

ALBANY CALIFORNIA



CITY OF ALBANY
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Agenda Date: May 6, 2024

MEMORANDUM

To: Albany City Council Members

From: Councilmembers Jordan and Tiedemann

Re: Supplemental Business License Special Tax to fund tenant and community services

RECOMMENDATIONS

Direct staff to prepare a ballot measure instituting a supplemental business license special tax increment on rented residences to continue funding for several programs currently funded by the American Rescue Plan Act (ARPA), most centrally the City's emergency financial support program for tenants, and to fund rental code enforcement along with legal counsel for tenants and rental providers.

BACKGROUND

At its October 3rd, 2022 meeting, the City Council adopted Resolution No. 2022-104, allocating \$1,475,000 in American Rescue Plan Act (ARPA) to the Temporary COVID Public Assistance Program, and giving staff the authority to reallocate funds between specific uses within the Program based on need. Proposed uses of Public Assistance funding included establishment of emergency rental assistance and debt relief programs, both of which were deemed necessary to alleviate the effects of the pandemic on Albany's vulnerable residents. After further discussion with members of Council, the City launched the Rental Assistance and Financial Stability & Debt Relief programs in April of 2023, with an allocation of \$625,000 in ARPA funds, and administered by ECHO Housing. As of early March of this year, \$247,147 had been disbursed as rental assistance and \$37,800 as debt relief for a total of \$284,947.

Through the local support program, ARPA funds are also currently being used to expand or support several other community programs, namely expansion of Project HOPE and subsidies for children from lower-income families to attend the Friendship Club after school and summer camp programs. Currently, the majority of Albany Project HOPE is funded with ARPA funds, with \$160,000 in funding coming from the General Fund. Albany CARES, the navigation service that interlocks with Project HOPE, is currently wholly funded by the General Fund, with \$125,000 in funding supporting the fulltime Neighborhood Services Supervisor.

Estimated annual ARPA funding for these programs and the equivalent of one full-time staff person associated with them is summarized below;

Programs	Annual ARPA funding
Rental Assistance and Financial Stability & Debt Relief	\$300,000
Albany Project HOPE	\$250,000
Friendship Club/Camp Subsidies	\$25,000
Staffing	\$125,000
Total ARPA funds annually	\$700,000

ARPA requires the funding it provides to be used by December 31st, 2026. Given the pace of disbursement of the amount allocated to Albany’s Rental Assistance and Debt Relief program, the City Manager projects this funding may be exhausted months before that time. While there may be funding allocated to the City from the Community Development Block Grant (CDBG) program that would be well suited to continue the program, this funding will not be permanent and may not be adequate to fund the program for more than a few months. Additionally, neither ARPA nor CDBG provide permanent funding that would enable Albany to continue offering these programs or fund the staff necessary to implement them beyond 2026. Without additional funding, the rental assistance and debt relief programs, Friendship Club scholarships, and additional Project HOPE resources would have to be scaled back or eliminated.

At its February 21st, 2023 consideration of the then draft version of the Housing Element, the City Council added exploring “the feasibility of a local housing voucher program” as one of the measures to be evaluated under Program 5.D: Tenant Protections.

The Tenant Protections Program in the Housing Element also includes a measure to provide tenants access to legal counsel. The need for and utility of such a program has been well documented in many areas, including by this recent [CalMatters article](#) that discusses the asymmetry in representation and rulings between tenants and rental providers. Unlike criminal trials where legal representation is provided to those that cannot afford it, eviction proceedings are civil matters and a very large share of renters go without representation, resulting in predictably unfavorable outcomes.

The draft Housing Element was approved by the City Council with this change, and certified by the State Housing and Community Development Department (HCD) on September 8, 2023.

On March 27th, 2023, the City Council held a work session to develop its Strategic Plan for April 2023 through March 2025. Goal 6: Increase public health, safety, and resiliency included an Objective to “Identify resources and options to enhance code enforcement.” The City Council adopted the Plan on April 17th, 2023.

At its May 1st, 2023 meeting, the City Council received a presentation from Kurt Wiest, Executive Director, at the time, of the Housing Authority of County of Alameda (HACA), regarding that agency's programs. In [answer](#) to a question following the presentation, Director Wiest stated that the most cost-effective program for keeping tenants housed is emergency financial support to address an unanticipated decrease in income or additional expense. Closing this short-term financial gap often makes the difference between stable housing and eviction. The vast majority of those experiencing homelessness in California cite short term financial instability for initial loss of housing. Due to the difficulty addressing homelessness after an individual has lost housing, short-term, targeted intervention is frequently cited as the most effective strategy to prevent homelessness, both in terms of cost and individual wellbeing.

During the City Council's study session on October 2nd, 2023 regarding implementation of the final Housing Element as certified by the State, representatives for the Alameda County Rental Association and the Albany Property Rights Advocates commented that if free legal services are to be made available to tenants by the City, they should also be made available to rental providers as well.

Goal 6 of the Council's Strategic Plan, "Increase Public Health, Safety, And Resiliency," includes the Objective "Identify resources and options to enhance code enforcement programs." Discussion with the City Attorney indicates that code enforcement of rented residences can be funded in large part by fees charged for the enforcement and invoiced/collected following the enforcement. Most collection would likely be by remittance, but any that are not collected this way would be collected via a lien for payment on the next property tax bill. Because collection of fees would thus lag behind the cost of enforcement, a revolving fund would need to be capitalized to pay for initiating the program.

DISCUSSION

After the Council added exploration of a local housing voucher program to the final draft Housing Element, expert testimony indicated that the more effective program for assisting City residents is to provide monetary support in the event of a financial emergency for renter households. This meets the intent of why Councilmember Jordan suggested the inclusion of a local housing voucher in the Housing Element at the City Council's 21 February 2023 consideration of the Element.

The need for such a program during COVID and the availability of ARPA funds to support it means the City either halts the program when the funding runs out or finds a new stable funding source to continue it. Given that the other local community support programs mentioned in the previous section that are funded currently via the same ARPA funds largely benefit the same lower-income population, and have significant benefit for our community, we believe there is a nexus between these programs such that their funding should be discussed altogether.

We also desire to capitalize code enforcement regarding rented residences and fund legal services for tenants and rental providers based on means testing. We hold the various items described here in the following order by priority. Albany CARES is included because it facilitates Albany Project HOPE and is at risk due to developing general fund deficits.

Programs	Annual ARPA funding
Staffing for the following	\$125,000
Rental Assistance and Financial Stability & Debt Relief	\$200,000
Code enforcement capitalization	\$100,000*
Legal services for tenants and rental providers by means testing	\$100,000*
Albany Project HOPE	\$250,000
Albany CARES	\$125,000
Friendship Club/Camp Subsidies	\$25,000

*Capitalizing the Code Enforcement program is a one-time use of funds. Subsequent code enforcement will be funded by the program’s collections. Legal services would be funded to the extent funding for code enforcement is not required.

The only current source from which the City could fund these programs is the General Fund. The authors of this memo do not recommend this option due to both the General Fund’s purpose to fund core city services that cannot be neglected, and the increasing burden placed on the General Fund due to pension liabilities. Therefore, we recommend developing a new source of funding via a voter approved tax measure.

We recommend a supplemental business license special tax on gross revenue from renting residences. The business owners having to bear this cost, rental providers, would receive the bulk of the revenue from such a tax in the form of emergency rental payments on behalf of tenants who cannot otherwise pay. This reduces the cost of tenancy turnover, due to the loss of rental income in between tenants and the cost of marketing residences and processing applications.

For the sake of continuity of service, administrative efficiency, and clarity for voters, we recommend the City put such a tax measure before the voters during the upcoming 2024 general election. While, as previously stated, ARPA funding for this program will not run out until 2026, we do not advise waiting until the November 2026 election, as doing would risk some of the programs having to shut down for some time in between exhaustion of Federal funds and the collection of the tax.

While it is also possible to place a measure on the next primary ballot in June 2026, this is not recommended, for the same reason. Business license taxes are collected early in the calendar year. Consequently, passage of a measure in June would still result in the program likely having to shut down for some time. Additionally, voter turnout in primary elections is substantially lower than in general elections. The Registrar of Voters also charges roughly twice as much for a local jurisdiction to participate in a primary election relative to a general election. Because the City and School District split the Registrar’s charge for participating in general elections, the cost to the City to participate in a primary election would be roughly four times the cost of participating in a general election. Given this cost, the City has not placed a measure on a primary ballot since 2006.

Albany’s business license tax for rental providers [this year was \\$115/residence](#). El Cerrito levied a tax of [\\$129/residence](#), while San Pablo levied a tax of [\\$85.86 per building and \\$34.98 per residence](#). The other cities in the area each levied a tax on gross revenue from renting residences at the following rates:

City	# of residences	
	<5	>4
Berkeley	1.081%	2.880%
Richmond	1.081%	2.880%
Emeryville	0.10%	
Oakland	1.395%	
Piedmont	1.395%	

The following table lists the number of residences and rented residences in Albany and each of the seven cities referenced above, which are the closest to Albany, according to the US Census Bureau’s American Community Survey for the five-year period ending 2022.

City	Residences	Rented
Albany	7,746	3,851
Berkeley	47,052	26,919
El Cerrito	10,637	4,610
Emeryville	7,233	5,050
Richmond	39,931	17,782
Piedmont	3,789	426
San Pablo	9,737	5,608
Oakland	178,788	100,787

Of these seven closest cities, more than 90% of rented residences are subject to a business license tax of more than 1% of gross revenue.

The 2022 five-year American Community Survey (ACS) gives [gross total monthly rent of \\$8,477,900 ± 551,351](#). Given the increase in rent over five years, we take the estimated gross total monthly rent as \$8.5 million, which is \$102 million annually.

The 2022 ACS gives [3,851 ± 245 rented residences occupied by households in Albany](#). We take the number of residences rented and so available as 3,800. Taxes are not paid for the [974](#) of these in University Village, whose average cost we estimate as \$2,500/month from the [rent schedules](#). Subtracting this from the \$102 million per year gross rental revenue gives \$73 million.

With 2,800 residences subject to Albany's current business license tax of \$115 per year, the current tax is equivalent to ~0.4% of gross revenue. Because that revenue goes to the general fund and Goal 5 of the City Council's Strategic Plan, which is "Increase Revenue To Sustain City Services," includes the Objective "Develop options to restructure the Business License Tax," we do not propose altering that tax at this time. Instead, as mentioned we recommend levying a supplemental business license special tax on gross revenue, bringing the total tax on rental businesses more in line with that of the surrounding cities.

Funding all the programs in the priority list above equates to a rate of ~1.1% for a total of ~1.5%. Slightly higher than in Oakland and Piedmont. Likely slightly less on average than in Berkeley and Richmond. Like in those cities, we favor a lower rate for providers of fewer residences and higher for providers of more. Funding the programs in the list through Project Hope equates to a rate of ~0.9% for a total of ~1.3%.

In proposing this approach, it is worth noting that [rental providers in Berkeley are supporting directing a portion of the business license taxes they pay to initiate and maintain a similar emergency rent support program there](#). Also that Albany CARES facilitates access to Albany's tax rebates for households with very low income that rent a residence. The number of households that have secured rebates nearly doubled last year to 67. The tax relief provided helps stabilize those household's finances, reducing the probability of their becoming in arrears on their rent or having to vacate. Both of which are also to the benefit of rental providers.

The proposed code enforcement and legal services programs are detailed more below.

Habitability Inspection and Code Enforcement

In order to be effective, a code enforcement program needs to occur in association with an inspection program. The latter consists of inspecting each rented residence for habitability every few years. In this way, it would function similarly to Albany's current fire inspection program, the cost of which is paid for by a \$197 fee per building plus an incremental fee for the size of the building by number of residences. Berkeley has an inspection program that [operates on a fee per residence of \\$56 this year](#).

Findings from the inspection program would be transferred to the code enforcement program for follow up. Without the inspection program, the code enforcement program would not be effective because the only findings it could pursue are those evident observing the outside of a building from public property.

Legal Counsel For Tenants and Rental Providers

The share of funding not needed to capitalize a revolving fund for the code enforcement program would be directed to a program providing legal counsel to tenants. This service would be provided on contract with the City by an organization already providing such services, of which there are several across the Bay. Access to the program would be means tested, and available for rental providers who qualify as well as tenants.

SUSTAINABILITY CONSIDERATIONS

The recommended action does not have sustainability implications.

SOCIAL EQUITY AND INCLUSIVITY CONSIDERATIONS

The recommended action would support those that currently live in Albany that encounter a financial emergency beyond their means to remain in their residence. It would provide for improved living conditions for those in residences that are insufficiently maintained. It would provide legal counsel for tenants and rental providers regarding evictions who otherwise would be unable to afford such.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

As mentioned, the proposed action would in large part meet City Council Strategic Plan the Objective “Identify resources and options to enhance code enforcement” of Goal 6: “Increase public health, safety, and resiliency.” As a side effect, operations of the programs would meet, in part, the Objective “Continue to educate and inform the community regarding housing to include tenants’ rights and housing provider responsibilities” of Goal 2: “Promote Housing Availability & Quality.”

FINANCIAL CONSIDERATIONS

The cost of the three programs described, including administrative costs, is to be fully borne by revenue from a special tax.