



Memorandum

TO: CITY HOUSING AUTHORITY
BOARD OF COMMISSIONERS

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: March 1, 2018

Approved

D. D. Syl

Date

3/2/18

SUBJECT: NOTICE OF TERMINATION OF AGREEMENT DATED APRIL 1, 1996 BETWEEN THE HOUSING AUTHORITY OF THE CITY OF SAN JOSE AND THE SANTA CLARA COUNTY HOUSING AUTHORITY REGARDING ADMINISTRATION OF CITY HOUSING AUTHORITY PROGRAMS

RECOMMENDATION

It is recommended that the Board of Commissioners of the City of San José Housing Authority adopt a resolution:

1. Directing the Executive Director of the Housing Authority of the City of San José (“City Housing Authority”) to give the Santa Clara County Housing Authority (“SCCHA”) a one-year written notice of termination of the Agreement dated April 1, 1996, if the Board of Supervisors votes to become the SCCHA governing board.
2. Authorizing the Executive Director to commence negotiations for a new Agreement with the SCCHA and to return to the Board of Commissioners of the City Housing Authority with a report on the progress on the negotiation of the new Agreement, or if there is no progress, with other options for administering the programs of the City Housing Authority.

OUTCOME

Approval of the recommended action will allow the Director of the City Housing Authority to provide SCCHA a one-year notice of the City’s Housing Authority’s intention to terminate the Agreement that authorizes the SCCHA to administer the City’s Housing Choice Voucher (HCV) program. This would allow staff to consider either negotiating a new Agreement or procuring another entity to administer the City Housing Authority voucher programs depending on the actions of the Board of Supervisors.

BACKGROUND

SCCHA has operated the City Housing Authority since 1976. On April 1, 1996, the City Housing Authority and the County Housing Authority entered into the current Agreement whereby the City Housing Authority delegated the management of its Section 23 and HCV contracts, allocations, and programs (collectively, the "Programs") to the SCCHA. The Agreement essentially transfers all powers to administer and manage all existing and future Programs of the City Housing Authority to SCCHA. Additionally, under this Agreement, all property acquired in the name of the SCCHA, regardless of the funding source, is to remain in possession of SCCHA even if it is located within the City of San José. The SCCHA is required to obtain City Housing Authority approval **only** on "significant policy decisions" regarding how the Programs are administered. The City Housing Authority has no authority or role over the day-to-day operations including budget decisions, the appointment of the Board of the SCCHA, the selection of the executive director, nor an ability to influence the SCCHA developments in the City of San José outside of the planning process.

In 2008, both housing authorities were selected to participate in the *Moving to Work* program (MTW). The MTW program provides local agencies with a significant amount of flexibility to design their own policies and procedures. While the MTW plan indicates that the two housing authorities would be operated as a "combined agency", the Department of Housing and Urban Development ("HUD") has executed two MTW agreements and maintains separate funding agreements with the City Housing Authority and the SCCHA. The Housing Department reviews the draft plan and the City Housing Authority has an opportunity to request revisions. However, the SCCHA has not always included the recommended policy changes in the City's Housing Authority final MTW plan.

Housing Choice Voucher Program

HCV program, commonly referred to as the Section 8 program, allows low-income households to rent apartments and homes at fair market rents from private landlords. HCV holders under the City Housing Authority MTW program, pay 32% of their gross income toward rent (or a minimum of \$50, whichever is higher), and SCCHA pays the balance of the rent directly to the landlords. SCCHA currently has 16,411 participants in its HCV program. The City Housing Authority contract with HUD supports 40% of the participants, however, approximately 74% of the housed participants rent a home or apartment located in the City of San José.

In 2007, SCCHA designated 500 HCVs for the chronically homeless. Beginning in 2009, the City Housing Authority began requesting that SCCHA increase their set-aside of vouchers for the chronically homeless. SCCHA's initial response was that they did not have the resources to provide additional vouchers for the chronically homeless. In 2011, SCCHA finally agreed to designate an additional 200 vouchers for the chronically homeless and created a direct referral program with the County.

Previous Attempts to Renegotiate the Contract

In a letter dated December 13, 2011, the City Housing Authority outlined a list of concerns regarding the SCCHA management of the City's MTW/HCV program. The concerns outlined in the letter included a lack of transparency, incomplete and timeliness of information, funding questions, and the need to renegotiate the outdated Agreement due to the inequity of the Agreement and lack of representation on the Board.

In a letter dated December 13, 2011, the City Housing Authority's Executive Director initiated staff level discussions with the County and SCCHA to determine if there was an interest in creating a Joint Powers Authority (JPA) in an effort to address these concerns. Unfortunately, staff from the three agencies were unable to reach an agreement regarding restructuring the SCCHA-City Housing Authority relationship.

Recent Efforts

On September 12, 2017 the Board of Supervisors directed the County staff to return to the Board with recommendations for restructuring the governance structure of the SCCHA, which due to the nature of the 1996 Agreement would change the governance for the implementation of the City Housing Authority programs. At the October 3, 2017 Board meeting, the County staff provided a report that contained several options on a new governance structure. The Executive Director of the City Housing Authority again suggested that the SCCHA and County consider moving to a JPA, to provide for better representation of the City Housing Authority in decision making and more transparency with respect to use of funding.

The County staff did not recommend further exploration of either the merged entity concept such as a Joint Housing Authority or a JPA. Instead, the County staff recommended that the two housing authorities remain separate. The report noted that the City could terminate its Agreement with the SCCHA if it was not satisfied. The only two options currently being explored by the Board of Supervisors for the governance structure of the SCCHA are summarized below.

Option 1: Board of Supervisors as the Governing Board of the SCCHA.

This option would replace the current governing board of the SCCHA with the Board of Supervisors. This would give the Board of Supervisors the most direct control over the SCCHA. Under this option, the County staff recommended the creation of an **advisory** Housing Commission that would report to the Board of Supervisors. The proposal provides that the City Housing Authority would have a representative on the Housing Commission along with the two tenant commissioners. It is unclear who else the Board of Supervisors would appoint to the Housing Commission.

Option 2: Maintain the status quo.

The current board of the SCCHA is appointed by the Board of Supervisors and consists of five commissioners plus two tenants of the housing authority. This structure has been in place since the creation of the SCCHA in 1967.

Due to concerns expressed by both the current tenant commissioners and the Housing Department representing itself and the City Housing Authority at the October 3rd Board meeting, the Board of Supervisors directed County staff to further explore the two options and obtain feedback from tenants and the City Housing Authority. The Board of Supervisors also voted to direct the County staff to return with implementing actions to make the Board the governing body of the SCCHA.

Per the direction of the Board of Supervisors, County staff met with the City Housing Authority to better understand the concerns expressed at the October Board Meeting. While the City Housing Authority staff still feels that a combined or Joint Housing Authority would better serve the residents and landlords of both the City and the County, it was agreed that adding this as an alternative was not feasible. At the October board meeting, the Board of Supervisors unanimously voted against both the JPA and Joint Housing Authority options. A combined Housing Authority is inconsistent with their goal to restructure the governance structure if their desired outcome is to exert more direct oversight of the operations of the SCCHA. As a result, the City Housing Authority staff recommended to the County staff that the governance structure should remain as is. County staff plans to return to the Board of Supervisors with a recommendation on the governance structure in March of 2018 after they have completed their outreach to SCCHA tenants.

ANALYSIS

Should the Board of Supervisors take control of the SCCHA and assume the governance of the SCCHA, the City Housing Authority's ability to influence policy decisions and the overall MTW program would be substantially reduced because the City would only have a seat on an advisory Housing Commission. The Housing Commission would have no authority to make policy decisions, approve budget actions, nor review actions that relate to land or development activities. Decisions may be subject to the Board of Supervisors approval. While the City Housing Authority does not currently have a seat on the SCCHA Board, nor the power to appoint any SCCHA Board members, the Executive Director of the City Housing Authority (along with the Director of the County's Office of Supportive Housing) has been granted a non-voting seat on the Board. This allows the staff to express the City's position before a final vote is taken on Board actions. This non-voting seat on the Board would be eliminated under Option 1.

Negotiation of a New Agreement

Regardless of the decision reached by the Board of Supervisors on the SCCHA governance structure, the Agreement between the City Housing Authority and the SCCHA is outdated and needs to be renegotiated. The designation of the housing authority as an MTW agency has given SCCHA much more latitude to make significant policy decisions that did not exist at the time the 1996 Agreement was executed. MTW agencies can request waivers exempting them from certain HUD regulations. This allows MTWs to test different approaches to providing housing

assistance and improving management practices. SCCHA drives the MTW policy development and is sometimes reluctant to consider or further study City initiated ideas.

As discussed earlier, the City Housing Authority has expressed specific concerns regarding past decisions and business practices of the SCCHA. Major decisions, such as using funds on pensions, land purchases, disposing of public housing, and project basing SCCHA units, have been made without the knowledge or consent of the City Housing Authority because SCCHA has maintained that the Agreement does not require it. The City Housing Authority does not receive any financial reporting that clearly indicates when City Housing Authority funds are used for purposes outside of funding HCV program or for direct administrative costs. This means that SCCHA may be using City funds to benefit County programs and/or projects without the permission of the City Housing Authority. SCCHA continues to execute agreements in the City's Housing Authority's name without expressly receiving written approval from the City Housing Authority. And finally, while SCCHA has improved its public noticing, it does not follow the City's strong sunshine requirements making it difficult for both the public and the City Housing Authority to have sufficient time to review and provide meaningful input. Given that no progress has been made on addressing these concerns it is time to renegotiate a new Agreement.

Given the fact that the existing Agreement is outdated, and the lack of interest in formalizing a board structure that creates one entity and results in some control and oversight for the City, the City Housing Authority needs to explore its options if the Board of Supervisors decides to take control of the SCCHA. Providing the one-year termination notice as allowed under the Agreement.

If the Board of Supervisors votes to keep the governance structure as is, staff will begin negotiating the Agreement with SCCHA. Staff will return in August to provide the City Housing Authority with an update on the progress of the negotiations.

EVALUATION AND FOLLOW-UP

The Housing Department will issue an information memorandum on the decision the Board of Supervisors makes on the governance structure. If the Board of Supervisors votes to take over the governance structure of the SCCHA, staff will return to the Board of Commissioners of the City Housing Authority with a recommendation on options for administration of the City Housing Authority after the Agreement is terminated. If the Board of Supervisors votes to keep the governance structure as is, staff will return with a progress report on the negotiations.

POLICY ALTERNATIVES

Alternative #1: Do not accept Staff's recommendations to provide a notice of termination to the SCCHA, if the County votes to take over the governance structure of the SCCHA.

Pros: The 1996 Agreement will remain in place and the HCV program will continue to operate under one program which benefits tenants and landlords. This ensures that uncertainty is not introduced into the program. Will save funds as there may be costs associated with restructuring. Staff time will be focused on other pressing priorities instead of renegotiating the Agreement.

Cons: If the Board of Supervisors take over the SCCHA, this will deprive the City of the representation that any other state recognized joint housing authority relationship would provide. The 1996 Agreement gives essentially all control to the SCCHA.

Reason for not recommending: Restructuring the SCCHA should be an opportunity to strengthen and formalize how the two housing authorities operate. If the County takes control over the governance board, the City Housing Authority will not be represented and will not have any oversight of the HCV program. The 1996 Agreement is one-sided, outdated and does not adequately protect the interests of the City Housing Authority.

PUBLIC OUTREACH

This memorandum will be posted on the City Housing Authority Board of Commissioners agenda for March 13, 2018.

COORDINATION

Preparation of this report was coordinated with the Office of the City Attorney and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

Approval of this action does not have any immediate cost implications for the City Housing Authority. At such time that the Executive Director of the City's Housing Authority returns to the Board of Commissioners of the City Housing Authority with a recommendation on a new SCCHA agreement, or an alternative option for administering the City's Housing Choice Voucher program, staff will include a thorough cost analysis in its report.

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March 1, 2018

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CEQA

Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND

Executive Director, Housing Authority of the City
of San José

For questions, please contact Jacky Morales-Ferrand, Director at (408) 535-3855.