

FRESNO HOUSING AUTHORITY COMMISSIONER RETREAT

By: Kenneth J. Price

**Baker Manock
& Jensen** PC

ATTORNEYS AT LAW

Overview

- Role of Commissioners
- Legal Duties of Commissioners
 - Governmental duties v. Non-Profit Duties.
 - Duty of Care
 - Duty of Loyalty
- Director Liability & Indemnification Issues
- Basic Legal Requirements
 - “Sunshine” Law Compliance

The Role of the Governing Board

- The right to direct government is the heart of democracy.
- Elected/appointed officials are the most important personnel of a local agency.
- The next most important group of officers is the appointed management.
- The Commissioners and management fulfill fundamentally different roles.

The Role of the Governing Board (cont.)

- To educate and to be educated by the public.
- Setting policy.
- Communicate the wishes of the public to the professional staff and the recommendations of the professional staff to the public by adopting agency policy.

The Role of the Governing Board

- Housing authority commissioners are responsible for:
 - Providing leadership
 - Setting policy
 - Approving budgets
 - Earning support of the community for day-to-day housing authority programs

- Juxtaposed with Authority professional staff:
 - CEO manages operations and reports to the Boards
 - Day-to-day management
 - Hires, supervises, and terminates Authority employees
 - Carry out the policy of the Boards
 - Develops and recommends budgetary priorities
 - Complies with all federal laws and HUD guidelines

Best Practices: The Role of an Individual Board Member

- Keep confidential matters confidential (Brown Act).
- Participate in professional development and commit time and energy to be an informed and effective leader.
- Understand the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the CEO and staff (causes issues with Governmental Immunities).
- Understand that the authority rests with the entire Board as a whole and not with individuals.
- Actively participate in Commission meetings.

Bests Practices: Role of Governing Boards During Meetings

- Do's
 - Know the proposed agenda and review the packet of materials before the meeting.
 - Know and go by the rules. Comply with Brown Act, Board policies.
 - Ask for advice from Authority staff and counsel. Try to request information in advance if possible.
 - Let your CEO (and Tiffany) know in advance if possible when you will miss a meeting.

Role of Governing Boards During Meetings

- Don'ts
 - Don't miss meetings without a reasonable excuse.
 - Don't come to meetings unprepared.
 - Don't monopolize the meeting.
 - Don't deviate from the agenda.
 - Don't restrict public or media participation

Legal Duties of Commissioners

- The role of the “fiduciary”.
 - What is a fiduciary?
 - Someone that stands in a position of trust to another person, with corresponding duties.
- Fiduciary duties exist in corporate law but the principals can carry to governmental service.
- How is a fiduciary supposed to act?
 - Good faith (state of mind – good intentions& honesty).
 - Exercise basic duties of good management (objective standard – prudently, fairly, and with care).

Legal Duties of Commissioners

- Two primary roles:

(1) Put the interest of the organization above your own personal interests; and

(2) Always exercise prudent business judgment.

But, how do we apply each of these roles?

Legal Duties of the Commissioners

*Putting the interest of the organization above
your own personal interests*

- In corporate law, it's called the "Duty of Loyalty."
- For governmental service, it means following the Political Reform Act and the Gov. Code section 1090.

Legal Duties of Commissioners

- Rule: Board member may not participate in a decision if that member's financial interests are affected by the decision.
 - Can be positive or negative
- General Rule: You may not make, participate in, or influence a decision if it may have a reasonably foreseeable financial material impact on you, your immediate family. (Gov. Code section 87100 *et seq.*)
- General Rule: You cannot contract with the agency that you serve. (Gov. Code section 1090 *et seq.*)

Legal Duties of Commissioners

Always exercise prudent business judgment.

- Under corporate structure, a director must act in a manner that he/she believes (i) is in the best interest of the corporation; and (ii) with such care as an ordinarily *prudent* person in a like position would use in similar circumstances. In corporate speak, this is known as the “Duty of Care.”
- *Prudent* means with common sense, practical wisdom, and *informed* judgment.

Legal Duties of Commissioners

- In a governmental context, how does the Duty of Care work?
 - (1) Must act in best interests of the agency.
 - (2) Must be informed about the decisions you take.
 - (3) Must have an open mind.
 - (4) Must use common sense and reason for the votes you make.
 - (5) Do not exceed the scope of your responsibilities.

What if you can't discharge these responsibilities?

Legal Duties of Commissioners

- Consequences of violations
 - Depending upon the violation: Prosecution, fines, disgorgement of profits.
- Potential Loss of Governmental Immunities

Immunities

- Corporations Code has immunities for charitable service.
- Government Code has similar immunities.
- Statutes protect agencies and their officers and employees for reasons of public policy.
- Immunity is created to ensure the risk of liability will not cause agencies to withhold essential services.
- Board members are shielded from vicarious liability claims (Gov. Code section 820.0)
- Immunities for claims involving public property.

Defense of Public Officials - Defense Costs

- If an employee's conduct is within the course and scope of employment and is not fraudulent, corrupt or malicious, the agency must provide for the official's legal defense.
 - However, the duty to defend and duty to pay judgments are two different duties.
- The Agency is not obligated to indemnify Board members for a lawsuit based upon conduct outside the scope of work or where the Board member is accused of committing fraud.

Defense of Public Officials - Judgment

- An agency must indemnify from any judgment based on an official act if:
 - A written request is made at least 10 days prior to trial for the agency to defend;
 - The agency has conducted the defense;
 - The officer cooperated with the defense; and
 - The officer's actions are within the scope of employment and not fraudulent or there was no misconduct.

Defense of Public Officials

- When members of the governing board are named as defendants in a lawsuit, the decision to provide a defense and indemnity is complicated by conflicts of interest law.
- Officer may participate in the decision to provide a defense when the agency is mandated to provide a defense.
 - Official may participate in determining whether the lawsuit arises within the official's course and scope of office.
 - Officer cannot participate when the agency is not required to provide a defense and indemnity.

Transparency Laws

Principles:

- It's the public's business
- Public trusts a process it can see

Types of Laws

- The Ralph M. Brown Act (Government Code Sections 54950, *et seq.*)
- The California Public Records Act

Commonality of Transparency Rules

- Conduct business in open and publicized meetings
- Allow public to participate in meetings
- Allow public inspection of records – Public Records Act

What is a “Legislative Body” of a Local Agency?

- The “governing body of a local agency or any other local body created by state or federal statute.”
- A “local agency” is any city, county, school district, municipal corporation, redevelopment agency, district, political subdivision, or other public agency.
- Also includes standing committees of a legislative body and certain public and private entities.

What is Not a “Legislative Body” under the Brown Act?

- A temporary advisory committee composed solely of less than a quorum of the board. This committee must serve a limited or single purpose, is not perpetual, and will be dissolved once its specific task is completed. (*Ad Hoc* Committee)
- Individual decision makers who are not elected or appointed members of a legislative body.

Public Meetings

- Public agencies must comply with the Brown Act.
- From the perspective of the public, the most important law affecting public agencies mandates public meetings.
- Although not required, some public agencies also record their meetings.
- As such, Commissioners should conduct meetings in a professional manner, and address fellow Commissioners, staff and members of the public in a cordial manner.

Agendas & Notices

- Posting & Notice Requirements
 - If the Authority maintains a website, the meeting agenda must be posted online and in compliance with timelines for posting (72 Hours in Advance)
- Mailed Upon Written Request
- Non-Agenda Items – Brown Act generally prohibits any action or discussion of items not on the posted agenda. There are exceptions.

Types of Meetings

- Regular meetings – Subject to 72-hour posting requirement
- Special meetings – Subject to 24-hour posting requirement & can only discuss discrete items on the agenda
- Emergency meetings – limited to meetings held when prompt action is needed due to actual or threatened disruption of public facilities
- Adjourned meetings

Other Meeting Issues

- Technological Conferencing – the Brown Act allows teleconferencing to meet, receive public comment, deliberate, or conduct a closed session. However, there are specific requirements for conducting teleconferencing.
- Location of the Meetings – should be held within the boundaries of the territory over which the local agency exercises jurisdiction

6 Exceptions to the Meeting Definition

- 1. Individual Contacts** (Brown Act recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague.)
- 2. Conferences** – allows a majority of a legislative body to attend a conference or similar gathering open to the public
- 3. Community Meetings** – a majority of a legislative body may attend an open and publicized meeting held by another organization to address a topic of community concern

6 Exceptions to the Meeting Definition (cont.)

4. **Other Legislative Bodies** – allows a majority of a legislative body to attend an open & publicized meeting of another body of a local agency or a legislative body of another local agency.
5. **Standing Committees** – authorizes attendance of a majority of the board at an open and noticed meeting of a standing committee (non-members of the committee attend only as observers)

6 Exceptions to the Meeting Definition (cont.)

- 6. Social or Ceremonial Events** – a majority of the legislative body may attend a purely social or ceremonial occasion. (Cannot discuss business amongst themselves, however.)

Public Participation

- Public Comment Section - The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda.
- Allows Commissioners to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda.
- If a member of the public wants to address an item on the agenda, he/she can speak when the Authority’s Commissioners consider that item.

Public Participation (cont.)

- The Brown Act protects the public's right to attend, observe and participate in meetings
 - Members of the public cannot be required to sign-in
 - Meetings must be held in public places that do not discriminate
 - Public must be given notice of teleconference location(s)
- Public has the right to record meetings (as long as not disruptive)

Closed Sessions

- Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.
- If action is taken in closed session, there must be an oral or written report in open session of the action taken and how each board commissioner voted.

Closed Sessions (cont.)

- Closed Session may only be held if there is a specific statutory exemption:
 - Litigation – existing, threatened, or initiation of litigation (must have an attorney present or on the phone)
 - Real Estate Negotiations
 - Public Employment – appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee (“personnel exception”)
 - No Discussion of Salary/Compensation in Closed Session
 - Labor Negotiations
 - Student Disciplinary Exception under Education Code
 - Public Security

Confidentiality of Closed Sessions

- The Brown Act prohibits disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality.
- Only the legislative body acting as a body may agree to divulge confidential closed session information – the entire body is the holder of the privilege

Violations of the Brown Act

- A majority may not consult outside an agency-convened meeting
 - At conferences
 - Through intermediaries (including staff and others)
 - Through email
 - At community meetings
- Key concept: “collective concurrence”
- Cannot have collective briefings or serial meetings (phone tree)
- Retreats or Workshops of the Legislative Body should be considered “special meetings” and comply with the Brown Act

Remedies

- Invalidation of certain actions of the legislative body
- Civil Action to prevent future violations
 - May be required to record meetings
- Costs & Attorney's Fees
 - May have to pay other's attorney's fees
- Criminal Complaints (must be attendance and action taken in violation of Brown Act)

QUESTIONS

CALL

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Board of Commissioners Retreat

May 17, 2017



Presentation Overview

- Our Mission
- Overview of Who We Are and Who We Serve
- Resident Services

Fresno Housing Mission

Mission

*Create and sustain vibrant communities throughout
Fresno County*

- Quality Housing
- Engaged Residents
- Vibrant Communities

Four Goals

People, Place, Partnerships, Public

Structure of the Agency

- The Housing Authority enters into an Annual Contributions Contract (ACC) with the HUD through which it administers programs and receives funding for its major programs
- In 1995, The Housing Authority of Fresno County and the Housing Authority of the City of Fresno entered into an agreement that provides for the two agencies to cooperate for the purposes of making both more efficient and effective
- The two agencies are managed by one CEO/Executive Director, have common staff and systems
- Both Boards of Commissioners act independently but meet jointly for efficiency

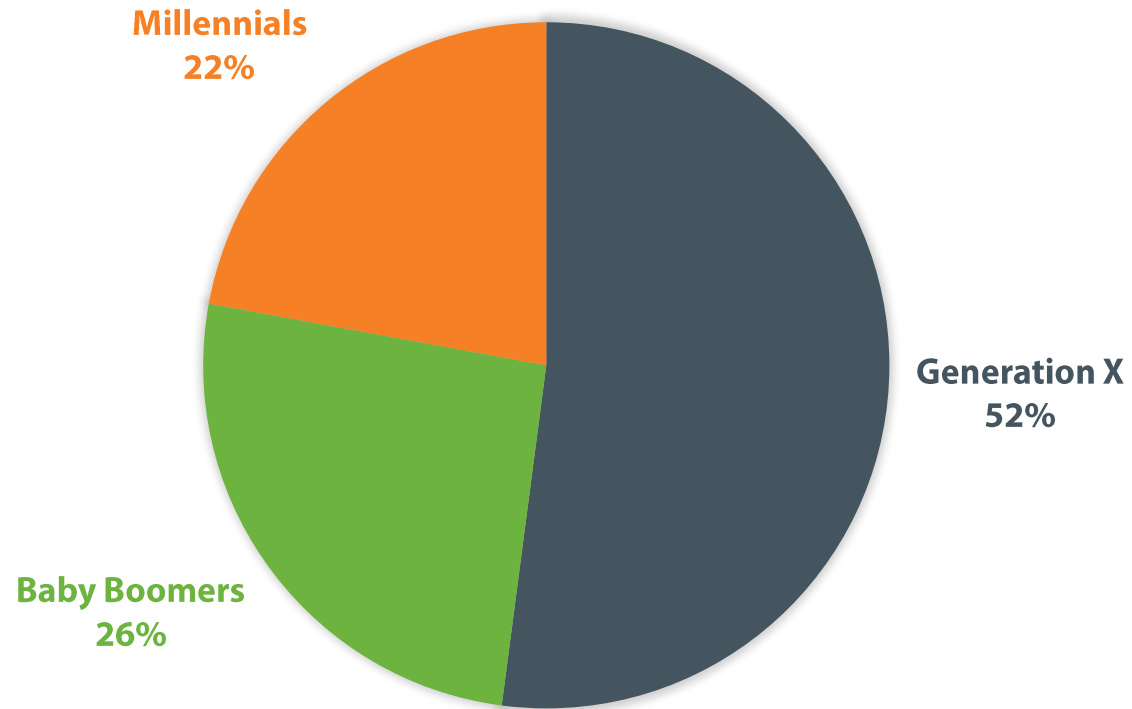
What We Do

- Administer Major Housing Programs
- Coordinate Resident Support Services
- Develop, Renovate, and Manage Affordable Housing
- Employ 217 individuals to plan and execute the work

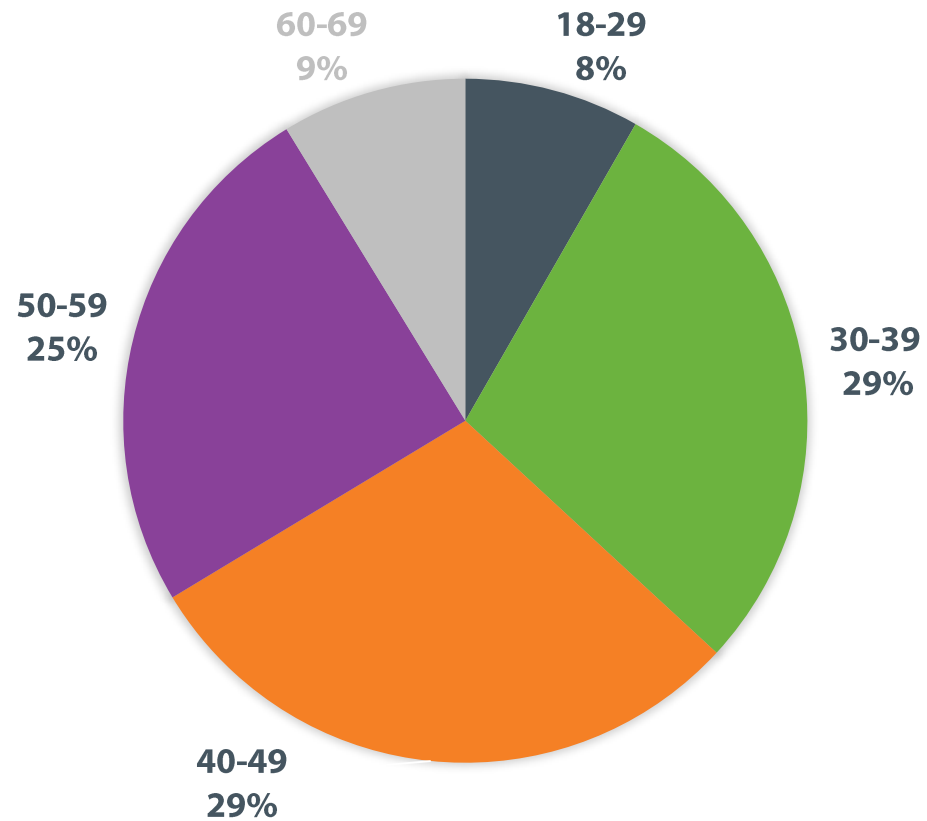


Who We Are

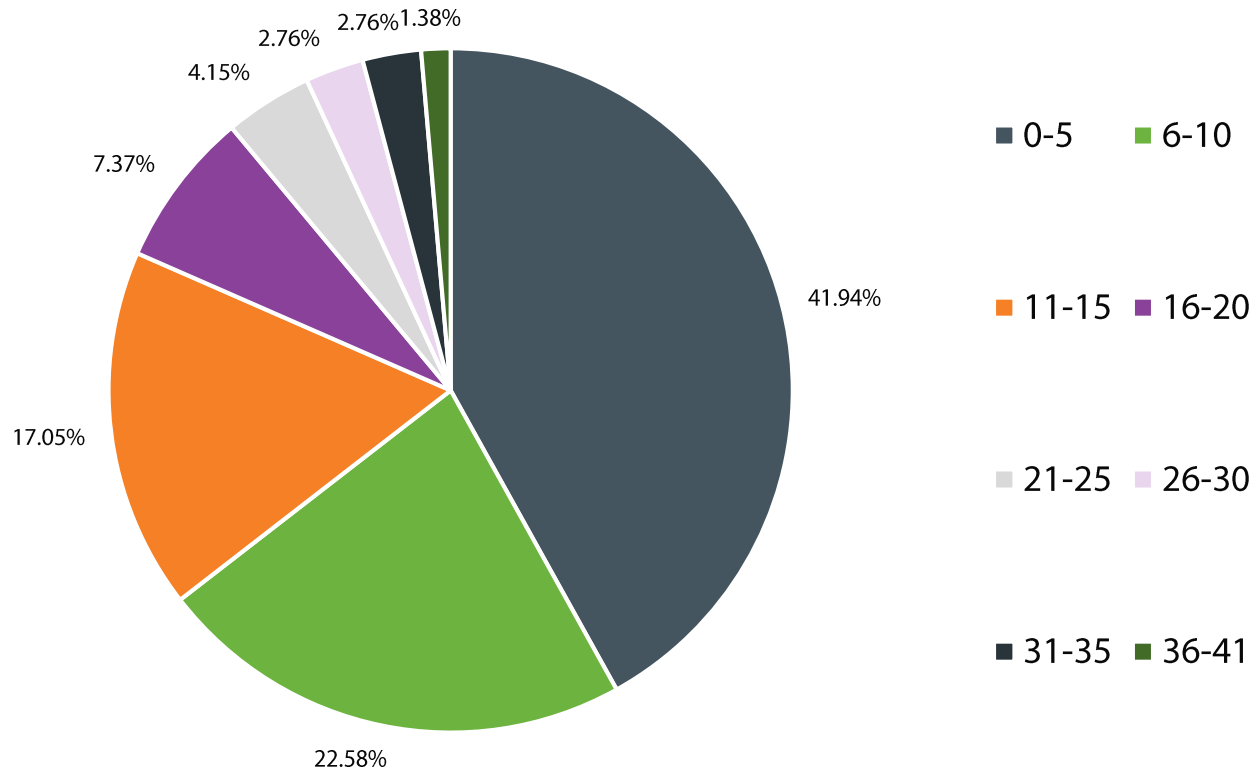
Generations in the Workforce



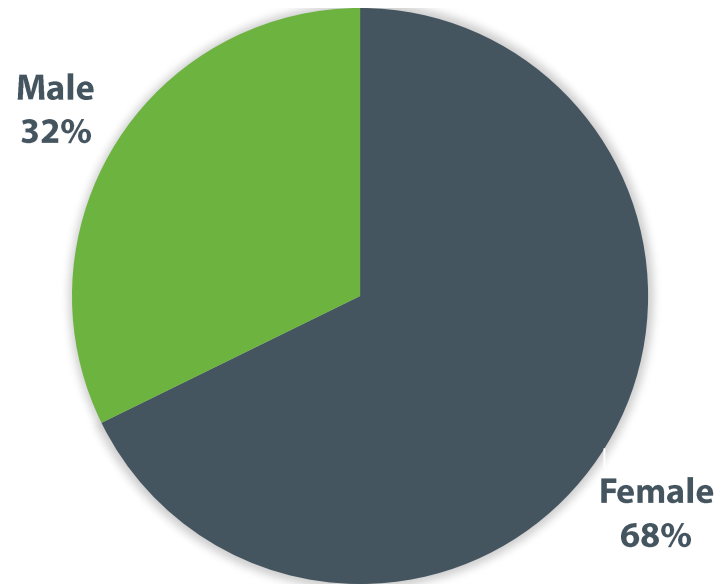
Age Groups



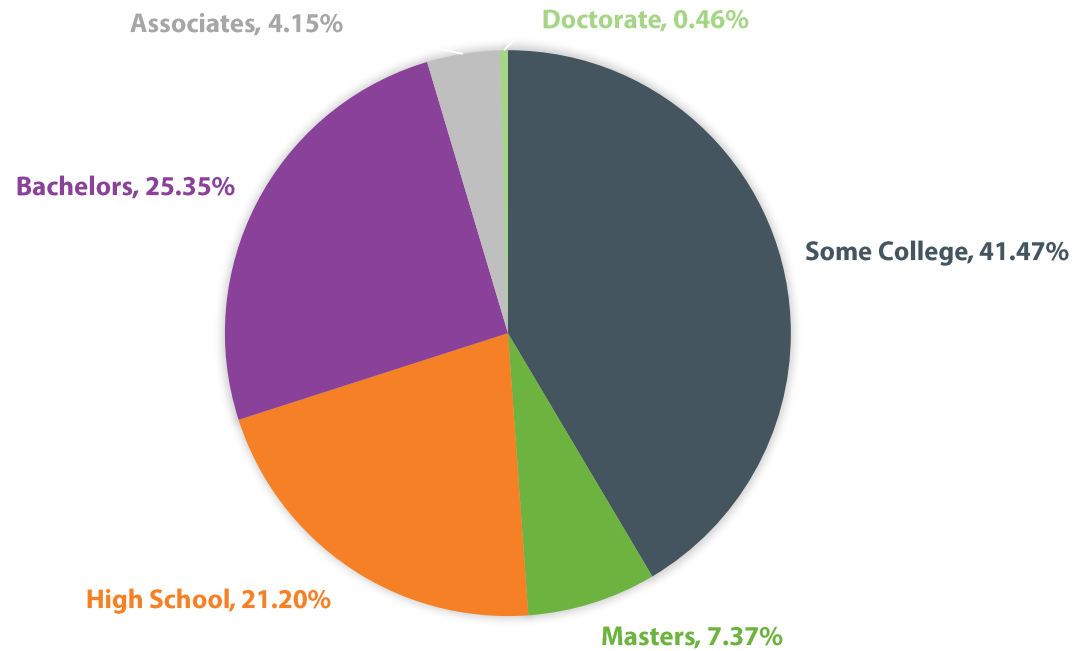
Years With the Agency



Gender

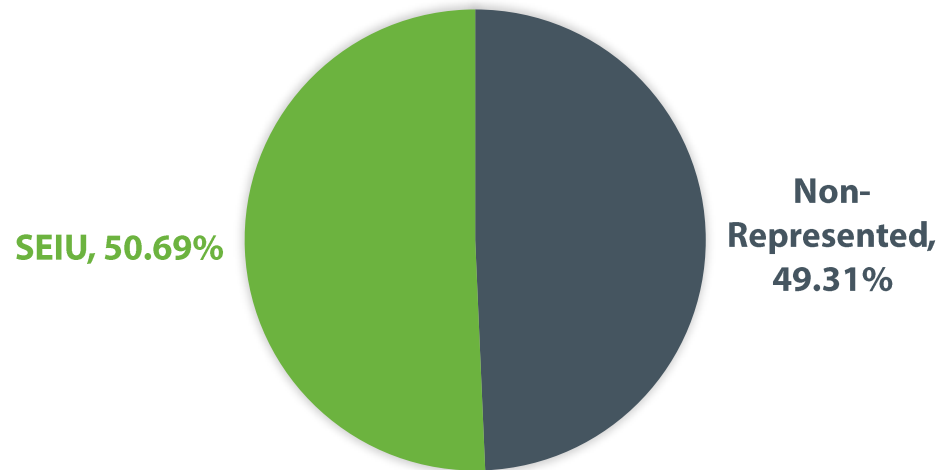


Employee Education Level

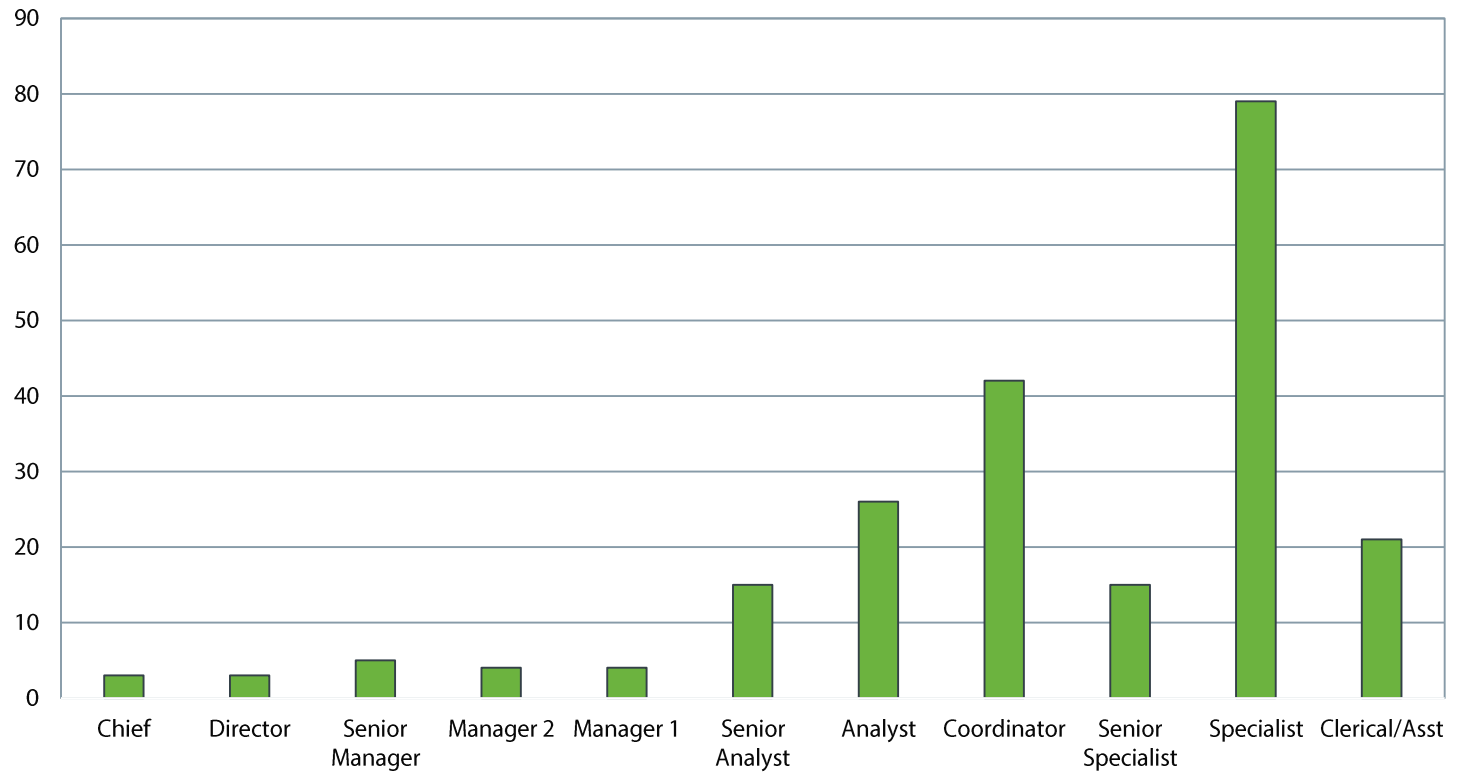


51% of Agency college graduates attended Fresno State

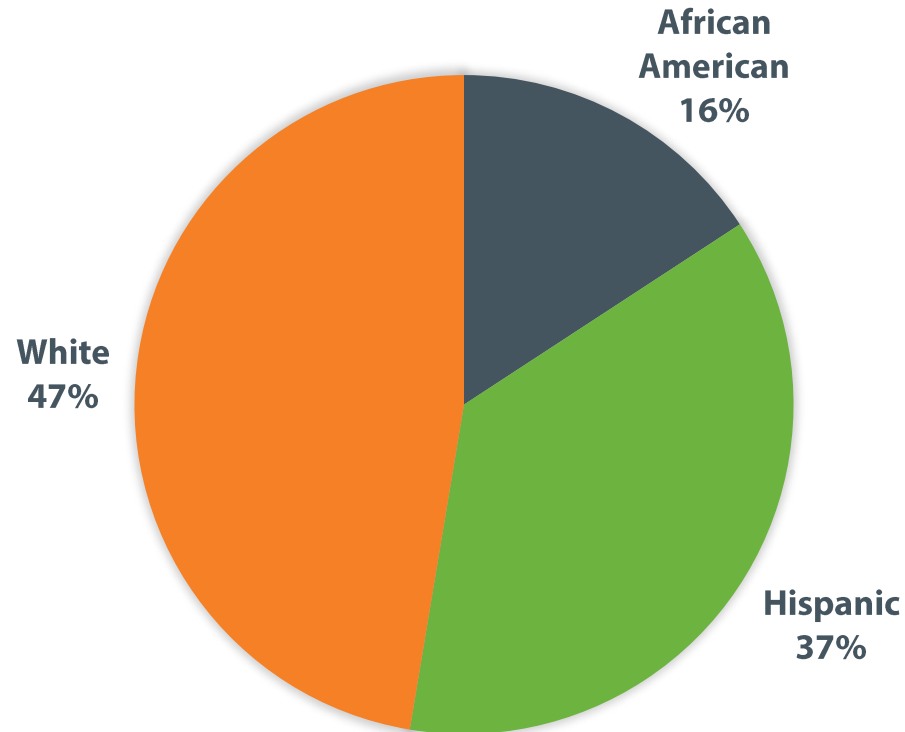
Union Representation



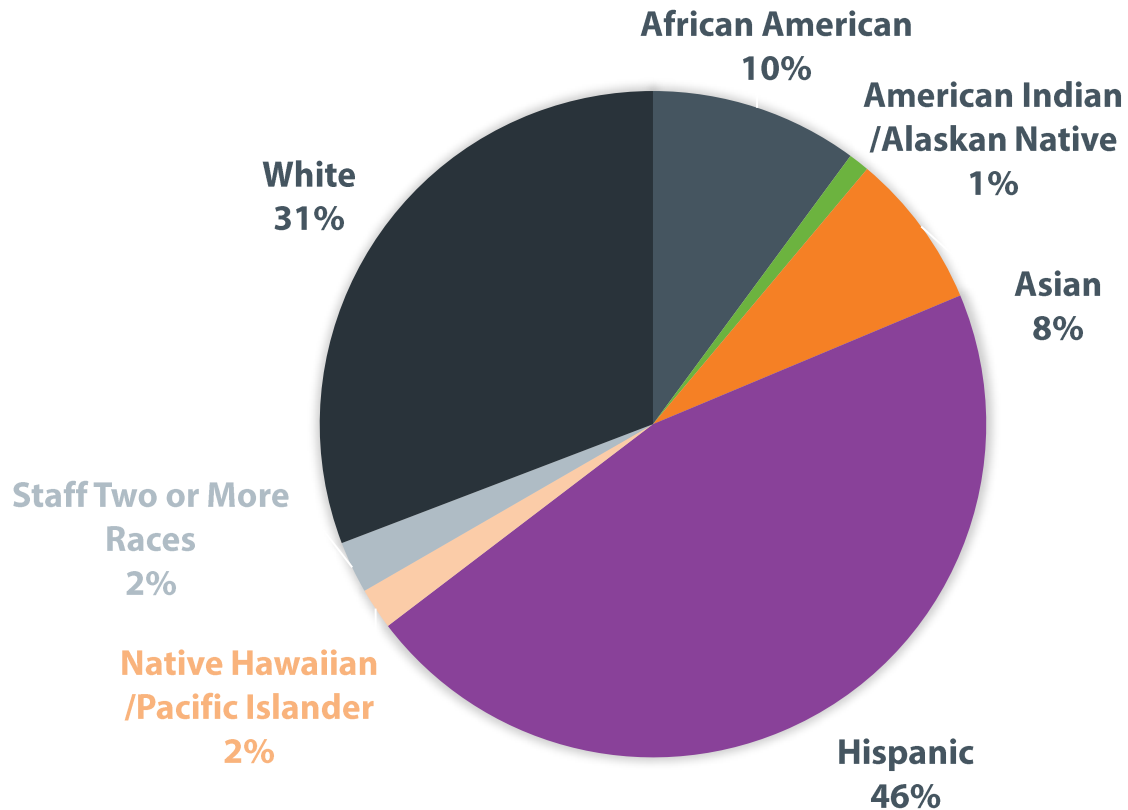
Employee Headcount by Classification



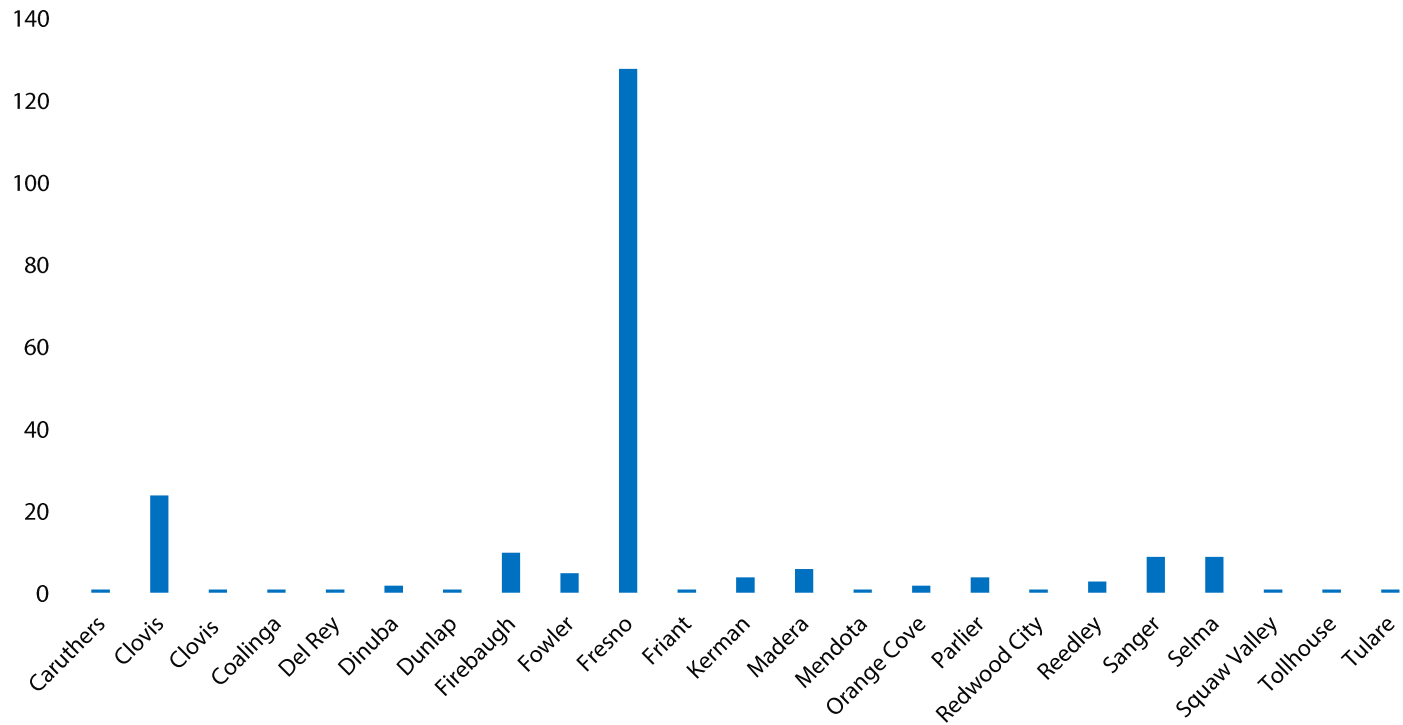
Ethnic Background- Management Team



Ethnic Background- Staff



Where We Live...





What We Do

Our Major Programs

- Assisted Housing (HCV/Section 8):
 - Approx. 13,000 total combined vouchers (7,100 City Vouchers)
 - Over 38,000 program participants
- Veteran, Homeless and Senior Programs:
 - Approx. 371 VASH Vouchers (Veterans)
 - Over 120 units of Permanent Supportive Housing Units (+ 40 Renaissance @PGC)
 - 250 Senior Housing units

Our Major Programs

- Affordable Housing
 - 70 Multi-family housing properties
 - Approx. 3,000 dwelling units
 - Over 12,000 residents
 - 130 Farm Labor households
 - 200 Migrant housing
- Resident Services
 - Education
 - Health and Wellness
 - Wage Progression

Homeless Assistance

- Continuum of Care Funding - \$2.9m
 - Housing Programs - \$2.4m
 - HMIS - \$214,000
 - Community Planning \$338,000
- City of Fresno – HOME TBRA - \$732,000
- County of Fresno DSS – CalWORKs - \$840,000
- Total external resources 4.47million

Demographics

- 659 persons served (422 adults; 237 children)
- Ethnicity
 - 322 Hispanic
 - 336 Non-Hispanic
 - 1 Refused/Don't Know

Demographics

- Race
 - 455 White
 - 173 African American
 - 8 Asian
 - 7 American Indian/Alaskan Native
 - 1 Pacific Islander
 - 14 Multiple Races
 - 1 Refused/Don't Know

Characteristics – PSH

- 59 Veterans
- 215 Mental Health issue
- 168 Substance Use Disorder
- 93 Chronic Health Condition
- 14 HIV/AIDS
- 33 Developmental Disability
- 136 Physical Disability
- Avg length of stay in housing – 1,113 days


Who We Serve



Housing Choice Voucher Program

35,298 residents 

12,138 families 

17,508 children (under 18) 

2,346 seniors (62+) 

\$12,867 

average annual income

Race

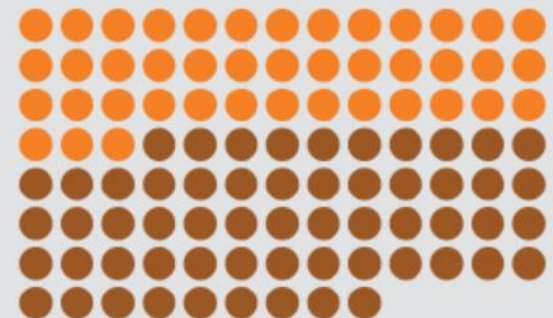


Asian (8%) Black (25%) White (55%)
Native American (1%) Multiple Races (11%)

Ethnicity

48%
Hispanic

Gender



Male (41.54%) Female (58.46%)

Housing Choice Voucher Program

Monthly Adjusted Income

\$1,072

average

\$2

minimum

\$7,840

maximum

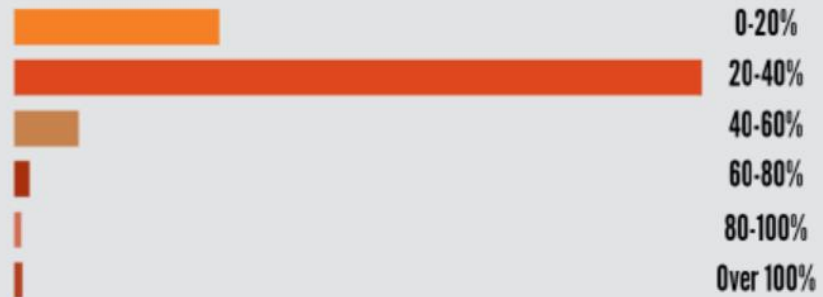
Tenant Rent

\$293

monthly average



Percent of Monthly Adjusted Income Paid To Rent



Housing Choice Voucher Program

City Program



6,900 vouchers

6307 live in City

593 live in County

County Program

5,280 vouchers

4,570 live in City

718 live in County

Where are
vouchers being
used?



■ City (89.24%) ■ County (10.76%)

Inspections

10  inspectors

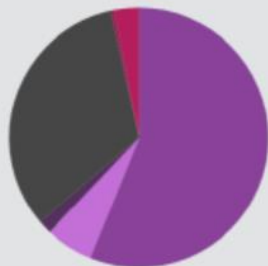
30,421 inspections requested

1,710 abatements

Inspection Result by Type

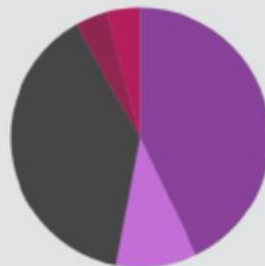
■ Pass ■ Fail ■ Auto-cancel (Move out) ■ Cancel
■ No Entry/Show ■ Inconclusive

Annual



80.8%

Quality Review



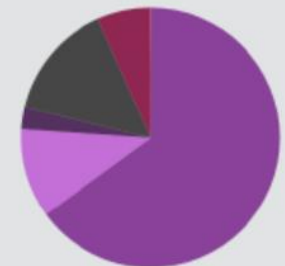
0.7%

Complaint



2.3%

Initial



16.2%

percent of total inspection request

Public Housing

3,479  residents

1,166 families 

1,755 children (under 18)

284 seniors (62+) 

\$13,473 average annual income

\$252 average tenant rent

Race

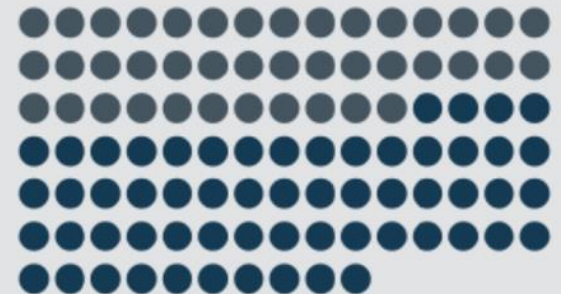


■ Asian (5.69%) ■ Black (14.80%)
■ White (77.67%) ■ Native American (1.52%)
■ Pacific Islander (0.17%) ■ Multiple Races (0.14%)

Ethnicity

56%
Hispanic

Gender



■ Male (41.36%) ■ Female (58.64%)



Resident Services

Education

- Parent Engagement
 - Abriendo Puertas (Opening Doors)
 - Evidence-based parent leadership program. Focuses on cultural values, key strengths, and builds leadership skills & knowledge to promote family well-being
 - 51 residents; 4 sites; 200 hours (not including Helm Home & Cedar Courts)

Reading and Beyond

- 4 year partnership including Boys & Girls Club
- K-3rd literacy intervention and summer reading academy
- 350 children at 10 sites (incl Mendota, OC, Firebaugh)
- Over 5,000 hours of extended learning
- 100% maintain or improve reading based on assessment

Parent University Digital Literacy

- Teach basic computer concepts & skills
- 6 wks, 2x per wk, 2hrs
- 2 sites, 8 cohorts total
- 192 hours total of digital literacy
- Each resident keeps the laptop upon course completion
- 68 completed the course

Health & Wellness

- Healthy Smiles Mobile Dental
 - Partners since 2012
 - 25 housing sites
 - Over 1,400 dental exams (incl preventative & restorative treatment or referrals)
- Centro La Familia
 - Support groups
 - Informational sessions on topics such as Depression & Suicide Prevention, Stress, Anxiety, Mental & Health & Stigma Reduction

Wage Progression

- DigiBus partnership w/FCPL, DSS, & WalMart to provide mobile digital connectivity
 - 4 sites, 2/2 hour sessions, 5x week
 - Total 80 hours of instruction
- Skills Assessment that captures education, interests, & experience. Used for referrals to career readiness opportunities and database for Section 3 recruitment pool.

Questions or Comments?

2017 Agency Goals and Strategic Plan Implementation

Create and sustain vibrant communities throughout Fresno County

Quality housing. Engaged residents. Vibrant communities.

Goal One – PLACE

Develop and expand the availability of quality affordable housing options throughout city and county by growing and preserving appropriate residential assets and increasing housing opportunities for low income residents.

- Design and conduct a housing assessment and a long-term plan with stakeholders, to address housing needs and barriers for various resident populations throughout the City and County of Fresno (e.g. homeless, low-level ex-offenders, mental health, youth, etc.).
- Create a robust, balanced pipeline for development activities that appropriately responds to the needs of the low income residents of Fresno County. A balance of renovation and new construction should focus on existing properties or surrounding neighborhoods, areas of increased economic activity and transit corridors.
- Collaborate with landlords, neighborhood groups and Community Development Corporations (CDCs), and other partners to implement activities and programs that enhance the quality of rental stock across the county and provide a greater range of options for residents with vouchers. Programs should focus on landlord outreach, support and education and target housing options in neighborhoods of opportunity. Research factors or amenities that identify neighborhoods of opportunities and make information available to residents.
- Complete a financial and physical overview of all agency housing assets. Prioritize and develop an asset management strategy and business plan for the key assets utilizing new analytical tools available. Develop a timeline for the completion of a business plan for all key assets.

Goal Two – PEOPLE

Respect community needs and knowledge - by listening, learning, and researching - and respond to issues compassionately, intelligently, and intentionally - by developing exceptional programs based on shared experiences.

- Create and enhanced Customer Service culture particularly in the large program areas of Housing Operations and Housing Programs. With staff, develop customer service training and support tools and determine ways to measure impact.
- Continue to refine and expand Resident Services activities. Conduct an assessment of resident needs and desired services, and create appropriate priorities for the department staff that focus on outcomes. Develop a regular report for the board reflecting progress on 2-4 outcomes for residents. Engage the broader group of staff in assessing the needs of the residents served, in an effort to provide a broader level of support and empathy for our residents, and enhance staff engagement.
- In conjunction with HCV department, develop a pilot program that explores support systems for residents that may program reach income limits. Research reasons why residents leave the HCV program.
- Research and analyze the impact of housing policies, such as Move-To-Work (MTW), Affirmatively Furthering Fair Housing (AFFH), on our residents and the agency.

Goal Three – PUBLIC

Build support for housing as a key component of vibrant, sustainable communities through public information, engagement, and advocacy that promotes high quality affordable housing and supports the advancement of Fresno's low-income residents.

- Further the development of and implementation of a comprehensive communications strategy relative to the ongoing efforts to establish improved HCV owner relations and outreach
- Develop an action plan for enhanced government and community relations with our local jurisdictions and public entities.
- Present an overview of Fresno Housing (similar to the 75th celebration) at one organization, jurisdiction or agency each month.

Goal Four – PARTNERSHIP

Collaborate to strengthen the Housing Authority's ability to address the challenges facing Fresno communities.

- Create 1-2 partnerships with an institution of higher education to develop an evaluation plan that will examine outcomes for the agency and regularly analyze key agency data.
- Pilot a community safety oriented partnership in West Fresno and one county jurisdiction with law enforcement and education partners that focuses on resident safety and engagement.
- Revisit relationship and collaboration opportunities with Fresno Housing affiliate Fresno Housing Education Corps (Ed Corps). In conjunction with the Ed Corps Board and key stakeholders, prioritize 3-5 initiatives that align with FH Resident Services Department.
- Explore opportunities to better utilize relationship with Fresno Housing affiliate, Better Opportunities Builder (BOB) in conjunction with the BOB Board.

Management Goal One – SUSTAINABILITY

(Staffing, Finances, Effectiveness, Evaluation, Technology, Facilities)

Build and maintain an innovative, engaged, visible, and sustainable organization, committed to its mission of providing housing for low-income populations.

- Create a comprehensive employee attraction, training and retention program that addresses key elements of employee satisfaction, as well as other innovative strategies to support and engage employees like daycare, study tours, wellness opportunities, all-staff events, etc.
- Develop a set of meaningful key performance indicators for each department that can begin to create the framework of an agency data dashboard.
- Develop strategies to attract, retain, and/or develop a diverse leadership team, representative of agency values and the populations we serve.
- Continue to implement the Performance Management Program throughout the agency and explore the implementation of Pay For Performance.
- Continue with the implementation of a new Enterprise Management System (EMS) with a significantly improved software solution across all platforms with initial emphasis on improving financial reporting, procurement and contracting accuracy. Regularly report to the board on key system improvements.

Management Goal Two – STRUCTURE

(Governance)

Maintain a committed, active, community-based Board of Commissioners.

- In conjunction with the Board, develop a Board handbook (i.e. orientation tool, administrative overview, agency information) for all board members.
- Succession planning and management is the practice that helps safeguard the stability of tenure of personnel and to ensure the agency is positioned to operate soundly in the event of change. The Boards should update their succession plan for the CEO position and develop a succession plan for key personnel.

Management Goal Three – STRATEGIC OUTREACH

(Image, Visibility, Materials and Tools, Outreach)

Heighten agency visibility; facilitate community dialogue about housing solutions; and build support for the agency and quality affordable housing

- Engage the Fresno community in discussions on housing issues and solutions - expanding the visibility of the Fresno Housing Authority as a key partner and contributor to vibrant communities.
- Produce and distribute three community "newsletters" that address key national housing policy issues and relate it to the local community.