



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Ed Shikada
Jennifer A. Maguire

**SUBJECT: AMERICAN RECOVERY
AND REINVESTMENT ACT
OF 2009 UPDATE AND
APPROPRIATION ACTIONS**

DATE: May 27, 2009

Approved

Christine J. Shuppen

Date

5/27/09

RECOMMENDATION

It is recommended that the City Council:

1. Accept staff's report on the American Recovery and Reinvestment Act of 2009.
2. Adopt a resolution accepting the Recovery Act 2009 Internet Crimes Against Children Task Force Program Grant in the amount of \$863,930 and authorizing the City Manager to execute the Grant Agreement and all related documents.
3. Adopt the following amendments to the 2009-2010 Proposed Capital Budget in the Construction Excise Tax Fund (465):
 - a. Establish an estimate for Recovery Act – State Revenue in the amount of \$15,139,200; and
 - b. Establish a Recovery Act – Street Resurfacing and Rehabilitation appropriation to the Transportation Department in the amount of \$15,139,200.
4. Adopt the following amendments to the 2009-2010 Proposed Operating Budget in the Edward Byrne Memorial Justice Assistance Grant Trust Fund (474):
 - a. Establish an estimate for Recovery Act – Federal Revenue in the amount of \$1,353,687; and
 - b. Establish a Recovery Act – Justice Assistance Grant Spending Plan appropriation to the Police Department in the amount of \$1,353,687.
5. Adopt the following amendments to the 2009-2010 Proposed Operating Budget in the General Fund (001):
 - a. Establish an estimate for Recovery Act – Federal Revenue in the amount of \$9,703,990;
 - b. Increase the estimate for Transfers and Reimbursements in the amount of \$500,000;

- c. Establish a Capital appropriation for Recovery Act – Energy Efficiency and Conservation Block Grant to the Environmental Services Department in the amount of \$8,840,060;
- d. Establish a City-wide appropriation for American Recovery and Reinvestment Act of 2009 Administration to the City Manager’s Office in the amount of \$500,000; and
- e. Establish a City-wide appropriation to the Police Department for the Recovery Act 2009 Internet Crimes Against Children Task Force Program in the amount of \$863,930.

BACKGROUND

The American Recovery and Reinvestment Act (Act) of 2009 (Recovery Act) was signed by President Obama on February 17, 2009 and provided a large, one-time domestic spending package along with tax relief measures to help stimulate the nation’s faltering economy.

ANALYSIS

The following discussion provides a status update regarding potential Recovery Act funding allocations to the City of San José and guidance regarding the allocation of administration costs to meet federal reporting and oversight requirements.

Airport

The Airport Improvement Program (AIP) provides grants to public agencies for eligible airport improvements and procurement, installation and commissioning of runway incursion devices and systems. An application for \$6 million in AIP Recovery Act funding for the Taxiway W Phase 1 project has been submitted to the Federal Aviation Administration (FAA). The FAA has already allocated \$2 million of AIP funding to this project and has agreed to consider allocating \$6 million of additional AIP funding through the Recovery Act for a total of \$8 million. Bids for the project are expected in late-June. The amount of Recovery funds awarded and the Airport local share will be determined at that time. Recovery Act funding is also anticipated for the Baggage Explosive Detection System and Airport staff is currently in discussion with the Transportation Security Administration (TSA) on the exact amount of funding. The Recovery Act appropriated funding to the TSA to award discretionary grants to airports for purposes of procuring and installing checked baggage explosive detections systems and check-point explosives detection equipment.

In January 2009, Council adopted Resolution #74762, delegating authority to the Director of Aviation to accept Recovery Act grant funds, up to a maximum of \$100.5 million, from the FAA for the Taxiway W Phase 1 project. Although the Council Resolution pre-dates the enactment of the Recovery Act, the delegation took into consideration the anticipated passage of the Recovery Act and was intended to cover any Recovery Act funds that might be available from the FAA. In March 2009, Council adopted Resolution #74847, delegating authority to the City Manager to negotiate and execute an Other Transaction Agreement with the TSA for the Baggage Explosive Detection System.

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Energy

The Recovery Act appropriated funding for the U. S. Department of Energy (DOE) to award formula-based grants to States, U.S. territories, units of local government and Indian tribes under the Energy Efficiency and Conservation Block Grant (Energy Block Grant) Program. The Energy Block Program provides funding assistance to reduce fossil fuel emissions and total energy use as well as provide for programs that improve energy efficiency. Of the total \$3.2 billion in the Energy Block Grant, \$2.8 billion is being distributed through formula allocation grants that are based on population. The remaining \$400 million will be distributed through competitive grants. The formula allocation for the City of San José is \$8,840,060. In addition to the Energy Block Grant, DOE has other competitive funding programs that City projects would be eligible for, however, at this time, guidance on these programs, as well as the competitive portion of the Energy Block Grant, is still pending.

The City of San José's proposed plan for the \$8,840,060 and authorization for the City Manager to make the grant application and execute the grant agreement is recommended for Council consideration at the June 2, 2009 City Council meeting. The grant application is due on June 25, 2009. In order to ensure funding is available for expenditure in 2009-2010, the appropriation of funds is being recommended in this memorandum.

Housing

Under the Recovery Act, San José will receive a one-time allocation of \$4,128,763 for a new program called the Homeless Prevention and Rapid Re-housing Program (HPRRP) and \$2,700,463 for the Community Development Block Grant program. These funds are distributed through existing formulas established by the U.S. Department of Housing and Urban Development (HUD). The program specifics are highlighted below.

- *Homeless Prevention and Rapid Re-housing Program (HPRRP)* - The Homelessness Prevention Fund is a new program created by HUD, to provide financial assistance and services to prevent individuals and families from becoming homeless and help those who are experiencing homelessness to be quickly re-housed and stabilized.
- *Community Development Block Grant recovery program (CDBG-R)* - In accordance with the Recovery Act, CDBG funds must be used for the preservation and creation of jobs, provide investment needed to increase economic efficiency, minimize or avoid reductions in essential services, or foster energy independence primarily for persons of low and moderate income.

The appropriation of funds and discussion of these programs were approved by the City Council on May 12, 2009. Additional information will be provided for the June 2, 2009 City Council meeting.

Public Safety

The City anticipates receiving \$1.3 million in Recovery Act funding from the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. The JAG Program provides formula-based grants that allow states and local governments to support a broad range of activities to prevent

and control crime. These funds are extremely flexible and can be used to pay for programs, equipment and technology improvements. JAG funding will be used to fund the Police Department's Automated Field Reporting/Records Management System, as presented to Council on April 28, 2009. Appropriation actions are included in this memorandum in order to ensure funds are available in 2009-2010.

The Police Department has been awarded \$863,930 for the FY 2009 Internet Crimes Against Children (ICAC) Task Force Program. The ICAC Task Force Program provides for grant funding to support state and local law enforcement attempts to address technology facilitated child exploitation. Funds awarded to the City will be used to hire a civilian Forensic Investigator and a Grants Analyst II, provide forensic training to the Forensic Investigator, and provide computer hardware and software necessary for the Forensic Investigator and Grants Analyst II to perform job duties.

Transportation

The table below summarizes Recovery Act funding allocations coming to the City or to another regional agency for projects that benefit the City and region. The Recovery Act appropriated funds to support the restoration, repair and construction of transportation infrastructure, as well as to invest in the expansion of public transportation systems such as high speed rail, and bus rapid transit. Recovery Act funds allocated to the State of California were sub-allocated using existing formula allocations for projects in the Bay Area region. San José's allocation includes \$15.1 million for street resurfacing and rehabilitation and the Phase 1 project in the amount of \$12.7 million is anticipated to be awarded at the June 30, 2009 City Council meeting. The appropriation of these funds, in order to meet the funding deadlines, is recommended as part of this memorandum. In addition to the projects shown below, other potential projects that may be funded through discretionary or competitive grants include high speed rail, BART, transportation electrification, and LED streetlights.

Funding Allocations

Program	San José Interests
Surface Transportation Program (MTC Discretion)	<ul style="list-style-type: none"> ▪ \$12.7M (Phase 1) and \$2.44M (Phase 2) for San José Local Street Pavement Maintenance ▪ \$3.1M for Montague Expwy Resurfacing - River Oaks to 880 (County is lead) ▪ \$12.0M for Route 280 Ramp Metering between 880 and 87 (Caltrans is lead)
Transit Program (MTC Discretion)	<ul style="list-style-type: none"> ▪ \$47.2M for 107 new VTA Hybrid Buses ▪ \$0.2M for VTA bus maintenance
Surface Transportation Program (Caltrans Discretion)	<ul style="list-style-type: none"> ▪ \$33.0M for Route 280 Pavement Maintenance between 880 and Lawrence Expwy (Caltrans is lead) ▪ \$6.0M for 237/880 HOT Lane Connector Ramps (VTA is lead)

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Workforce Investment Act (WIA) Grants

The Recovery Act appropriated funding for employment, job placement, counseling and training services for adult, youth and dislocated worker clients. Implementation of funds allocated by the Recovery Act is governed under the existing WIA Act of 1998 and the current Training and Employment Guidance Letter (TEGL) No. 14-08, OMB circulars, and State Directives. The work2future program was awarded total Recovery Act funding in the amount of \$11,857,306 allocated as detailed below:

Term	WIA – Recovery Act	Amount
02/17/09 to 06/30/11	Adult Program	\$2,026,103
02/17/09 to 06/30/11	Youth Program	\$4,744,413
02/17/09 to 06/30/11	Dislocated Worker Program	\$4,448,400
02/17/09 to 06/30/11	Rapid Response Program	\$ 638,390

Appropriation actions and further detail regarding federal WIA Recovery Act allocations is anticipated to be brought forward for City Council consideration as part of the June 23, 2009 City Council meeting.

Recovery Act Administration Costs

According to a May 11, 2009 Federal Office of Management and Budget (OMB) memorandum, central administrative costs incurred by recipients in the management and administration of Recovery Act programs are allowable costs under the current guidance of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments. Generally, these costs are recovered as indirect costs to the programs. The methodology used to reimburse recipients for central administrative costs is also captured in the indirect cost rates provided for in OMB Circular A-87. Although the memo is directed at State governments, OMB Circular A-87 also applies to local governments and the City's Finance Department uses Circular A-87 to develop the City's Grant Cost Allocation Plan.

Guidance from several grants have indicated administrative caps of 5%-10% and in some formula grant cases, allow for the collection of overhead currently charged to programs (e.g. Workforce Investment Act). Administrative costs do not include direct program costs and are intended to cover all indirect costs that help the implementation, tracking and reporting of the Recovery Act projects. As directed in the Mayor's March Budget Message and approved by the City Council, it is recommended that overhead collected in the General Fund would reimburse and/or provide funding to the City for activities related to monitoring of Recovery Act funds, meeting federal reporting requirements, accounting, budget, and audit services. Because of the extraordinarily high amount of accountability and transparency required by the Recovery Act, substantial internal controls and support systems will be in place to ensure the highest degree of compliance.

Direct control and support functions include:

- Interdepartmental coordination and oversight by the City Manager's Office;

- Accounting and cash flow planning by the Finance Department and the Budget Office;
- Technical support by Information Technology and City Manager's Office to satisfy transparency requirements through a comprehensive project database and website
- Comprehensive and frequent audits by the Auditor's office to ensure no fraud, waste or abuse of funds

Indirect support functions include:

- Public Outreach and Notification by the Clerk's Office

Staff is recommending establishing a City-Wide Expenses Recovery Act Administration appropriation to the City Manager's Office in the amount of \$500,000, to be used to support the administrative functions listed above. To ensure the necessary administrative support and oversight levels, limited term over strength positions will be used, as needed. At this time, \$500,000 is proposed as a placeholder estimate for administrative costs, pending the development of the cost allocation plan and administrative cost rate for the individual programs. As stated above all administrative costs will be assessed in accordance with the OMB Circular A-87 as well as guidance from the individual Recovery Act programs.

On April 30, 2009, the Chairman of the U.S. House of Representatives Committee on Oversight and Government Reform introduced the "Enhanced Oversight of State and Local Economic Recovery Act" (H.R. 2182) to provide state and local governments the ability to use stimulus funds in their efforts to meet the Recovery Act oversight provisions. The bill was passed by the House on May 19 and will now be referred to the Senate Homeland Security and Governmental Affairs Committee. If passed and signed by the President, the bill would allow State and local governments receiving Recovery Act funds to set aside an amount up to 0.5 percent of such funds, in addition to any funds already allocated to administrative expenditures, to conduct planning and oversight to prevent and detect waste, fraud, and abuse.

Accountability and Transparency

As stated above, the Recovery Act calls for an unprecedented level of accountability and transparency in the use of Recovery Act funding. Staff is setting up internal control systems to ensure compliance with these requirements. All projects being advanced for Recovery Act funding will be reviewed and vetted by the Program Lead (Senior Staff) to ensure appropriate use of tax dollars. All infrastructure investments will be further certified by the City Manager and posted on the City's Recovery Act website, per the Recovery Act requirements, at the following URL: <http://www.sanjoseca.gov/recoveryact>.

A weekly Recovery Act check-in meeting led by the City Manager's Office, has been scheduled with all Program Leads to ensure timely coordination on projects. Financial controls to ensure separate accounting and prevent co-mingling of Recovery Act funding, are being put in place. A central project tracking and reporting system, which is currently being developed, will be used to track all capital and non-capital projects receiving Recovery Act funding. Detailed quarterly reports will be provided to the appropriate Federal, State and/or Regional granting agency and

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posted on the City's Recovery Act website within the required 10 day period after the close of every quarter.

COORDINATION

This memorandum was coordinated with the City Auditor's Office; Office of Economic Development; and the Airport, Housing, Finance, Environmental Services and Transportation Departments.

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