



## Legislation Text

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**SUBJECT:** Consideration and Approval of the First Substantial Amendment to the U.S. Department of Housing and Urban Development (HUD) 2023 Annual Action Plan Involving Changes to Available Resources, Projects and Activities, and Goals and Objectives Affected by the Reallocation of Community Development Block Grant (CDBG) Funding to Projects in Support of an Affordable Rental Housing Project

### REPORT IN BRIEF

Considers the First Substantial Amendment to the HUD 2023 Annual Action Plan for changes to funding, projects, activities, and goals involving CDBG funds that support the acquisition of land for and the development of an affordable housing project (Devonwood Apartments).

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2024-02**, a Resolution of the City Council of the City of Merced, California, approving Substantial Amendment #1 to the Program Year 2023-2024 Annual Action Plan; Authorizing the City Manager or Deputy City Manager to Execute any Related Documents, Certifications, and/or Agreements Resulting from this Amendment; Certifying Compliance with the Requirements of the Community Development Block Grant (CDBG) Program; and, Authorizing Staff to Submit all Required Documents to the U.S. Department of Housing and Urban Development; and,
- B. Authorizing the Finance Officer to make any necessary budget adjustments.

### ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to conditions as specified by the City Council; or,
- 3. Deny the request; or,
- 4. Defer back to staff for reconsideration of specific items as requested by the City Council; or,
- 5. Defer action to a future meeting, with date and time to be specified in the motion.

### AUTHORITY

City of Merced Charter, Section 200, et. seq., and Title 24 of the Code of Federal Regulations (CFR) Parts 91 and 570 (federal regulations relating to Citizen Participation and Consolidated/ Action Plans, and CDBG funds).

### CITY COUNCIL PRIORITIES

As provided for in the 2023-24 Adopted Budget; and Council Priorities regarding Affordable Housing.

## DISCUSSION

The Merced City Housing Division requests approval of the First Substantial Amendment to the 2023 Annual Action Plan, which was originally approved by Council on June 5, 2023, and HUD on August 28, 2023.

Through this substantial amendment process, the City intends to reprogram \$2,612,845 of CDBG funds to support an affordable housing project and other proposed changes as described in this report.

### Background - Reasons for Amendments

#### *HUD Timeliness Deadlines for Expenditure of CDBG funds*

The primary reason that necessitates amendments to be made to the current 2023 Annual Action Plan is the need to accelerate expenditure of CDBG funds by moving funding to new activities that will spend the funds faster, as well as removing those previously approved projects.

24 CFR 570.902 of CDBG regulations require that the City carry out its CDBG activities in a timely manner, which includes a “Timeliness Test” on May 2<sup>nd</sup> of each year, sixty days prior to the end of the program year - where, if the City has more than 1.5 times its combined current annual CDBG allocation amount and program income by its timeliness date, it is considered non-compliant.

Since January 2020, at the start of the COVID-19 Pandemic, there have been several difficulties that have contributed to the Housing Division’s ability to plan for, implement, and expend its CDBG funds quickly, which have included large receipts of program income from payoff of affordable housing project loans in January 2021, a HUD environmental monitoring that froze multiple projects for an extended time, partly-staffed Housing and Engineering divisions, and the pandemic itself, which indirectly caused delays in the approval of both the 2020 and 2021 Annual Action Plans, and brought with it two different sources of HUD-issued COVID-relief funding that required separate public input processes, further deviating staff from concentrated efforts to move CDBG projects and funding.

Though now completely caught up at the Annual Plan level, the Housing Division is still grappling with a large amount of CDBG program income (PI) funding from 2021, due mainly to CDBG infrastructure projects that were approved with the intent to expend this PI, but which have not been able to move forward for varying reasons.

Because many other CDBG grantees (and HUD itself) were also severely affected by pandemic-caused delays, HUD has made some concessions to grantees like the City regarding timeliness, including waivers and extensions it issued to grantees at the start of and during the pandemic. In October 2021, HUD issued a memorandum entitled “Restarting the Corrective Actions Process for Untimely Expenditure” that provided grantees temporary leniency from stricter corrective actions it would normally take for untimeliness. The memo allowed grantees who were compliant before the pandemic to essentially be warned, not punished, if untimely at the end of the 2021-22 program year.

However, the City was still untimely at the end of program year 2022-23, and as such, has recently worked with HUD to develop a Workout Plan, which explains the reasons for non-compliance and maps out CDBG expenditures on a month-to-month basis over the coming few months. HUD approved the Workout Plan on December 16<sup>th</sup> and will use this workout plan to monitor the City's progress, as we work to be compliant on our next timeliness test date on May 2, 2024. The City must expend a minimum of approximately \$1,551,559 of its CDBG funding by this date.

If non-compliant a third time, the City risks losing all or at least a large portion of its CDBG funding for PY2024-25. Therefore, this substantial amendment is crucial to the City's ability to meet this next test.

### *Need for More Affordable Rental Housing*

Second, these changes also seek to address an urgent need for additional affordable rental housing units in the City of Merced. CDBG funds are typically very limited in the ways to which it can be used for the development of affordable housing - however, one of the eligible uses is for the purchase of land for affordable housing projects that will also use another HUD funding source. As part of staff's work on the Workout plan discussed above, a suitable project has been identified for this use with the CDBG funds, which will actually help the City to far exceed its timeliness responsibilities with HUD.

For nearly two years, Development Services Department (Housing/Planning) staff has been working with the developer team from The Richman Group on a 156-unit 100% affordable rental housing project to be located on currently vacant land at 1535 Devonwood Drive (Devonwood Apartments). The project is tentatively scheduled for its financial closing in late February 2024, which will enable the subject CDBG funding to be spent/drawn down in time to positively benefit the City's timeliness obligations with HUD.

The project has recently received its National Environmental Protection Act (NEPA) environmental clearance from HUD, which will allow for the expenditure of CDBG and Home Investment Partnership Program (HOME) funds for land acquisition and construction, as well as the use of Housing Authority-issued HUD Project Based Vouchers towards the project. The project will also use funding provided by the California Housing Finance Agency (CalHFA), who collaborated in the NEPA process as the Cooperating Agency, and the California Housing and Community Development Department (CA HCD).

Following the requested Council approval, and as soon as HUD approves project funding being amended to the 2023 Annual Plan through this process, City staff will bring the final funding commitment documents to Council for approval - tentatively scheduled for the January 16, 2024, Council meeting.

### Citizen Participation Plan Requirements

The City's adopted Citizen Participation Plan (CPP) for HUD-funded projects sets the requirements for substantial amendments, which is made necessary whenever one or more of the following is proposed:

1. A substantial change in the allocation priorities or substantial change in the method of distribution of funds. A substantial change is defined as a change that affects more than 75%

- of the allocation of funding in any project and/or total distribution.
- 2. An activity using funds from any HUD program not covered by the Consolidated Plan, including program income, not previously described in the plan.
- 3. A substantial change to the purpose, scope, location, or beneficiaries of an activity.

The City is required to carry out a minimum 30-day Public Review and Comment Period to give residents reasonable opportunity to both review the proposed changes and provide their feedback or other input. The City is required to notify the public of this opportunity through the publishing of public notices in three languages in local newspapers, on the City's website, and at the Merced Civic Center, and provide the public with easily-accessible ways to view and comment.

Notices in English, Spanish, and Hmong were published in the Merced Sun-Star and Merced County Times on Thursday, November 23, 2023, and provided a 33-day Public Review and Comment Period through December 26, 2023. Both the notices and the website provided instructions for viewing and commenting, as well as instructions for requesting special accommodations, such as language translation or disabled accessibility. The notices were also posted on the bulletin board outside the Merced Civic Center.

The CPP does not require a public hearing for substantial amendments. However, residents are still encouraged to provide any comments or other input for this matter before the City Council is asked to approve these changes.

### Proposed Amendments

As per the public notice, a summary of the proposed amendments entitled "Summary of Changes to Projects and Amendment Details" was initially posted on November 22, 2023, and a full-text proposed Draft Amended 2023 Annual Action Plan was posted the following week. Both documents explain the reasons for the amendments, and the Draft Amended Plan fully reflects the changes that are proposed. After Council approval, the final draft of the amended plan will be finalized and submitted to HUD for their approval. A preliminary draft has already been submitted to HUD for their precursory review to help expedite this approval process.

The Summary document that was posted for Public Comment, as well as the Draft Amended 2023 Annual Action Plan are attached to this report and provide details as to all the proposed changes (Attachments 1 and 2, respectively). However, below is an overview:

1. 2023 Projects Changed:
  - a. *Project #15: HSG - HOME: Construction of Affordable Rental Housing (23/24)*
    - Change Project Name to HSG - CDBG/HOME: Affordable Rental Housing - Land Acquisition and Construction (23/26).
    - Amend Funding Sources to add \$2,612,845 CDBG to existing HOME funding.
    - Amend Use of Funds to add "Acquisition of Real Property" (both CDBG and existing HOME project funding).
    - Amend Goals Supported to delete Goal 2C from project (no permanent supportive housing will be provided with this project).
    - Amend Location Description to 1535 Devonwood Drive, Merced.

*b. Project #5: PSA - CDBG: Project Sentinel “Tenant-Landlord Services” (23/24)*

- Amend Goals Supported to delete Goal 5 from project.

2. 2023 Projects Deleted:

*a. Project #7: PFI - CDBG: City of Merced McNamara Park Memorial Plunge Pool Improvements (23/24)*

- Remove Project #7 from the 2023 projects list and move \$258,122 CDBG to Project #15
- Goal Outcome Indicator is reduced by 1 Public Facility (“Other”) and estimated 900 persons assisted.

*b. Project #17: HSG - CDBG: Rehabilitation Project to be Determined (23/24)*

- Remove Project #17 from the 2023 projects list and move \$126,563 CDBG to Project #15
- Goal Outcome Indicator is reduced by 1 housing unit rehabilitated

3. Other Amendments:

*a. Increase CDBG Program Income by \$27,095 (see Summary)*

*b. Increase CDBG Carryover Resources Expected by \$2,201,065 (see Summary)*

*c. Amend 2023 CDBG Annual Goals and Objectives (see Summary)*

*d. Minor text amendments and other corrections (see Summary)*

Additional Amendments Required to the 2023 Annual Action Plan

As Housing and Finance Department staff worked to finalize this administrative report, a discrepancy was identified between the Annual Action Plan projects listing, the approved budget, and the balance of funding currently listed as available in HUD’s Integrated Disbursement and Information System (IDIS). As a result of these findings a subsequent or additional amendment will be necessary to resolve the discrepancies.

Staff was unable to incorporate the corrections into this 1<sup>st</sup> amendment due to the notice and comment requirements for the amendment process. In spite of the needs for the additional amendment the stated reasons for this 1<sup>st</sup> Amendment which were published in the Public Notice in November - meeting the HUD CDBG Timeliness Expenditure deadline are valid and necessary to avoid the potential loss of 2024 CDBG funding; and, the community need for affordable housing.

As such, staff requests Council approval of the 1<sup>st</sup> Substantial Amendment as presented, with additional direction to staff to immediately begin the required Citizen Participation noticing, comment period, and other steps needed to begin the process for a 2<sup>nd</sup> Substantial Amendment. This will keep the Devonwood Apartments project on its current timeline for financial closing and expenditure of the stated CDBG (and HOME) funding in order to still meet the CDBG Timeliness deadline by the end of April 2024.

## **IMPACT ON CITY RESOURCES**

This Substantial Amendment involves changes to project activities using CDBG and HOME funds that have already been allocated and distributed by HUD to the City (therefore already budgeted) through approval of the (original) 2023, 2022, and 2021 Annual Action Plans, with the exception of \$27,095 of unanticipated 2023 Program Income that has been received over and above what was previously estimated to be received this year.

Normally, additional program income received in this manner are held in the unreserved, unencumbered fund balance as unallocated funding. It rolls over into the next year's Annual Plan as prior year carryover funding. However, HUD allows grantees the option of using unallocated program income the year they are received, as long as the City performs the required Citizen Participation process that allows residents the opportunity to comment on the use of funds, goals, etc.

Funds are currently available in Fund 2501 CDBG.

## **ATTACHMENTS**

1. Summary of Changes to Projects and Amendment Details - Public Review document
2. Draft Amended 2023 Annual Action Plan (text only version)
3. Resolution 2024-02