



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** January 18, 2023

Approved

Date

1/20/23

**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:
  - (1) Approve the following changes relating to the Substantial Amendment to the Fiscal Year 2022-2023 Annual Action Plan to:
    - i. Decrease Neighborhood Stabilization 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.

## **SUMMARY AND OUTCOME**

This is the first amendment to the Fiscal Year 2022-2023 Annual Action Plan (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 the U.S. Department of Housing and Urban Development (HUD). The purpose of the amendment is to transfer Neighborhood Stabilization Program (NSP1) income funds to Community Development Block Grant (CDBG) program income<sup>1</sup> as approved by HUD. 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.

This Substantial Amendment to the Action Plan enables the City to use loan repayments, originally funded with NSP1 dollars, to be spent in Fiscal Year 2022-2023 on CDBG eligible uses. The City proposes to use the NSP1 transferred funds for CDBG eligible uses of public service, community development, and administration.

As required by the Citizen Participation Plan<sup>2</sup>, this is the second public hearing to provide the public an opportunity to comment on the proposed amendment to the Action Plan. The first publicly noticed hearing on the proposed amendments was held on September 8, 2022, before the Housing and Community Development Commission.

## **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 \$3,127,328 in program income, of which \$2,543,108 was re-invested into the program. Program income is money 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 NSP1-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 NSP1-eligible property to acquire, rehabilitate, and re-sell with these limited funds. Therefore, the Housing Department proposes to convert these funds under

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<sup>1</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)

<sup>2</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>

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 is 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 NSP1 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 NSP1 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 a substantial amendment because it is a significant change to the NSP1 program budget since funds will no longer be used to acquire and

rehabilitate foreclosed single-family homes or apartments. Additionally, 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**

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
		<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 NSP1 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% 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 June Budget Message for Fiscal Year 2022-2023, including lighting improvements in alleyways within the Washington-Guadalupe neighborhood, and tree planting.

*Administration* – The Housing Department proposes to increase this activity by \$116,844, or 20% of the transferred NSP1 program income funds. CDBG regulations cap the amount of funds for administration to 20% of program income. The administration funds will be used to fund staff who will be managing and monitoring the public service and community development contracts as that funding has been insufficient due to actual costs and the limitations of this category.

The changes to specific projects and programs are provided in the **Attachment - First Substantial Amendment to the FY 2022-23 Action Plan** 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. Specifically, \$5,000 will be allocated to CommUniverCity and \$7,850 will be allocated to SOMOS Mayfair. The Fair Housing services, an

<sup>3</sup> Memorandum to City Council August 9, 2022 item 8.3:  
<https://www.sanjoseca.gov/home/showpublisheddocument/88675/637962415499600000>

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>

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

**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 are reported to the public and the City Council in the Consolidated Annual Performance Evaluation Report.

## **COST SUMMARY/IMPLICATIONS**

Budget adjustment actions will be recommended as part of the 2022-2023 Mid-Year Budget Review – scheduled for City Council approval on February 14, 2023 – to reallocate the remaining NSP1 resources from the Multi-Source Housing Fund into the CDBG Fund, as well as recommend other technical adjustment to reallocate existing funding within the CDBG Fund to accurately align the Action Plan with budgeted appropriations.

## **COORDINATION**

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

## **PUBLIC OUTREACH**

- This memorandum will be posted on the City’s Council Agenda website for the January 31, 2023 City 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*, *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 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 the Substantial Amendment is submitted to HUD.

### **COMMISSION RECOMMENDATION AND INPUT**

- No commission recommendation or input is associated with this action.
- 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. The Commission approved a recommendation to the City Council to approve the Action Plan. Public comments were not received on this item.

### **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 as defined in government code section 53083 or 53083.1 or in the City's Open Government Resolution.
- This item includes a public subsidy of \$100,000 or more as defined in California Government Code section 53083. The Director of the Office of Economic Development and Cultural Affairs has been informed of this subsidy to ensure that it is tracked appropriately. Required information is provided below.
- This item includes a public subsidy of \$100,000 or more to a warehouse distribution center as defined in California Government Code section 53083.1. The Director of the Office of Economic Development and Cultural Affairs has been informed of this subsidy to ensure that it is tracked appropriately. Required information is provided below.
- This item includes a public subsidy as defined in the City's Sunshine Resolution section 2.2.10 and is in the amount of \$1 million or more. An Informational Memorandum as described in Sunshine Resolution section 2.3.2.6.C was/will be released at least 28 calendar days prior to the City Council meeting at which the subsidy will be considered. The Director of the Office of Economic Development and Cultural Affairs has been informed of this subsidy to ensure that it is tracked appropriately.

/s/

JACKY MORALES-FERRAND  
Director of Housing

The primary author of this memorandum was 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** - First Substantial Amendment to the FY 2022-23 Action Plan

# **Attachment**

## **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 (NSP1) 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 when 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.

**Attachment**  
**First Substantial Amendment to the FY 2022-23 Action Plan**

**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

**Attachment**  
**First Substantial Amendment to the FY 2022-23 Action Plan**

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

#	Project Name	Target Area	Needs Addressed	Previously Proposed Amount	New Proposed Amount	Goal Outcome Indicator
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