

RESOLUTION NO. 74138

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE REVISING AND UPDATING COUNCIL POLICY 7-4 REGARDING CITY'S RELOCATION POLICY AND ADOPTING FEDERAL AND STATE REGULATIONS AS THE CITY'S GUIDELINES FOR RELOCATION BENEFITS, AND REPEALING RESOLUTIONS NOS. 41149, 41786, AND 44463.**

**WHEREAS**, since the Council adopted Policy 7-4 in 1971, federal regulations applicable to projects requiring relocation assistance have been revised and amended and 2005, and state rules and regulations applicable to projects requiring relocation assistance have been revised and amended in 1976, 1997, and 1999; and

**WHEREAS**, a revised and updated Council Policy 7-4 which adopts federal and state regulations as the City's Guidelines for relocation benefits will conform to federal and state laws and simplify the City's relocation guidelines,

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**Section 1.** The revised Council Policy 7-4 attached hereto as Attachment A is hereby approved.

**Section 2.** The City hereby adopts as its Relocation Guidelines the relocations laws and guidelines set forth in 49 Code of Federal Regulations Part 24, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended for Federal and Federally-Assisted Programs; Final Rule amended as of January 4, 2005; Government Code Sec. 7260 (Relocation Assistance) through Sec. 7267; and State Regulations -- Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Administrative Code Ch. 6, Art 1, Section 6000 et seq.), as they may be revised and amended from time to time.

**Section 3.** Resolutions Nos. 41149, 41786, and 44463, setting forth prior Relocation Guidelines, are hereby repealed in their entirety.

ADOPTED this 4<sup>th</sup> day of December, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,  
OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: LICCARDO, NGUYEN

DISQUALIFIED: NONE

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

**ATTACHMENT A**

*City of San Jose, California*  
**COUNCIL POLICY**  
**7-4**

TITLE	PAGE	POLICY NUMBER
SEE BELOW	3 of 4	7-4
	EFFECTIVE DATE	REVISED DATE
	July 6, 1971	

**TITLE**

**CITY POLICY AND GUIDELINES FOR RELOCATION ASSISTANCE UNDER STATE AND FEDERAL LAWS FOR PERSONS DISPLACED BY CITY'S CAPITAL IMPROVEMENT PROJECTS**

**BACKGROUND**

In conjunction with the City's capital improvement projects, lands, buildings, or right-of-way are acquired for public purposes. From time to time, relocation of persons displaced by capital projects is needed in conjunction with the project. This requires a fair and just administrative process. In conducting such projects and offering relocation assistance, it is the City's policy that applicable Federal and State laws, rules, and regulations shall serve as the City's rules and regulations.

**PURPOSE**

The purpose of this City Policy and Guidelines for Relocation Assistance under State and Federal laws for Persons Displaced by City's Capital Improvement Projects ("Policy") is to establish a uniform plan for the fair and equitable treatment of persons displaced as a result of a capital improvement project.

**RELOCATION GUIDELINES, RULES, AND REGULATIONS**

The City's guidelines, rules and regulations for Relocation Assistance are the following federal and state laws, rules, and regulations, as they may be amended from time to time: 49 Code of Federal Regulations Part 24, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended for Federal and Federally-Assisted Programs; Final Rule amended as of January 4, 2005; Government Code Sec. 7260 (Relocation Assistance) through Sec. 7267; and State Regulations -- Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Administrative Code Ch. 6, Art 1, Section 6000 et seq.), and are referred to as the "City Relocation Guidelines".

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### DESCRIPTION OF APPLICABLE FEDERAL AND STATE GUIDELINES

It is the policy of the City of San José that State relocation laws and regulations govern programs and projects funded without federal funds. The California Relocation Assistance Law (California Government Code Section 7260 et seq) is the statute passed by the state legislature to govern relocation activities. The State Department of Housing and Community Development (HCD) has the legal authority to administer State relocation laws and promulgating implementing regulations. Since 1990, the California Legislature passed several amendments to the state Relocation Assistance Law. These amendments have served to make the state statutes closely parallel federal law.

Programs and projects funded in whole or in part with federal funding sources are governed by federal relocation laws and regulations. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, was passed by Congress to govern relocation activities conducted by Federal, State and Local Agencies receiving federal funds, grants or reimbursements. The Federal Highway Administration promulgated implementing regulations. Revisions to those regulations, as amended from time to time, are to be followed by the City in such federally funded projects. In some instances, State and Federal regulations are different.

Federal relocation law provides that a person who is an alien not lawfully present in the United States is not eligible to receive federal URA relocation benefits or relocation advisory services. The State, under Title 25, may approve exceptions if unusual hardship to the alien's spouse, parent or child who is a U.S. citizen or an alien admitted for permanent residence, would otherwise result.

In circumstances where both Federal and State funds are being used in a program or project, Section 6018 of the State relocation regulations provides that:

"If a public entity undertakes a project with federal financial assistance and consequently must provide relocation assistance and benefits as required by federal law, the provisions of the [State Relocation Law and Regulations] shall not apply; but if an obligation to provide relocation assistance and benefits is not imposed by federal law, the provisions of the Act and Guidelines shall apply."

When projects contain mixed funding sources, the Department of Housing and Urban Development (HUD) and HCD generally agree that a public entity applies the requirement that provides the displaced person or household with the greatest benefit. Clearly stated, this means that, in a mixed funding project, if the assistance or benefit under state law is more favorable to the displaced person or household, then the state regulation applies. Conversely, if federal benefits are more favorable to a displaced person, those rules apply."

APPLICABLE PROGRAM ELEMENTS FOR RELOCATION ASSISTANCE

Following are the key relocation assistance program elements under Federal and State laws:

1. Eligible tenant displaced from home:
  - a. Advisory Services.
  - b. Payment for Moving Expenses
    - (i) Payment for Actual Reasonable Moving and Related Expenses, or
    - (ii) Fixed Moving Expense and Dislocation Allowance, or
    - (iii) A combination of both, based on circumstances.
  - c. Replacement Housing Assistance.
    - (i) Rental Assistance, or
    - (ii) Purchase Assistance.
  
2. Eligible homeowner occupant displaced from home:
  - a. Advisory Services.
  - b. Payment for Moving Expenses.
    - (i) Payment for Actual Reasonable Moving and Related Expenses, or
    - (ii) A Fixed Moving Payment, or
    - (iii) A combination of both, based on circumstances.
  - c. Replacement Housing Payment.
    - (i) Purchase Assistance, or
    - (ii) Rental Assistance.
  
3. Eligible displaced businesses, nonprofit organizations and farms:
  - a. Advisory Services
  - b. Payment for Moving and Reestablishment Expenses falls into two general categories:
  - c.
    - (i) Payment for Actual, Reasonable Moving and Related Expenses;
    - (ii) Fixed Payment ("In Lieu Of" Payment)
  
4. Eligible displaced mobile home tenants and homeowners:
  - a. Advisory Services
  - b. Specific Considerations:
    - (i) Payment is based on displaced occupancy status as either 180 day owner or 90 day occupant of the mobile home – not occupancy status on the land.
    - (ii) Occupant might receive rental assistance payment for the site and price differential payment for a comparable mobile home.

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- (iii) Occupant might own the mobile home and rent the site or vice versa, requiring different computations.
- c. **Personalty or Realty**  
Owner/occupant of a mobile home acquired (as realty) is eligible for replacement housing payment. If mobile home is moved (as personalty), occupant is eligible for moving expenses for the mobile home.
- d. **Replacement Housing Payments – 180-Day Owner/Occupants**
  - (i) Owner/occupant who purchases a comparable replacement mobile home and site is eligible for a Price Differential, Incidental Expenses, and if, applicable, Mortgage Interest Differential.
  - (ii) Owner/occupant who rents a comparable replacement may be paid a rental assistance payment based on the market rent of the acquired mobile home site.
  - (iii) Owner/occupant can combine payments to purchase a replacement mobile home or conventional dwelling.
- e. **Rental Assistance Payments – 90-Day Occupants**  
90-day tenants and 90-179-day owner/occupants are eligible for a rental assistance payment for a comparable replacement mobile home and site, or for a conventional dwelling if no comparable mobile homes and site are available.
- f. **Moving Expenses**
  - (i) Cost for an owner to move the mobile home
  - (ii) Cost for a tenant to move furnishings and other personal property
  - (iii) Reasonable cost of a non-refundable mobile home park entrance fee, as determined by the City.

## RELOCATION APPEALS

Both Federal and State regulations provide that any aggrieved person may file a written appeal with the City in any case in which the person believes that the City has failed to properly consider the person's application for relocation assistance. 49 CFR Section 24.10; and 25 Cal. Administrative Code Sections 6000 – 6176. The Federal and State regulations provide substantially similar rights of appeal, but the State administrative guidelines are more detailed as to process, procedures, and timelines.

The City provides an appeals process in accordance with Federal and State requirements. The Appeals Hearing Board of the City is designated as the Relocation Appeals Board by Resolution No. 69321. An appeal of the City's determination regarding relocation assistance may be filed within 90 days of written notice to the aggrieved party of the City's decision.

In accordance with adopted procedures, the aggrieved party first appeals to the Real Estate Division Manager. If not satisfied with the initial determination by the advisor assigned to the aggrieved party's case, an appeal to the Director of Public Works is available. The determination of the Director of Public Works may then be appealed to

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the Appeals Hearing Board, which is the final administrative appeal. The Board's decision may be appealed to the courts in accordance with applicable laws.

An aggrieved party may obtain the forms and receive assistance in the appeals process from his or her relocation advisor.

The City will adhere to the timelines for appeals set forth in federal and state law.