Ms. Leslye Corsiglia  
Director of Housing  
City of San Jose  
200 E. Santa Clara Street, 12th Floor  
San Jose, CA 95113

Dear Ms. Corsiglia:

SUBJECT: Community Development Block Grant (CDBG) Code Enforcement Desk Review  
Fiscal Year Allocations: B-08/09-MC-06-0021

The purpose of this letter is to report the results of our desk review of the City’s CDBG-funded Code Enforcement Program, conducted by Ms. Kimberly Ferguson, Community Planning and Development Representative.

The intent of this special review was to determine whether the City’s Code Enforcement Program complied with eligibility requirements and that the City’s system for charging and documenting the costs of the program to CDBG were sufficient. Ms. Ferguson reviewed a variety of documents submitted by the City, including Memorandums of Performance, Field Activity Logs, performance reports for the 4th quarter of 2008/2009, the most recent Consolidated Plan the 2008/2009 Action Plan and corresponding Consolidated Annual Performance and Evaluation Report.

Enclosed as an addendum to this letter is a monitoring report which outlines the issues in more detail, and provides guidance on steps to be taken to rectify these matters. A response to this letter and specific required actions is due within 30 days of the date of this letter.

If you have any questions, please contact Ms. Ferguson at (415) 489-6594.

Sincerely,

Angelo Tom  
Director, Program Support  
Community Planning and Development Division

Cc: Jacky Mofales-Ferrand  
Assistant Director
CDBG Code Enforcement Desk Review For Grant Year B-08-MC-06-0021

Finding #1 The City does not adequately demonstrate that it operates its CDBG Code Enforcement Program in compliance with the regulations found at 24 CFR 570.202(c), 570.208(a)(1) and 570.207(a)(2).

Condition

The City’s CDBG Code Enforcement Program has defined its project area as being aligned solely with specific census tracts, as listed in the Memoranda of Performance (MOP) for its three code enforcement activities: housing, business, and abandoned vehicles/vacant lots. The City has categorized this program as being a “low/mod area” (LMA) activity, and has targeted the program to LMA census tracts. The City has not identified the deteriorated/deteriorating conditions to be addressed in its one project area, nor articulated specific actions it will take, along with code enforcement, to ameliorate the deteriorating conditions of the project area. Further, the City has not set forth effective metrics to measure the impact of all its actions in reversing the course to deteriorating conditions in the service area. Currently, the City measures how quickly code violations are addressed by owners, and the number of visits that are conducted in a program year. In the absence of this information, the City has not been able to adequately distinguish its CDBG Code Enforcement from its regular Code Enforcement program.

Criteria

CDBG funds cannot be used to pay for the general costs of government, which includes code enforcement, as stated at 24 CFR 570.207(a)(2). Therefore, CDBG-funded code enforcement activities must meet the eligibility requirements of 570.202(c) to properly distinguish the program costs from the general costs of government. The regulations found at 24 CFR 570.202(c) state that code enforcement is an eligible activity if “[C]osts incurred for inspection for code violations and enforcement of codes (e.g., salaries and related expenses of code enforcement inspectors and legal proceedings, but not including the cost of correcting the violations) in deteriorating or deteriorated areas when such enforcement together with public or private improvements, rehabilitation, or services to be provided may be expected to arrest the decline of the area.”

As stated in policy guidance issued by the Department in 1992, it is not sufficient for CDBG grantees to identify deteriorated/deteriorating areas as synonymous with low/mod income areas. To ensure that its code enforcement activities comply with the CDBG program, a grantee must document all of the following:
1. its definition of deterioration;

2. the specific boundaries of the areas to be considered eligible for CDBG-funded code enforcement inspections;

3. a description, in sufficient detail, of the conditions in each area to support a determination that the area qualifies as deteriorating or deteriorated under the City’s definition;

4. its strategy for using code enforcement together with other activities to arrest the decline in each specific service area; and

5. methodology and data it will use to assess whether code enforcement and other activities are arresting the decline of each service area during the period that CDBG funds area being used to carry out code enforcement activities.

The national objective requirements described at 570.208(a)(1) for activities classified as LMA direct grantees to ensure "[A]n activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low- and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion."

The City has not documented that its Code Enforcement project area is primarily residential, which is especially important given that code inspectors are assigned to inspect businesses as well as vacant lots and abandoned vehicles.

Cause

The City has not adequately defined the project area for its CDBG-funded Code Enforcement program beyond listing multiple census tracts that are located in clusters in different parts of the City. The "project area" as defined in the MOPs between the City’s Housing Department and the Planning, Building and Code Enforcement Department lists the census tracts, but does not clearly link CDBG-funded code enforcement activities with distinct strategies for addressing deterioration. Our review of the quarterly reports submitted by the Code Enforcement Division to the Housing Department found that these reports do not provide metrics that would allow the City to assess the effectiveness of code enforcement activities in addressing deterioration or be able to report to HUD on the City’s success in addressing deteriorating conditions. Further, the City does not take the Code Enforcement information and report on how code enforcement has impacted deteriorating conditions in its "project area" in the annual CAPERs.
The MOPs do not set forth an expectation that inspectors will refer cited property owners (or their tenants, if applicable) to other services, and provide documentation to indicate that referrals were made. While the new Field Activity Log does give inspectors the opportunity to indicate that referrals were made, inspectors rarely indicated that any referrals were made. It is unclear if the inspectors are unaware that they are expected to make referrals to other programs, (eg housing rehabilitation services), or that they just omit that information when completing the Field Activity Log.

Effect

In the absence of clearly defined project areas with elements that meet CDBG requirements, and without a descriptive strategy which articulates how deteriorating conditions are to be addressed using code enforcement and other actions, the City is operating its CDBG-funding code enforcement program in a manner that does not fully conform to various regulations. CDBG funds may have been spent without meeting the eligibility requirements for 24 CFR 570.202(c), the national objective requirements set forth at 570.208(a)(1), and therefore appear to be more appropriately classified as “general government costs” as described at 570.207(a)(2).

Without defining “deterioration” and establishing the deteriorating conditions within the project area, or establishing the boundaries of the project areas, and without articulating a universal strategy for arresting deterioration in the project area, the City has failed to meet HUD standards for ensuring that it was appropriate to use CDBG funds for code enforcement.

Required Action

To address this finding, the City must submit service plans to demonstrate that its CDBG Code Enforcement program addresses the following requirement for each of its project areas:

- Defines deterioration;
- Identify the specific boundaries of the project areas;
- Verify that the project areas are primarily residential, and that at a minimum 51% of the residents of the project areas have incomes that are at or below 80% of the area median income;
- Sufficiently describe the conditions in each project area to support a determination that each area qualifies as deteriorating or deteriorated under the City’s definition;
- Sufficiently describe its strategy for using code enforcement together with other identified activities to arrest the decline in each specific project area; and
- Describe the methodology and metrics it will use to assess whether code enforcement and other activities are arresting the decline of each project area during the period that CDBG funds are being used to carry out code enforcement activities.
Finding #2 The City's financial management system for the CDBG Code Enforcement Program lacks safeguards to ensure that CDBG funds are used solely for authorized purposes, as found at 24 CFR 85.20(b)(3) and 570.207(a)(2).

Condition

The CDBG Code Enforcement Program uses CDBG funds to support the personnel costs of inspectors, administrative and clerical staff, as well as managers. The City has set forth in the Memoranda of Performance the positions and names of staff to be supported with CDBG funding. Inspectors are expected to use report their staff time by completing the daily Field Activity Log as well as a complete the “Daily non-Inspection Activity Log”. Both of these documents are to support personnel expenses charged to the CDBG program. The City has informed our office that it has not established time standards for completing various inspection tasks, nor is there an indication that timesheets are reviewed to ensure that the number of hours reported to complete an inspection are reasonable.

Criteria

The regulations found at 24 CFR 85.20(b)(3) focus on the internal controls of a grantee. The regulations state that “[E]ffective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.”

Additionally the CDBG regulations found at 570.207(a)(2) state that “expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance”. CDBG funds should not be substituted to pay for costs otherwise funded with local funds, as in the case of supporting the City’s regular code enforcement program.

Cause

When completing the daily Field Activity Log, inspectors are required to identify the properties they have inspected, the type of inspection that was done (e.g., housing or business inspection), and identify the number of hours to complete the task. The log does not require inspectors to indicate whether the property was in the project area, making it unclear whether properties inspected were in fact in the project area. Additionally neither the Field Activity Log nor the Non-CDBG Activity log requires the signature of the staff person completing the form or the supervisor who is to review and approve the documents.
The City has indicated that it has not established time standards by which specific tasks completed by inspectors are expected to be done. It is noted that the Field Activity Log asks inspectors to include the time of travel when they report on the amount of time it took them to complete a particular inspection. However, there is no indication that supervisors review timesheets to ensure that the amount of time inspectors spend at particular properties is reasonable.

The City identified eight inspectors assigned to the CDBG service area for the 4th quarter of the 2008/2009 program year as part of the documentation submitted to our office for review. It was noted that only three of these inspectors are also listed on the “Detail of Cost for Reimbursement Costs” spreadsheet that is part of the Memoranda of Performance. This document serves as a budget, which details each position supported in whole or in part with CDBG funds. This budget also identifies the staff filling the positions, and their annual salary. The other five inspectors identified as working in the CDBG service area during the 4th quarter are not listed on and of the CDBG Code Enforcement Program budget documents.

Effect

Since inspectors do not have to confirm that particular addresses are within the CDBG service area, it is difficult to document that the hours reported to the CDBG Code Enforcement Program are eligible costs. Additionally, without established time standards for completing specific types of inspection tasks and for traveling to and from sites, the City cannot determine that the hours charged are reasonable. Finally, the City needs to be able to verify that all the inspectors whose time is billed to the CDBG Code Enforcement Program are associated with the program.

Required Action

To address this finding, the City should update the Field Activity Log template to allow for inspectors to report whether a particular property is within the CDBG service area. Additionally, the City must develop time standards that inspectors should follow for travel, and for completing different types of inspections. The Field Activity Log and CDBG Daily non-Inspection Activity Log should be signed by both the inspector and the supervisor. The City should establish protocols that supervisors should refer to when reviewing timesheets. Finally, the City should ensure that only those inspectors assigned to work on the CDBG Code Enforcement Program are having their salaries paid with CDBG funding. If there is a need to shift non-CDBG inspector staff to the CDBG program, then the City should document the reason for this shift, and maintain appropriate records to support personnel charges to the CDBG program.