



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: September 6, 2022

Approved

Date

SUBJECT: FIRST SUBSTANTIAL AMENDMENT TO THE FISCAL YEAR 2022-23 ANNUAL ACTION PLAN FOR TRANSFER OF NEIGHBORHOOD STABILIZATION PROGRAM INCOME FUNDS TO COMMUNITY DEVELOPMENT BLOCK GRANT FOR ELIGIBLE USES

RECOMMENDATION

- (a) Hold a public hearing to allow for public comment.
- (b) Adopt a resolution relating to the following actions regarding a first amendment to the existing Fiscal Year 2022-23 Annual Action Plan that includes changes to the federal Neighborhood Stabilization Program (NSP1) and the Community Development Block Grant (CDBG) to the City:
 - (1) Approve the following changes relating to the Substantial Amendment to the FY 2022-23 Annual Action Plan to:
 - i. Decrease NSP1 program income funds by \$584,220 and redirect funds to CDBG eligible uses.
 - ii. Increase CDBG program income funds by \$584,220 and apply funds to other CDBG eligible uses.
 - (2) Authorize the City's Housing Department to submit the Substantial Amendment to the U.S, Department of Housing and Urban Development (HUD); and,
 - (3) Authorize the Director of Housing to negotiate and execute agreements with grantees for the activities identified in these Annual Action Plan amendments and all related contract amendments, extensions, and changes.

- (c) Adopt the following 2022-23 Appropriation Ordinance Amendments in the Multi-Source Housing Fund:
 - (1) Decrease the Unrestricted Ending Fund Balance by \$584,220; and,
 - (2) Establish a Transfer to the Community Development Block Grant Fund in the amount of \$584,220.

- (d) Adopt the following 2022-23 Appropriation Ordinance Amendments in the Community Development Block Grant Fund:
 - (1) Establish a Transfer from the Multi-Source Housing Fund in the amount of \$584,220; and,
 - (2) Increase the Housing Program Development and Monitoring appropriation to the Housing Department by \$116,844; and,
 - (3) Increase the Contractual Community Services appropriation to the Housing Department by \$87,633; and,
 - (4) Increase the Neighborhood Infrastructure Improvements appropriation to the Housing Department by \$379,743.

OUTCOME

Pursuant to the Citizen Participation Plan¹, this is the second public hearing providing the public opportunity to comment on the proposed amendment to the City of San José's (City) Fiscal Year (FY) 2022-23 Annual Action Plan (Action Plan). The first publicly noticed hearing on the proposed amendments was held on September 8, 2022, before the Housing and Community Development Commission (Commission).

This Substantial Amendment to the Action Plan enables the City to use program income made available through the Neighborhood Stabilization Program, funded by the Housing Economic Recovery Act of 2008 (NSP1) to be spent in FY 2022-23 on CDBG eligible uses.

EXECUTIVE SUMMARY

This is the first amendment to the City's FY 2022-23 Action Plan approved by City Council at the August 9, 2022, Council Meeting. The Action Plans govern the expenditure of entitlement funds and competitive grants that the City receives from the HUD. The purpose of the amendment is to transfer NSP1 program income funds to CDBG program income as authorized and approved by HUD.² Once transferred to CDBG, all statutory and regulatory provisions governing CDBG program income will apply to the NSP1 transferred funds.

¹ City of San José, *Citizen Participation Plan*, amended Aug. 4, 2020, <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/hud-reports/consolidated-annual-action-plans/citizen-participation-plan>

² Notice of the Neighborhood Stabilization Program: Changes to Closeout Requirements related to Program Income (Program Income Notice) published June 14, 2016 (FR 5933-N-01)

The City proposes to use the NSP1 transferred funds for CDBG eligible uses of public service, community development and administration.

BACKGROUND

This is the first amendment to the City's FY 2022-23 Action Plan. The purpose of the amendment is to reallocate NSP1 program income funds to CDBG program income for CDBG eligible uses. The U.S. Congress has discontinued funding the Neighborhood Stabilization Programs and NSP recipients are in the process of closing out their programs. In June 2022, the Housing Department initiated the NSP1 closeout process that will be completed in the 2022-23 fiscal year.

In 2009 and under the Housing Economic Recovery Act of 2008 (HERA), the City was awarded a \$5,628,283 grant to mitigate the impacts of the foreclosure crisis. The City successfully acquired and resold/rented to income eligible households, 14 owner-occupied single-family residences and two 4-plex buildings. The Program generated \$3,127,329 in program income, of which \$2,543,108 was re-invested into the program. Under NSP regulations, program income received before, at the time of or after closeout may be transferred to an annual CDBG program and the transferred funds will become CDBG program income and shall be subject to CDBG statutory and regulatory requirements for CDBG program income.

HUD recognizes that some grantees no longer have an adequate pool of NSP-eligible foreclosed or abandoned properties in the specified targeted areas, although there are other community needs that CDBG funding could be used to address. In this current housing market, it has been difficult to identify an NSP eligible property to acquire, rehab and resell with these limited available funds. Therefore, the City has decided to convert and use these funds under CDBG eligible uses to utilize these funds more effectively for community benefit under the CDBG funding categories of; 1) Public Services, 2) Community Development, and 3) Administration. The CDBG program fund balance for FY 2022-23 will be increased by the \$584,220 transferred NSP program income, allowing for increased community impact and benefit.

All entitlement jurisdictions such as San José that receive HUD's federal funds by formula allocation are required to have an adopted Citizen Participation Plan (CPP). San José's Citizen Participation Plan describes the efforts that the City will take to encourage its residents to participate in developing federal spending plans. It also provides requirements for the public process to be used when a "Substantial Amendment" to programs funded in an Action Plan is proposed. Per the City's CPP, a Substantial Amendment constitutes a change to a previously adopted Five-Year Plan or Annual Plan that:

- Increases or decreases by the greater of \$100,000 or a 25% change in the amount allocated to a category of funding, or
- Makes a significant change to an activity's proposed beneficiaries or persons served, or
- Funds a new activity not previously described in the Action Plan.

When a proposed change in program funding reaches one of these thresholds, the City must comply with the public process required in the CPP for Substantial Amendments, which includes

a 30-day public comment period and two public hearings. The City's CPP requires at least two public hearings to give the citizens of San José an opportunity to provide feedback on the proposed actions. Public hearings may be conducted virtually.

Staff published official notices required by HUD in the *Mercury News*, of the public meetings and 30-day public review period. These notices were translated into Spanish, Vietnamese, Chinese, and Tagalog and were published in the *El Observador*, *Vietnam Daily News*, *World Journal*, and *the Asian Journal* newspapers. City staff also sent e-mail announcements of the public hearings on the Substantial Amendment and ways to submit comments to over 2,600 organizations and individuals concerned about affordable housing public services and community development issues. The e-blasts were also posted on the Housing Department's website at www.sjhousing.org, and were turned into news briefs that were automatically sent to media outlets.

In addition to submitting directly to staff, comments can be submitted prior to the City Council hearing via a link on the City Council's agenda webpage, as well as by e-mail to the City Clerk (city.clerk@sanjoseca.gov) by 12:00 noon on the day of the hearing. During the hearing, comments can be submitted via eComment on the City's agenda webpage as well as by emailing councilmeeting@sanjoseca.gov and identifying the agenda item number in the subject line.

Staff will include all public comments provided to the City both verbally and in writing together with staff's responses when staff submits the Substantial Amendment to the HUD.

ANALYSIS

In 2009 and under HERA of 2008, as an entitlement city, the City of San José was awarded a \$5,628,283 grant to mitigate the impacts of the foreclosure crisis in hardest hit census tracts. Between 2009 and 2012, the City acquired, rehabilitated, and sold to income eligible households, 14 owner-occupied single-family residences. The resale of these units generated \$3,127,329 in program income, of which \$2,543,108 was re-invested into the program leaving an unused program income balance of \$584,220. Under NSP regulations cited above, program income received before, at the time of or after closeout may be transferred to an annual CDBG program and the transferred funds will become CDBG program income and shall be subject to CDBG statutory and regulatory requirements for CDBG program income.

The City's FY 2022-23 Action Plan is being amended for the following reasons:

- Transfer NSP program income to CDBG program income and subject to CDBG program income regulations,
- Increase the FY 2022-23 CDBG fund by \$584,220 and distribute as outlined in **Table 1** below.
- Decrease the NSP1 fund by \$584,220.

The proposed changes to the City’s FY 2022-23 Action Plan qualify as Substantial Amendment because they meet the HUD criteria of making a significant change to the NSP program budget. The closure of the NSP1 program and the transfer of funds to CDBG meet HUD’s substantial amendment requirements as outlined in the BACKGROUND section above.

Table 1: Proposed Funding Changes - Additions

Funding Source	Activities	Approved	Change	Proposed New Budget
CDBG	Public Service	\$1,328,190	\$87,633	\$1,415,823
	Community Development	\$9,415,202	\$379,743	\$9,794,945
	Administration	\$1,770,921	\$116,844	\$1,887,765
		\$12,514,313	\$584,220	\$13,098,533

Public Service – The Housing Department is proposing to increase this activity by \$87,633, or 15% of the NSP transferred funds to offset the 4.9% decrease in the 2022-23 CDBG allocation. These funds are consistent with CDBG guidelines and will bring public service programs back to FY 2021-22 levels.

Community Development – The Housing Department is proposing to increase this activity by \$379,743 to supplement the Nonprofit Facility Rehabilitation program, providing additional funding in this category to support the projects identified in the Mayor’s 2022 Budget Message. These funds are consistent with CDBG guidelines.

Administration – The Housing Department proposes to increase this activity by \$116,844, or 20% of the transferred NSP program income funds, and is consistent with CDBG guidelines under this funding category.

The changes to specific projects/programs are provided in Attachment A and are summarized in **Table 2** below. These transferred NSP1 funds will bring five Public Service programs to the FY 2021-22 funding level. As proposed in the August 9, 2022, Supplemental Memo to City Council.³ there remained an additional \$12,850. To promote community leadership, these additional funds are being added to the Neighborhood Engagement programs: \$5,000 to CommUnivCity and \$7,850 to SOMOS Mayfair.

³ Memo to City Council August 9, 2022 item 8.3:

<https://www.sanjoseca.gov/home/showpublisheddocument/88675/637962415499600000>

Table 2 – CDBG Proposed Changes

Activity	Agency	Program	Previously Approved Amount	NEW Proposed Amount
Legal Services	SJ Housing Rights Consortium	Legal services for low-income tenants and landlords	\$454,730	\$475,115
Neighborhood Engagement	SOMOS Mayfair	Home Grown Talent Project	\$118,875*	\$157,850
Neighborhood Engagement	CommUnivCity	Community Leadership Development	\$71,325	\$80,000
Services for Homeless	HomeFirst	Citywide Street Outreach	\$380,385	\$399,983
Fair Housing	Law Foundation Silicon Valley	Fair Housing Services	\$190,200	\$200,000
CBO Acquisition, Rehab, & Public Facilities Projects	TBD CBO	Community-servicing facilities rehabilitation	\$1,300,003	\$1,679,746
Administration	SJ Housing	N/A	\$1,580,721	\$1,687,765
		Total	\$4,096,239	\$4,680,459

**There was a mathematical error in the staff report dated July 26, 2022, resulting in a larger decrease than 4.9% for SOMOS Mayfair.*

CONCLUSION

The proposed First Substantial Amendment to the Action Plan enables the City to use NSP1 program income funding that has accumulated since program completion in 2019. In this current housing market, these funds do not provide an adequate pool of funding to acquire and rehabilitate prior to resale, of a foreclosed or abandoned property. It has been determined that, once converted to CDBG, there are other community needs that could be addressed with these idle funds. Additionally, the administrative oversight of the NSP1 program will be decreased after program closeout.

EVALUATION AND FOLLOW-UP

After the City Council public hearing, staff will submit the Substantial Amendment and the record of public comments to the HUD for approval. Progress is reported to the public and City Council in the Consolidated Annual Performance Evaluation Report (CAPER).

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum has been posted on the City's website for approval by the City Council on September 27, 2022. The Substantial Amendment is also posted on the Housing Department's website at www.sanjoseca.gov/housingconplan. Staff published official notices required by HUD in *The Mercury News* of the public meetings. These notices were translated into Spanish, Vietnamese, Chinese, and Tagalog and also were published in *the El Observador*, *Vietnam Daily News*, *World Journal*, and *the Asian Journal newspapers*. City staff also sent e-mail announcements of the public hearings on the Substantial Amendment to over 2,600 organizations and individuals concerned about affordable housing and community development issues. The e-blasts were also posted on the Housing Department's website at www.sjhousing.org, and were turned into news briefs that were automatically sent to media outlets.

Comments will be accepted prior to the hearing via a link on the City Council's agenda webpage as well as by e-mail to the City Clerk (city.clerk@sanjoseca.gov) by 12:00 p.m. the day of the hearing. All public comments provided to the City both verbally and in writing will be included in the appendices of the Substantial Amendment together with staff's responses when the document is submitted to the HUD.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item was heard by the Commission a hybrid meeting on September 8, 2022, at 5:45 p.m. A supplemental memorandum will be published with the comments from this hearing.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *Consolidated Plan 2020-25* and with the City's Adopted *Housing Element 2024-2026*, in that the action provides services to very low-income households. It also furthers the advancement of the *Community Plan to End Homelessness* approved by the City Council in August 2020.

COST SUMMARY/IMPLICATIONS

The NSP1 Fund (304) is a memo fund to the Multi-Source Housing Fund (448). Activities in this memo fund have been discontinued for several fiscal years and the remaining income has been released into the Ending Fund Balance of the Multi-Source Fund to facilitate the close out process of this federal program. The recommended actions in this memorandum reallocate \$584,220 in previously programmed federal NSP1 program income funds in the Multi-Source Housing Fund to CDBG to increase services to the community and enable the Housing Department to complete the NSP1 program closeout process with the HUD. The actions recommended in this memorandum have no impact on the General Fund and meet federal NSP requirements.

BUDGET REFERENCE

The table below identifies the funds and appropriations proposed to fund the actions recommended as part of this memorandum.

Fund #	Appn. #	Appn. Name	Total Appn.	Rec. Budget Action	2022-2023 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
448	8999	Unrestricted Ending Fund Balance	\$9,359,080	(\$584,220)	912	6/21/2022 Ord. No. 30790
448	R003	Transfers & Reimbursements	\$0	(\$585,220)	N/A	N/A
441	R003	Transfers & Reimbursements		\$585,220	N/A	N/A
441	0055	Contractual Community Services	\$2,175,191	\$87,633	855	6/21/2022 Ord. No. 30790
441	2246	Housing Program Development and Monitoring	\$1,437,599	\$116,844	855	6/21/2022 Ord. No. 30790
441	7482	Neighborhood Infrastructure Improvements	\$0	\$379,743	855	6/21/2022 Ord. No. 30790

HONORABLE MAYOR AND CITY COUNCIL

August ##, 2022

Subject: First Substantial Amendment to the FY 2022-23 Annual Action Plan

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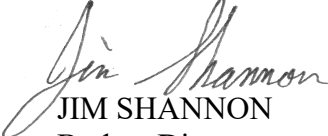
* The 2022-2023 Proposed Operating Budget, as modified by the Mayor's June Budget Message for 2022-2023 and Manager's Budget Addendum #43, Adoption of the 2022-2023 Operating and Capital Budgets, was adopted on June 21, 2022.

CEQA

Not a Project, File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment.

/s/

JACKY MORALES-FERRAND
Director of Housing


JIM SHANNON
Budget Director

The primary author of this memorandum is Sandra Murillo, Senior Development Officer. For questions, please contact Ragan Henninger, Deputy Director at ragan.henninger@sanjoseca.gov.

Attachment A: First Substantial Amendment to the FY 2022-23 Action plan

Attachment A

First Substantial Amendment to the FY 2022-23 Action Plan

SUMMARY

The following is a summary and draft language that amends the FY 2022-23 Annual Action Plan.

Background

This is a proposed first amendment to the City's FY 2022-23 Annual Action Plan. The purpose of the amendment is to reallocate NSP1 program income funds to CDBG program income for CDBG eligible uses. In June 2022, the Housing Department initiated the NSP1 closeout process that will be completed in the 2022-23 fiscal year.

The City's Annual Action Plan details its funding strategy for the Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG), HOME Investment Partnership (HOME), and Housing Opportunities for People with AIDS (HOPWA) programs each year. Annual Action Plans implement a jurisdiction's Five-Year Consolidated Plan and are developed through public input, analysis, and planning. The Action Plan provides spending caps for the different programs or services funded by federal funds.

Substantial Amendment is Needed

All entitlement jurisdictions such as San José that receive HUD's federal funds by formula allocation are required to have an adopted Citizen Participation Plan. San José's Citizen Participation Plan¹ describes the efforts that the City will take to encourage its residents to participate in developing federal spending plans. It also provides requirements for the public process to be used when a "Substantial Amendment" to programs funded in the Annual Action Plan is proposed. Per the City's Citizen Participation Plan (CPP), a substantial amendment constitutes a change to a previously adopted Five-Year Plan or Annual Plan that:

- Increases or decreases by the greater of \$100,000 or a 25% change in the amount allocated to a category of funding, or
- Makes a significant change to an activity's proposed beneficiaries or persons served, or
- Funds a new activity not previously described in the Action Plan.

The proposed changes to the City's FY 2022-23 Action Plan qualify as Substantial Amendment because they meet the HUD criteria of making a significant change to a program's budget. The closure of the NSP1 program and the transfer of funds to CDBG meet HUD's substantial amendment requirements.

Proposed Amendment

This proposed Substantial Amendment redirects NSP1 program income funds as follows:

1. Beginning on page 48 of the approved FY 2022-23 Annual Action Plan, amend the estimated amount of CDBG and Activities in section AP-38 Project Summary, as follows:

**Table 1 – Project Summary
FY 2022-23 Funding Directed to CDBG**

Fund	Allocation	Total Estimated Resources
CDBG	\$8,454,606	\$12,514,313
NSP1 Transfer	\$584,220	\$584,220
Total	\$9,038,826	\$13,098,533

Table 2 – Proposed Funding Changes - Additions/Reductions

Funding Source	Activities	Approved	Change	New Funding Level
NSP1	Decrease	\$584,220	(\$584,220)	0
CDBG	Administration	\$1,770,921	\$116,844	\$1,887,765
	Public Service	\$1,328,190	\$87,633	\$1,415,823
	Community Development	\$9,415,202	\$379,743	\$9,794,945

AP-38 Projects Summary
Project Summary Information
Table 1 – Project Summary

#	Project Name	Target Area	Needs Addressed	Previously Proposed Amount	NEW Proposed Amount	GOI
1	Public Service: Neighborhood Engagement-Home Grown Talent/SOMOS Mayfair	N/A	Strengthen and Stabilize Communities	\$118,875	\$157,850	200
1	Public Service: Neighborhood Engagement Community Leadership Development /CommUniverCity	N/A	Strengthen and Stabilize Communities	\$71,325	\$80,000	64
2	Public Service: Services for Homeless and Unhoused	N/A	Homelessness Strengthen and Stabilize Communities	\$380,385	\$399,983	30 Persons Assisted 310 Outreached
3	Legal Services for Low-income Tenants and Landlords	N/A	Strengthen and Stabilize Communities	\$454,730	\$475,115	300 Persons Assisted
8	CDI: CBO Acquisition, Rehabilitation, & Public Facilities Projects	LMI	Community-serving facilities Rehabilitation	\$1,300,003	\$1,679,746	TBD
15	Administration – Fair Housing	LMI	Fair Housing	\$190,200	\$200,000	220 Persons Assisted
15	Administration	N/A	N/A	\$1,580,721	\$1,687,765	TBD