



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Ragan Henninger  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** September 23, 2021

Approved

Date

09/24/21

**SUBJECT: CITY'S COVID-19 RESPONSE AND RECOVERY: EMERGENCY  
RENTAL ASSISTANCE PROGRAM**

## RECOMMENDATION

- (a) Adopt a resolution to:
- (1) Authorize the City of San José's participation in the State of California's Emergency Rental Assistance Program Round Two (ERA2) using U.S. Treasury Emergency Rental Assistance funds, including making any necessary arrangements to effectuate the Department of Housing and Community Development (the "Department") receipt of the City's ERA2 allocation for the purpose of administering it for and on behalf of the City; and
  - (2) Authorize the City Manager to negotiate and execute a Standard Agreement with the State for the City's participation in the State ERA2 Program, including any amendments and revisions to said agreements and any necessary documents to effectuate the agreement, whether under State or Federal law, to govern the administration of the City's ERA2 allocation for and on behalf of the City, and
  - (3) Authorize the City Manager to accept a grant from the Department in the amount of \$1,088,336 of ERA2 Funds (not to exceed 3% of City's ERA2 award) from the State to fund the City's administrative and program outreach costs; and
  - (4) Authorize the City Manager to submit an application to Local Initiatives Support Corporation (LISC), the State's ERA program contracted implementer, to become a local partner network for the State's ERA Program in order to receive funding to continue local outreach and assistance.
- (b) Adopt the following Funding Sources Resolution and Appropriation Ordinance amendment in the Emergency Reserve Fund:
- (1) Decrease the estimate for Revenue from Federal Government by \$13,422,819; and,
  - (2) Decrease the Resident Relief - Housing Stabilization appropriation by \$13,422,819.

## **OUTCOME**

City Council approval of this item will allow the second phase of federal ERA2 funding to build on the prior program strengths, while making some key improvements. By entering into agreements with the State to manage our locally allocated ERA2 funds, the City, County, and our local partners can focus on outreach and application assistance, while the State will process the actual applications and payments to landlords and renters.

This will eliminate confusion for tenants and landlords about whether to apply to the State or local program. There will be one application, regardless of income level. Duplication of benefits will be less of an issue. And, most importantly, our local residents will be able to fully access the tenant protections available under new legislation.

Much has changed and evolved since we first received ERA1 dollars from the federal government. The federal guidance and State legislation have made rental assistance more accessible for our most vulnerable residents. As described below, there have been significant improvements to the State program.

What has not changed is our commitment to our most vulnerable residents. With approval of today's action, City staff, together with our partners at the County, Sacred Heart Community Service, Destination: Home, and the local partner network will continue to focus on helping our lowest income residents, including those who do not have traditional leases and those who have been most impacted by the pandemic and job loss, to access rental assistance. Help is available through our eviction help centers and online at [HousingIsKey.com](https://www.housingiskey.com).

## **BACKGROUND**

The American Rescue Plan Act, enacted on March 11, 2021, allocated \$21.55 billion for a second round of ERA2 nationwide, including \$2.5 billion targeted to high-need areas where low-income renter households are paying more than 50% of income for rent, living in substandard or overcrowded conditions, or where rental market costs are high, or there has been a significant change in employment since February 2020.<sup>1</sup>

These ERA2 funds are in addition to ERA1 previously appropriated in December 2020 through the Consolidated Budget Reconciliation Act of 2021. The State of California was allocated \$1.18 billion in ERA2, plus \$26.27 million for high need areas. The City of San José will be eligible to receive \$24.03 million in ERA2 plus \$12.24 million in funding for high needs areas for a total of \$36.27 million. Santa Clara County will receive \$21.32 million, plus \$8.75 million towards high needs areas, for a total of \$30.1 million. Funds awarded to Santa Clara County may be used to help residents throughout the County, including those living in the City of San José.

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<sup>1</sup> Information available: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program>

In May, the City of San José received the first tranche of ERA2 funds, totaling \$14,511,155, which represents 40% of the total federal assistance appropriation. These funds have been budgeted for use in fiscal year 2021-2022.

*Emergency Rental Assistance Implementation*

On February 9, 2021<sup>2</sup>, the City Council approved the Administration's strategy for deploying \$30.38 million in federal ERA1, that the City of San José received directly from the U.S. Department of Treasury through the Consolidated Appropriations Act of 2021. Council further approved staff's recommendations and a memorandum from Councilmember Esparza<sup>3</sup>, to pursue a Hybrid program under Senate Bill 91 (the State's "Option C"), which allowed the City to administer a local program utilizing the \$30.38 million from the federal government, while the State would administer the ERA1 funds it had allocated for San José landlords and tenants (an additional \$33 million) through the California COVID-19 Rent Relief program.

As approved by Council on March 23, 2021<sup>4</sup>, the City work plan established a partnership for administering ERA1 funding between the City, County of Santa Clara, and the Homelessness Prevention System co-led by Sacred Heart Community Service and Destination: Home. This local program, now known as the Santa Clara County Homelessness Prevention System COVID19 Response, is comprised of a network of 46 trusted community and grassroots partners to provide homelessness prevention services including rental assistance, utility assistance, outreach and case management. It builds on the existing work of the countywide Homelessness Prevention System and the successful efforts to deploy \$38 million in philanthropic, local, state, and federal Coronavirus Relief Funds in 2020 to provide local residents with rental assistance and direct financial relief.

The local program soft-launched on May 1, 2021, with a public launch on May 19. Since the launch, 5,778 households applied countywide, requesting approximately \$60.2 million in relief funds, which exceeds the local ERA1 allocation of \$57 million. The local program has paid 2,233 households totaling \$23 million. The County, Destination: Home and Sacred Heart are rapidly working on paying the remaining households with ERA1 funds. There are approximately 463 household applications to the local program that will have to be transferred to the State for payment. City, County, Destination: Home and Sacred Heart are working with the State to prioritize those households for payment. As of September 21, 2021, applications to the State program totaled 7,401 in Santa Clara County, for approximately \$99 million in requested rental assistance. The State has paid 2,988 households totaling \$40.5 million.

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<sup>2</sup> See February 9, 2021 staff report: <https://sanjose.legistar.com/View.ashx?M=F&ID=9161966&GUID=041DCE11-F956-4E5B-BF9E-27385005E9AD%20%20>

<sup>3</sup> Esparza memorandum: <https://sanjose.legistar.com/View.ashx?M=F&ID=9169395&GUID=627B0297-EAEA-44CD-8FAB-9964CBFA7C97%20%20>

<sup>4</sup> March 23, 2021 staff report: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4819308&GUID=A07519E4-DAB5-479A-9593-978491304871&Options=&Search>

**ANALYSIS**

Today’s action allows the Administration to upstream the ERA2 funds to the State and authorizes the City’s participation in the State’s rental assistance program – round two (SRA2). There will no longer be a local application for U.S. Treasury ERA funds. However, the local assistance network led by Sacred Heart Community Services and Destination: Home and 46 grassroots partners will remain in place and continue to help households access rental assistance through the State program. The County of Santa Clara will also participate in the State program and will seek authorization from the County Board of Supervisors on October 5, 2021.

Joining the State program will allow the City, County, and our partners to focus all of our efforts on our biggest program strengths: Helping the most vulnerable, extremely low-income residents apply to and access the rental assistance program. It will remove the need for local personnel to review and approve application paperwork and process rental assistance payments. In essence, the local partners will be helping people in the field, while the State program will be the back office.

Table 1 provides an overview of the \$66.34 million in ERA2 funding that both the City and County anticipate receiving through direct allocation of ERA2 federal funds.

***Table 1: ERA2 Direct Allocation of Funds***

<b>Direct Payment to:</b>	<b>ERA2</b>	<b>ERA2 High-Needs</b>	<b>Total</b>
<b>San José</b>	\$24,038,066.30	\$12,239,822.10	\$36,277,888.40
<b>County of Santa Clara</b>	\$21,315,291.50	\$8,746,710.90	\$30,062,002.40
<b>Total</b>	\$45,353,357.80	\$20,986,533.00	\$66,339,890.80

In February 2021, when the Council approved a hybrid model with both a local and State rental assistance program, the State legislation and federal guidance governing rental assistance was much different than it is today. The Administration recommended that the City, County, and our partners administer a local rental assistance program, focused on extremely low-income households (those earning less than 30% of Area Median Income, or AMI), for the following reasons:

- Senate Bill 91 provided a framework for paying a landlord 80% of past rent due and considered it payment in full. If a landlord refused to accept payment, the tenant received 25% of past rent due, which allowed the tenant to access eviction protections under SB 91. A local program would not have to follow the 80% /25% model in SB 91.
- The program model laid out in SB 91 relied on landlord cooperation to ensure success. In the 2020 rental assistance program, our partners found that 40% of households did not have a traditional landlord-tenant relationship. The State program initially was challenging for tenants who were sub-letting, renting a garage or room, or who have a difficult relationship with their landlord to access.
- The pandemic and recession had disproportionately impacted ELI residents. Through the 2020 rental assistance program, our partners were successful in reaching these residents with trusted partners who had deep roots in the community. Many of these residents

lacked the digital access needed to access the State program as it initially was designed. By operating a hybrid program, we could focus locally on these ELI residents and their digital access and language needs, while those with incomes above 30% AMI and their landlords could apply to the State.

- The hybrid model allowed the local program to target outreach efforts in specific neighborhoods in San José disproportionately impacted by COVID-19.
- A local program could ensure program materials were accessible in multiple languages, the application was simple and widely available with trusted grassroots community partners.

Since February when Council approved a hybrid model, much has changed. On June 28, Assembly Bill (AB) 832 was enacted into law, which included several important changes to the California COVID-19 Rent Relief program and extended critical eviction protections for all California tenants. AB 832 provided three additional months of eviction protections and increases the compensation for rental assistance to a full 100% of unpaid rent available to either the landlord or tenant.

The State of California has requested cities across the State consolidate rental relief programs and join their local programs with the State's. State tenant protections are ending and regulations under AB 832 contain strict compliance deadlines that must be met to protect tenants. The State believes one streamlined program will better serve and protect the most vulnerable.

It should be noted that the legislation does provide an option for cities and counties that receive a direct allocation of federal funds to continue operating local programs by receiving a block grant from the State and assuming all risks and responsibilities under AB 832. The Administration and our local program partners cannot recommend this option, as we were already stretched beyond capacity to administer the smaller ERA1 program. In fact, no jurisdiction in the State will operate a hybrid ERA2 program, all cities and counties will participate fully in the State program or run their own. Of the ten largest cities in the State, three will participate in the State program, specifically Los Angeles, San Francisco and San José. The remaining seven have chosen to run their own program, specifically San Diego, Fresno, Sacramento, Long Beach, Oakland, Bakersfield and Anaheim.

The Administration is comfortable making this recommendation because the State has made improvements to the program designed to better serve the most vulnerable. They have begun increasing messaging and outreach to raise awareness of the program and encourage tenants and landlords alike to submit an application for assistance using trusted local partners. The Housingiskey.com website is now fully translated into six languages and is easier to navigate. The State made it much easier for applicants to access rent relief by launching a revamped, user-centric application, requiring fewer documents and simplifying questions. The State says that it now takes only about 30 minutes to apply for rent assistance. Finally, the State now has the ability to assist households without formal lease agreements.

Additionally, the State program has been providing back utility payments and utility providers are required to coordinate with the State program. The local program has not had capacity to fund utility payments, which has meant our lowest-income residents have not yet had access to this vital assistance. This will change by joining the local program to the State program.

Given the limited bandwidth of our existing nonprofit network and the compliance deadlines in AB 832, we believe having a unified program with the State is now the best option. This switch means the City's second round of U.S. Treasury funds for rental assistance, which is approximately \$32 million, will go to the State to serve our residents.

The Homelessness Prevention System partners will remain in place and refer all new applicants to the State program and help these residents navigate the State process. In addition, the County and City will continue their efforts to help residents in-need access rental assistance and other available resources. We will still target outreach efforts to ELI households in areas hardest hit by COVID-19. The City's eviction prevention help centers will remain in place and are already assisting households complete the State rental assistance application.

#### *Recent State Audit*

On September 16, 2021 the State Auditor's Office released a report<sup>5</sup> that reviewed how the Department of Housing and Community Development (HCD) was managing \$1.8 billion to administer California's rental assistance program. The report focuses on HCD's progress in committing and awarding rent relief program benefits to eligible households by the first federal deadline, which states 65% of funds must be obligated by September 30<sup>th</sup>. The federal statute says:

*"Beginning on September 30, 2021, the Secretary shall recapture excess funds, as determined by the Secretary, not obligated by a grantee for the purposes described under subsection (c) and the Secretary shall reallocate and repay such amounts to eligible grantees who, at the time of such reallocation, have obligated at least 65 percent of the amount originally allocated and paid to such grantee..."*

HCD's interpretation, which is informed by direct communications with U.S. Treasury officials, is that a recipient's funds are recaptured *only* if the recipient falls below the 65% obligation threshold. If, on the other hand, the recipient has obligated at least 65% of its funds by September 30, 2021, then none of its funds will be recaptured by the Treasury.

The second issue the auditor's report raised was how HCD is calculating "obligated," finding HCD has been inconsistent in how it has reported its obligated funds to U.S. Treasury and the Legislature. HCD reported a total of \$446 million in obligated funds to the Legislature through the end of June 2021, using its definition of *obligated funds*—those funds preliminarily approved for applicants. However, HCD reported to U.S. Treasury that it had obligated \$1.6 billion—90% of its funds—in its rental assistance program through the end of June 2021. HCD reports that this

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<sup>5</sup> California State Auditor's Report, September 16, 2021: <http://auditor.ca.gov/reports/2021-615.1/index.html>

new total obligated amount includes its forecast of payments to eligible households to further demonstrate the ongoing need in California, and that it calculated this amount by using the average monthly assistance approved for each household and forecasted it for the allowable program period (15 months). HCD maintains there is a lack of clear federal guidance on the definition of “obligation” and HCD’s revisions are meant to show both conservative and projected needs to U.S. Treasury, all of which may meet the yet unknown final Federal guidance, when it becomes available.

The Administration has reviewed the auditor’s report and feels comfortable moving forward with the recommended action. HCD is making significant progress toward meeting the first federal deadline and we believe HCD has taken a reasonable approach in defining its amount of obligated funds. We understand the circumstances are challenging given the changes to governing law, as well as uncertainty in Federal guidance and believe HCD’s approach to addressing these has been appropriate.

## **CONCLUSION**

The Administration recommends authorization to transfer San José’s ERA2 funding – with the exception of \$1.1 million to fund our local outreach efforts – to the State and allow the City’s participation in the State rental assistance program. There will no longer be a local application for U.S. Treasury ERA funds. However, the local assistance network led by Sacred Heart Community Services and Destination: Home and 46 grassroots partners will remain in place and continue to help households access rental assistance through the State program.

We have developed this recommendation in partnership with our colleagues at Santa Clara County, Destination: Home and Sacred Heart Community Services.

## **EVALUATION AND FOLLOW-UP**

Council has requested regular updates on progress of resident access to Emergency Rental Assistance. Staff has access to a State dashboard to track local data, including the number of households served, the amount of funding distributed, the geographic distribution of funds, aggregated demographic information, and the length of time it takes for applications to be processed. Housing will share that information regularly with Council via City Manager’s COVID-19 updates at City Council.

Councilmembers have been provided toolkits with multi-lingual information to share with constituents via newsletters, social media, and other outreach efforts. As updates become available, they will be shared. Councilmembers are a critical conduit to reaching our most vulnerable residents, and staff will continue to work with Council offices on pop-up rental assistance events.

Additional updates on program implementation will be provided to the City Council via quarterly updates at both Neighborhood Services and Education Committee and Community and Economic Development Committee. Updates will also be provided via information memorandum and Council meeting, as appropriate.

### **CLIMATE SMART SAN JOSE**

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

### **PUBLIC OUTREACH**

We have developed this recommendation in partnership with our colleagues at Santa Clara County, Destination: Home and Sacred Heart Community Services. With each new phase the rental assistance program, the Homelessness Prevention System, led by Destination: Home and Sacred Heart seeks input from the nonprofit partners and their clients. The Administration holds ongoing weekly meetings to discuss outreach and program implementation strategies, including this switch to the State program. The City and the County met with network partners on September 8<sup>th</sup> and 9<sup>th</sup>.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Office of Administration, Policy and Intergovernmental Relations and the Finance Department.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

The recommendations outlined here are in alignment with the Citywide Residential Anti-Displacement Strategy goals to:

- Support equitable COVID-19 recovery and impact mitigation measures for renters and homeowners, and
- Establish new sources of funding for affordable housing and anti-displacement.



**COST SUMMARY/IMPLICATIONS**

Actions included in this memorandum allow for the return of Federal ERA 2 funds in the amount of \$13.4 million for the State to administer. A total of \$1.1 million will remain with the City to pay for outreach to enroll eligible households into the ERA 2 program.

**BUDGET REFERENCE**

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


<b>Fund #</b>	<b>Appn #</b>	<b>Appn. Name</b>	<b>Total Appn</b>	<b>Rec. Budget Action</b>	<b>2021-2022 Proposed Operating Budget Page *</b>	<b>Last Budget Action (Date, Ord. No.)</b>
406	R110	Revenue from Federal Government	\$26,351,000	(\$13,422,819)	X-38	80109, 6/22/2021
406	217N	Resident Relief – Housing Stabilization	\$15,636,000	(\$13,422,819)	X-38	30621, 6/22/2021

\*The 2021-2022 Proposed Operating Budget was approved by the City Council on June 15, 2021 and adopted on June 22, 2021. Of the \$15.6 million appropriated to Resident Relief – Housing Stabilization, \$14.5 million consists of ERA2 funds and \$1.1 million consists of FEMA-reimbursable funding for operation of isolation and quarantine sites during the first quarter of 2021-2022, as needed.

**CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/  
 RAGAN HENNINGER  
 Deputy Director  
 Housing Department



JIM SHANNON  
 Budget Director

For questions, please contact Ragan Henninger, Deputy Director, Housing Department at [ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov).