



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Ragan Henninger
Lee Wilcox

SUBJECT: SEE BELOW

DATE: February 5, 2021

Approved

Date

2/5/2021

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

RECOMMENDATION

Accept the staff report on the City's implementation of the federally funded COVID-19 Emergency Rental Assistance Program.

OUTCOME

The City Council will consider policy alternatives and provide guidance on implementing federal Emergency Rental Assistance funds allocated to San José, both directly and through the State of California. Staff will return to Council at a future date for contract authority approval and final program design.

EXECUTIVE SUMMARY

The City of San José has received \$30.38 million in federal Emergency Rental Assistance funds. These funds are not as flexible as the CARES Act Coronavirus Relief Funds that we used for Local Assistance, including rental assistance for extremely low-income families. These new funds come with requirements and guidance around attempting to pay landlords directly and only allow funding for rental and utility relief.

In addition, the State of California has received \$1.5 billion in federal Emergency Rental Assistance funds. The state funds are allocated to cities and counties based on population. Approximately \$32 million is reserved for San José landlords and tenants. The State has contracted with LISC, a nonprofit Community Development Finance Institution, to administer the program statewide.

Senate Bill 91 provides a framework for paying a landlord 80 percent of past rent due and consider it payment in full. If a landlord refuses to accept payment, the tenant will receive 25 percent of past rent due, which will allow the tenant to access eviction protections under SB 91.

The state legislation outlines three options for how cities and counties can access and administer these funds:

- A. **State Program:** The City would pool its funds with the State. Landlords and tenants would access funds through the partnership with LISC. This option requires using the 80 percent to landlords/25 percent to tenants State model.
- B. **Local Program:** The City could receive a block grant from the State and administer funds directly. This option requires using the 80 percent to landlords/25 percent to tenants State model.
- C. **Hybrid Program:** The City would administer a local program with the \$30 million we have received directly from the federal government. The State would administer the \$32 million allocated for San José landlords and tenants. The local program would not have to follow the 80 percent/25 percent model. The State states that the burden for preventing duplication of benefits is on the City.

Each model has risks and benefits. For reasons outlined in this report, the Administration is recommending Option C, the Hybrid Program. We believe it provides the most flexibility to serve San José residents who are most at risk of eviction and displacement and small-business landlords. We can continue and build on the existing systems and grassroots partnerships that in 2020 provided rental relief and direct financial assistance to 14,000 households across Santa Clara County, 77 percent of whom were extremely low-income and 94 percent of whom were people of color. We have developed this recommendation after listening to the community and grassroots partners and in partnership with our colleagues at Santa Clara County.

BACKGROUND

Local Assistance Framework and Community and Economic Recovery Objectives

From the beginning of the coronavirus pandemic and initial public health orders, the City of San José has prioritized helping those who are most vulnerable to COVID-19 and job loss. Efforts included launching Silicon Valley Strong to help residents, small businesses, and nonprofits, and pivoting City funding and programs to help those in need.

Following the infusion of CARES Act Coronavirus Relief Funds, on August 18, 2020, the City Council approved the framework for local assistance and the following Community and Economic Recovery Objectives:

- Invest in our most vulnerable residents, small businesses, and nonprofits;

- Empower our community with resources that build resiliency; and
- Partner to stabilize and improve outcomes for all.

Our analysis centered these objectives in making the following policy recommendations. In addition, on Feb. 5, 2020, the City Council held a listening session on Community Healing and Economic Recovery, at which Council and the community stressed the importance of prioritizing those hardest hit by the pandemic and recession and how critical housing stability will be now and in the long-term.

2020 Rental Relief Efforts

As of January 26, 2021, the City has dedicated more than \$25 million to support rental assistance for property owners and tenants impacted by COVID-19 and the pandemic-induced recession, prioritizing extremely low-income households. (Note: some of these funds are still being distributed by our nonprofit partners.)

In the largest effort, the Santa Clara County Homelessness Prevention System, led by Destination: Home and Sacred Heart Community Services, pivoted to focus on COVID-19 relief. The program partnered with more than 70 nonprofits and grassroots partners who provided intake, case management, and distributed direct assistance to residents and landlords.

In total, this partnership distributed \$31 million in rental relief and direct financial assistance countywide in 2020, using a combination of local, state, federal, and philanthropic funds. The program assisted 14,000 households countywide. Of these, 77 percent were Extremely Low-Income, earning 30 percent of the Area Median Income or less, and 94 percent were people of color.

On average, households had lost two-thirds of their income due to the pandemic and recession. The average income post-COVID was \$1,000 per month, while the average rent was \$1,700 per month. Back rent owed averaged \$5,000.

Most critically, 25 percent of households were unable to access an online payment platform. In the most recent phase of funding, the program was unable to connect with a landlord to accept a rental assistance payment in 40 percent of the cases. For many of these households, the connection with a trusted provider who could help with applications and provide case management was critical to receiving assistance.

Community Needs

It is difficult to quantify the true scope of back rent due in San José. A recent report from Policy Link projects that 37,305 households in Santa Clara County owe a combined \$173.5 million in back rent. Of these households, 22,269 low-income households owe a projected \$84.3 million.

As detailed above, clients in the 2020 program averaged \$5,000 in back rent due. However, our partners encountered many families who prioritized paying rent due to fear of eviction and displacement. In these situations, families borrowed from friends, families, and payday lenders, maxed out credit cards, or deferred payment on utility bills, medical bills, or other needs.

In another indicator, while local and state eviction protections have suppressed the number of Unlawful Detainer submissions, Housing staff reviewed those that have been submitted (as required by the Apartment Rent Ordinance) and found that, on average, tenants owed approximately \$13,500 in accrued past due rent from April 2020 to October 2020.

Given the need and limited resources, programs have prioritized extremely low-income residents who are most at risk of displacement and homelessness.

Federal Emergency Rental Assistance Funds

The federal Consolidated Appropriations Act of 2021 was signed into law on December 27, 2020. It provides \$900 billion in COVID-19 relief, including \$25 billion to provide rental assistance and help paying utility bills. In total, \$2.6 billion was allocated to the State of California: \$1.5 billion to the State directly and \$1.1 billion directly to California cities and counties with more than 200,000 residents.

As a jurisdiction with more than 200,000 residents, the City of San José was able to apply for funding directly from the U.S. Department of the Treasury. The City has received \$30.38 million in direct funding, and Santa Clara County has received \$26.9 million.

The Treasury Department issued high-level program guidance and frequently asked questions (FAQs) in January, however, the new Administration is currently updating the FAQs for administering the funds.

Currently, the program states that:

- Not less than 90 percent of awarded funds must be used for direct financial assistance, including rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other expenses related to housing.
- Remaining funds are available for housing stability services, including case management and other services intended to keep households stably housed, and administrative costs.
- Up to twelve months of back rent or utility payments may be paid. Up to three months of forward rent may be paid. Back rent due is to be paid first.
- The preference is for funds to be paid directly to the landlord or utility. If the landlord refuses payment, the tenant may be provided funds to pay rent.
- Rental assistance provided to an eligible household should not duplicate any other federally funded rental assistance provided to the household.

- Funds generally expire on December 31, 2021.

An “eligible household” is defined as a residential renter household in which at least one or more individuals meets the following criteria:

- Qualifies for unemployment or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship due to COVID-19;
- Demonstrates a risk of experiencing homelessness or housing instability; and
- Has a household income at or below 80 percent of the area median.

Priority is to be given to eligible households that include an individual who has been unemployed for the 90 days prior to application for assistance and households with income at or below 50 percent of the area median.

The federal funds are only available for rental or utility relief, not help with paying mortgages. The City is seeking clarity as to whether the Emergency Rental Assistance funds can help mobile home owners (who own the mobile home they live in, but pay rent for the land on which it is located) with rental arrears.

The City must meet the federal requirements. However, we can set additional priorities or qualifications within those requirements, such as only funding households with income below 30 percent of AMI.

State of California COVID-19 Tenant Relief Act

As mentioned above, the State of California received \$1.5 billion in federal Emergency Rental Assistance funds. On January 29, 2021, the Governor signed SB 91, the COVID-19 Tenant Relief Act, which extended eviction protections for tenants impacted by the pandemic through July 1, 2021 and created the framework for spending the federal rental assistance funds.

The legislation allocated the \$1.5 billion in state funds to counties and cities based on population. Approximately \$32 million is reserved for San José landlords and tenants, and \$28 million is reserved for Santa Clara County.

On Monday, February 1, 2021, the State announced that it was contracting with LISC (the Local Initiatives Support Corporation), a nonprofit Community Development Finance Institution, to administer the program statewide. In the announcement, the State said the program would prioritize multilingual services, local outreach, fraud prevention, and customer service.

In addition, block grants are available for jurisdictions with more than 200,000 to run their own rental assistance program in conformance with the State program requirements described below.

The State Emergency Rental Assistance Program is scheduled to begin accepting applications no later than March 15, 2021. In conformance with the federal guidelines, funding will be available for households with incomes at or below 80 percent of AMI, with a priority on helping households at or below 50 percent of AMI as well as households unemployed for the preceding 90 days at the time of application.

The State program is prioritizing rental arrears. SB 91 adds an additional layer of requirements for tenants and landlords:

- Landlords can choose to accept 80 percent of any unpaid rent owed from April 1, 2020, through March 31, 2021. If a landlord accepts this funding, the landlord agrees to forgive the remaining unpaid rent for that covered period.
- If a landlord chooses not to participate, the tenant can still apply for relief valued at 25 percent of unpaid back rent they owe for the covered period.
- Qualified tenants will also be able to access funds to cover 25 percent of prospective rent for the months of April, May, and June of 2021, subject to funding availability.

The State has provided local jurisdictions with three alternatives to administer their programs, described below.

ANALYSIS

San José is one of the most expensive regions to live in, and our lowest income residents were already struggling to pay rent and afford basic needs before the COVID-19 pandemic and recession struck. Eviction and utility shut-off protections have provided some cushion, but thousands of households face a mountain of debt from unpaid rent, utilities, and other bills.

The City is extremely grateful for the infusion of federal Emergency Rental Assistance, both the \$30 million in direct funds from Treasury and the \$32 million that the State has set aside for our residents. However, we must note that these new funds are not as flexible as the CARES Act Coronavirus Relief Funds that we used for local assistance efforts in 2020, including for rental relief and direct assistance for extremely low-income families. These new funds come with requirements and guidance around attempting to pay landlords directly and only allow funding for rental and utility relief.

In addition, the program model laid out in SB 91 relies on landlord cooperation to ensure success. In the most recent phase of the 2020 program, our partners found that 40 percent of households did not have a traditional landlord-tenant relationship. The state program will be challenging for tenants who are sub-letting, renting a garage or room, or who have a difficult relationship with their landlord to access. For tenants whose landlords do not want to accept 80 percent of past rent as payment in full, the state program will not eliminate rental debt. It does create new protections from eviction but does not ensure enforcement protections.

The state legislation outlines three options for how cities and counties can access and administer these funds. Following is the Administration's analysis of opportunities and risks of each alternative.

Option A: State Program

Under Option A – the State Program, The City would pool its funds with the State. San José landlords and tenants would be access funds through the partnership with LISC. This option requires using the 80 percent to landlords/25 percent to tenants' model.

The advantages and opportunities with this program include:

- Residents and landlords have one number to call/one application site to access.
- Landlords have the ability to submit applications from multiple jurisdictions in one place.
- The burden is on the State and its partner for verifying duplication of federal benefits.
- The City does not have to administer a program.

Disadvantages and risks include:

- If a landlord refuses to accept 80 percent of rental arrears, then tenant will only receive 25 percent of the funds. This could severely disadvantage tenants in non-traditional rental situations or with difficult landlord relationships.
- The program only covers April 1, 2020-March 1, 2021 rental arrears, which is more restrictive than federal parameters.
- Local partnership component is undefined. Case management component is undefined.
- Program could be inaccessible to the most vulnerable.
- Local partners successfully got \$30 million to 14,000 households in 2020. (Note: this included direct financial support and more flexible funds.)

We explored alternatives related to this option, including keeping funds allowed for housing support, case management, and administration to fund a robust local outreach and case management program. Under this model, local nonprofit partners would focus on the most vulnerable, ELI clients and help access the state program. However, we believe the risks of the 80/25 program model are too great to those at greatest risk. As a result, the Administration does not support moving forward with Option A.

Option B: Local Program

Under Option B – Local Program, the City can apply for and receive a block grant from the State and administer both the \$30 million in direct funds and the \$32 million in state set-aside directly. This option requires using the 80 percent to landlords/25 percent to tenants' model.

In addition, SB 91 sets aggressive deadlines for implementation, requiring that the City encumber 65 percent of the block grant funding by June 1, 2021 and spend all funding by August 1, 2021.

In usual circumstances, the Administration would recommend a locally administered program, particularly when our local partners have demonstrated success in implementation. However, the State's requirements make this option impossible to recommend.

As mentioned above, the 80/25 program model and funding dates don't serve the residents with non-traditional landlord relationships, and those are our households at greatest risk of displacement and homelessness. Additionally, serving these families takes time, attention, and care, as demonstrated by the 2020 program partners. The aggressive timeline outlined in SB 91 would be challenging to meet.

The Administration does not recommend pursuing Option B.

Option C: Hybrid Program

Under Option C – a Hybrid Program, the City would administer a local program with the \$30 million we have received directly from the federal government. The State would administer the \$32 million it has allocated for San José landlords and tenants.

If we pursue Option C, we envision focusing local efforts first on extremely low-income households (at or below 30% of AMI) with multi-lingual outreach and case management, using trusted partners and targeting neighborhoods with the highest rates of COVID-19 and job loss.

In addition, using existing City databases and outreach channels, we would inform landlords of the opportunity to apply directly to the State's partner for funds. Our priorities here would be the operators/owners of the nearly 21,000 deed-restricted affordable units, small-business landlords, and owners of older rent-controlled units that are subject to the City's Apartment Rent Ordinance.

Tenants who have traditional rental/lease arrangements and have incomes between 30 percent and 80 percent of AMI would have the option of applying directly to the State program.

Advantages of Option C include:

- The City will have local control over the \$30 million we have received from Treasury. This will allow us to set program priorities and determine who is eligible, within the federal guidelines, such as focusing on extremely low-income households.
- The local program could cover rent and utility needs beyond the State's April 1, 2020 to March 1, 2021 time period (within available funding).

- The local program could fund higher percentages of rental arrearages than the State's 80/25 model.
- The local program could be tailored to meet the needs of renters that do not have traditional landlord relationships.
- Our local partners know how to reach extremely low-income residents and successfully provided \$31 million to 14,000 households countywide in 2020 through a robust network of trusted grassroots partners to ensure local success.

Disadvantages include:

- San José residents and landlords would be accessing different programs. This increases the risk of duplication of benefits.
- Landlords and tenants could be confused about where to apply for assistance and which program they qualify for.
- Under SB 91, the burden is on the City for verifying there is no duplication of federal benefits if we choose to operate a hybrid program.

Despite the risks involved and the potential confusion of having two programs, the Administration recommends moving forward with Option C – Hybrid Program. The greater risk is that thousands of extremely low-income families in our City will face displacement and homelessness under the State's 80/25 model.

Our plan is to build on the success of the 2020 effort, in partnership with the County and the countywide Homelessness Prevention System, led by Destination: Home and Sacred Heart. We also acknowledge that, as with any new and large program, the 2020 effort had some challenges and that there are areas to improve and streamline the program. We are working with the partners and the County to address these concerns and develop performance metrics for 2021.

We also hope to engage with the State's partner (LISC) with the goal of developing regular communications, data-sharing protocols, procedures for trouble-shooting complex cases, and safeguards to prevent the duplication of benefits. We also hope to access data about how San José landlords and tenants are accessing the program, particularly those households who are low-income and extremely low-income.

CONCLUSION

Each of the program models discussed above has risks and benefits. However, we have a year of experience providing rental relief and direct assistance through trusted partners and a well-established Homelessness Prevention System. We know who is at greatest need in our San José community: Extremely low-income households, communities of color, predominantly in East

San José, those who have been disproportionately impacted by COVID-19 and the loss of jobs and income.

For the reasons outlined in this report, the Administration is recommending Option C, the Hybrid Program. We believe it provides the most flexibility to serve San José residents who are most at risk of eviction and displacement and small-business landlords. We can continue and build on the existing systems and grassroots partnerships that in 2020 provided rental relief and direct financial assistance to 14,000 households across Santa Clara County, 77 percent of whom were extremely low-income and 94 percent of whom were people of color.

We have developed this recommendation after listening to the community and grassroots partners and in partnership with our colleagues at Santa Clara County.

EVALUATION AND FOLLOW-UP

The Administration will return to City Council for contract authority on February 23, 2021 to implement the program, and to budgetarily recognize and appropriate the \$30.38 million of Emergency Rental Assistance funds. Updates on program implementation will be provided via informational memorandum, Council committee, 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

With each new phase of funding and programming, Destination: Home and Sacred Heart convened partners to seek input from the nonprofits and their clients about what was working and what wasn't, as well as how the program should be designed. The Administration participated in those convenings, and the Director of the City's Office of Racial Equity served as facilitator. We will hold additional sessions on Thursday, February 18 to update the nonprofit partners on actions by the City Council and Board of Supervisors before returning to Council for contract authority.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office, and 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.

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/
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/s/
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For questions, please contact Michelle McGurk, Assistant to the City Manager and Assistant Director, Community and Economic Recovery Branch of the EOC, at (408) 535-8254.