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OFFICE OF THE CITY CLERK
OAKLAND

2017 FEB -2 PM 5:16

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Michele Byrd
Director, HCD

SUBJECT: BRT Business Assistance Fund
Resolution Amendment

DATE: January 23, 2017

City Administrator Approval

Date:

[Handwritten signature]
2/2/17

RECOMMENDATION

Staff Recommends That The City Council Adopt:

A Resolution Amending Resolution No. 85286 C.M.S. To Allow Businesses Along The Bus Rapid Transit (BRT) Route To Apply For Business Assistance Fund Grants Prior To Experiencing Adverse Permanent Impacts From BRT Infrastructure Changes.

EXECUTIVE SUMMARY

The Business Assistance Fund (BAF) was established to support businesses that have experienced permanent adverse impacts due to BRT infrastructure changes. Pursuant to Resolution No. 85286 C.M.S., to apply and qualify for BAF consideration, a business must have already experienced permanent adverse impacts. Some businesses that have experienced adverse permanent impacts from BRT infrastructure changes might fail prior to receiving a BAF grant to assist them. Staff recommends that Resolution No. 85286 C.M.S. (**Attachment A**) be amended to state that the BAF is for "businesses *that will experience or have experienced adverse permanent impact from BRT infrastructure changes.*" The City Attorney's Office has determined that this recommended amendment requires City Council approval.

BACKGROUND / LEGISLATIVE HISTORY

In 2013, AC Transit and the City entered into a Master Cooperation Agreement, which included \$22,700,000 for implementing the Conditions of Approval (CoA) for Business and Parking Impact Mitigation activities and roadway, bicycle and pedestrian improvements. Resolution No. 84570 C.M.S. urged AC Transit to set aside sufficient dollars to implement a comprehensive BRT – Business Impact Mitigation Fund, which resulted in a \$2,000,000 grant to the City from AC Transit as part of a Business Sustainability Program ("BSP"). In November 2014, the City Council unanimously adopted Resolution No. 85284 C.M.S. to accept and appropriate AC Transit's contribution for the development and implementation of the City's BRT BSP.

AC Transit, City staff and consultants worked together to revise BRT design features to mitigate impacts to businesses and residents, with extensive input from business owners, community

Item: _____
CED Committee
February 14, 2017

members, and community advocates. Despite these efforts, the Oakland City Council concluded that the Final Environmental Impact Study/Report (FEIS/R) and Conditions of Approval (CoA) were not sufficient to protect some businesses from adverse permanent impacts from BRT infrastructure changes. To address these concerns the City Council created the \$2,000,000 Business Assistance and Sustainability Fund (BAS-f), which is currently known as the Business Assistance Fund (see next paragraph). Resolution No. 85085 C.M.S. appropriated \$1,000,000 of General Purpose Funds for the BAS-f and Resolution No. 85286 C.M.S. appropriated an additional \$1,000,000 of Community Development Block Grant funds for the BAS-f. Resolution No. 85286 explicitly directed that these funds not be dispensed until guidelines are in place. A *Further Resolved* in Resolution No. 85286 C.M.S. states that the BAS-f is for "businesses that have experienced adverse permanent impact from BRT infrastructure changes."

On July 19, 2016, the City Council approved the Eligibility Criteria and Disbursement Guidelines ("Eligibility Criteria") for what is now referred to as the Business Assistance Fund (BAF) by way of Resolution No. 86321 C.M.S. Please refer to **Attachment B** for the approved criteria and guidelines.

ANALYSIS

Preparing grant applications and evaluating businesses and property owners to determine if they meet the approved Eligibility Criteria is anticipated to be a time consuming process, particularly when the business operator is not the property owner. Depending on the extent of mitigations needed to address an anticipated adverse permanent impact, a project will take several months during which businesses must have detailed plans and preliminary designs, and then go through design review and plan checking. Staff must then factor the time it takes to perform the work, which in some cases will require building permits and inspection, as well as compliance with Prevailing Wage law for publicly funded projects. This timeline could add up to many months to complete a mitigation project. By then, the loss in customer flow and revenue may be irreversible for some businesses.

The addition of three words—"will experience or"—allows the City's Business Technical Assistance contractors and staff to proactively work with businesses to minimize adverse permanent impacts. Given the time it takes to process and award grant funding, staff believes that the BAF program should allow for instances where it is objectively evident that a business will experience adverse permanent impacts from BRT infrastructure changes before the impacts take full effect. The recommended Resolution amendment addresses this concern.

FISCAL IMPACT

The City Council appropriated \$2,000,000 for the BAF by way of Resolution No. 85085 C.M.S. and Resolution No. 85286 C.M.S. This proposed amendment to Resolution No. 85286 C.M.S. has no impact on the allocation and use of those funds.

PUBLIC OUTREACH / INTEREST

For more than four years, staff has consulted with numerous organizations and individuals who informed the development of the BSP for the BRT, including the following: the BRT Community Outreach Work Group, which was comprised of the East Bay Asian Local Development Corporation (EBALDC), the Unity Council, the Downtown Oakland/Lake Merritt Community Benefit District, the East Bay Asian Youth Center (EBAYC), Oakland Citizens Committee for Urban Renewal (OCCUR), Allen Temple Baptist Church, Transform, and the City of San Leandro.

In December 2015, staff convened a BRT/BSP Technical Advisory Committee (TAC) to develop eligibility criteria recommendations for the use of a \$2,000,000 BAS-f appropriated by the City Council in 2014. The BAS-f, now referred to as the BAF, is for the express purpose of providing financial support for businesses facing adverse permanent impacts as a result of BRT infrastructure that are not covered by AC Transit's FEIS/R requirements. Members of the TAC represent the Oakland Chinatown Chamber of Commerce, the Lake Merritt/Uptown Business Association, the Eastlake Merchants, the San Antonio District merchants, the Fruitvale Business Improvement District, the Havenscourt/Lockwood District, the Hegenberger District, and Allen Temple Baptist Church in the Elmhurst District.

The lead representative of the TAC expressed support for the recommended Resolution amendment.

COORDINATION

The Business Sustainability Program is a joint effort among the following entities:

- AC Transit
- The Public Works Agency
- The Department of Housing and Community Development
- The Office of Contracts and Compliance

The Office of the City Attorney and the Controller's Bureau reviewed and signed off on this report and Resolution. The Office of the City Administrator has been instrumental in negotiating funding agreements with AC Transit.

SUSTAINABLE OPPORTUNITIES

Economic: The sustainability of small businesses is essential for Oakland's economic health. While the BRT project offers hope for a vibrant transit-oriented commercial corridor, its construction and permanent infrastructure will disrupt some business operations. The BSP provides critically needed services and resources to businesses along the BRT route that will experience permanent adverse impacts as a result of the BRT infrastructure changes.

Environmental: The BRT will reduce greenhouse gas emissions by significantly improving access to mass transportation using buses with advanced energy-efficient technology.

Social Equity. The businesses that will receive services represent the ethnic diversity of Oakland. The majority of the businesses along the BRT route are very small, with annual gross receipts of less than \$100,000. Business Sustainability Program services and resources are designed and aligned to assist all businesses, with added emphasis on small emerging businesses with ownership that reflects the rich diversity of Oakland.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt a resolution amending Resolution No. 85286 C.M.S. to allow businesses along the Bus Rapid Transit (BRT) Route to apply for Business Assistance Fund grants prior to experiencing adverse permanent impacts from BRT infrastructure changes.

For questions regarding this report, please contact Al Auletta, International Boulevard Corridor Program Manager, at 238-3752.

Respectfully submitted,



MICHELE BYRD
Director, Department of Housing and
Community Development

Prepared by:
Al Auletta, Program Manager
International Boulevard Corridor Project

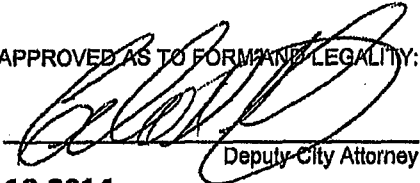
Attachments (2):

- A. *Resolution No. 82568—Business Assistance and Sustainability Fund*
- B. *Business Assistance Fund Eligibility Criteria and Disbursement Guidelines*

FILED
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OAKLAND

2014 NOV 26 AM 11:55

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

REVISED Per City Council 11.18.2014

OAKLAND CITY COUNCIL

RESOLUTION NO. 85286 C.M.S.

A RESOLUTION ALLOCATING \$1,000,000 IN FISCAL YEAR 2015 – 2016 AND FISCAL YEAR 2016 – 2017 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO THE CITY OF OAKLAND EAST BAY BUS RAPID TRANSIT (BRT) PROJECT BUSINESS IMPACT MITIGATION FUND – BUSINESS SUSTAINABILITY PROGRAM

WHEREAS, the U S Department of Housing and Urban Development (HUD) requires that the City of Oakland prepare and submit an annual Consolidated Plan Annual Action Plan (the Plan) as a condition for receiving Federal funds for housing and community development activities, and

WHEREAS, the Community Development Block Grant (CDBG) program goals include creating a suitable living environment through neighborhood revitalization and improvements in public facilities and services and expanding economic opportunities for lower income households; and CDBG funds must be used so as to give maximum feasible priority to activities which will carry out one of the three broad national objectives of: benefit to low- and moderate-income families; or aid in the prevention or elimination of slums or blight; or activities designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs; and

WHEREAS, eligible activities that can be funded by CDBG funding include microenterprise assistance through the provision of assistance to facilitate economic development by providing credit for the establishment, stabilization and expansion of microenterprises; providing technical assistance, advice and business support service to owners or developers of microenterprises; and providing general support to owners and developers or microenterprises, including training and technical assistance; and

WHEREAS, on April 25, 2012, the Alameda - Contra Costa County (AC) Transit District Board of Directors adopted Resolution No. 12-018 certifying the Final Environmental Impact Report/Statement (FEIR/FEIS) for the East Bay Bus Rapid Transit Project, and selection of the Downtown Oakland – San Leandro Alternative (DOSL) as the Locally Preferred Alternative for the BRT Project; and

WHEREAS, on July 17, 2012, the Oakland City Council adopted its own CEQA-related findings of AC Transit for the BRT Project; adopted the DOSL as the Locally Preferred Alternative for the BRT Project; and required that the AC Transit append the City Conditions of Approval (COA) to the BRT Project (Resolution No. 84106 C.M.S.); and

WHEREAS, Resolution No. 84570 C.M.S authorized the City Administrator to enter into Master Cooperative Agreement (MCA) with AC Transit for Final Design and Construction of the BRT Project, and the MCA attaches COA Standards and Cost Estimates; and

WHEREAS, the COA Standards require that AC Transit submit a draft Business Impact Mitigation Plan and a corresponding draft Parking Impact Mitigation Plan for the Oakland City Council review on or before the completion of the 65% Design Phase, and return to Council with an update on or before completion of the 95% Design Phase of the BRT Project; and

WHEREAS, Resolution No. 84570 C.M.S. urges AC Transit to set aside in abeyance sufficient dollars to implement a comprehensive BRT - Business Impact Mitigation Fund (BIM-F) and urges City staffers to actively seek out additional, more flexible private and/or public funding and supportive services to supplement the BIM-F; and

WHEREAS, Resolution No. 84570 C.M.S. also urges AC Transit to consult with and include stakeholder representatives with neighborhood expertise from the Unity Council, Allen Temple, and East Bay Asian Youth Center, and AC Transit subsequently formed a Community Outreach Working Group (COWG) in the development of the P/BIM-P, the expanded group includes the East Bay Asian Local Development Corporation, Downtown Oakland and Uptown Lake Merritt District Associations, OCCUR and Transform; and

WHEREAS, the City and AC Transit staff have worked cooperatively to identify project cost savings and to jointly meet with the COWG to develop a more robust Business Impact Mitigation Fund with the primary objectives of strengthening the ability of existing businesses to proactively prepare and effectively manage adverse conditions that may occur during periods of construction and fully exploit beneficial opportunities that may arise after construction is completed; and

WHEREAS, the City of Oakland and AC Transit agree that a well-implemented BRT project will have beneficial impacts to the businesses along the Corridor and that the overall project success will be further enhanced by targeted business support and development services through the City of Oakland; and

WHEREAS, in April 2014, the Oakland City Administrator and AC Transit General Manager agreed in principle to add up to \$2,500,000 in AC Transit funds to the BIM-F to establish a Business Sustainability Program to be managed and implemented by the City;

WHEREAS, the City Administrator and General Manager further agreed that AC Transit will provide a \$500,000 start-up grant to the City for technical assistance program development activities, after which AC Transit will provide up to \$2,00,000 in additional funding exclusively for the Business Sustainability Program (BSP); and

WHEREAS, the BSP agreement is based on the City matching \$2,000,000 for other activities, Housing and Community Development staffers have proposed that \$1,000,000 in future CDBG funding be allocated to the BSP contingent upon availability from HUD, and the additional \$1,000,000 in matching funds will come from a one-time General Purpose Fund (1010) allocation approved by Council on July 1, 2014; and

WHEREAS, the AC Transit BRT Construction Impact Mitigations are currently budgeted at \$8,816,000, the AC Transit BRT Business Support Activities are budgeted at \$2,165,000, and the newly proposed AC Transit Business Sustainability Program contribution is budgeted at \$2,500,000, bringing the baseline AC Transit BIM-F contribution to \$13,481,000; and

WHEREAS, the Eastbay BRT Project overall adds to the revitalization efforts for the entire International Boulevard and the other corridor segments of the BRT route in Oakland; and that AC Transit and the City's additional investment of \$7,980,000 in funding to support business sustainability activities related to this major transit oriented development will not have any implications or establish standards for future AC Transit, City or other major transit developments and/or capital project budgets going forward; and

WHEREAS, City staff, after consultation with the HUD Regional Offices, have determined that CDBG funding can be set aside from the upcoming FY 2015-2016 and FY 2016-2017 for various BRT Business Impact Mitigation Fund purposes, including but not limited to making infill infrastructure improvements (i.e. sidewalk repair) and making loans to eligible existing businesses that demonstrate a business loss as result of the transit system construction; now, therefore, be it

RESOLVED: That the Oakland City Council hereby allocates CDBG funds in the amount of \$500,000 in FY 2015-2016 and \$500,000 in FY 2016-2017 for a total of \$1,000,000 contingent upon the availability of funding and approval from HUD to the BRT Business Impact Mitigation Fund - Business Sustainability Program; and be it

FURTHER RESOLVED: That the Oakland City Council directs staff to create a BRT Business Assistance and Sustainability Fund (BAS-f) to provide direct monetary assistance in the form of loans and grants to businesses for the purpose of enhancing the viability of such businesses that have experienced adverse permanent impact from the BRT infrastructure changes. Merchants may use funds for infrastructure improvements such as sidewalk improvements, implementation of Technical Assistance recommendations, and capital and/or tenant improvements. The Oakland City Council commits at least \$2,000,000 to this BAS-f, to come from the \$1,000,000 in General Purpose Fund dollars authorized in July 2014 and the \$1,000,000 in CDBG funds (or other sources which may be swapped for the CDBG monies) and directs that these monies shall not be dispensed until guidelines are in place.

FURTHER RESOLVED: The Council asks the City Administrator to seek regional grant sources to address further capital improvements to the public-right-of-way along the BRT corridor and to continue to seek additional flexible funding sources to provide local matching funds for those regional grant opportunities.

FURTHER RESOLVED: That the Oakland City Council authorizes the City Administrator to distribute CDBG funds within the Business Sustainability Program budget as needed to ensure that all activities are adequately funded and that all expenditures are commensurate with HUD reporting requirements.

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 18 2014

PASSED BY THE FOLLOWING VOTE:

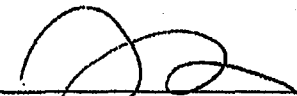
AYES- BROOKS, GALLO, GIBSON MCELHANEY, KAPLAN, REID, SCHAAF AND PRESIDENT KERNIGHAN - 7

NOES- 0

ABSENT- 0

ABSTENTION- KALB - 1

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

City of Oakland BRT Business Assistance Fund

City Council Approved Eligibility Criteria and Disbursement Guidelines

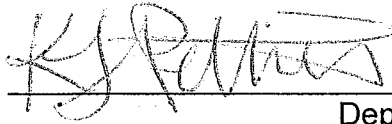
The following Eligibility Criteria and Disbursement Guidelines were developed by a Technical Advisory Committee comprised of business operators and community advocates who are familiar with the BRT, and adopted by City Council Resolution No. 86321 July 19, 2016.

1	Entity: Must be a for-profit business.
2	Location: On BRT route frontage or one block from front face curb of route.
3	Licenses: Must have Oakland Business Tax License and all required permits, etc.
4	Liens: No property or income tax liens against business.
5	Annual revenues: a) 3-year average annual revenues less than \$3 million; or b) if in business less than 3 years, annual revenues less than \$3 million.
6	Years in operation: Be in operation in current location 3 years prior to start of construction, or be in a current 3-year lease.
7	Technical Assistance: Must take advantage of Business Technical Assistance services (TA).
8	Distance of impact from BRT features: Up to 2 blocks away from business.
9	Feasible plan: Must develop a feasible impact mitigation plan with TA provider.
10	Eligible uses of funds: Building renovations, facade improvement, acquisition/creation of private parking; business model alterations, product offerings, business lines, customer base, etc.) and, absent a feasible retention plan, relocation.
11	Oversight: To establish an administrative oversight and appeals process for businesses denied support, including the creation of an Ombudsperson role.

12	Non-eligible uses: a) For mitigations that come under the FEIR/S and AC Transit's responsibilities; and b) fund administration costs.
13	Term of BAF program: From start of construction until one year after BRT operations begins.
14	Structure and terms of assistance: Grants not to exceed \$100,000 per business to be disbursed on a reimbursement basis to business/property owners or directly to contractors; and up to 25% of funds can be used for relocation costs within Oakland.
15	Equitable Distribution Model: Based upon business type and proximity to BRT infrastructure (stations, medians, left-turn restrictions) and significant parking loss. Must ensure that businesses in each impacted sub-district receive equitable proportions of funding.

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APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AMENDING RESOLUTION NO. 85286 C.M.S. TO ALLOW BUSINESSES ALONG THE BUS RAPID TRANSIT (BRT) ROUTE TO APPLY FOR BUSINESS ASSISTANCE FUND GRANTS PRIOR TO EXPERIENCING ADVERSE PERMANENT IMPACTS FROM BRT INFRASTRUCTURE CHANGES

WHEREAS, Alameda-Contra Costa Transit District ("AC Transit") is currently constructing the East Bay Bus Rapid Transit ("BRT") Route along International Boulevard ("Corridor") in the City of Oakland ("City") to improve bus transit service by improving existing infrastructure, vehicles and bus scheduling; and

WHEREAS, the City and AC Transit agree that a well-implemented BRT project will have beneficial impacts to the businesses along the Corridor and that project success will be further enhanced by targeted business support and development services provided by the City; and

WHEREAS, the City developed a Business Sustainability Program ("BSP") to provide technical assistance to businesses along the Corridor to remain viable during and after BRT construction and commencement of operations; and

WHEREAS, the City also established the Business Assistance and Sustainability Fund, which is currently known as the Business Assistance Fund ("BAF"), to provide moneys for the Business Sustainability Program; and

WHEREAS, the AC Transit Board of Directors approved a \$2,000,000 grant for the City to provide technical assistance to the impacted business along the Corridor provided by two contractors approved by the Oakland City Council on October 18, 2016;

WHEREAS, the City Council authorized the appropriation of \$1,000,000 General Purpose Fund (1010) allocation on July 1, 2014 and by way of a \$1,000,000 Community Development Block Grant (CDBG) fund allocation on November 18, 2014; and

WHEREAS, Pursuant to Resolution No. 85286 C.M.S. the City Council directed staff to create the BAF to provide direct monetary assistance in the form of loans and grants to businesses for the purpose of enhancing the viability of such businesses that have

experienced (emphasis added) adverse permanent impact from the BRT infrastructure changes; and

WHEREAS, the City desires to amend Resolution No. 85286 C.M.S. so it provides that the BAF is for businesses *“that **will experience or** have experienced adverse permanent impact from BRT infrastructure changes; now therefore be it*

RESOLVED: The City Council approves an amendment to Resolution No. 85286 C.M.S. so it provides that the Business Assistance Fund is for businesses that *“will experience and have experienced adverse permanent impact from BRT infrastructure changes.”*; and be it

FURTHER RESOLVED: That the City Administrator or designee is hereby authorized, without returning to Council to spend funds and take other administrative action with respect to the adopted budget and authorized Business Assistance Fund consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California