



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: October 10, 2017

Approved	/s/	Date
	Kim Walesh	10/13/17

SUBJECT: WORKLOAD ASSESSMENT ON PRIORITIZATION FOR TENANTS OF AFFORDABLE HOUSING

RECOMMENDATION

Accept an overview of the types of residential preferences (including those for residents who work/live in San José, are in particular neighborhoods, become displaced, those in need of emergency housing, and those at particular risk such as artists or emancipated youth) and give direction on Tenant Preferences to explore, which may be used to establish priorities for making affordable apartments available to eligible applicants.

OUTCOME

Direction from the Committee on Community and Economic Development (“CEDC”) will finalize which preferences that staff will formally study, develop draft policies, and conduct stakeholder outreach. Staff will then return to the City Council with draft policies for consideration in 2018.

BACKGROUND

Many municipalities have some priorities for the selection of eligible applicants of restricted affordable housing (“Tenant Preferences”). These Tenant Preferences are policy statements as to what populations they deem it most important to serve in specific types of affordable housing developments, or on a geographic or other basis. Implementation of Tenant Preferences may have the effect of advantaging certain eligible applicants’ chances of obtaining housing, while disadvantaging others, and so such policies must be selected and applied carefully.

In March 2017, the City Council voted on Council priorities for staff work in FY 2017-18. One of the City Council's priorities was for staff to "Explore the development of policy that will allow a set-aside in affordable housing developments that prioritizes residents who are being displaced that live in low-income neighborhoods undergoing displacement and/or gentrification."

In August and September 2017, staff conducted initial research on Tenant Preferences and has gathered information on other jurisdictions' Tenant Preferences. In addition, on September 15, 2017, Housing staff sought initial feedback on this topic at a City-convened meeting of representatives from six property management companies. These companies together manage several thousand restricted affordable apartments in San José, as well as thousands of market-rate apartments. Representatives at the meeting noted their companies' experience with a range of types of Tenant Preferences, the various vehicles through which they are required, and considerations regarding the implementation of Tenant Preferences. Some of these entities manage Tenant Preferences by maintaining more than one tenant waiting list, or by designating a portion of their units to be filled by tenants with a preference.

There are ways other than establishing Tenant Preferences to target particular populations to be served. A public lender could create a funding program specifically for a particular population, such as teachers, subject to funding source restrictions. The lender would have to determine there was a public purpose rationale for spending public funds to help a narrow segment of the population. Homes funded with that source would be set aside for that population, and the target population would apply only to those funded developments. Or, developers could "target market" to a particular group, while being careful to uphold federal Fair Housing obligations at the same time. Target marketing involves no housing set-asides or formal screening criteria for applicants.

However, this Memorandum's focus is on the establishment of Tenant Preferences. Establishing Tenant Preferences on project-based, geographic, or Citywide basis would provide policy direction to allow the Housing Department to create a formal framework for new projects, and provide priorities and specific criteria to be used for newly-funded developments and programs.

Tenant Preferences are used to establish a hierarchy among applicants, or a rotation between waitlists, during a property's initial or subsequent leasing process. Cities that administer multiple Tenant Preferences often create a point system for the stacking of preferences. Applicants are awarded points for each type of Preference that applies to a particular property for which they qualify. A certain percentage of apartments in a given development are usually set-aside for the defined populations.

At the City's meeting with property owners, the City and County of San Francisco and its software vendor attended to demonstrate how its on-line renter portal allows Tenant Preferences to be defined for each property. The system assigns points for each type of preference per San Francisco's defined policies. Some buildings have several preferences that apply. Applicants are rated and ranked by their point totals in a single list of applicants that the system creates. Although the City does not currently have such software, such a system is being considered for

Santa Clara County. Alternatively, property managers can use Excel spreadsheets to calculate applicants' scores for various preferences and to rank applicants.

One example of creating a Tenant Preference was the Housing Department's creation of the Transition in Place ("TIP") program. As part of its many recent City Council-directed strategies to address homelessness, the Housing Department created TIP in 2015 so that formerly homeless recipients of City-funded rental vouchers could find apartments to accept them. With the City's tight rental market, voucher recipients found them very difficult to use in market-rate apartments. The vast majority of San José's landlords prefer to not accept voucher holders to the extent that they have alternative tenants to whom they could rent. The Department's TIP Program creates negotiated set-asides of a certain number and type of restricted affordable apartments that agree to accept referrals of TIP voucher-holders. Thus far, staff has negotiated a set-aside of these 80 TIP apartments as requirements of new funding awards, and as consideration for owners requesting City approval of actions on existing affordable rental properties. The TIP requirements are defined in the City's loan documents.

ANALYSIS

Establishing one or more Tenant Preferences would involve the following tasks:

- A policy decision on which types of Preferences are most important to pursue, and why
- Scoping of the preference (e.g., city-wide, specific projects)
- Staff's analysis of feasibility based on number, scope and type of Preferences, based on stakeholder input
- City Attorney review for fair housing, funding restrictions, and other issues
- Outreach to stakeholders and the public to solicit feedback
- City Council consideration of proposed Tenant Preferences
- Staff's implementation of the Tenant Preferences, together with affordable housing property owners and managers
- Broader education to the public on approved Preferences.

Following is more information on potential types of Tenant Preferences and the analysis that would be involved.

Types of Tenant Preferences

To get HCDC's input on the possible types of Tenant Preferences, Housing Department staff has assembled a list of potential types of Tenant Preferences. This list reflects staff's research on types of Preferences that other cities have established, including those directed for study by City Council priority setting. Staff had previously identified some Preferences, such as for tenants who live and/or work in San José, as an intended future focus for City Council consideration.

Some ideas, such as those for victims of natural disasters, were precipitated by recent events. Others were noted by staff reflecting input from members of the public at various meetings.

The list of potential types of Preferences with notes about their feasibility is located in **Attachment A** to this Memorandum.

Legal Issues

In addition to practical concerns, there are legal issues that must be considered in adopting and implementing Tenant Preferences. Certain preferences or combinations of Tenant Preferences may raise Fair Housing law issues, and other issues under State and federal law. Fair housing law applies to all residential developments. In addition, the greater the number of Tenant Preferences, the greater the need for analysis of how they interrelate.

Additionally, funding sources may prohibit or limit the ability to implement certain preferences. Tax credit properties, which constitute approximately 85% of the City's restricted affordable portfolio of apartments, have specific rules about lease-up and waitlist maintenance. These are governed both by Internal Revenue Service guidance as well as by fair housing law. State Health and Safety Code continues to govern and limit the reuse of loan repayments from redevelopment funding. State funding sources recognize some Preferences but prohibit others. Federal HOME funds have limiting requirements as well. Therefore, even if the City establishes Tenant Preferences, a particular development's funding sources could limit which Tenant Preferences could be evaluated.

Draft Workplan

The following is an outline of work that is anticipated to be involved in establishing **up to three** Tenant Preferences. If fewer or more Preferences were desired, the timeframe would alter accordingly.

These are rough estimates of the work involved; some Tenant Preferences will involve more analysis than others, and some may require sign-off from the U.S. Department of Housing and Urban Development ("HUD").

#	Task	Potential Timing	Level of Effort	Notes
1	Conduct additional research on Preferences	10/2017-12/2017	Med	Types of Preferences, vehicles, legal approvals needed, implementation issues.
2	Prepare for and present to CEDC	10/2017	Med	Obtain direction for CAO analysis and conducting additional stakeholder outreach to develop supporting findings and appropriate scope for CAO analysis, and return to City Council with draft policies and/or ordinances.

#	Task	Potential Timing	Level of Effort	Notes
3	Create draft structure, definitions and rationales	11/2017-1/2018	High	Staff and City Attorney's Office
4	Refine definitions and analyze legal issues	1/2018 - 4/2018	High	Staff and City Attorney's Office together refine definitions and analyze legality
5	Obtain HUD's guidance	01/2018 - 03/2018	Med	Depends on selected Preferences; analysis may require consultation with and guidance from HUD.
6	Conduct initial public outreach	10/2017 - 01/2018	Med	Inform public of the upcoming actions and get feedback on content and implementation.
7	Prepare draft policies/ordinances	3/2018-6/2018	High	Drafting by City Attorney's Office.
8	Hold stakeholder feedback meetings on drafts	Summer 2018	Med	Includes a follow-up HCDC meeting.
9	Edit draft policies/ordinances	Fall 2018	Low	Drafting by City Attorney's Office.
10	Request City Council approval for draft policies/ordinances	Late 2018	Med	
11	Implement and educate stakeholders and the public	2019 and ongoing	Med	

EVALUATION AND FOLLOW-UP

As directed by CEDC, staff will conduct the work outlined above for preferences identified by CEDC and will return to the City Council for its consideration of draft policies and/or ordinances by late 2018.

PUBLIC OUTREACH

On September 15, 2017, Housing staff sought initial feedback on this topic at a City-convened meeting of representatives from six property management companies that oversee tens of thousands of apartments. On October 12, 2017, HCDC is holding a public meeting and Tenant Preferences is one item on the agenda. If CEDC gives direction to pursue tenant preferences, staff will hold public outreach meetings and stakeholder meetings to get feedback. This Memorandum will be posted on the City's website for the Community and Economic Development Committee Agenda for October 23, 2017.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION

This item will be heard by the Housing and Community Development Commission (“HCDC”) on October 12, 2017. A Supplemental Memorandum will be submitted reflecting HCDC’s comments.

FISCAL/POLICY ALIGNMENT

Depending on the populations selected for study, the preferences may be consistent with the City's *Analysis of Impediments to Fair Housing 2016-2020* in that they could make available affordable apartments for certain very low- and extremely low-income populations such as those displaced by gentrification, LGBT, homeless, and those having other special needs; and, the *Community Plan to End Homelessness* approved by the City Council in February 2015 in that they could provide affordable housing opportunities for residents experiencing homelessness.

/s/

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

Attachment A: Possible Types of Tenant Preferences Chart