August 12, 2020

RE: Anti-Displacement/Neighborhood Local Preference Policy

Dear Honorable Councilmembers,

Our commission continues to be excited and passionate about our work for our fellow residents. We believe that housing is a human right. San José is at a critical point where it is important that we ensure the representation of our most vulnerable communities is included in its future.

We would like to express to you that we, as the San José Human Services Commission are in support of creating an Anti-displacement San José Neighborhood Local Preference Policy to help ensure that our most vulnerable community members can continue to call San José their home and not face displacement.

We ask that you strongly consider the following parameters:

1. 50% of affordable housing units be designated for a local preference policy;
2. Preference be based on council district and the nearest community that is facing extreme displacement pressure.
3. Prioritize extremely low and very low-income families with children ages 0-17, with the extension to 22 years of age for students with special needs.
4. Residents who live and work in San José.
5. Use the alternative documents to prove eligibility to apply for housing and proof of residence.
6. Urge developers to build more 2-4 bedroom family units with universal design being included within the construction of all units.

We ask you to include this in your consideration as you vote on this upcoming item.

In Community,

Daisy R. Barocio, M.A.
Mother, Educator, D5 Resident

August 13, 2020

Dear Commissioners,

South Bay Community Land Trust generally supports the Housing Department anti-displacement recommendations, especially the adoption of a COPA or TOPA program, which would require that tenant organizations, non-profits, or government agencies be given first right of refusal during the sale of any multifamily residential property.

However, we are concerned that as written, the proposed COPA program (recommendation number 3) does not sufficiently stress tenant agency and tenant empowerment in the COPA process. I have attached a few pages from Urban Habitat's pamphlet, "Rooted in Home", which explain how the Washington DC TOPA program specifically grants tenants the first right of refusal to the property, which they then can assign to a non-profit if they choose. It also slows down the sales process in order to give tenants time to organize and acquire technical, legal, and financial support, with considerable assistance from the City.

Community Land Trusts are an excellent resource for preserving permanently affordable housing. However, they are not just another housing developer or service provider. Above all, Community Land Trusts as originally envisioned were vehicles for community empowerment, racial and economic justice, and social transformation. I have attached a page about this from MIT CoLab's recent "Guide to Transformative Land Strategies" that details these characteristics. For all these reasons, we believe it is essential that San Jose's proposed COPA program include a robust tenant empowerment provision, as part of the foundation for the community empowerment that is necessary to end displacement and stabilize our communities.

Thank you for all the work you have done so far on this, and South Bay Community Land Trust looks forward to collaborating closely with the Housing Department and other stakeholders to help work out the details of such a policy.

Sandy Perry
President, Affordable Housing Network of Santa Clara County
Board Member, South Bay Community Land Trust

ROOTED IN HOME

COMMUNITY-BASED ALTERNATIVES TO THE BAY AREA HOUSING CRISIS

URBAN HABITAT

EAST BAY COMMUNITY LAW CENTER

ROOTED IN HOME

Community-Based Alternatives to the Bay Area Housing Crisis

PUBLISHED BY: Urban Habitat and East Bay Community Law Center

Urban Habitat works to democratize power and advance equitable policies to create a just and connected Bay Area for low-income communities and communities of color. We confront structural inequities impacting historically disenfranchised communities by bringing a race and class lens to the forefront of transportation, land use, and housing policies.

The East Bay Community Law Center (EBCLC) is the largest provider of free legal services in the East Bay and Berkeley Law's largest clinical program for law students. EBCLC's Community Economic Justice clinic (CEJ) advances people-oriented economic development and empowers low-income communities of color to build long-term solutions to poverty in the East Bay through a racial justice and anti-displacement lens.

AUTHORED BY:
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COMMUNITY LAND TRUSTS:

OPPORTUNITIES

CLTs offer a clear model for creating permanently affordable housing that is replicable and scalable across the Bay Area. Through resale restrictions, CLTs limit increases in land and housing prices over time and can provide stability for the communities most at risk of displacement and economic hardship from speculative land development.

The greatest hurdle for CLTs is finding adequate funding to acquire land in the Bay Area. City governments are vital to supporting and expanding the CLT model; by adopting the following recommendations, cities can more quickly bring the model to scale.

- Cities should enact a first-right-of-refusal policy, such as a Tenant Opportunity to Purchase Act [see Community Opportunity to Purchase section], to create opportunities for tenants to purchase their buildings to convert into CLTs.
- Cities should also create a fund to channel money to CLT projects in neighborhoods experiencing displacement, such as a Small Sites Program [see Community Opportunity to Purchase section].
- Cities and other jurisdictions should support the scaling of CLTs in the Bay Area through the transfer of public land to CLTs, at low or no cost [see Public Land section]. This would significantly help CLTs overcome the high cost of land, thereby enabling them to provide permanently affordable housing to low-income communities of color. Currently, there is capacity for 35,000 units of affordable housing on public land near transit across the Bay Area.[51]

Residents of Columbus United Cooperative. Source: San Francisco Community Land Trust, 2018

COMMUNITY OPPORTUNITY TO PURCHASE

There are two primary obstacles to purchasing property in the Bay Area: inflated land values and the rapid rate at which sales occur. The median price for a single-family home in the Bay Area is nearly $1 million, and can reach as high as $1.6 million in cities like San Francisco.[76] The Bay Area also has the fastest turnaround for home sales nationwide, meaning that housing in this region spends the shortest amount of time on the market.[77] Buyers must act quickly, often in competition with cash offers well above the list price. Homes were sold within an average of 43 days in the San Francisco metro area in 2017; the national average is 81 days.[78]

These are average figures, however. In cities and neighborhoods with higher-than-average demand, a home may sell after only one week on the market.[79] The rapid rate of Bay Area home sales has resulted in bidding wars that privilege cash offers and put buyers who use conventional financing at a disadvantage.[80] These challenges place low- and moderate-income tenants, first-time homebuyers, and non-profits such as community land trusts at a severe disadvantage when trying to purchase property in the Bay Area.

To help level the playing field, cities can adopt a first-right-of-refusal policy modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA)[81] and implement an acquisition loan fund modeled after San Francisco's Small Sites Program (SSP).[82] These interventions could empower long-time and low-income residents to stay in their neighborhoods and preserve housing as permanently affordable, while helping organizations like CLTs overcome issues with funding, timing, and scalability.

THE RAPID RATE OF BAY AREA HOME SALES HAS RESULTED IN BIDDING WARS THAT PRIVILEGE CASH OFFERS AND PUT BUYERS WHO USE CONVENTIONAL FINANCING AT A DISADVANTAGE.

Tenant Opportunity to Purchase, Washington D.C.

Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) requires owners of rental accommodations to give tenants the opportunity to purchase the property before the owner can sell the building on the market or issue a notice for tenants to vacate for purposes of discontinuance or demolition.[83] TOPA does this by creating legal rights for tenants and requiring reasonable timelines for the sale of property, all of which gives tenants and qualified affordable housing developers the first opportunity to purchase rental accommodations when the owner decides to sell.

Tenants may exercise their right to purchase the property on their own or assign or sell their rights to a third party.[84] TOPA also establishes timelines that slow down the sales process and give tenants enough time to organize, access technical and legal support, negotiate a contract of sale, secure financing, and close the deal.[85] The City has a hand in facilitating the financial, educational, and technical support for tenants to move through the TOPA process successfully.[86] TOPA is funded primarily through D.C.'s Housing Production Trust Fund.[87]

TOPA can function as a broad community stabilization policy. Studies show that TOPA was critical in preserving nearly 1,400 units of affordable housing between 2002 and 2013 in Washington D.C.[88] Many units preserved under the Act were in neighborhoods undergoing gentrification. The Act has allowed residents to stay in units that would have been converted to luxury rentals or market-rate condos, indicating that TOPA can be an effective tool in preventing the displacement of long-time residents and preserving affordable housing.[89]

SF CLT purchased this property in April 2016 with funding from the City's Small Sites Program, preventing the displacement of multiple generations of SOMA residents. Source: San Francisco Community Land Trust, 2016

Small Sites Program, San Francisco

The Small Sites Program (SSP) is a loan program that funds the acquisition and rehabilitation of existing residential buildings with five to 25 units.[90] SSP helps San Franciscans avoid displacement or eviction by removing small rent-controlled properties, which are often vulnerable to market pressures, from the speculative market and converting them to permanently affordable units.[91] SSP results in more permanently affordable housing, stabilized housing for current residents, improved physical conditions, and financial sustainability.[92] SSP's funding selection criteria achieve these goals by prioritizing projects located in neighborhoods in San Francisco experiencing high levels of Ellis Act evictions (the Ellis Act gives landlords the legal right to evict their tenants if they are getting out of the rental business), and which house specifically-defined vulnerable populations.[93] The City initially funded SSP with $3 million in 2014.[94] As of September 2018, the City has allocated $102.5 million to SSP, which has in turn supported non-profits to acquire 27 buildings encompassing 189 units, with an additional 11 buildings and 134 units in the pipeline.[95]

Together, TOPA and SSP jointly confront displacement and preserve permanently affordable housing by facilitating the removal of properties from the speculative market and placing them into the hands of the community. In the Bay Area, Berkeley, Oakland, and San Francisco are already considering first-right-of-refusal policies and creating funds like the Small Sites Program.

COMMUNITY OPPORTUNITY TO PURCHASE:

OPPORTUNITIES

A TOPA-like policy should be tenant-centered and rooted in the goals of preventing displacement and preserving permanently affordable housing. This means:

- The non-sellable right of first refusal must belong to tenants, but tenants can assign their right(s) to a qualified third party organization that is committed to permanent affordability.
- The timelines under a TOPA policy must give tenants enough time to organize, negotiate a contract, secure funding, and close a deal. We recommend starting with Washington, D.C.'s TOPA timelines and adjusting as necessary.

In order to truly preserve affordable housing, all housing accommodations purchased under TOPA and SSP should be subject to permanent affordability restrictions for current and future residents.

- Permanent affordability restrictions should include limitations on rents (e.g. building average rents not to exceed 70% AMI rent), as well as limitations on the resale of the whole building or separate ownership interests.
- To determine a fair initial sales price, those who purchase under TOPA should have the right to an appraisal of the property by an independent, qualified appraiser to set the sales price.

SSP should prioritize funding the purchase of buildings in neighborhoods with a high risk of displacement and buildings that house vulnerable populations with the lowest incomes. SSP guidelines should require purchasers to adopt an affordability standard that sets rent to the lowest amount possible while ensuring the financial stability of the project. SSP should also provide greater subsidies for buildings with lower-income residents and ensure the timely availability of funds to make purchases possible under tight timelines.

TOPA should also guard against legal challenges and ensure that the right of first refusal is not circumvented through loopholes. For example, we can draw one lesson from D.C.: The definition of a "sale" under TOPA should include a broad array of transfers of ownership and/or control that may not appear as conventional sales, such as a transfer of the property in intervals.[96] Instead, "sale" could be defined broadly to include any sort of transfer that transfers both ownership and control of the property from one group of people to another.[97]

Finally, cities considering adopting a TOPA-like policy or SSP must work with community-based organizations to create the infrastructure to support their implementation and success. This support includes:

- Education so that tenants fully understand their rights and obligations under TOPA.
- Financial resources to support the purchase and rehabilitation of buildings.
- Legal and technical assistance to support tenants through the TOPA process.

Nicholas Shatan
Olivia R. Williams
Community Innovators Lab
Massachusetts Institute of Technology
Just Urban Economies
June 2020

A GUIDE TO TRANSFORMATIVE LAND STRATEGIES:

Lessons from the Field

Photo by: Katherine Mella

Community land trust movement at an inflection point

Community land ownership is only one part of an ecosystem that can catalyze the transformation of the economy; under a democratic economy to come, there will be a diversity of approaches to land tenure and ownership of housing, labor, and money. CLTs are also only one part of the solutions needed to address the intertwined issues of displacement, gentrification, and affordability, where they are critical because they can add democratic governance and permanent community ownership of land to a comprehensive platform that includes policies such as rent control and the elimination of exclusionary zoning.

Pioneered in 1969 by Black civil rights leaders at the agricultural New Communities land trust in Albany, Georgia, **the CLT model has gained considerable traction: the number of CLTs in the United States is now over 276, and approximately 24 CLTs have been developed across Canada.**[17] This year, two Democratic presidential candidates included CLTs in their platforms: unsurprisingly given his impactful support of CLTs as mayor of Burlington, Bernie Sanders proposed $50 billion in support for CLTs and other shared-equity ownership models; Elizabeth Warren's plan to start a HUD Innovation Lab also involved further studying CLTs.[18]

Yet this rapid growth and mainstream acceptance of CLTs has come at a cost. As with the community development movement before it, CLT organizations that become increasingly focused on professionalized housing development tend to **lose some of the original intentions of proponents of the model, including community governance and decommodification of land.**[19] Therefore, the CLT model, on its own, is not inherently transformative.[20] In other words, the model does not in itself subvert and replace oppressive institutions of the dominant development power structure—extractive financial institutions, austerity-minded governments, and the racialized and individualistic system of homeownership—and may in many cases simply build on those existing institutions to make life marginally better for low-income people.

Along these lines, Zach Murray from the Oakland Community Land Trust (Oak CLT) told us to be wary of the mandate to scale,

> *"...because CDCs at one point owned the same language that the CLTs do of community control and community self-determination. And the federal government came and gave them money and then they started becoming about how to get the money still... There's always that risk of co-optation that even government money brings, if we're not doing the deep level of really ensuring and perfecting democracy."*

CLTs, stripped of their political education and organizing capacities, can serve to reinforce the status quo relations of the economy, if in a somewhat reformed manner. In other words, there is a risk that, without centering transformative politics and democratic practice, CLTs will become just another tool in the affordable homeownership toolkit, without fundamentally changing the power and conditions of low-wealth communities of color. Edward Garcia from the Bronx Community Land Trust (BXCLT) told us, "I'm worried about CLTs just becoming a regular developer. It's easy to stay away from the organizing, which is the vitals."

17. "CLTs in the US and Canada" Center for Innovative CLTs. https://bit.ly/3hTFFtf
18. "Housing For All." Friends of Bernie Sanders. bit.ly/2XwaPO6; "Protecting and Empowering Renters." Warren Democrats. bit.ly/3ehmlnk
19. DeFilippis, James, Stromberg, Brian, and Williams, Olivia. "W(h)ither the community in community land trusts." *Journal of Urban Affairs* 40(6): pp. 755 - 769; Williams, Olivia. 2019. "Are We Diluting the Mission of Community Land Trusts?" *Shelterforce.* bit.ly/2TEuBG7
20. DeFilippis, James, Olivia Williams, Joseph Pierce, Deborah Martin, Rich Kruger, Azadeh Hadizadeh Esfahani. 2019. "On the Transformative Potential of Community Land Trusts in the United States." *Antipode* 51(3): 795–817.

Guiding principles and questions

A core tenet of the CLT and broader movement for community land ownership is permanent affordability through ***decommodification of land***, meaning that the land and the uses on it will be shielded from speculation by taking it off the private market. Noni Session from EBPREC told us, "We want to see structures and organizations that really understand that **commodified land and housing is a sure way to continue to destroy and dismantle communities' history, cohesion, and safety."**

TCLOs are a tool that can support ***economic democracy***, which we at MIT CoLab have defined as "a socio-economic system in which those most impacted democratically own and govern wealth, resources, and other assets."[21] When we discuss democracy in this report, we are referring to democratic practices that aspire to meet Michael Menser's definition of *Maximal Democracy*: a type of deep, participatory democracy that involves collective determination; capacity development and delivery of economic, social, and political benefits to members or constituents; the replacement of unequal power relations with relations of shared authority; and the construction, cultivation, proliferation, and interconnection of movements and organizations with overlapping normative frameworks.[22]

We define ***racial justice*** as the collective work of dismantling and rectifying structures of violence and exploitation on the basis of race. Zach from Oak CLT noted that "CLTs are not reparations but a model worth reparating into." In other words, CLTs and other TCLOs are not a silver bullet for achieving racial justice, but **an important strategy within a movement and an ecosystem that aims to make the economy racially just.** Without racial justice and social justice, "community" can be used in service of nativism, a structure meant to exclude people of color and immigrants from white places and spaces. The definition of "community" in "community land trust" also becomes complicated in the context of gentrification: it may refer to a cultural group or historical population rather than a neighborhood's growing demographic. Some of the organizations we spoke to have expanded their membership catchment area or their definition of "directly impacted" because so many community members have had to leave their neighborhood. This is why, when we talk about community land, we have to talk about racial justice, social justice, and economic justice.

Political and economic ***transformation*** is a thread that runs through each of these frameworks, and the organizations we focus on in this guide generally consider transformation to be an important goal for their work. Adrian Alberto Madriz from SMASH Miami told us, "transformation means we are really shifting the dynamics of power to favor groups of people that have historically been shut out of decision making processes [...] **The end goal really has to be that we transform people's thinking about how they relate to the systems of power and the decisions that are made about their neighborhood."** Even though these CLTs sometimes have to position themselves as reformists, they are in the struggle to empower marginalized communities to take ownership and make decisions about the places where they live.

Starting from this understanding of the types of practices we wanted to lift up and disseminate within the contemporary context, and questions we have heard from people involved and interested in the community land movement, CoLab generated the following guiding questions:

- What common understandings, strategies, and practices are TCLOs developing and implementing to advance transformative com-

21. MIT CoLab. 2015. "Economic Democracy Training Series," bit.ly/2X-CPnHc
22. Menser, Michael. 2018. We Decide! Philadelphia, Pa: Temple University Press. pp. 57 - 59

munity ownership and governance of land?

- What's the land acquisition strategy the movement needs to scale?
- How can TCLOs overcome reliance on external funding that can compromise their values?
- What role should participatory planning play for TCLOs?

By defining these questions, we're also defining the questions we're not asking and answers we're not providing here, including some that are very important. We are leaving aside for now the questions of the relationship of TCLOs to the theft of Indigenous land across this continent, what "community" means, the ideal relationship of TCLOs to the government and public assets, and understanding how TCLOs relate to the commons. We are also not trying to provide a step-by-step manual on how to build a TCLO, recognizing that a number of such resources exist, and that the real work of movement building is in cultivating leadership within a community to adapt relevant strategies, practices, and tools to a local context and to build the power to actualize them.

The following sections explore and analyze these strategies, practices, and tools. We arrange these under three general themes: participatory planning, land acquisition, and non-extractive finance.

San Jose, The state of things-July 2020

I don't think it's healthy for a state to be ruled by a single party! Wisconsin and California come to mind. One doesn't need to be a senior to recognize that things have changed.

Eminent Domain, through the years, has meant the government can condemn a property as long as it is needed for the common good, and the owner is fairly compensated. The common good is for a school, hospital, road, public buildings or a rail system. However, it now covers a casino/hotel complex because it pays more taxes than your neighborhood; the XL Pipeline from Alberta, Canada's tar-sand oil runs through states down to the Gulf of Mexico to be shipped overseas. America's becoming the world's largest producer of oil must be for the common good, maybe at the pump?

Compensation for the forced loss of a property is the second part. Usually, the process calls for appraisals and negotiations on a fair price. The City of San Jose, acting on a housing crisis, which it partially generated itself, has broadened its rent control ordinance to the point of eliminating some private property rights, like capping rents, raising occupancy numbers, freeing residents from any utility costs, and stopping non-payment evictions during the pandemic; the state Judicial Council bolstered that move by closing all eviction courts for the duration and possibly beyond. This stops all evictions! If a tenant couldn't pay in April, they will be protected through August (That's five months at $2,000)! San Jose toys with the plan of recognizing that the tenant owes back rents and expects they will pay half of the owed rents by year's end and the rest in a year, but eying the pandemic second wave, that's doubtful; the state talks of tax credits and suggests an owner sells them at a discount to raise money. It's a problem because tax, water, maintenance and mortgage go on, under the close eye of City Housing which makes sure tenants are decently housed. The end result is that the cost is extracted from income property owners, sacrificing those smaller marginal owners. Here we have the taking of private property without compensation by means of legislation.

Certain Non-profits like Sacred Heart and The Law Foundation of Silicon Valley add another level. San Jose receives and distributes federal Housing and Urban Development money to non-profits concerned with housing. One can argue that

HUD's grant to non-profit's can be used for political lobbying, but they are also recipients of San Jose's grant program. Sacred Heart and the Law Foundation are in the forefront of every council meeting effectively lobbying for residents, not owners. The urban development part in San Jose is lodged within bottom-line problems of builders, the NYMBY forces and the uncertainty of City Council actions via rent control.

I have seen the housing department led council make decisions over five years to tighten the tether on income property owners. The Covid 19 disruption has and is ruining many businesses but the city's housing action has systematically worked toward this end all along and is poised to continue. It doesn't show yet, but the more strict the controls are, there will be less interest in buying or building housing.

David Eisbach

December 5, 2019

Mayor Sam Liccardo & Councilmembers
San Jose City Hall
200 E. Santa Clara St.
San José, CA 95113

RE: City of San Jose Preference/Prioritization Policy

Dear Mayor Liccardo and Councilmembers,

Every day we see the depth and breadth of needs ranging from family resources; immigrant services; housing and shelter; and economic security, especially among women and immigrants (both documented and undocumented) in San Jose. We are embedded in the community and are deeply aware of the fear, anxiety and harsh realities that our families face often without having the necessary resources and services to have all their needs met.

Our community strongly supports the passing of a preference policy that will offer some relief to low-income immigrant families and allow them the right to stay in their communities where they belong while also preserving the landing pad for newly arrived immigrants. Community leaders have considered preferences based on neighborhood and households that have experienced displacement. They have suggest creating a ***Neighborhood Local Tenants Preference*** policy with the following parameters:

1. **50% of affordable housing units be designated for a local preference policy;**
2. **Preference be based on council district and the nearest community that is facing extreme displacement pressure.** *To make sure that this policy does not replicate existing patterns of exclusion and promotes continued racial and economic integration, we believe that the policy should apply to any site that has been defined as being at risk of displacement using the Urban Displacement Project's metrics or the city's own measurement of displacement risk*
3. ***Prioritize Extremely Low and Very Low-Income Families with Children ages 0-17;*** *children must be prioritizing because they are a vulnerable population*
4. **Residents who live AND work in San Jose.** *Focus on the families already living here in order to prevent displacement*
5. **Use the alternative documents to proof eligibility to apply for housing and proof of residence.** *Include more accessible documents discussed by community residents was discussed heavily with Housing Department on 2/26/2019.*

Context:
We have seen neighborhoods rapidly change before our eyes over the last few years with increases in home sales and the evictions of dozens of families; we have said goodbye to neighbors as they have been displaced; we have seen the destabilization of our once culturally rich communities, cultures and heritage erased from spaces that were ours to gather; and we have seen our local, family-owned businesses close for good.

San Francisco started its gentrification journey in 1980 with the coming of the dotcom boom that saw an influx of investment and higher income earners, specifically from the technology sector, coming into the most relatively affordable parts of town. Meanwhile, there has been a consistent struggle to build affordable housing at the rate necessary to preserve and protect communities. Nevertheless, there have been investments in luxury apartments and homes; public spaces; and business districts. Thus, as more people have continued to move to San Francisco, attracted by the all the amenities that these new
investments afford, there are less and less rooted community members to protect and defend themselves against the growing demand to live in the urban and sunny Mission District.

San Francisco is now one of the most expensive places to live in the nation and it has lost most of its low-income black and brown populations. For example, from 1970 to 2018, San Francisco experienced a 7.9% drop in the African-American population[1]. Also – despite San Francisco experiencing a steady decrease in poverty levels for years 1970-1990 – poverty levels have risen 1.2% since 1990.[2]

It is important to note that San Francisco has been able to pass policies to mitigate the displacement of families, such as rent control and inclusionary housing; and they have focused on commercial displacement. However, these policies alone have not been able to reverse the impact of gentrification, demonstrating that San Francisco, San Jose and other cities need a "menu" of comprehensive, holistic and strategic policies and strategies to protect communities from displacement.

Due to the lack of accessible housing options in San Francisco, residents started to move to Oakland which was already deeply impacted by the Priority Development Area (PDA) as part *of Plan Bay Area*, which prioritized transit-oriented development, according to a Case Study on Gentrification and Displacement Pressure in Oakland, CA. These plans also included transit, housing, shopping and recreation opportunities that continued to attract higher income earners looking for more affordable options and robust amenities. As housing costs began to increase in Oakland, the Bay Area also saw an increase of low-income people of color leaving Oakland and re-locating much further away from their
employment, increasing commutes, decreasing quality of life, and increasing environmental concerns, disproportionately affecting low income earners and people of color.

For example, Contra Costa County experiences a significantly higher "commuter export" rate in comparison to other Bay Area counties. For years 2006-2010, Contra Costa County residents primarily commuted to San Francisco County, Alameda County, and Santa Clara County respectively.[3] In addition to the aforementioned statement, this is the only county in which the

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[1] Bay Area Census – San Francisco City & County, 1970-2018
(http://www.bayareacensus.ca.gov/counties/SanFranciscoCounty.htm)

[2] Bay Area Census – San Francisco City & County, 1970-2018
(http://www.bayareacensus.ca.gov/counties/SanFranciscoCounty.htm)

[3] American Community Survey 2006-2010: tract-by-tract database

residents prioritize "inter-county commuting" versus "inner-county commuting" as a community issue.

From these local Bay Area examples, and as demonstrated in a report by the Urban Institute[4], similar components and patterns that have advanced gentrification, include:

1. Lack of resident engagement to protect current communities
2. Increase in down payments and decrease in FHA financing
3. Influx of households interested in urban living
4. Increase in high-income service amenities (e.g., coffee shops, shopping centers, etc.)
5. Historic architecture (e.g., large housing units, outdated design, etc.)
6. Rapidly increasing housing costs

With this historical context, patterns in data, and the end-of-year decision to allow Google to purchase land in San Jose, it is now imperative for San Jose to pass policies that will protect the people that are currently living here. For some, the Google developments and other sizable projects will mean increased economic opportunity and wealth generation, but for most, these developments bring about great fear and anxiety, knowing that it will exacerbate their already tenuous living and working conditions here in San Jose/Silicon Valley.
There have been ongoing efforts to mitigate similar occurrences across the State of California, and UC Berkeley (UCB) has been leading the charge thus far. UCB is currently leading the "Urban Displacement Project", which indicates Diridon Station Area (DSA) – including census tracts *5003*, *5008*, and *5019* – as "no stranger to displacement since the 1980's"[5]. While comparison data to other census tracts is limited, we have aggregated demographic data for census tracts in the nearby area: *5001.00, 5011.02, 5014.02, 5037.02, 5037.07, 5037.08, 5037.09, and 5037.10*. We can dub this tract series as "Nearby Tract Area" (NTA) for reference. After careful analysis, we have found concerning trends regarding *displacement risk, income differences, poverty rates, and commute times.*

As of 2015, the NTA had 2,291 households "at-risk of displacement"; this is identified by the number of low-income households (below AMI) within tracts which are losing its low-income population.[6] In comparison, the DSA tracts had 2,848 low-income households (below AMI); though they are not designated as "at-risk", the coming developments may change this status.

As of 2016, the NTA had a median income of $54,022 while the DSA had a median income of $83,814. This is a staggering difference despite the areas being very close to each other, which may reflect the ongoing redevelopment and displacement of DSA residents.

(http://www.thevacdat.com/planning/census-issues/app/data-products/2000-2010-tract-files/)

[4] *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*
Urban Institute
(https://www.urban.org/sites/default/files/publication/50791/412264-In-the-Face-of-Gentrification-PDF.)

[5] Urban Displacement Project – UC Berkeley, pg. 9
http://www.urbandisplacement.org/sites/default/files/san_jose_final.pdf

[6] Metropolitan Transportation Commission – Risk of Displacement (by tract)
https://opendata.mtc.ca.gov/datasets/Displacement-Risk-by-Tract?geo=36%2C-122.0%2C-119.0%2C-114.0

As of 2016, the NTA had an average share of 0.45 persons living twice below the poverty level; meanwhile, the DSA only had an average share of 0.30 persons living twice below the poverty level.[7] This may indicate a strong need for affordable housing within the NSA, but it may also indicate how increasing costs have driven low-income persons from their homes within the DSA.

Finally, as of 2013, Santa Clara County ranked third amongst all Bay Area counties in number of imported workers from other counties.[8] Santa Clara County imports ~200,000 employees daily, San Francisco County imports ~250,000 daily, and Alameda County imports ~225,000 daily. As the Silicon Valley job market continues to expand, Santa Clara County is expected to surpass both San Francisco and Alameda County in number of imported workers from other counties. This may threaten the financial well-being of current low-income residents, which may result in further displacement.

We understand that the cost of living and displacement are symptoms of many macro-level forces; however, we urge our local City officials to do everything you possibly can to protect all the people currently living in San Jose. While we applaud recent decisions related to tenant protections, the commercial impact fee study and other measures, more policies and strategies are needed, and now is the time to take action.

Sincerely the following organizations,

Amigos de Guadalupe

Grail Family Services

Raising the Roof

School of Arts & Culture at Mexican Heritage Plaza

SOMOS Mayfair

Veggielution

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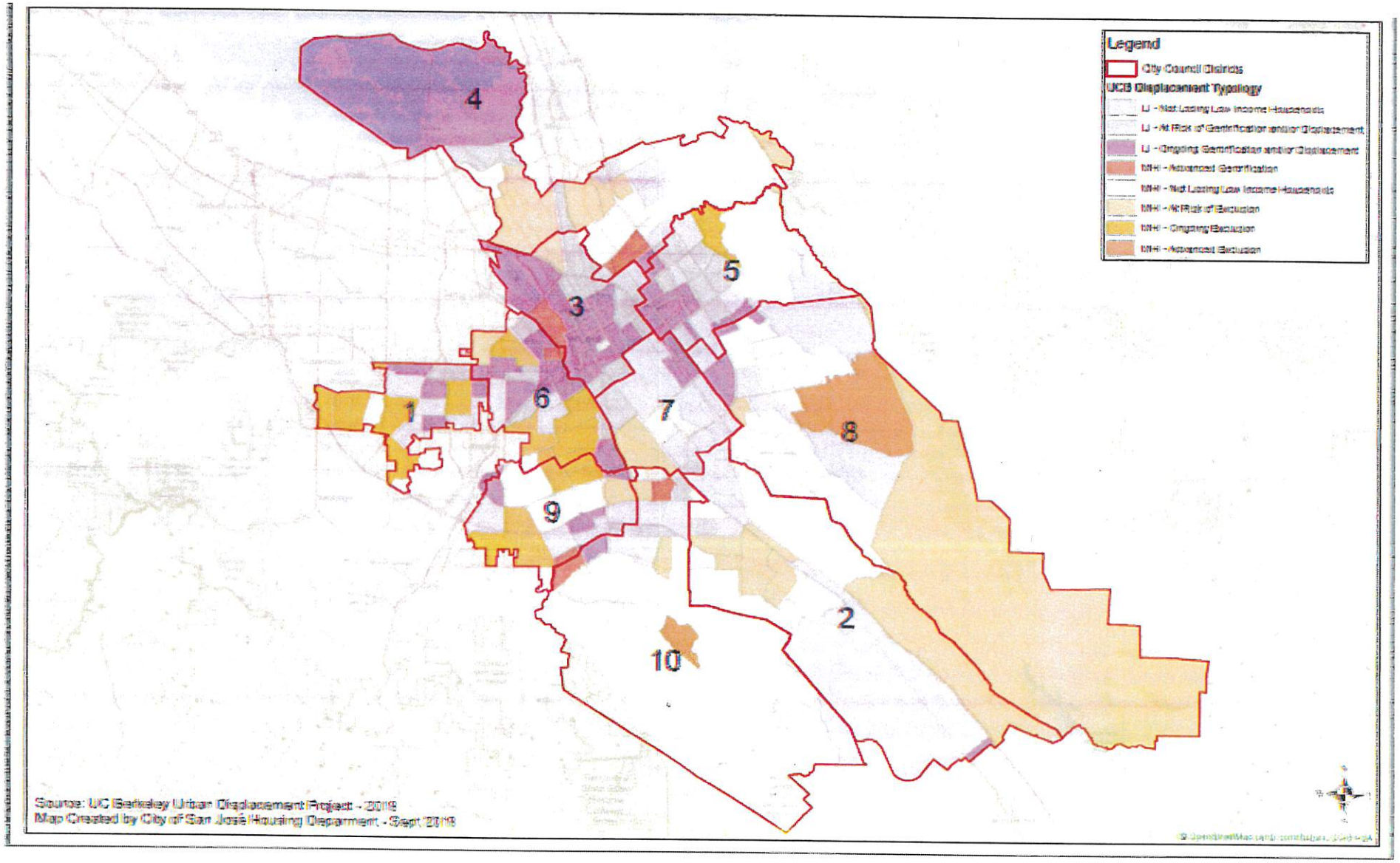
[7] Metropolitan Transportation Commission – Poverty Rates (by tract)
https://opendata.mtc.ca.gov/dataset/Vital-Signs-Poverty-by-Tract/tube-trk4

[8] Metropolitan Transportation Commission – Commute Patterns (by county)
http://www.vitalsigns.mtc.ca.gov/commute-patterns


Legend
City Council Districts
UCB Displacement Typology
LI - Not Losing Low Income Households
LI - At Risk of Gentrification and/or Displacement
LI - Ongoing Gentrification and/or Displacement
MHI - Advanced Gentrification
MHI - Not Losing Low Income Households
MHI - At Risk of Exclusion
MHI - Ongoing Exclusion
MHI - Advanced Exclusion
1
2
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10
Source: UC Berkeley Urban Displacement Project - 2018
Map Created by City of San José Housing Department - Sept 2018

Members of the City Council

August 13, 2020

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David Eisbach

Anti-Displacement 8/13/20

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If the City funds attorneys in eviction actions, selects a new tenant, stops you from taking your property off the market and forces you to deal with tenant buyers before entering the market, What's happened to the property rights? Would you buy this property? Would you build in San Jose?

David Eisbach

sv@home

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Destination: Home

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EAH Housing

Chris Neale
The Core Companies

Kelly Snider
Kelly Snider Consulting

Jennifer Van Every
The Van Every Group

Staff
Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

September 18, 2020

Honorable Mayor Sam Liccardo and Members of the City Council
City of San Jose
200 East Santa Clara Street, 18th Floor
San Jose, CA 95113

Dear Mayor Liccardo, Vice Mayor Jones, and Councilmembers Arenas, Davis, Diep, Carrasco, Esparza, Foley, Jimenez, Khamis, and Peralez,

RE: Item 8.1—Citywide Residential Anti-displacement Strategy

On behalf of our members, we thank city staff for their hard work in developing this report and its carefully thought out recommendations. The proposed policy framework-- focusing on the 3Ps of housing—production, preservation, and protection—provides a solid foundation for success. **We support moving forward on all 10 recommendations as part of the Citywide Residential Anti-Displacement Strategy.**

We know this has been a multi-year process, and that it included both extensive coordination within the city and significant community outreach and engagement. We are pleased to have been included at various points throughout this process, and offer the following comments.

Displacement is happening now and needs to be treated as the crisis it is. **We cannot afford the time it will take to conduct more studies. We simply can't wait to take action. Many of the proposals can be acted on immediately.** This includes:

- Allowing the creation of affordable housing on land owned by communities of faith (sometimes known as YIGBY – Yes In God's Back Yard). The city should take swift action similar to what was done to enable Tiny Homes to move forward on an accelerated timeline.
- Incentivizing affordable housing development in Urban Villages, which are lagging behind in their housing and affordable housing goals. The City should immediately put in place incentives that improve the financial feasibility of affordable housing in Urban Villages – those without plans as well as those where plans have been adopted. As the General Plan Four-Year Review Task Force has discussed and recommended, the ground floor commercial requirements for affordable housing developments in Urban Villages should be eliminated. This is arguably the greatest barrier to affordable housing development in resource and

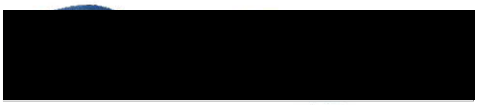
350 W. Julian Street, Building 5, San José, CA 95110
408.780.8411 • www.svathome.org • info@siliconvalleyathome.org

transit rich areas of the city, and programs should be developed to integrate commercial uses where they are both feasible and appropriate.

- Supporting current funding opportunities. The city has already developed a list of potential affordable housing funding sources thanks to all of the work done prior to the decision to move forward with Measure E and the Commercial Linkage Fee (CLF). The city also has poll results and other data that identify the sources of funding the public would support and how much money can be raised through different mechanisms. That's why the City should not conduct yet another study and instead commit to supporting the highest possible Commercial Linkage Fee in all areas of the city, when ordinance returns to council in 2022 and sign on as an early supporter for a regional affordable housing funding measure in 2022.
- Working with local businesses/corporations/firms to invest in anti-displacement strategies. Silicon Valley firms are already steping up to invest in housing and affordable housing across the South Bay. The city should work with local employers to partner in responding to displacement concerns by investing in anti-displacement programs, such as the preservation of existing naturally-occurring affordable housing.
- Working with the State Legislature to support funding for legal services and other tenant assistance programs. In the same way that regional solutions in partnership with other Bay Area jurisdictions are needed, the city should support action by the State Legislature to allocate funds to specifically help vulnerable tenants at risk of losing their homes.

Keeping people in their homes and communities in the midst of the housing crisis requires a targeted and comprehensive policy approach. SV@Home looks forward to supporting the City's implementation of these proposals and continuing to provide recommendations that shape San José's approach to the impacts of displacement on our neighbors.

Sincerely,



Leslye Corsiglia
Executive Director

350 W. Julian Street, Building 5, San José, CA 95110
408.780.8411 • www.svathome.org • info@siliconvalleyathome.org

East San José
PEACE
Partnership

September 15, 2020

RE: Item 8.1 Citywide Residential Anti-Displacement Strategy

Dear Honorable Councilmembers and Mayor,

On behalf of the community we serve, the East San Jose PEACE Partnership would like to express our strong support for the Citywide Residential Anti-Displacement Strategy.

The East San Jose PEACE Partnership is a community collaborative working together to build a healthy, peaceful, and empowered community in our city's 95116, 95122, and 95127 zip codes. We are made up of East San Jose residents, grassroots community organizations, businesses, healthcare organizations, youth leaders, as well as Santa Clara County and San Jose government agencies.

For generations, East San Jose has faced redlining, housing segregation, historical disinvestment, and freeway constructions that have led to deep economic disparities in our neighborhoods. Now, the crisis of displacement and lack of affordable housing threatens our community in an even more profound way. According to U.C. Berkeley's Urban Displacement Project, East San Jose is facing higher level of gentrification compared to other city districts[1]. Research has found that displacement negatively impacts children's education, families' housing stability, and communities' social networks. It also robs San Jose of its diversity and cultural richness which is vital to any urban center.[2] Finally, COVID-19 has exacerbated these existing inequalities, putting even more pressure on our families.

In response to these critical needs, The PEACE Partnership has organized an Anti-Displacement Workgroup made up of resident and CBO housing advocates. Our workgroup has been actively involved in the development of the City's Anti-Displacement Strategy by giving feedback to the City's Housing Policy Team on multiple occasions. We urge City Council to adopt all 10 recommendations listed in the Anti-Displacement Strategy, and to prioritize the first two strategies listed below:

1. Support Equitable COVID-19 Recovery and Impact Mitigation Measures for Renters and Homeowners

2. Establish a Neighborhood Tenant Preference for Affordable Housing

Furthermore, in the overall Anti-Displacement Strategy we ask that City Council prioritize specific actions such as establishing a Community Opportunity to Purchase Program (COPA) and creating new sources of funding for affordable housing and anti-displacement using the City's regulatory powers.

We look forward to working with the City and its partners to build a more equitable San Jose where we all can thrive.

Jacky Franco

ESJ PEACE Partnership Leadership Team Co-Chair
Socia Fundadora, META LLC

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[1] UC Berkeley Urban Displacement Project https://www.urbandisplacement.org/
[2] https://www.urbandisplacement.org/blog/displacement-impacts-santa-clara

LEAGUE OF WOMEN VOTERS® OF SAN JOSE/SANTA CLARA

P.O. Box 5374
San Jose, CA 95150
www.lwvsjsc.org
September 20, 2020

To: Hon. Mayor Sam Liccardo, Vice Mayor Chappie Jones, and Councilmembers Sergio Jimenez, Raul Peralez, Lan Diep, Magdalena Carrasco, Dev Davis, Maya Esparza, Sylvia Arenas, Pam Foley and Johnny Khamis

Re: Sept. 22, 8.1—Citywide Residential Anti-Displacement Strategy

The League of Women Voters of San Jose/Santa Clara encourages you to **support the City Residential Anti-Displacement Strategy** as proposed by Housing Department staff. It will help low-income tenants, many of whom are people of color, single moms, seniors or people with a disability to continue living in their neighborhoods. We support policies to provide a decent home and suitable living environment for every family, and believe there must be action at all levels of government to provide affordable housing.

The League of Women Voters is committed to sustainable communities. By preventing displacement, we allow people and families to stay connected to each other, their places of worship, their jobs and other important social ties. We hope Council will move quickly to develop and implement policies and programs to prevent, mitigate, and decrease displacement. People forced to find affordable homes far from their jobs must endure long, polluting commutes. Often, the only other option is living in crowded, unhealthy conditions. Many will face homelessness.

It is well documented that San Jose – like much of the United States – has a legacy of racist redlining that has translated into segregation, dislocation, inequitable development patterns and a lack of affordable housing. The ten recommendations in the multi-year Strategy will enhance protections for sensitive communities. While we had a housing crisis well before COVID-19, the pandemic has hit our most rent-burdened residents hardest. It is appropriate that addressing those impacts are the three priority recommendations.

Open government is a basic principle for the League of Women Voters. Democratic government depends upon informed and active participation. Therefore, we want to commend City staff for participation in the PolicyLink Network and the collaboration with SOMOS Mayfair which resulted in meaningful community engagement.

The League of Women Voters of the United States has supported fair housing efforts for decades. At regional and state levels, the League has supported legislation that is compatible with the Strategy. A few examples are the CASA Compact and its 3 Ps framework, YIGBY (SB 899), rent caps/just cause eviction (AB 1482) and AB 1436 to

stop the looming wave of evictions and foreclosures.

We thank the Housing staff for a thoughtful, thorough and well documented report and hope to see a progress report sooner than 12 months.

The League of Women Voters of San Jose/Santa Clara strongly supports the Citywide Residential Anti-Displacement Strategy as an effective way to address past discriminatory practices and confront the impact of the COVID-19 pandemic on San Jose's most vulnerable citizens.

Regards,

Carol Watts
President, League of Women Voters of San Jose/Santa Clara
president@lwvsjsc.org

Roma Dawson
Director, League of Women Voters of San Jose/Santa Clara
roma.dawson@lwvsjsc.org

FW: San Jose Anti-Displacement Strategy

City Clerk

Mon 9/21/2020 11:33 AM

To: Agendadesk <[redacted]

5 attachments (72 KB)

Anti-Displacement 8.13.20.docx; San Jose State of Affairs7.20.docx; City Council anti-displacement 8.13.20.docx; Letter to Editor 8.17.2020.docx; letter to Editor 8.19.20.docx;

From: David Eisbach [mailto:[redacted]
Sent: Monday, September 21, 2020 11:32 AM
To: City Clerk <[redacted]
Subject: Fw: San Jose Anti-Displacement Strategy

[External Email]

Subject: Fw: San Jose Anti-Displacement Strategy

Dear City Clerk,
Would you please see that these get into public comments. I am writing with great concern about the upcoming Anti-Displacement program decisions. I am including three letter expressing my views on a number of things, but especially on this program. Thank you!
Thank you
David Eisbach,

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

Anti-Displacement 8/13/20

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David Eisbach

Members of the City Council

August 13, 2020

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David Eisbach

San Jose, The state of things-July 2020

I don't think it's healthy for a state to be ruled by a single party! Wisconsin and California come to mind. One doesn't need to be a senior to recognize that things have changed.

Eminent Domain, through the years, has meant the government can condemn a property as long as it is needed for the common good, and the owner is fairly compensated. The common good is for a school, hospital, road, public buildings or a rail system. However, it now covers a casino/hotel complex because it pays more taxes than your neighborhood; the XL Pipeline from Alberta, Canada's tar-sand oil runs through states down to the Gulf of Mexico to be shipped overseas. America's becoming the world's largest producer of oil must be for the common good, maybe at the pump?

Compensation for the forced loss of a property is the second part. Usually, the process calls for appraisals and negotiations on a fair price. The City of San Jose, acting on a housing crisis, which it partially generated itself, has broadened its rent control ordinance to the point of eliminating some private property rights, like capping rents, raising occupancy numbers, freeing residents from any utility costs, and stopping non-payment evictions during the pandemic; the state Judicial Council bolstered that move by closing all eviction courts for the duration and possibly beyond. This stops all evictions! If a tenant couldn't pay in April, they will be protected through August (That's five months at $2,000)! San Jose toys with the plan of recognizing that the tenant owes back rents and expects they will pay half of the owed rents by year's end and the rest in a year, but eying the pandemic second wave, that's doubtful; the state talks of tax credits and suggests an owner sells them at a discount to raise money. It's a problem because tax, water, maintenance and mortgage go on, under the close eye of City Housing which makes sure tenants are decently housed. The end result is that the cost is extracted from income property owners, sacrificing those smaller marginal owners. Here we have the taking of private property without compensation by means of legislation.

Certain Non-profits like Sacred Heart and The Law Foundation of Silicon Valley add another level. San Jose receives and distributes federal Housing and Urban Development money to non-profits concerned with housing. One can argue that

HUD's grant to non-profit's can be used for political lobbying, but they are also recipients of San Jose's grant program. Sacred Heart and the Law Foundation are in the forefront of every council meeting effectively lobbying for residents, not owners. The urban development part in San Jose is lodged within bottom-line problems of builders, the NYMBY forces and the uncertainty of City Council actions via rent control.

I have seen the housing department led council make decisions over five years to tighten the tether on income property owners. The Covid 19 disruption has and is ruining many businesses but the city's housing action has systematically worked toward this end all along and is poised to continue. It doesn't show yet, but the more strict the controls are, there will be less interest in buying or building housing.

David Eisbach

Letter to Editor 8.19.20

Assemblyman Chiu's AB1436 places economic collapse on property owners by protecting non-paying tenants until April 2021.The California Judicial Council stopped all evictions until August 1. Cities and counties are moving to extend. The last statistical figures showed rental ownership about 80% single owners, not corporations. If you had a duplex or a triplex and one of your tenants couldn't or wouldn't pay their April rent of $1,500, including August it's now $12,000. AB1436 wants that owner to lose another seven months, that's $10,500. How much is enough? That tenant will owe you $22,500 on April 1 2021, but you can't evict because the tenant has until April 2022 to pay, He must pay full rent on April 1,2021. AB1436 asks banks to defer mortgage payments. They may do that but for sure they will not forgive a year's principal and interest. The consequence of losing $22,500 may end in foreclosure.

Letter to Editor 8.17.2020

When the Council passes the Anti-displacement legislation, it will mark the complete takeover of owners' rights to control their own rental properties. Today there is no eviction under Covid 19 and will stay so until the pandemic ends plus 90 days; the rent is capped at 5% regardless of Cost of Living; occupancy cannot be limited (any number of children). Tomorrow, they will include Code Enforcement inspections on single family homes and duplexes; tenants under eviction for non-payment will get attorneys; it will be harder to take a rental off the market; new tenants will be furnished by the City, and the tenants have the right to make an offer on buying your property, before you place it on the open market. This would be done through a Co-Op, or Community Land Trust.

Law Foundation
OF SILICON VALLEY

Advancing Justice
Housing | Health | Children & Youth

September 21, 2020

San José City Council
San José City Hall
200 East Santa Clara Street
San José, CA 95113

Re: Agenda Item 8.1, Citywide Residential Anti-Displacement Strategy

Dear Mayor and City Councilmembers:

We all belong in San José. Everyone – even our most vulnerable neighbors – deserves the opportunity to remain in our community and we thrive when all have access to basic necessities to live well. Housing is fundamental to human wellbeing and to ensuring people can access other basic necessities like good nutrition and healthcare. By addressing residential displacement in San José, we will expand access to quality housing, nurture the wellbeing of our residents, and ensure our community flourishes for years to come. This work promises to address decades of residential segregation and unchecked market forces that have inequitably forced low-income tenants, particularly low-income tenants of color, to move from their homes and away from our community.

We all have a role to play. The coronavirus pandemic has reminded us that our wellbeing depends on the wellbeing of our neighbors and that we are all stronger when we protect our most vulnerable neighbors. Just as we don masks, wash hands, and stay at home to keep one another healthy, we also must do our part to keep one another housed. We appreciated the chance to collaborate with the City of San José staff and the other members of the Anti-Displacement Policy Network (ADPN) cohort to research policy solutions from across the country, listen to community needs, and draft the Community Strategy to End Displacement. The recommendations in the Housing Department's staff report are critical first steps, and we urge you to adopt staff's recommendation and work diligently on implementing the top priorities in the report.

Community members have stepped-up over the past two years to explain how displacement impacts them and weigh-in on priorities for change through the ADPN community engagement process. Because all voices in our community matter, we hope that City Council will not lose track of the policy solutions that community members broadly supported, but are not included in the Housing Department's staff recommendations. Centering and continually engaging with the

community members most impacted by residential displacement is critical for ensuring City Council's interventions are effective.

Below, we explain how the Housing Department's top three recommendations – equitable COVID-19 recovery, a neighborhood preference policy, and a community opportunity to purchase act (COPA) – would address urgent displacement risks. We also call attention to three policies which, although not prioritized highly in the staff report, would create structural changes to prevent displacement. Our emphasis on these three additional policies – equitable code enforcement, a right to counsel in eviction lawsuits, and strengthening existing rent control and tenant protections – is informed by our direct service work representing low-income tenants in eviction cases.

I. The Housing Department's top three priorities address immediate displacement pressures.

The need for an **equitable COVID-19 recovery** could not be clearer. In July, an analysis we published with Working Partnerships, USA found that over 43,000 renters in Santa Clara County could face eviction once the protections of local eviction moratoria expire.[1] Unfortunately, even more tenant families are now at risk of eviction and homelessness because Congress has ended expanded federal Pandemic Unemployment Assistance payments.[2] The displacement risk of COVID-19 falls disproportionately on Black, Latinx, and undocumented families, who are most likely to be rent-burdened tenants and to be unable to work from home.

Although the new state law on evictions, AB 3088, will ease the burden for many of these tenant families, there are gaps in its protections that create a need for further action. For example, the law does not protect tenants who cannot pay at least 25% of their rent from September 2020 to January 2021. It also does not provide any protections against most types of no-fault evictions, and does not protect tenants who cannot pay their normal monthly rent starting on February 1, 2021. Therefore, Council's support for tenants impacted by COVID-19 remains critical.

In particular, City Council's support is needed to implement a **Housing Collaborative Court** in Santa Clara County. This innovative model embeds social services like rental assistance and case management in the court itself and creates an opportunity for landlords and tenants to resolve their disputes in a solutions-oriented, mandatory settlement conference. The model would also allow our community to engage volunteer attorneys to assist unrepresented tenants in trying to settle their cases, ensuring that every tenant facing eviction receives at least limited legal assistance. Of course, San José tenants also need City Council to speak up on their behalf with the state and federal legislatures to support comprehensive eviction, rent, and mortgage relief for the duration of the COVID-19 pandemic and its economic fallout.

Council's work on a **neighborhood preference policy** is also urgently needed. As San José strives to catch up in producing the number of affordable housing units that we need, these new units will mean little to low-income tenants if they do not have an opportunity to live in them.

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[1] WORKING PARTNERSHIPS USA AND THE LAW FOUNDATION OF SILICON VALLEY, THE EVICTION TIME-BOMB 3 (July 2020), https://www.wpusa.org/files/reports/EvictionTimeBomb.pdf.
[2] *Id.* at 13.

Unfortunately, because most housing production in our area is actually redevelopment that requires the demolition of an older building, low-income tenants are usually displaced when a new project begins. Even if these residents receive the relocation benefits they are owed under local law, many will not be able to find an affordable unit in their neighborhood given the huge demand for these units and vanishingly low vacancy rate in our area. A neighborhood preference policy would give low-income tenants the chance to rent the new affordable units being built in their neighborhood, limiting the extent to which redevelopment contributes to residential displacement. It is only fair that tenants already living here in San José, many of whom have been looking for a more affordable place to live for years, the opportunity to rent new affordable units being built down the street or around the corner.

Similarly, a **community opportunity to purchase act (COPA)** would ensure that when owners of affordable housing are ready to sell their building, local tenants, affordable housing developers, and public agencies have a chance to preserve that building as affordable housing. The affordability restrictions on over 1,000 deed-restricted affordable units in San José are set to expire in the next 10 years, making these units prime targets for redevelopment into market rate units. Giving local affordable housing development partners advance notice and a right of first purchase to acquire these buildings through a COPA would keep these affordable units and the low-income tenants they house in our community.

In working on a COPA policy, we urge staff and City Council to seize the opportunity to make these units permanently affordable by creating a mechanism to transfer ownership and management to a community land trust after acquisition. A dedicated group of tenants and advocates has already come together to form the South Bay Community Land Trust, the first of its kind in Silicon Valley. Likewise, the San José Housing Department has secured a grant through the Partnership for the Bay's Future to collaborate with SOMOS Mayfair and other organizations to identify opportunities to expand community-owned housing in San José. Studying a COPA policy is a key component of this work.

The City's collaboration with the South Bay Community Land Trust, SOMOS Mayfair, and other organizations in formulating its COPA policy is critical for ensuring we make the most of this important tool for affordable housing preservation. The proposed provisions in the Mayor's memorandum for this policy are both premature and imprudent given that no analysis of the feasibility, risks, or opportunities of a COPA policy for the City of San José has yet been completed. We urge Council to give staff full discretion to explore the COPA policy that is best for our community by rejecting the Mayor's proposed amendments.

II. City Council should not lose sight of urgently-needed tenant protections, which community members strongly supported.

In our day-to-day work as attorneys for tenants who are facing evictions, we see firsthand how the rules governing the maintenance and occupation of rental properties can threaten the housing stability of low-income tenants. Reflecting on the experiences of our clients, we urge Council to continue expanding tenant protections to prevent displacement, despite the fact that these proposals were not prioritized highly in the staff report.

A significant number of the tenants we serve have or are currently experiencing conditions of disrepair in their home. Unfortunately, these conditions all too often put the tenant in a no-win situation where they must choose between tolerating health and safety code violations to avoid conflict with their landlord or risk destabilizing their housing by contacting Code Enforcement to make a complaint. Staff's recommendations for **preventing code enforcement-related displacement**, including expanding proactive inspections, creating a low-cost loan fund for small landlords to make repairs, and seeking receivership of properties that have severe and persistent health and safety issues, would help low-income tenants address poor conditions in their home without worrying about losing their housing altogether.

Modifying the City's code enforcement practices to increase housing quality and reduce displacement risk is an important measure for advancing racial equity in housing in San José. The majority of the tenants we serve who are experiencing issues around conditions of disrepair are concentrated in Central and East San José. As the staff report points out, these neighborhoods are predominantly Latinx or Asian, and experience more overcrowding and poverty than the citywide average.[3] These neighborhoods have also been experiencing advanced displacement and now are the hardest hit by COVID-19 in terms of health and economic impact. The thoughtful improvements on the City's existing code enforcement program proposed in the staff report would help address poor housing conditions related to these inequities.

Although it was not included in staff's recommendations, we encourage City Council to **strengthen existing rent control and tenant protection policies**. This solution was the number one recommendation with respect to tenant protection in the Community Strategy to End Residential Displacement, and received a high number of positive comments during community outreach on the report.[4] A few simple and straightforward changes to San José's Apartment Rent Ordinance (ARO) and Tenant Protection Ordinance (TPO) could go a long way in increasing housing stability for our low-income tenants. Specifically, City Council should consider adding duplexes to the ARO and lowering its annual limit on rent increases from 5% to the increase in the cost of living, as well as expanding the TPO to all rental units. The City of San Jose could also expand access to these protections by proactively enforcing the ARO and TPO through the City Attorney's office or Housing Department.

Finally, we urge City Council to explore instituting a **right to counsel in eviction cases** for all San José tenants. This was another top priority in the Community Strategy to End Displacement that did not make it into the Housing Department's staff report despite seeing broad public support in community outreach on the Community Strategy report. From our own experience representing tenants in Santa Clara County eviction court, we know that having a lawyer is often the only way for tenants to assert their rights and can make the difference between someone remaining housed and being displaced.

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[3] Memorandum from San José Housing Department to City Council RE Item 8.1, Citywide Residential Anti-Displacement Strategy, at 5 (Aug. 20, 2020).

[4] *See* SAN JOSÉ HOUS. DEP'T, ANTI-DISPLACEMENT DRAFT SOLUTIONS NOTES 1 (2020), https://www.sanjoseca.gov/home/showdocument?id=51727.

Unfortunately, current funding for eviction defense provides representation for less than 1% of tenants threatened with eviction in a typical year.[5] Investing in providing a lawyer to every tenant facing eviction saves cities money by preventing disruptive evictions that cause job loss, interruptions in children's education, damaged credit scores, physical and mental health complications, and a loss of community support networks. Cities that have made this investment have seen a return of nearly $12 in savings on social and emergency services for every $1 invested.[6]

III. Strong political and financial commitment is needed to end residential displacement in San José.

We agree that by addressing residential displacement, "San José will improve its ability to grow sustainably while preserving its greatest asset – its existing residents."[7] We face an unprecedented layering of economic, public health, and climate disasters and must pull together to get through these challenging times and build systems for a better, more equitable future. The people of San José care deeply about this place they call home and the opportunity for them, and their children, to continue living here. We saw this throughout our community engagement process as an ADPN cohort, in which public engagement was high, and fears about displacement were especially high. The vast majority of people we talked to knew someone personally who had already been displaced from San José, and a majority said that the worry of displacement affects their everyday life.

We can and must do better for low-income tenants in our community. The Housing Department's recommendations chart the right course for addressing the most immediate displacement pressures in our community. We urge Council to adopt these recommendations and follow-through over the coming months and years with the political will and financial investment needed to properly implement these solutions.

Sincerely,

Nadia Aziz, Directing Attorney
Michael Trujillo, Staff Attorney

CC:
San José City Council
City of San José City Attorney
City of San José City Manager

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[5] SAN JOSÉ ANTI-DISPLACEMENT POLICY NETWORK TEAM, ENDING DISPLACEMENT IN SAN JOSE 40 (Jan. 2020), https://www.sanjoseca.gov/home/showdocument?id=54715.
[6] *Id.*
[7] Memorandum from San José Housing Department to City Council RE Item 8.1, Citywide Residential Anti-Displacement Strategy, at 2 (Aug. 20, 2020).

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September 21st, 2020

San Jose City Council
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Item 8.1 – September 22nd Council Agenda

Mayor Liccardo and City Council,

The California Apartment Association appreciates the collaborative approach we've taken on addressing the needs of both tenants and property owners over the past six months. We look forward to continuing this collaborative process as you consider the pitfalls of the anti-displacement strategies proposed by the Housing Department.

The issue of displacement is a serious one, caused by the severe lack of available units which has driven rental housing costs up. The current pandemic has had a destabilizing on housing. But the pandemic has also caused housing costs to drop from the lack of demand, which creates an opportunity to develop solutions to address the severe backlog in housing production rather than more onerous restrictions like the anti-displacement strategies discussed below.

When evaluating the anti-displacement strategies that the Housing Department wants to act upon immediately (the Housing Collaborative Court, the expansion of code enforcement, and the right of first refusal), the Council should consider the additional regulatory obstacles they would create and weigh them against the impact on both the property owner and the tenant.

The expense of the housing collaborative court and the impact to the unlawful detainer process should be weighed as this recommendation is considered. The creation of this court requires a significant investment by the City, the County and Superior Court to fund the effort in the face of significant budget shortfalls and the lack of input by legal professionals in the field of rental housing law should create additional concern.

The recommendation to expand code enforcement comes at a time when the City's budget has been slashed, rental vacancies have gone up and owners are facing financial hardships. Given the challenges that rental property owners who are currently impacted by code enforcement, the City should consider addressing the existing problems before expanding the program.

Of the strategies presented, the one that will have the greatest impact to property owners is the opportunity to purchase proposal. This proposal, modeled after the Community Opportunity to Purchase Act (COPA) in San Francisco, would require property owners to given certain groups the ability to make an offer for a multi-family property before it can be listed for public sale. Adding this regulatory burden when we

are facing one of the worst economic downturns since the Great Depression is ill advised. The proposal raises a host of questions that casts doubt in this program to the point that the Council should direct the Housing Department to remove this strategy from consideration.

Since these strategies were not given the benefit of review by subject matter experts before they were proposed, the California Apartment Association is prepared to provide the professionals in the field of property management, rental housing law, real estate brokerage to provide the City with guidance on the actual impacts of these recommendations.

Sincerely,

Anil Babbar
Vice President of Public Affairs
California Apartment Association