



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Leslye Corsiglia

**SUBJECT:** SEE BELOW

**DATE:** September 17, 2012

Approved

Date

9-17-12

## SUPPLEMENTAL

**SUBJECT: PUBLIC HEARING AND APPROVAL OF THE FY 2011-12  
CONSOLIDATED ANNUAL PERFORMANCE EVALUATION REPORT  
(CAPER)**

### REASON FOR SUPPLEMENTAL REPORT

This Memorandum summarizes 1) the public comments received for the draft FY 2011-12 Consolidated Annual Performance Evaluation Report (CAPER) during the public comment period from August 27, 2012 to September 13, 2012; and 2) the revisions made to the draft document in response to those comments as well as staff initiated revisions.

### BACKGROUND

The draft FY 2011-12 Consolidated Annual Performance Evaluation Report (CAPER) document was made available for public review and comment from August 27, 2012 to September 13, 2012. Additionally, a public hearing was held on September 13, 2012 at a meeting of the Grants Subcommittee of the Housing and Community Development Advisory Commission (HCDAC). This Memorandum summarizes the public comments received during the public comment period and the revisions made by City staff in response to those comments in preparation for the final draft CAPER document. Public comments received at the September 18<sup>th</sup> City Council hearing will also be incorporated into the final draft document, as appropriate, for submission to the U.S. Department of Housing and Urban Development (HUD) by the September 28<sup>th</sup> due date. Timely submission of the annual CAPER to HUD is required in order for the City to remain eligible for important federal funds that pay for housing and community development investments in San José.

## **ANALYSIS**

### *First Public Hearing*

On September 13, 2012, the Housing and Community Development Advisory Commission's (HCDAC) Grants Subcommittee held a public hearing to take comments from the public on the draft CAPER. As noted in Section B of the Attachment to this memorandum, no public comments were made at the meeting. The Grants Subcommittee accepted the CAPER and voted to recommend that the City Council approve the FY 2011-12 CAPER.

### *Public Comments*

The Law Foundation of Silicon Valley submitted a letter during the public comment period, which is included in Section A of the Attachment to this memo along with staff's response. No other public comments were made or received during this period.

### *Staff-Initiated Revisions*

Since the public release of the draft CAPER, staff has made revisions to the document in order to clarify the analyses and to make the document more readable. Section C of the Attachment to this Memorandum lists the staff-initiated revisions to the draft CAPER document.

## **EVALUATION AND FOLLOW-UP**

Upon City Council approval, the final CAPER will be submitted to HUD no later than September 28, 2012. The Council-approved documents will then be posted to the San José Housing Department's website at: <http://www.sjhousing.org/report/conplan.html>.

## **COORDINATION**

Preparation of this report was coordinated with the City Attorney's Office and the Department of Planning, Building, and Code Enforcement.

## **CEQA**

Not a project, File No. PP10-069(a), City Organizational & Administrative Duties for Staff Reports and Annual Report.

/s/  
LESLYE CORSIGLIA  
Director of Housing

For questions please contact Leslye Corsiglia, Director of Housing, at 535-3851.

**ATTACHMENT SECTIONS A, B, AND C: SUMMARY OF PUBLIC  
COMMENTS AND REVISIONS MADE SINCE DRAFT CAPER  
RELEASE**

**Section A:  
General Public Comments and City Responses**

- ***General Public Comment***

**From:** Kyra Kazantzis <[KyraK@lawfoundation.org](mailto:KyraK@lawfoundation.org)>

**Date:** September 12, 2012 4:46:34 PM PDT

**To:** "[daniel.murillo@sanjoseca.gov](mailto:daniel.murillo@sanjoseca.gov)" <[daniel.murillo@sanjoseca.gov](mailto:daniel.murillo@sanjoseca.gov)>

**Cc:** Kyra Kazantzis <[KyraK@lawfoundation.org](mailto:KyraK@lawfoundation.org)>

**Subject:** Law Foundation of Silicon Valley comments regarding Consolidated Annual Performance and Evaluation Report (CAPER)

Dear Mr. Murillo,

Thank you for the opportunity to comment on the City of San Jose's Consolidated Annual Performance and Evaluation Report (CAPER).

Action 5.A.1 slightly mistakes the name and nature of the Consortium. I would recommend using the following language in lieu of the current first sentence:

*The City of San Jose provides funding to the San Jose Fair Housing Consortium to provide education and outreach regarding fair housing. The Consortium is comprised of three non-profit agencies: Project Sentinel, Fair Housing Law Project (a program of the Law Foundation of Silicon Valley), and Asian Law Alliance.*

Action 5.A.2 contains a similar mistake. I would recommend using the following language in lieu of the current first sentence:

*Project Sentinel, a member of the San Jose Fair Housing Consortium and the primary local organization that conducts fair housing tests, performed 111 tests to determine whether housing discrimination occurred in San Jose-based rental properties in FY 2011-12.*

Regarding Action 5.B.1 and Action 5B2, we would again request that City staff review and analyze its ordinance requiring a conditional use permit for religious assembly in residential districts and its ordinance establishing parameters for reasonable accommodation requests in zoning. Both ordinances are problematic from a fair housing perspective, as we mentioned in our September 15, 2011, letter regarding the 2010-11 CAPER report (and in other earlier letters). The CAPER report should explain why the concerns we have identified are not valid, or propose changes in the ordinances. The CAPER report should also review the two planning decisions made during this time period regarding reasonable accommodations with an eye towards determining whether any changes to the current ordinance are warranted.

Page 50 contains a paragraph entitled CDBG Funding for Fair Housing (but doesn't contain an Action number). I would recommend adding Mental Health Advocacy Project, a program of the

Law Foundation of Silicon Valley, as one of the CDBG programs that the City funds that support fair housing.

Please let me know if you have any questions. Thank you again for considering our comments. Sincerely,

Kyra Kazantzis  
 Directing Attorney  
 Public Interest Law Firm and Fair Housing Law Project  
 Programs of the Law Foundation of Silicon Valley  
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 San Jose, CA 95112  
 Phone (408) 280-2401 Fax (408) 293-0106

• ***City Response to Public Comments***

<b><u>Law Foundation of Silicon Valley</u></b> <b><u>Comment</u></b>	<b><u>City Response</u></b>
1. Pg 47 – Edit first sentence of Action 5.A.1 to read as requested above	Staff has made the requested change
2. Pg 47 – Edit first sentence of Action 5.A.2 to read as requested above	Staff has made the requested change
3. Pgs 48 & 49 – Request that staff review and analyze the ordinance requiring a conditional use permit for religious assembly in residential districts.	<p>Staff has previously assessed and responded to the Law Foundation’s input that the requirement for a conditional use permit for Religious Assembly in residential districts may pose fair housing issues (see City’s Analysis of Impediments to Fair Housing).</p> <p>To further clarify the analysis:</p> <ol style="list-style-type: none"> <li>1. Individuals and households are allowed to practice their faiths and religions freely in their homes without obtaining any conditional use permit or other land use permit.</li> <li>2. The “Religious Assembly” designation in the municipal code indicates places in which organized religious worship takes place as the primary use of a structure (as opposed to the primary use of the structure being a residence). In this respect, it is similar to the "Church" designation, and would cover places of worship that may be called something different than “Church,” such as “Mosque,” Temple,” etc.</li> <li>3. Places of assembly for any purpose involve land uses distinct from residences, with different traffic and</li> </ol>

	<p>parking impacts, among other impacts.</p> <p>4. The conditional use permit requirement for Church/Religious Assembly and other types of assembly in residential areas is a land use regulation that establishes a procedure for the City to review a proposal for changing a residential land-use to a mixed-use or quasi-public land use. Consideration of a change in the land use is a reasonable and necessary activity of government, as the totality of potential impacts must be assessed when changing an underlying land use.</p> <p>5. The procedure to review a conditional use permit for assembly uses in residential zones does not imply that the use would be prohibited. Instead, as for any land use, the code establishes a procedure for the City to review a specific proposal to ensure that a change in the existing land use is compatible with the surrounding area. Again, this procedure would not apply to individuals or households freely practicing their religion in their homes, which they can freely do without obtaining a conditional use permit.</p> <p>The City is not aware of any cases in which the requirement for a conditional use permit (CUP) for an assembly use in a residential district has prevented fair housing choice. However, since a CUP is not required for residents to practice their own religion in their homes, the City will review the municipal code for potential modifications in order to further clarify its requirement.</p>
<p>4. Pgs 48 &amp; 49 – Request that staff review and analyze City’s parameters for reasonable accommodation request.</p>	<p>Staff has previously assessed and responded to the Law Foundation’s input that City staff analyze the City’s parameters for reasonable accommodation requests (see City’s Analysis of Impediments to Fair Housing).</p> <p>The City’s municipal ordinance provides a process for those who seek to make a reasonable accommodation request to provide information to the City regarding how the application of a zoning law may be</p>

	<p>acting as a barrier to fair housing opportunities. The municipal code allows the opportunity for the City to obtain information and make a finding and determination regarding the reasonable accommodation request. The City is not aware of any cases in which the Reasonable Accommodation process has prevented fair housing choice.</p>
<p>5. Pg 50 – Add the Mental Health Advocacy Project to the list CDBG supported Fair Housing activities.</p>	<p>The following is the project scope for the Mental Health Advocacy Project:</p> <p>"The primary purpose of the Project is to prevent homelessness and protect the rights of low income individuals with mental health or developmental disabilities by providing legal counseling/representation, mediation and short-term assistance services in residential care housing or independent living facilities."</p> <p>While the scope of the Project's work may have indirect fair housing benefits, the primary purpose is to provide legal counseling and representation for those with mental health or development disabilities and has been categorized as such in the CAPER. Therefore, while the Mental Health Advocacy Project will not be listed under fair housing activities in the report, staff greatly appreciates the Law Foundation's recognition that the Project's work has ancillary fair housing benefits.</p>

**Section B:  
Comments Received at the September 13, 2012 Housing & Community  
Development Advisory Commission Grants Subcommittee Meeting**

<b><u>Comment</u></b>	<b><u>City Response</u></b>
No public comments were made.	NA

**Section C:  
Staff-Initiated Revisions\***

<b><u>Page # of Draft Document</u></b>	<b><u>Recommended Change</u></b>	<b><u>Reason</u></b>
Index and Table of Contents	Revise index and table of contents to ensure maps, tables and page numbers are shown correctly.	Correction of errors
10,27	Goal 2.A.2 was adjusted to reflect 14,104 individuals served instead of 18,068 shown previously. Cumulative individuals served now reads 21,934 instead of 25,898. % of goal achieved is now at 366% instead of 432%	Correction of error
11, 39	Goal 3.B.3 was adjusted to reflect 16,328 residential parcels surveyed instead of 189 units inspected, shown previously. The cumulative total now reads 31,035 instead of 14,896. % of goal achieved is now at 282% instead of 135%	Correction of error
29	Removed line 2 - <i>During this first year of the five-year reporting period, 36,172 individuals have been assisted, constituting 66% of the five-year goal.</i>	Removed data about the prior year's performance
33	Removed this line from the paragraph on UPLIFT transit passes - <i>During the first three-quarters of this fiscal year the program has served over 2,800 individuals;</i> and replaced it with information on the number of transit passes awarded: <i>During the first three-quarters of this fiscal year the program has handed out over 4,600 passes Countywide and 1,500 passes in San Jose.</i>	Information added to highlight the relevant performance measure for the program
40	Action 3.B.3 – Removed this line - <i>The significant decline in the reported number is the result of a change to the program in FY 2011-2012.</i>	Correction of error. The decline was a result of using a different performance measure - units inspected instead of parcels surveyed.

\* Minor edits such as formatting changes, rewriting paragraphs without changing the intent or meaning, and moving data from one section to another are not listed above.