



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** November 19, 2021

Approved

Date

11/23/21

**SUBJECT: UPDATE ON EVICTION PREVENTION HELP CENTER AND  
EXPANSION OF LEGAL SUPPORT AND SERVICES**

## RECOMMENDATION

- (a) Accept the staff report on the Housing Department’s efforts to provide rental assistance, legal services, education and support to vulnerable households in the City of San José at Eviction Prevention Help Centers; and
- (b) Adopt the following Appropriation Ordinance Amendments in the General Fund:
  - (1) Decrease the Measure E – 10% Homelessness Prevention Reserve by \$575,000; and
  - (2) Establish a Measure E – Homeless Legal Services appropriation to the Housing Department in the amount of \$575,000.

## OUTCOME

The City Council will understand how the Housing Department is currently working to provide rental assistance, legal services, education and support to impacted tenants and property owners at the Eviction Prevention Help Centers. Approval of the recommendation authorizes a cost and benefit analysis of a right to counsel legal services model. This is the first step in considering whether investing in a right to counsel program would result in a benefit to the City. Finally, approval authorizes the Housing Department to move forward establish a legal clinic model with local law school(s).

## **BACKGROUND**

On June 28, 2021, California Governor Gavin Newsom signed into law AB 832<sup>1</sup>, enacting a number of protections against eviction for tenants who have been unable to pay rent debt that accrued during the COVID-19 crisis. AB 832 includes additional requirements of local rental assistance programs, as described in the September 28, 2021 staff memorandum<sup>2</sup>, and contains provisions that help streamline rental assistance payments to tenants and property owners.

AB 832 contains the COVID-19 Rental Housing Recovery Act (the “Recovery Act”), effective through September 30, 2024. The Recovery Act applies to rent debt accumulated during the COVID-19 hardship periods, which include COVID-19 rental debt (March 1, 2020 to September 30, 2021 rent) and COVID-19 recovery period rental debt (October 1, 2021 to March 31, 2022 rent), if the debt accumulated during a tenancy initially established before October 1, 2021.

The Recovery Act contains three main protections:

- 1) Requires that property owners provide information about the availability of rental assistance and information about how to apply when they issue a notice for nonpayment of rent;
- 2) Requires property owners to apply for rental assistance and be denied (or wait twenty days without a response from the rental assistance program or without the tenant completing their portion of the application) before a Court will allow them to evict; and
- 3) Authorizes Courts to stay eviction proceedings and reinstate tenancies if a tenant’s application for rental assistance has been approved and payment is pending to the property owner.

On October 5, 2021 the City Council approved participating in the State’s rental assistance program and transferring the City’s allocation of \$36.2 million in U.S. Treasury funds to the State to administer.<sup>3</sup> Providing rental assistance to the most vulnerable households in San José remains a priority. The Housing Department continues to operate two Eviction Prevention Help Centers and participate in “pop-up” events in targeted areas of the City assisting households to complete the State rental assistance applications. Legal services, along with tenant and landlord education, are also available at the Eviction Prevention Help Centers.

In a November 8, 2021 press release, California Attorney General Robert Bonta announced that he joined a multistate coalition supporting an interim rule expanding eviction protections for HUD-assisted tenants. Understanding that the emergency rent relief funds need to reach tenants and landlords to make a dent in addressing the threat of eviction looming for many tenants,

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB832](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB832)

<sup>2</sup> Staff report to City Council September 28, 2021:

<https://www.sanjoseca.gov/home/showpublisheddocument/77493/637680987831670000>

<sup>3</sup> Staff report to City Council October 5, 2021:

<https://www.sanjoseca.gov/home/showpublisheddocument/77821/637689311589630000>

Bonta stated, “we've got to do everything we can to protect renters from eviction during this financially precarious time.”<sup>4</sup>

On September 28, 2021, during an update on the expiration of the eviction moratorium, the City Council directed staff to return with: a) a recommendation for opening a third Eviction Prevention Help Center and the estimated cost, and b) opportunities to expand tenant and landlord education, assistance and legal services.

## **ANALYSIS**

The City of San José remains committed to protecting the most vulnerable communities negatively affected by the COVID-19 pandemic. While the statewide Eviction Moratorium expired September 30, 2021, there are some limited protections in place under AB 832 and the City will continue its efforts to encourage and assist tenants to apply for rental assistance.

### ***Eviction Prevention Help Center Program***

In August 2021, the City launched two permanent locations for tenants to get help with rental applications: on the 12<sup>th</sup> floor of City Hall and the Franklin McKinley School District. These sites are referred to as Eviction Prevention Help Centers. At these sites, Rental Assistance Navigators help tenants submit rental assistance applications; assistance is provided in various languages including Spanish, Vietnamese, Mandarin, and English. Additional language assistance is also available. The centers also offer access to legal services, with staff onsite from the Law Foundation of Silicon Valley (Law Foundation) and Bay Legal.

In addition to these two permanent locations, City staff have coordinated with organizations across the City to host pop-up events offering information regarding the Eviction Moratorium and rental assistance application help. Since July, Housing Department staff participated in more than 90 pop-up events, including an event in partnership with the Santa Clara County Superior Court.

Since the launch of the Eviction Prevention Help Centers and through pop-up events, staff has assisted over 1,000 families in applying for rental assistance. Over 64% of households were assisted in Spanish and over 5% in Vietnamese. At least 70% of the households were extremely low-income.

City staff has also coordinated with Santa Clara Superior Court in efforts to connect eligible tenants and landlords to rental assistance. Recent efforts include having Rental Assistance Navigators onsite at the downtown Superior Courthouse during the Unlawful Detainer calendars on Wednesday and Thursday mornings in addition to providing flyers in five languages informing people about rental assistance. The Judicial Officer that hears the Unlawful Detainer

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<sup>4</sup> <https://oag.ca.gov/news/press-releases/attorney-general-bonta-hud-must-use-its-full-authority-protect-renters-eviction>

calendar is highly supportive of this effort and support was also expressed by landlord and tenant attorneys, court mediators, and court staff.

The County has recently expanded services at a vaccine clinic to create the “Story Road Services Hub,” located at 1775 Story Road, Suite #120. This hub center now offers both in-person rental assistance help and isolation and quarantine assistance. The County’s rental assistance team is onsite three days a week on Monday, Wednesday and Friday to provide application assistance. During the other days, County staff onsite are trained to provide rental assistance and Isolation & Quarantine resources as well as do a warm handoff to Emergency Rental Assistance/Isolation & Quarantine teams for follow-up.

City staff is developing technology tools to expand access to eviction prevention information, resources and services. In the short term, these tools provide an efficient way to connect with the Eviction Prevention Help Center. Longer term, the tools can be expanded to provide immediate answers to basic rental housing questions and help residents get connected to appropriate resources without calling or visiting several organizations.

- *Simpligov Online Intake Form* – A link to this form is currently on the Eviction Help Center webpage. Tenants fill out a survey and if “legal services” is requested, they are asked a few more questions, including what their legal issue is. If a request is received, staff contacts the tenant who is invited to make an appointment or come to walk-in legal service hours.
- *San José 311* – An Eviction Prevention Help Center button will be launched on the 311 platform early next year. Initially, it will go to an intake form similar to the current online form but will be expanded to access information on rental housing laws and related services.
- *TOPCities* – A tool resulting from an 18-week innovation sprint with community and tech partners to develop tools that would address pressing local challenges emerging from COVID-19. It was initially designed as a rental assistance finder with the goal of expanding to other uses.

On September 28, 2021, City Council directed staff to return to Council with the cost to open a third City operated Eviction Prevention Help Center. The twelve-month cost to operate a help center is estimated at the following:

<b>Item</b>	<b>Cost</b>
Personnel/Housing Navigators (4 FTE)	\$238,150
Onsite manager/analyst II (1 FTE)	\$145,354
Receptionist/logistics/staff specialist (1 FTE)	\$133,818
Lease/operational costs/technology	\$25,000
<b>Total</b>	<b>\$542,322</b>

The Housing Department does not recommend opening an additional Eviction Prevention Help Center. The County “Services Hub” on Story Road has added capacity to serve individuals in person making it three sites in total for in-person assistance. The Housing Department believes the three sites are providing enough access to rental assistance in conjunction with the targeted pop-up rental assistance events in areas where there is known need. The volume at the existing locations has been steady, but we have not had to turn anyone away because of an inability to provide assistance. Also, providing City Rental Assistance Navigators at the courts two days a week is a more targeted approach and will reach the most vulnerable households. Finally, the Housing Department is concerned that hiring staff for another City operated Eviction Prevention Help Center will be difficult and lengthy.

***Opportunities to Expand Legal Services and Education***

The Housing Department and Santa Clara County Office of Supportive Housing were in negotiations with the Law Foundation for expanded legal services to help cope with increases in evictions expected since the State eviction moratorium ended on September 30, 2021. Like many organizations, the Law Foundation has recently experienced significant staff losses, forcing them to pivot their focus on organizational health and stability rather than expansion. Labor shortages are felt across the nation, but unfortunately, nonprofits often cannot compete. Nonprofits across the country continue to struggle to fill roles, particularly human service organizations. A survey from the National Council of Nonprofits<sup>5</sup> found that 80% of the organizations surveyed said salary has become a major issue in hiring, with real consequences that mean organizations are unable to fill positions that provide direct services.

Even amidst national and local hiring struggles of the nonprofit community, the Housing Department has developed three recommendations to expand legal support and education per the City Council’s direction on September 28, 2021. The Housing Department has explored the following additional legal services and support:

<b>Program</b>	<b>Impact</b>	<b>Estimated Cost</b>	<b>Description</b>	<b>Recommendation</b>
Right to Counsel Cost & Benefit Analysis		\$75,000	Consultant services to study the cost and benefit to implement Right to Counsel program.	Recommended
Law Clinic Model	750 households	\$500,000	Clinic for basic legal consultation and education for tenants (and low-income landlords)	Recommended

<sup>5</sup> Council of Nonprofits surveys and data: <https://www.councilofnonprofits.org/data-how-the-pandemic-and-economic-crises-are-affecting-nonprofits#national>

Expand Tenant and Landlord Education	4,000 households	N/A*	EHC's provide basic information & referral to tenants and landlords on rights and obligations	Recommended
Tenant Representation in Eviction Court	1,110 households	\$1,100,000	Represent low-income tenant on the day of eviction court.	Not Recommended
Legal Representation for Pandemic Response & Recovery	900 households	\$5,500,000	Fund a consortium of legal service providers, based on San Francisco's Right to Counsel.	Not Recommended

\*No cost, work can be incorporated into existing staff work at Eviction Prevention Help Centers.

*Right to Counsel Cost Study (Recommended)*

On September 28, 2021, Council approved a memorandum from Councilmember Peralez with direction to develop a work plan establishing a tenant right to counsel program for low-income households in San José.<sup>6</sup> A right to counsel program ensures that tenants who are facing the complex process of an eviction proceeding are guaranteed legal representation. The Housing Department recommends releasing a request for proposals to engage with a consultant to develop a cost estimate and benefit analysis for a potential Right to Counsel program in San José. It's estimated the study will cost \$75,000. Having legal counsel to represent low-income tenants going through the evictions court process is just one way to help lower-income people stay housed and healthy. However, it is a strategy that several other communities have employed and studied. Early indications are that Right to Counsel programs can be both cost-effective and effective at reducing evictions.<sup>7</sup> Understanding the potential cost, and determining if the benefits outweigh the costs, to implement a program in San José, is the first step in developing a work plan (per Council direction).

*Law Clinic Model (Recommended)*

The legal profession has an important role to play in helping to address the eviction crisis and law clinics can be an affordable and efficient model. Since 2015, law students are required to complete six hours of one or more “experiential” course(s), like a clinic, in order to graduate. Community law clinics have long been committed to housing and eviction work and in recent weeks they have reaffirmed their dedication to helping individuals and families navigate the housing system and their legal options – and to addressing the eviction crisis.

<sup>6</sup> Councilmembers Peralez and Arenas memorandum of September 28, 2021:

<https://www.sanjoseca.gov/home/showpublisheddocument/77497/637683308646000000>

<sup>7</sup> Ingrid Gould Ellen et al., “Do Lawyers Matter? Early Evidence on Eviction Patterns After the Rollout of Universal Access to Counsel in New York City,” *Housing Policy Debate*, vol. 31, pp. 540-561, Nov. 25, 2020,

<https://www.tandfonline.com/doi/full/10.1080/10511482.2020.1825009>.

The proposed pilot program would connect tenants and small low-income landlords to legal consultations and services with trained law students under supervision of an attorney. It is often the case that to address a rental issue, many tenants and landlords simply need basic legal education and consultation about their rights, responsibilities, and options from a trusted source. Where appropriate, law students could assist with more light touch legal tasks like writing a letter or calling a landlord to help the parties resolve the issue informally. With the passage of Tenant Protection Act of 2019 and the prevalence of local renter protections like the Apartment Rent Ordinance and Tenant Protection Ordinance, it is imperative for tenants and landlords to be able to receive help in understanding these laws. In order for these laws to have their intended impact, housing stability, landlords and tenants not only must understand their rights and obligations, but also how to access enforcement mechanisms. With a law student clinic fulfilling the role of legal counseling and consultation in less dire situations, non-profit legal organizations serving San José would be better equipped to concentrate their efforts on tenants who need limited and full representation. Currently, there is not a law school community law clinic with a dedicated tenant-landlord curriculum located in Santa Clara County.

*Expand EHC to provide Tenant and Landlord Education and Counseling (Recommended)*

Using the current Eviction Prevention Help Centers, Housing Department staff would pivot from rent relief access assistance to providing information and referral to tenants and landlords on rights and obligations under local and State rental housing laws. This neutral service would strive to empower residents' understanding of relevant laws and provide them with neutral educational materials in the resident's native language and presented in a culturally appropriate manner. Staff would identify different options for addressing the housing issue and counsel on potential consequences of actions, but not advise on what action to take. This could include coaching a landlord or tenant on communication techniques, reviewing a written communication, or referring them to mediation. A significant component to this service would be expanded education and outreach efforts to at-risk tenant populations and their housing providers. In addition to targeted, linguistically and culturally appropriate education and outreach efforts to family and community groups in the City's most rent-burdened communities, Housing Department staff would train grassroots partners who are front facing with tenants on basic landlord-tenant rights and responsibilities and where to go for help (teach the teachers). The goal would be to make the basics of tenant protections under San José and State law common knowledge in the community and for residents to trust in those laws and responsibilities.

*Tenant Representation in Eviction Court (Not Recommended)*

This pilot would provide in-court attorneys and staffing to represent and assist low-income tenants on the calendar on any given day in eviction court who choose to be represented, for the purpose of reaching a resolution of an eviction case as favorably as possible short of representing tenants at trial. Although tenants will not receive the legal support from when the eviction process begins with the filing of the unlawful detainer complaint, having an attorney present to represent tenants will already dramatically shift the unbalanced eviction process. The estimated cost is \$1.1 million for one year. This is based on the estimated cost per attorney *and support staff* on San Francisco's right-to-counsel program, which commits \$200,000 per year for each attorney/support staff team.

It is assumed that each attorney/staff team would represent tenants in 50 eviction cases per year, which is the benchmark used in San Francisco. In 2019, there were 2,617 eviction filings in Santa Clara County. Because San José contains about 53% of Santa Clara County's total population, we assume that about 1,387 of these filings are against tenants living in San José. Given that 80% of renters in Santa Clara County are low-income, we assume there are about 2,094 eviction filings against low-income tenants in Santa Clara County each year and about 1,110 eviction cases against low-income renters in San José each year.

The Housing Department is not recommending this option due to limited capacity amongst the non-profit legal organizations serving San José. Also, it would be extremely difficult to implement. Unlike other counties in the region, Santa Clara County does not have mandatory settlement conferences or case management conferences prior to any trial starting. There is little opportunity to intervene in a case prior to trial. Logistically, this program could be very difficult to implement if a tenant attorney is meeting their client for the first time on the day of trial.

*Legal Representation for Pandemic Response & Recovery (Not recommended)*

Under this 12-month option, every tenant, regardless of the basis of the eviction or availability of any defenses, who is sued for unlawful detainer and makes a request is provided representation available to them at no cost. The assigned attorney would provide full scope representation to the tenant, including but not limited to, assisting in filling out answers to unlawful detainers, filing responses, appearing on behalf of the tenant in court proceedings, including representation all the way through trial as well as any motion hearings or settlement conferences, and providing legal advice. It's estimated this model would cost \$5.5 million for 12 months. The model of providing legal representation for tenants could be administered through the Housing Department or via a contracted non-profit legal service organization or consortium of legal service providers. The administrator would be responsible for contracting with private attorneys, firms and/or non-profits to represent tenants in eviction cases. This temporary program could be used as a pilot for establishing a long-term service delivery model.

The Housing Department is not recommending this option due to limited capacity amongst the non-profit legal organizations serving San José. Staff consulted with San Francisco staff who have already implemented a right to counsel program. They have stressed the need to build capacity within the legal non-profit system and to increase services over time. The study recommended by the Housing Department will provide information on the infrastructure needed to expand legal services in San José.

**CONCLUSION**

Since October, the Housing Department has implemented creative responses and programs that assist the most vulnerable households seeking rental assistance and legal support. In partnership with the Law Foundation and Bay Legal, the Eviction Prevention Help Centers now provide legal education and consultations. Additionally, Housing Department staff are working in the courts two days a week during unlawful detainer hearings providing access to rental assistance.



Per Council direction from September 28, 2021 to explore opportunities for expansion, the Housing Department is recommending the following expansion of legal services and education:

1. Right to counsel cost study,
2. Legal clinic and advice model, and
3. Expand legal education and outreach at Eviction Prevention Help Centers

It's estimated these efforts will reach 4,750 households.

### **EVALUATION AND FOLLOW-UP**

The City Council has requested regular updates on progress of resident access to Emergency Rental Assistance. Staff has access to a State dashboard to track local data, including the number of households served, the amount of funding distributed, the geographic distribution of funds, aggregated demographic information, and the length of time it takes for applications to be processed. Housing will share that information regularly with Council via City Manager's COVID-19 updates at City Council and via regular information memoranda. The Housing Department will include updates on legal services in these updates.

Councilmembers have been provided toolkits with multi-lingual information to share with constituents via newsletters, social media, and other outreach efforts. As updates become available, they will be shared. Councilmembers are a critical conduit to reaching our most vulnerable residents.

Additional updates on program implementation will be provided to the City Council via quarterly updates at both Neighborhood Services and Education Committee and Community and Economic Development Committee via reports on the Residential Anti-Displacement Work Plan.

### **CLIMATE SMART SAN JOSÉ**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

The Housing Department developed this recommendation in partnership with our colleagues at the Law Foundation. Additionally, the Housing Department regularly updates partners at Santa Clara County Office of Supportive Housing, Destination: Home and Sacred Heart Community Services. The Housing Department and County Office of Supportive Housing also holds ongoing weekly meetings with the Courts to update and coordinate with them on rental assistance and legal support and education.

### **COORDINATION**

The memorandum was coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

Due to the urgency of this matter, staff was unable to bring this item to the Housing and Community Development Commission for input.

### **FISCAL/POLICY ALIGNMENT**

The recommendations outlined here are in alignment with the Citywide Residential Anti-Displacement Strategy goals to:

- Support equitable COVID-19 recovery and impact mitigation measures for renters and homeowners, and
- Establish new sources of funding for affordable housing and anti-displacement.

### **COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION: \$575,000
2. SOURCE OF FUNDING: General Fund, Measure E – 10% Homelessness Prevention Reserve
3. FISCAL IMPACT: These recommendations appropriate \$575,000 from the Measure E - 10% Homelessness Prevention Reserve to a new Measure E – Homeless Legal Services appropriation to fund additional legal services and education at a legal clinic and to develop a right to counsel cost and benefit study. There is no ongoing fiscal impact to the General Fund as a result of this action.

November 19, 2021

**Subject: Update on Eviction Prevention Help Center and Expansion of Legal Support and Services**

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**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2021-2022 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	8598	Measure E – 10% Homelessness Prevention Reserve	\$1,270,140	(\$575,000)	867	10/19/2021 Ord No. 30682
001	New	Measure E – Homeless Legal Services	\$0	\$575,000	N/A	N/A

**CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (Housing)

/s/  
JACKY MORALES-FERRAND  
Director, Housing Department

  
JIM SHANNON  
Director, Budget Office

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