



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: May 1, 2023

Approved

Date

5/12/23

SUBJECT: SEVENTH SUBSTANTIAL AMENDMENT TO THE FISCAL YEAR 2019-2020 ANNUAL ACTION PLAN TO REALLOCATE A PORTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CARES ACT FUNDING AWARDED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RECOMMENDATION

- (a) Hold a public hearing to allow for public comment.
- (b) Adopt a resolution relating to the following actions regarding a seventh Substantial Amendment to the Fiscal Year 2019-2020 Annual Action Plan to use the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act funding awarded by the United States Department of Housing and Urban Development to the City of San José:
 - (1) Approve the changes relating to the Substantial Amendment to the Fiscal Year 2019-2020 Annual Action Plan to apply to the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Program Allocation Plan;
 - (2) Reallocate \$250,000 in Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act funds from the Law Foundation of Silicon Valley to Sacred Heart Community Service for the Eviction Diversion and Settlement Program, and authorize the Director of Housing to execute an amendment to the Sacred Heart Community Service contract relating to these additional funds and extend the contract effective July 1, 2023 through December 31, 2023.; and
 - (3) Authorize the Housing Department to submit the Substantial Amendment to the United States Department of Housing and Urban Development.

SUMMARY AND OUTCOME

Approval of this action redirects \$250,000 of federal Community Development Block Grant Coronavirus Aid, Relief, and Economic Security (CARES) Act (CDBG-CV) funding for emergency rental assistance payments to low-income households negatively impacted by the coronavirus disease 2019 (COVID-19). Rental assistance payments would be administered through the City's Eviction Diversion and Settlement Program and overseen by Sacred Heart Community Service.

This action would formally amend San José's plan for spending CDBG-CV funds that were awarded to the City through the federal CARES Act. (See **Attachment** - Seventh Substantial Amendment to the FY 2019-2020 Action Plan Summary.) This change amends the expenditure plan for CDBG-CV funds approved at the February 14, 2023 City Council meeting.¹ It constitutes the Seventh Substantial Amendment to the FY 2019-2020 Annual Action Plan (Action Plan). The United States Department of Housing and Urban Development (HUD) action plans govern the expenditure of formula entitlement funds, competitive grants, and other federal funds that the City receives from HUD. Although the City is currently in the FY 2022-2023 Annual Action Plan period, it is necessary, per HUD's direction, to amend the City's FY 2019-2020 Annual Action Plan because San José's CARES Act funding was first recognized in that document.

BACKGROUND

During the COVID-19 pandemic, economic hardship caused housing instability for lower-income residents. Its effects continue to be felt by these households. The Housing Department engaged in several strategies to improve the housing stability of tenants. Shortly after the COVID-19 shutdown in March 2020, the City passed a temporary eviction moratorium. In addition, the State enacted four temporary eviction protection and rent relief laws during the two subsequent years. However, after the sunset of the temporary eviction protections last summer, eviction filings soared to pre-pandemic levels.² For example, in Santa Clara County, the rate of eviction cases is at one filing for every 195 households.³ During the past 18 months, the Housing Department responded to the dynamic environment of eviction protections by providing supportive rent relief. The purpose of this proposed amendment is to utilize available funding to continue the Housing Department's Eviction Diversion and Settlement Program to intervene and pay COVID-19-related rent arrearages.

¹ See February 14, 2023 City Council meeting minutes:

<https://sanjose.legistar.com/View.ashx?M=M&ID=1074305&GUID=B52A1281-F971-471D-BDB4-DC82C8F5DA56>

² See Attachment C to February 17, 2023 staff report:

<https://www.sanjoseca.gov/home/showpublisheddocument/97472>

³ *Ibid.*

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A Seventh Substantial Amendment to the City's FY 2019-2020 Action Plan is required to redirect existing appropriated funding and pay for these activities. This Action Plan administers San José's federal CARES Act funding overseen by HUD. This amendment allocates the remaining CARES Act CDBG-CV money to prevent, prepare for, and respond to the coronavirus pandemic.

Staff identified a program area to support community needs that is eligible for these funds. Funding the Eviction Diversion and Settlement Program will provide housing stability and homelessness prevention to families and individuals impacted by the pandemic through emergency assistance payments. Furthermore, this program meets CDBG-CV requirements by providing the following eligible public service activities for emergency payments⁴:

- Rent payments
- Rental arrears
- Security deposits
- Utility deposits
- Utility payments

All entitlement jurisdictions, such as San José, that receive HUD's federal funds by formula allocation must have an adopted Citizen Participation Plan. It requires public participation when a substantial amendment to the Action Plan is proposed. According to the City's Citizen Participation Plan,⁵ a Substantial Amendment constitutes a change to a previously adopted Annual Plan if it meets one of the following:

- 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. This requirement entails a 30-day public comment period and two public hearings, unless otherwise allowed a shorter comment period or process per HUD regulations.

HUD recently notified all jurisdictions that the CDBG-CV October 2023 spending deadline has been suspended. No new spending deadline has been provided.

⁴Using CDBG Emergency Payments for Rental Assistance in Coronavirus Responses:

<https://www.hudexchange.info/resource/6591/using-cdbg-emergency-payments-for-rental-assistance-in-coronavirus-responses/>

⁵ 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>

ANALYSIS

CDBG-CV funds were awarded to the Law Foundation of Silicon Valley to provide legal services pertaining to COVID-19. The Housing Department and Law Foundation staff agree that \$250,000 of these funds have a very low likelihood of being spent completely over the next few months.

As mentioned in the background section, there continues to be a high level of evictions for lower-income tenants. Shifting the \$250,000 in CDBG-CV funds to emergency rental assistance would provide additional assistance to lower-income households facing housing instability. To validate the merits of shifting of CDBG-CV funds to use for emergency rental assistance, staff considered the following factors:

- 1) The funding needed to mitigate the high numbers of residential evictions since the sunset of the City's eviction moratorium;
- 2) The ability to spend the funds quickly;
- 3) City and partner feedback to find additional funding to support tenants at risk of eviction; and
- 4) Other eligible uses within the same CDBG-CV category.

After completing the analysis of these factors, staff determined that shifting funds to provide emergency rental assistance should be the recommended course of action.

Sacred Heart Community Service

Sacred Heart Community Service has successfully acted as the lead provider in administering the City's Emergency Rental Assistance Round One funding and continues to manage the financial aspects of rental assistance payments through the Eviction Diversion and Settlement Program.⁶ It is ideally suited to administer additional rental assistance funds quickly and efficiently.

The funds would be used to provide one-time emergency rental assistance to tenants impacted by COVID-19 and at imminent risk of eviction. The Housing Department receives termination notices and unlawful detainer filings for properties covered by the Tenant Protection Ordinance and has seen recent increases in unlawful detainer filings submitted. In March 2023, 171 unlawful detainers were filed,⁷ a sharp increase from the 77 filed in July 2022 after the eviction protections were lifted. Even more so, the COVID-19 national emergency proclamation remains

⁶ See February 17, 2023 staff report: <http://sanjose.legistar.com/gateway.aspx?M=F&ID=2e7dbc33-a6f0-49c9-8c4a-c057beab4c2e.pdf>

⁷ Of the 171 unlawful detainer filings submitted to the Housing Department in March 2023, 157 (92%) were based in whole or in part on non-payment of rent.

in place, surpassing the end of eviction protections.⁸ Thus, the need for one-time emergency payments to assist vulnerable households from eviction continues.

The Eviction Diversion and Settlement Program works with landlords, tenants, and attorneys to cover rental arrears and stop pending eviction proceedings. As of March 2023, the program served over 200 households, aiding in homelessness prevention. The additional funding is expected to help an estimated 25 low-income households and families avoid eviction and remain stably housed. The recommended activities are consistent with HUD’s guidelines for these funds. Input collected from stakeholders, including the Law Foundation of Silicon Valley and Sacred Heart Community Service, and City Council’s approval of the Mayor’s March Budget Message for 2023-2024⁹ all cited the need to continue to assist tenants with one-time payments. A contract amendment is necessary to increase the amount for financial assistance payments and extend the term because Sacred Heart Community Service needs additional time to expend the additional funds in the new fiscal year. Therefore, staff recommends reallocating \$250,000 in CDBG-CV funds from the Law Foundation of Silicon Valley’s COVID-19 legal services contract, which expires June 30, 2023, to an agreement with Sacred Heart Community Service to continue the Eviction Diversion and Settlement Program and provide one-time rental assistance through October 31, 2023.

Shifting \$250,000 in CDBG-CV funds between two different activity categories exceeds the threshold of a change of more than \$100,000 in funding. Therefore, this proposed change constitutes a substantial amendment to the Action Plan per the definition above.

Staff proposes to utilize available funding for housing stability and homelessness prevention efforts as described below in Table 1.

Table 1: FY 2023-2024 CDBG-CV Allocation

Eligible Activity	Proposed Outcome	Amount
Housing Stability and Homelessness Prevention: provides temporary financial assistance, legal support, and other services to help at-risk families and individuals maintain their housing and avoid homelessness	Provide rental assistance to an estimated 25 households	\$250,000
Legal services in response to COVID-19		(\$250,000)
	TOTAL	\$0

⁸ Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic: <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/>

⁹ Mayor’s March Budget Message for Fiscal Year 2023-2024: <https://www.sanjoseca.gov/home/showpublisheddocument/95379/638143945589500000>

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.

COST SUMMARY/IMPLICATIONS

The recommendation action in this memorandum primarily impacts the CDBG-CV allocation within the CDBG Fund. If approved, these actions result in no net changes in overall funding. The measures recommended in this memorandum have no impact on the General Fund. The Seventh Substantial Amendment to the Action Plan will allow the City to fully implement a CDBG-CV allocation plan.

BUDGET REFERENCE

The table below identifies the fund and appropriation to fund contracts recommended in this memorandum.

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. for Agreement	2022-2023 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
441	214Z	Community Development Block Grant CV3	\$6,770,616	\$250,000	967	10/18/2022 Ord. No. 30833

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 May 23, 2023 City Council meeting.

As required by San José’s Citizen Participation Plan,¹⁰ this is a 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 amendment will be held on May 11, 2023, before the City’s Housing and Community Development Commission (Commission).

Staff published official notices of the public meetings and a 15-day public review period in newspapers as required by HUD. The Seventh Substantial Amendment is posted on the Housing Department's website at www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/hud-reports/consolidated-annual-action-plans/2020-25-consolidated-annual-action-plans. In addition, staff published official notices of the public meetings as required by HUD. These notices were posted in English, Spanish, Vietnamese, Chinese, and Tagalog. They were published in *The Mercury News*, *the 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 and individuals concerned about affordable housing and community development issues. The email announcements were also posted on the Housing Department's website.

COMMISSION RECOMMENDATION AND INPUT

The Housing and Community Development Commission (Commission) held a public hearing on the Seventh Substantial Amendment to the FY 2019-2020 Annual Action Plan on May 11, 2023 at 5:45 p.m. At its meeting, the Commission passed the following motion:

Commissioner Finn made the motion to recommend that the City Council approve the Seventh Substantial Amendment to the FY 2019-2020 Annual Action Plan, with a second by Commissioner Del Buono. The motion passed 10-0.

Yes	Oppie, Jackson, Tran, Partida, Vong, Del Buono, Shoor, Dawson, Finn, Cardoza (10)
No	(0)
Absent	Wheeler, Moore, Jasinsky (3)

There were no questions or comments from the Commission. During public comment, one individual stated that the language of the recommendation should be changed to reflect that the COVID-19 pandemic highlighted the inequities that already existed and that \$250,000 was insufficient to meet the community's needs.

¹⁰ 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>

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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 section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

JACKY MORALES-FERRAND
Director of Housing

The principal authors of this memorandum were Stephanie Gutowski, Senior Development Officer, Stephanie.Gutowski@sanjoseca.gov and Myranda Burciaga, Analyst II, Myranda.Burciaga@sanjoseca.gov. For questions, please contact Kristen Clements, Interim Deputy Director of Housing, at Kristen.Clements@sanjoseca.gov.

ATTACHMENT:

Seventh Substantial Amendment to the FY 2019-2020 Action Plan Summary

ATTACHMENT
Seventh Substantial Amendment to the FY 2019-2020 Action Plan Summary

The following is a summary and draft language that amends the Fiscal Year 2019-2020 Annual Action Plan.

Background

This is a proposed seventh amendment to the City's Fiscal Year 2019-2020 Annual Action Plan. The purpose of the amendment is to utilize available Coronavirus Aid, Relief, and Economic Security (CARES) Act money awarded as a supplement to the Community Development Block Grant (CDBG-CV) funding before the spending deadline of October 1, 2023.

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 2019-2020 Action Plan qualify as a substantial amendment because they meet the Housing and Urban Development threshold of an increase of more than \$100,000 in funding, requiring a substantial amendment.

Proposed Amendment

This proposed Substantial Amendment reallocates CDBG-CV funds as follows:

Beginning on page 48 of the approved Fiscal Year 2019-2020 Annual Action Plan, amend the estimated amount of CDBG-CV and Activities in section AP-38 Project Summary, as follows

AP-38 Project Summary
Project summary Information

Table 1 – Project Summary

Fund	Activities	Need Addressed	Proposed Outcome	Allocation
CDBG-CV3	Eviction Diversion and Settlement Program- COVID – Sacred Heart	Affordable Housing	Assist 25 households with rental assistance	\$250,000
CDBG-CV3	Legal services related to COVID-19 - Law Foundation			(\$250,000)
Total				\$0