

# SACRAMENTO COUNTY BOARD OF SUPERVISORS ABANDONS RESPONSIBILITY FOR COVID-19 CARES ACT SPENDING



## SUMMARY

The Sacramento County Grand Jury conducted an extensive examination of the use and distribution of more than \$270 million in federal Coronavirus Aid, Relief and Economic Security (CARES) Act funding received by both the County and City of Sacramento. The Grand Jury uncovered that the County and City took very different approaches to their use of CARES Act dollars. More importantly, and in the midst of a countywide emergency, the County of Sacramento made questionable and opaque maneuvers that skirted the intent of the CARES Act, to the benefit of County coffers and with scant regard for the needs of its citizens.

The CARES Act was enacted in March 2020. It was directed to cover extraordinary and necessary pandemic related expenditures incurred by state and local government agencies. Receipt of CARES Act funding was determined by population, which meant that while Sacramento County was eligible to receive \$181 million in CARES Act dollars, the City of Sacramento was the only other local governmental entity located in Sacramento County with a large enough population to qualify for its own CARES Act funding. The City received \$89.6 million from the CARES Act.

A fundamental CARES Act requirement was that funding utilized by government agencies had to be allocated for pandemic specific activities, and could not be applied toward already budgeted items. The Grand Jury found that the City of Sacramento distributed nearly its entire \$89.6 million CARES Act allocation to community agencies and businesses to help alleviate Coronavirus Disease 2019 (COVID-19) impacts.

In stark contrast, the Grand Jury investigation revealed that the County of Sacramento conducted no outreach, and made no CARES Act funding plan to support countywide COVID-19 relief activities. Instead, the County Chief Executive directed, and the Board of Supervisors approved, allocation of \$104 million of its \$181 million in CARES Act funding directly to the Sheriff's Office, transferring the same amount of Sheriff's Office funding back into the County's General Fund. While the CARES Act permitted its funding to support public safety, the County's maneuver was inconsistent with the widely publicized intent that CARES Act funds be directed to meet the community's challenges triggered by the COVID-19 pandemic.

The Grand Jury's comprehensive review of the County's budgeting process uncovered a failure to operate with transparency. The result of this failure undermined public confidence in government during a countywide emergency. The County Board of Supervisors failed to engage in governance and oversight at a critical moment.

The County Chief Executive had argued that the fund transfer to the Sheriff was entirely legal and made in anticipation of a pandemic-induced county revenue shortfall. However, neither the County Executive nor the Board presented any statutory or regulatory language, or a legal opinion, that would verify this assertion. At a minimum, the County Board of Supervisors, as elected representatives, had an obligation to timely notify its constituents of the fund allocation and transfer.

The Sacramento Grand Jury recommends that the Board of Supervisors appoint an independent panel to conduct an audit of the allocation and use of CARES Act funds and determine whether County actions were, in fact, in compliance with federal CARES Act requirements.

## **BACKGROUND**

Sacramento County received \$181 million in CARES Act funds. These funds were directed by Congress to cover extraordinary and necessary expenditures related to local, state/US Territory, or tribal government COVID-19 response activities. CARES Act funds were not allowed to be used to replace already budgeted activities. Further, these COVID-19 related expenditures were required to be incurred between March 1 and December 30, 2020.

Due to the pandemic crisis, the County estimated in April 2020 that it would receive approximately \$170 million less in revenue than expected for fiscal year<sup>1</sup> (FY) 2019-2020 and FY 2020-2021. On April 21, 2020, the Board of Supervisors authorized the County Executive, or his designee, to apply for, accept, and draw down all available loans, grants and other funding that might be available to the County to respond to the COVID-19 public health emergency.

The Board of Supervisors did not request, nor did it receive reports on the receipt, allocation or use of CARES Act funds until over three months later. On August 11, 2020, the County Executive reported to the Board that putting \$104 million of the \$181 million in CARES Act funds into the Sheriff's Office budget for existing County public safety employee salaries and benefits, as well as other existing service costs, was allowed by the Act. He provided further justification by explaining that moving already allocated General Fund dollars out of the

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<sup>1</sup> The Sacramento County's Fiscal Year runs from July 1 through June 30 of the following calendar year

Sheriff's budget back into the County General Fund would 1) help offset the anticipated \$170 million County revenue shortfall brought about by the COVID-19 pandemic, and 2) preserve those General Fund dollars that had no expiration date by putting CARES Act monies into use by the Sheriff, to be spent by the December 30, 2020 CARES Act deadline.

A citizen complaint about the County's conduct in its disposition of its CARES Act funds was submitted to the 2019-2020 Sacramento County Grand Jury. Due to the limited time remaining in the Jury's term, the complaint was forwarded to the 2021-2022 Grand Jury, which approved an investigation on March 18, 2021.

## **METHODOLOGY**

During its investigation, the grand jury conducted interviews and reviewed numerous documents, websites, and recordings including, but not limited to:

- Sacramento County Public Health Orders
- Sacramento City and County Public Health website
- Planning documents related to the COVID-19 and the CARES Act from the City and County
- Reports from City and County agencies related to COVID-19 status and responses
- Directives from the Sacramento County Board of Supervisors
- Directives from the Sacramento City Council
- Sacramento County Board of Supervisors meeting agenda packets, action summaries, and videos
- Sacramento City Council Agendas and Minutes
- Communications related to COVID-19 funding from both the County and City
- Announcements, agendas, and information from community workshops
- City and County Budget documents
- City and County documents related to reporting on COVID-19 response
- Citizen Complaint#19.20.48
- Federal CARES Act of 2020
- Department of the Treasury - Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments
- Department of the Treasury - 31 CFR Part 35 RIN 1505-AC77, Coronavirus State and Local Fiscal Recovery Funds
- Budgetary and other documentation from the Sacramento County Sheriff's Department
- Interviews of several County officials
- California Health and Safety Code Sections 101040, 101085, 120175, and 120220

## **DISCUSSION**

To stem the economic fallout from the COVID-19 pandemic, Congress passed and the president signed the CARES Act of 2020 in March 2020. The CARES Act provided a total of \$150 billion in relief funding to states, local government and US Territories and tribal governments. These funds were directed to be used for COVID-19 related expenditures incurred between March 1

and December 30, 2020. CARES Act funds were prohibited from use for already budgeted expenditures. Sacramento County received \$181 million in CARES Act funding.

On April 21, 2020, in preparation for receipt of CARES Act funds, the Board of Supervisors passed a resolution which authorized:

*The County Executive, or his designee, to apply for, accept, and draw down loans, advances, grants or other funding that may be available to the County to respond to the COVID-19 public health emergency and that the County Executive determines it is in the best interests of the county to accept; and*

*That the Board grants the County Executive, or his designee, retroactive authority to apply for and accept funds due to the nature of the emergency and the changing guidance from the federal and state government regarding application criteria and timelines.*

Despite the ongoing public health emergency and a 2020 summer surge, the Board showed little interest in the allocation and utilization of the CARES Act funds received by the County. In fact, the Board waited more than three months to receive a CARES Act revenue and expenditure report from the County Executive. It was August 11, 2020, when the County Executive finally provided an outline identifying “key goals” explaining how CARES Act eligible expenditures were approved by him:

1. Address critical public health needs to contain the spread of COVID-19;
2. Avoid potentially massive budget cuts to critical County programs, including public health, mental health, alcohol and drug, public safety, child protective services, homeless services, parks and other programs; and
3. Fully comply with federal law and guidance on the use of CARES Act funds, such as the prohibition on backfilling revenue losses, the requirement that the use of funds be subject to the Single Audit Act, the prohibition on using CARES Act funds to match other federal funds and the general requirement that the funds be used to cover COVID-19 related expenses.

The County Executive reported structuring use of the \$181 million of CARES Act funding over a two-year period, \$147.97 million for FY 2019-2020, and \$33.1 million in FY 2020-21.

Table 1 on the following page shows County expenditures for FY 2019-2020 listed in the reporting categories as required by the federal government:

**Table 1: Sacramento County Spending**

<u>Category of Spending for FY2019-2020</u>	<u>Amount</u>
Transferred to other governments	\$0.00
Payroll for public health and safety employees	\$132,857,301.43
Budgeted personnel and services diverted to a substantially different use	\$4,465,562.87
Improvements to telework capabilities of public employees	\$67,701.36
Medical expenses	\$4,056,586.22
Public health expenses	\$217,623.57
Distance learning	\$0.00
Economic support	\$7,127.00
Expenses associated with the issuance of tax anticipation notes	\$0.00
All items not listed above	\$6,296,050.20
Total	\$147,967,952.65

*Source: August 11, 2020 County Executive Report to Sacramento County Board of Supervisors; "Status of Coronavirus Relief Fund Revenue Received by Sacramento County"*

The Sacramento County Grand Jury, during its investigation, took specific note of the actual reported spending of \$132.86 million for “payroll for public health and safety employees.” The Sheriff’s Department received \$104.2 million (78%) of that \$132.86 million. On its face, this CARES Act allocation to the Sheriff to fund “public safety” payroll was permitted under federal guidelines. But the Grand Jury found that these CARES Act funded “public safety” employees simply continued performing the same duties as they had prior to the start of the COVID-19 pandemic. The CARES Act prohibited use of its funds for already budgeted staffing activities.

Further, the Grand Jury found a notable disconnect between the Sheriff’s receipt of a majority of the County’s CARES Act funds for public safety purposes, and the Sheriff’s flat refusal to publicly enforce the Governor and County’s Public Health stay-at-home and masking orders issued to prevent the community spread of COVID-19.

During this August 11<sup>th</sup> Board meeting, the County Executive and Chief Financial Officer (CFO) explained the Sheriff’s disproportionate allocation by stating that while other County departments could have used the CARES Act money, the County Executive and CFO were concerned that spending the entire CARES Act allocation could not be accomplished by the initial federal deadline of December 30, 2020. Unspent funds would then revert back to the federal government.

The County Executive and CEO asserted that since there was no deadline on use of County General Fund dollars, switching the Sheriff’s County General Fund allocation with CARES Act funds would guarantee that the entire \$181 million of CARES Act funding (\$147.97 million FY 2019-2020/\$33.1 million FY 2020-2021) would be retained by the County.

Switching County General Fund dollars with CARES Act funds may have provided the County with flexibility to maximize all the available federal and state funds that carry spending deadlines. However, the Grand Jury found that this maneuver had adverse consequences to the local community at a critical time in County history.

Most important to County residents, the lack of governance and oversight by the Board of Supervisors allowed the County Executive to violate the first goal of the County’s stated criteria for use of CARES Act funds: to “address critical public health needs to contain the spread of COVID-19.” While the entire County was immersed in the largest public emergency in memory, the Board of Supervisors failed to oversee the activities of the County Executive, and to provide regular, comprehensive public discussion of County emergency activities and use of CARES Act funding.

As shown in Figures 1 and 2, the City of Sacramento and the City Council, acted in marked contrast with the County. The City made its first CARES Act funding decision using a Request for Proposal (RFP) process to allocate \$1 million in discretionary General Fund money mostly to the city’s smaller businesses, including restaurants. The City Council also made an early decision to distribute a significant amount of its \$89.6 million in CARES Act funding to the city community, retaining a small amount for internal City operations. The City’s allocation of CARES Act funding is presented in Figure 3.

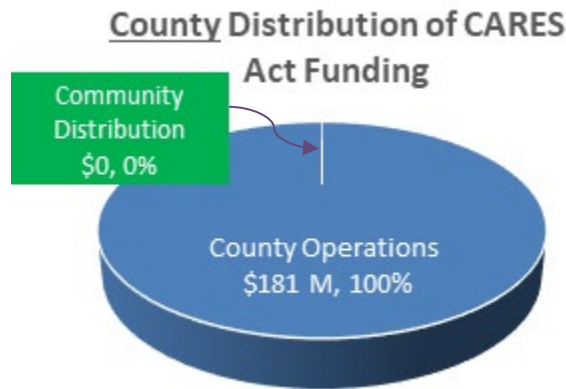


Figure 1

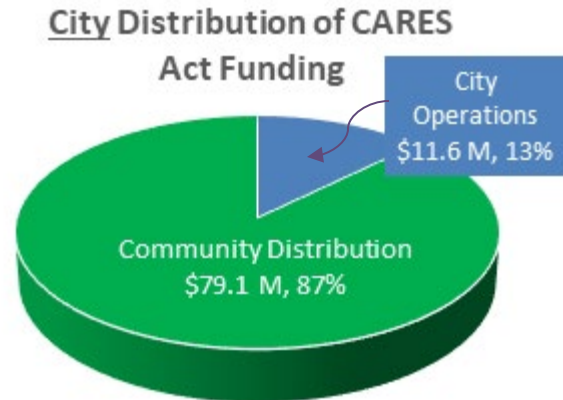


Figure 2

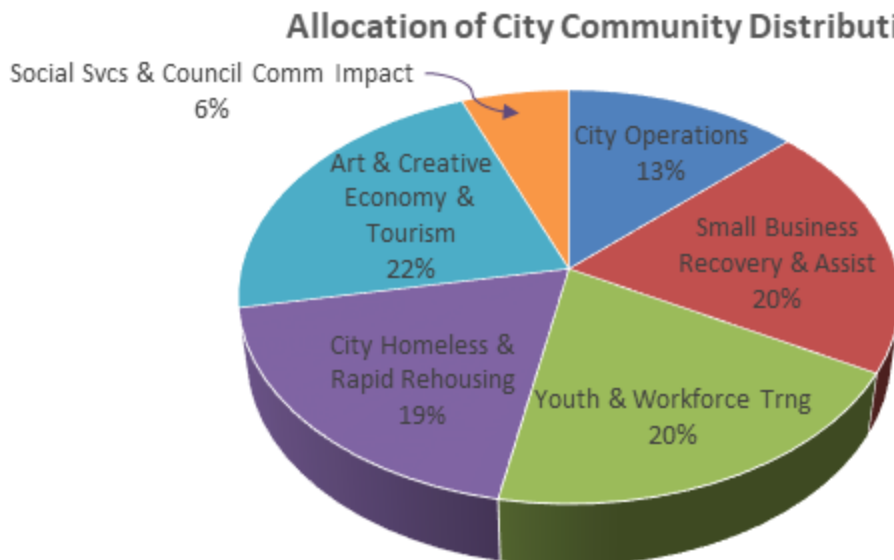


Figure 3

For its part, the County Executive did name an advisory committee of County agency heads to receive CARES Act funding requests from County departments and recommend allocation proposals to the County Executive for final action. However, scant information was provided regarding the request and approval process. No reports of funding requests or approvals were made to the Board between April 21, 2020 and August 11, 2020. As further evidence of its fractured response to the pandemic, the County Executive provided little guidance within County government regarding COVID-19 response and mitigation, resulting in an ad hoc set of County department COVID-19 related actions. The County Executive was placed on administrative leave and subsequently resigned his position effective February 2021.

## **FINDINGS**

- F1.** The Sacramento County Board of Supervisors abdicated its responsibility to determine community needs and to provide oversight in the development and implementation of the County COVID-19 response.
- F2.** The Sacramento County Board of Supervisors used the vast majority of the CARES Act funding it received to augment the county budget and support county operations while providing minimal support to the Sacramento County Health Department or other County agencies to address community needs resulting from the COVID-19 pandemic, neglecting its public support responsibility.
- F3.** The vast majority of the Sacramento County CARES Act dollars were used to fund County operations. No funds were distributed to the cities within the County to assist their effort to directly address the COVID-19 pandemic.
- F4.** Each department within the Sacramento County Administration had to create its own action plan to address the COVID-19 pandemic because there was no overarching County Plan nor was specific direction provided from the County Executive regarding these action plans.

- F5.** The Sheriff's Department final FY 2019-2020 budget was not increased due to the use of CARES Act funding of \$104.2 million. At year-end closing, Sacramento County provided the Sheriff's Department with \$104.2 million of CARES Act funds, and removed an equivalent amount of General Funds from the Sheriff's Department. The Sheriff used these CARES Act funds for standard non-COVID-19 operations. The Grand Jury was unable to determine if the switching of funds was in compliance with federal CARES Act requirements.
- F6.** Sacramento County's allocation of the majority of CARES Act funds to the Sheriff's Department achieved several benefits. It ensured there was no loss of CARES Act funds, provided the County with greater financial flexibility in funding services, and addressed the COVID-19 emergency. The Grand Jury was unable to determine if the switching of funds was in compliance with federal CARES Act requirements.
- F7.** The County Executive's decision to allocate 70% of Sacramento County's FY2019/2020 CARES Act expenditures to the Sheriff's Department ignored many of the critical public health needs to contain the spread of COVID-19. The Grand Jury was unable to determine if this action was in compliance with federal CARES Act requirements.
- F8.** While the Sheriff's Department conducted COVID-19 mitigation efforts within detention facilities, it expressly chose not to enforce the Governor's active emergency orders related to minimizing the spread of COVID-19 among the general public. The Grand Jury was unable to determine if the lack of enforcement of the Governor's emergency orders while using CARES Act funding was in compliance with federal CARES Act requirements.
- F9.** The CARES Act prohibited use of its funds for already budgeted staffing activities. But these CARES Act funded "public safety" employees simply continued to perform their same duties as they had prior to the start of the COVID-19 pandemic. The Grand Jury was unable to determine if this action was in compliance with federal CARES Act requirements.
- F10.** The Board of Supervisors, the County Executive, and the Sheriff's Department were not transparent in the use of the CARES Act funds. There was no written notice provided in the Board meeting agenda nor explanation within the Board Packet meeting materials regarding the replacement of allocated Sheriff's Department General Funds with CARES Act funds.
- F11.** The lack of governance and oversight by the Board of Supervisors allowed the County Executive to violate the first goal of the County's stated criteria for use of CARES Act funds.
- F12.** The City of Sacramento used a significant majority of its federal CARES Act funding to mitigate the impact of the COVID-19 pandemic on the local community.
- F13.** The City of Sacramento actively solicited community input on the allocation of CARES Act funding from local community.



- F14.** The Sacramento City Council actively engaged in the planning and oversight of CARES Act funding and determined five categories of funding included in the City’s “COVID-19 Response: CARES Act Investments.”

## **RECOMMENDATIONS**

- R1.** The Board of Supervisors should appoint an independent panel by June 2022 to conduct an audit to determine whether County actions were, in fact, in compliance with federal CARES Act requirements.
- R2.** The Sacramento Board of Supervisors, the County Executive, and the Sheriff’s Department should each adopt a transparent and properly noticed budget allocation and approval process to be used upon receipt by the County for all funding sources, including surplus dollars. This process should include adequate notice, extensive engagement with county residents, and utilize detailed public notices, media briefings, stakeholder workshops and appropriate social media outreach. This recommendation should be in place by December 2022.
- R3.** The County Board of Supervisors should engage in an active process to identify and address community needs and develop a plan to deliver appropriate funding and services to the community outside of County operations. A policy should be developed and approved to ensure community input in the use of supplemental emergency funding by December 2022.
- R4.** A policy should be developed by the County Board of Supervisors directing the County Executive to provide clear and specific direction and oversight to county operations to ensure that the Board’s plans and strategic directions in response to community emergencies are properly carried out. This policy should be developed and approved by December 2022.
- R5.** A policy should be developed by County Board of Supervisors to require that the County Executive provide monthly updates on the use of special funding. This policy should be developed and approved by December 2022.

## **REQUIRED RESPONSES**

Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses as follows:

From the following elected county officials within 60 days:

- Don Nottoli, Chair  
Sacramento County Board of Supervisors  
700 H Street, Suite 2450  
Sacramento, CA 95814
- Scott Jones, County Sheriff  
Sacramento County Sheriff’s Department

4500 Orange Grove Avenue  
Sacramento, CA 95841

Mail or deliver a hard copy response to:

- Hon. Michael Bowman  
Presiding Judge  
Sacramento County Superior Court  
720 9th St.  
Sacramento, CA 95814

Please email a copy of this response to:

- Ginger Durham  
Jury Commissioner  
[DurhamG@saccourt.ca.gov](mailto:DurhamG@saccourt.ca.gov)

Erendira Tapia-Bouthillier  
Grand Jury  
[TapiaE@saccourt.ca.gov](mailto:TapiaE@saccourt.ca.gov)

## **INVITED RESPONSES**

- Rich Desmond, Vice Chair  
Sacramento County Board of Supervisors  
700 H Street, Suite 2450  
Sacramento, CA 95814
- Phil Serna, Supervisor  
Sacramento County Board of Supervisors  
700 H Street, Suite 2450  
Sacramento, CA 95814
- Patrick Kennedy, Supervisor  
Sacramento County Board of Supervisors  
700 H Street, Suite 2450  
Sacramento, CA 95814
- Sue Frost, Supervisor  
Sacramento County Board of Supervisors  
700 H Street, Suite 2450  
Sacramento, CA 95814
- Ann Edwards, County Executive

Sacramento County  
700 H Street, Room 7650  
Sacramento, CA 95814

- Darrell Steinberg, Mayor  
City of Sacramento  
915 I St., 5<sup>th</sup> Floor  
Sacramento, CA 95814
- Howard Chan, City Manager  
City of Sacramento  
915 I Street  
Sacramento, CA 95814
- Porsche Middleton, Mayor  
City of Citrus Heights  
6237 Fountain Square Dr.  
Citrus Heights, CA 95621
- Christopher W. Boyd, City Manager  
City of Citrus Heights  
6360 Fountain Square Drive  
Citrus Heights, CA 95621
- Bobbie Singh-Allen, Mayor  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758
- Jason Behrmann, City Manager  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758
- Kerri Howell, Mayor  
City of Folsom  
50 Natoma St.  
Folsom, CA 95630
- Elaine Andersen, City Manager  
City of Folsom  
50 Natoma St.  
Folsom, CA 95630
- Shawn Farmer, Mayor  
City of Galt

380 Civic Drive  
Galt, CA 95632

- Lorenzo Hines Jr., City Manager  
City of Galt  
380 Civic Drive  
Galt, CA 95632
- Eric Pene, Mayor  
City of Isleton  
P.O. Box 716  
Isleton, CA 95641
- Charles Bergson, City Manager  
City of Isleton  
P.O. Box 716  
Isleton, CA 95641
- Garrett Gatewood, Mayor  
City of Rancho Cordova  
2729 Prospect Park Drive  
Rancho Cordova CA 95670
- Cyrus Abhar, City Manager  
City of Rancho Cordova  
2729 Prospect Park Drive  
Rancho Cordova CA 95670

Mail or deliver a hard copy response to:

Hon. Michael Bowman Presiding Judge  
Sacramento County Superior Court  
720 9th St.  
Sacramento. CA 95814

Please email a copy of this response to:

- Ginger Durham  
Jury Commissioner  
[DurhamG@saccourt.ca.gov](mailto:DurhamG@saccourt.ca.gov)
- Erendira Tapia-Bouthillier  
Grand Jury  
[TapiaE@saccourt.ca.gov](mailto:TapiaE@saccourt.ca.gov)

*Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.*