

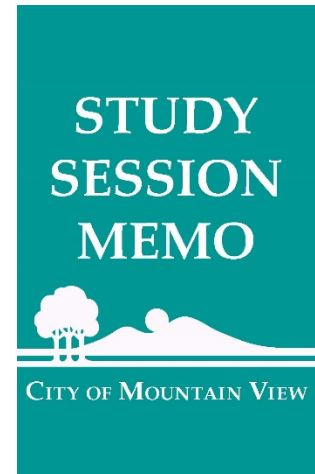
DATE: September 22, 2020

TO: Honorable Mayor and City Council

FROM: Wayne Chen, Assistant Community
Development Director
Aarti Shrivastava, Community Development
Director

VIA: Kimbra McCarthy, City Manager

TITLE: **Displacement Response Strategy Update**



PURPOSE

Provide Council an update on the Displacement Response Strategy (Strategy) and to receive Council feedback on next steps.

EXECUTIVE SUMMARY

Since the first Displacement Response Strategy Study Session held on October 29, 2019, staff has undertaken a significant amount of work to advance this effort, summarized as follows, under each prong of the six-pronged Strategy:

- 1. Acquisition/Preservation Program.** Staff has met with many different organizations across sectors to explore potential collaboration. The clear takeaway is that the City needs to commit funding to this program due to the lack of long-term capital needed to make such a program viable. It is recommended that staff evaluate local funding and program design options as part of next steps.
- 2. Displacement Mitigation Program (i.e., Replacement Requirements for Demolished Units).** The replacement requirements of SB 330 present feasibility challenges that will likely stop most, if not all, redevelopment projects requiring the demolition of existing housing units until the law expires January 1, 2025. However, locally determined replacement requirements need to be developed so that requirements are in place for after SB 330 expires, and in a manner that can balance development feasibility and mitigating/preventing tenant displacement. This effort could benefit from the R3 zoning modifications work concurrently being led by another staff team. It is recommended that the two efforts be coordinated in the next phase of work,

- and focus on locally determined replacement requirements post-SB 330 for units covered by the Community Stabilization and Fair Rent Act.
3. **Tenant Relocation Assistance Ordinance.** This prong has been completed. Modifications were unanimously approved by Council on June 9, 2020 and went into effect July 9, 2020.
 4. **Landlord-Rental Set-Aside Program.** Staff met with the Housing Industry Foundation (HIF) to explore possible collaboration, as HIF stated that they had an existing set-aside program. However, HIF's program had a different set of program parameters than the intent of this concept, such as focusing on a narrower population (e.g., teachers) and charging higher rents for the set-aside units. Ultimately, staff determined that a partnership with HIF was not a viable option for the City. Due to the significant workload to evaluate an Acquisition/Preservation Program, analyze replacement requirements, and make TRA0 modifications, in addition to the impact on staff capacity due to COVID-19, this item had been reprioritized to a later date in order for staff to complete more immediate tasks. Staff will continue to explore this concept as part of the overall Displacement Response Strategy.
 5. **Tenant Selection Preference for Displaced Tenants.** A tenant selection preference for displaced tenants is not recommended due to fair housing protections; however, there may be other approaches that could allow the City to more effectively achieve the same goal, such as the Acquisition/Preservation Program or a right-of-return for existing tenants to replacement units.
 6. **Evaluate Potential Modifications to City Code.** It is recommended to explore development of an Ellis Act Ordinance to allow the City to require replacement units for demolished rent-stabilized units.

With this agenda item, Council is asked to provide feedback on two questions that will inform staff's next steps:

- **Question 1: + Does Council agree with staff's recommendation regarding next steps to evaluate options for an Acquisition/Preservation Program?**
- **Question 2: Does Council agree with staff's recommendation regarding next steps to evaluate options for post-SB 330 replacement requirements for demolished CSFRA units?**

Based on Council input, staff will conduct the next phase of work on this project and return to Council at the appropriate time.

BACKGROUND

On October 29, 2019, Council held a Study Session to provide input on options to respond to displacement (See Attachment 1), which implemented Project 1.1 from the Fiscal Year 2019-21 Council Major Goals Work Plan. The issue of tenant displacement has been a priority, given recent residential projects that have included the demolition of rental units under the City's Community Stabilization and Fair Rent Act (CSFRA).

During the October 2019 Study Session, Council unanimously supported the following five key principles and six-pronged integrated, comprehensive Strategy:

Five key principles:

1. **Multi-Pronged and Integrated Strategy:** Displacement can occur in multiple ways, so there needs to be multiple responses working together to address the concern effectively.
2. **Broad-Based Strategy:** Mitigation as well as prevention options because of Council's multiple housing goals to increase supply and also address displacement.
3. **Collaborative/Multi-Sectoral Approach:** One sector or agency cannot do it alone.
4. **Tenant-Focused:** Focused on renters and people.
5. **Unit- and Place-Based:** Prioritize preventing permanent tenant displacement from unit but, if not possible, keep people from being displaced from the City.

Six-pronged comprehensive, integrated Strategy:

1. Evaluate an Acquisition/Preservation Program.
2. Evaluate a Displacement Mitigation Program (i.e., replacement requirements for demolished units).
3. Modify the Tenant Relocation Assistance Ordinance.

4. Evaluate “landlord-rental set-aside” program to assist with relocation options.
5. Evaluate a tenant selection preference for displaced tenants.
6. Evaluate potential modifications to the City Code or other regulatory/policy documents.

Actions Taken Since October 2019 Study Session

Since the October 2019 Study Session, staff have undertaken the following:

- Held three public meetings to receive input on the Strategy: developer-focused meeting on January 7, 2020; landlord-focused meeting on January 9, 2020; and a tenant-focused meeting on January 13, 2020.
- Met with various potential external partners to discuss options, issues, and considerations regarding an acquisition/preservation program, including with foundations, capacity builders, nonprofits, and the private sector.
- Work with consultants to evaluate replacement requirements for redevelopment projects and tenant selection preference.
- Completed TRAO modifications (Council adoption on June 9, 2020).
- Participated in two peer learning cohorts convened by Silicon Valley Community Foundation and Enterprise Community Partners.

Additional information regarding these efforts will be discussed under the appropriate Discussion sections below.

COVID-19 Considerations

The rapid onset of COVID-19 and shelter-in-place provisions to curb its spread have significantly impacted the economy and employment. These impacts have had a disproportionate impact on lower-wage jobs and sectors – such as retail, personal service, and food service – which, in turn, have had a disproportionate impact on low-income tenants. Based on past experience, it is likely that many, if not most, of the current tenants in rent-stabilized apartments are lower-income, thereby greatly impairing their ability to pay rent. The inability for tenants to pay rent also creates financial challenges for landlords to operate or hold onto their properties. Council has allocated \$2.7 million to the City’s COVID-19 Rent Relief Program to provide rent support to tenants impacted by

the pandemic. The rent support is paid directly to landlords and, thus, supports landlords and tenants simultaneously. However, the need continues to exceed the available resources and the economic uncertainty is expected to continue.

Additionally, there appears to be growing recognition that COVID-19 has created immediate urgency to address various housing needs, and is also creating a situation that could ultimately lead to more displacement in the future. Specifically, COVID-19 could lower apartment property values and/or cause landlords to sell their properties due to financial distress. This may create an opportunity for the private sector to purchase apartment buildings now and redevelop them later, when the market recovers.

DISCUSSION

This section provides a summary of work undertaken since the October 2019 Study Session, staff's evaluation, and recommended next steps on each of the six prongs of the comprehensive, integrated Strategy.

1. Evaluate an Acquisition/Preservation Program.

At the October 2019 Study Session, the following key areas for initial evaluation were identified: (1) consider establishing a goal for the number of units to be acquired/preserved; and (2) evaluate key program structure, including, but not limited to, identifying potential partners, assessing a "small sites acquisition" program (or subprogram), and feasibility and potential funding sources.

Findings

Staff has met (in person and calls) with several organizations multiple times to discuss how an Acquisition/Preservation Program (Program) could be set up, and explore potential partnerships and opportunities to leverage funding, among other considerations. The concepts ranged from a 100-unit pilot program to scaling up the program, such as a 1,500-unit program (approximately 10 percent of units covered under the CSFRA). These meetings have included foundations, capacity builders, nonprofits, a community land trust, and the private sector. These partners have all provided helpful insights and have lauded the City's efforts, goals, and direction of the Strategy.

However, after several months of discussion and research, one clear takeaway has emerged: an Acquisition/Preservation Program needs a City funding commitment to be viable. The consistent feedback from all of the discussions is that there needs to be a sufficient amount of long-term capital that "stays in the project," i.e.,

permanent financing. Currently, private-sector funding sources provide short term capital. This means that private capital typically funds project-related activities on the front end, such as acquisition or predevelopment activities, and the requirement is that the funding is “taken out” by another source (almost always public-sector funding) in a few years, typically within three to seven years. In limited instances, slightly longer terms are offered such as 10 years.

Staff’s research identified Apple’s recently created affordable housing fund (administered by the Housing Trust Silicon Valley and already depleted) as providing the longest term at 20 years. Regardless of the term, the private capital must be replaced by public funding sooner or later: the private-sector business model is to cycle its funds through as many projects as possible, rather than staying in any one particular project.

Philanthropies and community development organizations have been actively part of the broader Bay Area and national effort to address displacement issues. In fact, staff is part of two peer learning cohorts – one led by the Silicon Valley Community Foundation and the other by Enterprise Community Partners – comprised of other local government agencies, nonprofits, and other groups to discuss issues and share best practices. In addition to peer learning and information sharing, philanthropy has been focused on identifying pilot projects to demonstrate to its donor base the viability of acquisition/preservation programs. This may lead to long-term philanthropic capital for acquisition/preservation programs in the future, but such funding does not currently exist. Whatever funding that does exist is primarily short-term funding or to provide technical assistance/capacity building grants.

Considerations and Next Steps

Based on the consistent feedback received about the need for local funding, staff recommends the following next steps and considerations regarding an Acquisition/Preservation Program:

- **Determine funding amount needed.** The per-unit subsidy amount needed for a project can vary widely depending on many variables, such as the overall cost of the acquisition, the extent of the rehabilitation needed, the cost of a temporary relocation plan if needed, etc. Based on feedback from nonprofits and developers, an estimate of \$300,000 per unit was used as a discussion point during staff’s outreach with potential collaborators. This would require a significant amount of funding. For example, a 100-unit pilot program would require \$30 million of subsidy and a 1,500-unit program would require \$450 million. Because no external long-term funding sources were identified, the

City would need develop the resources to fund an Acquisition/Preservation Program. The amount of City funding needed would ultimately depend on the total number of units targeted and a more in-depth financial analysis of development costs and funding scenarios.

- **Insufficient resources available from existing City housing programs.** The City does not have existing housing funds that could support an Acquisition/Preservation Program. The following is a summary of existing housing funds and the limitations of each.
 - *Housing impact fees.* The City has two housing impact fee programs: one for office/high-tech and the other for hotel/retail. Currently, there is no funding available from these fee programs, as existing and projected funds are already oversubscribed by the new affordable housing projects in the pipeline. Additionally, to the extent that the ongoing pandemic might weaken the office market and cause office projects to delay or cancel, future revenues could decline, impacting the existing pipeline and making it even less of a viable funding source for an Acquisition/Preservation Program.
 - *BMR in-lieu fees.* Like the above housing impact fees, BMR in-lieu fees are already oversubscribed by the City's affordable housing project pipeline. Additionally, since 2019, the BMR program has been revised to require on-site units. In-lieu fees are an alternative mitigation that must be requested by the developer and granted by the Council. As such, it is likely that BMR in-lieu fees will decline in the future relative to past receipts.
 - *Successor Agency housing funds.* There is currently just over \$1 million of Successor Agency funds currently available. Of that amount, \$1 million is reserved for the development of Lot 12. Additionally, \$250,000 of Successor Agency funds has been budgeted annually in recent years for the City to provide services to unsheltered persons or persons living in vehicles in Mountain View. It is anticipated that funding for homeless response services will continue to be needed going forward. The City receives periodic repayments of the funds from affordable housing development loans made in the past. However, the loan repayments are irregular and, therefore, less reliable as a consistent funding source. Overall, there is limited opportunity to use Successor Agency funds for acquisition/preservation activities.

- *General Housing Fund.* This fund provides an unrestricted resource for housing activities. While flexible, there is a low fund balance, which is not sufficient to provide funding for an Acquisition/Preservation Program.
- *Measure P.* In 2018, Mountain View voters passed Measure P, a business license tax measure to fund critical City needs, including providing housing affordable for a range of incomes as well as for homeless services. It is estimated that approximately \$400,000 to \$600,000 will be generated annually for housing activities. Businesses began paying this tax in 2020. Staff is in the process of developing an expenditure plan for Measure P funds, and it is anticipated that a sizable portion of the annual funds received may need to be allocated towards homeless services as part of permanent supportive housing (PSH) and rapid rehousing (RR) projects. For example, the lack of ongoing funding for services has been a key barrier for PSH/RR projects in Mountain View seeking County Measure A funding. Measure P provides much-needed resources for these services, especially because most of the other housing funding sources are for development activities and not for services. As such, it is anticipated that Measure P would not be able to provide sufficient resources for an Acquisition/Preservation Program given the estimated per-unit subsidy amount for such a program and the need for services.
- **Support from philanthropy to evaluate options.** During the past several months, staff has had several discussions with philanthropies to explore opportunities for collaboration. Staff has requested technical assistance support to help the City develop an Acquisition/Preservation Program and is awaiting funding determination. If awarded, the grant will be used to develop financing scenarios, evaluate options for the City to provide gap financing, develop program guidelines, and conduct legal review. Funding options to be evaluated may include, but are not limited to, modification of the housing impact fee programs, development of new fee programs, local ballot initiatives, and other funding mechanisms as appropriate. The work would be conducted by a nonprofit agency with significant expertise in acquisition/preservation programs, and subgrantees such as economic or legal consultants may be funded as needed to assist with evaluating options in accordance with Council direction.
- **The City, as funder, not as developer or landlord.** It is recommended that the City's role in any eventual program be that of a funder rather than that of a developer or landlord. The City has expertise in funding affordable housing

projects through the Notice of Funding Availability (NOFA) process, and it is recommended that a similar process be used for an Acquisition/Preservation Program. Developers (most likely nonprofits) have expertise in identifying acquisition/preservation opportunities, rehabilitating properties, and operating them. The City does not have this expertise, and to develop the expertise would require the appropriate infrastructure, staffing, and resources to support a developer/landlord function.

- **SB 330.** As discussed in further detail below, the replacement requirements of SB 330 will likely significantly slow down or stop redevelopment-induced tenant displacement until the law expires. This provides an opportunity to develop and implement an Acquisition/Preservation Program during this time. However, the private sector may also take this opportunity to identify potential apartments to acquire for future redevelopment after SB 330 expires.

Based on Council input provided at this Study Session, staff will begin the next phase of work and will return to Council with more detailed options for consideration.

Question 1: Does Council agree with staff's recommendation regarding next steps to evaluate options for an Acquisition/Preservation Program?

2. *Evaluate a Displacement Mitigation Program (i.e., replacement requirements for demolished units).*

At the October 2019 Study Session, the following key areas for initial evaluation were identified: (1) evaluation of mitigation options for redevelopment projects, including no net loss policy and replacement provisions with compliance options and first right of return provisions; and (2) evaluation of mechanisms such as conditional use permit, regulation of demolition permit, and/or overlay zones.

Findings

After the October 2019 Study Session, staff procured Economic and Planning Systems (EPS) and other consultants to evaluate options for replacement requirements for residential projects that demolish existing rental units per Council direction. However, two factors changed the initial scope of work for this evaluation soon after the Study Session.

- **Impact of SB 330.** SB 330 went into effect January 1, 2020 and includes specific requirements for the replacement of demolished housing units. This includes:

(1) The requirement to replace demolished residential units (regardless of housing type or tenant characteristics) with at least the same number of units in the new project, i.e., “no net loss” of the City’s housing stock; and (2) The requirement to replace demolished “protected units” one-for-one with deed-restricted affordable housing units at specified income levels. SB 330 is currently scheduled to sunset as of January 1, 2025.

EPS tested several scenarios and found that the redevelopment of CSFRA units into new rentals with SB 330 replacement and relocation requirements were highly infeasible unless there were very significant increases in density and and/or reductions to other development standards (e.g., lower parking requirements).

The conclusion is that SB 330 requirements will likely render most, if not all, redevelopment projects that would require the demolition of existing residential units, infeasible while the law is in effect. Density increases within the R3 Zone are only expected to have a marginal effect on increasing the feasibility of projects under SB 330. Note that a review of the findings for sites in the R3 zones and proposed zoning modifications will be provided at a Study Session scheduled for October 13, 2020.

- **Interdependence with R3 zoning modifications work.** A different staff team began working on R3 zoning modifications (another Council Major Goals Work Plan item) in parallel with the analysis of replacement requirements.

The zoning modifications and displacement response strategy address two different parts along the spectrum of housing needs: new replacement requirements address tenant displacement due to redevelopment projects that have largely occurred on R3 sites, while a key goal of the R3 zoning project is to increase the supply and diversity of housing through redevelopment of existing apartment buildings, which could lead to tenant displacement. Therefore, the two projects will need to balance the goals of mitigating/preventing tenant displacement while increasing housing supply and diversity of housing options.

Ideally, this means that replacement requirements are set high enough to mitigate tenant displacement as much as possible while still allowing redevelopment projects to be financially feasible. The R3 work would focus first on establishing building forms that reflect community and neighborhood character and exploring the potential to increase densities through that analysis. Then, options for replacement requirements could be explored in a

variety of ways, such as evaluating the potential to increase densities to incentivize replacement units on-site, studying alternative mitigations to on-site replacement, etc.

Considerations and Next Steps

Given SB 330 requirements and the interdependence of replacement requirements/R3 zoning modifications, staff recommends the following next steps:

- Because SB 330 is currently set to expire as of January 1, 2025, evaluate options for replacement requirements that would go into effect in 2025 to ensure that there continue to be replacement provisions in place:
 - The Ellis Act provides jurisdictions the authority to require replacement units for demolished rent-stabilized units as part of redevelopment projects.
 - Explore provisions to require replacement of demolished CSFRA units pursuant to the Ellis Act.
 - Evaluate alternative mitigations to the Ellis Act replacement provisions, such as BMR requirements, in-lieu fees, off-site replacement, or other alternatives as appropriate.
- During the R3 zoning update process, the R3 and displacement response teams will develop several alternatives for post-SB 330 requirements:
 - Provide additional analysis on development feasibility based on up to two options for replacement.
 - Review density options on specific R3 sites.
 - Use the above analyses to determine the level of replacement requirements that density increases can reasonably address. Staff notes that density increases can only be adopted on larger sites to address this issue and that the feasibility of replacement requirements will likely lead to much lower requirements than a one-for-one replacement through density increases alone. Tools in addition to density increases will be evaluated to help with economic feasibility.

- Additional budget will be needed for the replacement requirement analysis because it exceeds both projects' original scope of work. If Council agrees with this approach, staff will review an updated scope of work to determine additional budget that may be needed based on Council input and direction.

Question 2: Does Council agree with staff's recommendation regarding next steps to evaluate options for post-SB 330 replacement requirements for demolished CSFRA units?

3. *Modify the Tenant Relocation Assistance Ordinance.*

At the October 2019 Study Session, Council requested that staff identify and make modifications to the Tenant Relocation Assistance Ordinance (TRAO) prior to Council adoption of the full Displacement Response Strategy. On January 1, 2020, SB 330 went into effect and includes various requirements regarding relocation assistance and, where any provision where SB 330 is stricter than the TRAO, SB 330 would prevail. In February 2020, Council directed staff to make several specific modifications. On May 12, 2020, staff proposed an ordinance that included the Council-directed modifications as well as additional modifications recommended by staff. The ordinance was unanimously adopted on June 9, 2020 (effective July 9, 2020) and includes the following key provisions:

- Increase the income eligibility for TRAO, adjusted by household size, by an additional \$5,000.
- Increase the amount of relocation assistance to special-circumstance households by \$5,000, to a total of \$8,000.
- Enhanced assistance by a relocation agency in searching for replacement housing.
- Payment of the rental assistance based on evidence of secured housing or after vacating the unit.
- Record notice of TRAO requirements with the County Recorder's Office.
- Specified that the stricter of TRAO or State laws (such as SB 330) shall prevail.
- Landlord notifications to tenants shall be provided in various languages as needed given the language access needs of the tenants.

4. *Evaluate a “landlord-rental set-aside” program to assist with relocation options.*

Over the past two years, various developers who have submitted applications to redevelop existing apartment buildings have mentioned that certain local landlords who own a substantial number of rental units have offered to collaborate on temporary relocation options for displaced tenants, including setting aside a certain number of their rental units for displaced tenants to occupy. To the best of staff’s knowledge, this idea has not come to fruition in any of the redevelopment projects. As a result, staff recommended more formal discussions with landlords to explore this opportunity.

At the October 2019 Study Session, representatives from the Housing Industry Foundation (HIF) stated that they would be open to working with the City to advance this idea because they already had a set-aside program. Staff met with HIF several times to discuss this opportunity. However, HIF’s program had a different set of program parameters than the intent of this concept, such as focusing on a narrower population (e.g., teachers) and charging higher rents for the set-aside units. Ultimately, a collaboration was not reached. Due to the significant workload to evaluate an Acquisition/Preservation Program, analyze replacement requirements, and make TRA0 modifications, in addition to the impact on staff capacity due to COVID-19, this item had been reprioritized to a later date in order for staff to complete more immediate tasks. Staff will continue to explore this concept as part of the overall Displacement Response Strategy.

5. *Evaluate a tenant selection preference for displaced tenants.*

Staff evaluated whether a tenant selection preference for affordable housing units in Mountain View for displaced tenants was viable. Given fair housing protections, such a preference is not recommended. Instead, staff recommends that efforts be focused on other strategies that will be more effective in achieving the same goal. For example, an Acquisition/Preservation Program would prevent tenants from being displaced in the first place. Conversely, implementing requirements to replace demolished units paired with a first right of return would allow temporarily displaced tenants to have priority access to new units. For these reasons, staff recommends that alternatives to a tenant selection preference be explored.

6. *Evaluate potential modifications to the City Code or other regulatory/policy documents.*

As mentioned in Item 2 above, staff recommends evaluating replacement requirements for demolished CSFRA units and exploring local Ellis Act provisions

to provide the City the authority to enact such requirements. This would establish replacement requirements for after SB 330 expires in 2025.

Other potential actions under this item may be identified as part of next steps.

RECOMMENDATION

It is recommended that Council provide input on next steps, including on the two Council questions posed in this report:

- *Council Question 1 of 2: Does Council agree with staff's recommendation regarding next steps to evaluate options for an Acquisition/Preservation Program?*
- *Council Question 2 of 2: Does Council agree with staff's recommendation regarding next steps to evaluate options for post-SB 330 replacement requirements for demolished CSFRA units?*

NEXT STEPS

Based on Council input, staff will continue to evaluate and develop options for Council consideration. This may include additional public outreach to inform the evaluation and potential options. Staff will return to Council at the appropriate time for further discussion/deliberation, if necessary, and with implementation items for the various tasks. Staff will also continue to work closely with the R3 team given the interdependence of the two projects as mentioned above. As noted above, the coordination with the R3 team will increase the scope and cost of the project. Based on Council input, staff will return with a budget and contract amendments as needed to complete the tasks noted in the discussion.

PUBLIC NOTICING

Agenda posting and email notification to developers, landlords, and tenants, as well as those who have subscribed to the Displacement Response Strategy e-zine.

WC-AS/2/CAM
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Attachment: 1. October 29, 2019 Council Study Session on Displacement Response Strategy