at meetings so the Commission can maintain quorums given vacancies, and that Commissioners should respond to upcoming potential retreat dates when they are sent out.

Vice Chair Shoor noted that Catalyze SV has an event on Wednesday, June 5th on Cities for All Ages.

Ms. Clements shared that the Housing Department will be sponsoring two events during Affordable Housing Week – a movie and panel on race issues in City Hall on May 15th, and an interactive workshop on residential anti-displacement at the MLK Library on May 16th.

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(IX) Meeting Schedule

The next regular meeting is scheduled to be held on at 5:45 p.m. on Thursday, June 13, 2019, in Wing Rooms 118-120 at San José City Hall, 200 E. Santa Clara St, San José, CA 95113.

(X) Adjournment

Chair Wheeler adjourned the meeting at 9:37 PM.

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

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Memorandum

**TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION**

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: June 6, 2019

Approved

Date

SUBJECT: HOUSING PAYMENT EQUALITY ORDINANCE (FORMERLY KNOWN AS THE SOURCE OF INCOME ORDINANCE) AND UPDATE ON SANTA CLARA COUNTY HOUSING AUTHORITY RENTAL SUBSIDY PROGRAM IMPROVEMENTS

RECOMMENDATION

It is recommended that the Commission:

- 1) Review the staff report and provide feedback on the draft housing payment equality ordinance including, but not limited to, staff's recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement; and
- 2) Accept staff recommendation of a limited position to research subsidy program incentives for participation and program improvements.

BACKGROUND

On December 11, 2018, the San José City Council directed the City Attorney's Office to develop an ordinance that would help to ensure that all persons with an ability to pay for housing are equally considered, regardless of whether or not they receive rental subsidies. The City Council further directed staff to conduct analysis and return with the following:

- ***Draft housing payment equality ordinance:*** Direct the City Attorney's Office to develop an ordinance including, but not limited to, staff's recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement.
- ***Implement education and outreach plan:*** Direct the Housing Department to implement an education and outreach plan in coordination with Santa Clara County Housing Authority and other rental subsidy partners that considers process improvements and incentives to increase the use of rental subsidy programs.
- ***Convene stakeholder meetings to identify a workplan for improvements in voucher programs:*** Direct the Housing Department to convene landlords and representative organizations, including the California Apartment Association; staff from Santa Clara County Housing Authority and the County of Santa Clara; and voucher holders and

tenant representatives to identify a workplan for continued improvements in streamlining lease-up, payment, reducing paperwork, and mitigating landlord risk in the voucher program.

- ***Explore administrative improvements and landlord incentives:*** Explore the following specific areas of possible administrative improvements and landlord incentives to increase the acceptance of housing vouchers: 1) speeding up the process of unit inspection required for landlords to be eligible to accept Housing Choice Vouchers; 2) speeding up the time a landlord will get the first rent check from the voucher program; and 3) simplifying paperwork, processes, or regulations that burden landlords who want to accept HCVs.

A summary of past City Actions is in **Table 1**.

Table 1: Previous City Actions Pertaining to the Housing Payment Equality Draft Ordinance

Date	Source	Actions
<u>June 23, 2015</u>	City Council	Identified development of an ordinance prohibiting discrimination based on income source, along with revisions to the Apartment Rent Ordinance, as a policy priority for FY 2015-16.
<u>September 1, 2015</u>	City Council	Accepted staff recommendation for Source of income ordinance be delayed given that the City of Santa Monica's source of income ordinance was being challenged in court.
<u>April 25, 2017</u>	City Council	Adopted the local Analysis of Impediments (AI) required by the U.S. Department of Housing and Urban Development as a basis for the City's Consolidated Plan. That action included direction to "explore the feasibility of an ordinance to address source of income discrimination."
<u>March 8, 2018</u>	Housing and Community Development Commission	Accepted staff recommendation and to also include incorporating and researching incentives for landlords to participate in Section 8, and conducting research on ways to prequalify landlord units for Section 8 consideration.
<u>December 11, 2018</u>	City Council	Accepted staff recommendation to draft a source of income ordinance

ANALYSIS

Staff developed a proposed Housing Payment Equality ("Proposed Ordinance") City Council's direction. A draft of the Proposed Ordinance is included in **Attachment A**.

A. Need for a Housing Payment Equality Ordinance

The Housing Choice Voucher Program (HCV), commonly known as the Section 8 Program, provides rental subsidies to low-income residents so they can rent housing on the private market. The HCV program is administered by the Santa Clara County Housing Authority. The Housing Choice Vouchers program provides rental subsidies to low-income tenants to help pay for housing in privately owned apartments. Under the Housing Choice Vouchers program, voucher holders pay 32% of their gross income toward rent, and SCCHA pays a property landlord the difference between the renters' payment and the SCCHA approved market rent.

The City of San José and County of Santa Clara also funds a modest number of rental subsidies as part of the strategy to end homelessness to extremely-low income residents with rules similar to the Housing Choice Vouchers program. These rental programs, such as Rapid Rehousing, target homeless individuals who are working, people with AIDS, homeless youth, families with children, domestic violence survivors, human trafficking victims and people exiting the criminal justice system.

This Proposed Ordinance addresses the challenges rental subsidy holders often experience when attempting to rent housing due to landlords' practice of excluding them from renting. Under the Proposed Ordinance, landlords of any rental property must consider all tenants during the tenant application review process, regardless of their source of income. The statistics of the challenges of these tenants with rental subsidies includes the following:

- **Challenge of finding landlords who accept vouchers:** A 2018 survey conducted by the San José Housing Department found that most landlords who listed in San José on Craigslist.org and Apartments.com did not accept Housing Choice Vouchers. As of March 2019, the lease rate was 88% of the 14,975 total available vouchers, with 327 active housing choice vouchers. Many landlords choose not to participate in housing voucher or rental subsidy programs for a variety of reasons, including not wanting to participate in the administrative process of the programs and/or perceived attributes of voucher holders.
- **Underutilization of the voucher, resulting in long waitlists:** The waitlist to obtain a Housing Choice Voucher contains more than 4,000 applicants. Voucher holders in San José are disproportionately disabled, female heads of households, formerly homeless, or people of color and are having trouble finding apartments within the allotted time at the risk of losing their vouchers.
- **No local prohibition:** Currently, landlords are not prohibited by Federal or California law from rejecting a tenant based solely on the fact that he or she possesses a Housing Choice Voucher or other tenant-based subsidies. However, several jurisdictions, including Santa Clara County, have adopted local source of income ordinances with the goal of increasing housing options for rental voucher holders. Santa Clara County's ordinance only applies to unincorporated parts of the County. Over 42 jurisdictions nationwide have adopted policies or ordinances protecting voucher holders. These major cities include San Francisco, Seattle,

Denver, Minneapolis, Philadelphia, and New York City. A 2011 study prepared for the U.S. Department of Housing and Urban Development (HUD) found that voucher utilization rates improved by 4 to 11 percentage points in localities with source of income ordinances.

- Proposed State Legislation SB 329 Discrimination:** Senate Bill 329 (“SB 329”) under consideration for the 2019-2020 California legislature proposes amendments to California Fair Employment and Housing Act (FEHA), that would broaden the definition of “source of income” to include “*lawful, verifiable income paid directly to a tenant, or paid to a housing landlord or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937.*” A copy of the legislation is included in **Attachment C**. The passage of SB 329 would provide statewide protection against source of income discrimination where currently many cities have filled this gap in the state law. If the legislature passes this amendment, and it is signed by the governor, aggrieved parties would have a State statutory remedy for source of income related discrimination claims under FEHA.

B. Subsidy Programs in San José

The summary in **Table 2** of rental subsidy programs by funding sources that would be impacted by this Proposed Ordinance includes:

Table 2: Approximate number of households enrolled in Voucher Programs in Santa Clara County

Rental Subsidy Programs	Total Enrolled Available	Currently Housed	Active Outstanding
Santa Clara County Housing Authority (SCCHA) <ul style="list-style-type: none"> Voucher holders pay 32% of their gross income toward rent. SCCHA pays a property landlord the difference between the renters’ payment and the SCCHA-approved market rent 	14,975	13,178	327
Rapid Rehousing <ul style="list-style-type: none"> Time-limited rental assistance Varying levels of case management to locate and stabilize the household 	840	524	316

C. General Overview of the Proposed Ordinance

The core provisions in the Proposed Ordinance that would prohibit discrimination based on the tenant’s source of income includes:

1. Rental Housing Covered by the Proposed Ordinance

The Proposed Ordinance explains that all rentals are covered including single family homes, duplexes, multiple unit dwellings with three apartments or more, co-living apartments, accessory dwelling units, guest houses, and mobilehomes. The only exclusion are rooms rented within a single family home where the landlord lives within the home.

2. Prohibited Activities

The Proposed Ordinance would prohibit a landlord from imposing different terms or conditions on tenants with rental subsidies compared to those without rental subsidies, advertising that housing vouchers are not accepted, or using a financial or income standard that favors tenants with income not supplemented by a rental subsidy. Refusal to initiate renting to a tenant with rental subsidies or terminate an existing tenancy would also be prohibited.

3. Enforcement

Similar to the Apartment Rent Ordinance, there are various options to enforce the Proposed Ordinance. First, the City may bring a civil action in Superior Court for repeated violations of the Ordinance. Second, the City may also issue an administrative citation if a violation occurs following an initial warning. Third, an aggrieved person may bring their own cause of action.

D. Public Comments and Input

Stakeholders consulted during outreach were concerned about the penalties and process of administrative citations. Landlords indicated that education is critical and that first-time offenders should not be harshly penalized. Landlords also expressed concerns regarding the potential for frequent litigation from private parties under the Proposed Ordinance. Tenants indicated that discrimination is pervasive and warrants the need for an ordinance that prohibits discrimination based on an applicant's source of income. Other tenants indicated a concern that landlords will continue to discriminate even with the Proposed Ordinance in place, resulting in wasted energy and expectations for voucher holders seeking housing. A summary of the public comments is included in **Attachment B**.

Participants in the public process also requested clarification on what types of evidence would be used to enforce the Proposed Ordinance. The required evidence is not covered under the Proposed Ordinance. However, generally, evidence is defined by the California Evidence Code and can include testimony, writings, material objects or anything else used to prove or disprove that a violation occurred.

E. Summary of Recommendations for Modifications to the Proposed Ordinance

After consideration of the comments gathered through the public comment process, staff prepared a summary of material changes in **Table 3** that will be included in the Proposed Ordinance:

Table 3: Summary of Proposed Changes

Public Comment	Section of Current Provision	Amendment
Definition: Clarify housing program versus assistance	Section 5.10.205	Removed the definition of “Housing Assistance” as it was redundant with the term “Source of Income”
Definition: Clarify landlord	Section 5.10.210	Clarified that persons that are prohibited from discriminating are individuals, firms, corporations, or other organizations or groups of persons however organized that offers, or is otherwise involved in, the rental or leasing of real property. The Ordinance does not strictly apply to only persons or entities with an ownership interest.
Applicability: Include Mobilehome	Section 5.08.300	Expand the types of housing covered by the Proposed Ordinance to include mobilehomes
Prohibited Acts: Include rental payments along with program	Section 5.08.400.F	Included rental payments
Enforcement: Ensure warning is provided before a City can pursue civil action	Section 5.08.600.B	Added “repeatedly” to clarify that City will pursue civil action may be pursued after warnings from the City
Title: Rename Source of Income Draft Ordinance	N/A	Renamed the Proposed Ordinance to “Housing Payment Equality” due to members of the public concerned that the title “Source of Income” was confusing and that vouchers are payments, not income for an individual.

F. Additional City Council Direction

The Proposed Ordinance addresses one of the items included in the direction provided by City Council over the past two years. However, there are several outstanding items from the December 11, 2018 City Council meeting which require additional work by the Housing

Department regarding researching two areas of program improvements and incentives for the Santa Clara County of Housing Authority, including:

- ***Implement education and outreach plan:*** Direct the Housing Department to implement an education and outreach plan in coordination with Santa Clara County Housing Authority and other rental subsidy partners that considers process improvements and incentives to increase the use of rental subsidy programs; and
- ***Convene stakeholder meetings to identify a workplan for improvements in voucher programs:*** Direct the Housing Department to convene landlords and representative organizations, including the California Apartment Association; staff from Santa Clara County Housing Authority and the County of Santa Clara; and voucher holders and tenant representatives, to identify a workplan for continued improvements in streamlining lease-up, payment, reducing paperwork, and mitigating landlord risk in the voucher program; and
- ***Explore administrative improvements and landlord incentives:*** Explore the following specific areas of possible administrative improvements and landlord incentives to increase the acceptance of housing vouchers: 1) speeding up the process of unit inspection required for landlords to be eligible to accept Housing Choice Vouchers (HCV); 2) speeding up the time a landlord will get the first rent check from the voucher program; and 3) simplifying paperwork, processes, or regulations that burden landlords who want to accept HCVs.

SCCHA is implementing program improvement initiatives to streamline the Section 8 program and reviewed the [SCCHA Moving to Work \(MTW\) 2019 Annual Plan](#) to learn about their program improvements proposed and implementation.

Santa Clara County Housing Authority Program Improvements

The Santa Clara County Housing Authority Program implemented the following changes and proposed improvements:

1. **Reduced Frequency of Tenant Reexaminations (Implemented):** This activity, implemented in 2009 reduces the frequency of participant reexaminations in the voucher program. Participants with a fixed income are reexamined every three years and participants with a non-fixed income are reexamined every two years. In 2015, SCCHA added an amendment to this activity to include its four public housing units under the new reexamination schedule. By including its public housing units under the modified reexamination schedule, SCCHA continues to recognize administrative streamlining and labor savings for both its Section 8 and 9 programs.
2. **Expediting the Initial Eligibility Income Verification Process (Implemented):** This activity, implemented in 2009, extends the timeframe of the application documents

window from 60 days to 120 days. Extending the documentation timeframe continues to provide administrative relief, both to applicants and to SCCHA. With this activity, applicants do not need to continually provide updated documentation if the previously provided information becomes too old (dated older than 60 days) before voucher issuance. SCCHA continues to utilize this activity.

- 3. 30-Day Referral Process for Project-Based Vacancies (Implemented):** This activity was implemented in 2010, and allows landlords to directly refer applicants after 30 days of unsuccessful attempts to fill the Project-Based Voucher (PBV) unit using referrals from the SCCHA waiting list. This activity reduces the vacancy time for landlords and the resultant loss in money thus ensuring the continuation of the PBV contract and the affordability of the units for low income households.
- 4. Simplify Requirements regarding Third-Party Inspections and Rent Services (Implemented):** This change was implemented in 2011 in order to waive the regulatory requirement in which HUD must approve a designated, qualified independent agency to conduct Housing Quality Standards (HQS) inspection and rent reasonableness services for SCCHA owned units. This activity has allowed SCCHA to waive the second part of the HUD regulation that requires the independent agency to supply copies of each inspection report and rent reasonableness determination to the HUD field office. SCCHA continues to realize the ongoing benefits associated with reduced costs and administrative streamlining related to this activity.
- 5. New Web-Based Tool for Waitlist (Implemented):** SCCHA's new web-based tool implemented in 2019 is designed to simplify client-agency interactions and improve overall efficiency; explore how to better serve clients through Section 8 waitlist and IT system innovations. The recently launched a tenant app to simplify the waitlist, the first of its kind in the country, to simplify clients' day to day interactions with the agency, while improving the efficiency of the agency.
- 6. Streamline the Lease-Up Process (Proposed):** SCCHA proposes in 2019 to alleviate the delays associated with the processing and completion of the lease-up process. Specifically, SCCHA proposes waiving the required use of standard form HUD-52517 and the HUD-required language that must be included in Section 8 leases. This proposed activity would increase available housing choices to participants by eliminating duplicative and redundant requirements in the lease-up process, which has been identified in surveys as a key factor which discourages landlords from renting to Section 8 tenants. SCCHA anticipates that this activity will improve customer service and communication between SCCHA and its participating landlords and reduce the time necessary for the completion of the RFTA and lease up processes. This will allow for an increase in housing choices for Section 8 tenants by allowing for the retention of current landlords as well as potentially attracting new landlords to the program.

Santa Clara County Housing Authority Program Incentives

SCCHA has introduced program and process improvements in recent years to improve landlord participation and satisfaction with the Housing Choice Voucher program, including:

- 1. Setting The Payment Standards Above 110 Percent of HUD Fair Market Rent (Implemented):** This change implemented in 2017 provided the flexibility to set SCCHA payment standards higher than 110 percent of the Fair Market Rent (FMR), if necessary, without HUD approval. This activity gave SCCHA participants the ability to be more competitive in the high priced and volatile Santa Clara County rental market. This activity is intended to increase the probability of participants securing a rental unit in a tight, high-cost rental market.
- 2. Re-Proposed Activity 2017: Expand Landlord Initiatives: Bonus Payment (Proposed):** This activity was originally implemented in 2017; it created as a means to encourage owners to rent their vacant units to HCV voucher holders. SCCHA is re-proposing this activity in 2019 to include bonus payments for new owners who agree to rent to HCV voucher holders. The bonus payment amount will range between \$500 and \$2,500. This is an amount that was determined to be reasonable after evaluating the program-wide contract rent range. Landlords received a one-time bonus payment equal to the amount of the unit's one month's rent, not to exceed \$2,500.
- 3. Provide a Graduation Bonus (Proposed):** This activity proposed in 2019 will modify the regulation that the HAP contract automatically terminates 180 days after the last HAP payment to include families whose HAP amount is less than \$100 per month, shorten the time period before automatic termination to 60 days, and provide a graduation bonus payment to affected families. The graduation bonus paid by this activity is intended to ease the transition of formerly-assisted families into the unsubsidized housing market. Therefore, for each family who leaves the program because of this activity, a new family can receive the benefit of the voucher turnover.

SCCHA has already initiated program improvements and incentives

Some of the work directed by City Council from the December 11, 2018 meeting has already been completed by the Santa Clara County Housing Authority. The Housing Department recommends the addition of a half-time two-year limit dated position to coordinate with the SCCHA and other stakeholders on the two areas of program improvements and incentives for the Housing Choice Voucher program. The position would provide educational outreach to the tenants and landlords in the community regarding the program and incentives. In addition, the position would also provide administrative and implementation support for the Proposed Ordinance.

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

June 6, 2019

Subject: HOUSING PAYMENT EQUALITY ORDINANCE AND RENTAL SUBSIDY PROGRAM
IMPROVEMENTS

Page 10

PUBLIC OUTREACH

The Housing Department conducted the following outreach meetings and a summary of the feedback received is included in **Attachment B** of this memorandum.

/s/

JACKY MORALES-FERRAND

Director, Housing

For questions, please contact Rachel VanderVeen, Deputy Director, at 408-535-8231.

Attachment A: Draft Housing Payment Equality Ordinance – Redlined

Attachment B: Summary of Meetings and Public Input

Attachment C: Proposed SB 329 Legislation

RD:CPA:CER
6/6/19

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 5 OF THE SAN JOSE MUNICIPAL CODE TO ADD A
NEW CHAPTER 5.10 RELATED TO CITYWIDE SOURCE
OF INCOME**

WHEREAS,.....

WHEREAS,.....

WHEREAS,.....

WHEREAS,.....

WHEREAS,.....

WHEREAS,.....

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

A new Chapter is added to Title 5 of the San José Municipal Code, to be numbered,
entitled and to read as follows:

**CHAPTER 5.10
SOURCE OF INCOME**

**Part 1
Findings**

Part 2 Definitions

5.10.200 Definitions

The definitions set forth in this part shall govern the application and interpretation of this chapter. Words and phrases not defined in this Part 2 shall be interpreted so as to give this chapter its most reasonable application.

5.10.205 Aggrieved Person

“Aggrieved Person” includes any person who claims to have been injured, or will be injured, by a discriminatory housing practice related to their source of income. .

5.10.205 Housing Assistance

~~“Housing Assistance” includes all housing and rental assistance programs, homeless assistance programs, security deposit assistance programs, and housing subsidy programs.~~

5.10.210 PersonLandlord

“PersonLandlord” means any individual, firm, corporation, or other organization or group of persons however organized, including their agent(s), that offers, or is otherwise involved in, the rental or leasing of real property.

5.10.~~230~~-215 Source of Income

“Source of Income” shall mean all lawful sources of income or rental assistance from any Federal, State, local or non-profit administered benefit or subsidy program including, but not limited to, the Housing Choice Voucher Program.

**Part 3
Applicability**

5.10.300 Applicability

The provisions of this Chapter shall apply to:

- A. One-family dwellings, as defined under SJMC 20.200.320, except those that are owner-occupied as the owner(s) primary residence;
- B. Two-family dwellings, as defined under SJMC 20.200.330
- C. Secondary dwellings, as defined under SJMC 20.200.325
- D. Co-Living Communities, as defined under SJMC 20.200.197
- E. Multiple Dwellings as defined under SJMC 20.200.340; and
- F. Guest Rooms as defined under SJMC 20.200.460 in any Guest House as defined under SJMC 20.200.470 and SJMC 20.200.480.
- G. Mobilehome parks as defined under SJMC 20.200.790.

Part 4 Prohibited Acts

5.10.400 Prohibited Acts

It shall be unlawful for any person to do any of the following that is wholly or partially based on ~~receipt of housing assistance~~ an individual's Source of Income:

- A. To interrupt, terminate, or fail or refuse to initiate the rental of real property; or
- B. To falsely represent that an interest in real property is not available for ~~transaction~~ rent or lease; or
- ~~C. To require different terms for such transaction; or~~
- C. To include in the terms or conditions of a rental agreement any clause, condition, or restriction, except as lawfully required by the particular source of income; or
- D. To refuse or restrict facilities, services, repairs or improvements for any current or prospective tenant or lessee; or
- E. To in any way make, print, or publish, advertise or disseminate any notice, statement, or advertisement involving the rental of real property that unlawfully indicates preference, limitation, or discrimination based ~~on receipt of housing assistance~~ an individual's Source of Income; or
- F. To use a financial or income standard for ~~rental housing~~ renting or leasing real property that privileges income earned or rental payments made directly by the tenant or prospective tenant.

Part 5 Enforcement

5.10.500 Enforcement

A. Notwithstanding section B. below, a civil action may be brought by the City Attorney and a court may assess a civil penalty in an amount up to \$10,000 per violation, payable to the City, against any Landlord who repeatedly violates this Chapter. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter.

B. The Director may enforce any violation of this Chapter, including the issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.

1. First time violations of this Chapter shall result in a written warning prior to issuing a citation.
2. For subsequent violations following the first violation, the Director may issue an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code, with escalating fines for each subsequent violation, in an amount adopted by Resolution.

~~B. Notwithstanding subsection A. above, a civil action may be brought by the City and a court may assess a civil penalty in an amount up to \$10,000 per violation, payable to the City, against any person who violates this Chapter. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter.~~

C. Nothing under this Part shall preclude an aggrieved person from bringing a civil action in a court of competent jurisdiction for any violation of this Chapter.

D. Reserved

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk

Summary of Public Outreach Meetings

PUBLIC MEETINGS:

- May 22, 2019: Seven Trees Community Center
- May 23, 2019: Bascom Community Center
- May 30, 2019: San Jose City Hall Wing Rooms
- June 13, 2019: Housing and Community Development Commission (HCDC)

STAKEHOLDER MEETINGS:

- May 17, 2019: Renter's Coalition
- May 17, 2019: Bay Area Homeowners' Association
- May 23, 2019: California Apartment Association
- May 29, 2019: Santa Clara County Association of REALTORS
- May 30, 2019: Law Foundation

Source of Income – Summary of Public Comments

Seven Trees Community Meeting May 22, 2019

QUESTIONS:

1. Explain the status quo.
2. Explain the research behind the ordinance.
3. Clarify the determination on the level of evidence for a citation.
4. Consider renaming the ordinance.
5. Clarify the vetting process for Section 8.
6. Clarify the eviction process for section 8 tenant vs. tenants without a voucher.

CONCERNS:

1. No concern with the ordinance.
2. Challenge having to accept a federal/state subsidy comes with other strings attached that landlords have to follow.
3. There is a large demand for rentals and it may be a challenge to also consider voucher holders in a competitive pool.
4. There should be more mechanisms for enforcement.

Bascom Community Meeting May 23, 2019

QUESTIONS:

1. Explain the impact on security deposits.
2. Clarify how the city would investigate the citations.
3. Explain the timeline of the approval of the administrative citation fees and approval of the Ordinance.
4. Explain what is a civil action lawsuit that the city can act on.
5. Explain the reasons or need for this ordinance.
6. Clarify how landlords can be compensated for missed rents.

CONCERNS:

1. Staffing levels that are needed to do compliance.
2. Voucher programs are challenging for landlords to participate in.
3. Landlords do not want to participate in voucher programs.
4. Prohibiting the advertisement may be more challenging to find landlords who are participating in voucher programs and who are not.
5. Single family homes and duplexes should not be included.
6. Concerned that this would result in more regulations for single family homes.

7. There should be a choice for landlords to accept or decline voucher holders.
8. Find out reasons why a landlord does not accept an applicant.
9. Evictions may be more challenging with voucher holders.
10. It would be helpful to have statistics and data to show discrimination.

**City Hall Wing Rooms Community Meeting
May 31, 2019**

QUESTIONS:

1. Clarify what vouchers would be included.
2. Clarify the administration of the vouchers.
3. Explain the legal actions that may impact landlords.
4. Explain the what would be considered discrimination.
5. Explain the impact of the state bill SB 329 and what is source of income discrimination.
6. Explain the consequences for an owner if they do not participate in the voucher program.

CONCERNS:

1. Expand how Mobilehome residents would be considered.
2. Government cannot force a landlord to accept a voucher program.
3. This may result in many legal actions regarding discrimination.
4. This ordinance is just raising the expectation of tenants that they will be accepted when the landlord can still refuse it.

From: Cheryl

Sent: Sunday, March 4, 2018 3:25 AM

To: VanderVeen, Rachel; Cheryl Lubow; Morales-Ferrand, Jacky; Wright, Sara; RSP

Subject: Please add this input for Voucher ordinance

Hi,

Please add this input for Voucher Ordinance

If there is going to be a voucher Ordinance, it should pertain only to Section 8. The local vouchers should not be part of it. And, the ordinance should not apply to single family homes, condos or duplexes. It is enough of a financial burden to expect owners of 3+ units to lose a month's rent. But it would be even more difficult for owners with 1-2 units.

Thanks,
Cheryl

From: Jeff Zell

Sent: Tuesday, May 21, 2019 5:18 PM

To: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>

Subject: RE: Draft Source of Income Ordinance Available for Review

Hi Jacky and Rachel,

I'm unable to make any of these because my daughter's HS graduation events overlap with Housing events. Here are a couple points for consideration:

Non-profit subsidies typically expire after 12 months, after which the tenants usually can't pay the rent. We inherited a couple buildings with tenants funded by Abode and Bill Wilson – all 12 tenants left after their subsidy expired for non-payment of rent; 6 left voluntarily before the UD was filed and 6 left with UDs on their records. Small sample size, but a 100% failure rate nonetheless. I'll decline to rent to any and every tenant with an expiring income source because they are not credit worthy and a proven financial risk.

Secondly, I learned recently that property insurance is underwritten differently if 15% or more of the building's income comes from subsidies, so I can't let a building surpass 15% subsidized for fear of it becoming uninsurable. I don't know why, I just know this from shopping coverage on buildings recently.

I've got no issue with S8 et al with indefinite funding sources and I've got no issue with non-profit provided deposits. I hope you do the right thing by addressing the two issues above.

Jeff


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SB-329 Discrimination: housing: source of income. (2019-2020)

SHARE THIS:



Date Published: 05/17/2019 06:22 PM

AMENDED IN SENATE MAY 17, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

No. 329

**Introduced by Senator Mitchell
(Principal coauthor: Senator Wiener)
(Principal coauthor: Assembly Member Bloom)
(Coauthors: Assembly Members Bonta, Chiu, and Grayson)**

February 15, 2019

An act to amend Sections 12927 and 12955 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 329, as amended, Mitchell. Discrimination: housing: source of income.

Existing law, the *California* Fair Employment and Housing Act, prohibits housing discrimination, including discrimination through public or private land use practices, decisions, or authorizations, based on specified personal characteristics, including source of income. Existing law defines the term "source of income" for purposes of the provisions relating to discrimination in housing accommodations described above, to mean lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant.

This bill would instead define the term for purposes of those provisions, to mean verifiable income paid directly to a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and housing subsidies, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *It is the intent of the Legislature in enacting this act to provide a participant in a housing voucher program an opportunity to receive a thorough and fair vetting when they seek housing.*

SECTION 1. SEC. 2. Section 12927 of the Government Code is amended to read:

12927. As used in this part in connection with housing accommodations, unless a different meaning clearly appears from the context:

(a) "Affirmative actions" means any activity for the purpose of eliminating discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

(b) "Conciliation council" means a nonprofit organization, or a city or county human relations commission, which provides education, factfinding, and mediation or conciliation services in resolution of complaints of housing discrimination.

(c) (1) "Discrimination" includes refusal to sell, rent, or lease housing accommodations; includes refusal to negotiate for the sale, rental, or lease of housing accommodations; includes representation that a housing accommodation is not available for inspection, sale, or rental when that housing accommodation is in fact so available; includes any other denial or withholding of housing accommodations; includes provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations; includes harassment in connection with those housing accommodations; includes the cancellation or termination of a sale or rental agreement; includes the provision of segregated or separated housing accommodations; includes the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification (other than for reasonable wear and tear), and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(2) "Discrimination" does not include either of the following:

(A) Refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that no more than one roomer or boarder is to live within the household, and the owner complies with subdivision (c) of Section 12955, which prohibits discriminatory notices, statements, and advertisements.

(B) Where the sharing of living areas in a single dwelling unit is involved, the use of words stating or tending to imply that the housing being advertised is available only to persons of one sex.

(d) "Housing accommodation" means any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied.

(e) "Owner" includes the lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof.

(f) "Person" includes all individuals and entities that are described in Section 3602(d) of Title 42 of the United States Code, and in the definition of "owner" in subdivision (e) of this section, and all institutional third parties, including the Federal Home Loan Mortgage Corporation.

(g) "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur.

(h) "Real estate-related transactions" include any of the following:

(1) The making or purchasing of loans or providing other financial assistance that is for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or that is secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(3) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential real property.

(i) "Source of income" means lawful, verifiable income paid directly to a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

~~SEC. 2.~~ **SEC. 3.** Section 12955 of the Government Code is amended to read:

12955. It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, or genetic information of any person seeking to purchase, rent, or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information or an intention to make that preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, genetic information, source of income, or on any other basis prohibited by that section. Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, genetic information, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, source of income, familial status, disability, or genetic information.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, genetic information, familial status, source of income, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, genetic information, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void.

(m) As used in this section, "race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information," includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, "source of income" means lawful, verifiable income paid directly to a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.



Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: Tenant Preference to
Prevent Displacement

DATE: June 6, 2019

Approved

Date

RECOMMENDATION

Review the staff report, provide input to staff, and make possible recommendation to the City Council to approve an ordinance based on this framework for a preference for applicants to affordable apartments in order to help prevent displacement.

EXECUTIVE SUMMARY

This memorandum presents staff recommendations for the framework of a Tenant Preference to Prevent Displacement (“Preference”). Staff intends to present a draft ordinance for this Preference to the City Council in fall 2019. If approved, this Preference will give a better chance to applicants for affordable apartments if they currently live in certain census tracts experiencing ongoing displacement and gentrification and where future development is expected to occur. This Tenant Preference is intended to help mitigate the continuing displacement of low-income tenants from certain areas of San José. This Preference would apply to 30% of new affordable apartments funded by the City, and potentially other restricted affordable apartments, that are available to the general public. This Preference would not apply to special needs apartments, such as those created for formerly-homeless residents that are filled through local agencies’ queues with priorities based on vulnerability ratings. Staff estimates that approximately 750 new affordable apartments throughout San José over the next approximately five years could be prioritized for access by applicants who currently live in the certain identified areas of San José that are eligible for this Preference.

BACKGROUND

Staff work on this Preference is part of a broader Citywide effort to limit residential and small business displacement in San José. The Housing Department, in collaboration with other City departments and nonprofit community stakeholders, intends to bring forward a comprehensive residential Anti-displacement Strategy in fall 2019. This Tenant Preference to mitigate displacement is one strategy of many that fits within this broader Anti-displacement initiative.

In March 2017, the City Council prioritized staff work 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” as priority number 19. Since this time, Housing Department staff have presented updates at the Housing and Community Development Commission (HCDC) on October 12, 2017, the Community and Economic Development Committee on May 21, 2018, and again at the HCDC on January 17, 2019.

ANALYSIS

A core component of staff analysis on displacement in San José relies on research by the Urban Displacement Project (UDP), an ongoing research and action initiative between UC Berkeley, UCLA, and Portland State University. Since 2009, the UDP has conducted research to understand the nature of urban displacement and created tools to assist policymakers. Much of UDP’s research is focused on the Bay Area and we are fortunate to have these resources so close to San José. The academic principals in UDP are well-respected, frequently-cited experts in the field of displacement, gentrification, and ramifications of the imbalance and shortage in housing markets.

This memorandum presents revised staff recommendations for the framework of the proposed Tenant Preference to Prevent Displacement (“Preference”). Staff’s revisions considered both public input and additional staff analysis. Staff intends to present a draft ordinance for this Preference to the City Council in fall 2019.

What is residential displacement?

It is important to begin by establishing a working definition for displacement. UDP uses the following definitions:

- **“Gentrification...**the influx of capital and higher-income, higher-educated residents into working-class neighborhoods.”¹
- **“Displacement** occurs when any household is forced to move from its residence by conditions which affect the dwelling or immediate surroundings, and which: 1) are beyond the household’s reasonable ability to control or prevent; 2) occur despite the household’s having met all previously-imposed conditions of occupancy; and 3) make continued occupancy by that household impossible, hazardous or unaffordable.”²

¹ https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf

² <https://ww3.arb.ca.gov/research/apr/past/13-310.pdf>

- “Displacement can be physical (as building conditions deteriorate) or economic (as costs rise). It might push households out, or it might prohibit them from moving in, called **exclusionary displacement.**”

What are the effects of displacement?

According to many studies aggregated by UDP, displacement is associated with a wide range of adverse effects. It can lead to stress and depression, can have many negative health impacts on children, can lower children’s academic test scores, and can lead to additional long-term financial strains on households.³ In a 2017 study on displaced households San Mateo County, approximately one in three displaced households reported some period of homelessness or marginal housing in the two years following their displacement, with some remaining homeless for months after the initial displacement.⁴ Displacement of residents from their homes often results in moves to areas with fewer local job opportunities and increased commutes,⁵ which are detrimental to health and take away from time with friends and family. Residents’ moves away from their neighborhoods also can take them away from their personal support networks, adversely affecting their access to resources that help to reduce stress and stabilize families such as babysitters, doctors, friends, and family.

What major factors cause displacement?

In 2015, UDP found that the primary drivers of gentrification and displacement are:⁶

- Proximity to rail stations
- Proximity to Job centers
- Historic housing stock
- Location in a strong real estate market
- Neighborhood disinvestment
- Communities of color and renter neighborhoods are particularly at risk.

Low-income Renters in San José’s Urban Core are at Higher Risk of Displacement

The risk of residential displacement in growing areas of San José has been recognized for several years. In 2013, the California Housing Partnership Corporation and Reconnecting America prepared a report analyzing the need for affordable housing preservation near transit in San José. The report found the following:

³ See studies linked at: <https://www.urbandisplacement.org/pushedout>

⁴ Justine Marcus and Miriam Zuk, “Displacement in San Mateo County, California: Consequences for Housing Neighborhoods, Quality of Life, and Health,” University of California at Berkeley’s Institute of Governmental Studies Research Brief, May 2017, p.1

https://www.urbandisplacement.org/sites/default/files/images/impacts_of_displacement_in_san_mateo_county.pdf

⁵ Marcus and Zuk, p.1.

⁶ https://www.urbandisplacement.org/sites/default/files/images/urban_displacement_project_-_executive_summary.pdf

“The neighborhoods in and around downtown San Jose, around the Diridon station, and to the east towards Alum Rock are the neighborhoods where there is both the potential of market pressure from transit investments and planning efforts as well as vulnerable populations and existing affordable housing stock. RA and CHPC recommend that the City and partners should focus place-based preservation efforts in these areas.”

“The northern section of the BART to San Jose extension does not fall into a priority area for preservation. Northeastern San Jose, from the border of Milpitas down to Berryessa has planned transit improvements but no significant concentrations of vulnerable residents or existing affordable housing. Areas along the future BART alignment from Berryessa north are primarily business parks with some single-family neighborhoods.”

There is research to indicate that high amounts of new market-rate residential development in San José could create residential housing that serves the larger region, but may displace local residents. In a 2016 research brief, UDP found some evidence that adding new market-rate residential development in the Bay Area may help to prevent displacement at the regional scale, but it had an “insignificant” effect on reducing displacement at the neighborhood level in San Francisco.⁷ UDP found that the increase in residential supply from high-rent new apartment buildings has little to no effect of lowering rents for low-income households. This is supported by other industry analysis, which notes that the benefits of increasing high-rent apartment supply have negligible benefit in serving the housing needs for low-income people.⁸

According to UDP, San José has 219 census tracts, of which 41 are low-income and experiencing “ongoing displacement” and 29 are low-income and “at risk of displacement.” Together, these 70 census tracts are concentrated in Downtown, East San José, West San José, and parts of North San José as shown in **Attachment 1**.

Housing Department staff also studied eviction and development activity and found the following:

- From May 2017 to April 2019, the City received 18,766 termination of tenancy notices of which 17,835 (95%) were issued for nonpayment of rent. This indicates that a very large number of residents are facing eviction because they cannot afford to pay rent in San José. The City does not have data on how many of these notices resulted in evictions, but it does indicate evidence of high tenant vulnerability to displacement. These notices were clustered primarily in Downtown, West San José, and East San José. See **Attachment 2** for a map of these notices.
- The City issued building permits for 354 new multifamily residential developments containing 13,102 new housing units between 2014 and 2018. Many of these units were

⁷ Miriam Zuk and Karen Chapple, “Housing Production, Filtering and Displacement: Untangling the Relationships,” Institute of Governmental Studies, University of California at Berkeley, May 2016,

https://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

⁸ Rick Jacobus, “Why Voters Haven’t Been Buying the Case for Building,” *Shelterforce*, Feb. 2019.

concentrated in Downtown and West San José. See **Attachment 2** for a map of these projects.

- Downtown commercial expansion, BART Phase I and II, and Bus Rapid Transit along Alum Rock Avenue may also contribute to increased demand for new multifamily housing in San José's central core. See **Attachment 3** for a map of these major infrastructure projects.

Considered together, the above City data indicates that neighborhoods in Downtown, West San José, and East San José are likely at elevated risk for development and displacement.

Rents have increased faster in certain parts of San José

Staff analyzed changes to average effective rents in different areas of San José between 2009 and 2019. All areas experienced significant increases in rent, ranging from 56% to 126%. Citywide, average rents increased by 70%. Table A lists some of the submarkets with the highest rent increases in average effective rents over this 10-year period.

Table A: Submarket Rent Changes Over the Past 10 Years⁹

Submarket Name	2009 Average Effective Rent (\$)	2019 YTD Average Effective Rent (\$)	Percent Change
SJ Airport	1,069	2,419	126%
San José Citywide	1,476	2,506	70%
Willow Glen/Central San José	1,311	2,194	67%
Berryessa - East & West	1,391	2,304	66%
Downtown	1,514	2,501	65%
South San José	1,536	2,454	60%
West San José/Winchester	1,522	2,422	59%
East San José	1,383	2,154	56%

Incomes have not kept up with rent increases

While average effective rents in San José have increased an estimated 70% on average over the past 10 years, local wages have not kept pace. According to the Silicon Valley Index, inflation-adjusted average wages in Silicon Valley increased by 21% between 2010 and 2018.¹⁰ This average wage increase includes workers at all pay levels. As the highest paid workers in Silicon Valley now earn three times the lowest-paid workers,¹¹ the likely conclusion is that pay for lower-wage workers increased only a fraction of the 21% overall average increase during this time. Therefore, lower-income residents in San José likely experienced rent increases that were

⁹ All rents cited from CoStar as of May 28, 2019.

¹⁰ Joint Venture Silicon Valley, 2018 Silicon Valley Index, <https://jointventure.org/news-and-media/news-releases/1637-2018-silicon-valley-index-enduring-tech-success-puts-more-pressure-on-families-commuters>.

¹¹ 2019 Silicon Valley Index, p.29, <https://jointventure.org/images/stories/pdf/index2019.pdf>.

several times the increase in their pay during this time period, increasing their vulnerability to rising housing costs.

In conclusion, data supports the concerns that City staff have been hearing from the community regarding their experiences and fears of displacement. During the Housing Department's community engagement on displacement, many people have expressed the desire for more affordable housing to be produced to help ease the situation in San José. This Preference would give greater access to forthcoming affordable housing for those living in areas experiencing displacement.

Following is a description of staff's recommendation on the framework for this Preference.

Staff Recommendation for Tenant Preference to Prevent Displacement

Purpose

The purpose of a the Tenant Preference to Prevent Displacement is to lessen the likelihood of displacement from San José for those residents residing in displacement "hot spots."

UDP's research supports the importance of increased access to affordable housing for people at risk of being displaced. It found that subsidized affordable housing production was at least twice as effective in reducing displacement pressures at the regional level as compared to building market-rate housing.¹² While this Preference alone does not expand the affordable housing stock, it may lessen the wait for access to affordable apartments for residents who need it urgently.

Definition

This Preference would allow low-income applicants residing in City-designated census tracts to obtain preferred status when they apply to rent an eligible restricted affordable apartment. The Preference would apply to eligible affordable apartments throughout San José, not just in a resident's current neighborhood. A resident could choose to apply for an apartment near their current location, or could choose another neighborhood instead. In this way, this Preference would provide eligible applicants with expanded housing options to help lower their likelihood of displacement from San José and from the Bay Area, where housing options remain extremely limited.

Census Tracts Where Residents Can Qualify for the Preference to Prevent Displacement

Low-income residents of eligible census tracts would be able to apply for the Preference. To select the eligible census tracts, Housing Department staff identified 21 tracts that both are experiencing "on-going" displacement according to UDP, and that are located in areas where residential growth is anticipated to occur (Downtown, Horizon 1 Urban Villages, and North San José). See **Attachment 2** for a map of these areas.

¹² Zuk and Karen Chapple, p.4.

To classify areas as having on-going displacement, UDP uses a combination of factors that indicate significant changes in that area over time and a population that is relatively vulnerable to displacement forces. The factors include income levels, loss of low-income households, percentage of college-educated residents compared to the regional median, percent of renters compared to the regional median, and others.¹³ See **Attachment 4** for the full UDP methodology.

Eligible Residents

1. Staff recommends that residents who meet the following criteria be eligible for this Preference: Applicant currently lives in the identified eligible census tracts in San José, as described in the previous section, and can show required evidence that supports their place of residence.
2. Applicants' household income and size are appropriate for the affordable apartments to which they are applying. The majority of affordable apartments for which Preferred applicants can apply will be designated for households with incomes below 60% of the area median income ("AMI"). As example, a household of four people could make no more than \$87,780 in 2019 to qualify. But many affordable apartments may be restricted to maximum incomes at 30% to 50% AMI.

A small amount – perhaps 5%, based on recent development funding applications – may target renters up to 80% AMI, which for a household of four people has a current maximum income of \$103,900.

Recent changes to federal and State law enable affordable housing financed with Low Income Housing Tax Credits to house residents who earn up to 80% of Area Median Income. While approximately 130,257 households are below the maximum income cutoff for most affordable apartments, staff expects that the likely number of these higher income households who would apply for and be eligible for affordable apartments to be a relatively small proportion of that pool. Table B summarizes how many households not already living in affordable housing are in each income category:

Table B: Number of Low-income Households at 60% and 80% AMI Citywide and in Selected Tenant Preference Census Tracts

	Net Households Below 60% AMI	% of Citywide	Net Households Below 80% AMI	% of Citywide
Citywide	97,659	30%	130,257	41%
In Tenant Preference Areas	18,230	6%	22,281	7%

¹³ Risk factors included having a higher proportion of low income households, percentage of renters, or of nonwhite residents compared to the regional median. Another factor was having a lower proportion of college-educated residents compared to the regional median.

3. Applicant meets the property's standard leasing requirements.

In response to a question from the Housing and Community Development Commission, staff analyzed how many mobilehome parks have residents who may be eligible for this Preference as proposed. Staff found that residents in three of the City's 59 mobilehome parks are located in eligible census tracts and could be eligible for this Preference. The three parks are Bella Rosa Mobile Lodge, Foothills Mobile Lodge, and Summerset Mobilehome Park.

Eligible Apartments

Staff recommends that this Preference apply to properties with the following characteristics:

1. New affordable rental developments that receive public subsidies (if all funders agree).
2. Existing affordable City-subsidized developments that are modified through changes negotiated with the City, with implementation of tenant preferences part of the City's negotiated changes to its business terms. (Note that the Preference would not impair the obligations of any pre-existing contract entered into by the City, unless modified.)

Staff's intention is to create tenant preferences that apply broadly across all affordable apartments to the maximum extent permitted under State and federal funding programs and policies. Staff continues to work with the City Attorney and external stakeholders to determine if the following types of developments could be eligible:

- Those financed with Low Income Housing Tax Credits and/or Multifamily Housing Revenue Bonds
 - Those funded with State of California funds through the Department of Housing and Community Development
 - Those financed with federal HOME funds.
3. In addition, separate actions by the City Council would be necessary for tenant preferences to apply to affordable apartments produced pursuant to:
 - The City's Inclusionary Housing Ordinance
 - The City's Surplus Land Policy.

Proportion of Apartments on Which this Preference Applies

Staff recommends that this Preference be limited to apply to 30% of the restricted affordable apartments that are available to the general public in a particular housing development. As an example, if a 100-unit apartment building were built and 60 apartments were designated for homeless households, 40 apartments would be available to the general public. This Preference would then apply to 30% of those 40 apartments, or 12 apartments.

In 2018, the *Columbia Law Review* published an article that analyzed San Francisco's and New York's tenant residency preferences. The article found that tenant preference policies with high

proportions of units set aside for tenant preferences were subject to criticism and legal challenge on fair housing grounds. For reference, New York City has a 50% set-aside for its Neighborhood tenant preference, which has been challenged. Setting San Jose's set-aside at 30%, considerably lower than the 50% level, accommodates potential legal concerns. This threshold comports with legal guidance on fair housing principles for tenant preferences, and follows recommendations from the City Attorney's Office.

Staff estimates there are approximately 2,500 affordable apartments in San Jose's development pipeline over the next few years that will be available to the general public. A 30% set-aside would lead to 750 apartments being subject to this Preference, with the other 1,750 apartments to be filled through the typical waitlist process for non-preferenced applicants.

Outreach to Potential Applicants

Housing Department staff will work with property managers and owners of affordable apartments and other stakeholders to ensure that they are aware of the Preference and they understand how to administer it. Their advice will help staff to develop an ongoing public information strategy. The strategy could include a combination of digital advertising using email and social media, and non-digital advertising such as flyers and informational meetings.

Application Process

Generally, the application process for an affordable apartment using this Preference would be as follows:

1. The Housing Department will include requirements for a specific number of units be set aside for tenants that meet the tenant preference as a part of the loan documents for the development.
2. The Housing Department would identify affordable apartments that are eligible for preferences as a part of its forthcoming on-line tenant application portal system (DAHLIA).
3. Applicants would submit an application online indicating interest in a specific property.
4. Property managers would gather and process rental applications.
5. Property managers would offer apartments to eligible applicants who meet all other leasing criteria.
6. Property managers would report outcomes to the Housing Department annually.

Until the on-line application system is fully implemented, Housing Department staff will support property managers as needed in their determinations of eligibility. The Housing Department will define administrative details in formal guidance for use by property managers when the City Council adopts the Preference ordinance.

Proving Eligibility

Applicants requesting this Preference will be required to provide either 1) a current lease agreement with their name on it, or 2) two of the following documents with their name and address on it, dated within the previous 45 days:

- Cable, internet, or cell phone bill
- Gas, electric, garbage, or water bill
- Paystub
- Public benefits records
- School records or school ID
- Social Security annual statement
- Bank statement
- Driver's license.

This list of evidence is being finalized based on feedback from the public and from property owners, and would be located in administrative guidance for the Preference.

Program Evaluation

If the City Council adopts the ordinance for the Tenant Preference to Prevent Displacement, staff proposes to update the analysis of eligible census tracts every three years. Updates would use the most recent UDP data and local data. Three-year intervals would provide more predictability than would more frequent updates. Three years is also likely to be the shortest interval in which data would change significantly.

After the first three years of implementation, Housing Department staff will analyze the effectiveness of the preference and will ensure that the preference is administered in accordance with fair housing standards. Three years would allow sufficient time to collect enough data to conduct the analysis.

PUBLIC OUTREACH

Stakeholder outreach on this Preference has included an Affordable Developer and Property Manager Roundtable on April 10, 2019, and a survey of property managers is in progress to get more feedback on operational details. Staff has held several meetings with policy-oriented stakeholders on this topic in 2018 and 2019. Staff will also continue its work with the State to determine if this Preference may be used with State-funded multifamily affordable developments.

The following is a summary of comments made by the public between May 21, 2018, and June 6, 2019. This includes one public hearing at the City Council's Community and Economic Development Committee, two public hearings at the Housing and Community Development

Commission, and two public meetings at Bascom Library and City Hall. Some comments relate to this Tenant Preference to Prevent Displacement, while others are more general:

- Some stakeholders asked for a tenant preference that benefits people who had lived in San José within the last several years so they can return to San José. Others felt only existing residents should be eligible for preferences.
- Some stakeholders asked for a Neighborhood preference, which would give an applicant priority only for affordable developments in their own neighborhood, so that residents could remain in their current communities near the friends and family members. Other residents were willing to move to other neighborhoods for affordable housing, less crime, higher performing schools, and other amenities.
- Some stakeholders expressed the desire to not have to choose between staying in their community and accessing high-performing schools and other amenities. These speakers highlighted the importance of creating new opportunities in low-resource areas.
- Some developers like Neighborhood preference policies because they can increase community acceptance for new affordable housing developments.
- The City should create a tenant preference that includes households at a moderate-income level, not just extremely low- and very low-income levels, as residents earning higher amounts are still having difficulty affording rising rents.
- Set aside 50% of any new affordable housing for people who live in the neighborhood as New York City has done.
- Can the City create a hybrid where residents in certain areas are eligible, but extra points would go to residents who live in the same neighborhood as the affordable housing they are applying for? This would combine a displacement prevention and a neighborhood preference. Stakeholders called this a “two-step” approach.
- The City should allow flexibility on the documents it requires to show proof of eligibility. Some people rent rooms and do not have leases or utility bills in their name to prove residency during a period. Maybe the Housing Department can follow what the Department of Transportation did by creating a form for the landlord to sign confirming residency. But some tenants may fear asking their landlord for such a form.
- In San Francisco, Oakland, and New York City, preference policies were created without substantial community input. San José should include the community in creating these preferences.
- We are creating tenant preferences at the right time so that San José does not become another San Francisco.
- A ‘live in San José’ preference is desirable, as it would help local residents compete against renters from outside of San José.
- It will be challenging to educate residents about their eligibility for this preference. Will the City conduct an outreach campaign? Good ways to get the word out include distributing flyers at libraries, common areas like laundry rooms, business associations, neighborhood associations, and schools. Mailing postcards can also be effective.

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Subject: Tenant Preference to Prevent Displacement

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- When doing outreach, remember there is still a digital divide, and not everyone has access to the internet, email, or social media.
- People with higher needs should get a higher preference, such as seniors with limited abilities compared to a younger person.
- The City should work with the County to enable homeless housing queues to have a neighborhood preference, or create some other strategy so that homeless residents in a given neighborhood can be prioritized for new affordable housing in that same neighborhood. This would support community acceptance for new developments if people could see reductions in homelessness in those same areas.

Staff expects to issue a draft ordinance for the Preference for a public comment period, and to hold additional public meetings, in late summer 2019. Staff will then bring the revised draft ordinance to the City Council for approval in fall 2019.

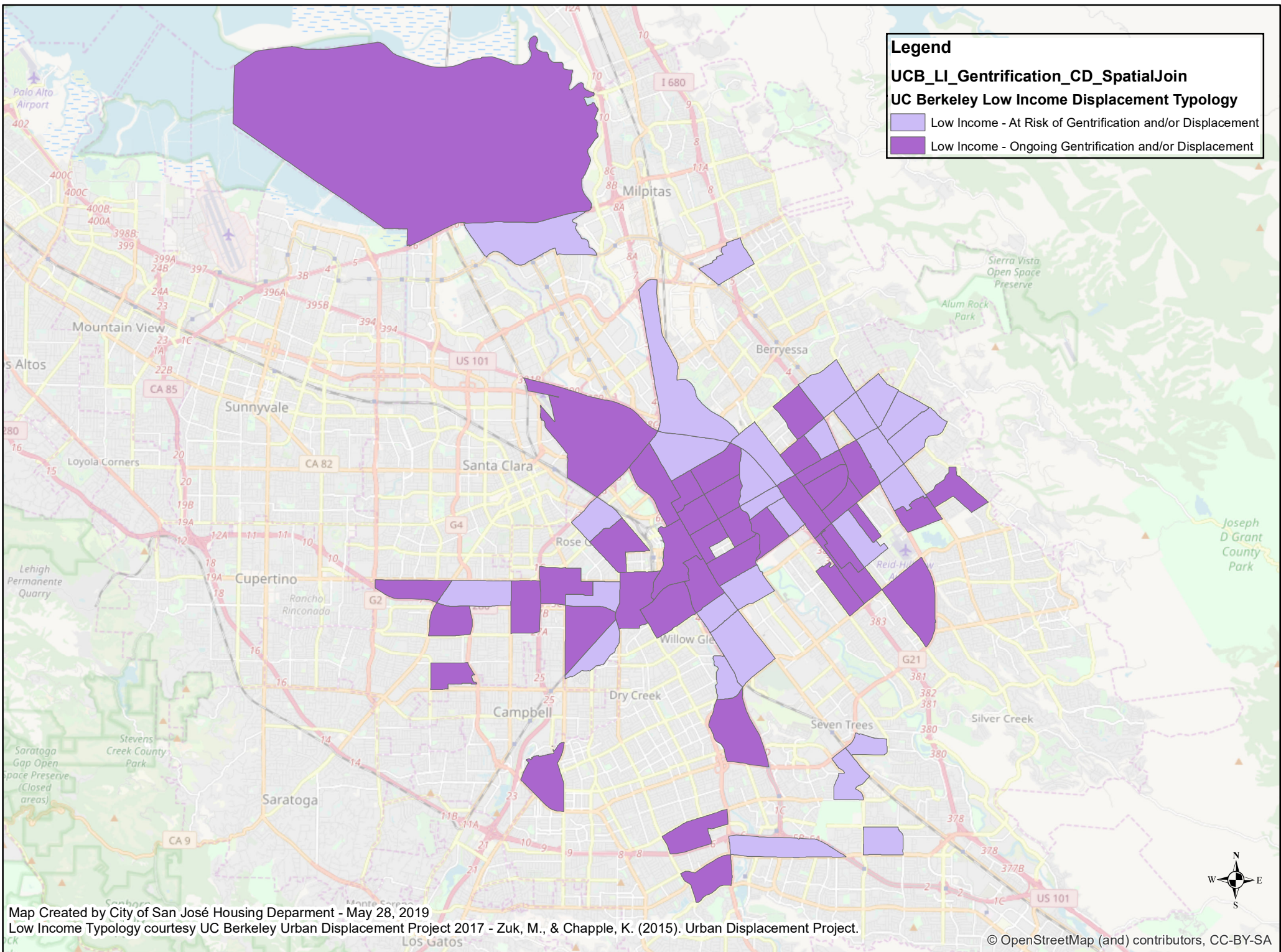
Jacky Morales-Ferrand
Director, Department of Housing

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

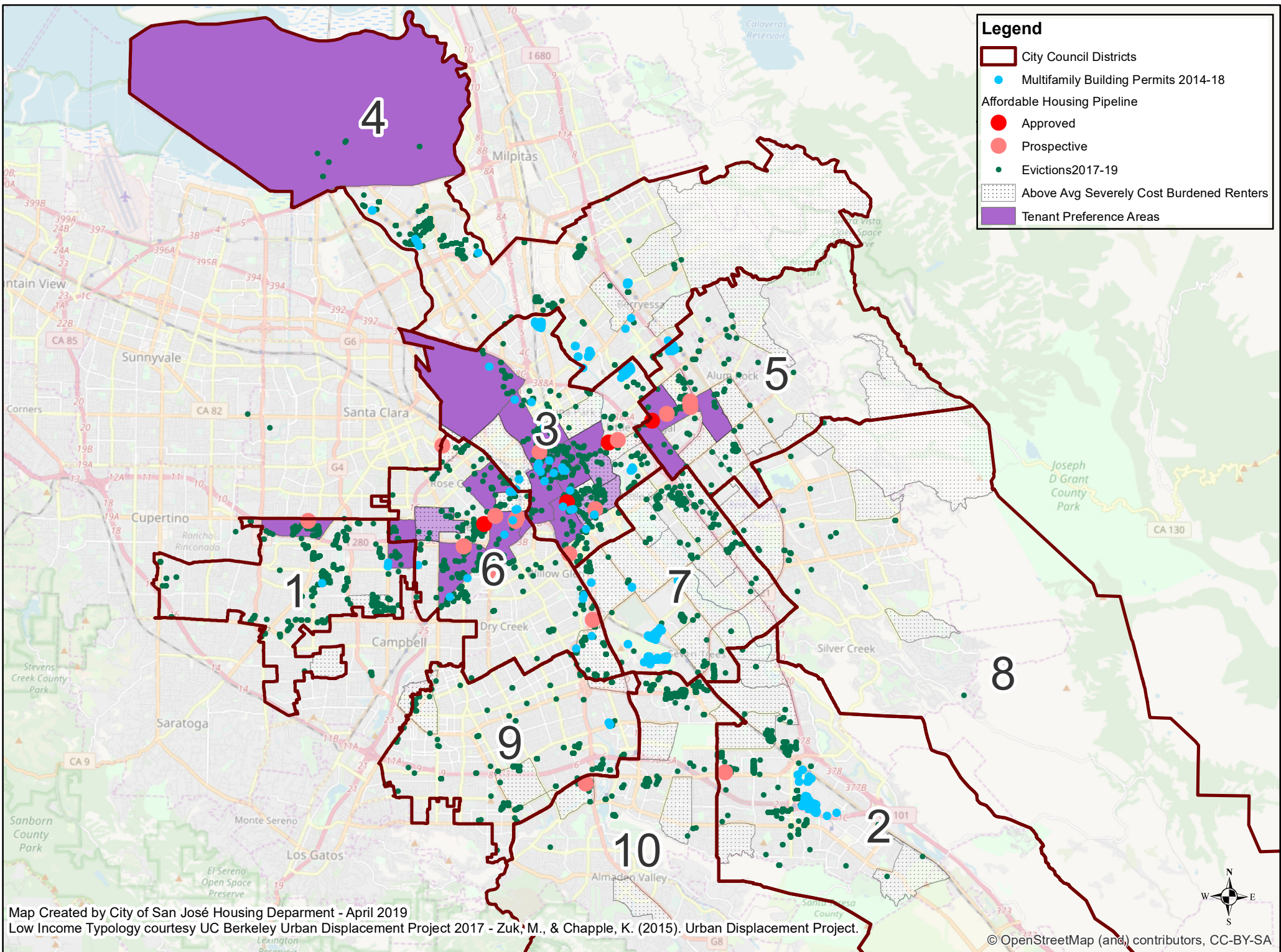
ATTACHMENTS:

- **Attachment 1** – Map of Census Tracts with “on-going” displacement or that are “at-risk” of displacement.
- **Attachment 2** – Map of Proposed Tenant Preference Areas, Pre-eviction Notices, and Multi-family Building Permits.
- **Attachment 3** – Map of Major Transit Projects
- **Attachment 4** – UC Berkeley Urban Displacement Project Methodology

San José Areas At Risk or Experiencing On-going Displacement (UCB)



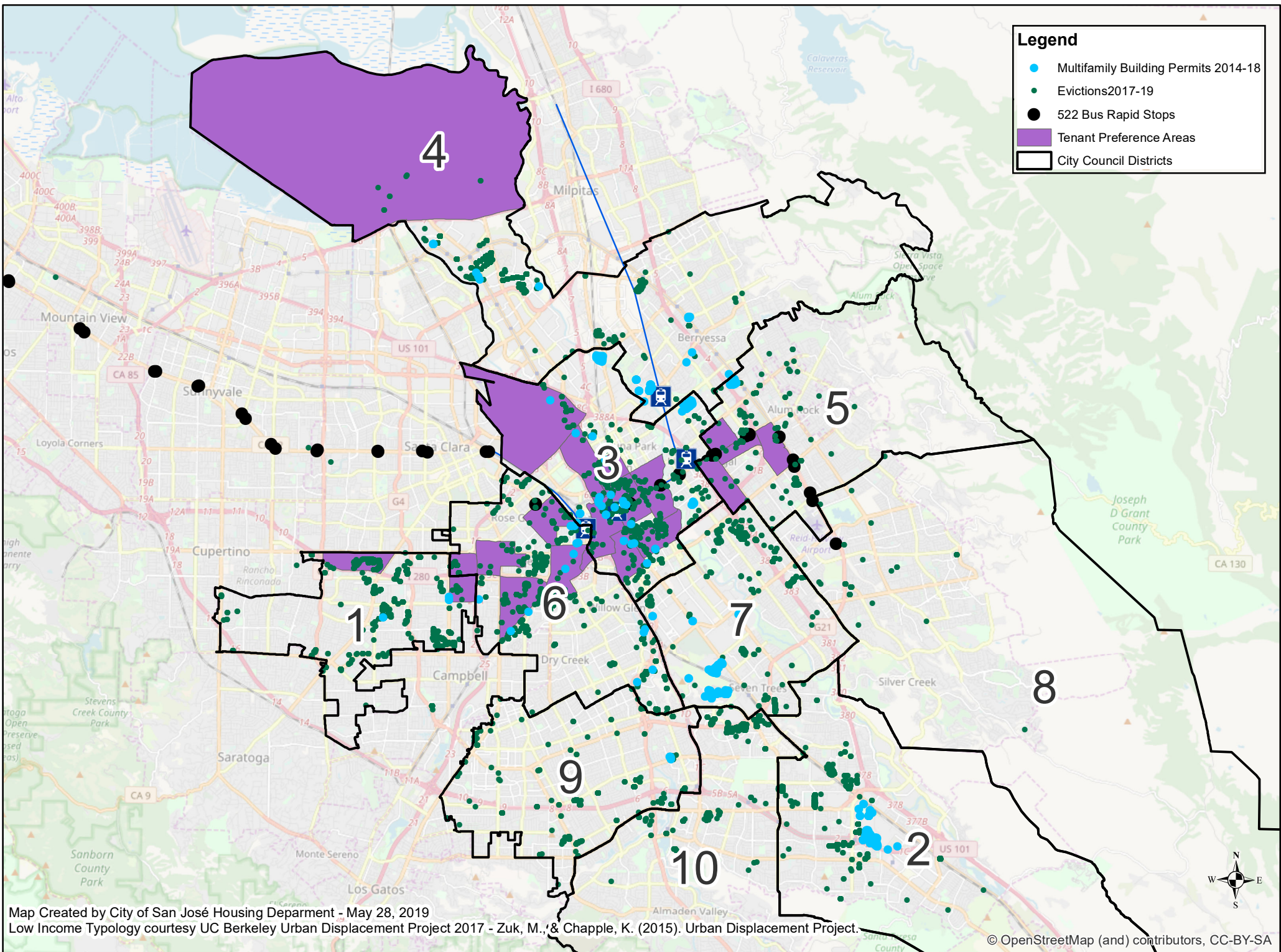
San José Anti-Displacement Tenant Preference Areas - Draft



Legend

- City Council Districts
- Multifamily Building Permits 2014-18
- Affordable Housing Pipeline
 - Approved
 - Prospective
 - Evictions 2017-19
- Above Avg Severely Cost Burdened Renters
- Tenant Preference Areas

San José Building Permits, Pre-Eviction Notices, and Transit Projects



Map Created by City of San José Housing Department - May 28, 2019
Low Income Typology courtesy UC Berkeley Urban Displacement Project 2017 - Zuk, M., & Chapple, K. (2015). Urban Displacement Project.

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Gentrification and Displacement Census Tract Typologies

Regions defined as 9-county Bay Area, and the remaining counties are each their own region.

Typology	Typology Criteria
Not Losing Low-Income Households (Low Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Low Income Tract in 2015 • Not classified as At Risk of, Ongoing, or Advanced Gentrification
At Risk of Gentrification (Low Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Low Income Tract in 2015 • Vulnerable in 2000 (Defined in Appendix) • 2 out of the 4 of the following is true in 2015: <ul style="list-style-type: none"> ○ Has rail station in tract ○ % of units in pre-1950 buildings > regional median ○ Employment density (2014) > regional median ○ “Hot market” (options defined below table) • Not currently undergoing displacement or ongoing gentrification
Displacement of Low-Income Households/Ongoing Gentrification (Low Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Low Income Tract in 2015 • Vulnerable in 2000 (Defined in Appendix) • Population stable or growing 2000-2015 • Loss of LI households 2000-2015 (absolute loss) • Either: <ul style="list-style-type: none"> ○ “Hot market” (Defined in Appendix) ○ LI migration rate (percent of all migration to tract that was LI) in 2015 < in 2009 – Or – • Low Income Tract in 2015 • Gentrified in 1990-2000 or 2000-2015 (Defined in Appendix)
Advanced Gentrification (Moderate to High Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Moderate to High Income Tract in 2015 • Gentrified in 1990-2000 or 2000-2015 (Defined in Appendix)
Not Losing Low-Income Households (Moderate to High Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Moderate to High Income Tract in 2015 • Not classified as At Risk of, Ongoing, or Advanced Exclusion
At Risk of Exclusion (Moderate to High Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Moderate to High Income Tract in 2015 • 2 out of the 4 of the following is true in 2015: <ul style="list-style-type: none"> ○ Has rail station in tract ○ % of units in prewar buildings (1950) > regional median ○ Employment density > regional median ○ “Hot market” (options defined below table) • Not currently undergoing exclusion – none of the below classifications are met

URBAN DISPLACEMENT

Displacement of Low-Income Households - Ongoing Exclusion (Moderate to High Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Moderate to High Income Tract in 2015 • Population stable or growing 2000-2015 • Loss of LI households 2000-2015 (absolute loss) • Either: <ul style="list-style-type: none"> ○ “Hot market” (options defined below table) ○ LI migration rate (percent of all migration to tract that was LI) in 2015 < in 2009
Advanced Exclusion (Moderate to High Income)	<ul style="list-style-type: none"> • Pop in 2000 > 500 • Moderate to High Income Tract in 2015 • <20% LI in 2000 and % LI in 2015 < % LI in 2000 • LI migration < regional median in 2015

Appendix

- **Vulnerable to gentrification in 1990 or 2000 (at least 3 out of 4 of the following indicators):**
 - % low income households > regional median
 - % college educated < regional median
 - % renters > regional median
 - % nonwhite > regional median
- **“Hot Market” in 2000 or 2015**
 - Change in median real rent > regional median
 - or*
 - Change in median value for owner-occupied homes > regional median
- **Gentrification from 1990 to 2000 or 2000 to 2015**
 - Vulnerable in base year (as defined above)
 - Demographic change between base and end years (at least 2 of 3 occurring):
 - Growth in % college educated > regional median
 - Growth in real median household income (percent change) > regional median
 - Lost low-income households
 - LI migration rate (percent of all migration to tract that was LI) in 2015 < in 2009 (only used for 2000-2015 time frame)
 - “Hot market” (defined above)
- If any individual variable is missing, then the whole typology is missing.
- Tracts with a coefficient of variation > 15% on several key 2015 variables are flagged and determined unreliable:
 - Population
 - Housing units
 - Median rent
 - Median home value
 - Median income
 - College count
 - Renter count