



CITY OF OAKLAND

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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Michele Byrd  
Director, HCD

**SUBJECT:** BRT Business Assistance and  
Sustainability Fund Guidelines

**DATE:** April 19, 2016

City Administrator Approval

Date:

4/28/16

## RECOMMENDATION

**Staff Requests that the City Council Receive a Report and Provide Preliminary Direction on Initial Findings and Recommendations for Guidelines to Dispense Business Assistance and Sustainability Program Funds to Businesses that Experience Adverse Permanent Impacts from East Bay Bus Rapid Transit Project Infrastructure Changes**

## EXECUTIVE SUMMARY

The City Council appropriated a total of \$2,000,000 towards a Business Assistance and Sustainability Fund (BAS-f) to provide direct monetary assistance in the form of loans and grants to businesses that experience adverse permanent impacts from Bus Rapid Transit (BRT) infrastructure changes. The City Council action taken in November 2014 explicitly states that these monies shall not be dispensed until guidelines are in place. This staff report presents initial findings and recommendations for the establishment of guidelines and business eligibility criteria for the City Council's consideration and direction. Staff will return to the City Council in July with a final set of recommended guidelines and eligibility criteria for approval, as well as with BAS-fund administration and contracting recommendations.

## BACKGROUND / LEGISLATIVE HISTORY

### **Project Description**

The East Bay BRT spans a total of 9.5 miles from 20<sup>th</sup> Street in Uptown Oakland to the San Leandro BART station, with 8.5 miles of the route in Oakland, including all of International Boulevard and parts of East 12 Street. The BRT is among many major transit oriented development projects throughout the country and the world to increase the use of mass transit, reduce greenhouse gases and pollutants, and promote economic revitalization.

The BRT will transform International Boulevard from a four-lane thoroughfare to a two-lane street with two bus-dedicated lanes. Curbside and median stations, along with new medians and no-left-turn zones, will create obstructions for cars and trucks accustomed to the Corridor's current configuration. Businesses highly dependent on cars and trucks will be impacted.

Item: \_\_\_\_\_  
Public Works Committee  
May 10, 2016

### **Major Project Issues**

The BRT project has gone through 12 years of planning and faced substantial opposition from community and business leaders who were and remain concerned about business and resident impacts and displacement. The Oakland City Council listened to the concerns raised by the Community and, with staff, worked with AC Transit on developing a comprehensive BSP. The focus of the BSP goes beyond the mitigation measures required under the Final Environmental Impact Statement/Report (FEIS/R) for the BRT project. The City Council adopted the FEIS/R in 2012 and placed local Conditions of Approval (CoA) on the BRT project that include additional parking and business impact mitigation requirements, local hiring provisions, and design requirements, such as curb-to-curb repaving and pedestrian lighting and safety measures.

### **AC Transit/City Master Cooperation Agreement**

In 2013, AC Transit and the City entered into a Master Cooperation Agreement (MCA), which included \$22.7 million for implementing the CoA for Business and Parking Impact Mitigation activities and roadway, bicycle and pedestrian improvements. In 2014, the AC Transit General Manager at the time agreed in principle to allocate \$2.5<sup>1</sup> million to the BSP to be administered by the City. The City in turn committed \$2.0 million in match for the BSP. AC Transit's contribution to the BSP is going towards the Business Technical Assistance Element, while the City's contribution is allocated for the Business Assistance and Sustainability Fund (BAS-f). 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 project BSP Business Impact Mitigation Program.

Resolution No. 84570 C.M.S. urged AC Transit to set aside in abeyance sufficient dollars to implement a comprehensive BRT – Business Impact Mitigation Fund, which ultimately resulted in a \$2,000,000 grant to the City from AC Transit as part of a BSP to conduct Business Technical Assistance services before, during and after BRT construction. AC Transit and City project staff and consultants worked diligently together to revise BRT design features to mitigate impacts to businesses and residents to the greatest extent possible, with extensive input from business owners, community members, and community advocates. Despite these best efforts, the Oakland City Council concluded that the FEIS/R and COAs would not be sufficient to protect some businesses from adverse permanent impacts from BRT infrastructure changes, and thus created the \$2,000,000 BAS-f. Resolution No. 85085 C.M.S. appropriated \$1,000,000 of General Purpose Funds for the BAS-f. Resolution No. 85286 C.M.S. appropriated an additional \$1,000,000 of CDBG funds for the BAS-f, and explicitly directed that these funds shall not be dispensed until guidelines are in place.

### **Work with Oakland Business Development Corporation/Main Street Launch**

City staff established a contract with the Oakland Business Development Corporation (OBDC), now doing business as "Main Street Launch<sup>2</sup>," with an appropriation of \$500,000 in Community Development Block Grant (CDBG) funds from the City Council by way of Resolution No. 85285 C.M.S. The Scope of Work in the OBDC/Main Street Launch contract includes the task of

<sup>1</sup> The City actually received \$2.0 million of the \$2.5 million for the BSP Technical Assistance Element.

<sup>2</sup> Main Street Launch (MSL), formerly OBDC, has filed its name change with the California Secretary of State and the Internal Revenue Service and continues to operate as a tax-exempt public benefit corporation.

preparing a set of recommendations for the eligibility criteria and guidelines for dispensing the \$2,000,000 BAS-f.

Based on the City Council's commitment to ongoing community involvement and input regarding the BRT project, staff formed a Technical Advisory Committee (TAC) in December 2015 comprised of merchants and merchant advocates appointed by City Councilmembers<sup>3</sup> who represent each of the sub-districts along the BRT route: Chinatown, Uptown, Eastlake, San Antonio, Fruitvale, Havenscourt/Lockwood, Hegenberger, and Elmhurst. The TAC was charged with developing recommendations for the use of the \$2,000,000 BAS-f. The TAC began its work December 22, 2015, and came to consensus on its set of recommendations March 22, 2016, presented as **Attachment A**.

Main Street Launch's (MSL) full set of draft recommendations and rationale informed by its extensive work with businesses along the BRT route are presented as **Attachment B**.

**ANALYSIS AND POLICY ALTERNATIVES**

In light of the community's extensive involvement in the BRT project for many years, and most recently as part of the AC Transit Community Outreach Working Group, staff believed having a TAC to assist with the development BAS-f disbursement guidelines would add value to the set of recommendations that ultimately would be brought forward to the City Council. Both OBDC/MSL and the TAC, therefore, are advisory to staff and the City Council in consideration of the BAS-f disbursement guidelines.

**Technical Advisory Committee (TAC)**

The TAC was comprised of the following members:

Name	Organization	Sub-District	Council District	City Councilmember
Ari Takata-Vasquez	Viscera Studio	Uptown	3	President Gibson McElhane
Carl Chan	Oakland Chinese Chamber	Chinatown/Downtown	2	Councilmember Guillen
Thu Nguyet "Moon" Pham	Eastlake Merchants	Eastlake	2	Councilmember Guillen
Andy Nelsen	East Bay Asian Youth Center	San Antonio	2	Councilmember Guillen
Hugo Guerrero	Hugo's Tours and Travel	Fruitvale	5	Councilmember Gallo
Nanette Hunter	D-Unique Tools	Havenscourt/Lockwood	6	Councilmember Brooks
Lurelia Smiley	C.P. Bannon Mortuary	Hegenberger	6	Councilmember Brooks
Rev. Ineda Adesanya	Allen Temple Baptist Church	Elmhurst	7	Councilmember Reid
Christine Calabrese	City Public Works Department	N/A	N/A	N/A

<sup>3</sup> The City Administrator's Office appointed Christine Calabrese, BRT Project Manager, as a non-voting member of the TAC given her extensive technical and programmatic knowledge of the BRT project.

TAC Concerns about "Gaps" in the Business Impact Mitigation Program

From its first meeting, TAC members asserted that \$2,000,000 would not be enough to address the adverse permanent impacts to businesses from BRT infrastructure not covered in the FEIS/R. The TAC also identified a number of other "gaps," which it initially presented in a letter to the City Council and AC Transit leadership on February 22, 2016. Since then, the TAC identified two additional concerns to the original five in its letter, which are presented as **Attachment C**, including staff comments.

**TAC BAS-f Eligibility and Disbursement Guidelines**

Following are the TAC's recommendations presented verbatim as they specifically relate to the guidelines and criteria for the use of the BAS-f<sup>4</sup>:

*Purpose: To assist businesses for whom the permanent features of East Bay Bus Rapid Transit (BRT) Project construction and operations cause significant impacts to business operations and for whom design solutions have not been found or are inadequate. Assistance is intended to help retain businesses in their current location, or where that is not feasible, relocate to another Oakland location. Permanent BRT Project features include, but are not limited to, reduction of public parking spaces near the business, increased travel (commute) time to the business, reduction of left hand and "U" turn opportunities near the business, and station platform impacts upon the business.*

*Eligibility: To be eligible, applicants must:*

*Threshold Criteria*

- 1. Be a for profit business;*
- 2. Be located directly on the BRT route, have frontage on the BRT route or be located within 500 feet of the BRT route, as measured from the front face of the curb;*
- 3. Have an Oakland Business License and all other required licenses and permits,;*
- 4. Have no property or tax liens against the business;*
- 5. Have 3-year average annual revenues of less than \$3 million or if the business is less than 3 years old, have average annual revenues of less than \$3 million; and*
- 6. Have been at their current location three years prior to commencement of BRT major construction in spring 2016 or be in a current lease with at least a three year term.*

*TA Provider Assessment Criteria*

- 7. The business owner must participate in the City of Oakland BRT – Business Technical Assistance (TA) program;*
- 8. Determine, in consultation with the City Business TA program and to the satisfaction of the TA provider, that the permanent features of the BRT construction and operations*

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<sup>4</sup> The TAC also included a section in its report regarding the Business Technical Assistance services provided by OBDC/Main Street Launch. Staff addressed those recommendations in its staff report dated April 26, 2016 regarding the \$2,000,000 Main Street Launch Business Sustainability Program/Technical Assistance Element contract funded by AC Transit.

*within two blocks along the BRT route of the businesses' location have or are likely to have significant negative permanent impacts to the operation of their business;*

9. *Work with the TA provider to develop a feasible plan to address those impacts, which includes as a first step determining if the AC Transit BRT Business TA program is responsible to mitigate those impacts; and*
10. *Plans could include, but are not limited to, renovations, acquisition/creation of private parking, business model alterations (product offerings, business lines, customer base, etc.) or, when no feasible retention plan can be identified, relocation to another site in Oakland.*

*Oversight and Appeals:* *The City shall establish an oversight and appeals process for businesses. The TAC recommends a five-person voluntary appointed board (1 per CCD affected by the BRT) would meet quarterly to review the program. Businesses deemed ineligible by the TA provider or by City staff could appeal the decision to this body. The body would have authority to reverse decisions if the applicant met threshold criteria of eligibility.*

*Non-eligible uses of the funds:* *Mitigations required by the BRT Final Environmental Impact Statement / Federal Record of Decision, which are the responsibility of the AC Transit BRT Project.*

*Administration:* *All \$2 million is to be granted to businesses.*

*Term of the Program:* *From start of construction until three years after the BRT begins operations.*

*Structure and Terms:* *A grant that that must be repaid if the business ceases Oakland operations within five years of the grant. Grants are not to exceed \$100,000. A maximum of 25% of the Business Sustainability Program funds can be used to relocate businesses to another location in Oakland.*

*The TAC recommends that the Business Sustainability Program be re-evaluated annually.*

### ***MSL Recommended Considerations and Guidelines***

One of the primary tasks in the Scope of Work in the City's Start-up Phase Business Impact Mitigation Fund Technical Assistance Element contract with OBDC/MSL is "to develop eligibility criteria for the Oakland Business Sustainability Program and create a definition of temporary and permanent indirect impacts not covered by the AC Transit TA program."

MSL submitted its recommendations a week after the TAC completed its work, which are presented as **Attachment B**. Following are highlights from MSL's report and recommendations:

- *Equitable Allocations:* *Some of the TAC's recommendations, particularly those related to eligibility, are included in MSL's report, while in other cases MSL has taken a different*

approach based on its fieldwork findings, case studies, and the need to find an equitable allocation for all businesses permanently affected along the Corridor. The BAS-f program proposed by MSL should be divided among the eight neighborhoods based on each neighborhood's pro rata share of total impacts, and within each neighborhood allocated to qualified businesses based on a pre-determined formula expressed as a value per impact.

- AC Transit Responsibilities: It is important to emphasize that AC Transit has significant responsibilities under the FEIS/R and other agreements with the City to resolve a range of both temporary and permanent impacts.
- Order of Magnitude: MSL's view is that the financial impacts of adverse permanent (and temporary) impacts caused by the development of the transit line are orders of magnitude greater than available resources.
- Timely Deployment of BAS-f: MSL's recommendations anticipate impacts before they happen based on the best data available, in order to deploy the BAS-f quickly and equitably as each zone construction winds-up, so that businesses can use the grant funds to support technical assistance recommendations and be proactively responsive to permanent impacts on their businesses.
- Approach: In order to determine if a business will be subject to adverse permanent physical impacts from the BRT system, MSL used the six impact drivers identified in the FEIS/R, and mapped these six impact types over corridor businesses to help visualize which will be affected by each impact. Factors one to five relate to proximity to the permanent impact, while factor six relates to the corridor as a whole. The six permanent impact drivers are:
  1. Located near parking loss
  2. Located within one block of a left turn restriction
  3. Located across from a new median
  4. Located across from new median station
  5. Located adjacent to curbside station
  6. Subject to increased traffic congestion
- Form of Direct Financial Assistance: MSL recommends that the Fund provide one time grants and not loans or forgivable loans to the business. Fieldwork and one-on-one meetings with corridor businesses clearly indicates that businesses along the BRT route are already experiencing negative impacts resulting from increasing rents, short term tenancies, and business interruption from construction and are generally not interested in borrowing given the uncertainty about what changes will result along the BRT Corridor.

- **Application Process and Required Documentation:** To maintain accountability, any of the businesses seeking a grant under the program would be required to complete an application and provide documentation sufficient to meet the following criteria:

1. Are a for profit business
2. Have an Oakland business license
3. Have annual revenues of less than \$3 million
4. Have operated a business on the corridor since January 2016 or earlier
5. Have a lease or letter from a landlord demonstrating that they are a tenant
6. Have paid their most recent city, state and federal taxes
7. If the business owner is also a property owner, no outstanding property tax liens

In addition, all applicants would be required to participate in a needs assessment conducted by MSL. This work would provide the option of obtaining assistance from the full suite of services available from MSL and other organizations.

**TAC and MSL Side-by-Side Comparison**

While the recommended criteria and guidelines of the TAC and MSL are presented in distinct formats and detail, there are more areas of agreement between them than disagreement. Staff prepared **Attachment D**, which presents the TAC and MSL positions and Staff comments on key areas for the City Council's consideration.

**Key Decision Points on BAS-f Disbursement Guidelines**

While **Attachment D** presents the recommendations of the TAC compared to those of MSL with staff comments, it is not all inclusive of the key decision points that must be included in the BAS-f disbursement guidelines. Following is staff's summary of some of the key decision points for the City Council's consideration:

	Key Decision Points	Pros	Cons
1	<i>Should the BAS-f cover costs for business relocation? (TAC)</i>	Several business types will not be sustainable once the BRT is built and operational.  Setting aside up to 25% of the BAS-f for business relocation will not deplete the fund for other uses.	The cost of business relocation is expensive, and finding suitable sites in Oakland that are appropriately zoned is challenging.
2	<i>Should disbursements be in the form of grants? (MSL)</i>	Grants are preferable for struggling businesses, cost less to administer, and are quicker to disburse than loans.	Businesses could receive grants and ultimately fail.  Grants with repayment terms if default occurs cost more to administer than one-time allocations.

	Key Decision Points	Pros	Cons
3	<i>Should disbursements be in the form of forgivable loans? (TAC)</i>	<p>Forgivable loans offer greater assurance than grants that the funds will be used responsibly.</p> <p>Forgivable loans may be more attractive to small businesses that are committed to staying in business in Oakland.</p>	<p>Many small businesses cannot afford debt service and would decline loans, forgivable or not.</p> <p>Forgivable loans must be tracked over time, thus increasing administrative costs.</p>
4	<i>Should the BAS-f Program be in effect three years after the BRT is operational? (TAC)</i>	Three years provides ample time to determine long-term permanent impacts on businesses.	The longer the program is in effect, the higher the costs to administer the fund.
5	<i>Should each sub-district be allocated a certain amount of the BAS-f based upon the number of estimated permanent business impacts in each area? (MSL)</i>	<p>Some sub-districts along the BRT route have more businesses and higher numbers of potential permanent impacts than others.</p> <p>Fixed allocations per sub-district will expedite rapid deployment of funds</p>	The actual number of permanent impacts may likely not be known completely until the BRT infrastructure is completed and the buses are operational.
6	<i>Should there be a standing BAS-f Oversight Body? (TAC)</i>	The Oversight Body would provide an independent mechanism for businesses to appeal award decisions and monitor program effectiveness.	<p>A standing Oversight Body requires staff/consultant support, which requires resources.</p> <p>With clearly articulated guidelines in place, business appeals can be heard administratively based upon a defined appeals process.</p>

**Coordination with AC Transit’s Mitigation Program**

The BRT Construction Impact Mitigation Plan (CIM-p) provides guidelines and clarity on AC Transit’s obligations and commitments to mitigate temporary impacts on businesses and communities during BRT Bid Package 3 construction. The CIM-p is an element of the broader Business Impact Mitigation Plan (BIM-p) that AC Transit and the City of Oakland established in 2014 by way of Resolutions No. 85284-6, C.M.S. While City Council adoption of the CIM-p and separate Parking Impact Mitigation Plan will signal final design phase completion, it is important



to note that the BIM-p includes supplemental construction phase business impact mitigation programs currently under development, such as the Oakland BAS-f.

AC Transit and City staff and our respective consultants are in the process of working out clearly defined communications processes and protocols to ensure that the project team is responsive and supportive to each and all of our impacted businesses during and after construction. Discerning which entity is responsible for addressing various disruptions and impacts is up to AC Transit and the City, not the businesses in question. On-going, real-time communication among AC Transit's Community Construction Relations Managers (CCRM)s and project managers, as well as Main Street Launch, and project managers, is essential. AC Transit and the City are moving towards establishing clearly articulated communications processes and protocols, and still have work to do prior to the start of construction.

### **FISCAL IMPACT**

The Oakland City Council appropriated \$1,000,000 in General Purpose Funds for the Business Assistance and Sustainability Fund by way of Resolution No. 85085, C.M.S., line E16. The \$1,000,000 in CDBG funding was appropriated by way of Resolution No. 85286, C.M.S. These funds are currently being moved to the appropriate Organization and Accounts.

Not appropriated as yet are funds to administer the Business Assistance and Sustainability Fund. It is difficult at this time to estimate the cost of determining eligibility, disbursing funds, overseeing fund usage, reporting on monthly on the BAS-f program, and preparing for annual reviews and audits. Staff is currently planning to present the City Council with its recommending BAS-f administration funding needs in July.

Key factors that may likely have significant cost implications include the following:

- The complexity and terms of the financial assistance products;
- The length of the program; and
- The need to staff and support an Oversight Body.

### **PUBLIC OUTREACH / INTEREST**

For more than three years, staff has consulted with numerous organizations and individuals who informed the development of the Business Sustainability Program (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 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.

### **COORDINATION**

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

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

The Office of the City Attorney and the Controller's Bureau were consulted in preparation of this report and Resolution. The Office of the City Administrator was instrumental in negotiating funding agreements with AC Transit.

### **SUSTAINABLE OPPORTUNITIES**

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

**Environmental:** The BRT is a major transit oriented development project that will reduce greenhouse gas emissions by significantly improving access to mass transportation.

**Social Equity:** The businesses that have received technical assistance services and will receive services represent the rich 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. The technical assistance services are designed and aligned to assist all businesses equitably regardless of size.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the City Council provide preliminary direction on initial findings and recommendations for guidelines to dispense Business Assistance and Sustainability Program Funds to businesses that experience adverse permanent impacts from East Bay Bus Rapid Transit Project 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 (4):*

- A. *TAC Final Recommendations*
- B. *MSL Recommendations*
- C. *TAC Summary of Gaps and Concerns*
- D. *Recommendations Comparative Table*

**Final BRT Business Sustainability Program Grant Program  
Recommendations from the Technical Advisory Committee (TAC)**

**Purpose:** To assist businesses for whom the permanent features of East Bay Bus Rapid Transit (BRT) Project construction and operations cause significant impacts to business operations and for whom design solutions have not been found or are inadequate. Assistance is intended to help retain businesses in their current location, or where that is not feasible, relocate to another Oakland location. Permanent BRT Project features include, but are not limited to, reduction of public parking spaces near the business, increased travel (commute) time to the business, reduction of left hand and "U" turn opportunities near the business, and station platform impacts upon the business.

**Eligibility:** To be eligible, applicants must:

Threshold Criteria

1. Be a for profit business and;
2. Be located directly on the BRT route, have frontage on the BRT route or be located within 500 feet of the BRT route, as measured from the front face of the curb, and;
3. Have an Oakland Business License and all other required licenses and permits, and;
4. Have no property or tax liens against the business, and;
5. Have 3-year average annual revenues of less than \$3 million or if the business is less than 3 years old, have average annual revenues of less than \$3 million, and;
6. Have been at their current location three years prior to commencement of BRT major construction in spring 2016 or be in a current lease with at least a three year term.

TA Provider Assessment Criteria

7. The business owner must participate in the City of Oakland BRT – Business Technical Assistance (TA) program and;
8. Determine, in consultation with the City Business TA program and to the satisfaction of the TA provider, that the permanent features of the BRT construction and operations within two blocks along the BRT route of the businesses location have or are likely to have significant negative permanent impacts to the operation of their business and;
9. Work with the TA provider to develop a feasible plan to address those impacts, which includes as a first step determining if the AC Transit BRT Business TA program is responsible to mitigate those impacts.
10. Plans could include, but are not limited to, renovations, acquisition/creation of private parking, business model alterations (product offerings, business lines, customer base, etc.) or, when no feasible retention plan can be identified, relocation to another site in Oakland.

**City Business TA Provider's role:**

1. Make good faith efforts to contact all businesses on the corridor, including at least three in-person attempts, with an offer to explain the BRT Project infrastructure and parking configuration changes caused by the BRT that are to occur within two blocks of their business.
2. In coordination with the AC Transit Community Construction Relations team, explain the BRT Project infrastructure configuration changes to every contacted business.
3. Assist businesses in identifying what, if any, negative impacts the changes in configuration will have on their business.
4. Provide businesses with consultation, if desired, to develop a plan to address impacts.
5. Inform businesses of both AC Transit and City provided programs and resources to address the impacts, and provide ongoing coordination and support for businesses working with AC Transit.
6. Assist businesses in meeting threshold eligibility criteria, i.e. license and permitting, addressing liens, negotiating leases, etc.
7. Recommend candidate businesses for grant funding.
8. Assist in implementation of solution if desired.

**Oversight and Appeals:** The City shall establish an oversight and appeals process for businesses. The TAC recommends a five-person voluntary appointed board (1 per CCD affected by the BRT) would meet quarterly to review the program. Businesses deemed ineligible by the TA provider or by City staff could appeal the decision to this body. The body would have authority to reverse decisions if the applicant met threshold criteria of eligibility.

**Non-eligible uses of the funds:**

Mitigations required by the BRT Final Environmental Impact Statement/Report, which are the responsibility of the AC Transit BRT Project.

Administration. All \$2 million is to be granted to businesses.

**Term of the Program:** From start of construction until three years after the BRT begins operations.

**Structure and Terms:** A grant that that must be repaid if the business ceases Oakland operations within five years of the grant. Grants are not to exceed \$100,000. A maximum of 25% of the Business Sustainability Program funds can be used for to relocate businesses to another location in Oakland.

The TAC recommends that the Business Sustainability Program be re-evaluated annually.

**Main Street Launch (formerly OBDC)  
Business Assistance and Sustainability Fund Recommendations**

**Background:** In November, 2014, The Oakland City Council passed Resolution No. 85286 establishing a \$2,000,000 Business Sustainability Fund for direct monetary assistance in the form of loans and grants to businesses experiencing adverse permanent impacts from the Bus Rapid Transit system. The Resolution states that merchants may use these funds for “infrastructure improvements such as sidewalk improvements, implementation of technical assistance recommendations, and capital and/or tenant improvements”. The Fund is not be used to reimburse merchants for revenue loss from business interruption caused by construction activity.

As part of its CDBG contract for Phase 1 Technical Assistance services, Main Street Launch was tasked with developing an independent, data driven recommendation to the City Council for the implementation and distribution of the Fund. Additionally, a Technical Advisory Committee (TAC) was formed, composed of Council member recommended representatives from the business community along International Boulevard, who completed their work on March 22<sup>nd</sup> and provided their recommendations to Main Street Launch for consideration. Some of the TAC’s recommendations particularly those related to eligibility are included here, while in other cases, Main Street has taken a different approach based on its fieldwork findings, case studies, and the need to find an equitable allocation for all businesses permanently affected.

It is important to emphasize that AC Transit has significant responsibilities under the FEIS and other agreements with the City to resolve a range of both temporary and permanent impacts. The Fund grants to merchants recommended here are not meant to replace those resources but rather **supplement** the resources AC Transit is obligated to provide. Attachment #2 describes the referral, communication, and data processes that Main Street is recommending be followed by itself and AC Transit in order to maximize efficiency and support AC Transit in meeting its requirements.

It is also important to state that it is Main Street’s view that the financial impact of adverse permanent (and temporary) impacts caused by the development of the transit line are orders of magnitude greater than available resources (including this Fund), and that the impacts to businesses will likely be very significant, including situations where businesses are unable to continue operations and need to move or fail, and situations where, weakened first by business interruption from construction, then by customer losses due to increased traffic congestion and other permanent changes, business failure occurs. Other externalities, particularly rapidly escalating commercial rents and the lack of long term leases among many of these businesses, will accelerate displacement.

Finally, it is critical to understand that it is Main Street’s professional opinion that it is only possible to measure *actual* permanent impacts to businesses once the temporary disruptions end and the transit line opens and the many benefits that the BRT system will bring to *some* businesses become manifest, the net result measured through business financial performance. The nature and timing of positive and negative impacts will be unique for each business, and because of that a standardized, streamlined approach is necessary to avoid administrative costs and transaction complexity, since there is no allocation for Fund administration as part of the \$2,000,000, 100% of the Fund is designated for direct financial assistance to affected businesses.

Therefore, this recommendation is **projecting** impacts before they happen based on the best data available, in order to deploy the Fund quickly and equitably as each zone construction winds-up, so that businesses can use the grant to support technical assistance recommendations and be proactively responsive to permanent impacts on their business. The grant Fund program proposed here will be divided among the 8 neighborhoods based on each neighborhood's pro rata share of total impacts, and within each neighborhood allocated to qualified businesses based on a pre-determined formula expressed as a value per impact. Timing is of the essence in these urgent business survival situations and simplicity is essential for rapid deployment of assistance.

**Approach:** In order to determine if a business will be subject to adverse permanent impacts from the BRT system, Main Street used the 6 impact drivers identified in the FEIR/S, and mapped (see Appendix 1) these 6 impact types over corridor businesses to help visualize which will be affected by each impact. Factors 1 -5 relate to proximity to the permanent impact, while factor 6 relates to the corridor as a whole. The 6 permanent impact drivers are:

1. Located near parking loss
2. Located within one block of a left turn restriction
3. Located across from a new median
4. Located across from new median station
5. Located adjacent to curbside station
6. Subject to increased traffic congestion

To date, Main Street has verified 816<sup>1</sup> qualified businesses, which is estimated to be 90% to 95% of all the businesses with addresses directly facing the transit route at street level, the remainder have not responded to fieldwork attempts to contact them. These 816 businesses were analyzed to determine, first, what neighborhood they were located in, and second, what the total number of impacts is per type of impact, per business. Using this method, Main Street identified 1,840 impacts, as summarized below:

	Number and Type of Impact by Neighborhood							Percent by Neighborhood	Total Number of Verified Businesses
	# of Businesses with Parking Loss	# of Businesses Subject to Left Turn Restriction	# of Business Across from New Median	# of Businesses Across from Median Station	# of Businesses Adjacent to Curbside Station	# of Businesses with Increased Congestion	Total Number of Impacts		
Downtown	17	1	0	0	11	71	100	5%	71
Chinatown	1	0	0	0	0	11	12	1%	11
East Lake	80	0	0	0	3	157	240	13%	157
San Antonio	23	25	1	1	0	58	108	6%	58
Fruitvale	113	124	150	24	0	265	676	37%	265
Havenscourt/Lockwood	62	44	35	7	0	81	229	12%	81
Hegenberger	50	48	17	3	0	70	188	10%	70
Elmhurst	32	47	96	9	0	103	287	16%	103
<b>Totals</b>	<b>378</b>	<b>289</b>	<b>299</b>	<b>44</b>	<b>14</b>	<b>816</b>	<b>1840</b>	<b>100%</b>	<b>816</b>
Percent of Total Impact	21%	16%	16%	2%	1%	44%	100%		

<sup>1</sup> By Qualified Businesses, MSL refers to business operations at street level, and not on the second floor or higher.

On the basis of this data, Main Street conducted two calculations. First, based on the neighborhood pro rata share of impact, the following allocation would be reserved for each area:

Impacts and Allocation of \$2m by Neighborhood			
	Total Number of Impacts	Percent by Neighborhood	Amount of \$2m Allocated
Downtown	100	5%	\$ 108,696
Chinatown	12	1%	\$ 13,043
East Lake	240	13%	\$ 260,870
San Antonio	108	6%	\$ 117,391
Fruitvale	676	37%	\$ 734,783
Havenscourt/Lockwood	229	12%	\$ 248,913
Hegenberger	188	10%	\$ 204,348
Elmhurst	287	16%	\$ 311,957
Totals	1840	100%	\$ 2,000,000

These amounts would be reserved by neighborhood based upon the areas pro rata share of total impacts expected to occur in each neighborhood, allowing for an equitable distribution of funds and eliminating the concern that funding may run out before BRT construction begins in a given neighborhood.

Second, for the purposes of this analysis all impact types are given the same weight, so the value of each impact would be determined by dividing \$2,000,000 by the total number of impacts (1,840), which results in a value per impact of \$1,087 per impact. This value per impact then would be multiplied by each businesses actual number of impacts, up to 6, for a grant amount ranging from \$1,087 (1 impact) to \$6,522 (6 impacts). The number of impacts are predetermined by the mapping and set based on this formula.

**Form of Direct Financial Assistance:** Main Street recommends that the Fund provide one time grants and not loans or forgivable loans to the business. Fieldwork and one-on-one meetings with corridor businesses clearly indicates that businesses along the BRT route are already experiencing negative impacts resulting from increasing rents, short term tenancies, and business interruption from construction and are generally not interested in borrowing given the uncertainty about what will happen. Further, case studies of other transit projects nationally indicate that loan programs, however concessionary, are not well utilized. Perhaps most importantly, loans require significant documentation and multi-year monitoring, and those administrative costs quickly outweigh the benefit provided. Given the number of affected companies who might obtain support from the Fund, loans and forgivable loans are cost prohibitive in this situation.

**Application Process and Required Documentation:** To maintain accountability, any of the 816 businesses seeking a grant under the program would be required to complete an application and provide documentation sufficient to meet the following criteria:



1. Are a for profit business
2. Have an Oakland business license
3. Have annual revenues of less than \$3 million
4. Have operated a business on the corridor since January 2016 or earlier
5. Have a lease or letter from a landlord demonstrating that they are a tenant
6. Have paid their most recent city, state and federal taxes
7. If the business owner is also a property owner, no outstanding property tax liens

In addition, all applicants would be required to participate in a need assessment conducted by Main Street, and presented the option of obtaining assistance from the full suite of services available from Main Street and other organizations.

In the event some of these businesses do not qualify or are not interested in the grant program, unused funds will be held in trust and disbursed after the BRT line opens as determined by the City of Oakland at that time.

## **Appendix 1 Methodology for Determining Physically Impacted Businesses**

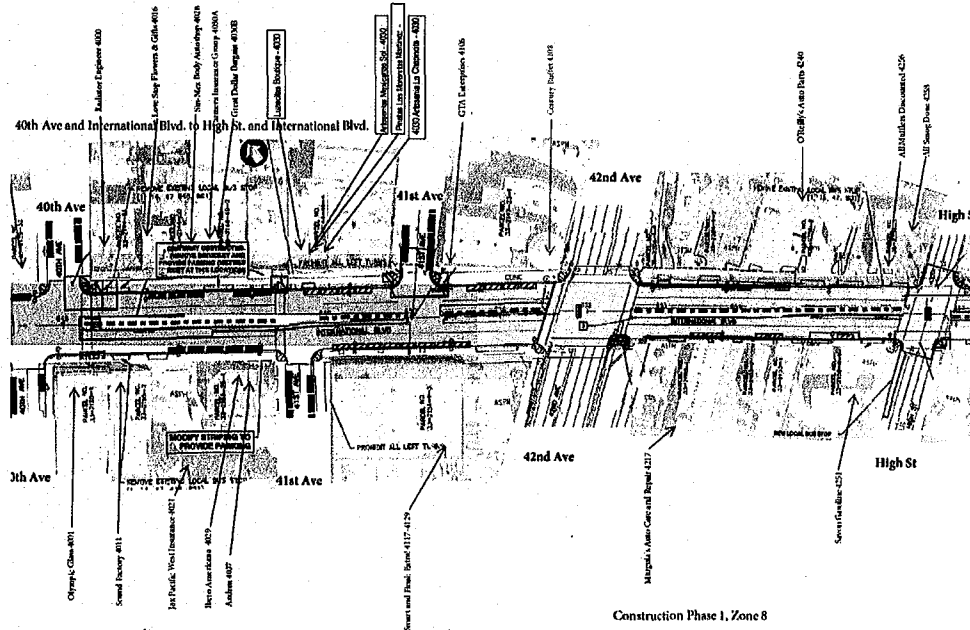
Main Street developed a systematic methodology to verify information about businesses located along the BRT Route which included a team of Business Outreach Managers who work in the field collecting information from business owners in person.

- **Mapping Methodology:** To gain a better idea of BRT's permanent impact on businesses and the subsequent recommended allocations, OBDC established a methodology to map and quantify business impacts on the BRT corridor. The methodology consisted of 3 steps:
  1. Business Verification
  2. Business Mapping
  3. Impact Assessment

**Business Verification:** Using a team of Business Outreach Managers with language capabilities and cultural competencies reflective of the diverse communities along the BRT route, OBDC began verifying businesses along the BRT route in May 2015 based on telephone calls and in-person site visits. OBDC began with list of businesses obtained from the SBDC National Information Clearinghouse at the Institute for Economic Development at the University of Texas at San Antonio.

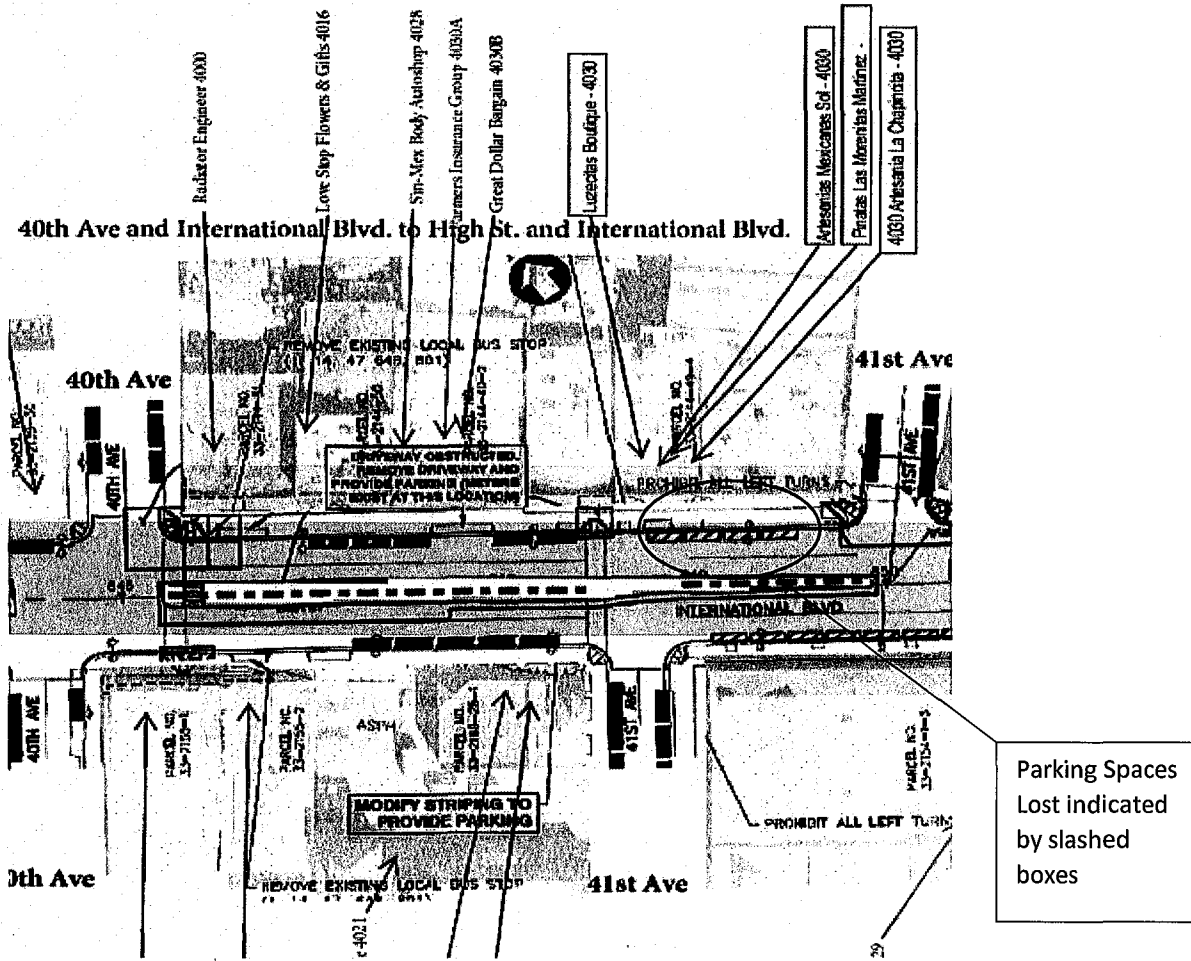
**Business Mapping:** Once a list of verified businesses was developed, the next step was to see where those businesses were in relation to the new BRT infrastructure. OBDC created a map using (1) construction from the Project Plans for Construction for AC Transit East Bay Bus Rapid Transit Project and (2) parcel numbers and building images from the East Bay BRT Project – Draft Oakland Parking Impact and Improvement Plans by Fehr & Peers. Next, the OBDC team placed business names with arrows pointing to the appropriate parcel on the map which helped OBDC was more accurately assess impacts. A sample image of the area from 40<sup>th</sup> Avenue to High Street along International Blvd is provided in the image below.

Impact Assessment: In order to get an accurate assessment of impacts, OBDC needed to identify physical, permanent impacts and plot them on the BRT Route map. The six permanent impacts OBDC mapped include: parking loss, left turn restriction, across from new median, across from median station, adjacent to curbside station and increased congestion.



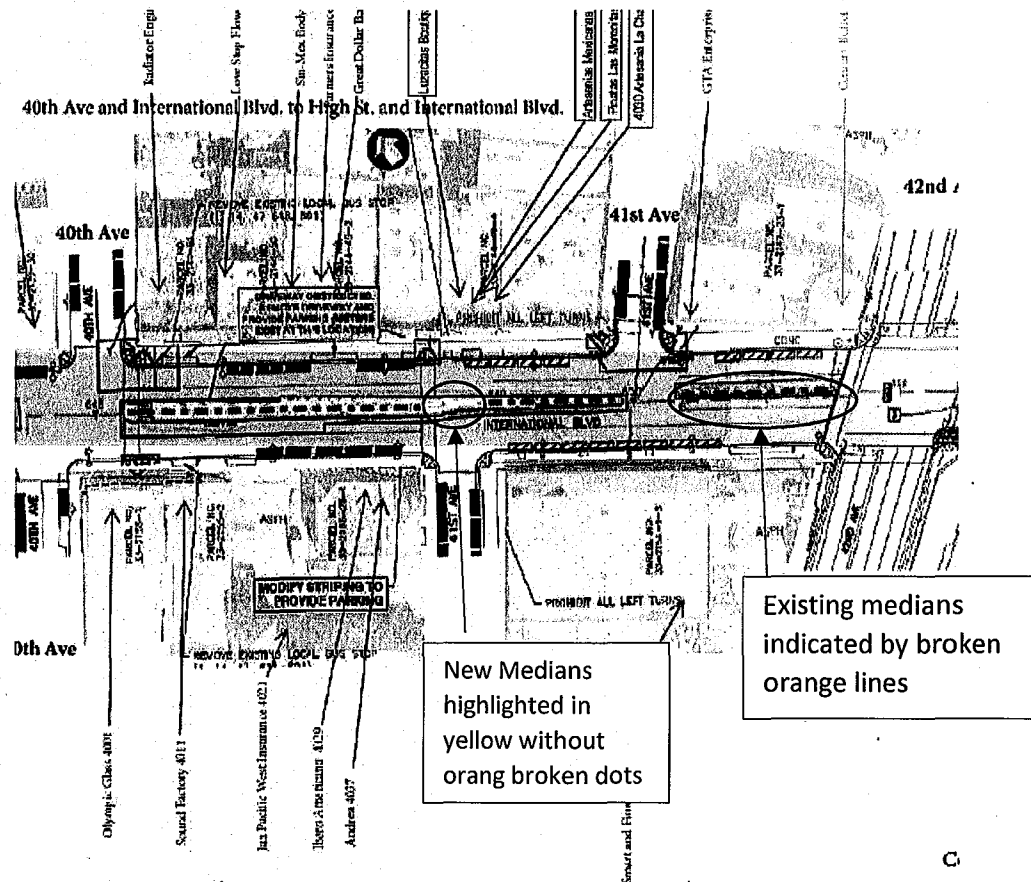
The 6 impact type maps Main Street used are as follows:

1) **Parking Loss:** Any businesses that is losing at least 1 parking space within the block on which it resides is termed to experience parking loss. For example: all 9 businesses on the north side of International Blvd between 40<sup>th</sup> and 41<sup>st</sup> Ave will experience parking loss, because the block is losing 3 parking spaces (See image below).

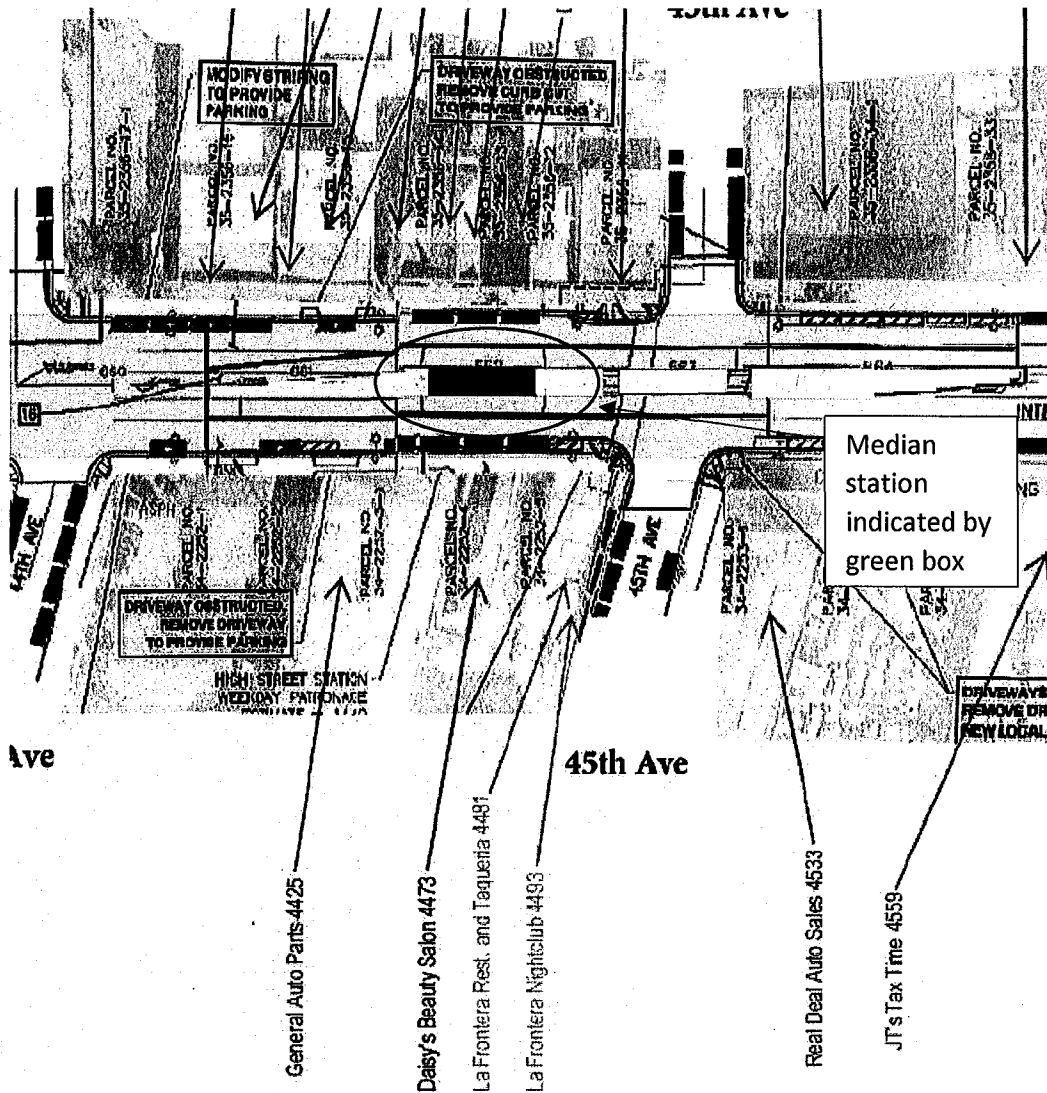




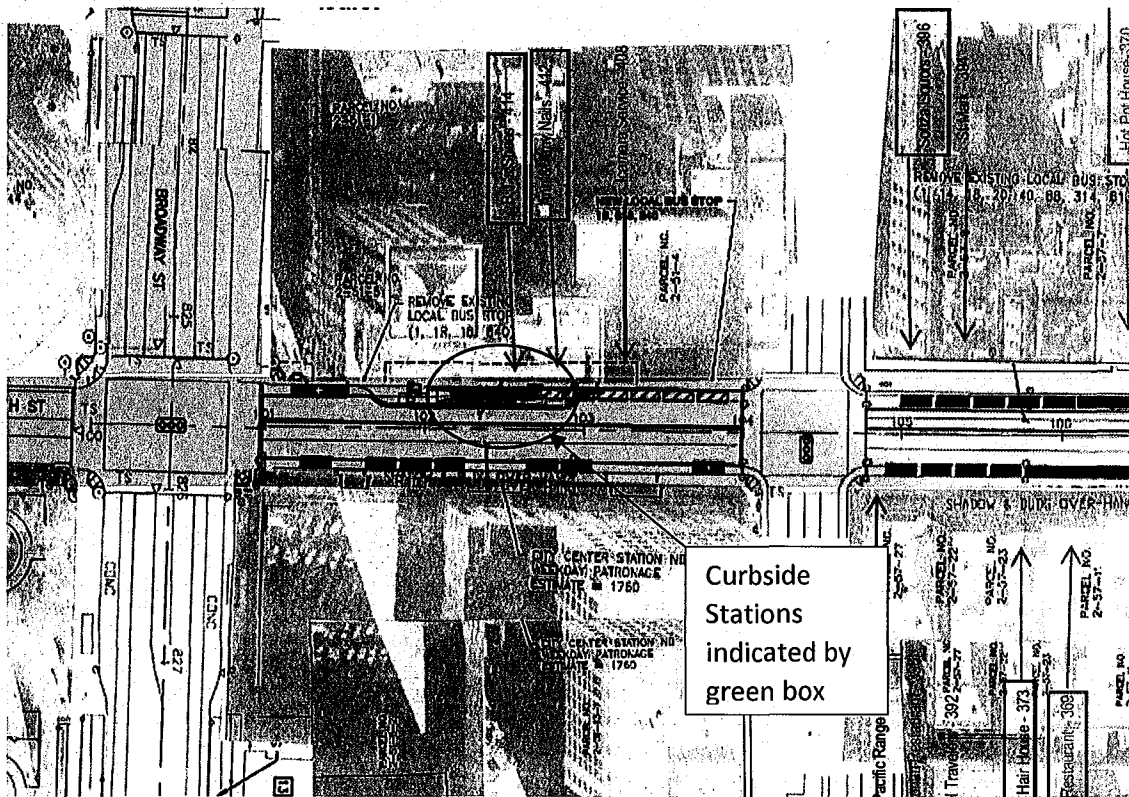
3) *Across from New Median:* This impact is defined as the business is in front of a new median that is being constructed. If a median currently exists, the business is not considered to be impacted. Note that there are currently physical medians along the BRT Route such as at 42<sup>nd</sup> Avenue to High Street (see exhibit above, existing median is indicated with broken orange lines). An existing physical median is not anticipated to be a new permanent impact and therefore was not counted.



4) *Across from Median Station:* Businesses with a median station directly in front of their businesses are considered to be across from a Median Station, as distinct from being located across from a new median which was discussed above. Median stations are expected to have station canopies, which range from 16-48 feet in width. These canopies are expected to permanently impact businesses. For example, in the image below (Exhibit 2, Figure 2), Daisy's Beauty Salon at 4473 International Blvd will be across from a median station.



5) *Adjacent to Curbside Station:* Businesses on the same side of the street and with a curbside station directly in front of them would qualify as adjacent to curbside station. For example, in the image below, B.J.'s Shoes at 414 12<sup>th</sup> Street will be adjacent to a curbside station.



6) *Increased Congestion:* This impact cannot be quantified prior to construction. However, traffic congestion in this highly auto-dependent corridor will increase significantly as a consequence of lane losses, left turn restrictions, and increased bus traffic, and Main Street believes all businesses along the transit line will be adversely impacted by increases in congestion as a result of the new BRT infrastructure.



## Appendix 2 AC Transit Responsibilities & Work Flow

Under the AC Transit Business Impact Mitigation Plan, impacts for which AC Transit is responsible to address are summarized as follows:

1. Direct Impacts: This includes direct BRT Project impacts for businesses:
  - That are located directly adjacent to curbside platforms;
  - That are in the direct vicinity of median platforms;
  - That have driveway impacts; or
  - That have other direct temporary and/or permanent impacts due to project construction and operations.
2. Direct Temporary Construction Impacts, which include:
  - Construction phase impacts described in the FEIR/FEIS and the approved Business Impact Mitigation Plans for BRT Project Construction Bid Packages #1, 2 & 3 (BIM-Ps);
  - Stage Construction and Traffic Handling Plans for Bid Packages #1, 2 & 3, and/or listed under the AC Transit Business Support Activities Program, such as noise, dust, restricted visibility and/or access, on-street parking suspensions, and traffic detours.
3. Direct Permanent Construction Impacts: For the purposes of the BRT Project-funded Business TA Project these include:
  - Post-construction impacts described in the FEIR/FEIS; and
  - The approved BIM-Ps, and/or the final plans, specifications and estimates for Bid Packages #2 and #3, such as driveway closures, restricted visibility and/or access, parking displacement, new traffic rules, increased traffic congestion, etc.

Work Flow with AC Transit: In working with AC Transit, to the extent that a business approaches Main Street prior to approaching AC Transit regarding the experience of adverse permanent impacts, Main Street will, as it is trying to assist the business with TA:

1. Refer the business to the appropriate contact at AC Transit and note in Salesforce the nature and date of the complaint;
2. Request an in-person site visit to the business within two weeks of the referral with representatives from Main Street, AC Transit and the City to review the situation;
3. Request written correspondence from AC Transit within three weeks of the site visit detailing if the business will receive assistance from AC Transit and the type of assistance that the business will receive and when the assistance will be provided.
4. Request written correspondence from AC Transit confirming that the assistance has been provided one week after the date AC Transit selected for providing the assistance.
5. Report to the City and AC Transit monthly summarizing:
  - a. the name and address of each business referred
  - b. the date the site visit was requested
  - c. the date site visit was completed
  - d. the date AC Transit either completes its work or determines that the business is not eligible for services by AC Transit

**Gaps within the BRT Business Impact Mitigation Plan and the BRT Business Sustainability Program  
Submitted by The BRT Business Sustainability Program Technical Advisory Committee (TAC)**

During the course of completing our task of providing recommendations on eligibility criteria for the BSP, we identified several gaps in the BRT—Business Impact Mitigation Programs overall. The gaps that we identified are as follows:

1. There is a lack of public funding for lost business revenues and functionality that directly results from the temporary (not permanent) impacts of BRT construction phase activities. We acknowledge that AC Transit and the City will place controls on the selected construction contractor to limit the duration of construction in any given business district and mitigate temporary business impacts. However, if the San Jose BRT Project is any indication, we can be certain that the temporary impacts in the dense Oakland corridor will likely be much more severe than anticipated. Therefore, we remain extremely concerned that no public monies are allocated for lost temporary construction impacts.
2. There is a lack of current information regarding the magnitude of the permanent impacts businesses may face once the BRT is in operation. It was extremely difficult to adequately perform our advisory function regarding the \$2.0 million Business Sustainability Fund without this analysis. Anecdotal evidence and the experiences of transit programs like this in other cities (San Jose, Seattle, and Twin Cities) suggest that \$2.0 million is likely to be inadequate, but we lack any reliable estimates to confirm or refute this.
3. There is a lack of a supplemental parking impact mitigation program for impacts listed in the draft BRT Project Parking Impact Mitigation Plans but not addressed under the BRT Project Final Environmental Impact Statement or in the BRT construction bid documents. Staff has informed us that the interagency BRT staff team is developing a proposal for a supplemental program; but the contours of that program and the funding commitments it would require are not yet available. As with the temporary impacts noted in No. 1, we believe this issue will require a commitment of public funds.
4. There is a lack of tenant protections and services to retain businesses facing rent increases. The Transit Oriented Development approach that accompanies the BRT is widely expected to raise property values significantly along the Corridor. Anecdotally, many businesses already are reporting rent increases. Given that TOD on the corridor is expected by the City to accomplish “development without displacement,” a program to protect and assist businesses that rent and may face rent increases is, we believe, imperative.
5. There is a lack of resources and definition regarding the administration of the \$2.0 million Business Sustainability Fund. We strongly support the Council intention that the entire \$2.0 million allocation would go directly to impacted businesses. However, it is not known where the administrative, technical, and other support services will come from, who will provide them and how they will be paid for.
6. There is a shortage of appropriately-zoned land in Oakland for light industrial and production, distribution and repair uses common to the Blvd. These uses are at highest risk for direct displacement by the BRT. Should these business types require relocation, the City should assist by identifying sites, making City-owned land available to these businesses, using regulatory, legislative and police powers such as rezoning, granting variances, granting General Plan Amendments, or using other planning tools to help retain these businesses in Oakland.
7. There is no external public oversight or advisory committee for the BSP program overall.

City Staff Comments to TAC's List of Gaps and Concerns

**1. Lack of public funding for lost business revenue.**

- This is a long-standing concern held by business advocates, based on their belief that many businesses will sustain significant losses of revenue during construction.
- The City has worked diligently with AC Transit to limit temporary business impacts during construction through project design and construction staging requirements.
- The City Council was clear that there would be no City funding allocated for business interruption payments due to the construction of the BRT.
- The City Council did, however, allocate \$2 million to a Business Assistance and Sustainability Fund to help businesses mitigate the indirect permanent impacts of BRT construction on their facilities and operations.
- City staff also assisted AC Transit in acquiring an additional \$2 million from the Alameda County Transportation Commission for a supplemental BRT - Business Technical Assistance project, which AC Transit granted to the City.

**2. Lack of information about magnitude of permanent impacts.**

- Each major transit oriented development project is different.
- Until BRT operations commence, there really is no way of knowing the full extent of permanent impacts businesses will face beyond those already identified and addressed in the Final Environmental Impact Statement/Report (FEIS/R) and or the Final Design process.
- It is equally difficult, therefore, to predetermine how much funding will be needed to address permanent impacts due to BRT construction.

**3. Lack of supplemental parking impact mitigation program.**

- AC Transit and City staffers will bring a proposal forward in May 2016 to jointly develop a supplemental BRT Corridor Parking Management Plan that will address post-construction impacts not anticipated in the FEIS/R.
- The Plan will recommend general on-street parking resource management strategies, as well as targeted solutions for business districts where post construction peak parking occupancies are expected to exceed 85 percent.

1

**4. Lack of tenant protections and services to retain businesses.**

- In the absence of commercial rent control, which is not likely to happen in the foreseeable future, the best we can do about the unfortunate trend of escalating rents is assist businesses with lease negotiations.
- OBDC is working the with Lawyers Committee for Civil Rights to provide pro bono support for business operators in negotiating long-term leases with their property owners.

**5. Lack of resources for administration of \$2 million BAS-f.**

- All of the \$2 million for the Business Assistance and Sustainability Program will go to support businesses and not for fund administration.
- The Department of Housing and Community Development will work on getting authorization from the City Council to allocate other funds for the administration of the Business Sustainability Program funds.

**6. Shortage of appropriately zones land in Oakland for light industrial and production, distribution and repair uses common to International Boulevard.**

- Areas in the City zoned for Auto Repair and Service, General Warehousing and Retail, and Light and Custom Manufacturing are limited.
- Most areas not requiring Conditional Use Permits are west of International Boulevard and towards the Port and Former Oakland Army Base.
- Further analysis of property vacancies in these areas that permit commercial uses likely to be displaced by the BRT is required.

**7. No external public oversight or advisory committee for BSP program overall.**

- The City Council must ultimately determine if the City is willing and able to support a standing BSP oversight body, given the cost implications.

## Summary of Recommended BAS-f Eligibility Criteria, Disbursement Guidelines, and Comments

#	TAC Recommendations <sup>1</sup>	MSL Recommendations	Staff Recommendations/Comments
1	<b>Entity:</b> Must be a for-profit business.	Agree	Agree
2	<b>Location:</b> On BRT route frontage or within 500 feet from front face curb of route.	MSL recommends BRT route frontage only.	If eligibility consideration goes beyond route frontage, there should be clear rationale as to what circumstances would qualify for funding.
3	<b>Licenses:</b> Must have Oakland Business Tax License and all required permits, etc.	Agree	Agree
4	<b>Liens:</b> No property or income tax liens against business.	Agree	Agree
5	<b>Annual revenues:</b> 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.	Agree	Agree
6	<b>Years in operation:</b> Be in operation in current location 3 years prior to start of construction, or be in a current 3-year lease.	MSL recommends flexibility given the high number of businesses this condition may exclude.	Staff agrees with TAC; eligibility criteria should be clear and objective. January 2016 start of business is too new.
7	<b>Technical Assistance:</b> Must take advantage of Technical Assistance services (TA).	Agree	Agree
8	<b>Distance of impact from BRT features:</b> Up to 2 blocks away from business.	MSL recommends 1 block.	Staff agrees with TAC regarding parking impact mitigation concerns.
9	<b>Feasible plan:</b> Must develop feasible impact mitigation plan with TA provider.	Agree	Agree
10	<b>Eligible uses of funds:</b> Building renovations, acquisition/creation of private parking, business model alterations (product offerings, business lines, customer base, etc.) and, absent a feasible retention plan, relocation.	MSL is concerned about financial assistance for relocation, which can cost up to \$250K and beyond.	Business relocation strategies merit further consideration given the magnitude of impact to certain industry types, such as auto repair and services, wholesale, distribution, etc.
11	<b>Oversight:</b> Should be oversight and appeals process for businesses denied support; TAC prefers creation of an Oversight body to hear appeals and reverse funding decisions of warranted.	Appeals should be a City staff/Administration function based upon clearly established eligibility criteria and disbursement guidelines.	Oversight body would likely come under Brown Act/Sunshine Ordinance and will need staff support; final authority to dispense City funds typically not given to boards or committees; clearly established criteria should effectively govern the fund disbursement process.

<sup>1</sup>The order of this table follows the format of the recommendations submitted by the TAC for item numbers 1 -14.

**Summary of Recommended BAS-f Eligibility Criteria, Disbursement Guidelines, and Comments**

#	TAC Recommendations <sup>1</sup>	MSL Recommendations	Staff Recommendations/Comments
12	<b>Non-eligible uses:</b> a) For mitigations that come under the FEIR/S and AC Transit's responsibilities; and b) fund administration costs.	Agree	Agree
13	<b>Term of BAS-f program:</b> From start of construction until 3 years after BRT operations begins.	No position	Grant process should begin within 1 year after commencement of operations, which should be ample time to identify impacts.
14	<b>Structure and terms of assistance:</b> a) Grants to be repaid if business ceases operations within 5 years; b) Grants not to exceed \$100K; and c) Up to 25% of funds can be used for relocation costs within Oakland.	a) Agrees with grants, not loans; b) No position on maximum amount; and c) Disagrees with covering relocation costs.	a) Agree with grants, but disagree with 5-year duration of term due to cost to administer; b) Agree with \$100K maximum; and c) Recommend further analysis of relocation strategies and options due to high cost of moving and limited areas in Oakland in which to relocate certain business types.