

RE: Healthy Housing Elements for Californians (8/1/22)

Dear Housing Elements Officials,

We, at Business and Housing Network (BAHN), endeavor to provide a supportive community platform for mom-and-pop property owners throughout California. We are mostly immigrants and seniors working hard and overcoming language and cultural barriers to try to achieve the “American dream” of a middle-class life by investing our efforts and hard-earned savings in providing housing to renters. We highly value the importance of an inclusive community.

Not long ago, without “too much bureaucracy of tenant protection,” when we came to California with little financial credential, we were able to find housing often offered by small mom-and-pop housing providers, and were readily accepted into the communities. For generations the small property owners are the backbones of the community housing, embracing and inspiring people from all walks of life and from all over the world. Sadly that social harmony in California has been slowly crumbling. The ever expanding hostile bureaucracy and draconian rental policies are dividing people, tearing down the centuries’ of proven prosperity through free enterprise, self governance, and respect for contractual business partnerships. The governmental traps for the residential rental business are now too daunting for the small players that the privilege is reserved as the playground for big-money corporations and government-funded organizations. The pathway for small mom-and-pop owners to middle class, along with their community-friendly privately-owned housing stock, are systematically squeezed out of the market.

Data and economists consistently show that rent and building restrictions destroy the housing supply and hurt housing providers and renters alike at same time (see links below). Yet, the current housing element packet perpetrates and turns a blind eye on such failures:

- Rent control distorts the rental prices and pits one group of renters to subsidize another.
- It completely disregards property owners as laborers who deserve fair compensation to support their families’ livelihoods and keep up with the costs associated with properly maintaining their properties.
- The forced income/cost deficits destroy the rental housing entrepreneurships, resulting in shrinking housing offerings, increased competition among renters for the limited housing availability, forced front-loading of higher rents by the surviving housing providers and reduced rental housing construction.
- Many housing policies nullify the mutual contractual terms between an housing provider and their tenant clients, resulting in tremendous legal and financial uncertainty for housing providers, especially for the mom-and-pop and frail seniors with limited education, language skills or mobility, which undermine their control over their relations with their tenants.
- This government-induced disrespect for property rights result in increased bad tenant behaviors and problems for the safety and enjoyment of the community. The exorbitant legal costs and disputes only add to government/owner/renter financial and social woes.
- To see the deterioration of housing affordability and the quality of life under these horrific rent control and “tenant protection” laws, look no further than the infamous New York City, San Francisco, East Palo Alto, Oakland and newly extreme-rent-controlled St. Paul, where housing constructions have dwindled.

As one can see, the proliferating draconian "tenant protection" and rent control policies do not work. California must start respecting the basic economics that every housing regulation or fee add to the base cost and thus rent. The government must allow businesses and clients to establish and enforce contractual terms



BAHN – a non-profit grassroots organization to unite & connect Mom & Pop property owners in CA. Together, we fight for property rights!

among themselves, effectively improve infrastructures and fairly facilitate communities to restore prosperity and harmony. The government shall work with the housing providers as partners, instead of working against them and driving them out of business; it shall device programs to provide direct rental assistance for families in need and provide education and down-payment assistance so that more renters can become homeowners.

America is built on free enterprise principles. These principles fuel human ingenuity to thrive and overcome difficulties. Please reverse the destructive rent restriction policies and allow mom-and-pop housing providers to thrive and support the housing needs of our communities for generations to come.

References:

<https://www.gsb.stanford.edu/faculty-research/publications/effects-rent-control-expansion-tenants-landlords-inequality-evidence>

<https://caanet.org/uc-berkeley-economist-criticizes-rent-control-prop-10-in-new-study/>

<https://www.youtube.com/watch?v=vZyeNFTje2A>

<https://www.aier.org/article/the-perpetual-tragedy-of-new-yorks-rent-control/>

<https://data.census.gov/cedsci/table?q=DP04&q=0500000US06075&tid=ACSDP1Y2019.DP04>

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City of San Jose Planning Department and Housing Department.

As a part of the Housing Element Update, cities in California must assess housing needs, and adopt programs and policies that respond to these needs. The state requirement to affirmatively further fair housing through the Housing Element Update process provides an additional framework to develop programs and policies to expand access to affordable housing, stabilize communities and prevent displacement. This framework requires both broad and targeted public engagement in soliciting perspectives on housing needs and solutions, and explicitly supports a process to generate programs and policies to address the constraints faced disproportionately by lower-income BIPOC communities and individuals.

The standard for public engagement under the AFFH guidelines is high - early, often and ongoing. Early engagement and ongoing discussion is central to this process, which acknowledges that the process of community needs identification and policy or program development can take years.

The comments and recommendations presented in this letter are the result of such a process to understand and develop responses to chronic housing instability and displacement in our city. This process has been ongoing in the City of San Jose for years. For many of our organizations, this work has been central to our missions, and organizing and advocating has been central to our work. Most of the organizations involved in this process have also been active participants in formal anti-displacement community engagement efforts, and policy research, led by an evolving collaboration between the City of San Jose and multiple community serving organizations. These efforts have included hundreds of hours of community discussions and stakeholder meetings, detailed analysis, presentations to appropriate commissions, and the City Council endorsement of an Anti-Displacement Strategy.¹

This group met for the first time in December of 2021 to discuss the most effective and efficient way of engaging in the Housing Element Update process given the time and resource constraints of both city staff and our respective organizations. There was consensus that the hardships facing our communities were ongoing, the needs and constraints were well established, and the tools needed to respond were well known at this point. In the midst of the community crisis stemming from the pandemic, it seemed most important to reaffirm consensus

1

<https://sanjose.legistar.com/View.ashx?M=F&ID=8772026&GUID=C6ADD217-83DD-4F7E-B480-056B228DCAF1>

policy and program responses, and to prioritize policy solutions where there has been less progress. There was a collective prioritization process, and the group's priorities were shared amongst our organizations and constituencies.

After establishing the programs that were already being developed by the city based on community input and City Council direction, the remaining consensus priorities were divided into Tier I and Tier II sets of substantive proposals.

There was a public community meeting held on February 24th of this year, sponsored by our organizations in partnership with the city, to discuss the need for additional anti-displacement measures as part of the requirements under AFFH guidelines. On March 7, our group met directly with City of San José staff, as an organized working group of stakeholders representing lower-income renters and communities of color, to discuss our priorities and how they might best be integrated into the Housing Element Update. In a follow-up meeting there were additional efforts to clarify the priorities and to identify areas of agreement.

The Tier I priorities included:

- Develop a process for recognizing organized tenant associations to target ARO enforcement and code enforcement as part of the expanded tenant resource center, including the potential of a receivership program for chronic offenders.

- Amend the Apartment Rent Ordinance to include duplexes (single family homes).

- Amend the Apartment Rent Ordinance to lower allowable rent increases below 5%.

- Establish programs to fund technical assistance for COPA , alternative community ownership models, and other preservation efforts.

- Expand local tenant-based housing voucher programs or to allow people more options to live in higher opportunity areas instead of continuing to segregate people of color in low income, under-resourced areas.

The following organizations were involved with this process at various stages:

- Catalyze SV

- The Health Trust

- Sacred Heart Community Services

- LUNA

- Asian Law Alliance

- Amigos Center

- Law Foundation

- Vietnamese Roundtable

- Somos Mayfair

- Law Foundation of Silicon Valley

- SV@Home

- Vietunity

- African American Community Services Agency (AACSA)

- Catholic Charities

Affordable Housing Network (AHN)
Working Partnerships USA

When the Draft Housing Element was released, this group came together again to see how our input was incorporated into the draft. A full list of our priorities, corresponding strategies incorporated by staff into the draft currently open to public comment, and the feedback which was generated by this discussion are detailed in the table appended to this letter.

Inclusion of our priorities in the Draft Housing Element

Overall, the City has made a good effort in documenting the ongoing work in the city, and further addressing many of our priorities through the proposed goals and strategies in the document. We appreciate the time the city has taken to meet with us in good faith. Critical pieces of our collective ongoing work, some of which has struggled with delays, are well represented in the draft including: the development of a Community Opportunity to Purchase Act with other preservation and community ownership models, and creating a neighborhood preference for affordable housing. The draft includes a robust set of policies and programs, and efforts have clearly been made to articulate processes, timelines and metrics to establish expectations. A comprehensive list of our priorities, those underway and those we have identified as additional priorities, is appended below this letter.

There are, however, a number places where we believe the proposed processes, and timelines, fall short of what is needed to ensure impact during the 6th Cycle

Amend the Apartment Rent Ordinance to include duplexes (and possibly single family homes) and Amend the Apartment Rent Ordinance to lower allowable rent increases below 5%.

We support the city's inclusion of S-29 as a strategy in the Housing Element draft. However, we encourage the city to put a more defined timeline and more clarity on what kind of amendments would be presented to council. It is essential to get tangible improvements to the ARO after committing to going through a process that is estimated to be implemented in 2-3 years. It is worth exploring basing the allowable increases on factors such as cost of living, inflation, and cost of operation while ensuring the cap does not exceed the current 5% cap. We appreciate the policy process, but believe there is little question that many in our community lack the protections we have deemed important, just because they rent in smaller buildings.

Develop a local Right to Counsel program to provide legal services in eviction proceedings.

We believe this program, which has already been identified as a critical element in the City's Anti-displacement Strategy, lacks a full articulation of the goals and challenges targeted through these efforts by understating the importance of accountability. Just as a housing collaborative court should focus on keeping people housed and preventing homelessness, and think broadly about the range of landlord responsibilities in this process, the right to counsel must be paired with supporting city policies to engage with the courts and programs to support enforcement of tenants' rights. Rather, the Housing Element draft takes an educational approach, such as in

S-23 of Chapter 3. While this may be helpful to small landlords who may be unaware of the law, this will have no impact on those knowingly and willingly violating the law. Indeed, management companies and big landlords should in particular be aware of local laws, as it is their business to know. Yet, tenants continue to live in substandard conditions, pay illegally high rents, and fall victim to landlord harassment, discrimination, and retaliation. This item is described in more detail at the end of this document.

Develop a process for recognizing organized tenant associations in targeting ARO enforcement and code enforcement as part of the expanded tenant resource center, including the potential of a receivership program for chronic offenders.

The current Draft of the Housing element lacks detailed, substantive policies to empower renters to organize their community and ensure their rights. There are valuable strategies to educate tenants on their rights and develop more city capacity for code enforcement, but the needs are broader. We would ask that the City adopt a local “right to organize” policy, to augment the State protections with local enforcement. We also believe that a more formal integration of established tenant unions or organizations in building code, and renters rights, enforcement is a critical step to realize the value of these organizations to the tenants themselves and the city as a whole. This item is described in more detail at the end of this document.

Recognize the need for reparations in land use and anti-displacement policies in formerly redlined neighborhoods.

We appreciate the inclusion of the Equitable Neighborhoods-Based Investment Strategy (N-1) in the current draft of policies and programs. If successful the strategy would employ an equity framework to align city departments to prioritize investment in our communities that have suffered from decades of neglect. It is especially important that this program acknowledges that the planning and prioritization process must be driven by people who live in these communities as co-creators of this development and anti-displacement effort - building on the extensive existing community work on anti-displacement solutions and continuously supporting broader community engagement.

We do have a number of concerns, however. First, the discussion of equity-framework has been ongoing in San Jose, and we are rightfully concerned that data alignment, coordination of service delivery, and prioritization of funding continues to lack specific time lines and continues to note that this work is as yet unfunded. This is a missed opportunity to set deadlines and identify sources of resources to move from promise to progress.

We are also concerned that while there is recognition that this program will require a multidimensional response, there is no direct mention of land use and the need to incorporate the production and preservation of affordable housing. Creating more affordable housing in these areas is an investment, especially if the city can ensure that these housing opportunities serve residents in these areas. The anti-displacement tenant preference and the neighborhood tenant preference policies in S-20 will be essential to keeping neighborhoods whole and invested in. Mentioned in previous priorities, empowering tenants also provides the community

support to look after each other in these neighborhoods as they face the changes that come with investment.

Finally, we believe this Strategy N1 needs to acknowledge the need for programs and policies that focus on equity-based outcomes for racial groups and protected classes across all efforts to reinvest in people who have historically been excluded. This strategy must address the distinction between place-based vs people-based discrimination and the hardships of not only the most visible and populous minority groups, but those groups that exist in much smaller communities, including Black and Indigenous residents. We believe this will require an explicit reparations framework that acknowledges lasting harm across income categories.

Discrimination Against Tenants with Eviction Records and Low Credit Scores - New priority

The Housing Element draft should include measures to protect tenants with eviction records and low credit scores. Resources should be provided to help tenants reverse default judgments against them which would enable them to mask their eviction case. This is particularly important as default judgments can make up as much as 50% of evictions. The City should also prevent private entities, companies, and individuals from collecting and selling court records to landlords and management companies. Additionally, landlords should be prevented from asking applicants whether they were evicted in the past on rental applications. This would impede the ability of landlords to discriminate against tenants for prior evictions. The City should also further assess how to help tenants with low credit scores. Solutions can include workshops to help people understand their credit score and how to improve it, as well as how to remove negative information.

Housing should be made more accessible to San Jose residents, not more difficult. The Law Foundation of Silicon Valley sees first hand the huge economic impact the pandemic has had through the number of eviction related calls they receive. In most cases, San Jose residents are facing non-payment of rent evictions and/or have accumulated substantial debt during the pandemic through no fault of their own. This widely affects the working class and service workers in San Jose who often make minimum wage in an inflated housing market, which in many cases pushes residents out of San Jose.

Addressing past evictions and low credit scores is also a means of affirmatively furthering fair housing, as this makes way for discriminatory practices and unfair housing opportunities. People of color are much more likely to have low-credit scores and have limited options when renting a unit in an already inflated market. These rental units are usually in areas with limited access to resources, poor living conditions or they are unpermitted units. It is important for the Housing Element to address these issues and practices that make it difficult for people to rent and pushes residents out of San Jose or into homelessness.

Specific housing needs of survivors of Domestic Violence - New priority

The draft appendix B references outreach to domestic violence survivors and notes that common problems include: “lack of shelter beds, lack of affordable housing, documentation

issues to apply for housing if prior documentation was in the name of husband and general lack of support in transitioning to living without partner.” Appendix B goes on to further acknowledge that the demand for housing for those fleeing domestic violence is greater than the supply. However, Chapter 3: Housing Goals and Strategies does not propose anything to address these concerns from survivors.

Domestic Violence is a unique housing issue that must be addressed in the Housing Element, as survivors are often victimized in the home. In addition to the need for more shelters and affordable housing for survivors of domestic violence, there must also be more measures to prevent survivors from losing their homes. Although state laws exist that provide some protection from evictions to survivors of domestic violence, these protections are limited where the abuser is a tenant of record to the property. Survivors should have the right and landlords should have the obligation to relocate survivors to a different unit when available. Finally, there should be more funding to provide survivors resources to pay off back rent, and to give them support to pay rent and the security deposit in a new home.

Other policies and programs we strongly support

Although, not from the original priorities, we are also in support of the following strategies found in the draft:

- S-10: Study on rent increases and burden in affordable housing - Research how rent increases in the City's restricted affordable apartments have been implemented over the last five years, given that area median income continues to increase rapidly in Santa Clara County. Study rent burden and demographics for residents of affordable homes, and use research results to inform proposed state legislation and/or City policy. Present findings and policy recommendations to the City Council.
- S-12: Eviction prevention - Housing Collaborative Court and other support for legal services - Work in ongoing partnership with the County's Superior Court to staff an Eviction Diversion Program, holding weekly workshops at the Court to offer a spectrum of resources to all parties, including rental assistance, social services referral, mediation, and legal assistance. Identify funding to continue Eviction Diversion programming. Explore conversion of Superior Court Eviction Diversion into a Collaborative Court model, as appropriate. Increase funding to nonprofit legal organizations to provide eviction counseling and defense.
- S-31: Expand/amend the Tenant Protection Ordinance - Review the Tenant Protection Ordinance for ways it could apply to restricted affordable apartments and still be consistent with rules for common funding sources such as low-income housing tax credits and State funding programs, and propose amendments to the City Council.

Anti-displacement policies build upon each to create a safety net to protect the community. As each policy is developed and implemented, we are creating stable and inclusive neighborhoods. We look forward to staying continuously connected to the city to ensure that these priorities and strategies are adopted and enacted.

Kind regards,

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Appendix I

Policies and Programs already being developed by the City of San Jose

Priority	Corresponding Strategies in Housing Element	Feedback
Providing targeted outreach/assistance to BIPOC communities to ensure they have full access to the “Doorways” software for affordable housing applications when this becomes operational.	S-13, S-16	Support as written
Community Opportunity to Purchase Act (COPA), including technical assistance support for Community Land Trusts, tenant/community ownership	R-4, R-9	This is a top priority and we encourage the city to quickly pass the COPA policy with the input from the community. The policy should also create a pathway for CLTs to become a QNP.
Develop program to fund technical assistance for community-based acquisition/rehabilitation and affordable housing production.	P-31, R-5, R-9, N-4	Support as written
Expand direct community representation on Boards/Commissions.	I-9, I-11	Support as written
Develop a local Right to Counsel program to provide legal services in eviction proceedings.	S-28	More feedback provided in the main letter. To truly make this effective, we recommend advocating for a housing collaborative court.
Develop a multi-platform Tenant Resource Center that supports access to both local and state tenant protections,	S-1, S-23, S-27	We are happy about the plan creation of a permanent tenant resource center, but we also see no program or policy addressing the tenant’s

including the right to organize - Eviction Help Center		right to organize. See feedback on the main letter.
Develop a Neighborhood Preference program, which ensures that new affordable housing, in lower-income neighborhoods, has a portion of the new units set aside for residents of the surrounding neighborhood.	S-15, S-20	Support as written
Amend Measure E expenditure plan language to clarify the eligibility of acquisition and rehab projects that create deed-restricted affordable units.	Completed 2022	No action needed.

Tier I Priority Policies and Programs (Not in order)

Priority	Corresponding Programs in Housing Element	Feedback
Develop a process for recognizing organized tenant associations in targeting ARO enforcement and code enforcement as part of the expanded tenant resource center, including the potential of a receivership program for chronic offenders.	S-1, S-3, S-5, S-6, S-23, S-27	Significant feedback provided in the main letter.
Amend the Apartment Rent Ordinance to include duplexes (and possibly single family homes).	S-29	Could use more details and have a clear actionable timeline.
Amend the Apartment Rent Ordinance to lower allowable rent increases below 5%.	S-29	More feedback provided in the main cover letter.

Establish programs to fund technical assistance for COPA , alternative community ownership models, and other preservation efforts.	R-12, N-4	Support as written. We strongly encourage the city to move this forward. This is a critical piece for more community led nonprofits to build capacity to create a robust and local preservation ecosystem.
Expand local tenant-based housing voucher programs or to allow people more options to live in higher opportunity areas instead of continuing to segregate people of color in low income, under-resourced areas.	P-2, P-17, P-29, S-14, S-25	Support as written

Tier II Priority Items (not in order)

Priorities	Corresponding Programs in Housing Element	Comments
Recognize the need for reparations in land use and anti-displacement policies in formerly redlined neighborhoods.	N-1, S-20	Deeper feedback is included in the main letter.
Continue to support Permanent Supportive Housing.	P-2, H1, H-2, H-3, H-5, H-8, H-11	Support as written
Adopt policies to ensure that opportunities for public participation are fully supported with multi-lingual material and translation, and are structured in ways to expand opportunities for concrete input.	I-7, I-8	Support as written
Increase accessibility requirements for city-funded affordable housing developments to expand	P-21, I-1	Support as written

opportunities for older adults and people with disabilities.		
Develop a local Fair Chance /"Ban the box" ordinance which would make it illegal to include questions about prior convictions or history of incarceration from initial rental applications.	S-17	Support as written
Update local Ellis Act Ordinance to reflect state (SB 330) guidelines on relocation, replacement of affordable units, and right of return.	P-13	Support as written

Appendix II

Detailed discussion of select priorities not sufficiently addressed in the current Draft Housing Element

Develop a local Right to Counsel program to provide legal services in eviction proceedings.

We believe this program, which has already been identified as a critical element in the City's Anti-displacement Strategy, lacks a full articulation of the goals and challenges targeted through these efforts by understating the importance of accountability. The related item, a housing collaborative court should focus on keeping people housed and preventing homelessness. Too often in unlawful detainer proceedings, there is an outsized focus on the landlord's property rights and right to collect money over the needs of tenants. A collaborative court should include rental assistance, assistance with searching for housing, and case management. A collaborative court should also address violations of the landlord. Too often landlords get the back rent owed through unlawful detainers, while the tenant's home remains in disrepair, with conditions like mold, mice infestations, and broken appliances. Tenants should be able to get a reduction in rent for poor habitability conditions, as well as request a hearing on these issues without the risk of being evicted.

A collaborative court should also include mandatory settlement conferences. Other jurisdictions in California require mandatory settlement conferences prior to a trial in unlawful detainer cases, this requires both parties to come to the settlement table with a neutral facilitator. This is often best for both parties. However, there is no mandatory settlement requirement in Santa Clara County, thus a landlord can refuse to engage in settlement talks or settlement talks happen without a neutral third party, which opens the possibility for intimidation, manipulation, and one-sided settlements from the landlord.

We are also supportive of the draft's recommendation to pursue Right to Counsel in housing court. However, there are several other common problems in the court process that must be addressed in order to sufficiently address the high rates of eviction. A Right to Counsel program would otherwise be limited in its success. The City should consider undertaking a study to address inefficiencies in the court system and consider solutions to remedy the problems. Currently some of the issues that exist include a lack of clerks and staff available to assist tenants (and lawyers); no online access to cases and information; limited to no phone access to court staff; and biases among court staff, including judges and commissioners. .

An assessment should include the rate of defaults, outcome of cases, and other factors to assess bias and deficiencies within the court system that can be fixed to ensure that tenants are able to fully and fairly access the court system. Furthermore, for goals concerning collaborative court, right to counsel, and other similar measures involving the eviction process, a metric of success should also include the number of evictions/households displacement that are prevented, with a goal to decrease evictions/displacement by 10% within two years (as a basis

of comparison New York City's Right to Counsel program, which started in 2017, reduced evictions citywide by 15%).

The Housing Element draft does not include sufficient accountability measures for landlords and management companies that violate the law. Rather, the Housing Element draft takes an educational approach, such as in S-23 of Chapter 3. While this may be helpful to small landlords who may be unaware of the law, this will have no impact on those knowingly and willingly violating the law. Indeed, management companies and big landlords should in particular be aware of local laws, as it is their business to know. Yet, tenants continue to live in substandard conditions, pay illegally high rents, and fall victim to landlord harassment, discrimination, and retaliation.

To address this, greater fines should be imposed and collected on landlords, as well as the possibility of criminal charges for serious and repeat offenders. Furthermore, there should be a streamlined mechanism that enables the city of San Jose to take on management of buildings that have fallen into disrepair to make the necessary repairs and renovations to keep the building up to code. Finally, resources and funding should be provided to enable tenants to bring affirmative suits against their landlord for violating the law. This should also be a priority of the San Jose city attorney to hold landlords accountable for violations of the law.

Tier 1 priority: Develop a process for recognizing organized tenant associations in targeting ARO enforcement and code enforcement as part of the expanded tenant resource center, including the potential of a receivership program for chronic offenders.

A significant aspect missing from the housing element is how the city plans to empower renters to organize their community and ensure their rights. The housing element provided a number of strategies to educate tenants on their rights and develop more capacity for code enforcement. However, we asked the city to push further. You can read the priorities in the appendix at the end of the letter. However, here is where we can improve the strategies to address the community concerns:

There are thousands of properties throughout San Jose that are listed as Tier 3 properties, meaning they have multiple code enforcement violations. Tenants in this building are likely living in sub par conditions and have landlords that are either negligent, unwilling to invest in their property, or are likely to impact renters negatively either through passing through repair costs to tenants, or more extreme retaliation such as unjust increases or threat of eviction. There are multiple ways of approaching this specific issue, the City currently enforces habitability standards through their Code Enforcement Department, this has been an underwhelming process as currently this department does not have enough funding to hire enough inspectors to adequately ensure properties are being maintained at an acceptable level. Cities such as San Francisco have implemented a [Code Enforcement Outreach Program](#), **which offers opportunities for collaborations between tenants, property owners. And non profit organizations. A program such as this would lessen the burden on Code Enforcement, but would also allow active cases to move through the process at an expedited rate.**

There are also ongoing collaborative programs currently in places in San Jose such as Project Hope, which is primarily in areas that are statistically high crime, and the Responsible Landlord Engagement Initiative (RLEI) which was under Catholic charities, but has now folded into the city process. With some precedent, there should be tangible opportunities to make recommendations to better improve the current process which moves slow and impacts renters the most.

Following intermediary, collaborative measures such as innovative approach to Code Enforcement, there may also be a next step where a property owner who continues to demonstrate that they either cannot or will not adequately maintain their property can have their property taken away through Receivership. As the City's Anti Displacement Plan states, **Staff could work with the City Attorney's Office to consider use of the receivership process for buildings in chronic, serious disrepair that threatens tenants' safety. Staff could also assess the clarity and level of compensation under the City's ordinances concerning situations that result in tenant displacement, including 'red-tagging' of buildings and conversions of rented condominiums to for-sale homes.** In the past the City of Oakland had a receivership program in place, this created a process for properties that were in chronically poor habitable conditions eligible for receivership, where control of a residential or commercial property is removed from its original owner and a receiver (non profit entity) could take control of the property. Currently, Oakland is looking to reinstate this program through collaboration with the County Assessor's office. Another example of Receivership programs is the state on New Jersey:

New Jersey has used receivership to improve the condition of rental housing since 2004. New Jersey law allows the receiver to sell a property where the sale "would promote the sustained maintenance of the building as sound, affordable housing, consistent with codes and safety requirements." The New Jersey Department of Community Affairs established a registry of qualified entities and set aside up to \$4 million per year for a fund from which grants and loans can be made to receivers acting under the provisions of this bill. From the first \$4 million set aside for this purpose, \$1 million was used to make grants to nonprofit entities to build their capacity to act as receivers.

Having both Community based Code Enforcement programs as well as a more serious form of enforcement which would create opportunities for land trusts or qualified non profits to acquire housing and implement permanent affordability would both serve as pathways for further tenant empowerment and engagement.

We currently have tenant organizing currently taking place throughout San Jose, but we lack a formal process where tenant associations/unions are recognized and are offered institutional support to fully form organized bodies. Creating processes to recognize tenant associations would provide renters the opportunity to organize their neighbors and advocate for themselves to ensure that their needs and rights as tenants are being addressed. Similar to labor unions, tenants deserve a set of rights to ensure that they can organize within their building without fear

of retaliation. In early 2022, the San Francisco Board of Supervisors passed [an ordinance to officially create a process for the establishment and recognition of tenant associations](#). A policy proposal similar to San Francisco's ordinance would go a long way in creating a formal process towards giving tenant associations the right to organize.

Even with most of these policies implemented, there is still a significant power imbalance between a landlord and a tenant. Another way to empower tenants to exercise their rights is to adopt an anti-harassment / anti-retaliation ordinance. It requires landlords to notify tenants about unit renovations, prohibits renovating for the purpose of getting the tenant to vacate, and prohibits landlords from forcing an existing tenant to agree to a new term of tenancy unless the changes are allowed by state law (or at the end of a tenant's existing lease). It provides clear definitions on what is considered tenant harassment, such as removing services, unannounced unit entries and misrepresenting conditions to force a tenant to move, giving tenants the right to receive rental receipts and pay through various means. Landlords who violate this law could be fined or prevented from taking their annual general adjustment/increase. Many California cities including Long Beach, Oakland, Los Angeles, Berkeley, Concord and Richmond have adopted this kind of ordinance.

Priority to be added: Discrimination Against Tenants with Eviction Records and Law Credit Scores

The Housing Element draft should include measures to protect tenants with eviction records and low credit scores. Resources, such as outreach and education, expansions of Eviction Help Center, and access to legal services, should be provided to help tenants reverse default judgments against them which would enable them to mask their eviction case. This is particularly important as default judgments can make up as much as 50% of evictions. The City should consider regulations that would prevent or limit private entities, companies, and individuals from collecting and selling court records to landlords and management companies. Additionally, landlords should be prevented from asking applicants whether they were evicted in the past on rental applications. This would impede the ability of landlords to discriminate against tenants for prior evictions. The City should also further assess how to help tenants with low credit scores. Solutions can include workshops to help people understand their credit score and how to improve it, as well as how to remove negative information.

We believe housing should be made more accessible to San Jose residents, not more difficult. At the Law Foundation of Silicon Valley, we see the huge economic impact the pandemic has had through the number of eviction related calls we receive. In most cases, San Jose residents are facing non-payment of rent evictions and/or have accumulated substantial debt during the pandemic through no fault of their own. This widely affects the working class and service workers in San Jose who often make minimum wage in an inflated housing market, which in many cases pushes residents out of San Jose.

Addressing past evictions and low credit scores is also a means of affirmatively furthering fair housing, as this makes way for discriminatory practices and unfair housing opportunities. People of color are much more likely to have low-credit scores and have limited options when renting a unit in an already inflated market. These rental units are usually in areas with limited access to resources, poor living conditions or they are unpermitted units. It is important for the Housing Element to address these issues and practices that make it difficult for people to rent and pushes residents out of San Jose or into homelessness.

Priority to be added: Domestic Violence

The draft appendix B references outreach to domestic violence survivors and notes that common problems include, “lack of shelter beds, lack of affordable housing, documentation issues to apply for housing if prior documentation was in the name of husband and general lack of support in transitioning to living without partner.” Appendix B goes on to further acknowledge that the demand for housing for those fleeing domestic violence is greater than the supply. However, Chapter 3: Housing Goals and Strategies does not propose anything to address these concerns from survivors.

Domestic Violence is a unique housing issue that must be addressed in the Housing Element, as survivors are often victimized in the home. In addition to the need for more shelters and affordable housing for survivors of domestic violence, there must also be more measures to prevent survivors from losing their homes. Although state laws exist that provide some protection from evictions to survivors of domestic violence, these protections are limited where the abuser is a tenant of record to the property. Survivors should have the right and landlords should have the obligation to relocate survivors to a different unit when available. Finally, there should be more funding to provide survivors resources to pay off back rent, and to give them support to pay rent and the security deposit in a new home.



Advancing Justice
Housing | Health | Children & Youth

August 21, 2022

City of San Jose Planning Division, 3rd Floor
c/o David Ying
200 East Santa Clara St.
San Jose, CA 95113

Dear Mr. Ying,

The Law Foundation of Silicon Valley has represented low-income people in San Jose and Santa Clara County for over 40 years. As part of our work, we represent tenants in eviction proceedings, advocate for better housing policies, organize with tenants in the community, as well as run a hotline and provide walk-in services for tenants in need. As a result of our work, we are in a unique position to see firsthand the obstacles and injustices faced by low-income tenants and tenants of color in San Jose every day. We believe that the Housing Element presents a valuable opportunity to address those injustices and improve the lives of tenants living in San Jose. The current draft of the Housing Element has many goals and strategies that would be beneficial to tenants, low-income residents, and historically marginalized communities in San Jose. However, we believe that the current draft is inadequate as it fails to identify specific timelines for the programs and goals. We also believe the City needs to establish stronger programs to improve the Housing Element.

We believe housing should be made more accessible to San Jose residents, not more difficult. At the Law Foundation of Silicon Valley, we see the huge economic impact the pandemic has had through the number of eviction related calls we receive. In most cases, San Jose residents are facing non-payment of rent evictions and/or have accumulated substantial debt during the pandemic through no fault of their own. This widely affects the working class and service workers in San Jose who often make minimum wage in an inflated housing market, which in many cases pushes residents out of San Jose. We also view housing unaffordability as a racial justice issue. In fact, 80% of the people facing eviction that come to our office for help are people of color.

The following outlines improvements that should be made to the Housing Element draft.

I. Metrics to Measure Goals

California Government, Section 65583 governs what must be included in the Housing Element draft, which includes specific metrics to measure the progress of the Housing Element. As explained in the California Department of Housing and Community Development guide on

Affirmatively Furthering Fair Housing, “The housing element must include goals, policies and most specifically, a schedule of actions during the planning period. Actions must be specific with timelines, discrete steps, and measurable outcomes to have a ‘beneficial impact’ during the planning period.”¹ The guide defines beneficial impact as, “Programs in the element must have specific commitment to deliverables, measurable metrics or objectives, definitive deadlines, dates, or benchmarks for implementation.... For example, programs to “explore” or “consider” on an “ongoing” basis are inadequate to demonstrate a beneficial impact in the planning period. Conversely, a program with clear and specific commitment and numerical objectives such as “rezone 50 acres to high density by June 2022” is adequate to demonstrate a beneficial impact.”²

The draft housing element lacks clear timelines and metrics as required by the State. Much of the metrics outlined in the Goals and Strategies of Chapter 3 do not include specific numbers, where one can determine whether the City is meeting the goals. Further, many of the timelines are listed as “ongoing”. In order to comply with state guidelines, the draft must be edited to include specific metrics and timelines that ensure the Housing Element will be properly followed and that the City is accountable to plan.

II. San Jose Apartment Rent Ordinance

We are encouraged by provisions of the draft aimed at assessing the efficacy of the Apartment Rent Ordinance and to consider possible amendments. As noted in S-29 of Chapter 3, your assessment will consider expansion of the ARO to duplexes and alternate methods of calculating the maximum allowable rent increases.

We strongly believe that both duplexes and single-family homes should be covered by the ARO. This is both an issue of equity and fair housing. In Appending B: Assessment of Fair Housing, the draft quotes Richard Rothstein in saying, “To prevent lower-income African Americans from living in neighborhoods where middle-class whites resided, local and federal officials began in the 1910s to promote zoning ordinances to reserve middle class neighborhoods for single family homes that lower-income families of all races could not afford.” Furthermore, the draft recognizes that, unlike many cities in the U.S., San Jose has a large amount of single-family homes. Indeed, single-family homes make up a third of the rental market. As such, single family homes in addition to duplexes should be covered by the ARO.

We are encouraged by your consideration of changing how rent is increased under the ARO. We have found that allowing a 5% rent increase each year under the ARO is arbitrary, as it does not take into consideration inflation, cost of living, or other impacts on a tenant’s life and ability to pay. The purpose of rent stabilization is to keep rents affordable, but a blanket 5% increase does not accomplish this goal. Rather the increase should be based on other factors relevant to the tenant including cost of living and inflation, with a cap of 5%.

¹ California Department of Housing and Community Development, Affirmatively Furthering Fair Housing, Guidance for All Public Entities and for Housing Elements, April 2021.

² Id.

For example, in New York City, the rents are set annually by the Rent Guidelines Board based on economic conditions of the real estate industry, such as operating costs and vacancy rates. The Board also considers impacts on tenants, such as cost of living. In addition, the Board gives the community the opportunity to advocate for different increases. This flexibility enables the Board to take nuanced approaches to rent increases that more adequately reflect what is happening in the housing market and lives of tenants. For instance, prior to the pandemic, New York City froze rent on two separate occasions, so tenants did not have a rent increase and rents are rarely increased above 5%.

Other cities in the Bay Area with rent regulation also take a more nuanced approach. For instance, San Francisco's rent increases are 60% of the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region for the 12-month period ending October 31, as posted in November by the Bureau of Labor Statistics. As a result, the allowable rent increase for the current period in San Francisco is 2.3% and has not gone over 2.6% in the last ten years.

III. Tenant Protection Ordinance

As tenant lawyers, we find it can be difficult in some situations to prove that a landlord's intentions under the just cause provisions of the Tenant Protection Ordinance. For instance, when a landlord evicts a tenant to move into the property. We have seen on several occasions the landlord is falsely evicting the tenant and they do not actually move into the property. The TPO should be amended to provide greater recourse for tenants who are evicted under false pretenses, including the right to return to the property. Further, where the landlord owns a vacate unit of similar size, they should be prevented from evicting a tenant in order to occupy the unit. The TPO can also be strengthened with greater anti-harassment measures where the landlord is using the eviction process or threats of termination to harass tenants.

We agree with your intention to not count immediate household members against occupancy limits to the extent allowed by the health and safety code. Furthermore, a landlord should not be able to unreasonably withhold consent to subletting. Tenants should be protected when they sublet the premises to a family member, a person with a close personal relationship, or a roommate to help pay for the rent. This the case in the Community Stabilization and Fair Rent Act of Mountain View, where under section 1705(a)(2)(A)(iii), a landlord is prohibited from unreasonably prohibiting subletting. Under this section, a landlord cannot reject a sublessee for lack of creditworthiness where the occupant would not be legally required to pay the rent.

The TPO should also be amended to allow tenants the right to cure any violations up until the point where they are out of possession of the premises. Too often, a tenant will receive only three days to fix a problem alleged by the landlord. If they fix it on the fourth day, they can still be evicted under the law. A tenant should have the opportunity to pay back rent or fix any violation of the law or lease beyond the time provided by the landlord. This is a benefit to both parties, as it keeps the tenant housed and cures lease violations and enables ensure the landlord receives back rent, rather than allowing the problem to remain and displacing the tenant.

IV. Eviction Process

The Law Foundation of Silicon Valley is the predominate legal service organization in San Jose representing tenants in unlawful detainers. As such, LFSV knows firsthand the difficulties of navigating the eviction process. LFSV believes a continuation of the eviction diversion program would be a great benefit to tenants and a collaborative court model could balance the extreme inequities currently present in unlawful detainer proceedings.

A collaborative court should focus on keeping people housed and preventing homelessness. Too often in unlawful detainer proceedings, there is an outsized focus on the landlord's property rights and right to collect money over the needs of tenants. A collaborative court should include rental assistance, assistance with searching for housing, and case management. A collaborative court should also address the legal violations of the landlord. Too often landlords get the back rent owed through unlawful detainers, while the tenant's home remains in disrepair, with conditions like mold, rodent infestations, and broken appliances. Tenants should be able to get a reduction in rent for poor habitability conditions, as well as request a hearing on these issues without the risk of being evicted.

The City should insist that a collaborative court model include mandatory settlement conferences. Other jurisdictions in California require mandatory settlement conferences prior to a trial in unlawful detainer cases. This requires both parties to come to the settlement table with a neutral facilitator. This is often best for both parties. However, there is no mandatory settlement requirement in Santa Clara County, thus a landlord can refuse to engage in settlement talks or settlement talks happen without a neutral third party, which opens many possibilities for intimidation, manipulation, and one-sided settlements from the landlord.

We are also supportive of the draft's recommendation to pursue Right to Counsel in housing court. However, there are several other common problems we witness in the court process that must be address in order to sufficiently address the high rates of eviction and homelessness in San Jose. A Right to Counsel program would be limited in its success if the problems below are not addressed. The City should commit to conducting a study to assess the deficiencies in the unlawful detainer system, including biases among commissioners and judges; lack of access to resources to respond to unlawful detainers; inconsistent responses from the court; high number of defaults; and the effect of evictions on a person's public record.

Furthermore, for goals concerning collaborative court, right to counsel, and other similar measures involving the eviction process, a metric of success should also include the number of evictions/households displacement that are prevented, with a goal to decrease evictions/displacement by 10% by the end of the second year (as a basis of comparison New York City's Right to Counsel program, which started in 2017, reduced evictions citywide by 15%).

V. Accountability for Landlords and Management Companies

The Housing Element draft does not include sufficient accountability measures for landlords and management companies that violate the law. Rather, the Housing Element draft takes an educational approach, such as in S-23 of Chapter 3. While this may be helpful to predominately small landlords who may be unaware of the law, this will have no impact on those knowingly and willingly violating the law. Indeed, management companies and big landlords should in particular be aware of local laws, as it is their business to know. Yet, tenants continue to live in substandard conditions, pay illegally high rents, and fall victim to landlord harassment, discrimination, and retaliation.

To address this, greater fines should be imposed and collected on landlords, as well as the possibility of criminal charges for serious and repeat offenders. Furthermore, there should be a streamlined mechanism that enables the city of San Jose to take on management of buildings that have fallen into disrepair to make the necessary repairs and renovations to keep the building up to code.

San Jose should also pass an anti-harassment ordinance, such as the one in Los Angeles, which provides greater recourse for tenants who are harassed, including an award of up to \$10,000 per violation. Additionally, resources and funding should be provided to enable tenants to bring affirmative suits against their landlord for violating the law. This should also be a priority of the San Jose city attorney to hold landlords accountable for violations of the law.

VI. Affirmatively Further Fair Housing

In terms of the strategy laid out in P-17 of the goals and strategies, the analysis of high resourced and low resourced neighborhoods in the Affordable Housing Sitting Policy must be readdressed. As you know, the policy divided San Jose into three categories: category one includes areas of high resources and wealth, while category three includes areas designated as violent and low income, while category two includes areas in the middle of this spectrum. Violence is not a factor that should be considered in determining the location of affordable housing and is not in compliance with the requirements of AB 686 to affirmatively further fair housing. The inclusion of gang hot spots and expanding the definition of violence to increase the locations under category three was done without consideration of fair housing factors.

The legislature and California's Department of Housing and Urban Development has provided directives and guidance on how to affirmatively further fair housing. Rates of violence or high crime in a neighborhood is not a factor for assessment in determining the location of affordable housing.³ The consideration of violence as a factor in determining the location of affordable housing is highly problematic and many of the assumptions of high crime neighborhoods come from a history of prejudice against neighborhoods of color, as well as the criminalization and marginalization of homeless people, and people with disabilities.

³ Id.

AB 686 does not provide any directives to assess the crime rates or rates of violence of a neighborhood in a manner that prevents the development of housing in those areas. Further, California’s Department of Housing and Urban Development published guidance on how to affirmatively further fair housing. Notably, the guide cites policing and criminalization as contributing factors that cause segregation, racial concentration, disparities in opportunity, as well as disparities in opportunity for people with disabilities. Therefore, under CA HUD guidelines to affirmatively further fair housing, crime and policing is a factor to consider in terms of how it has contributing to segregation, not as a basis to not build housing.⁴

Furthermore, the metric of measurement of P-17 states, “Report on Siting Policy Outcomes” This does not meet the requirements of metrics and should rather have a clear and specific commitment to a numerical objective. Similarly, under S-22 of Chapter 3, which speaks of funding on fair housing testing, outreach, and education. The metrics are not actionable and rather should have specific commitment to conduct a specific number of tests during the housing element cycle, as well as a specific number of meetings with nonprofits.

A plan for affirmatively furthering fair housing is also incomplete without addressing reparations for past harms. Housing segregation not only historically prevented people from purchasing adequate homes, but it also prevented generations from receiving equity and financial stability that comes with owning a home.

VII. Tenant based voucher advocacy

The Housing Element draft goals to support tenant-based voucher holders are great starting points. Housing Choice Voucher tenants are among the most vulnerable for displacement as a result of the lack of landlords willing to accept vouchers. Despite state and local legislation, HCV tenants still face source of income discrimination from private landlords. Many are unable to secure or maintain housing despite their subsidy. Strong enforcement of source of income discrimination laws is critical in ensuring HCV tenants access housing. The Draft does not provide much clarity in what these enforcement mechanisms will be or whether this will be a function of the San Jose City Attorney’s Office or County Counsel. Further, centering the goal of getting HCV tenants housed would help create more accessible housing in addition to penalizing landlords who discriminate.

A major barrier that HCV tenants face is the lack of affordable housing. Often, HCV tenants are priced out of higher resource areas because their subsidies are not enough to cover the full amount of rent. One of the solutions that the Draft could explore is ways to increase the amount covered by the subsidy for HCV tenants, which would help these tenants access homes that they would not otherwise have been able to afford. Further, the draft could also provide more clarity around how funding will be allocated to Santa Clara County Housing Authority to produce housing for HCV tenants.

The Draft could also explore ways to work with SCCHA to help HCV tenants maintain their vouchers. Voucher terminations are detrimental to low income tenants and could lead to many families becoming unhoused. A solution the Draft could explore in its collaboration with

⁴ Id.

SCCHA is a diversion program to voucher terminations in order to give HCV tenants the opportunity to maintain their subsidy and remain housed.

VIII. Code Enforcement

The Housing Element draft does not include a plan to implement strict accountability measures for landlords who are non-compliant with the municipal code. Many of the clients we assist at Law Foundation find themselves facing retaliatory eviction notices when they contact code enforcement regarding habitability issues. Tenants often do not know what to do when they request repairs or bring up serious habitability concerns to landlords who refuse to make repairs. Some tenants also face serious health concerns when landlords refuse to address habitability issues such as mold or pests. The housing element should include a plan to implement strict measures to hold landlords accountable as it is part of landlord's responsibilities to provide a habitable living space.

IX. LIHTC Properties

The Law Foundation of Silicon Valley has been working with tenants that live in LIHTC properties and have serious concerns about the recent rental increase notices tenants have been receiving, many of which are over 10% because the rent is not based on a person's income, but on the area median income. LIHTC tenants generally have less protections on rent increases than ARO/TPO covered properties when it comes to rent increases and are also not covered under AB 1482 which caps rent at no more than 10% in a 12-month period. We believe the Housing Element should address this issue by including LIHTC under ARO/TPO protections to prevent LIHTC owners from spiking rents by percentages higher than rent regulated properties.

Thank you for taking the time to read this letter. If you would like to follow up on any of these issues, you may contact Erin Neff, Lead Policy Attorney at the Law Foundation at 408-273-4796 or erin.neff@lawfoundation.org.

Sincerely,

/s/

Nadia Aziz, Directing Attorney
Shaunita Hampton, J.D. Advocate
Erin Neff, Lead Policy Attorney
Luis Rodriguez, Community Housing Advocate



P.O. Box 5374
San Jose, CA 95150
www.lwvsjsc.org
August 21, 2022

City of San Jose Planning Division, 3rd Floor
c/o David Ying
200 East Santa Clara St.
San Jose, CA 95113

To: City of San Jose Planning Department and Housing Department

Subject: Comments on Draft Housing Element

The League of Women Voters worked for federal housing reforms beginning in the 1960s. The League was a member of the National Low-Income Housing Coalition that urged the passage of 1987 legislation authorizing HUD's low-income housing and community development program. Numerous League positions and action policies are predicated on the conviction that "every person and family should have decent, safe, and affordable housing." The League of Women Voters of California supports legislative efforts aimed at our state's housing crisis. State, regional, and local Leagues have worked to preserve and increase the supply of low and moderate income housing through efforts to change zoning laws, streamline approval processes and set up housing services. The San Jose/Santa Clara local League names affordable housing and homelessness as a priority for education and advocacy. We submit the following comments regarding the Draft Housing Element with a focus on the League's core value of transparency in government and the firm belief that "democratic government depends upon informed and active participation in government."

First, the League wants to acknowledge the increased amount of work required to complete the 2023-2031 Draft Housing Element as compared to housing Cycle 5, and to thank City staff for its diligence in completing the document. The League fully recognizes the work required over the next eight years to realize the housing goals of the City of San Jose. We note in Appendix C, the Fifth Cycle Review, that the City did not reach its RHNA affordable housing goals yet met 98% of the programs, projects or activities related to the Work Plan Implementation. While recognizing there are many outside constraints in the creation of housing units, **we ask that the City provide more examination of what could have been done to reach the RHNA affordable housing goals.**

The magnitude and complexity of actions, goals and strategies contained in the Draft Housing Element is significant. We have several recommendations to improve the Element:

- We believe the Housing Element would benefit greatly by more prioritization and more specificity on timelines.
- We encourage City staff to continue engagement with the working group formed by stakeholder organizations representing lower-income renters and communities of color

to further prioritize the many items within the Housing Element.

- Given the size and importance of the Housing Element, we urge the City to consider ways to bring **transparency** to the execution of the Housing Element over its eight-year span. Residents should have the opportunity to understand what stage of implementation the City has reached and to “be heard” in discussions of successes attained and obstacles preventing achievement. Prioritization allows residents to independently monitor the overall progress towards the City’s housing goals.

The League of Women Voters appreciates the detailed discussion of methodology in Chapter 5, Adequate Sites for Housing. However, it is difficult for most residents to determine the realistic development potential for each individual site within the planning period with the information given in Appendices F and K. While we appreciate the interactive map on the Housing Element Update web page, none of the maps within the Draft were interactive. **We ask staff to provide more parcel-specific information such as that detailed in HCD’s Housing Element Site Inventory Guidebook.** Such information ensures transparency and will facilitate meaningful community engagement.

The League of Women Voters of San Jose/Santa Clara supported the adoption of the City’s Citywide Residential Anti-Displacement Strategy and the Community Plan to End Homelessness. This and all our advocacy is rooted in League direction to apply an equity filter for all member actions. We will continue to monitor the progress of the 2023-2031 Housing Element grounded in our equity guidelines and core principles of good government. Again, we express our gratitude to City staff given the challenges of the COVID pandemic.

Regards,

[Redacted signature block]

Taryn Upchurch, Co-President, League of Women Voters of San Jose/Santa Clara
president@lwvsjsc.org
Carol Watts, Vice President, League of Women Voters of San Jose/Santa Clara

cc: Roma Dawson, Director, Housing and Homelessness Committee,
League of Women Voters of San Jose/Santa Clara



**Public Comment of the National Coalition for a Civil Right to Counsel to the
San Jose City Council on Housing Element Plan, Strategy S-28 (Right to Counsel)**

Submission: August 20, 2022

Members of the San Jose City Council:

On behalf of the National Coalition for a Civil Right to Counsel (NCCRC), I submit the following written comment regarding Strategy S-28 (Right to Counsel) of the City of San Jose [Draft Housing Element](#). The NCCRC has over 600 participants and partners in 41 states, including many in California. In addition, we have supported advocates and policymakers in the fifteen cities and three states that have [enacted a right to counsel for tenants facing eviction](#), and have supported advocates in San Jose who have been exploring possibilities around a right to counsel for San Jose tenants.

The right to counsel for tenants is a positive and proven intervention in the eviction crisis. Guaranteeing that eligible tenants have legal representation when facing eviction prevents evictions, mitigates eviction-related harms, increases housing stability, and can save jurisdictions money. In addition, a right to counsel increases balance in an overwhelmingly one-sided system. Tenant representation increases tenant use of existing defenses to an eviction, expands time to secure necessary rental assistance, and can help tenants enforce tenant protections such as rental registries or just cause eviction laws.

San Jose's Housing Element is thorough, tied to resident needs, and ambitious. Strategy S-28, which recommends hiring a consultant to design a right to counsel program, estimate costs, and identify funding sources, and then seek City Council approval of the program, is a critical preliminary step to a tailored and effective right to counsel in the City. Notably, there is support at both the city and state level for a right to counsel. Strategy S-28 builds upon [similar recommendations made by Councilmembers Peralez and Arenas](#) in September 2021, who cited a report that found in California, "Racial inequities in pre-pandemic housing and economic security, as well as pandemic-related income losses, have resulted in Black and Latino/x renters being 1.5 times as likely to be behind on rent compared with all renters." Councilmembers Peralez and Arenas also noted that Santa Clara County has about a 40% default rate for evictions, which they explained "often occur[s] because the process for filing a response within 5 days of receiving the eviction lawsuit is extremely difficult for non-lawyers." And they noted the success of right to counsel programs implemented around the country. Similarly, in November 2021 the San Jose Housing Department [recommended](#) immediately hiring a consultant to begin the process of determining the cost/benefit of a right to counsel program. Finally, the California Supreme Court Chief Justice's Work Group on Homelessness recently [recommended](#) that "The Judicial Council should encourage and support legislative efforts to create and fund a statewide program that provides full-scope legal representation in

residential unlawful detainer proceedings for all litigants who are unable to afford counsel.” This recommendation was based on the linkage between eviction and homelessness, the racial disparity of who experiences eviction, the impact of right to counsel programs in other jurisdictions, and the potential cost savings.

However, Strategy S-28 proposes to delay action until 2025-26. Given the urgency of the looming eviction crisis now that eviction moratoria have expired and emergency rental assistance is following suit, along with the current energy and focus around the national eviction right to counsel movement, we strongly encourage the City Council to advance the recommended timeline. While we understand the capacity issues of the local legal aid programs are a legitimate concern, the hiring of a consultant should occur immediately, and efforts should be made to design a right to counsel program that can begin sooner but slowly scale in a manner consistent with legal aid’s capacity.

Eviction filings are growing in number, and, as is happening across the country, will overwhelm existing legal assistance. Postponing this preliminary right to counsel assessment only guarantees that the vast majority of tenants will face and navigate evictions on their own and suffer the many personal, financial, and health-related consequences that accompany such proceedings. This is especially true given that even once a right to counsel program is approved, it likely will be phased in over several years, further postponing the time when many tenants will receive assistance. Engaging in an analysis of the scope of a right to counsel as soon as possible, positions the City within a growing and dynamic network of jurisdictions working on enacting and implementing this essential tenant protection today.

Finally, a faster timeline will help meet one of the benchmarks of Strategy S-28: the identification of funding sources. Advancing the timeline allows the City to consider the use of federal Emergency Rental Assistance Program funding and Fiscal Recovery Funds to fund the initial phase of a right to counsel. Federal funding may still be available if the City is considering an enactment of a right to counsel, but the opportunity to do so will not last. [Numerous cities](#) have employed Emergency Rental Assistance Funds and Fiscal Recovery Funds for legal representation, pilot projects, as well as funding the initial phases of an enacted right to counsel. The Department of the Treasury recently reiterated, and strengthened the [guidance](#) around the use of such funds for legal representation.

There are numerous justifications for pursuing an eviction right to counsel program:

A Right to Counsel Increases Housing Stability for Tenants

Tenants with legal representation avoid disruptive displacement over [90% of the time](#), [remain in their units more often](#), [save on various costs associated with eviction](#), and [avoid shelter use more often](#). But without a right to counsel in place, a review of local and statewide reports across the country shows that, on average, [a mere 3% of tenants are represented](#) in eviction cases, compared to 81% of landlords. [Fifteen cities and three states](#) have enacted such a right. Where it has been implemented, a right to counsel has extended representation and its benefits to many more tenants, and has had a transformative impact.

- In [San Francisco](#): 59% of fully represented tenants are able to remain in their homes and of the 30% who did not remain in their unit, 70% received a favorable settlement, such as a move-out with sufficient time and money.
- In [New York City](#): 84% of represented tenants were able to remain in their homes.
- In [Cleveland](#): 93% of clients avoided an eviction judgment or involuntary move, 92% of clients who sought more time to move received it, and 97% of clients seeking monetary relief received it.
- In [Boulder](#): 63% of cases avoided eviction, and all tenants who appeared in court and were provided with an attorney avoided eviction.
- In [Washington State](#), tenants remained in their homes in more than 50% of closed cases. In cases with other known outcomes, attorneys helped tenants expand the time they have to move, obtain orders of dismissal and limited dissemination, provide relief from future back-due rent claims, and achieve “other outcomes that significantly benefit the tenant and reduce the long-term negative impact on their ability to find rental housing.”

In addition to housing stability, the right to counsel changes court and party behaviors. In New York City, there was a 30% drop in filings after the right to counsel was enacted but before the pandemic. Housing court judges in New York City [testified](#) that, from their perspective, the right to counsel has made the proceedings more efficient and fairer. This testimony is unsurprising: even with a right to counsel, the majority of cases will settle as they do now, but more fairly. And those settlements will not require the management of the court but will occur as out-of-court negotiations.

A Right to Counsel is Cost-Effective for Jurisdictions

The right to counsel is a forward looking, cost-effective policy in numerous ways. [Studies](#) have repeatedly found that every dollar spent on representation returns many dollars in savings by reducing spending on emergency services, prisons, foster care, and other negative consequences of evictions. For example, [a study in Baltimore](#), found that a \$5.7 million investment in the right to counsel by the city would yield \$35.6 million in benefits to the city and state.

The right to counsel also makes federal and state relief more impactful and preserves these critical funds for housing and tenant needs. Rental assistance preserves tenancies when tenants know where and how to apply, have time to obtain the assistance, and when their landlords agree to accept the assistance. A tenant’s attorney engages in advocacy for the client on all of these fronts: helping tenants identify and obtain assistance, negotiate with landlords, and obtain more time for the assistance to come through. In an evaluation of [Cleveland’s right to counsel program](#), of represented clients who had the goal of obtaining rental assistance, 83% received it.

A Right to Counsel will Strengthen Existing Tenant Protections, as well as other Housing Element Strategies

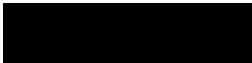
Legal representation makes a difference in eviction cases - even those which, at first glance, appear to be simple. In the cities with a right to counsel, as with nearly all cities nationwide, nonpayment of rent cases make up the bulk of eviction cases, yet tenant representation has still vastly increased unit

retention and housing stability. These statistics belie the notion that there is nothing for attorneys to do in nonpayment cases. Nonpayment matters can, and often do, involve complex issues such as improper service of notice, disputes over whether rent paid has been credited, unauthorized or illegal fees, failure to make necessary repairs, discrimination, harassment, and retaliation. In [Cleveland](#), approximately 83% of right to counsel client survey respondents who had the full back rent owed or would be able to get it, indicated that they had conditions issues with their units. [Studies](#) have shown pro se tenants with available legal defenses fail to effectively use them. Even where there is no legal defense, a court must still decide how much time the tenant will have to vacate, whether the eviction ends up on the tenant's record, and whether, and for how much, a monetary judgment will be issued.

A strong and timely right to counsel in San Jose can support other Housing Element reforms, as well as existing tenant protections. A right to counsel can help strengthen and enforce strategies including Strategy S-2 (Rental Property Registry Improvement), Strategy S-12 (Eviction Diversion and Collaborative Court and Other Supports for Legal Services), Strategy S-21 (Facilitation of Equal Access to Housing), Strategy S-30 (Just Cause Eviction Protection Amendment), and Strategy S-32 (Local enforcement of state tenant protections). Representation is a critical tool if tenants are to truly benefit from fair housing laws, existing affirmative defenses, rental assistance programs, federal, state, and local subsidies, and laws and regulations related to safe and habitable housing.

We would be happy to answer any questions as well as provide technical support to the City (as we have done with many other cities). Thank you for your consideration.

Sincerely,



John Pollock
Coordinator
National Coalition for a Civil Right to Counsel

Housing Element

From: [REDACTED]
Sent: Tuesday, August 2, 2022 9:52 AM
To: Housing Element
Subject: Labor Standards

You don't often get email from [REDACTED]. [Learn why this is important](#)

[External Email]

Hello,

I believe that any plan that leaves out Labor Standards is a short fall. It is important to not only supply the housing that will encourage economic diversity and equality, but also to provide careers that are pathways for individuals and families. These Standards should be the minimum qualification for contractors to bid the project. The standards should include 20% Local hire, Healthcare for the individual and their family, and a livable wage for a dignified existence.

Bryan Shields
Field Representative
Nor Cal Carpenters Union

[REDACTED]
[REDACTED]

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Housing Element

From: [REDACTED]
Sent: Wednesday, August 3, 2022 4:30 PM
To: Housing Element

You don't often get email from [REDACTED]. [Learn why this is important](#)

[External Email]

Hello,

My name is [REDACTED] I live in San Jose. Housing element is great because it provides housing for all income level and benefits the people that want to live and work in San Jose. However before granting approval there needs to be some requirement for the housing element. Project that invest in apprenticeship, prevail wage, and health care are the best deals for workers and the community. Housing element should not be permitted to save cost by cutting corners on labor needed to properly build these new residences. Requiring labor standards will ensure contractors to pay fair wages and use experienced and well trained workers. This leads to a higher quality workmanship, meeting building standards, and completing the project quickly.

Thank You for your time!

[REDACTED]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Housing Element

From: [REDACTED]
Sent: Wednesday, August 3, 2022 6:29 PM
To: Housing Element
Subject: Labor Standards

You don't often get email from [REDACTED]. [Learn why this is important](#)

[External Email]

Good evening,

My name is [REDACTED] and I am a member of local 9144 representing 36000 members in San Jose. Housing Element is amazing because it provides housing options for all income levels as well as benefits the people who want to live and work on San Jose. However, before granting approval there needs to be some requirements for the Housing Element. A commitment to apprenticeship programs, to guarantee we have a skilled and safe workforce to complete high quality projects in a streamlined manner. Projects that invest in apprenticeship, prevailing wages, and healthcare are the best for workers and the community. I strongly believe the Housing Element with pre-qualification language in place is the best option for workers and the community. In closing, Carpenters urge the City of San Jose to adopt these labor standards.

Regards,
[REDACTED]

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

August 19, 2022



Submitted by email to: HousingElement@sanjoseca.gov

With a copy to:

Ruth Cueto, Planning Division, Supervising Planner: ruth.cueto@sanjoseca.gov

David Ying, Planning Division, Housing Policy Planner: david.ying@sanjoseca.gov

Kristen Clements, Housing Department, Division Manager: kristen.clements@sanjoseca.gov

Joshua Ishimatsu, Housing Department, Senior Development Officer: joshua.ishimatsu@sanjoseca.gov

Dear City of San José:

Thank you for the opportunity to provide input on the city of San José's housing element. Your work supporting your community to meet its housing needs is critical in addressing the housing affordability crisis. We understand that at this moment in the housing element process, your jurisdiction is incorporating public comment into your draft housing element. As such, we are offering the attached equitable policy resources in addition to offering technical assistance from Baird + Driskell Community Planning ("B+D") if your jurisdiction is interested in this level of support.

The Partnership for the Bay's Future ("PBF") is a public-private-nonprofit partnership working to create a more livable Bay Area in which diverse people of all walks of life can afford to live and thrive. To do so, we address the challenges of housing and protecting tenants through the support of equitable policy change as well as investing in the production and preservation of affordable housing.

In consultation with government leaders, housing policy experts, and communities, we have compiled a list of equitable housing priorities that we hope San José will consider incorporating into the new housing element. In some cases, these are policies that housing element law requires jurisdictions to address as a potential action or recommendation in their housing elements, but in other cases, these are suggested policies that we are raising up as equitable planning priorities. We are including the following resources for your review and consideration:

- a slide deck covering each priority policy idea, with template language for your jurisdiction to consider,
- examples of places where the policy has been adopted, and
- additional links and resources.

We understand that due to the timing of the housing element process, your current efforts [may] already include many of the listed policies, which we applaud. These summaries can be used as resources for staff as they communicate with both decision makers and the public. If you are interested, we are happy to provide further assistance to incorporate these policies into your housing element as well as help draft talking points that can be tailored for local implementation.

We believe the following policies can play an important role in meeting the requirements of this housing element and supporting thriving communities:

1. Favorable Zoning and Land Use
 - Make multifamily infill easier to develop
 - Allow, require or encourage multifamily housing in more places
 - Allow or encourage missing middle housing in single-family neighborhoods

- Provide incentives for affordable housing development
- Provide incentives for affordable ADUs and "missing middle" housing
- 2. Accelerating Production Timeframes
 - Streamline development approvals and environmental review process for multifamily housing
 - Streamline permitting process for multifamily housing
- 3. Reducing Construction and Development Costs
 - Ensure local requirements are not making development more expensive without requisite benefits
 - Actively support the use of modular and factory-built construction methods
- 4. Providing Financial Subsidies: Generate new or dedicate existing revenue for affordable housing
- 5. Advocating for Rent Control and Just Cause for Eviction Policies
 - Adopt or update rent stabilization policies
 - Adopt or update just cause eviction policies
- 6. Advocating for Community Land Trusts (CLTs): Support the formation and operation of community land trusts
- 7. Advocating for Inclusionary Zoning and Impact Fees: Create or review/update inclusionary housing (including in-lieu fees) and commercial linkage fee requirements
- 8. Inventory of Sites: Ensure that land is equitably zoned for multifamily housing, especially in high-opportunity areas

If you have any questions, please contact me (krusso@sff.org) and our colleagues at Baird + Driskell (Kristy Wang, wang@bdplanning.com, and Joshua Abrams, abrams@bdplanning.com). We do hope that you consider tapping into the B+D team's technical assistance to explore some of these policies further or receive support with policies San José is already considering. Please contact us and we will be happy to arrange that.

Thank you again for the opportunity to provide input into San José's housing element. We appreciate all your efforts to address the housing needs of Bay Area and California residents.

Sincerely,



Khanh Russo
Vice President of Policy and Innovation and Senior Director for the Partnership for the Bay's Future

PBF's Priorities for 6th Cycle Housing Elements

July 2022

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FUTURE**



Priority Policies and Actions

1. Favorable Zoning and Land Use

- Make multifamily infill easier to develop
- Allow, require or encourage multifamily housing in more places
- Allow or encourage missing middle housing in single-family neighborhoods
- Provide incentives for affordable housing development
- Provide incentives for affordable ADUs and "missing middle" housing

2. Accelerating Production Timeframes

- Streamline development approvals and environmental review process for multifamily housing
- Streamline permitting process for multifamily housing

3. Reducing Construction and Development Costs

- Ensure local requirements are not making development more expensive without requisite benefits
- Actively support the use of modular and factory-built construction methods

4. Providing Financial Subsidies: Generate new or dedicate existing revenue for affordable housing

5. Advocating for Rent Control and Just Cause for Eviction Policies

- Adopt or update rent stabilization policies
- Adopt or update just cause eviction policies

6. Advocating for Community Land Trusts (CLTs): Support the formation and operation of community land trusts (CLTs)

7. Advocating for Inclusionary Zoning and Impact Fees: Create or review/update inclusionary housing (including in-lieu fees) and commercial linkage fee requirements

8. Inventory of Sites: Ensure that land is equitably zoned for multifamily housing, especially in high-opportunity areas

Make multifamily infill easier to develop

Explore the following policies and programs:

- **Revise development codes:** Review multifamily development standards to allow greater density, including floor area ratio, height limits, minimum lot or unit sizes, setbacks, and/or allowable dwelling units per acre.
- **Reduced parking requirements:** Adopt policies that reduce parking minimums, establish parking maximums and encourage other practices that reduce cost and the amount of space dedicated to cars.
- **Eliminate design standards:** Eliminate or replace subjective development and design standards with objective standards that simplify zoning clearance and improve approval certainty and timing.
- **Form-based codes:** Establish form-based codes that can be paired with by-right approvals.



EXAMPLES

San Francisco, Berkeley and San Diego have eliminated minimum parking requirements in new housing development.

[Redwood City's Downtown Precise Plan](#) links adherence to development standards with a streamlined approvals process.

Allow, require or encourage multifamily housing in more places

Explore the following policies and programs:

In mixed-use zones where commercial uses outcompete residential uses, cities could:

- **Change zoning standards:** Offer greater FAR, height and other zoning standards for residential developments in mixed use zones.
- **Encourage mixed-use:** Require applicants to build housing when applying to build commercial developments in mixed use zones

Cities can also ensure their regulations don't preclude the development of microunits or single room occupancy (SRO) buildings



EXAMPLES

Redwood City's Mixed-Use Neighborhood District allows greater height and FAR for residential-only and mixed-use buildings than for commercial-only buildings.

In 2019, San Jose revised its planning regulations to allow for co-living housing types.

Allow or encourage missing middle housing in single-family neighborhoods

Explore the following policies and programs:

- **Rezoning:** Rezone in single-family neighborhoods to allow [additional ADUs](#), duplexes, triplexes and other small-scale multifamily ("[missing middle](#)") housing
- **New standards and guidelines:** Establish design and development standards and guidelines that support missing [middle housing](#) types



EXAMPLES

Portland has established a strong missing middle policy, including their [Better Housing by Design](#) work, focused on design guidelines and related zoning code changes in multi-family zones, and the [Residential Infill Project](#) development standards focused on single family neighborhoods.

Eugene, Oregon approved [Middle Housing Code Amendments](#) to comply with state law. The amendments include smaller minimum lot sizes, lot size reductions for affordable units, parking reductions for housing built near transit, and other changes.

Provide incentives for affordable housing development

Explore the following policies and programs:

- **Overlay zones:** Establish an affordable housing overlay zone to encourage the production of below-market-rate affordable housing with targeted incentives that go beyond state density bonus law
- **Incentives for developers:** Offer zoning concessions and fee exemptions as incentives to developers of multifamily housing projects which meet [JURISDICTION]'s housing needs, in exchange for an agreement that more than [#%] of the total number of units constructed will be affordable to lower-income households



EXAMPLES

[Menlo Park's Affordable Housing Overlay Zone](#)

[Foster City's Affordable Housing Overlay Zone](#)

[Oakley's Affordable Housing Overlay Zone](#)

[Sunnyvale's waiver of parking requirements](#)

[Half Moon Bay's waiver of development standards](#)

Provide incentives for deed-restricted affordable ADUs and "missing middle" housing

Explore the following policies and programs:

- **Lot splits:** Allow all nonprofits to sell deed restricted affordable ADUs separately from the main house.
- **Increase ADUs per lot:** Allow nonprofits to build two detached, deed restricted, affordable ADUs per property.
- **Community partnerships:** Develop zoning standards that provide additional flexibility to nonprofits that want to build ADUs, including 2-story ADUs.
- **Upzoning partnerships:** Allow nonprofits to convert single family homes into deed restricted, affordable duplexes, triplexes or quads (more permissive than SB 9)
- **Density bonuses:** Develop rules that extend the density bonus to 100 percent affordable projects smaller than 5 units.



EXAMPLES

San Diego allows an [extra ADU](#) on a site that has reached the maximum ADU limit if the extra one is deed-restricted affordable.

Piedmont has flexibility built into their ADU ordinance where [larger ADUs are permitted](#) if they are deed restricted affordable for low-income households.

Pasadena incentivizes the creation of ADUs affordable to Section 8 voucher holders with incomes below 80% of AMI. The city offers [comprehensive assistance](#) (with financing, designing, permitting, and constructing) and low-interest construction loans.

[LA ADU Accelerator](#) matches homeowners with older renters, providing landlord support and reliable rent in return for affordability.

[LA Mas's Backyard Homes Project](#)

Streamline development approvals and environmental review process for multifamily housing

Explore the following policies and programs:

In locations that have not yet met their housing targets, [SB 35](#) pairs a streamlined approval process with objective design standards for infill projects that provide a certain level of affordability and comply with existing residential and mixed-use zoning and other requirements.

Localities could take it further by:

- Establishing [by-right zoning](#) and local systems/dedicated staff for more types of housing beyond SB 35-eligible projects
- Establishing by-right zoning in certain areas or neighborhoods



EXAMPLES

[Redwood City's Downtown Precise Plan](#)

allows for the ministerial approval of certain multifamily infill projects.

Streamline permitting process for multifamily housing

Explore the following policies and programs:

- **Improve application processes:** Review application review and approvals process to identify improvements (convene stakeholders, hire an outside firm).
- **Pre-application checks:** Establish pre-application checks to ensure that applications are complete before submission.
- **One-stop-shops:** Establish one-stop-shop permitting process and/or a single point of contact for coordinating permitting across city approval functions (e.g., planning, public works, building) from entitlement application to certificate of occupancy.
- **Special expedited permits:** Establish priority permit processing or reduced plan check times for specific categories of housing (ADU/JADUs, multifamily housing, affordable housing, etc.)



EXAMPLES

San Diego has an [expedited permitting process](#) for affordable, infill and sustainable buildings.

Seattle has a [expedited approvals program](#) for new construction projects that meet certain sustainability requirements.

San Francisco's [Mayoral Executive Directives](#) on ADUs and setting timelines for approvals have sped up permitting processes by providing a rationale to create a sense of urgency and focus city staff.

San Jose had "[ADU Tuesdays](#)" at the city's permit counter in order to streamline ADU permit processing.

Ensure local requirements do not make development more costly without requisite benefits

Explore the following policies and programs:

- **Flexible standards:** Provide additional flexibility on development standards, including parking standards, for affordable housing
- **Reduce construction costs:** Review current local construction requirements and building standards for excessive and costly terms



EXAMPLES

Half Moon Bay's zoning code allows for flexibility in the application of development standards for affordable housing projects.

Actively support the use of modular and factory-built construction methods

Explore the following policies and programs:

- **Expedited permits:** Establish a clear and expedited approval and permitting process for modular and manufactured homes.
- **Pre-fab trainings:** Conduct or require a training for building officials and relevant staff to ensure they are aware of current state processes and requirements and how they intersect with local authority/responsibilities.

Generate new revenue and/or dedicate existing revenue towards affordable housing

Explore the following policies and programs:

- **Explore new or increased taxes:** Generate new dedicated revenue for affordable housing. This could include:
 - Sales tax increases
 - General obligation bonds
 - Transient occupancy taxes
 - Parcel taxes
 - Head taxes
 - Business license (landlord) taxes
 - Real estate transfer taxes
 - Vacancy taxes
- **Prioritize existing revenue:** Establish priorities or set-aside existing local general funds for affordable housing.



EXAMPLES

In 2016, Santa Clara County voters and Alameda County voters approved general obligation bonds for affordable housing through Measure A (\$950 million in Santa Clara County) and Measure A1 (\$580 million in Alameda County).

In 2018, Oakland voters approved a vacant property tax that generates revenue for homeless services.

By resolution, San Mateo County's Board of Supervisors established funding priorities – including affordable housing uses – for 2016's Measure K half-cent sales tax extension.

In 2012, San Francisco established its Housing Trust Fund through a set-aside in the General Fund.

Adopt or update rent stabilization policies

Explore the following policies and programs:

Under [California's Tenant Protection Act of 2019](#) (AB 1482):

- Rent cannot be increased more than 5% + your local CPI (Consumer Price Index) OR 10% annually – whichever of these is lower.

Localities could take it further by:

- Adopting a local ordinance with a smaller allowable annual rent increase
- Adopting a local ordinance that does not sunset in 2030

Localities could also dedicate funding and resources toward education and enforcement.



EXAMPLES

Several Bay Area jurisdictions have [rent stabilization policies](#) that go beyond state law (such as smaller allowed rent increases), including:

- San Francisco
- San Jose
- Oakland
- Berkeley
- East Palo Alto
- Mountain View
- Richmond

Adopt or update just cause eviction policies

Explore the following policies and programs:

[California's Tenant Protection Act of 2019](#) (AB 1482) limits the reasons for which tenants can be evicted. This law does not cover all buildings or all tenants. It expires on Jan. 1, 2030.

Localities could take it further by:

- Applying protections on day 1 of a tenancy (instead of day 365)
- Requiring landlords to have a permit in hand before evicting tenants using the "substantial remodel" provision
- Passing a local ordinance that is permanent
- Expanding just cause eviction policies to cover new construction, single-family homes and condominiums

Localities could also dedicate funding and resources toward education and enforcement.



EXAMPLES

Berkeley, East Palo Alto and Oakland are some Bay Area jurisdictions that have existing permanent [Just Cause evictions](#) ordinances.

Most rental units in [Oakland](#) and [Richmond](#) are subject to their just cause eviction ordinances.

Support the formation and operation of community land trusts (CLTs)

Explore the following policies and programs:

- **Eligibility:** Ensure CLTs are eligible for local housing funding.
- **Opportunity to Purchase:** Establish a right of first offer/refusal that gives nonprofits/CLTs enhanced ability to buy property
- **CLT Incubation:** Establish an initiative to support the incubation or creation of a new community land trust. Provide financial support to CLTs in the early stages of organizational development.
- **CLT Pipeline Development:** Study the feasibility of requiring new inclusionary ownership units to be stewarded by a CLT.
- **Extra Flexibility:** Give CLTs extra flexibility to develop/steward ADUs, allowing CLTs to sell ADUs to low-income buyers and giving CLTs more flexibility with development standards (multiple ADUs, 2-story ADUs, etc.). See *affordable ADU slide*



EXAMPLES

In 2018, New York City funded a [citywide CLT initiative](#) to support the incubation/expansion of 10 CLTs

Cities like [Irvine](#) and [Chicago](#) have city sponsored/chartered CLTs that manage the affordable ownership stock.

Create or review/update inclusionary housing and commercial linkage fee requirements

Explore the following policies and programs:

- **Establish New Inclusionary Requirements:** Require the provision of affordable housing by the private sector through an [inclusionary requirement](#) for market-rate housing (including in-lieu fee options) and a commercial linkage fee paid by new commercial development.
- **Regularly Update Inclusionary Requirements:** Conduct an [inclusionary housing feasibility](#) study in [20XX] and develop policy recommendations on inclusionary zoning in [20XX].



EXAMPLES

[Inclusionary housing requirements](#) have been widely, but not universally, adopted by jurisdictions across the Bay Area.

[San Mateo](#) (city) and [Boulder, CO](#) are two examples of small to midsized cities that do a good job of managing their units.

Ensure that land is equitably zoned for multifamily housing, especially in high-opportunity areas

Explore the following policies and programs:

- **Zoning:** Rezone sites for [multi-unit housing in high resource areas](#).
- **Public Land:** Set-aside publicly owned land in high opportunity areas for housing development.
- **Affordable Housing Siting Policy:** Develop an affordable housing siting policy to provide affordable housing equitably across a jurisdiction.
- **Tax Credit Competitiveness:** Conduct an analysis of a jurisdiction's geography for [tax credit amenity scoring](#). Zone more land for multi-family in amenity-rich areas and/or do land assembly/acquisition in places that score highly and/or address missing amenities in a community.



EXAMPLES

Los Angeles's 6th Cycle housing element includes an objective to "[increase the utilization of public land](#) for affordable housing with particular emphasis in high resource and gentrifying areas."

Seattle has a [development siting policy](#) that seeks to provide housing opportunities for the lowest-income and the most vulnerable populations across the city, including amenity-rich neighborhoods.

San Jose has begun a process to develop an [affordable housing siting process](#) to ensure the city meets its fair housing and affordable housing goals, including providing affordable housing in higher-opportunity neighborhoods.

Other equitable housing policies for further exploration

Explore the following policies and programs:

- **Anti-tenant harassment policies (Oakland and Concord)**
- **Preservation policies including acquisition/rehab models**
- **Transit Oriented Communities (TOC) policies**

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**A Vision For a Vibrant, Inclusive
Bay Area**

August 19, 2022

City of San José
Planning Division, 3rd Floor
c/o David Ying
200 East Santa Clara Street
San José, CA 95113
HousingElement@sanjoseca.gov
David.Ying@sanjoseca.gov

Dear Mr. Ying:

Re: Draft 2023-2031 Housing Element, REAL Coalition Comment Letter

This letter was prepared by the Housing Justice Workgroup of the nonprofit Race Equity Action Leadership (REAL) Coalition. We write to provide comments on the City of San José's 6th Cycle Draft Housing Element, 2032-2031.

The REAL community of nonprofit leaders and allies has been meeting since June 2020 to use our positional power to advocate for a more racially-just and equitable society; to establish a peer network of leaders committed to fighting white supremacy and systemic racism in ourselves and our institutions; and to hold each other accountable to the promises we made in the Nonprofit Racial Equity Pledge. The REAL coalition is broadly representative of the nonprofit community including human and community services, behavioral health and health, arts and culture, domestic violence, older adults, food distribution, education, environmental, farming, legal, disability rights, LGBTQ rights, ethnic, immigrant rights, housing and homelessness, criminal justice reform, urban planning, and intermediary organizations, and others. Over 125 organizations have participated in the REAL Coalition.

Overall, we are pleased to see a number of goals and strategies in the draft Housing Element that coincide with a number of the REAL Coalition's priorities. We also feel that in a number of areas, the City should be more bold in advancing housing programs and policies that will recognize historic inequities and advance racial justice and equity in measurable ways.

Our comments, described in the attached spreadsheet, are centered around priorities related to:

- Housing Funding
- Racial Justice, Equity and Fair Housing
- Investments in San José’s African-American Community
- Community Engagement and Power Building
- Wealth-Building for Historically Disadvantaged Communities
- Avoiding Unnecessary Policing and Incarceration
- Tenant Rights

In framing our comments related to tenants’ rights, we consulted with Sacred Heart Housing Action Committee (SHHAC) as well as the Anti-Displacement Coalition.

Thank you for considering the comments submitted by the following 57 nonprofit and ally members of the REAL coalition. We know that this draft represents much hard work by City staff, and we are looking forward to working with the City over the coming years to implement these important strategies.

Sincerely,

Almaz Negash

African Diaspora Network

Lavere Foster

African American Community Service Agency

Sheri Burns

Aging Services Collaborative of Santa Clara County

Jaime Alvarado

Alum Rock Urban Village Advocates

Maritza Maldonado

Amigos de Guadalupe

Mylinh Pham

Asian American Center of Santa Clara County

Richard Konda

Asian Law Alliance

Sparky Harlan

Bill Wilson Center

Elisa Koff-Ginsborg

Behavioral Health Contractors’ Association (BHCA)

Jahmal Williams & Carmen Brammer
Black Leadership Kitchen Cabinet

Gregory Kepferle
Catholic Charities of Santa Clara County

Frederick Ferrer
Child Advocates of Silicon Valley

Dolores Alvarado
Community Health Partnership

Erin O'Brien
Community Solutions

Pete Settlemyer
Downtown College Prep

Shawn Gerth
EduCare Silicon Valley

Reymundo Espinoza
Gardner Health Services

Carmina Valdivia
Grail Family Services

Jason Su
Guadalupe River Park Conservancy

Andrea Urton
HomeFirst Services

Dana Bunnnett
Kids in Common

Darcie Green
Latinas Contra Cancer

Alison Brunner
Law Foundation of Silicon Valley

Quency Phillips
Lighthouse Silicon Valley

Gisela Bushey
Loaves & Fishes Family Kitchen

Anjee Helstrup-Alvarez
MACLA/Movimiento de Arte y Cultura Latino Americana

Héctor Sánchez-Flores
National Compadres Network

Maria Daane
Parents Helping Parents

Heather Cleary
Peninsula Family Service

Rev Ray Montgomery
People Acting in Community Together (PACT)

Sharon Winston
Project HIRED

Nathan Svoboda
Project MORE

Carole Conn
Project Sentinel

Kathy Cordova
Recovery Café San José

Poncho Guevara
Sacred Heart Community Service

Dorsey Moore
San José Conservation Corps

Wisa Uemura
San José Taiko

Carlos Rosario
**Santa Clara County Black Lawyers
Association**

Jessica Paz-Cedillos
School of Arts and Culture

Vanessa Shieh
School of Arts and Culture at MHP

Gabriel Hernandez
Sí Se Puede Collective

Walter Wilson
**Silicon Valley African American
Cultural Center**

Kyra Kazantzis
Silicon Valley Council of Nonprofits

Liz Gonzalez
Silicon Valley De-Bug

Sheri Burns
**Silicon Valley Independent Living
Center**

Saul Ramos & Victor Vasquez
SOMOS Mayfair

Elizabeth Gonzalez
South Bay Community Land Trust

David Cox
St. Joseph's Family Center

Regina Celestin Williams
SV@Home

Yvonne Maxwell
Ujima Adult and Family Services

Kevin Zwick
United Way Bay Area

Cayce Hill
Veggielution

Philip Nguyen
Vietnamese American Roundtable

Kylie Clark
West Valley Community Services

Leif Erickson
Youth Community Service

Huascar Castro
Working Partnerships USA

Adriana Caldera Boroffice
YWCA Golden Gate Silicon Valley

cc: Ruth.Cueto@sanjoseca.gov
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Joshua.Ishimatsu@sanjoseca.gov
housingelements@hcd.ca.gov
Members of the City Council and Mayor

Item #	Goal #	REAL Priority	City of San Jose Housing Element Strategy	REAL Comments
(P) Production of Market-Rate and Affordable Housing				
P-15	1,3	Investments in San Jose's African-American Community; Wealth-Building for Historically Disadvantaged Communities	Moderate-income Housing Strategy: Complete study and implement Council-approved strategy to further rental and homeownership opportunities for moderate-income residents. Get Council direction on priority programmatic recommendations	This strategy should include a plan for researching and collecting data about the needs of historically disadvantaged communities. It should also be clear that it is, at least in part, specifically directed toward the African American community and, as such, should be explicitly tied to the legacy of redlining and discrimination.
P-17	1, 4	Racial Justice, Equity and Fair Housing	Affordable Housing Siting Policy: Fully implement and evaluate effectiveness of the City's new Affordable Housing Siting Policy in generating new affordable housing developments in higher opportunity areas. Report on the outcomes, focusing on fair housing implications of development patterns.	The Housing Element and AFFH plan should make explicit that any categorization in the Siting Policy should not be based on discriminatory stereotypes about people who live in affordable housing. It should also make clear that lower income communities are also deserving of investment that ensures that every neighborhood is a "high opportunity area." Given the continued premise of the "Categories" used to define "higher opportunity area," the city must reject the current Category designations of the Siting Policy (that continues to redline neighborhoods based on neighborhoods of color, high crime areas, and density of low-income families). San Jose must find other anti-racist, socially respectful, and economically equitable designations of defining its neighborhoods and must still invest in affordable housing for the historically ignored neighborhoods and people of color. (Refer to I-18 of this Housing Element.)
P-21	1, 5	Housing Funding	Special needs housing NOFA: Issue Notices of Funding Availability (NOFAs) for City funds that award points for serving Special Needs populations, to the extent the City is allowed under law.	The strategy broadly proposes to issue NOFAs to serve Special Needs populations. However, this strategy is too generalized and should provide clearer targets on whose needs will be met. Many people who are rent-burdened have disabilities, while most Fair Housing complaints are related to disabilities. Recent trends in Santa Clara County data show that Black, Indigenous and other People of Color (BIPOC) with disabilities experience higher rates of severe rent burden than either those same people without disabilities or whites with disabilities. REAL recommends either having a separate NOFA for each special needs population or clearly providing a percentage for each, including people with disabilities and an emphasis on Black, Indigenous and other People of Color with disabilities who need access to affordable housing, particularly Extremely Low Income units to Affirmatively Further Fair Housing (AFFH).
P-25	1	Housing Funding	Updated Inclusionary Housing program fees: Conduct a fees study to ensure the Inclusionary Housing program remains feasible and does not present a barrier to housing construction	The goal of the inclusionary fee program should be to collect fees to build more homes. As such, the language should be more balanced, acknowledge the duty developers have to pay for housing needs they create, and stress the importance of inclusionary fees to the city's ability to fund affordable housing. The inclusionary policy should require more onsite construction or incentivize it with higher fees. The section should read "assess any and all exemptions to housing impact fees in geographic areas (like downtown San José) and how they negatively impact the intended public benefit of the program and limit funds for affordable housing projects."
P-30	1	Housing Funding	Updated feasibility study for Commercial Linkage Fee: Ensure funding for affordable housing is being paid per the City's new Commercial Linkage Fee, and periodically update fee levels to market conditions. First trigger is fall 2023 or after 1M square feet in executed leases of new construction over 100,000 sq. ft. in the Downtown over more than one building, whichever happens first.	The Commercial Linkage Fee (CLF) is the primary means of ensuring that funds are generated for the ever-increasing need for affordable housing. These funds are created by the outgrowth of jobs from commercial development. When the CLF was approved, the levels were set well below those determined to be feasible by the independent study. The potential of the CLF as a powerful tool to build more affordable housing must be maximized. The CLF can ensure San Jose is better able to follow-through on the affordable housing goals of the Housing Element and effectively expand opportunities for the most vulnerable and racialized members of the San José community. REAL recommends elements in the strategy be revised in the following ways: 1. "Updated feasibility study for the Commercial Linkage Fee, including the geographic analysis from the original study"; and 2. "Ensure funding for affordable housing is being paid per the city's new Commercial Linkage Fee, including integrating the fee into any project development agreements and periodically update fee levels to market conditions as determined by the feasibility study."

Item #	Goal #	REAL Priority	City of San Jose Housing Element Strategy	REAL Comments
(R) Preservation of Market-Rate and Affordable Housing				
R-2	1	Wealth-Building for Historically Disadvantaged Communities; Housing Funding	<p>Establish a Preservation NOFA: Establish a regular housing Preservation program, including annual funding allocation, priorities, underwriting guidelines, Notice of Funding Availability (NOFA) scoring framework, and ongoing workplan for NOFA issuances. Eligible Preservation activities should include acquisition and rehabilitation of existing market-rate housing, community land trusts’ rental housing acquisition, and other nonprofit-led alternative homeownership models.</p> <p>Create a staffing plan for a Preservation team to underwrite, fund and facilitate Preservation deals.</p>	<p>REAL champions preservation funding, particularly if it supports community land ownership models. The city needs creative thinking and revenue generation so it can build the appropriate internal infrastructure to support an ongoing Preservation NOFA, and significantly increase the available funding without moving money away from building deeply affordable homes. We want to see a minimum annual funding allocation of an additional \$25 million to support alternative community development and ownership models of affordable housing. REAL agrees that Eligible Preservation activities should include acquisition and rehabilitation of existing market-rate housing. Funding streams should include, but not be limited to, a more progressive tax structure, Measure E Funding, linkage fee funds, and more</p>
R-4	1, 3	Wealth-Building for Historically Disadvantaged Communities	<p>Implement the Community Opportunity to Purchase program: Fully implement the Community Opportunity to Purchase program, if approved by the City Council. Draft implementing regulations and finalize them based on comprehensive community input. Educate property owners, realtors, CBOs and residents on COPA parameters, compliance, and opportunities. Issue a Request for Qualifications and identify a pool of Qualified Nonprofits (QNP) to participate in the COPA program. Assist QNPs to team with Community Partners to participate in the program. Put in place technology enhancements to the City’s website to help users participate in the program.</p>	<p>We are pleased to see that the implementation of a COPA program is included as a strategy. We would like to see that the COPA policy be established by 2023 through a meaningful community participation process that ensures projects are adequately funded and meets the community’s needs.</p>
(H) Housing and Systems for People Experiencing Homelessness				
H-1 through H-6, H-8, H-9		Racial Justice, Equity and Fair Housing	<p>H-1: Interim homeless housing construction H-2: Interim housing for people experiencing homelessness in hotels/ motels H-3: Conversion of hotels/motels for homeless housing H-4: Shelters streamlining throughout the City H-5: Low-cost permanent housing solutions - H-6: Housing with integrated health care H-7: Safe parking program H-8: Nonprofit-provided homeless support services H-9: Street-based services for unhoused residents H-10: Encampment management to improve the health and safety of homeless individuals and the community</p>	<p>1. Leadership from those who are or have experienced houselessness is critical in service provision and constructing an effective path from the street to a home. 2. However, this will only work if the city is clear that it has just one north star and explicitly communicates this to all residents: Our goals with every service and project should be to keep people as safe and healthy as possible, and to move people from the street to temporary shelter to permanent housing. 3. It is important for the city to acknowledge that placating the complaints of housed residents by focusing on temporary and inadequate fixes like interim shelter and encampment sweeps only serve to take the city off course. It is also important to dispel misinformation so that the community knows that “solutions” like building massive, segregated shanty towns are not only impractical but also inhumane, and will detract from the city’s long-term housing plans that lift up the dignity, health, and long-term well-being of every unhoused resident. 4. Every temporary unit and service program needs to be tailored around the physical, mental and emotional needs of unhoused residents, prioritize service over punishment, and aim to keep family units (including pets) together.</p>
H-7	2	Racial Justice, Equity and Fair Housing	<p>Safe parking program: Continue to operate an overnight safe parking program and other emergency shelter options, establish 24-hour safe parking, and seek permanent funding sources for these uses.</p>	<p>We are very glad to see the Safe Parking Program included in this document. Having a car makes a huge difference for someone experiencing homelessness, and having a safe place to park is crucial. For this reason, a problem the city should work to solve is the impounding and ticketing of the cars of people experiencing homelessness. Once this happens, it becomes nearly impossible to get the car back given the exorbitant fee, and someone experiencing homelessness is not able to pay a ticket. This ultimately works against the city because when someone loses their car, this person becomes much more expensive to care for, and they will sadly deteriorate more quickly, as homelessness puts a massive toll on one’s body and mind. Additionally, giving a ticket to someone who is unhoused doesn’t make any sense. This pushes them further down and does not incentivize a change in behavior, as this is already their last resort. Instead, put a pamphlet with resources on their car, or find something other than a ticket to reprimand them. They need help, not punishment.</p>

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H-10	2	Racial Justice, Equity and Fair Housing	<p>Encampment management to improve the health and safety of homeless individuals and the community: Implement the encampment management program (Beautify SJ) to ensure that encampment residents and nearby residents are safe, provide encampment hygiene services and trash clearance, perform outreach to enroll encampment residents in services, and provide adequate notice and responsibly address the housing needs and belongings of homeless residents when encampments are cleared.</p>	<p>The city should not be encouraging policing and sweeps of encampments in the Housing Element. The explicit goal should be to eliminate or dramatically reduce encampment sweeps. A huge problem with encampment sweeps is loss of prescription medicine, which can lead to a major downward spiral for residents of the encampment. Losing one's belonging is also dehumanizing. Work not to sweep encampments, and ensure there are strong measures in place to protect residents if the encampments do get swept.</p> <p>Overall, this section lacks strategies to address the over-policing of unhoused individuals. The city should make transparent the results of encampment sweeps, including the number of arrests made during sweeps. The San Jose Police Department should track and report on its interactions with individuals who are unhoused and the city should analyze how many interactions could be instead handled by civilian and community-based interventions. This should happen within the next year.</p>
H-11	2	Racial Justice, Equity and Fair Housing	<p>Racial and other bias in homeless shelter and supportive housing systems: Increase access to homeless shelters and permanent supportive housing for people experiencing homelessness who are in protected classes by examining data to identify systemic racism and patterns of other biases, and working with shelter staff to remedy issues.</p>	<p>All services and housing provided to people who are unhoused – whether provided by city staff or nonprofit providers – should be free from discrimination. The City should ensure that the Housing Element includes strategies that root out and address discrimination and access barriers through the City's homelessness and housing systems.</p> <p>One of the largest protected classes of "people experiencing homelessness" are single undocumented Raza (Latina) women with children. This category of people is one of the most underrepresented groups to receive access to homeless shelters and/or supportive permanent housing from public administrations and operations. Limited data collected and/or analyzed from undocumented im(migrant) populations does not provide these public institutions with the information necessary to identify the systemic racism and patterns of other biases to remedy the needs of these families. San José should double its efforts to work with those with lived experience, regardless of their status, to help develop such remedies. Under AFFH guidelines, the city is required to identify and affirmatively address these systemic barriers to full access to publicly funded housing resources.</p>
H-13	2, 5	Racial Justice, Equity and Fair Housing	<p>Neighborhood outreach and education on homeless housing: Work with partners countywide on a community-based outreach campaign to promote dialogue and greater understanding of these issues. Outreach would focus on: 1) the root causes of homelessness and different housing approaches for people experiencing homelessness; 2) controversial housing topics related to equity and protected classes.</p> <p>Focus community outreach in areas experiencing growth.</p> <p>Pursue ongoing funding to compensate community-based organizations and advocates to conduct outreach.</p> <p>Create content and outreach materials, and establish regular cycles of issuing low-barrier Requests for Qualifications, identifying outreach partners, conducting regular trainings, and holding feedback and support sessions with outreach partners.</p>	<p>We recommend inviting people with lived experience of homelessness into the conversation to provide input to staff to develop outreach content that demonstrate the reality of homelessness and debunk myths and stereotypes about people experiencing homelessness that lead to NIMBYism and misinformation. People should be compensated for their time and expertise. and efforts should be made to ensure the context of participation is inclusive and safe for all participants.</p>
(S) Housing Stability, Tenant Protections, and Wealth Building				
S-1	3	Tenant Rights	<p>Tenant Resource Centers and violations reporting: Incorporate Code Enforcement and Apartment Rent Ordinance violation reporting procedures as part of expanded tenant resource centers, including allowing for tenant associations to report such violations on behalf of tenants. Assist residents to learn how to file Code complaints and look up their status online in tenant resource centers to help make the process more transparent. Improve coordination between Rent Stabilization Program and Code Enforcement staff and meet regularly.</p>	<ol style="list-style-type: none"> 1. These proposals are strong, and need to be strengthened and expanded. Tenant Resource Centers will be more useful by expanding their power and reach, such as allowing them to report violations. The city needs to ensure adequate funding and language access so these resources are readily available in practice and not just in theory. There will need to be a robust mail, social media and advertising campaign to raise awareness of these services. 2. San José should pass an ordinance declaring a right to organize for tenants in any building with five or more units, whether or not the units are legal under code enforcement. State law offers some protection against landlords who target tenants who try to organize their building but a city ordinance should go further and establish a right to collective bargaining. 3. The city should provide seed funding for tenant associations and collect data regarding their effectiveness in improving conditions for tenants and helping prevent evictions. 4. We recommend these additional metrics: Translation and Interpretation available; number of recognized tenant associations.

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S-3	3	Tenant Rights	Proactive Code enforcement in Place-based neighborhoods: Continue to implement the Enhanced Multiple Housing Inspection Program in Project Hope and other low-income neighborhoods to provide enhanced proactive inspection services to rental properties to arrest the decline and deterioration of aging housing stock and reduce blighted conditions.	It is certainly good to continue this program. It should be accompanied by a program that does something when a property is found not to meet safety standards, because we do not want to lose housing, but obviously we shouldn't have tenants living in places that fail inspection or aren't inspected.
S-5	3	Tenant Rights	Code enforcement improved case management: Implement a new Code Enforcement case management system for improved violation tracking to identify properties more easily with the most serious safety violations. Use the information to better educate the City's building preservation efforts.	To encourage people to report habitability issues, the city needs to provide incentives to low-income landlords to care for their properties and increase enforcement against landlords who fail to do so, including a receivership process. There should be relocation funding available for residents who are displaced due to habitability concerns. The city should explore the Code Enforcement Outreach Program in San Francisco, a collaboration between tenants, landlords and nonprofits, as a potential path to expedite the work of Code Enforcement. The city should adopt metrics measuring the number of people who stay in their homes and experience improved living conditions, and the number of people relocated within San José due to habitability displacement support;
S-16	3	Racial Justice, Equity and Fair Housing	Affirmative marketing languages and best practices for affordable housing: For all City-funded affordable housing, require affirmative fair housing marketing to be done in English plus top 3 languages. Expand data collection and monitoring of affirmative marketing of affordable apartments for initial lease-up and waitlist openings. Create library of best practices including sample notices translated into multiple languages.	San José is a diverse place with more than half of households speaking a language other than English. More than a quarter of households speak a language from the Asian and Pacific Islander population, which itself is broad and diverse. With so many different language speakers and the goal of increased accessibility, translating to an additional three languages is not sufficient to meet the goal of increased awareness and accessibility. Putting a limit to the number of languages in which information will be available perpetuates systemic and institutional inequities, and guarantees people will be locked out of housing they qualify for and deserve. More impactful than creating a library of best practices, the city needs to continue to invest in its database of affordable housing, improving its ability to interact with the public and notify users of the availability of affordable housing units in their preferred language. Also, each of the three facets of this strategy should have their own timing, as a requirement for translation can and should be implemented immediately, not 2026-27. When we know that barriers exist, we must look to remove them immediately, as our neighbors' access to housing depends on it.
S-17	3	Avoid Unnecessary Policing & Incarceration	Local Fair Chance / "Ban the Box" ordinance: Complete a report to review best practices in housing formerly incarcerated people and assess the feasibility, impact, and enforcement options of a Fair Chance / Ban the Box ordinance for rental housing applicants that would limit the use of criminal records by property managers when they are screening prospective tenants. If directed by the City Council, draft an Ordinance for their consideration.	There is no need for a costly and time-intensive assessment. The Housing Department should seek immediate direction from the City Council to draft an ordinance. More than 150 cities in 37 states have adopted a "ban the box" policy, which is a proven way to improve access to housing for formerly incarcerated people. Given the pervasive racism of over-policing and the disparate experience of BIPOC communities in the criminal justice system, a ban the box policy is a needed, concrete step the city can take immediately to promote racial justice in housing.
S-29	3	Tenant Rights	Rent Stabilization Program Strategic Plan and program assessment: Complete a Strategic Plan for the Rent Stabilization Program and assess the efficacy of the program in meeting its goals to provide tenant stability. Evaluate the current Apartment Rent Ordinance and a set of possible amendments including expansion of coverage to duplexes and alternate methods of calculating maximum allowable rent increases.	The Tenant Protection Ordinance should be expanded to cover all rental property. The maximum allowable rent increase on covered properties should be lowered. The city should collaborate with regional partners and statewide elected officials to push for a repeal of Costa Hawkins and clarify that the city has legal authority to expand the TPO to cover all rental properties built before 1995. Regarding the statewide rent cap passed in 2019, the city should advocate for it to be lowered, extended, and expanded to cover single family homes.

Item #	Goal #	REAL Priority	City of San Jose Housing Element Strategy	REAL Comments
(N) Neighborhood Investments and Higher-Resource Neighborhoods				
N-1	4, 5	Investments in San Jose's African-American Community; Wealth-Building for Historically Disadvantaged Communities	<p>Equitable neighborhoods-based investment strategies:</p> <ul style="list-style-type: none"> -Focus the City's investments on increasing equity in racially/ethnically concentrated neighborhoods with extremely low incomes by changing the City's organization and the way that departments collaborate. -Create an interdepartmental team facilitated by the CMO to create a common equity-based framework that prioritizes investing in capital projects and delivering services to racially and ethnically concentrated areas with a high proportion of lower-income residents. -Align data indicators across departments on income, race/ethnicity, and protected classes where possible. -Organize departments' staffing and community services delivery by neighborhood. -Create a coordinated neighborhood engagement strategy to take feedback from constituents in formerly redlined neighborhoods with high racial/ethnic concentrations and lower-incomes. Use feedback to co-create neighborhood investment and anti-displacement plans. -Apply the updated equity-based framework to budget requests, investment plans, and program delivery, and align the resulting priorities with Citywide Roadmap priorities. -Identify new, additional funding sources to implement the co-created neighborhood investment and anti-displacement plans 	<p>We appreciate this strategy that invests in lower income neighborhoods and equity. We recommend a reparations strategy based on evaluation of the history and consequences of historic redlining and discrimination be made explicit in the strategy language. Additionally, while it is often important to focus on neighborhood-level strategies for community stability and public safety, it's also important to ensure that policies and programs do not leave out communities whose needs aren't met by place-based strategies. For example, San José residents who are members of the African-American and Indigenous communities may not benefit from place-based strategies. The need to address this deficit in a neighborhood-based approach should be explicit, as should be a strategy to address this deficit.</p>
N-7	4, 5	Racial Justice, Equity and Fair Housing	<p>External infrastructure funding to create complete, high-quality living environments:</p> <p>Continue to seek external funding for parks, transportation, and other types of neighborhood infrastructure that favor cities with a demonstrated commitment to building affordable housing. Prioritize investments in lower-income neighborhoods with fewer amenities to the extent that program rules allow. Improve accessibility for residents with physical disabilities through infrastructure work.</p>	<p>There is some language we would like to see added to this strong and important strategy. We recommend adding: "Work with residents in these neighborhoods to identify the resources and amenities they want in their communities." and "Use strategies in the city's anti-displacement plan to ensure investment in high-need areas does not result in displacement of low-income residents, including local preference policies." Additionally, we recommend explicitly stating that deed-restricted affordable housing can be a community amenity within this strategy. We recommend an additional metric of the number of neighborhoods scheduled for and receiving improvements.</p>

Item #	Goal #	REAL Priority	City of San Jose Housing Element Strategy	REAL Comments
(I) Inclusive Neighborhoods				
I-1	5	Racial Justice, Equity and Fair Housing	<p>Disabled community partnership and priorities: Create partnerships with organizations that provide outreach to disabled persons, and meet at least twice per year to collaborate on ways the City could improve how well its affordable housing portfolio serves disabled residents. Conduct two tours of affordable sites to get partners' feedback and identify challenges for disabled residents, prioritize changes to developments the City could effectuate, identify potential changes to the City's affordable housing funding priorities and other requirements, and promote lessons learned to the development community.</p>	<p>1. The strategy emphasizes an educational opportunity for the city to learn by means of collaborating and partnering with organizations to identify, prioritize, and eventually implement needed changes in the development industry for the construction of affordable housing for the disabled community. However, this Housing Element Update process was the city's opportunity to be educated on the needs and solutions of the disability rights community. For example, the city held a focus group meeting with disability organizations on January 19, 2022, where a wide array of solutions were discussed.</p> <p>2. REAL recommends that strategy I-1 be reflective of target/priority solutions from these existing coordination efforts to date and provide new strategies that implement the solutions already recommended to the City by these disability organizations. The January 19, 2022 focus group meeting discussed how affordable housing for the physically and cognitively impaired should have "support services," "universal design features," and be able to "age in place."</p> <p>3. Targeted outreach could go to these communities as part of the strategy and/or equitable development or funding solutions can go towards providing more explicit language beyond what is provided in strategies I-5 and I-6, such as designing units to have adequate space for in-home care while maintaining affordable rents for the disabled, and/or including a specific strategy that meets the needs of the cognitively impaired. Moreover, Appendix H includes a wide array of comments that discuss meeting the needs for people with mental health disorders, but we could not find any strategies around this topic that we would like to see.</p> <p>4. This community, along with people with developmental disabilities also need supportive services to integrate into the community. This is particularly needed considering the history of both of these populations being forced to live in segregated settings such as the Agnews Developmental Center or Insane Asylum (which closed less than 15 years ago) with few alternative housing options being created for where these adults would live when parents or family members could not provide housing.</p>
I-7	5, 4	Community Engagement & Power Building; Racial Justice, Equity and Fair Housing	<p>Inclusive and equitable community engagement: Develop and implement inclusive and equitable community engagement strategies that center racial and social equity to inform and hear from San José residents in protected classes. Strategies are for use by City staff as well as developers and community groups.</p> <p>Amend the City's outreach and engagement policies, including Public Outreach Policy 6-30, to ensure that outreach is robust and opportunities for meaningful public participation are fully supported with multi-lingual materials, translation, and interpretation. Provide clear processes and methods to collect multi-lingual input and for input by persons with disabilities.</p> <p>Adopt language access standards for Housing Department outreach/public events and for Housing Department-funded affordable housing and grantees.</p> <p>Increase the availability of financial resources for all City staff to regularly partner with community-based organizations to gather meaningful community input.</p> <p>Continue to develop consistent equitable outreach practices and coordination across departments. Provide staffing from the City Manager's Office to help manage, and increase departments' staffing to do outreach and engagement.</p>	<p>1. Deep, meaningful community engagement is something the REAL Coalition has been asking for and we are happy to see a community outreach plan in this document. This strategy has several laudatory components and requires additional investment and urgency. REAL has previously advocated for the city to adopt a robustly funded and staffed Civic Engagement Initiative that is co-designed with the community. This kind of program should go hand in hand with a funded, community-based promotora model.</p> <p>2. This strategy must be in place no later than the end of 2023, considering one of its crucial components, Policy 6-30, was updated 18 years ago. The most important thing the City can do to improve inclusive and equitable community engagement is to create an in-house team of interpreters and translators (minimum Spanish and Vietnamese), with additional budget for translation and interpretation in other languages as needed.</p> <p>3. Inclusive and equitable engagement also means creating spaces for renters without landlords; spaces for LGTBQ+ identifying folks facilitated by people who understand the needs of those communities; and spaces for unhoused residents without housed residents complaining about them. The city should work with disability rights groups to provide different engagement platforms that work for different people who may not be able to attend in person or on Zoom. Doing this well requires realism about the scale of investment needed to engage residents most targeted and most at risk of displacement and homelessness. Partnerships between city staff/developers/community groups are critical. Nonprofits can be helpful intermediaries and can help engage community members.</p> <p>4. This strategy (and Council Policy 6-30 in particular) should be amended to include specific targets to engage BIPOC and low-income residents and give greater weight to this input when crafting policies and programs. We also recommend that the City work with the Office of Racial Equity to ensure that Policy 6-30 is crafted to meet city-wide racial equity goals.</p> <p>5. Increasing staffing and other funding to get this right is incredibly important.</p> <p>6. Lastly, city outreach continues to be not based in current adult and popular education strategies and communications social science, which means the content is often confusing and therefore not accessible to all audiences. Invest in training and train the trainer approaches for staff about effective education strategies.</p>

Item #	Goal #	REAL Priority	City of San Jose Housing Element Strategy	REAL Comments
I-8	5	Community Engagement & Power Building	<p>Promotores-based outreach: Fund a community-based Promotoras/ Promotores program to compensate residents who listen actively to community members' needs, share their lived experiences, build trust, and help the City to do meaningful community outreach and information sharing. Focus resources on hiring Promotoras/es from protected classes to serve the City's subpopulations experiencing the greatest housing needs. Make them available to all departments conducting outreach and engagement.</p>	<p>REAL has long advocated for city funding for community-based promotora models. The promotora model is a social change model and can create career pathways for promotora leaders. We are pleased to see this strategy acknowledged in the draft Housing Element. The city should add more detail to this plan including a more specific and near-term timeline for funding and implementation. Additionally, this strategy should acknowledge that in addition to information sharing, there are other, arguably more important, goals to a promotora model. Creating pathways for actual civic engagement, including feedback mechanisms and advocacy, by community members, is also critical. One way the city can accomplish this is by funding community-based organizations to hire promotoras as well, so that organizations that are close to the community can ensure those community members can engage in a meaningful way with the city, rather than just delivering informational messages about city services and processes.</p>
I-9	5	Community Engagement & Power Building	<p>Equitable Representation of Historically Underrepresented Communities on City Commissions: Conduct an analysis of appointments to the Housing and Community Development Commission and the Neighborhoods Commission to track the representation of protected classes, historically underrepresented neighborhoods, and those with other relevant characteristics. Implement a pilot program to require an equitable distribution of seats for historically underrepresented populations, including low-income renters and homeless/formerly homeless residents on these two Commissions.</p>	<p>We are glad to see this strategy. We strongly recommend expanding this plan to other commissions, such as the Planning Commission. Additionally, outreach for this program will be important to ensure targeted communities are aware of this opportunity.</p>
I-10	5	Community Engagement & Power Building	<p>Lived Experience with Homelessness seat on Commission: Fully implement the primary and alternate seats for a commissioner with Lived Experience Seat with homelessness on the Housing and Community Development Commission. Work with the Mayor's Office and the Clerk's Office to ensure the primary and alternate seats are filled promptly and the primary seat remains filled ongoing. Provide orientation, training, compensation, and other supports as needed within the first 6 months. Perform a confidential evaluation with those two commissioners, and other interested commissioners, starting 12 months after the Lived Experience commissioner seat is filled, and implement additional recommended improvements to support the commissioners.</p>	<p>We are pleased to see this strategy. Compensation should be provided beyond six months.</p>
I-11	5	Community Engagement & Power Building	<p>Representation of and priority for protected class members on City bodies: Develop and implement guidelines, and update the municipal codes where needed, to ensure elevated representation of communities of color and other protected class members in decision-making or advisory bodies such as City Commissions or refreshed Neighborhood Advisory Councils</p>	<p>This is a necessary strategy to add representation to city bodies. Proposed metrics should be expanded to include goals related to representation by specific protected classes. We recommend that a timeline and benchmarks of progress be added including specific and meaningful benchmarks beginning in the next fiscal year.</p>
I-12	5	Community Engagement & Power Building	<p>Resident-identified priorities: Interview, survey and analyze the living experience of the City's lower-income residents, especially those in protected classes, in all housing across the City. Use the results to determine needs the City should track and endeavor to meet.</p>	<p>One of the most important ways to include people with lived experience is to have them lead the conversation, and this is a good step toward this vision. It is good the city is interviewing, surveying, and analyzing, not just choosing one of these strategies. However, this strategy needs to be more specific. For example, include a metric with a goal of a meaningful number of people surveyed. It should also include a metric that the city will release the survey results and analysis, as well as a metric that the city will report on how those results are implemented over the duration of the Housing Element.</p>

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I-13	5	Racial Justice, Equity and Fair Housing	Equity-focused metrics: Develop and align department wide metrics that measure progress towards beneficial outcomes for protected class residents resulting from housing policies and programs.	This is a critical component toward the goal of eliminating housing discrimination. We appreciate the thoughtfulness and intentionality behind this strategy of developing department-wide metrics. These will support the continuous assessment of whether the city is progressing toward ending discrimination against protected classes through its many other strategies, in order to create racially and socially inclusive neighborhoods. This allows for accountability, and therefore it is critical that the reporting of these metrics and the methods for sharing this information with the public are more defined within the strategy. Additionally, we expect staff to move quickly in implementation of this goal, as it is a necessary step in understanding whether this work is moving in the right direction.
I-16	5	Investments in San Jose's African-American Community; Wealth-Building for Historically Disadvantaged Communities	Advocacy to close the racial homeownership gap: As part of the Housing Department's ongoing leadership around Fair Housing issues, engage in and support efforts at the state and federal levels to amend fair housing laws to allow for race-targeted housing assistance in jurisdictions where the jurisdiction has made documented findings of fact that race-based housing discrimination has occurred.	We appreciate this effort to advocate for changes that would specifically benefit the communities harmed by historic redlining and discrimination, particularly the African American community. It is important to specify which communities the city intends to benefit in this strategy, including but not limited to the African American community.
I-18	5	Housing Funding	Advocacy on public policies and programs to facilitate production, preservation, protection, and neighborhood investments: Inform, support and advocate for public policies and programs at all levels that create funding and other assistance for affordable housing production and preservation, tenant protections, and investments in prioritized extremely low-income, racially segregated neighborhoods	We appreciate the plan to create a City legislative priority to advocate for these important approaches. Following adoption and implementation of strategy I-16, the City should, in addition to taking local action, support and advocate for all efforts at the state and federal level to create reparations mechanisms in historically disinvested communities of San José. The City must account for and make specific reparations from historic disinvestment in racially segregated neighborhoods (historically redlined areas), including families from African Ancestry and Raza (Indigenous) communities (refer to P-17).
Constraints on Housing	NA	Racial Justice, Equity and Fair Housing; Community Engagement & Power Building	There's no language in the "Constraints" section outlining the challenge of neighborhood opposition	The California Department of Housing and Community Development directs cities to address local opposition to housing, and the draft report fails to reckon with the constraint of housed residents who fight against any and all new housing, whether it's market-rate, deed-restricted affordable or temporary villages for unhoused residents. The city needs an intentional plan to communicate with housed residents, give them a chance to offer input, and consider any reasonable feedback that goes beyond "don't build this project in my neighborhood." The need for many more homes is a citywide issue and shouldn't be subject to neighborhood vetoes. The city needs to be more proactive in reaching residents who support building new housing and to create channels for this silent majority to be heard without subjecting themselves to the usual opponents who tend to show up. We need more honest communication from staff and council members that the days of a sleepy, suburban San José are long over and the future is a denser city that is affordable to all and not an enclave for the lucky few.



Sacred Heart Housing Action Committee

August 19, 2022

Ruth Cueto
Planning Department
City of San Jose
200 E Santa Clara St
San Jose, CA 95112

Via email

Re: San Jose Housing Element 2023-31

We are the Sacred Heart Housing Action Committee (SHHAC), a grassroots organization comprised of a diverse group of San Jose leaders who are residents, workers, and voters representing the immediate need for affordable housing for low and very low-income residents and economic refugees. We seek immediate, long term, just and equitable solutions from our elected officials to guarantee affordable housing for all!

After reviewing the San Jose Housing Element draft, we generally approve of the overall direction of the document and feel that it accurately captures community input. Many of the items demonstrate innovation in expanding housing availability and breaking down patterns of segregation. We appreciated the frankness of the background in Chapter 2 regarding redlining and its effects on current segregation in San Jose. We also approve of the efforts to make boards and commissions truly represent San Jose's racial and cultural diversity, including lived experience representatives. The slogan "Nothing about us, without us" should apply to all under-represented groups.

The four items we find to be most important are:

- **S-28 (Right to Counsel)** We believe tenants need to be on a level playing field with landlords in eviction proceedings; [according to the ACLU](#), 90% of landlords have attorneys but only 10% of tenants are represented in court. Similar programs in other metropolitan areas have substantially reduced eviction rates.
- **S-29 (Rent Stabilization Program Strategic Plan and Program Assessment)** We believe that ARO protection could be extended to tenants in duplexes and single family rental homes even before any State amendment or repeal of Costa-Hawkins. Likewise, the City could adjust the formula calculating allowable rent increases to prevent sudden increases in rent for tenants protected by the ARO.
- **R-4 (Implement the Community Opportunity to Purchase Program)** We support the implementation of COPA to help preserve affordable housing when landlords wish to sell their naturally-affordable properties.

- **H-5 (Low Cost Permanent Housing Solutions)** We support creative solutions to increase options for housing people who are currently unhoused. However, representatives with lived experience must be involved in crafting policies to prevent unintended negative consequences.

We have detailed suggestions regarding the following groups of items:

- **R12 (New Anti-Displacement Strategy), H-13 (Neighborhood outreach and education on Homeless Housing), S-23 (Know Your Rights Materials), S-24 (Targeted Fair Housing Outreach and Enforcement), S-26 (Increased Support for Nonprofits to do Tenant Outreach and Education), I-1 (Disabled Community Partnership and Priorities)** Make deeper intentional partnerships with community organizations and groups in order to conduct better outreach, specifically with the Black/African Ancestry and Indigenous communities. Consider conducting outreach further in advance, and giving more notice of future outreach efforts. Hold focus groups with community partners on how best to engage with these communities and develop a collaborative and strategic outreach plan. Set a higher goal of residents to connect with and make it an active goal to increase the number of residents who provide feedback. The current policy of requiring interested parties to seek out email lists to sign up for notifications of new outreach sessions, even after attending meetings on related topics, meets requirements to avoid unsolicited emails but fails to properly notify people who would be interested if they knew it existed. The Housing Department seems to assume that people are constantly searching the City of San Jose website for new meetings on topics of interest. It would be helpful for the public to be able to opt-in to an overall Housing email list that would announce the availability of new outreach meetings on all topics.
- **P-17 (Affordable Housing Siting Policy), P-31 (Land Acquisition for Affordable Housing in Target Locations)** Develop specific strategies for informing the high resource communities regarding AB 686 (Affirmatively Furthering Fair Housing) in attempts to prevent vocal pushback and/or White Flight. These strategies must be informed by insight provided by local community organizations and leaders most directly impacted, as well as facts from affordable housing policy experts. For example, members of SHHAC who attend public meetings (Planning Commission, City Council, and focus groups) have heard first hand the false narratives and myths promoted by Home Owner Associations (HOAs) and neighborhood associations that oppose affordable housing in their neighborhoods. These claims, such as accusations that sex offenders will be secretly placed in affordable housing near schools, are inaccurate and deeply offensive. The spread of these dangerous myths at meetings throughout the South Bay demonstrates the importance of outreach and education to address these assertions. That type of fearmongering conveniently appeals to homeowners of all races, while allowing plausible deniability of any connection to the racial equity goals of the Housing Element. Shift The Bay is a group that has developed messaging and training for positive community engagement on affordable housing in the Housing Element for local organizations to adapt.
- **N-1 (Equitable Neighborhoods-Investment Based Strategies), P-2 (Subsidize Extremely Low-Income Housing Including Permanent Supportive Housing for Homeless):** When naming specific communities that are low-resource, underfunded and need investment in this plan, partner with with residents of the area who have lived in that community for an extended period of time.

- **R-7 (Extend AH Restrictions), R-9 (Create a Preservation Policy)** The strategy for protection of current deed-restricted affordable housing needs to be described in more detail.
- **Appendix H** In terms of outreach for the Housing Element, were residents from each of the City Council districts represented? What were the percentage breakdowns of each district? Was any district disproportionately represented?
- **Appendix B** Typo to be fixed (pdf pg 102) by providing the year: “In xxxx, the City Council directed that 45% of the City’s subsidies be spent on ELI apartments.”

We also have concerns about the metrics for many of the items in the Housing Element. A few items that state specific goals seem to be setting the bar too low or the target date seems later than appropriate. More importantly, however, the City’s metrics for many items in the Housing Element only track their efforts and not the actual outcomes. This will enable those departments to celebrate wins for holding a certain number of meetings, rather than reporting the number of tenants housed by that effort.

- **R-8 (Work with BAHFA on Moderate-Income Financing Strategy Bonds)** We approve of this item, except the goal is to complete merely three (3) transactions by 2027. Unless each “transaction” is a bond that funds an entire year’s worth of housing development rather than a transaction for a single project, this goal is far too low to support our affordable housing goals.
- **H-8 (Nonprofit-Provided Homeless Support Services) and H-9 (Street-Based Services)** only track the funding and the number of people assisted. There is no indication they plan to track outcomes for the people assisted by these nonprofits. Given that there have been multiple press reports of issues such as [people falling through the cracks despite receiving services](#), [mismanagement by John Stewart and Abode Services at Renascent Place](#) and [Second Street Studios](#), and [street-based services being unable to support people displaced by sweeps](#) over the period the Housing Element has been drafted (and multiple first-hand reports at town halls and other public comment forums) this is a serious oversight. There must be accountability for the nonprofits contracted to support the unhoused people of San Jose.
- **I-5 (ADUs with Universal Design)** This is an excellent idea that we support. However, the design standards will not be released until 2027 even though the feasibility analysis for P-27 (ADU Affordability) is due by 2025. Shouldn’t those be developed in tandem?
- **I-12 (Resident-Identified Priorities)** Why are they waiting until 2025 to start the surveys?
- **I-15 (Housing Catalyst Team Work Plan)** Why are the only metrics an annual report to the City Council? Will this be released to the public? Why isn’t there a requirement to present this information on a public-facing website in plain language (and multiple languages)?
- **I-16 (Advocacy To Close the Racial Homeownership Gap)** Why are the only metrics the number of support letters issued and advocacy meetings held? Why are there no goals on outcomes such as the number of home purchases facilitated?
- **I-17 (Collaborative Solutions to Address Housing Needs)** Why are the only metrics the number of collaborative initiatives? Why are there no measures of how many new solutions were generated or people housed using their new methods?

- **I-18 (Advocacy on Public Policies & Programs To Facilitate Protection, Preservation, and Production and Neighborhood Investments)** Why are the only metrics the number of support letters written and the working group participation? Why are there no measures of new policies and programs, funds invested, tenants protected, units preserved/produced, etc.?

We also have concerns about ongoing data reports of the fees collected under **P-25 (Updated Inclusionary Housing Program Fees)** and **P-30 (Updated Feasibility Study for Commercial Linkage Fee)**. The public needs transparency around these because of the constant back-and-forth between Council approving fees to fund affordable housing and developers getting exemptions from the fee [\[see Spotlight article\]](#).

Although we approve of items **P-7 (City Ministerial Infill Approval Ordinance)** and **P-10 (Standardize and Streamline Permitting, Fees, Applications)**, we caution that any process must still incorporate public outreach to educate neighborhood residents and allay their fears about affordable housing or higher density housing. The future tenants of new higher density or affordable housing do not benefit by moving into a neighborhood that sees them as dangerous enemies rather than just new neighbors.

Likewise, ensuring that developers don't harbor attractive nuisances on their land during the permitting process via **N-3 (Vacant and Neglected Buildings Program)** will help reduce neighborhood fears and resistance to new projects.

Additionally, one of our members (Kathryn Hedges) also participated in the Disability Focus Group and has concerns regarding several items related to that meeting. The only government agency representing Disabled people was the San Andreas Regional Center (SARC), which provides services to families of children with Developmental Disabilities (DDs). This is a small fraction of the total Disabled population (especially since SARC only accepts the most severely disabled children with specific diagnoses). Although the representatives from the Silicon Valley Independent Living Center (SVILC) were very knowledgeable, the number of speakers from the Disability community was outnumbered by the speakers from the Parent groups. There are significant differences in policies promoted by Parent groups compared to what Disabled adults want. There are also misconceptions in the Disability community that it is easy for people with DDs to get housing and other services from SARC, when that is not the case. One reason that it is difficult to recruit Disabled focus group members is that many people with disabling conditions don't see themselves as "members of the Disability community" and don't know that SVILC is a resource. The City of San Jose is still in the process of establishing an Office of Disability Affairs (ODA), as is the County of Santa Clara. The ODA is intended to represent the whole Disability community and should be added to the list of agencies supporting the following items:

- **P-25 (Special Needs Housing NOFA)** This item is currently skewed towards clients of SARC who are represented by This over-representation is perpetuated in the current Housing Element.
- **S-13 (Affordable Housing Renter Portal Language Access)** The disability access described in this item clearly relates to the basic function of the Office of Disability Affairs.
- **I-1 (Disabled Community Partnership and Priorities)** Working with the Office of Disability Affairs (City and/or County) will be important when those office(s) are fully operational.
- **I-2 (Affirmative Marketing to Disabled Community)** It is very important to determine how to reach Disabled people who are not Regional Center clients, particularly since the Disability

Focus Group was unable to reach a representative cross-section of people with disabilities in San Jose. SVILC and ODA need to be included, not just SARC.

- **I-5 (ADUs with Universal Design) and I-6 (Universal Design & ADA Upgrades)** Universal Design is a relatively new idea that designs spaces that are more accessible across disabilities. These design features typically benefit non-disabled people as well (just as curb cuts and ramps help people with strollers, carts, and wheeled luggage). This is an appropriate area for SVILC and ODA to lead the design standards effort. The Kelsey and the Palo Alto Junior Museum and Zoo are two local organizations that implement Universal Design.

Thank you for the opportunity to provide our input on the San Jose Housing Element for 2023-31. We hope that our suggestions can be incorporated in the final version of this plan.

Sincerely,

Sacred Heart Housing Action Committee



SOUTH BAY YIMBY

Comment on San Jose's Draft 2023–2031 Housing Element

South Bay YIMBY is a grassroots group advocating for plentiful, inclusive, and affordable housing in the South Bay. We appreciate the opportunity to comment on San Jose's Draft Housing Element, and thank staff for the considerable work they undertook in preparing this document.

Since 2014, San Jose has consistently ranked among the worst of California's major cities in per capita housing growth. It ranked 8th out of the state's ten largest cities in 2014, 8th in 2015, 7th in 2016, 7th in 2017, 9th in 2018, 9th in 2019, and last in 2020. The status quo is unacceptable, and San Jose must take "meaningful actions" to meet its housing needs during the 6th RHNA cycle. (Gov. Code § 65584(e).)

We believe the [Draft Housing Element](#) contains several commendable elements, with sites widely distributed and a promising set of policies. The city's pipeline analysis, which discounts production based on the percent of entitled projects which have proceeded to be developed, is particularly praiseworthy, as is the proactive inclusion of zoning changes in the Sites Inventory. However, we believe the Draft Housing Element could and should be improved in several ways:

- The analysis of zoning as a constraint is minimal, while consideration of existing uses as a constraint is inconsistent, and the city does not consider what policy tools it may have to address high construction costs as a constraint.
- High-impact policies such as ministerial approval should be implemented sooner, rather than later, to make a difference in *this* planning period.
- Opportunities for affordable housing remain constrained to high traffic, high pollution arterials, with little to none located in the city's highest resource census tracts and Racially Concentrated Areas of Affluence (RCAA).
- We commend the city's anti-displacement and tenant protection policies, but more could be done to strengthen this aspect of the Housing Element.

The Draft Housing Element's analysis of constraints is incomplete on zoning & construction costs

San Jose's General Plan and zoning confine housing growth to only a narrow subset of the city's land, yet the Draft Housing Element does not analyze whether this constrains housing growth within the city. The various zoning districts of the city are listed, but their standards such as setbacks are not assessed for whether they act as constraints. Nor is the relative proportion of different zoning districts considered. San Jose has a particularly high share of its land zoned exclusively for single family homes, covering 84-94% of the city's residentially zoned land and a majority of all non-agricultural land within the urban growth boundary. Does this abundance of land with the most restrictive zoning designation constrain housing growth in San Jose? The document does not say.

The Draft Housing Element also notes construction costs as a constraint, but does not consider policy solutions within the city's power to bring down those costs. For example, San Jose's design guidelines emphasize "articulating the facade," requiring multiple plane changes and additional corners that add complexity and cost to the construction process. Moreover, the relative lack of multifamily zoned land leads San Jose to plan for all housing growth through fairly high density development (above 50 du/acre). We celebrate and welcome high density development, but in planning for it exclusively, San Jose leaves out the possibility of lower-cost moderate density construction (~30 du/acre). This moderate density development can be built more cheaply, without structured parking, and we believe opening up more of the city to it is an essential part of San Jose meeting its housing needs.

Lastly, the Draft Housing Element's analysis of existing uses as a constraint on development is inconsistent. In Chapter 4: Constraints on Housing, the city notes that "Long-term landholders may be unlikely to sell because they maintain a low tax base on the property", and also that "In urban village areas, of which many are transitioning from primarily commercial to mixed-use or residential, there may be properties already occupied by businesses that are paying good rent, and the owner is thus reluctant to sell." However, in the Sites Inventory, the city claims that "existing prior uses such as retail... do not significantly impede additional residential development on a site" because the value of the land for residential use is greater. These claims conflict with one another. Since some landholders will be unlikely to sell or redevelop such properties, and since the Sites Inventory includes many locations which currently have stable or successful businesses, San Jose should identify additional sites and rezonings in order to meet its housing needs.

Policy implementation timelines place certain high impact (and legally mandated) programs into the back half of the planning period

We are very excited to see San Jose propose moving toward ministerial approval for housing (P-7). However, we are concerned that this policy is not proposed for implementation until 2027,

halfway through the planning period. By-right approval of developments with 20% on-site Low Income housing is mandated by state law for a selection of San Jose's sites (Gov. Code § 65583.2(h)). Since having such a program in place is already a necessity, expanding it throughout the city should not pose additional technical difficulties. We also encourage San Jose to consider adjusting the percentage of on-site Affordable Housing required based on the depth of affordability provided, as is typical in Inclusionary Zoning and Density Bonus policies.

We are also excited to see the Draft consider a study of permitting missing middle housing types throughout more of the city (P-11, P-35). We are eager to participate with the city in developing this policy, which we think has the potential to add a much needed new dimension to San Jose's housing growth. We would like to see greater clarity on the interim timeline between now and when the policy would come to Council in 2027, as well as specification on how this work would relate to the city's implementation of SB 9. We also encourage San Jose to expand its popular and successful program of pre-approved ADUs eligible for same day permitting to duplexes under SB 9.

Affordable housing sites remain concentrated on high traffic & high pollution arterials, with little to none in the city's highest resource census tracts & RCAs

The city has clearly worked hard to ensure that housing opportunity sites are distributed across all neighborhoods and not concentrated in lower income areas, including proposals for zoning changes to achieve that goal. We commend that work, and are excited for steps that will advance it, such as rezoning Willow Glen's neighborhood commercial district. However, we see two key remaining shortcomings.

First, very few opportunity sites are located in the Highest Resource census tracts and Racially Concentrated Areas of Affluence within San Jose. We encourage the city to seek additional sites & zoning changes that can remedy this.

Second, almost all opportunity sites for Lower Income housing are on high traffic, high pollution arterials. This is why we believe the city's missing middle study, along with implementation of SB 9 that includes work to support development of dedicated affordable housing, is essential to advancing a truly equitable siting of Affordable Housing in San Jose.

More can be done to strengthen implementation of the city's Anti-Displacement Framework

We are pleased to see that many anti-displacement and tenant protection policies have been incorporated into the Draft Housing Element. We strongly support the items relating to COPA (R-4) and developing and funding a preservation policy (P-31, R-5, R-9, N-4, R-12). We also support the many priorities communicated in the letter submitted by the anti-displacement equity coalition, made up from members of groups representing populations historically excluded and

disinvested from in the city. Like the comments in that letter, we would like to see the city empower tenants to form their own recognized organizations and create a community based code enforcement policy. Not only would this encourage more community engagement among those who have not been traditionally centered in discussions, it builds on itself to create stronger and more stable communities.

We recognize that the Equitable Neighborhoods-Based Investment Strategy (N-1) is a deeply important factor to affirmatively further fair housing. Just as putting affordable homes in highly resourced areas will provide more opportunities, so will reinvesting in underrepresented communities. Core to our values, that reinvestment should include more affordable housing which is not mentioned in the (N-1) strategy. As YIMBYs, we believe housing is not a burden on communities, but a critical tool to prevent displacement and destabilization of our neighborhoods. As we develop in these Racially / ethnically concentrated neighborhoods, we support the city pursuing a anti-displacement tenant preference and the neighborhood tenant preference policies in S-20 to prioritize the residents at risk of displacement in those communities.

Other important policies that we support in the draft include: Study on rent increases and burden in affordable housing (S-10), Eviction prevention - Housing Collaborative Court and other support for legal services (S-12), Expand/amend the Tenant Protection Ordinance (S-31), Right to counsel (S-28), Local Fair Chance / "Ban the Box" ordinance (S-17) and Tenant Resource Centers and violations reporting (S-1). There are many more good and important anti-displacement policies in the draft, but these were the ones we wanted to highlight in support.



San Francisco | San José | Oakland

August 21, 2022

City of San José Planning Division
200 E. Santa Clara Street
San José CA 95113

Dear San José Housing Element Team:

Thank you for the opportunity to comment on San José's Draft Housing Element. The state-mandated Housing Element is a critical document that outlines how the city is going to accommodate future housing growth at all income levels. This policy document will guide investments and policies that can help make San José a much more affordable city. We appreciate the amount of time and care that the Housing Element Team has put into drafting this document, and commend its thoughtful outreach and engagement with community groups and stakeholders across the city.

SPUR is a public policy non-profit organization in the Bay Area with offices in Oakland, San Francisco and San José. We work across policy areas and political lines to solve the big problems our cities and the region face, including the housing affordability crisis. We are committed to working in partnership with the City to develop a housing element that complies with state law and contains strong implementation mechanisms to remove barriers to housing development, stabilize communities, and meaningfully address social and racial equity in San José. We submit the following feedback on the Draft Housing Element for your consideration.

- 1. The Housing Element should take steps to clarify mechanisms for meeting its goals to affirmatively further fair housing, prioritizing clear implementation policies for citywide siting of affordable housing, and how rezoning is being contemplated.**

We appreciate the effort that the team has taken to analyze how this Housing Element draft affirmatively furthers fair housing. Additionally, we commend the City's more than five-year long process to engage local community and advocacy organizations to work on anti-displacement strategies and policies for San José and their inclusion in this document. Affordable housing is an important tool for stabilizing neighborhoods at risk of displacement, and the City has taken significant steps to engage the City's stakeholders to affirmatively site fair housing.

However, Appendix F of the Draft Housing Element shows that several opportunity sites in the inventory have a zoning that is inconsistent with the General Plan and that staff will need to align with the General Plan. The Draft also notes that staff is currently developing an overlay for sites in North San José that currently do not have a land use designation that allows for residential uses. We appreciate and support all of this work but feel it would be a great benefit if the Housing Element provided more specific details about which locations are being considered for rezoning and utilization, and revisit the assumptions made in the draft.

2. We support planning for growth in well-resourced neighborhoods to meet fair housing goals, but we have questions as to how to achieve these outcomes.

The draft indicates that up to 34% of new housing may be possible in high resource areas. Given that much of the residential capacity in San José is located in high resource areas such as in North and West San José, and that therefore, a sizable portion of affordable housing in the city may be located in these areas, it is important to ensure that development is feasible.

Although the team has identified the need to produce an analysis of likely tools to meet 20% affordable housing targets in North San José, inclusive of feasibility studies, we feel that the Housing Element should provide clarity on what strategies will be contemplated. SPUR recommends doing this by maximizing affordable housing production on existing publicly owned land, partnering with affordable housing developers to acquire land for affordable housing development, and providing additional incentives for the development of affordable housing.

3. The site inventory relies on opportunity sites to accommodate RHNA that are primarily located in Growth Areas and Urban Villages where the City encourages most new housing to align with the General Plan. However, many of these Growth Areas and Urban Villages will require significant attention and resources in order to move forward, and those needs should be clarified in the Housing Element.

The city has succeeded in adopting a land use and transportation agenda that seeks to add compact Urban Villages instead of growing out. We are supportive of these strategies to enable San José to accommodate its share of the region's growth by concentrating new job and housing development in locations accessible by transit, foot, or biking. However, to date only a

handful of the 60 designated Urban Villages have projects underway, and [plans have taken four to five times longer](#) to complete than expected.

We believe that the Housing Element can more specifically address how to make the Urban Villages strategy and process more effective. Currently, approved Urban Villages plans contain implementation challenges such as inclusion of commercial or phased requirements for residential development, rezoning that needs to be matched to their land use designation in the Envision 2040 plan, and room for improvements to meaningful community engagement. The Housing Element should specifically address planning process challenges for approved and unapproved Urban Villages, and address the need for additional City resources to complete and implement this ambitious land use strategy.

4. The Housing Element should revisit housing production constraints and the City's goals for developing livable and affordable communities that will make neighborhoods more equitable.

The availability of financing, the price of land, and construction costs contribute to the cost of housing investment and can potentially hamper the production of affordable housing. Although many of these potential constraints are market-driven and generally outside of direct government control, jurisdictions have options to address these constraints and plan for well-resourced and livable communities.

We commend the City in adopting solutions to housing constraints such as reforming citywide parking minimum requirements, and appreciate the team outlining goals and strategies to address other jurisdictional constraints towards an abundant and affordable housing stock. However, we feel the Housing Element can more adequately address the challenges and opportunities in San José's development patterns. For example, the draft identifies transit oriented development for all income levels in and around Diridon Station in proximity to Google's Downtown West development. However, the Housing Element should also prioritize the development of concrete and effective strategies to ensure dedicated funding for affordable housing and community infrastructure leads to concrete outcomes. The Housing Element should revisit commercial linkage fees, park fees and more that entail investments in community spaces and programs that benefit low-income families and uplift communities across the city.

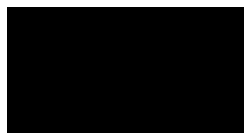
Effective housing policy is not concerned solely with providing enough housing but ensuring that it meets diverse needs by considering where and for whom housing is built. Whereas community development across California has had an ongoing history of racially discriminatory policies and outcomes, this Housing Element update is one of many tools San José can use to move towards a more equitable and affordable community for its residents.

Thank you for your consideration of our comments. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Erika Pinto
San José Planning Policy Manager



Fred Buzo
San José Director

Cc: SPUR San José Board of Directors
California Department of Housing and Community Development

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TRANSMITTED VIA EMAIL

August 21, 2022

City of San Jose Planning Division, 3rd Floor
c/o David Ying
200 East Santa Clara St.
San Jose, CA 95113

City of San Jose Planning Department and Housing Department.

The 6th Cycle Housing Element Update process is a unique opportunity to fully assess housing needs in San José and to identify new tools and sites to address these needs and constraints on developing housing. This process is also an opportunity to engage deliberately with the full community, especially those who represent populations that have been historically excluded and are at risk of displacement, to share their housing needs. This unique opportunity is one that is required to adhere to the clear legal guidance as outlined by HCD in multiple documents interpreting state law.

This is not a simple process, and we appreciate the work that San José staff, elected and appointed representatives, and members of the community have done over the last 12-14 months. As you know, the expectations for this process are high, and jurisdictions throughout the state have struggled to generate compliant housing elements for this cycle.

During this comment period on the current Draft, there is still time to receive public input and address concerns prior to submission of the Housing Element Update to the State. Towards that end, SV@Home is submitting the following comments.

***Outreach, Community Input, and targeted AFFH outreach as the foundation of the
Housing Element Update process***

The City's outreach consisted of a broad range of activities including: online surveys, tabling at events, holding public meetings, a movie screening, and reaching out directly or through community partners to key resident groups and stakeholders through multiple channels. Many engagement opportunities were offered in English, Spanish, and Vietnamese, and at multiple times of day. Based on SV@Home's participation in many of these events, and the City's documentation of its efforts, the City did an excellent job of keeping issues of fair housing central to many of the discussions.

The City has provided the Draft Housing Element in English only, creating a barrier for San José's large population of residents who do not read English to provide feedback and continue to engage in the process.

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 2 of 20

Although the City has clearly made significant efforts at outreach and engagement, much of the feedback from representatives of vulnerable communities and key stakeholders is not described in the Draft Housing Element. The following describes the shortcomings we see related to the transparency of documented feedback.

- For many public and group meetings, the City has provided excellent documentation of community, and some focus group, feedback over a broad range of issues and needs. However, there is no documentation provided of the agenda or feedback from the City's 44 stakeholder meetings, 11 working groups, or 6 intergovernmental agency meetings. In addition, more than half of the focus groups that are listed as occurring have no documented summary of feedback: formerly incarcerated individuals, nonprofit affordable housing developers, women and domestic violence survivors, Central County, Vietnamese community, South County, Filipino community, schools/ educators, seniors, Latinx community, and affordable housing residents of Kings Crossing. While necessary perspectives may have been captured by the City, the lack of documentation makes that knowledge inaccessible to those who should be able to comment during this process and could learn from the concerns discussed.
- There have been no meetings soliciting stakeholder or public input or feedback on the details of the Sites Inventory.
- Some stakeholder meetings, such as most of those SV@Home engaged in, were focused more on process planning than on housing needs. It is not clear how many other stakeholder meetings were also process planning-focused rather than seeking substantive community input.
- The City's decision to strip out most of the identifying information from Focus Group meetings summary table makes it difficult to assess whether these groups were representative of the population.
- The summary of community engagement efforts and community participation was not included in the Draft Update initially released for the 30-day public comment period, reducing the time available for the public to review and provide feedback to the City below the statutory minimum.

It is clear from the Housing Needs Assessment, Goals and Strategies, and other sections of the Draft Housing Element that the City has received and incorporated an abundance of stakeholder and community input and feedback. However, the failure to include full documentation in the Draft of knowledge shared in the stakeholder and community discussions makes it very difficult to assess how comprehensively the Goals and Strategies reflect the input received. This lack of transparency about the process greatly limits understanding of what appears to be substantive public engagement throughout this process, and weakens the ability of a range of government divisions and partners to learn what is most important to residents.

SV@Home recommends the City of San José fully document input and feedback received from all groups over the course of the housing element process.

Housing Needs Assessment

Overall, the Summary of Housing Needs is concise but substantive, incorporating robust local knowledge and demonstrating a thorough understanding and analysis of both data-driven assessments of resident housing needs and fair housing issues.

Based on community feedback, SV@Home requests that the City analyze and add the following:

- The housing needs of tenants in single family homes and duplexes, given the City's high proportion of lower-income residents renting these home types, many of which are under corporate ownership, and residents of which are not protected by the City's existing rent control ordinance;
- The unique housing needs, challenges of, and protections for families experiencing domestic violence, given that domestic violence occurs primarily in the home and is a common reason for family eviction for public nuisance due to police calls or noise;
- The housing needs and challenges of people with physical or intellectual disabilities, disaggregated by race, as residents of different races are likely to experience different outcomes.

Policies and Programs to address housing needs and risks of displacement under AFFH

Affirmatively Furthering Fair Housing through Anti-Displacement policies

SV@Home has been actively involved in a series of meetings with a coalition of groups representing communities most impacted by housing instability and displacement, to engage in a process of prioritizing anti-displacement policies. This process built upon the extensive public and community-government led discussion and research of displacement risks and effective responses, which has taken place in the last five to six years in San José. The process included meetings of stakeholder organizations, public meetings to discuss priorities, and direct meetings with city staff. SV@Home is proud to have participated in this constructive process, which is outlined in a coalition comment letter on the Draft, which you can view [here](#).

The anti-displacement coalition process generated a number of concrete proposed policies that the group felt have not been adequately addressed in the City's current Anti-Displacement Strategy. Most of these recommendations have been included in the Policies and Programs chapter in the Draft Housing Element, but there were also two recommendations, previously shared with City staff, that the group felt were not fully addressed:

- Develop a process for recognizing organized tenant associations in targeting Apartment Rent Ordinance enforcement and code enforcement as part of the expanded tenant resource center, including the potential of a receivership program for chronic offenders.

The current Draft identifies important steps to increase education about tenant rights and resources and strategies to step up code enforcement (S-1, S-3, S-5, S-6, S-23, S-27, S-28). However it lacks detailed,

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 4 of 20

substantive policies to empower renters to organize their community and ensure their rights. We ask that the City adopt a local “right to organize” policy, to augment the State protections with local enforcement. We also believe that a more formal integration of established tenant unions or organizations in building code, and renters rights, enforcement is a critical step to realize the value of these organizations to the tenants themselves and the city as a whole.

- Amend the Apartment Rent Ordinance to include duplexes (and possibly single family homes) and amend the Apartment Rent Ordinance to lower allowable rent increases below 5%.

The coalition supports the City’s inclusion of S-29 as a strategy but is concerned that the policy process lacks a clear timeline and clarity on what kind of amendments would be presented to council.

The coalition also supports several proposed Policies and Programs that were not a part of our prioritization process. One such program is S-10: Study on rent increases and burden in affordable housing - Research how rent increases in the City's restricted affordable apartments have been implemented over the last five years, given that area median income continues to increase rapidly in Santa Clara County. Study rent burden and demographics for residents of affordable homes, and use research results to inform proposed state legislation and/or City policy. Present findings and policy recommendations to the City Council.

REAL Coalition

SV@Home is also part of the Race Equity Action Leadership (REAL) Coalition, a broad community of over 125 nonprofit leaders and allies that have been meeting since June 2020 to use their positional power to advocate for a more racially-just and equitable society. We facilitated REAL’s engagement with the Draft Housing Element and collaborated to produce a letter under the Housing Justice Workgroup asking the City of San José to be more bold in advancing housing programs and policies that will recognize historic inequities and advance racial justice and equity in measurable ways. SV@Home is also proud to support the REAL Coalition’s letter, which can be viewed [here](#).

Several important comments from the REAL Coalition are included below.

Affordable Housing Siting Policy (I-18)

The Housing Element and AFFH plan should make explicit that any categorization in the Siting Policy should not be based on or promote discriminatory stereotypes about people who live in affordable housing. It should also make clear that lower-income communities are also deserving of investment that ensures that every neighborhood becomes a “high opportunity area.” Given the continued premise of the “Categories” used to define “higher opportunity area,” the city must reject the current Category designations of the Siting Policy, which continue to redline neighborhoods based on neighborhoods of color, high crime areas, and density of low-income families. San José must find other anti-racist, socially respectful, and economically equitable designations of defining its neighborhoods, and must still invest in affordable housing for the historically ignored neighborhoods that are home primarily to residents that are people of color. (Refer to I-18 of this Housing Element.)

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 5 of 20

Updated Inclusionary Housing program fees: Conduct a fees study to ensure the Inclusionary Housing program remains feasible and does not present a barrier to housing construction (P-25)

While we appreciate the importance of not hindering market rate housing construction, the goal of the inclusionary fee program should be to collect fees to build more homes. As such, the language should be more balanced, acknowledging the duty developers have to pay for housing needs they create, and stressing the importance of inclusionary fees to the City's ability to fund affordable housing. The inclusionary policy should require more onsite affordable housing construction or incentivize it with higher fees. The section should read "assess any and all incentives and exemptions to housing impact fees in geographic areas (like downtown San José), and how they negatively impact the intended public benefit of the program and limit funds for affordable housing projects."

The Commercial Linkage Fee (CLF) (P-30)

The CLF is a critical means of ensuring that funds are generated for the ever-increasing need for affordable housing. These funds are created by the outgrowth of jobs from commercial development. When the CLF was approved, the levels were set well below those determined to be feasible by the independent study. The potential of the CLF as a powerful tool to build more affordable housing must be maximized. The CLF can ensure the City is better able to follow through on the affordable housing goals of the Housing Element and effectively expand opportunities for the most vulnerable and racialized members of the San José community. SV@Home recommends the following elements in the strategy be revised in the following ways:

- Updated feasibility study for the Commercial Linkage Fee, *including the geographic analysis from the original study*; and
- Ensure funding for affordable housing is being paid per the City's new Commercial Linkage Fee, *including integrating the fee into any project development agreements*, and periodically update fee levels to market conditions as determined by the feasibility study.

In addition to the priorities of the coalition highlighted above, SV@Home would like to share concerns regarding Strategy N-1, Equitable neighborhoods-based investment strategies.

The equity framework is an important effort to address historic underinvestment and the need for community integration into shaping solutions. However, this strategy needs to acknowledge the differences in equity-focused outcomes for various racial groups and protected classes within any plans. This strategy should make distinctions between place-based and people-based discrimination and include solutions that reflect the hardships of not only the most visible and populous minority groups, but also those groups that exist in much smaller communities. In order to address inequities for Black and Indigenous residents, two constituent groups not bounded by specific neighborhoods in San José, nor solely categorized within a particular income stratus, a broader solution of reparations should be considered that takes into account those groups' geographic placement across the city without regard to neighborhood.

Marginalized, and low-income constituents have already provided significant commentary and feedback on the continual effects of redlining and systemic disinvestment, lack of employment opportunities, low wages,

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 6 of 20

and other inequities that could be used along with already collected demographic data indicators to create neighborhood plans for investment and proposed services much sooner than the suggested timeline. Moreover, these communities have been involved in addressing historic displacement and redlining in San José for a long time, and even helped produce the City of San José's Anti-Displacement Strategy. The N-1 strategy should discuss how it will be a continuation of the Anti-Displacement Strategy, and what these proposed investment and anti-displacement plans will resolve under the Anti-Displacement Strategy framework.

There is no direct mention of land use and the need to incorporate the production and preservation of affordable housing in what is presented as a multidimensional response. Creating more affordable housing in these areas is an investment, especially if the city can ensure that these housing opportunities serve current residents in these areas. The anti-displacement tenant preference and the neighborhood tenant preference policies in S-20 will be essential to keeping neighborhoods whole and invested in. As mentioned in the discussion above, empowering tenants also provides the community support to look after each other in these neighborhoods as they face the changes that come with investment.

We are also concerned that in the time frame proposed for the N-1 strategy it is unclear which portions of the strategy have begun, still need to be crafted, or are ready to be implemented. The entire strategy is listed as "2023-2031," the entire planning period, which is unacceptably vague. While we imagine some portions would begin to be implemented earlier in the planning cycle and others later in the timeline (perhaps so they can be implemented in the next Housing Element cycle), we strongly recommend including detailed time frames for each strategy line-item.

Finally, there is a concerning lack of specificity in Strategy N-1's implementation, outcomes and decision-making power. Investments and organization changes must be translated to concrete, actionable steps with specific timelines. It is unclear from the City's language what kind of investments they would consider to be equitable or are willing to commit, and what organizational changes need to be made to ensure the strategy's success. We have highlighted below sections of the N-1 strategy to illustrate overall lack of specificity and clarity:

- *Organizational changes*, for example, can be made through internal policies, standard operating procedures, or a City Council Policy, and Strategy N-1 does not specify which would be used to implement changes or who has the power to make such changes.
- The strategy also discusses prioritizing capital project investments and services in racially and ethnically concentrated areas of poverty (RECAP), organizing departmental staffing and community services delivery per neighborhood, and producing investment and anti-displacement plans through public engagement. However, the Sites Inventory does not include any publicly-owned sites that would fall under any City capital project program.
- The services that would be prioritized for RECAP neighborhoods are not listed, so it is difficult to say what services RECAP neighborhoods, including which neighborhoods and groups of people, would exactly benefit from this strategy.

Analysis of Constraints on the Development of Housing

The Analysis of Constraints on housing production generally falls short of the robust analysis required by HCD. Despite the inclusion of strategies in Chapter 3 of the Draft that are likely to help mitigate some constraints, others remain unacknowledged and unaddressed.

Non-Governmental Constraints

We find that while the Draft's analysis of nongovernmental constraints is substantive, there are obvious missing elements, and it lacks the required analysis of their cumulative impact on the supply and affordability of housing, and is subsequently missing a number of opportunities to take actions to mitigate these effects. We would highlight the following:

The analysis fails to address community opposition to residential development, particularly to affordable and higher density development, as a constraint as required by HCD's guidance on Affirmatively Furthering Fair Housing. Higher density affordable housing is at the center of the city's strategies outlined in this draft document, and there is appropriately a very heavy reliance on areas that have not historically included this type of housing, many of which have unfortunate histories of strong opposition to change. This will be a highly significant constraint on affordable housing development including timelines, costs of development, projected densities and general feasibility of such development. **We would recommend, and be available to support, a comprehensive strategy integrating community education on affordable housing development, and solid policy commitments to mitigate neighborhood opposition.**

The Analysis of Constraints also omits any discussion of affordable housing financing, ignoring the ongoing challenges with state and local funding which continue to be a major barrier in the development of affordable housing in San José. There are policy statements in Chapter 3 that call for continued advocacy for additional funding sources, but there is little effort to integrate the Planning Department and the Housing Department together into addressing the crisis we face in being competitive for tax credit and bond commitments.

Understanding of both planning and land-use processes needs to be integrated into this advocacy effort, and there should be an assessment of the ways that city processes may pose additional barriers to accessing these funding sources. For example, we believe additional General Plan Amendment hearings were added to better align local approval timelines with state funding application timelines. It would be valuable to review whether this has been effective, and what additional steps might be taken.

We also feel very strongly that the housing element update should include a more detailed analysis of land costs for parcels zoned for all residential uses, and within the different policy relevant geographies in the city. Land costs are central to the Cost of Development Study, the Inclusionary Housing Ordinance, and the potential additional costs of subsidies for affordable housing developments in high-resource areas being discussed in the context of the Affordable Housing Siting Policy. Explicit acknowledgement of the central

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 8 of 20

importance of accurately assessing land costs is a tool that the city can use better to shape the program details and effectiveness of policies and programs that could address this non-governmental constraint.

Similarly, this analysis misses the opportunity to address the impact of labor shortages on rising labor costs. Non-governmental constraints must be assessed for the ways government action might mitigate their impact.

We would recommend that the City continue to explore ways of supporting construction trade apprentice and labor force retention programs.

While the Draft contains the required assessment of constraints on some categories of special needs development, there are clear gaps in this assessment. One example is the lack of an assessment of the barriers to dedicated housing production for San José State University students. We know there are significant efforts underway to respond to this challenge, and that a number of major development projects are in various stages of review, however, an assessment of the magnitude of this problem is necessary to assess the impact and adequacy of the response.

Governmental Constraints

We recognize that there are dozens of policies and programs included in this draft that directly or indirectly address ways of supporting both affordable and market rate housing. We are highly supportive of the proposed expansion of ministerial approval processes and the related city initiated CEQA analysis; the assignment of a dedicated planner to assist affordable developments through the building permit process; ongoing efforts to improve the transparency of fees through an integrated fee structure; the removal of ground floor commercial requirements from affordable developments throughout the city; and the potential for development tax reductions or suspensions for affordable developments. We look forward to the process for developing an SB9 ordinance that focuses on promoting feasibility and broad accessibility. These programs will complement the ongoing efforts to fully implement the Housing Crisis Workplan, and we will address other policies elsewhere in this comment letter.

While these policies are robust, we understand that these policies were responsive in part to developer feedback, but there is little documentation of the specific feedback that was received. We believe there are shortcomings in the analysis of governmental constraints that could be addressed through this process.

The Urban Village strategy is central to the General Plan's approach to residential growth in the City. Much of this framework is now in conflict with various State laws that prohibit residential development caps and phasing. Prior to these new state prohibitions, some of the Urban Villages with adopted plans struggled to attract development while others seemed to thrive, but there have been ongoing concerns about the barriers inherent to overlapping policy goals in these areas of incentivising job growth and high-density housing production in "walkable and bike-friendly" neighborhoods. As noted above, the proposed ministerial review process, city sponsored CEQA analysis, and the removal of ground floor commercial requirements are important responses to some of these challenges. **We believe, however, that a more comprehensive assessment of the success and challenges of the Urban Village strategy is warranted.**

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 9 of 20

The analysis of governmental constraints does not present a full assessment of the cumulative impact of these constraints, and then clearly identify which proposed policies are intended to mitigate these impacts. Throughout the discussion processes, standards, and fees are listed sequentially and described as having limited impact as evidenced by comparison with neighboring jurisdictions. This is particularly unfortunate because we know that significant work has been and is being done to address constraints systematically – including policies listed in this document.

At this moment we believe that there is a shared understanding that residential development processes are not working well, and that being no worse than others is not an adequate assessment of constraints. This cumulative analysis, and connection to proposed mitigation policies, is a required part of the Housing Element Update process, should be central to the Housing Element as an adopted section of the General Plan, and is intended to enable ongoing evaluation of effectiveness.

A number of aspects of the development process that we believe are not fully assessed for their impact on cumulative constraints are:

- Staff shortages;
- Preliminary review process that comes before the official development process begins to be measured;
- Challenges in meeting statutory deadlines for SB 35 and other streamlining program projects;
- Various program requirements related to residential development in unplanned Urban Villages including 5.12 and Signature Project processes; and
- Various potential legal barriers to development in areas such as North San José.

Preservation of Affordable Homes At-Risk of Conversion to Market-Rate

Loss of deed restricted affordable homes to market rate conversion leads to an overall constraint on available affordable units, at a time when we are struggling to produce new ones. The analysis of the relative costs of preserving these units versus constructing new ones is clear. The proposed policy responses are important, but are presented in the Policy and Programs chapter in language that is ambiguous about how they are a part of or separate from important efforts to preserve non-deed restricted, more-affordable units in the private market.

SV@Home believes a comprehensive program must be developed to address the significant procedural and resource challenges inherent to this threat to our existing stock of affordable homes.

Additional important Policies and Programs supporting mitigation of governmental and non-governmental constraints

P-12 Cost of Residential Development Study update - Conduct analysis every 2 to 3 years, or as market conditions warrant, and present to the City Council on the Cost of Residential Development that uses prototypical models of common types of multifamily residential construction in different submarkets

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 10 of 20

within San José. The report will help ~~determine~~ on an ongoing basis governmental and nongovernmental constraints on the production of market-rate and affordable housing in San José.

We would request that the language in P-12 be changed from “determine” to “help inform.” This study is an important, but inherently limited tool that should be used in combination with other assessment tools and policy priority discussions.

P-8 General Plan Amendment to remove commercial requirements for affordable housing - Amend the General Plan to remove ground floor commercial requirements for all 100% affordable housing developments throughout the City to improve project feasibility and enable more developments to proceed.

P-9 Diridon affordable housing production goal - Actively subsidize and effectuate production of affordable housing in the Diridon Station Area to achieve the City’s goal of at least 25% of housing in this area being restricted affordable by the time of full Station Area build-out.

P-22 Transit-oriented affordable housing near Diridon Station - • To integrate restricted affordable housing around the City’s main transit station and maximize competitiveness for State affordable housing funding sources, prioritize sites within a one-half mile walkshed of Diridon Station for affordable housing. • Implement prioritization by land use tool such as an overlay zone in the area surrounding Diridon and/or set Notice of Funding Availability priorities for City affordable housing subsidies

P-11 Explore Allowing “SB 9” Type Housing on Additional Properties Examine allowing SB 9-type projects on properties zoned R-2 Two Family and properties listed on the Historic Resources Inventory. Create design standards to maximize acceptance of SB 9 developments in single family neighborhoods.

P-24 School district housing (YOSL) - Complete and implement YOSL (Yes on School Lands) ordinance, allowing both affordable and market-rate housing to proceed on sites with Public/Quasi Public designation on lands that are owned by public school districts, to create more opportunities for school district employees to live close to where they work and give greater financial stability to public school districts.

P-34 Affordable housing funding advocacy - • Support bond funding initiatives at the County and regional levels to increase the supply of affordable housing production and preservation. • Sustain advocacy for State and federal funding programs and advocate for more resources so that they meet the affordable housing production and preservation needs of San José. • For homelessness response, advocate for both operating and capital subsidies.

Meeting RHNA levels and Housing Opportunity Sites Inventory

Despite all of the public outreach and engagement efforts conducted for this Housing Element Update, there were no meetings to discuss the details of the Sites Inventory, including how pipeline projects and accessory dwelling units (ADUs) would be addressed, details of the sites selection methodology, or consideration of the tools used to calculate realistic capacities. SV@Home was among those who requested more detailed briefings and discussions, but these were not provided. Despite these efforts, there ultimately were no focus groups, or meetings held with developers or other stakeholders about the Sites Inventory. Beyond very high-level discussions of focus area categories, the first time this process and maps were available for discussion was when the complete Draft Housing Element Update was released. The importance of this inventory stretches beyond just accounting for capacity in San José; it is central to many of the major affordable housing policies in place or being developed.

That said, city planning staff have made efforts to be responsive to our efforts since the release of the draft. Upon request, the sites inventory was uploaded in the City's Housing Sites Explorer, which provided an invaluable visual and analytic tool to interface with the tremendous amount of additional information on that platform. City planning staff were also responsive to requests for clarification about a number of other land-use policy items contained in the draft.

The housing opportunity sites "map" shows a serious commitment to the AFFH requirements, and local priorities. Affordable sites are distributed throughout the city: they have been identified in areas described as higher-resourced where they have not traditionally been built, they support the development strategy of the General Plan, and they take advantage of major priority growth areas including North San José. However, the assumptions embedded in the map will determine whether this becomes an actual tool to enable development.

Based on our initial analysis we have a number of significant concerns, including:

- **Potential double-counting of reported 5th cycle projects in the 6th cycle pipeline inventory;**
- **Overstatement of ADU production expectations;**
- **Problems with the site selection methodology;**
- **Problems with the reasonable capacity assumptions;**
- **Concerns with the integration of the Affordable Housing Siting Policy; and**
- **Incomplete work on the North San José affordable housing requirements.**

Potential double-counting reported 5th cycle projects in the 6th cycle pipeline inventory.

In the Draft Housing Element, *Chapter 5: Adequate Sites for Housing* states in section 5.3.1 that the City may take credit towards their RHNA for units "that have been approved, under review, or received a certificate of occupancy" during the 6th Cycle RHNA projection period from June 30, 2022 to December 31st, 2030. We

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 12 of 20

appreciate the recognition that not all pipeline projects count as progress, and that in the analysis, significant adjustments were made to how pipeline units are applied to the RHNA obligations.

However, SV@Home has reviewed a more detailed list of pipeline projects produced by the City of San José, which identifies a number of sites as “Under Construction” and others as post entitlement, which may have received building permits prior to the end of June, 2022. According to the 5th Cycle Housing Element APR rules, projects that acquired building permits within the planning period would count as progress towards a jurisdiction’s 5th Cycle RHNA,¹ and would therefore not qualify to be included in the 6th Cycle Housing Element sites inventory. SV@Home did an initial review of the “Under Construction” pipeline projects listed in the spreadsheet against the City’s sjpermits.org, a publicly accessible online permitting record database. Of this small sample, we believe that at least three projects may have already received building permits, including:

- 1710 Moorpark Avenue (APN: 282-44-027), Permit No. H19-054;
- 3090 S. Bascom (APN: 414-14-092), Permit No. H20-013; and
- 5647 Gallup/1171 Mesa Drive (APN: 567-52-029), Permit No. H19-023.

We understand that there is some confusion among cities about when housing units may be counted toward the RHNA allocation due to seemingly contradictory information in HCD’s Housing Element Site Inventory Guidebook. However, developments that receive building permits prior to June 30, 2022 will be counted toward the 5th Cycle RHNA, and should not also be counted toward the 6th Cycle RHNA.

SV@Home recommends that the City of San José remove these and any other sites from the inventory that received building permits prior to June 30, 2022.

Overstatement of ADU Production Expectations

San José has been a regional and state-wide leader of advocacy to embrace the opportunities that ADUs offer for adding critical residential capacity, and intensify the use of the residential land in the city. This proactive and deliberate effort has produced results, and ADU production is now a consequential percentage of annual production. Section 5.3.2 estimates that 3,553 new ADUs will be built during the RHNA cycle, and that 60% of these (2,132) will count towards the City’s lower-income obligations. This amounts to 9% of the total combined very-low and low-income units, and over 12% of the total low-income category alone.

These forecasts are based on the ADU calculation methodology provided to Bay Area cities by the Association of Bay Area Governments (ABAG). While we understand why cities are using this guidance in their Housing Element planning process, we believe that this methodology is flawed in two ways: 1) it assumes significantly lower rents than unpublished local studies have shown, and we have found in our analysis that the ABAG methodology subsequently credits far more units to affordable goals than is warranted, and 2) it assumes that all ADUs are used as primary residences, rather than home offices, guest rooms, or play spaces for children. Together, these failings lead to a significant overstatement of ADU impact.

¹ [HCD, Housing Element Annual Progress Report Instructions \(pg 91\)](#)

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 13 of 20

SV@Home recommends that San José, as a regional leader, coordinate a county-wide ADU rent-level and use study in 2026 to assess the assumptions of this portion of the Housing Element update, and make the necessary adjustments to the Sites Inventory to ensure that the existing capacity continues to meet RHNA obligations.

Housing Opportunity Sites Methodology

There is a general lack of transparency as to the methodology used for housing opportunity sites, which hampers the ability to fully assess the sites selection process, likelihood of redevelopment, and the realistic capacity calculations methodology used for the Sites Inventory. Because the City chose to use alternative methods to those outlined in HCD's Housing Element Site Inventory Guidebook ([the Guidebook] [per Government Code section 65583.2(c)(2)]), it is difficult to unpack whether these processes and methodologies meet the basic standards required to assess the reasonable likelihood of development within the planning period, or the realistic capacity.

Site Selection

Although HCD guidance includes some flexibility on how each city can approach this process, the standard is high, and we believe the intention is that the methodology employed will produce similar results to a full analysis of each specific site. Within the limits of the procedural description provided in the Draft, we will address some concerns about what appear to be the key screening assumptions for selecting feasible sites. We will then turn to specific categorical and site-specific analysis to argue that the methodology employed generally fails to meet HCD's standards.

In describing the opportunity sites, the Draft holds that these sites are generally "vacant or underutilized." The screening tools, as described, included: "filtering out properties that already had multifamily uses, were on the Major Development Projects list, had Planning permits issued within the last four years, had new construction Building permits in the last eight years, and were smaller than 0.5 acres." We do not believe these filters were adequate to identify viable sites as required. The construction of properties more than eight years ago, or improvement more than four years ago, are not obvious indicators of underutilization or likely redevelopment. The assertion that recent development projects show that non-vacant sites do not pose a barrier to redevelopment is not fully supported by the project list in Appendix K (titled Appendix F). This list shows that many of the developed sites were on vacant land or parking lots, and the majority of those built on land with existing uses were built in very active growth areas such as Downtown, proximate to Diridon Station, or in the San Carlos Urban Village just west of Downtown. This framework does not appear to meet the site selection standards set by HCD, which is significantly higher for assessing non-vacant lower-income sites, as outlined in the Guidebook.

The clearest guidance for identifying lower-income sites is that the parcels must be at least 0.5 acres and not more than 10 acres in size. However, in the Draft Sites Inventory, 484 lower-income units are planned for parcels smaller than 0.5 acres (two percent of the total lower-income units in the inventory), and 2,967 lower-

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 14 of 20

income units are planned for parcels larger than 10 acres (12.6 percent of the total lower-income units in the inventory). These units combined account for nearly 15 percent of the total lower-income inventory. There is no specific discussion of how or why these sites were chosen for inclusion, despite not meeting HCD requirements for lower-income housing.

For lower-income sites, HCD also states the City must: 1) provide substantial evidence that indicates existing non-residential use will be discontinued or will not be an impediment to future residential development, 2) demonstrate that there is clear developer interest in redeveloping each site within the planning period, **and** 3) incorporate potential constraints (e.g. environmental, parking, open space, etc.) into the inventory's realistic capacity calculations consistent with the Guidebook. This evidence, or comparable analysis has not been included in the Draft.

Site specific analysis of a sample of sites indicates that the methodology employed by the City resulted in the inclusion of parcels in the Sites Inventory that are unlikely to be redeveloped with housing during the 6th planning cycle – an issue of particular concern for sites planned to hold lower-income units in higher-resource areas. These sites are required to meet a higher bar to ensure they can be realistically developed within the planning period and to meet AFFH standards of spreading lower-income sites throughout the city.

Approximately 34 percent of lower-income units in the Sites Inventory are planned for parcels in higher-resource areas. SV@Home analyzed some of these sites and identified multiple parcels that are unlikely to meet the HCD Guidebook's standards. The following are examples:

- **Walmart Neighborhood Market, 4080 Stevens Creek Boulevard** (APN: 294-41-005): It is very unlikely that a bustling Walmart grocery store opened in 2014 and generating nearly 100 jobs will redevelop to accommodate 313 lower-income residential units, given that nothing about this newer, profitable store or the company's long-range plans to expand the small-footprint format indicates a future closure;
- **West Valley Center of the Palo Alto Medical Foundation, 7225 Rainbow Drive** (APN: 372-23-022): This site is currently occupied by a prominent medical building and provides "a full range of primary care medicine-family practice, internal medicine and pediatrics and a full service lab and X-ray for patient convenience." It does not seem financially feasible for this active use to be redeveloped to 101 units of lower-income housing;
- **The Willow Glen Bevmo, Aqui, and parking behind shops east of Willow at Lincoln, 1133 Lincoln Avenue, San José, CA** (APN: 429-07-041): This site is planned to become 45 units of lower-income housing despite the popularity of these small businesses and the thriving Willow Glen business district there; and
- **Holder's Country Inn restaurant, 998 S. De Anza Boulevard** (APN 372-26-019): Before July 27, 2022, when this highly successful business burned in the night, the owner of the property had not expressed intent to redevelop to any other use, even as the City had planned 104 units of lower-income housing for the site. Now owner Efren Flores is [quoted in the Mercury News](#) as saying he intends to rebuild the restaurant in the same location.

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 15 of 20

Other examples of sites in highest/high resourced areas, where redevelopment seems unlikely in the absence of the required robust site-specific analysis, include:

- An active Bank of the West on an outlot in the parking lot of an active Home Depot, 1.15-acre site proposed for 87 lower-income units (965 S. De Anza Boulevard, APN: 359-27-026);
- A large office building fully leased to high-end business in the Willow Glen business district, 0.64-acre site slated for 52 lower-income units (1122 Willow Street, APN: 429-07-045);
- Occupied business offices on a 2.15-acre site, projected to have 169 lower-income units (1175 Saratoga Avenue, APN: 381-17-149)
- A bustling shopping center on a 3.39-acre site, proposed for 238 lower-income units (1741 Berryessa Road 95133, APN: 245-42-029); and
- A 0.78-acre site abutting a riparian corridor – an environmental constraint – planned to have 96 lower-income units (1081 Foxworthy Avenue, APN: 439-48-044).

SV@Home’s analysis also identified problematic sites in low-resourced areas that require further site-specific analysis. For example, the odd-shaped sites provided below are unlikely to produce the proposed market-rate and moderate residential capacity that could also be representative of lower-income sites throughout the Sites Inventory. We also found a church site that would require lot-splitting and is compressed by active small businesses and occupied residential areas, which can severely limit church operations:

- Long and narrow 1-acre site occupied by an active Hertz Car Rental/Penske Truck Rental. This site is planned to have 25 market-rate units (APN: 484-03-049);
- Long and narrow, oddly shaped 0.82-acre vacant site with very limited access near Muirfield Drive and East Capitol Expressway, located between the backs of existing single-family homes and the Highway 680 onramp. This site is proposed to have five moderate-income units (APN: 484-41-154); and
- True Vine Baptist Church, 505 S. White Road (APN: 484-26-081 is planned to hold 106 low-income units on 1.34 acres.

SV@Home would recommend a thorough review of the sites selected for the Sites Inventory, and the inclusion of additional factors known to be constraints on likely development including existing uses on non-residential sites. If a site-by-site assessment is beyond current capacity, a sample of consequential low-income sites should be reviewed in detail to ensure that the reasonable expectation of redevelopment for residential uses is met as required by State law.

Realistic Capacity

We are deeply concerned about the transparency of the process used to determine realistic capacity, including the barriers this poses for evaluating this process. In the draft, the process is described as using a complex algorithm deployed via the BuildingBlocks platform from Tolemi, a three-step process to estimate density of the sites based on historic trends by calculating the allowable density, estimate historic production trends for realistic capacity using five “Comparables” from the previous Housing Element, and apply a calculation of the dwelling unit per acre to the selected sites. There is no discussion of how this process actually works, how the

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 16 of 20

comparables are identified given the significant variability of the sites identified, and what the “historic trend” assumptions are that are applied to individual sites.

Again, because the city chose to use alternative methods than those outlined in the Guidebook it is difficult to unpack whether the realistic capacity of these processes meet the basic standards required. Although HCD guidance includes some flexibility on how each city can approach this process, the standard is very high, and we believe the intention is that the methodology employed will produce similar results to a full analysis of each specific site. Below are our concerns with the City’s alternative realistic capacity methodology:

- **Environmental constraints** - it is not clear that the comparables in the model accounted for constraints from the environment;
- **Adjustment factors including design standards** - it is not clear that the comparables fully accounted for the range of factors outlined in the table at the top of page 22 of the Guidebook. These include:
 - required setbacks
 - emergency vehicle access areas
 - easements
 - required parking
 - height restrictions
 - other design standards, ex. shadow planes

Note: The constraints stemming from some of these factors may be mitigated through concessions allowed under the state Density Bonus law, but the HCD guidance explicitly forbids integrating this law into the assumptions used to identify feasible sites and realistic capacities.

- **Rezoning and Densities** - it is not clear how the comparables accounted for sites which will require rezoning or discretionary approval, including the zoning designation that these sites would be rezoned to, nor the density that would be allowed at these rezoned sites.

These factors are vital to understanding the realistic capacity calculations, and central to determining the realistic capacity of each site.

An initial review of the realistic capacity assigned to the sites in the inventory indicates that there may be significant problems in the BuildingBlocks process. Excluding the highest density core areas, Downtown and the Diridon Station Area, the realistic capacity estimates assume that sites will be developed at an average of 90 dwelling units per acre. (The Downtown and Diridon Station lower-income sites in the inventory, have a combined capacity of 370 units.) This average density is almost exactly the same for lower-income sites. This is unaccountably high as an average density across most geographies in San Jose, and it would indicate that the comparable developments used in the BuildingBlocks process may not have accounted for critical distinctions between sites in the inventory.

For example, the average project realistic density is higher, over 100 units per acre, in Urban Villages with adopted plans. Currently, adopted plans with active development are concentrated in transit intensive areas connected to downtown by core arterial streets. These are either Tier I Regional Transit Urban Villages, or Tier

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 17 of 20

II Local Transit Urban Villages. The exceptions to these core arterial connectors are the Berryessa BART Tier I Urban Village, and the lower tiered Santana Row Commercial Corridor & Center Urban Village which has been dominated by site, often mixed-use, development. The Urban Village land use designations in these high priority areas are spurring development very differently than the same land use designations in other regions of the city, and in lower tiered Urban Villages. This is actually by design. These Urban Villages with the first adopted plans were intended to build out more densely and quickly than others, which is why they were planned first. The Santana Row Urban Village was pushed up the priority list when the demand increased dramatically, and somewhat unexpectedly.

For this reason, selecting five comparable recent developments for use in the BuildingBlocks algorithm is difficult and highly consequential, as the majority of sites in the inventory are not similar to recent developments. Nonetheless, the algorithm assumes an average density of over 90 units per acre even in unplanned lower tiered Urban Villages. Of the unplanned Urban Villages included in the inventory, 11 percent are in Tier II Local Transit Urban Villages, 70 percent are in lower tiered Commercial Corridor and Center Urban Villages, and 19 percent are in the lowest tiered Neighborhood Urban Villages.

These will be challenging areas to develop high density affordable housing. In recent months, three mixed-income, mixed-use, developments have been approved in Urban Villages without plans: Blossom Hill Light Rail Station, Cambrian Village, and El Paseo de Saratoga. Each of these projects is in a great site, and on a large and flexible parcel, but arguably none of them reached residential densities of 90 units per acre. Each took years, confronted major challenges, and the two largest encountered massive community backlash.

This poses an even greater challenge for sites included in the inventory under policy H-2.9, the “1.5 Acre Rule,” which account for 5 percent of the total sites in the inventory, but nearly 10 percent of the lower-income sites, and an even higher proportion of the affordable sites located in high resource areas. There are very few developments to date that have used this almost decade-old policy, which was recently rewritten to make it more accessible and objective. A review of these sites showed the majority were in residential areas, abutting single family homes more often than multifamily apartments. (The rule requires that any existing structures have an FAR of .2 or less, or have been vacant for five years, and it is not clear that this filter was integrated into the selection of these sites.) Despite a clear lack of comparables, BuildingBlocks calculated a realistic capacity of just under 80 units per acre for these sites. Some of these sites offer excellent opportunities - my favorite is a .84 acre parcel across from the YMCA on the Alameda, a major transit corridor - but very few are likely to develop at these densities in the next eight years. We have similar concerns about the capacity and development assumptions applied to the brand new Neighborhood Business Districts.

SV@Home recommends that the City of San José provide more disclosure about its realistic capacity calculation methodology used in BuildingBlocks to facilitate public review.

SV@Home recommends that the ability of the BuildingBlocks tool to meet the requirements in the HCD Housing Element Site Inventory Guidebook be reassessed and that additional points of data detailed above be integrated into the model. The new output should then be assessed, and the City

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 18 of 20

should move to a site-by-site analysis of a sample of sites to determine appropriate additional adjustments.

SV@Home recommends updating projected densities of lower-income sites located in higher-resourced areas to more closely reflect the reality that, despite new programs, realistic sites and capacities need to more closely reflect historic development trends at these locations.

Concerns with the integration of the Affordable Housing Siting Policy

As we noted above, the “maps” of lower-income opportunity sites included in Chapter 5 display a substantive commitment to the AFFH requirements that affordable housing be planned throughout the city. The accompanying Table 5-12, Site Inventory Units by TCAC Resource Level, shows that 45.4 percent of lower-income units have been planned for either High- or Highest-Resource Areas. This is also a substantive commitment. These are areas that have disproportionately fewer existing affordable housing developments, will be more competitive for State and Federal resources to build affordable housing, and have historically been more resistant to integrating higher density affordable housing into their neighborhoods.

This commitment to identifying lower-income sites in High- or Higher-Resource areas is also an integral part of assessing the viability and the tools necessary to implement the Affordable Housing Siting Policy, which is underdevelopment after receiving initial approval from the City Council last year. This policy is listed as two related programs in Chapter 3:

- *N-5 Increase affordable housing production in higher-resource areas - Allocate a greater share of affordable housing subsidy awards to Tier 1 higher-resource neighborhoods to provide more lower-income and protected class residents greater choices of where they can live.*
- *P-17 Affordable Housing Siting Policy - Fully implement and evaluate effectiveness of the City’s new Affordable Housing Siting Policy in generating new affordable housing developments in higher opportunity areas. Report on the outcomes, focusing on fair housing implications of development patterns.*

The “Tier(s)” referred to above align very closely to the TCAC/CDLAC maps, with San Jose’s Tier 1 including both “High” and “Highest” resource areas. The policy, if fully adopted, would allocate up to 60 percent of the City’s affordable housing production and preservation subsidies exclusively to Tier I communities. During the council action, direction was given to staff to integrate the proposed Siting Policy into the Housing Element sites inventory process, to assess the realistic current development opportunities to support the policy, to identify barriers to its implementation, and to propose additional actions that would mitigate those barriers.

This would explicitly require coordination between the Planning and Housing Departments in this process, and an especially careful analysis of both site selection and site capacity. We are not confident that this work has been done as intended.

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 19 of 20

We noted above that the assumptions embedded in the map are what determines how this part of the process becomes an actual tool to enable development, and we discussed significant concerns about the site selection and realistic capacity calculation process and assumptions.

Underlying much of this analysis is the reality that identifying sites in High Resource Areas was appropriately central to the process. Unfortunately, the concerns we have expressed are highly correlated with the tools used to promote this part of the AFFH mandate. Unplanned Urban Villages and H-2.9 sites account for nearly 70% of the sites identified in High or Highest-Resourced areas. All but one of the Neighborhood Business District sites are located along Lincoln in Willow Glen, where five properties are projected to redevelop at high density to produce 310 new affordable homes, in the next eight years.

We examined a sample of these High and Highest-Resourced lower-income sites. There are seven properties with “realistic capacity” of over 100 units in Highest-Resource areas, and 16 in High-Resourced areas; we counted these because they seemed large enough to overcome our skepticism about the realistic capacity calculations. Given that larger projects are often more competitive for funding, we looked more closely at the seven sites in the inventory in these higher resourced areas that had been identified as likely to redevelop, and where BuildingBlocks had determined had a realistic capacity of over 150 units. These included a Goodwill store, an active Flames cafe, the recently opened Walmart discussed earlier, a strip mall without vacancies, a vacant lot, a VTA Park-and-Ride, and an interesting “L” shaped property that wrapped around a gas station (separate parcel) and abutted a single family neighborhood.

There are multiple programs listed in Chapter 3 that could support the implementation of the siting policy, including: P-32, Higher subsidies for affordable units where land costs are higher, or developments need to be smaller; P-7, Ministerial approval for infill development; P-33 and P-24 YIGBY and YOSL for worship assembly and school sites. However, without careful coordination between the Planning and Housing Departments, and a much more robust analysis of actual sites that could redevelop, we believe it would be a mistake to adopt a policy that may lack the tools and conditions to be effective.

SV@Home recommends that, following the reanalysis of sites that are feasible for redevelopment and recalculation of realistic capacity, a specific analysis be conducted on sites in higher-resourced areas to develop a more complete understanding of the potential success or failure of the proposed Affordable Housing Siting Policy. Neither programs N-5 or P-17 should be adopted until this analysis has been completed.

SV@Home recommends that a more direct discussion of the connection between the Sites Inventory and the proposed Policies and Programs that will remove barriers to development and increase feasibility of affordable housing be included in this Housing Element Update prior to certification.

Ensure success in building lower-income units in North San José.

August 21, 2022

Re: Comments on Draft Housing Element Update

Page 20 of 20

In the San José General Plan, residential development in North San José was planned to reach 32,000 units by 2040 - over a quarter of the total residential growth in the City. Under the recently retired North San Jose Development Plan, 20 percent of this new housing was required to be affordable to low and moderate income households. In the first phase of this plan 8,000 units were built, but only a fraction of them were affordable. Roughly 24,000 units remain to be built. When the NSDP was retired, the City Council directed staff to develop a number of policies and land-use tools to ensure North San Jose fully develops, and that 20 percent of the homes in the area, up to 6,400, are affordable.

These are plans that stretch beyond the 6th Cycle, but this Housing Element Update will play a critical role in establishing the policies and programs to move development forward as planned.

The current Draft does not reflect the final land-use plan for the area. As noted in Chapter 5;

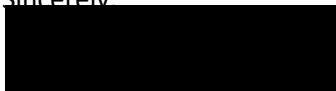
Staff is currently developing a housing and affordable housing overlay for sites in North San José that currently have a land use designation that does not allow residential uses. This work will be completed prior to or concurrent with the adoption of the Housing Element by the City Council in 2023.

This work is listed as P-3: NSJ Affordable Housing Overlay Zones; and is supported by P-4: Affordable Housing Tools for NSJ, and P-5: Affordable Housing Investments in NSJ. It is our understanding that the details of the overlay zones are scheduled to be reviewed separately by the City Council for integration into the Housing Element prior to final submission. Together we believe the combination of land-use tools and deliberate policy levelers will be essential to the future of NSJ as a truly integrated, vibrant, transit and jobs rich community in the city.

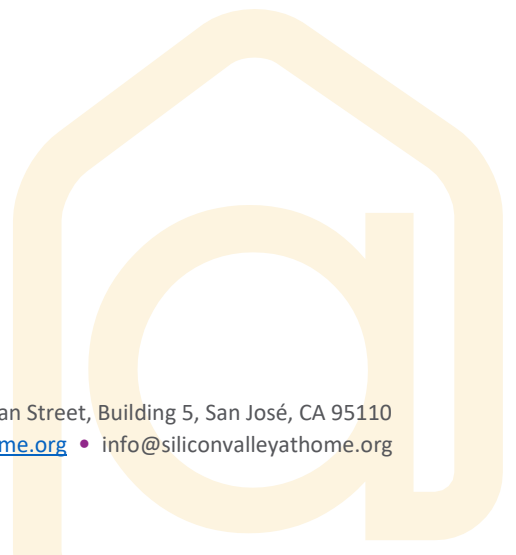
It is important to note our strong support for the significant commitment to making more land available for residential development in North San Jose. In combination with the increase in the minimum densities required in the TERO areas, the identification of nearly 120 additional acres in the TEC core is an important step toward the next 24,000 new homes. We share the confidence that we can grow jobs and housing, and that we need both.

SV@Home values its partnership with the City of San José and is pleased to have been invited to provide feedback on the Draft Housing Element. We welcome the opportunity to engage in an ongoing dialogue as the Draft Housing Element moves through cycles of review and revision, with the shared goal of addressing the City's urgent housing need by boosting production of homes at all income levels, preserving existing affordable homes, and protecting the families in them.

Sincerely,


Regina Celestin Williams
Executive Director

350 W. Julian Street, Building 5, San José, CA 95110
www.svathome.org • info@siliconvalleyathome.org





August 10, 2022

San José Planning Department
200 E Santa Clara Street
San José, CA 95113

Re: Recommendation for parking component of Housing Element

Dear San José Planning Department,

TransForm is a regional non-profit focused on creating connected and healthy communities that can meet climate goals, reduce traffic, and include housing affordable to everyone. We applaud San José's work to date on the housing element,

San José has great potential to become a leader in the Bay Area when it comes to smart parking policy. This past June, the San José City Council approved an ordinance with many parking reforms, including eliminating parking minimums across the city and establishing a more robust and streamlined TDM strategy. These changes, if adopted this fall, would greatly reduce the financial and physical constraint posed by excessive parking mandates. By implementing multiple parking reforms within the ordinance, it is clear the City understands the power of implementing many smart parking policies in tandem, a nuance missed by other municipalities.

We commend the steps the City will take with the passage of this ordinance, but we see room for some simple adjustments to ensure San José is doing all it can to eliminate parking as a restraint on development. Specifically, for new residential developments above a certain unit threshold, e.g. forty units, we encourage the following changes citywide:

1. Require provision of transit passes and bike share memberships to each resident, as part of the new Transportation Demand Management program.

To show the tremendous benefits these policies can have, we have used our GreenTRIP Connect tool to [create scenarios](#) for a potential future development site at **257 Delmas Avenue**. This site is identified as a vacant and privately owned future development site, only 0.2 miles away from a VTA light rail station. The California Office of Planning and Research recommends GreenTRIP Connect as a tool to use while developing General Plans and is especially useful during the development of Housing Elements (the tool is free to use and supports better planning at the site and city-wide level).

By implementing the strategies above at 257 Delmas Avenue, GreenTRIP Connect predicts:

560 14TH STREET, SUITE 400, OAKLAND, CA 94612 | T: 510.740.3150 | WWW.TRANSFORMCA.ORG

1. Implementing unbundling and providing transit passes at this site would decrease demand for parking by 20% and result in resident transportation savings of \$1,109 per year.
2. With right-sized parking, incorporating the benefits of good location, unbundled parking and free transit passes, the development would cost \$1,215,000 less to build relative to current parking standards.
3. When combined with 100% affordable housing these strategies resulted in an incredible 74% reduction in driving and greenhouse gas emissions for the site, compared to the county average.
4. If an affordable development with smart parking strategies were built on this site each household would drive 8,822 less miles per year creating a greener and safer community.

Through eliminating the high costs of parking, homes can be offered at more affordable prices, reducing the number of community members that face extreme housing cost burdens, getting priced out of their community, and/or becoming unsheltered. Residents, new and old alike, will greatly benefit from the reduction in vehicle traffic and associated air pollution (see scenarios [here](#)).

In addition to parking and transportation strategies, we applaud some of the proposed strategies to support more affordable homes, since these would have such tremendous benefits as noted in the GreenTRIP scenario. One of the most important is Program 8 that supports affordable development to help reach RHNA goals by eliminating the first-floor commercial requirement for 100% affordable housing to streamline development.

The GreenTRIP scenarios and the chart on the final page of our Scenario document also show the imperative of programs to accelerate development of affordable homes, like Program 8. Not only do these households use transit more and drive much less than average, but success in this area can help provide homes for unsheltered individuals and families. A commitment to these programs will show that San José is committed to planning for all levels of the 34,486 RHNA BMR units anticipated in this cycle.

Please let me know if you have any questions. TransForm hopes this information clarifies why San José should make parking reform and provisions to support affordable housing central priorities in the Housing Element update.

Sincerely,
Kendra Ma
Housing Policy Analyst
kendrama@transformca.org



August 17, 2022

Chris Burton
Director of Planning, Building and Code Enforcement
200 E. Santa Clara St.
San Jose, CA 95113

Jacky Morales-Ferrand
Director of Housing
200 E. Santa Clara St.
San Jose, CA 95113

Re: VTA Comments to the City of San José's Draft Housing Element

Dear Directors Burton and Morales-Ferrand and City staff:

Thank you for the opportunity to review the City of San José's Draft Housing Element. VTA's Planning and Programming Division, as well as the Real Estate and Transit-Oriented Development Department, have reviewed the draft and would like to provide the below feedback.

Comments to Chapter 3: Housing Goals, Objectives, Policies and Programs

Strategy P-23: Pursue AHSC funding near Diridon Station

VTA supports pursuing AHSC funding near Diridon Station and recommends that the City broaden this strategy to consider pursuing AHSC funding in additional areas, such as all identified Urban Villages, or near all major transit lines.

Strategy N-9: Affordable transit-oriented development

VTA recommends that the City expand this strategy to facilitate development of transit-oriented communities and affordable homes within a ½ mile, rather than ¼ mile, of existing and future BART, Light Rail, and Bus Rapid Transit (BRT) stations.

Strategy I-4: Create a Housing Balance Report

VTA recommends that the City update this strategy to clarify if the Housing Balance Report will be created on biennial or biannual basis.

Comments to Appendices F: Site Inventory Map and Data

We believe that VTA's TOD sites provide ideal locations for mixed-income and mixed-use development that further the Housing Element goals with fewer impacts. In general, it is VTA's preference that all VTA-owned sites on the Housing Element Site Inventory list be identified for mixed-income, rather than specific income levels.

The following are VTA sites currently on the Housing Element Site Inventory list to which we have comments on:

Site Name/#	APN(s)	Comment(s)
Capitol (71)	462-14-021	Add the remainder of the site as mixed-income. APNs: 462-15-027, 028, 030, 037, 040; 462-14-019, 022, 015, 016, 014, 017, 018.
Almaden (107)	694-03-024	The APN and footprint listed are inaccurate. VTA suggests adding APN 694-03-010 as well as potentially the adjacent Water District property (APN 694-07-005).
Berryessa (526)	254-17-113	Update to mixed-income and align densities with those identified for this site in the Berryessa BART Urban Village Plan.
28 th Street (101)	467-08-013	Update to mixed-income on the entire site. Add additional APNs: 467-08-004, 467-08-005
River Oaks	097-06-032	This site is identified on the inventory map, but not on the inventory data table. Additionally, the acreage is incorrect.

The following are additional VTA sites that we propose adding to the Housing Element Site Inventory:

Site	APN(s)	Projected Total Units	Projected % of Affordable Units
Ohlone-Chynoweth	458-11-020	177	50%
Alum Rock	484-44-061, 063	168	100%
Almaden	694-03-010	456	25%
Tamien West	434-13-038	320	25%
Cottle	706-05-038	263	25%
Cerone	097-04-020, 037	TBD	TBD
Santa Teresa	703-03-013	TBD	TBD

Attached to this letter are informational sheets about each site listed above.

Lastly, VTA would like to would like to highlight three active projects which include affordable housing.

- Tamien: 135 affordable units; 434 market rate units
- Blossom Hill: 89 affordable units; 239 market rate units
- Curtner: 65 affordable units

Thank you for the opportunity to review and comment on the Draft Housing Element. In addition to the Housing Element provisions, VTA would welcome the opportunity to work with the City on other General Plan revisions that advance the potential for housing for households at all income levels at VTA TOD sites. We look forward to a continued partnership with the City of San José.

If you have any questions regarding this letter, please contact Jessie O'Malley Solis, Manager of Transit-Oriented Development, at (408) 321-5950 or jessie.o'malleysolis@vta.org.

Sincerely,

DocuSigned by:

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Ron Golem
 Director of Real Estate & Transit-Oriented
 Development

DocuSigned by:

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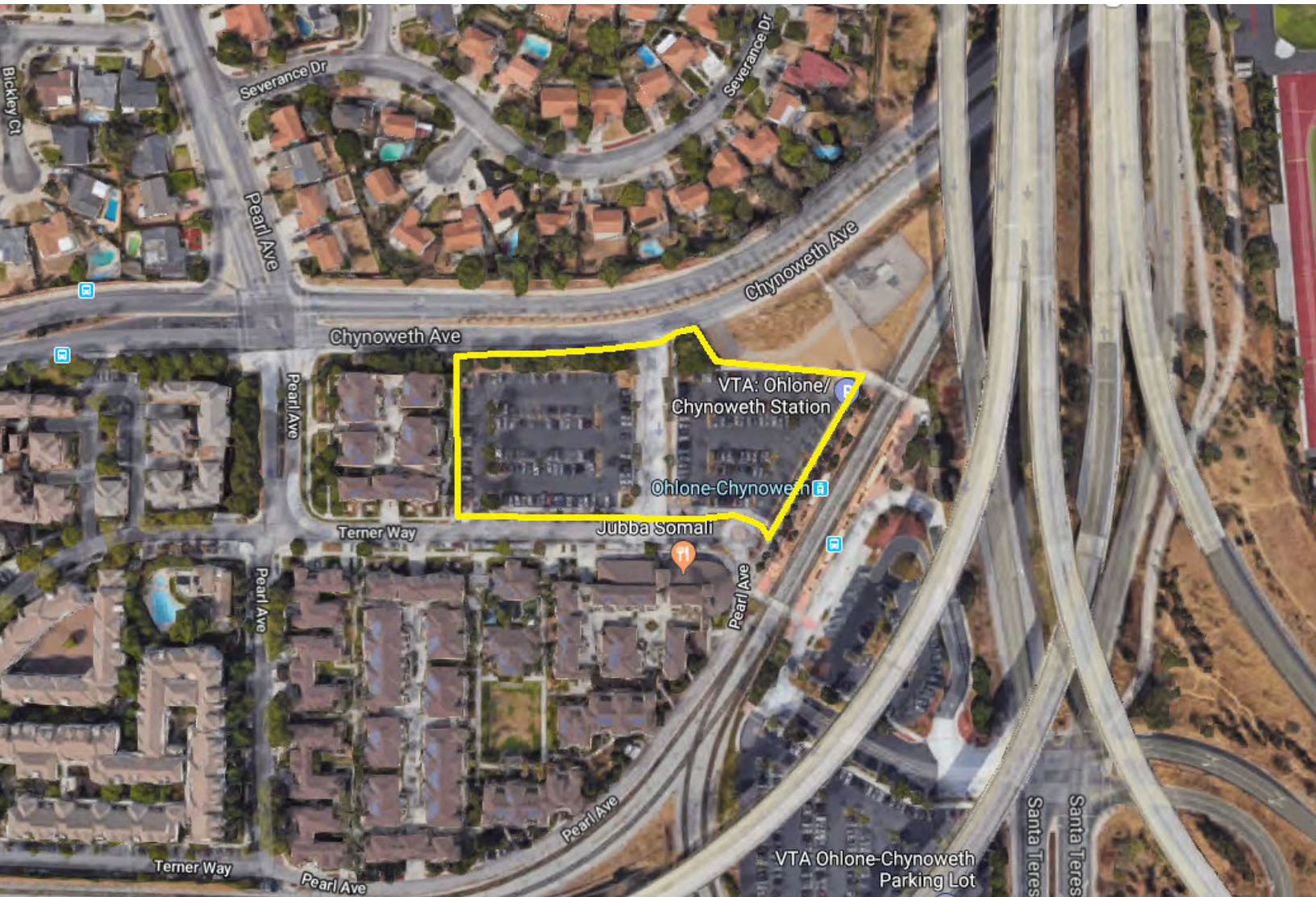
Deborah Dagang
 Chief Planning & Programming Officer

cc: Kristen Clements; Ruth Cueto

17

OHLONE/CHYNOWETH STATION

Chynoweth Avenue @ Pearl Avenue, San Jose, CA 95136



SITE DETAILS

APN: 458-11-020

Acreage: 2.7

Title: VTA

Transit: Light Rail, Bus

Current Use: Park & Ride Lot

Zoning: A

General Plan: TR - Transit Residential

School District: San Jose Unified

Council District: 9



ALUM ROCK TRANSIT CENTER

Capitol Avenue @ Wilbur Avenue, San Jose, CA 95127



SITE DETAILS

APN: 484-44-061, 063

Acreage: 2.1

Title: VTA

Transit: Light Rail, Bus

Current Use: Park & Ride Lot

Council District: 5

Zoning: A

General Plan: NCC -
Neighborhood Community
Commercial

School District: Oak Grove,
East Side Union HSD



ALMADEN STATION

Winfield Blvd @ Coleman Road, San Jose, CA 95123



SITE DETAILS

APN: 694-03-010

Acreage: 5.7

Title: VTA

Transit: Light Rail, Bus

Current Use: Park & Ride Lot

Council District: 10

Zoning: HI - Heavy Industrial

General Plan: CIC -

Combined Industrial

Commercial

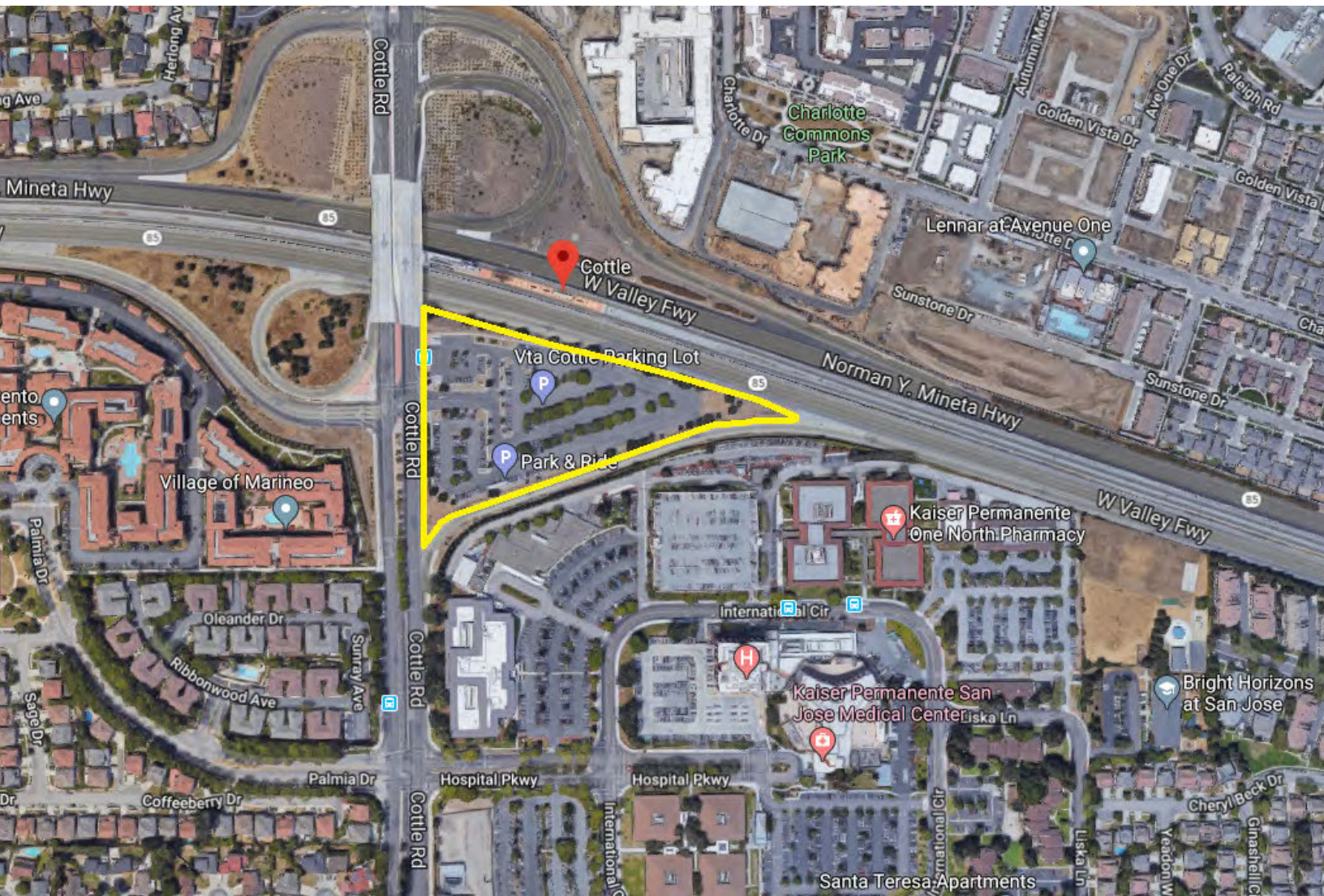
School District: San Jose

Unified



COTTLE STATION

Cottle Road @ Highway 85, San Jose, CA 95123



SITE DETAILS

APN: 706-05-038

Acreage: 4.5

Title: VTA

Transit: Light Rail

Current Use: Park & Ride Lot

Council District: 2

Zoning: A (PD 90025)

**General Plan: NCC -
Neighborhood Community
Commercial; PQP -**

Public/Quasi- Public

**School District: Oak Grove,
East Side Union HSD**



CERONE DIVISION

3990 Zanker Road, San Jose, CA 95134



SITE DETAILS

APN: 097-04-020, 037

Acreage: 28.8

Title: VTA

**Current Use: Vacant Land,
Parking**

Council District: 4

Zoning: IP - Industrial Park

**General Plan: N: CIC -
Combined Industrial
Commercial; S: IP -
Industrial Park**

**School District: Santa Clara
Unified**



SANTA TERESA STATION

Santa Teresa Boulevard @ Miyuki Drive, San Jose, CA 95119



SITE DETAILS

APN: 703-03-013

Acreage: 34.8

Title: VTA

Transit: Light Rail, Bus

Current Use: Park & Ride

Lot, Vacant Land

Zoning: IP - Industrial Park

General Plan: TEC - Transit

Employment Center

School District: Oak Grove,

East Side High School

District

Council District: 2

August 20, 2022

David Ying
City of San José Planning Division, 3rd Floor
c/o David Ying
200 East Santa Clara St.
San José, CA 95113

**San José 2023-2031 Housing Element
West Valley Community Services comments regarding Initial Draft**

To whom it may concern,

On behalf of West Valley Community Services staff, board, and clients, we are incredibly grateful for all of the hard work, time, and thought that the Council and staff put into this document. We know that your Housing Element incorporates hundreds of public comments, hours of deliberation, and even more hours of research and consideration outside of City Council meetings. We are happy to see the City working to provide more equitable housing, as this will directly impact the lives of our clients.

As you may know, West Valley Community Services (WVCS) is a nonprofit organization that has been providing safety net services to low-income and homeless individuals and families in the west valley region of Santa Clara County for more than 49 years. As one of the primary service providers in San José, WVCS is excited to submit our comments regarding the Initial Draft of the 2023-2031 Housing Element. We are breaking down our comments by chapters, as well as by the specific goals listed within chapter 3.

Chapter 1: Introduction

We found this introductory chapter greatly helpful and informative, particularly in highlighting the substantial efforts the Council and staff put into establishing methods of public outreach and engagement. As an organization that fights to ensure affordable and accessible housing for our community members, we identify with the key themes highlighted in each of the listed phases, and recognize them as crucial challenges affecting our community members.

Chapter 2: Housing Needs

WVCS appreciates the thorough and intensive research the City conducted and provided in this section of the Housing Element. We also found this section particularly useful in highlighting the history of housing development within San José, and appreciate the City's recognition of the "explicitly and intentionally racist" aspect of San José's former housing development practices. WVCS knows firsthand that it is critical that cities recognize past discriminatory practices and consciously work towards inclusionary goals that provide support for a community's most vulnerable members.

Chapter 3: Housing Goals and Strategies

GOAL 1: An Abundant and Affordable Housing Stock

We firmly support the need for an abundant housing stock, and support efforts toward increasing the amount of, and availability of, housing in San José. There are many people who wish to live in San José, but cannot afford to due to a lack of available housing, and we hope to see this change. We appreciate the

strategies listed to work toward realizing this goal, however we would like to see many of the individual strategies contain tangible and actionable elements.

- **P-13:** For example, under strategy P-13, we would like to see greater clarification on how the City plans to “strengthen implementation of SB 330’s replacement housing requirements to preserve affordable housing opportunities.” There should be specific mechanisms and policies for strengthening implementation described in this document, as this is where such planning is meant to take place, followed by implementation over the next 8 years.
- **P-15:** Additionally, under strategy P-15, rather than a plan to “complete a study and implement Council-approved strategy to further rental and homeownership opportunities for moderate-income residents,” we would like to see metrics substituted or added to better monitor how the City is progressing toward achieving the goal of improving rental and homeownership opportunities for moderate-income residents.
- **P-32:** We would also like to see metrics built into strategy P-32, which aims to subsidize affordable housing in areas with sufficiently higher land costs. While we strongly support this strategy as a means to further the construction of additional housing units, the plan to “ensure that City subsidies per unit are sufficiently higher so as to not disincent building in those areas,” does not seem adequate in providing metrics to ensure this strategy will actually be implemented.

GOAL 2: Sufficient Housing for People Experiencing Homelessness

There is a critical need to supply housing for individuals experiencing homelessness, and it is central to many of our clients’ lives and barriers. Providing housing is crucial to allowing individuals to access additional resources, such as food, education, and job support, and to achieve long-term physical and mental health; sufficient housing for individuals experiencing homelessness is thus a critical component of providing support for all members of a community.

- **H-6:** Those who experience homelessness often do not have adequate access to health care. Thus, WVCS supports strategy H-6, which aims to provide housing with integrated health care. However, we would prefer the language used to describe this strategy to be more specific and actionable. Rather than stating that the City, “seeks to generate new housing opportunities that integrate health care for the complex needs of people currently or formerly experiencing homelessness,” we would like to see a much more robust and actionable plan to integrate quality health care into the housing developments established for individuals experiencing homelessness. As the City mentions, there are complex health care needs for those experiencing homelessness, and it is critical that the City identify an actionable way to integrate these health care needs with its housing solutions.
- **H-7:** Many of our clients greatly benefit from the Safe Park program. As an agency, WVCS has seen that it is safe, humane, and extremely effective. We are very glad to see the program included in San José’s Housing Element. Having a car makes a huge difference for a person experiencing homelessness, and having a safe place to park is crucial. As a result, a problem the City should work to solve is the impounding and ticketing of the cars of people experiencing homelessness. Once this happens, it becomes nearly impossible to get the car back given the exorbitant fee, and someone experiencing homelessness is not able to pay a ticket. This ultimately leads to additional challenges for the City, because when someone loses their car, this person becomes much more expensive to care for as homelessness puts a massive toll on one’s body and mind. Additionally, giving a ticket to someone who is unhoused doesn’t make any sense as they fundamentally lack the capacity to pay for it. A ticket does not incentivize a change in behavior, as this is already their last

resort. Instead, put a pamphlet with resources on their car, or find another way to address the situation. People experiencing homelessness need help, not punishment.

- **H-9:** Thank you for including this strategy in your Housing Element. Street-based services for people experiencing homelessness are extremely important and immensely lacking. A very important component of this is asking the people living on the street what they need. Don't make assumptions - find out what they need and where they need it before making major and expensive investments. You may want to consider utilizing strategy H-12, feedback from those with lived experience in homelessness in decision making to inform your implementation of strategy H-9.
- **H-10:** While encampment care is extremely important, encampment sweeps are often horribly inhumane and cause long-term harm to the lives of the individuals dwelling there. Beautify SJ is a very slippery slope. Encampment policing and sweeping is a huge problem, and the City should not be encouraging/planning this in their Housing Element. Please work to reduce encampment sweeps, and if they are swept, do it in an incredibly ethical and humane way. A huge problem with encampment sweeps is the loss of prescription medicine by residents. Once any toxic waste (feces, needles, etc.) are found, everything at the site is determined to be garbage and disposed of. This can lead to a major downward spiral for residents of the encampment. It is also very dehumanizing to destroy all of their belongings - they have things they care about just like the rest of us. Aim to avoid encampment sweeps, and ensure there are strong measures in place to protect residents if encampments do get swept.
- **H-11:** We would like to see a more robust strategy made for H-11. Biases in supportive housing systems are a significant barrier preventing individuals from accessing critical support. As the city recognized through its robust public outreach process, racial bias, as well as other forms of bias, are issues plaguing San José that need to be widely and systematically addressed. While we support the strategy to “increase access to homeless shelters and permanent supportive housing for people experiencing homelessness who are in protected classes by examining data to identify systemic racism and patterns of other biases, and working with shelter staff to remedy issues,” we would like to see a much more actionable approach that incorporates measurable plans. For such a serious and influential issue, we would like to see a more thorough strategy with numerous measurable steps to address and diminish racial bias and the effect it is having on those experiencing homelessness.
- **H-13:** The importance of neighborhood outreach and education on homeless housing is often underestimated. Thank you for including this as its own strategy in your Housing Element. Myths and stereotypes about people experiencing homelessness are a massive barrier to the construction of much-needed housing. WVCS has been actively working to combat these stereotypes, largely through bringing people with lived experience with homelessness directly in conversation with community members. For this strategy, you should consider bringing people with lived experience into the conversation to demonstrate the reality of homelessness and directly debunk these myths.
- **Credit Score:** Please add an additional strategy related to credit score. Similar to the use of criminal records by property managers (leading to the “Ban the Box” strategy), a massive barrier to housing for people who receive a Section 8 voucher, the only path to housing for many, is discrimination by property owners. Even though it is illegal for property owners to turn away a potential tenant because they have a Section 8 voucher, policies contain loopholes that allow them to circumvent this and make it even more difficult for someone with a voucher to find housing. Namely they are able to require a certain credit score. Anyone who has been living on the street will almost certainly have a terrible credit history. This doesn't matter if they have a voucher, because the property owner will

literally be getting guaranteed rent from the government every month. Yet property owners are allowed to ask this question and use it to turn away potential tenants.

GOAL 3: Housing Stability and Opportunities to Build Wealth for all Residents

We are also in strong support of Goal 3. Housing stability is critical for residents to build wealth in San José, while also allowing for greater economic mobility within the region. Many of the strategies listed within this goal area are well developed, and WVCS stands in strong support of the City's developed strategy.

- **S-1:** Tenant Resource Centers are very important and so is expanding their power and reach, such as allowing them to report violations. We need clarification on what it means to "expand" Tenant Resource Centers. If we are making these more powerful and beneficial for the community, we need to invest in them financially and make sure tenants are aware of this resource.
- **S-8:** One strategy that stands out in particular is S-8, "Homebuyer program redesign." This strategy is extremely well developed and includes the type of actionable strategies that WVCS firmly believes will benefit the San José community members.
- **S-17:** It is very concerning to see the way this powerful and crucial strategy is being implemented. "Ban the Box" is a proven way to ease the housing process for formerly incarcerated individuals in a system that is incredibly cyclical and often inescapable because of boxes they have to check like this one. 37 states and over 150 cities and counties have adopted "Ban the Box." The City should not do an assessment and wait to see if they're directed by Council to draft an ordinance for them to consider. "Ban the Box" should be directly implemented through the Housing Element, much like many of the other code and policy changes. At the very least, the City should draft the ordinance as part of this policy rather than considering drafting no ordinance at all.
- **S-27:** Another well-developed strategy is strategy S-27. The listing of specific sites - with a particular focus on digital tools, pop-ups, and/or mobile sites - is greatly appreciated in developing strategies for improving tenant/landlord education centers. We also appreciate the City's desire to "partner with community-based organizations to deliver services in ways that are convenient and accessible for all users, especially those with disabilities," and we look forward to participating as an organization that helps members access resources and services.

As WVCS works directly with community members who struggle with accessing fair and affordable housing, a primary issue we work to address is fair housing and income discrimination.

- **S-24:** We support the City's efforts to combat these issues, however, we would like to see strategy S-24 further developed. WVCS supports the goal to "increase fair housing education, monitoring, and enforcement in target neighborhoods, especially on source of income discrimination," but the strategy does not list specific actions the City plans to take to realize this strategy. For example, we would like the Housing Element to recognize the target neighborhoods this strategy applies to, as well as the plan the City intends to follow to, "identify more ongoing funding for this activity."
- **S-34:** Similarly, under strategy S-34, we would like to see more specific ways the City plans to improve economic opportunities within San José. WVCS appreciates that the City recognizes and prioritizes the need to "explore and establish strategies to increase economic opportunities, self-sufficiency, and asset-building for households and communities;" however, we strongly request that the City consider revising this strategy, and including a much more robust plan to expand economic opportunities.

GOAL 4: Healthy, Thriving Neighborhoods with Access to Good Jobs, Schools, Transportation, and Other Resources

WVCS strongly supports Goal 4 and seeks to contribute towards the implementation of the listed strategies. The strategies included under this goal do a great job incorporating community feedback into its goals for equitable development.

- **N-1:** Strategy N-1 is a particularly thorough and detailed listing of how the City aims to focus investments in “racially/ethnically concentrated neighborhoods with extremely low incomes.” We appreciate this strategy’s rigorous and multi-step approach to ensuring equitable development that also seeks to overcome the harmful results of past discriminatory practices.

GOAL 5: Racially and Socially Inclusive Neighborhoods that Overcome Past and Present Discrimination

As the City thoroughly recognized in Chapter 2 of the Housing Element draft, housing growth and development in San José has consistently occurred alongside harmful and discriminatory public policies that were “explicitly and intentionally racist.” It is critical that future community development plans recognize these harmful past practices and include efforts to make reparations for economic inequality that arose as a result. WVCS supports Goal 5 and the City’s efforts to work toward more inclusive neighborhoods, and we want to be an active participant in realizing these goals.

- **I-7:** Community engagement in San José has been lacking for a long time and we have heard numerous requests from community members for increased outreach and engagement. We are happy to see a robust community outreach plan in this document. Partnerships between City staff/developers/community groups are critical. We would like to see the changes to Public Outreach Policy 6-30 included in the Housing Element since this is vague. It’s also promising to see language access - San José is very diverse, and non-English speaking communities have long been marginalized. The increase in financial resources and providing of staffing is incredibly important and we believe this will make strong contributions to accomplishing the goal. This is what it looks like to truly invest in change - please be sure to go through with this, providing financial support and securing sufficient staff.
- **I-9:** This is incredibly important and we are glad to see this strategy. Please add something about expanding this to other commissions if you find the pilot program to be successful. Most importantly, *the Planning Commission should be included in this pilot program.* Additionally, please note that outreach for this program is important because we need to make sure the targeted communities are aware of this opportunity.
- **I-10:** It is very exciting to see the inclusion of a lived experience with homelessness seat on the Housing and Community Development Commission. At WVCS, we have a Lived Experience Advisory Committee that regularly brings together staff, clients, and other lived experience community members. We have witnessed firsthand the power of these conversations and know that including someone with lived experience with homelessness on this commission will have a tangible impact on the City. Through this committee, we have also seen how difficult it is for someone struggling to make ends meet to find the time to participate in commitments like this. Compensation should be provided to them on an ongoing basis, not just for 6 months, because we are asking someone with much less privilege and often less time and schedule flexibility to do this. It’s important to acknowledge this and demonstrate that we value their time and understand their needs by compensating them.

- **I-11:** Many of the community members we serve and advocate for and with are clients with disabilities. We strongly support strategy I-12 and its goal to increase access to affordable housing near public transportation for members with disabilities. However, we request that the City provide a more detailed plan of which practices they plan to implement, as well as how they plan to implement these practices. For such a critical goal, we request that the City develop a more comprehensive strategy that the community can help realize.
- **I-12:** Another lesson we have learned through our Lived Experience Advisory Committee is that one of the most important ways to include people with lived experience is to have them lead the conversation, and this strategy is a good step toward this. It's great that the City is interviewing, surveying, *and* analyzing, not just choosing one of these strategies. However, this strategy needs to be more specific. How many people will be surveyed and what is the timeline? Lastly, please add that the City will use the results to create and implement a plan to meet and track these needs (not just track and endeavor to meet).

Chapter 4: Constraints on Housing

The issues addressed within this chapter are critical to the health of the housing economy in San José. We are very grateful for the robust and thorough analysis conducted by the City, in which the numerous constraints on housing are acknowledged.

We also appreciate the work done to emphasize and work toward the preservation of affordable homes that are at risk of conversion to market-rate homes. It is critical that these homes are protected and that affordable homes remain accessible to those who seek assistance. While we thank the City for the plans listed to protect affordable homes, we request that the City consider additional programs to further protect these homes.

WVCS also believes that we must reduce constraints on the production of numerous housing types, such as multi-family homes, duplexes, and fourplexes. While we appreciate the thorough analysis included on many different types of housing, as listed in the chapter, please consider adding an analysis that focuses on reducing constraints to the missing middle housing development process.

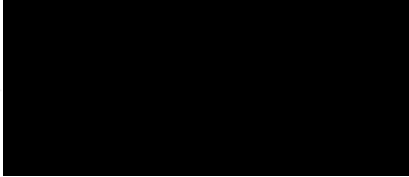
Chapter 5: Adequate Sites for Housing

Because WVCS' expertise largely lies in policies and programs related to housing, we will keep our comments in this area short. We want to emphasize the importance of heavily weighing the comments of other nonprofits with extensive knowledge of housing, such as SV@Home. The only thing we would like to emphasize in our comments is the importance of building throughout the City. While we must place some focus on high opportunity areas in order to give historically disadvantaged communities access to quality resources and education, we also must ensure we are not leaving behind our neighbors who are still living in lower opportunity areas in the City. We need sufficient, quality, inclusive, affordable housing everywhere; please ensure you are planning accordingly.

Thank you for your consideration of this feedback. We look forward to continuing to participate in San José's Housing Element process, and we hope you find our insights and thoughts helpful. We again want to voice our immense gratitude to everyone who worked on this document for your dedication to the community and the hundreds of hours of work you have put into this Housing Element. In particular, thank you to staff for all of the work you have done. We know that this would be impossible without you, and we are incredibly

grateful for your dedication and hard work. WVCS is happy to support in any way we can - please don't hesitate to reach out to us at the phone number or email below with questions, responses, or requests.

In community,



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Commenter	Issue Raised/Requested Changes	Chapter	Section
Independent commenters	Show densities, council districts, resource areas	Website	N/A
	Oppose rent control and other tenant protections	3	3.3
	Anti-fair housing	3	3.5
	Anti-production	3	3.1
	Add 4846 Harwood Rd, delete 56901099, 45141068, 56945063, 52733017, 56918058, Walgreens	5	5.4
	Budget analysis	3	N/A
	Equitable tree coverage	3	N/A
	Too corrupt to spend money	3	N/A
	Build more: Expand ministerial, more TOD, Opportunity Housing	3	3.1