County of Los Angeles
**CHIEF EXECUTIVE OFFICE**
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FESIA A. DAVENPORT
Chief Executive Officer

"To Enrich Lives Through Effective And Caring Service"



August 10, 2021

**ADOPTED**
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

73-E August 10, 2021

CELIA ZAVALA
EXECUTIVE OFFICER

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**ESTABLISH A NEW BOARD BUDGET POLICY ON
CARE FIRST AND COMMUNITY INVESTMENT
(ALL DISTRICTS)
(3-VOTES)**

## SUBJECT

Recommendation to approve a new Board budget policy to establish procedures to fund Care First and Community Investment (CFCI) programs. The CFCI procedures and programs track those established in County Ballot Measure J, approved by County voters on November 3, 2020. Although the Los Angeles Superior Court determined that the Measure J requirements could not be mandated by voters, the court acknowledged your Board's separate authority to implement Measure J's procedures and programs.

## IT IS RECOMMENDED THAT THE BOARD:

Adopt the attached new Board budget policy, effective July 1, 2021, related to Care First and Community Investment Programs.

## PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approve New Budget Policy – Care First and Community Investment Programs

Measure J was a Charter Amendment passed by County voters on November 3, 2020. The Measure created a process to allocate ten percent (10%) of unrestricted locally generated revenues to fund program categories in the areas of direct community investment or alternatives to incarceration.

Measure J required that the County “[s]et aside a baseline minimum threshold of at least ten percent (10%) of the County’s locally generated unrestricted revenues in the general fund (net County cost), as determined annually in the budget process or as otherwise set forth in the County Code or regulations, to be allocated on an annual basis…” (Measure J, section (8)(A)).

On June 17, 2021, the Los Angeles County Superior Court issued a tentative ruling that Measure J is constitutionally invalid. The court determined that the Measure interferes with your Board’s authority under State law to establish the County’s budget. In its decision, however, the court made clear that “this case does not involve any evaluation of the policy choices embedded in Measure J. Nor does the court’s resolution of this case prohibit in any way the current Board of Supervisors or any future Board, from adopting a budget wholly in line with Measure J’s provisions.” On July 14, 2021, the court issued the final statement of decision.

We recommend your Board adopt the attached budget policy to establish the appropriate procedures and controls, and to provide the requisite guidance in preparing the County budget, to ensure that the aims of Measure J are implemented in accordance with your Board's intent. We further recommend that the Board budget policy be known and cited as the “Care First and Community Investment Program.”

**Implementation of Strategic Plan Goals**

The recommended action supports Strategy III.3, Pursue Operational Effectiveness, Fiscal Responsibility, and Accountability.

**FISCAL IMPACT/FINANCING**

The CFCI Program budget policy identifies how the County will determine the amount of locally generated unrestricted revenues in the general fund (net County cost) to set aside for CFCI programs. Your Board approved $100 million for CFCI programs in the Fiscal Year (FY) 2021-22 budget as a down payment to the full set-aside amount in FY 2023 24.

Other components of the CFCI Program budget policy are consistent with Measure J’s provisions:

- Unrestricted revenues that are set aside shall phase in over a three-year period, beginning July 1, 2021, and incrementally grow to the full set-aside by June 30, 2024. During the annual budget process, the Chief Executive Office (CEO) will determine the amount of unrestricted net County cost that is available for CFCI programs in the upcoming budget year.

- The ten percent (10%) set-aside cannot be used to supplant existing County funds that are already budgeted for in the nine CFCI Program categories. That is, CFCI funding must be add to, not replace, the existing budgeted net County cost levels for the nine program categories. The budgeted funding in the FY 2020-21 Final Adopted Budget will constitute the base year funding for net County cost for these categories.

- The Board may, by four-fifths vote, reduce the set-aside in the event of a Board declared fiscal emergency that threatens the County’s ability to fund mandated programs. Further, the amount of available unrestricted local revenues that support CFCI programs may be variable or lower during periodic economic downturns. Finally, in the event of a severe mid-year economic downturn, the

CEO may seek to close any budget gap in available funding through mid-year budget reductions, the use of obligated fund balance, or other measures.

As defined in the CFCI Program budget policy, locally generated unrestricted revenues in the general fund are comprised of local revenue sources over which your Board has substantial spending flexibility. Locally generated County revenues include property taxes, deed transfer taxes, transient occupancy taxes, various permit and fee revenues, and others. The budget policy excludes restricted or required spending categories where your Board lacks flexibility in the spending amount or obligation. Restricted spending categories generally consist of legal settlements, maintenance of effort requirements, State and federal mandates, legally or contractually required payments, previously incurred debt service, unfunded pension or retiree health obligations, and prior year unfunded workers compensation costs, among others.

## FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The CFCI Program budget policy identifies nine specific program categories where the funds may be expended:

Direct Community Investment

1. Community-based youth development programs.

2. Job training and jobs to low-income residents focusing on jobs that support the implementation of the "Alternatives to Incarceration" workgroup recommendations as presented to the County Board on March 10, 2020, especially construction jobs for the expansion of affordable and supportive housing, restorative care villages, and a decentralized system of care.

3. Access to capital for small, minority-owned businesses.

4. Rent assistance, housing vouchers, and accompanying supportive services to those at risk of losing their housing, or without stable housing.

5. Capital funding for transitional housing, affordable housing, supportive housing, and restorative care villages with a priority for shovel-ready projects.

Alternatives to Incarceration

1. Community-based restorative justice programs.

2. Pre-trial non-custody services and treatment.

3. Community-based health services, health promotion, counseling, wellness and prevention programs, and mental health and substance abuse disorder services.

4. Non-custodial diversion and reentry programs, including housing and services.

The policy provides that funding shall not be used for any carceral system or law enforcement agencies. The policy further provides that all funding decisions must be in compliance with applicable State and federal law.

The Reimagine LA Advisory Committee and stakeholder process created by your Board will generate spending proposals to the CEO. Consistent with State budget law, the CEO will prepare a recommended CFCI Program budget for your Board's consideration. Upon approval by your Board, the CEO will allocate funding to appropriate budget units.

Consistent with the provisions of Measure J and existing Board Policy 4.030 – Budget Policies and Priorities, the ten percent (10%) set-aside required by the CFCI Program budget policy may be reduced by a four-fifths vote. Such a reduction may be exercised in the event of a Board-declared fiscal emergency that threatens the County's ability to fund mandated programs. In this situation, the CEO will seek Board authorization to reduce the set-aside for the fiscal year.

As County Counsel advised when Board Policy 4.030 was discussed on September 30, 2014, a simple majority of your Board could adopt a Board policy that includes a provision requiring a super-majority to approve certain actions. However, County Counsel further advised that a simple majority of your Board could also suspend, waive, or repeal the policy calling for a super-majority vote.

This advice is based upon a formal California Attorney General opinion which addressed this issue following a request for a legal opinion from the County of Mono. After reviewing applicable legal precedent, the Attorney General concluded that while a board of supervisors may adopt a rule that mandates a four-fifths vote of the board to act regarding specified matters which otherwise would require only a majority vote for adoption, such a rule may itself be amended or repealed by a majority vote of the board. The Attorney General reasoned that a majority does not have the power to make a rule which cannot be modified or repealed by a majority. The Attorney General concluded that if a majority of an official body has the authority in the first instance to pass a rule, a majority has the authority to annul or repeal the same rule, even a rule which provides that no rule can be repealed or amended without a super-majority vote. The Attorney General also noted that no meeting of a legislative body can bind a subsequent one by irrepealable acts or rules of procedure. 66 Cal.Ops. Atty.Gen. 336, 338-339 (1983).

Based on California Attorney General Guidance interpreting State law, your Board can revise, suspend, or repeal this policy with a simple three vote majority.

## **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Over time, the CFCI Program budget policy implementation may result in budget reductions to existing discretionary programs in multiple departments. CFCI funding will be phased in over three years and would need to be financed either through growth in unrestricted locally generated revenues or, if needed, net County cost reductions in departmental budgets. Any budget reductions may result in service cutbacks, possibly including layoffs, in impacted programs.

Respectfully submitted,

FESIA A. DAVENPORT
Chief Executive Officer

FAD:JMN:MM
JJ:cg

Enclosures

c: Executive Office
County Counsel
Auditor-Controller

# Los Angeles County BOARD OF SUPERVISORS POLICY MANUAL

ATTACHMENT

| Policy #: | Title: | Effective Date: |
|---|---|---|
| **4.03X** | **Care First and Community Investment Budget Policy** | **08/10/21** |

## BACKGROUND

Ballot Measure J was a charter amendment approved by Los Angeles County (County) voters on November 3, 2020. The Measure required the County to "[s]et aside a baseline minimum threshold of at least ten percent (10%) of the County's locally generated unrestricted revenues in the general fund (net County cost), as determined annually in the budget process or as otherwise set forth in the County Code or regulations, to be allocated on an annual basis…" (Measure J, section (8)(A)).

On June 17, 2021, the Superior Court ruled that Measure J is constitutionally invalid. The court determined that the Measure interferes with the Board of Supervisors' authority under State law to establish the County's budget. On July 14, 2021, the court issued the final statement of decision.

In its decision, the court made clear that "this case does not involve any evaluation of the policy choices embedded in Measure J. Nor does the court's resolution of this case prohibit in any way the current Board of Supervisors or any future Board, from adopting a budget wholly in line with Measure J's provisions."

Because the court's decision does not prohibit the Board of Supervisors (Board) from adopting the types of budget investments called for in Measure J (i.e., direct community investments and investments in alternatives to incarceration), a Board budget policy is needed to provide guidance in preparing the County budget to ensure that the aims of Measure J are implemented in accordance with the Board's intent. The Board budget policy shall be known and cited as the Care First and Community Investment (CFCI) Program.

## PURPOSE

Effective July 1, 2021, establishes a budget policy to ensure that provisions of the CFCI Program for ongoing funding for alternatives to incarceration and direct community investments are implemented in accordance with the Board's intent. This policy does not address the process for determining which eligible programs, services, and other investments are funded with CFCI.

## REFERENCE

July 28, 2020, Board Order Nos. 1, 2, and 3

## POLICY

This policy consists of two parts. Section I establishes a minimum funding set-aside for CFCI and specifies the programs, services, and other investments that are eligible for CFCI funding. Section II specifies how the County will determine the amount of locally generated unrestricted revenues available for CFCI purposes.

**SECTION I – USE OF FUNDING IDENTIFIED FOR CFCI**

1. The County shall set aside a baseline minimum threshold of at least ten percent (10%) of the County's locally generated unrestricted revenues in the general fund (net County cost), as determined annually in the budget process or as otherwise set forth in the County Code or regulations, to be allocated on an annual basis, after input from, among others, the public and County departments at a public meeting, for the following primary purposes:

   Direct Community Investment

   a) Community-based youth development programs.

   b) Job training and jobs for low-income residents focusing on jobs that support the implementation of the "Alternatives to Incarceration" workgroup recommendations as presented to the Board on March 10, 2020, especially construction jobs for the expansion of affordable and supportive housing, restorative care villages, and a decentralized system of care.

   c) Access to capital for small, minority-owned businesses.

   d) Rent assistance, housing vouchers, and accompanying supportive services for those at risk of losing their housing or without stable housing.

   e) Capital funding for transitional housing, affordable housing, supportive housing, and restorative care villages with a priority for shovel-ready projects.

   Alternatives to Incarceration

   a) Community-based restorative justice programs.

   b) Pre-trial non-custody services and treatment.

   c) Community-based health services, health promotion, counseling, wellness and prevention programs, and mental health and substance abuse disorder services.

d) Non-custodial diversion and reentry programs, including housing and services.

2. The set-aside shall not be used for any carceral system or law enforcement agencies, including the County Sheriff's Department, District Attorney's Office, Superior Courts, or Probation Department, including any redistribution of funds through those entities. This restriction does not extend to State law requiring the County to fund court facilities and expenditures, including, but not limited to, the Trial Court Facilities Act of 2002 (2002 Senate Bill 1732) and Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Assembly Bill 233), other mandatory fines and fees, or any other County commitments to the extent required by law.

3. The unrestricted revenues that are set aside shall phase in over a three-year period, beginning July 1, 2021, and incrementally grow to the full set-aside by June 30, 2024, pursuant to the procedures codified in the County Budget Act in the Government Code.

4. The set-aside cannot supplant monies otherwise allocated for the same categories listed above in paragraph 1 as direct community investment or alternatives to incarceration.

5. The Board shall establish an inclusive and transparent process on the allocation of funds set aside for CFCI.

6. The Board may, by a four-fifths vote, reduce the set-aside for a one year period in the event of a fiscal emergency, as declared by the Board, that threatens the County's ability to fund mandated programs.

7. The implementation of this policy must comply with all applicable State and federal law.

**SECTION II – CALCULATION OF LOCALLY GENERATED UNRESTRICTED REVENUES**

"*Locally generated unrestricted revenues in the general fund (NCC)"* means ongoing revenues generated from local revenue sources that the Board has substantial flexibility in budgeting or spending. These funds are referred to in this Policy as "Unrestricted NCC."

As set forth in this Policy, Unrestricted NCC excludes Restricted NCC spending categories where the Board lacks substantial flexibility in the spending amount or obligation. These restricted or required spending categories generally include, but are not limited to, legal settlements, maintenance of effort (MOE) requirements, State and federal mandates, legally or contractually required payments, previously incurred debt service, unfunded pension or retiree health obligations, prior-year unfunded workers' compensation costs, and similar categories as determined by the Chief Executive Officer (CEO) and approved by the Board as part of the budget approval process. Such restricted or required spending categories reduce the amount of revenues that can be made available for the CFCI set-aside.

1. Annually, the CEO will determine the gross amount of ongoing locally generated revenues (Gross NCC).

a) Gross NCC excludes one-time or non-recurring revenues, such as available fund balance and cancelled obligated fund.

b) Examples of locally generated revenues include, without limitation, property taxes, deed transfer taxes, transient occupancy taxes, license fees, permit fees, franchise fees, penalties, and vehicle license fee revenues.

2. To determine the amount of unrestricted NCC subject to the CFCI set-aside, the CEO will deduct from Gross NCC those restricted or required spending categories where the County lacks flexibility in the spending amount or obligation. These non-flexible items are restrictions on discretionary spending, and include the following categories:

   a) Revenue sources with significant restrictions or mandates on spending. Examples include, without limitation, vehicle license fee revenues.

   b) Unfunded liabilities, including but not limited to annual budget requirements for underfunded and/or legacy costs for pensions, retiree health, workers' compensation, and fixed employee benefits.

   c) Other restricted, non-flexible costs, including but not limited to "Maintenance of Effort" requirements or commitments required to draw down or otherwise receive the benefit of federal and/or State funding sources; and other mandatory costs, such as judgments and damages, legal settlements, legally required or contractually required payments to County sponsored organizations and programs (e.g., museums), and debt service.

3. In addition, the CEO will review and validate the categories and amounts of mandated versus discretionary programs as reflected in departmental budgets.

   a) Programs identified by CEO as discretionary are considered "unrestricted" and are subject to the CFCI set-aside.

   b) Programs identified by CEO as mandated, with a required level of service, are considered "restricted" and will be excluded from the amount subject to the CFCI set-aside.

   c) If departmental programs are mandated by federal or State law, but the level of service is discretionary, such programs will generally fall into the "unrestricted" category subject to the CFCI set-aside. Exceptions include:

      i. When the Board directs, through a motion or other action, a specific level of service, the program will be considered "restricted" and will be excluded from the amount subject to the CFCI set-aside.

      ii. When a program's level of service is not legally mandated, but the CEO determines that the County lacks discretion in its ability to control program costs, then the required program costs will be considered mandated/restricted, and not subject to the CFCI set-aside. Examples include but are not limited to indigent defense costs in the Public Defender, Alternate Public Defender and the Trial Courts Operations budget units.

4. In addition, the ten percent (10%) set-aside cannot be used to supplant County funds that are already budgeted for the nine program categories identified above in paragraph 1 of Section I. That is, CFCI funding must be *additive to*, and not *replace*, the existing budgeted NCC levels for these nine program categories.

   a) The CEO will identify the total existing NCC budgeted amounts in the Fiscal Year (FY) 2020-21 Final Adopted Budget for the nine program categories.

   b) The budgeted funding in the FY 2020-21 Final Adopted Budget will constitute the CFCI base year funding for NCC for these categories.

   c) Since existing NCC funding in these nine categories cannot be reduced, except as provided in Paragraph 7 below, the CEO will continue to budget the base year NCC funding amount for these programs outside the CFCI set-aside, unless otherwise directed by the Board. These amounts will be subtracted from the unrestricted NCC available for the CFCI allocation. This provision does not impose any restrictions on the County's determination as to how to utilize the funding, provided the programs, services and investments funded with the base year NCC fall within one of the nine categories identified above.

5. In addition, the CEO will advise the Board if additional spending categories should be excluded from Gross NCC based on the restricted nature of the expenditure.

6. The 10 percent set-aside required by Section I, Paragraph 1, shall phased in over a three-year period, beginning July 1, 2021, and incrementally grow to the full set-aside by June 30, 2024.

   a) During the annual budget process, the CEO will set aside an amount of unrestricted NCC that is available for CFCI programs in the upcoming budget year.

   b) Starting in FY 2021-22 and continuing for two additional fiscal years, the amount of the CFCI funding set-aside will be phased in. To develop funding recommendations during the phased in period, the CEO will consult with those responsible for implementing the CFCI program regarding expected timing and ability to expend funding.

   c) On November 10, 2020, the Board established an Advisory Committee and stakeholder process to provide spending recommendations to the CEO. After considering the Advisory Committee's recommendations, and consistent with State budget law, the CEO will present a recommended CFCI budget to the Board for their consideration. Upon approval by the Board, the CEO will allocate funding to appropriate budget units.

   d) As part of book closing each fiscal year, the Auditor-Controller and CEO will identify and commit as obligated fund balance any unspent and unencumbered CFCI funds from the various budget units. In a subsequent period, the CEO will make budget recommendations to the Board to allocate this one-time funding component of future CFCI spending plan(s).

7. The Board may, by a four-fifths vote, reduce the set-aside in the event of a Board-declared fiscal emergency that threatens the County's ability to fund mandated programs. In such an event, the CEO will seek Board authorization to reduce the CFCI set-aside to less than ten percent (10%) of unrestricted NCC. Any such authorization will expire at the end the applicable fiscal year. In the event of a severe mid-year economic downturn, the CEO may seek mid-year budget reductions, the use of obligated fund balance, or other measures to close any budget gap in CFCI available funding.

## RESPONSIBLE DEPARTMENT

Chief Executive Office

## DATE ISSUED/SUNSET DATE

**Issue Date: August 10, 2021** **Sunset Date: August 10, 2026**