



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand  
Jim Shannon

**SUBJECT: SEE BELOW**

**DATE:** January 9, 2023

Approved

Date

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**SUBJECT: FIRST SUBSTANTIAL AMENDMENT TO THE FISCAL YEAR 2022-2023 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 2022-2023 Annual Action Plan that includes changes to the federal Neighborhood Stabilization Program and the Community Development Block Grant to the City of San José (City):
  - (1) Approve the following changes relating to the Substantial Amendment to the Fiscal Year 2022-2023 Annual Action Plan to:
    - i. Decrease NSP1 program income funds by \$584,220 and redirect funds to Community Development Block Grant eligible uses.
    - ii. Increase Community Development Block Grant program income funds by \$584,220 and apply funds to other Community Development Block Grant eligible uses.
  - (2) Authorize the Housing Department to submit the Substantial Amendment to the U.S. Department of Housing and Urban Development ; and,
  - (3) Authorize the City Manager or her designee 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 Fiscal Year 2022-2023 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 Fiscal Year 2022-2023 Appropriation Ordinance amendments in the Community Development Block Grant Fund:
  - (1) Establish an estimate for Revenue from Transfers and Reimbursements in the amount of \$584,220;
  - (2) Increase the Housing Program Development and Monitoring appropriation to the Housing Department by \$116,844;
  - (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**

As required by the Citizen Participation Plan<sup>1</sup>, this is the second public hearing to provide the public an opportunity to comment on the proposed amendment to the Fiscal Year 2022-2023 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 .

This substantial amendment to the Action Plan enables the City to use loan repayments originally funded with Neighborhood Stabilization Program (NSP1) dollars, f to be spent in Fiscal Year 2022-2023 on Community Development Block Grant (CDBG) eligible uses.

## **EXECUTIVE SUMMARY**

This is the first amendment to the Action Plan approved by the City Council at the August 9, 2022, Council Meeting. The Action Plan governs the expenditure of entitlement funds and competitive grants that the City receives from the U.S. Department of Housing and Urban Development (HUD). The purpose of the amendment is to transfer NSP1 program income funds to CDBG program income <sup>2</sup>and approved by HUD. ~~Program income~~ Program income are loan repayments. Once transferred to CDBG, all statutory and regulatory provisions governing CDBG program income will apply to the NSP1 transferred funds.

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<sup>1</sup> 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>

<sup>2</sup> 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)

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

## **BACKGROUND**

In 2009, under the Housing Economic Recovery Act of 2008, the City was awarded a \$5,628,283 grant to mitigate the impacts of the 2008 to 2010 foreclosure crisis. The City successfully acquired and resold or rented 14 owner-occupied, single-family residences and two fourplex apartment buildings to income-eligible households. The program generated \$3,127,329 in program income, of which \$2,543,108 was re-invested into the program. Program income are funds directly generated from loan repayments from these investments. Under NSP1 regulations, program income received prior to, at the time of, or after closeout may be transferred to an annual CDBG program and the transferred funds will become CDBG program income. As a result, there is \$584,220 in available program income. These funds are 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. HUD also acknowledges there are other community needs that CDBG funding could be used to address. In the current housing market, it has been difficult to identify an NSP eligible property to acquire, rehabilitated and re-sell with these limited funds. Therefore, the Housing Department proposes to convert these funds under CDBG eligible uses within the funding categories of 1) Public Services, 2) Community Development, and 3) Administration. The CDBG program fund balance for Fiscal Year 2022-2023 will be increased by the \$584,220 transferred NSP1 program income, allowing for greater 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's Participation Plan. San José's Citizen's Participation Plan describes the efforts that the City will take to encourage its residents to participate in developing federal spending plans. It also requires a public process when a substantial amendment to programs funded in an Action Plan are proposed. According to the City's Citizen's Participation Plan, a Substantial Amendment constitutes a change to a previously adopted 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 Citizen Participation Plan for substantial amendments, which requires a 30-day public comment period and two public hearings. Public hearings may be conducted virtually.

## **ANALYSIS**

This is the first amendment to the Action Plan that was approved at the August 9, 2022 City Council meeting. The amendment reallocates NSP1 program income funds to CDBG program income for CDBG eligible uses. NSP1 recipients are in the process of closing out their programs because the federal government discontinued funding the Neighborhood Stabilization Programs. In June 2022, the Housing Department initiated the NSP1 closeout process that will be completed in this fiscal year. Transferring the funds into the CDBG program is one of the requirements of the closeout process.

There is a balance of \$584,220 in NSP program income that is being transferred to the CDBG program. Before the funds can be transferred into the CDBG program, the funds must be allocated in an Annual Action Plan so that the public will know how the funds will be spent. The Action Plan is being amended as follows: :

- Transfer NSP program income to CDBG program income, Increase the Fiscal Year 2022-2023 CDBG fund by \$584,220 and allocate the funds as outlined in **Table 1** below.
- Decrease the NSP1 fund by \$584,220.

The proposed changes to the Action Plan qualify as Substantial Amendment because it is a significant change to the NSP program budget since funds will not longer be used to acquire and rehabilitate foreclosed single-family homes or apartments. The closure of the NSP1 program and the transfer of funds to CDBG meet HUD’s substantial amendment requirements because it is an increase in over \$100,000 in the Community Development and Administration funding categories.

**Table 1: Proposed Funding Changes - Additions**

<b>Funding Source</b>	<b>Activities</b>	<b>Approved</b>	<b>Change</b>	<b>Proposed New Budget</b>
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
		<b>\$12,514,313</b>	<b>\$584,220</b>	<b>\$13,098,533</b>

*Public Service* – The Housing Department proposes to increase this activity by \$87,633, or 15% of the NSP transferred funds, to offset the 4.9% decrease in the Fiscal Year 2022-2023 CDBG allocation. CDBG regulations limit the amount of CDBG funds for public service activities to 15 percent of program income. This action will also increase the funding of the public service programs back to Fiscal Year 2021-2022 levels.

*Community Development* – The Housing Department proposes to increase this activity by \$379,743 to supplement the Nonprofit Facility Rehabilitation program, providing additional funding in this activity to support the projects identified in the Mayor’s 2022 Budget Message. .

*Administration* – The Housing Department proposes to increase this activity by \$116,844, or 20% of the transferred NSP program income funds. CDBG regulations cap the amount of funds for administration to 20% of program income..

The changes to specific projects and programs are provided in Attachment A and are summarized in **Table 2** below. These transferred NSP1 funds will increase five public service awards to their Fiscal Year 2021-2022 funding level. As proposed in the August 9, 2022, supplemental memorandum to the City Council,<sup>3</sup> an additional \$74,783 in funding was needed to return the nonprofits to their Fiscal Year 2021-2022 levels. The total transferable NSP1 funds eligible for public service use is \$87,633. The remaining balance of \$12,850 is being allocated to further support community engagement and leadership in the Neighborhood Engagement programs: \$5,000 to CommUniverCity and \$7,850 to SOMOS Mayfair. The Fair Housing services, an eligible use under the Administration category was increased through the Administration pool of NSP1 transferred funds.

**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	CommUniverCity	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
Community Based Organization Acquisition, Rehab, & Public Facilities Projects	TBD	Community-servicing facilities rehabilitation	\$1,300,003	\$1,679,746
Administration	Housing Department	N/A	\$1,580,721	\$1,687,765
		<b>Total</b>	<b>\$4,096,239</b>	<b>\$4,680,459</b>

<sup>3</sup> Memo to City Council August 9, 2022 item 8.3:

<https://www.sanjoseca.gov/home/showpublisheddocument/88675/63796241549960000>

*\*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 the completion of the program in 2019. In the current housing market, these funds do not provide an adequate amount of funding to acquire and rehabilitate a foreclosed or abandoned property. It has been determined that, once converted to CDBG, there are pressing community needs that will be addressed with these funds.

## **EVALUATION AND FOLLOW-UP**

After the City Council public hearing, staff will submit the Substantial Amendment and the record of public comments to HUD for approval. The performance outcomes of the HUD funded programs is reported to the public and the City Council in the Consolidated Annual Performance Evaluation Report.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the January 31, 2023 Council meeting.

Outreach was undertaken for this item in addition to the agenda posting described above. These outreach efforts are described below.

Staff published official notices of the public meetings and 30-day public review period in newspapers as required by HUD. The Substantial Amendment is also posted on the Housing Department's website at [www.sanjoseca.gov/housingconplan](http://www.sanjoseca.gov/housingconplan). Staff published official notices of the public meetings as required by HUD. These notices were posted in English, Spanish, Vietnamese, Chinese, and Tagalog and were published in *The Mercury News*, *the El Observador*, *Vietnam Daily News*, *World Journal*, and *the Asian Journal newspapers*. Staff also sent email announcements of the public hearings on the Substantial Amendment to over 880 organizations and individuals concerned about affordable housing and community development issues. The email announcements were also posted on the Housing Department's website at [www.sanjoseca.gov/housingconplan](http://www.sanjoseca.gov/housingconplan), and were turned into news briefs that were automatically sent to media outlets.

In addition to submitting directly to staff, 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](mailto:city.clerk@sanjoseca.gov)) by 12:00 p.m. the day of the hearing together with staff's responses when the document is submitted to HUD. The community will also have the

opportunity to comment virtually at the public hearing held by the City Council on January 31, 2023

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

**COST SUMMARY/IMPLICATIONS**

The NSP1 Fund (304) is a memorandum fund to the Multi-Source Housing Fund (448). Activities in this 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 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 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
448	8999	Unrestricted Ending Fund Balance	\$2,850,852	(\$584,220)	912	10/18/2022 Ord. No. 30833
448	A087	Transfer to the Community Development Block Grant Fund	\$0	\$584,220	N/A	N/A
441	R003	Transfers and Reimbursements	\$0	\$584,220	N/A	N/A
441	0055	Contractual Community Services	\$873,460	\$87,633	855	10/18/2022 Ord. No. 30833



441	2246	Housing Program Development and Monitoring	\$1,780,701	\$116,844	855	10/18/2022 Ord. No. 30833
441	7482	Neighborhood Infrastructure Improvements	\$670,000	\$379,743	855	10/18/2022 Ord. No. 30833

**COORDINATION**

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

**PUBLIC OUTREACH**

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

**COMMISSION RECOMMENDATION AND INPUT**

A commission has taken action on this item. The action is described below.

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

**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, and File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy.

JACKY MORALES-FERRAND  
Director of Housing

JIM SHANNON  
Budget Director

I hereby certify that there will be available for appropriation in the Community Development Block Grant Fund in the Fiscal Year 2022-2023, moneys in excess of those heretofore appropriated therefrom, said excess being at least \$584,220.

JIM SHANNON  
Budget Director

The primary author of this memorandum is Sandra Murillo, Senior Development Officer. For questions, please contact Ragan Henninger, Deputy Director of Housing, at [ragan.henninger@sanjoseca.gov](mailto: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 Fiscal Year 2022-23 Annual Action Plan.

**Background**

This is a proposed first amendment to the City's Fiscal Year 2022-23 Annual Action Plan. The purpose of the amendment is to reallocate Neighborhood Stabilization Program 1 (NSP) program income funds to Community Development Block Grant (CDBG) program income for CDBG eligible uses. In June 2022, the Housing Department initiated the Neighborhood Stabilization Program closeout process that will be completed in Fiscal Year 2022-23.

The City's Annual Action Plan details its funding strategy for the CDBG, Emergency Solutions Grant, HOME Investment Partnership, and Housing Opportunities for People with AIDS 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 Housing and Urban Development federal funds by formula allocation are required to have an adopted Citizen Participation Plan. 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 the Annual Action Plan is proposed. Per the City's Citizen Participation Plan, 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 Fiscal Year 2022-23 Action Plan qualify as a substantial amendment because they meet the Housing and Urban Development 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 Housing and Urban Development'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 Fiscal Year 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
<b>Total</b>	<b>\$9,038,826</b>	<b>\$13,098,533</b>

**Table 2 – Proposed Funding Changes - Additions/Reductions**

Funding Source	Activities	Approved	Change	New Funding Level
NSP1	Decrease	\$584,220	(\$584,220)	<b>0</b>
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	Community Development Improvements: Community Based Organizations 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