



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: October 5, 2022

Approved

Date

10/6/2022

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 (FY) 2022-2023 Annual Action Plan (Action Plan) that includes changes to the federal Neighborhood Stabilization Program (NSP1) and the Community Development Block Grant (CDBG) to the City of San José (City):
 - (1) Approve the following changes relating to the Substantial Amendment to the FY 2022-2023 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 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 Appropriation Ordinance amendments in the Multi-Source Housing Fund:
 - (1) Decrease the 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 Appropriation Ordinance and Funding Sources Resolution amendments in the Community Development Block Grant Fund:

- (1) Establish the revenue estimate for Transfers and Reimbursements in the amount of \$584,220;
- (2) Increase the Contractual Community Services appropriation to the Housing Department by \$67,248; and
- (3) Increase the Ending Fund Balance by \$516,972.

OUTCOME

Pursuant to the Citizen Participation Plan¹, this is the second public hearing to provide the public an opportunity to comment on the proposed amendment to the FY 2022-2023 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 formally use program income made available through the Neighborhood Stabilization Program, funded by the NSP1 to be spent in CDBG eligible uses.

EXECUTIVE SUMMARY

This is the first amendment to the Action Plan approved by the City Council at the August 9, 2022, City Council Meeting. The Action Plan governs the expenditure of entitlement funds and competitive grants that the City receives from HUD. The purpose of the amendment is to: 1) transfer NSP1 program income funds to CDBG program income as authorized and approved by HUD² – once transferred to CDBG, all statutory and regulatory provisions governing CDBG program income will apply to the NSP1 transferred funds; and 2) allow for adjustments to the Action Plan within the Administration (\$113,507) and Public Service (\$12,850) allocations.

BACKGROUND

This is the first amendment to the 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 discontinued funding the Neighborhood Stabilization Programs and NSP1 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 this fiscal year.

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)

In 2009, 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 either resold or rented properties to income-eligible households, 14 owner-occupied, single-family residences and two fourplex apartment buildings. 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. 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, although 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, rehabilitate, and sell with these limited available funds. Therefore, the City will convert and use these funds under CDBG eligible uses under the funding categories of: 1) Public Services, 2) Community Development, and 3) Administration.

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.

Staff published official notices of the public meetings and 30-day public review period in newspapers as required by HUD. These notices were posted in English, Spanish, Vietnamese, Chinese, and Tagalog and were published in the *Mercury News*, *El Observador*, *Vietnam Daily News*, *World Journal*, and *the Asian Journal* newspapers. City staff also sent email announcements of the public hearings on the Substantial Amendment to over 2,600 organizations and individuals concerned about affordable housing public services and community development issues. The email announcements were also posted on the Housing Department's website at 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 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 the Substantial Amendment is submitted to HUD.

ANALYSIS

The City of San José was awarded a \$5,628,283 HERA 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 homes generated \$3,127,329 in program income, of which \$2,543,108 was reinvested 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.

Because the Housing Department initiated the NSP1 closeout process in June 2022, City Council's approval of the Action Plan on August 9, 2022 assumed the use of most of the remaining NSP1 funding. The 2021-2022 Annual Report – scheduled for City Council approval on the October 18, 2022 agenda – includes a number of adjustments within the CDBG Fund to align the City's budget with the approved Action Plan. However, as separate and formal City Council action is necessary to recognize the remaining NSP1 resources as a funding source, the 2021-2022 Annual Report adjustments allocated resources from the ending fund balance in the CDBG Fund. The recommended budget actions in this memorandum formally transfers in the NSP1 resources and restores the majority of the fund balance to the CDBG fund and makes other minor adjustment.

Further, the 2021-2022 Annual Report adjustments provided did not correctly capture all of the necessary budget modifications to align expected spending in 2022-2023.

The recommended actions in this memorandum accomplish the following objectives:

- Amend the Action Plan as shown in Table 1 below to:
 - Increase the allocation for Administration by \$113,507 to include the costs associated with planning studies and legal services; and
 - Increase the allocation for Public Service by \$12,850 to further support community engagement and leadership in neighborhood engagement programs: \$7,850 to SOMOS Mayfair and \$5,000 to CommUniverCity;

- Transfer NSP program income of \$584,220 from the Multi-Source Housing Fund to the CDBG Fund as program income and subject to CDBG program income regulations.
- Adjust the Contractual Community Services appropriation by \$67,248 to align the appropriated amounts for Public Service – including actions assumed in the 2021-2022 Annual Report – with the modified Action Plan.
- Restore remaining funding of \$516,972 within the CDBG Fund to the ending fund balance.

Action Plan Amendment

The proposed changes to the Action Plan as shown in Table 1 below qualify as a Substantial Amendment because they meet the HUD criteria of making a significant change to the NSP program budget.

Table 1: Recommended Annual Action Plan Changes

Funding Source	Activities	Approved Annual Action Plan	Recommended Change	Proposed New Annual Action Plan
CDBG	Public Service	\$1,402,973	\$12,850	\$1,415,823
	Community Development	\$9,415,202	\$0	\$9,415,202
	Administration	\$1,780,721	\$113,507	\$1,894,228
		\$12,598,896	\$126,357	\$12,725,253

The changes to specific projects and programs are provided in Attachment A and are summarized in **Table 2** below. It is important to note that City Council’s approval of the Action Plan on August 9, 2022, including the supplemental memorandum,³ and the modification recommended in this memorandum fully restores the non-profit funding to their FY 2021-2022 levels.

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	\$475,115	\$475,115
Neighborhood Engagement	SOMOS Mayfair	Home Grown Talent Project	\$150,000	\$157,850

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

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

Neighborhood Engagement	CommUniverCity	Community Leadership Development	\$75,000	\$80,000
Services for Homeless	HomeFirst	Citywide Street Outreach	\$399,983	\$399,983
Fair Housing	Law Foundation Silicon Valley	Fair Housing Services	\$200,000	\$200,000
Community Based Organization Acquisition, Rehab, & Public Facilities Projects	TBD	Community-servicing facilities rehabilitation	\$1,300,003	\$1,300,003
Administration	SJ Housing	N/A	\$1,780,721	\$1,894,228
		Total	\$4,380,822	\$4,507,179

**These figures reflect the amounts approved in the 2022-2023 Annual Action Plan that was adopted on August 9, 2022.*

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 pool 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 could be addressed with these funds. The Amendment also allows for adjustments to Administration and Public Service allocations that align with City Council and community needs.

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 outcomes of the HUD funded programs is reported to the public and the City Council in the Consolidated Annual Performance Evaluation Report

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum was 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 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. City staff also sent email announcements of the public hearings on the Substantial Amendment to over 2,600 organizations and individuals concerned about affordable housing and community development issues. 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. 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 together with staff's responses when the document is submitted to HUD.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

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.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *Consolidated Plan 2020-2025* 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 is budgeted within the Multi-Source Housing Fund. NSP1 Fund activities have been discontinued for several fiscal years, and the remaining income has been released into the

Ending Fund Balance of the Multi-Source Housing Fund to facilitate the close out process of this federal program. The recommended actions in this memorandum, as reflected below in **Table 3**, reallocates \$584,220 in previously programmed federal NSP1 program income funds in the Multi-Source Housing Fund to CDBG to provide 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.

Table 3: Recommended Budget Actions

Funding Source	Activities	Approved Budget*	Rec Budget Adjustment	Proposed New Budget
CDBG	Public Service	\$1,348,575	\$67,248	\$1,415,823
	Community Development	\$8,449,726**	\$0	\$8,449,726
	Administration	\$1,894,228	\$0	\$1,894,228
	Ending Fund Balance	\$45,051	\$516,972	\$562,023
		\$11,737,580	\$584,220	\$12,321,800

*Assumes City Council approval of actions recommended in the 2021-2022 Annual Report, scheduled for City Council approval on October 18, 2022.

** While the 2022-2023 Annual Action Plan reflects the total allocation of \$9,415,202, only \$8,449,726 is appropriated in the current year. The remaining \$965,476 is captured within prior year encumbrances in the CDBG Fund.

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	Ending Fund Balance	\$8,459,080	(\$584,220)	912	6/28/2022 Ord. No. 30802
448	NEW	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	\$ 2,029,169	\$67,248	855	08/09/2022 Ord. No. 30805
441	8999	Ending Fund Balance	\$227,892	\$516,972	855	08/09/2022 Ord. No. 30805


* The 2022-2023 Adopted Operating Budget was approved on June 14, 2022 and adopted on June 21, 2022 by the City Council.

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.

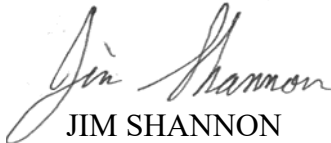
/s/

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.

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 (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 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 FY 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 FY 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 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	\$12,141,033
NSP1 Transfer	\$584,220	\$584,220
Total	\$9,038,826	\$12,725,253

Table 2 – Proposed Funding Changes - Additions/Reductions

Funding Source	Activities	Approved	Change	New Funding Level
CDBG	Administration	\$1,780,721	\$113,507	\$1,894,228
	Public Service	\$1,402,973	\$12,850	\$1,415,823
	Community Development	\$9,415,202	\$0	\$9,415,202

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	\$150,000	\$157,850	200
1	Public Service: Neighborhood Engagement Community Leadership Development/ CommUniverCity	N/A	Strengthen and Stabilize Communities	\$75,000	\$80,000	64
2	Public Service: Services for Homeless and Unhoused	N/A	Homelessness Strengthen and Stabilize Communities	\$399,983	\$399,983	30 Persons Assisted 310 Outreached
3	Legal Services for Low-income Tenants and Landlords	N/A	Strengthen and Stabilize Communities	\$475,115	\$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	\$1,300,003	TBD
15	Administration – Fair Housing	LMI	Fair Housing	\$200,000	\$200,000	220 Persons Assisted
15	Administration	N/A	N/A	\$1,580,721	\$1,694,228	TBD

* These amounts reflect the approved 2022-2023 Annual Action Plan adopted on August 9, 2022.