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OAKLAND

2019 MAY 16 PM 6:22

# AGENDA REPORT

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

**FROM:** Maraskeshia Smith  
Assistant City Administrator

**SUBJECT:** Write-Off Non-Performing Loans  
Under the Economic Development  
Administration Revolving Loan  
Program

**DATE:** May 8, 2019

City Administrator Approval

Date:

5/16/19

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To:**

- 1) **Write-Off Three Uncollectible Loans For A Total Of \$241,926 Under The Economic Development Administration Revolving Loan (EDA RL) Program To Decrease Reportable Default Rate, Enabling The City To Maintain The EDA RL Balance For Future Loans To Oakland Small Businesses; And**
- 2) **Authorize Without Returning To Council, Small Business Loans That Meet The EDA RL Grant Requirements Up To The Available Balance Of \$201,676.30 Under EDA Award #07-39-02873.**

## EXECUTIVE SUMMARY

For several years City staff has attempted to collect on the following loans funded under the Economic Development Administration Revolving Loan Fund (EDA RLF) award number 07-39-02873:

<u>Borrower</u>	<u>Uncollectible Debt</u>	<u>Default Year</u>
La Placita de Micro Negocios	\$ 43,678	2012
Merritt Bakery & Restaurant	\$162,000	2009
Victor London Photography	<u>\$ 36,248</u>	2009
<b>Total</b>	<b>\$241,926</b>	

The U.S. Department of Commerce Economic Development Administration Office has strongly advised that the City write-off the uncollectible loans listed above to be in compliance with the City's EDA Administrative Plan and Title 13 of the Code of Federal Regulations Section 307.21 (a) [13 CFR 307.21 (a)].

Item: \_\_\_\_\_  
CED Committee  
May 28, 2019

Not complying may result in the termination of the EDA RLF grant in whole or in part, which would involve the City repaying EDA the federal share of the EDA RLF assets. In the case of an audit, the recommended write-off will reduce the amount of uncollectible accounts receivable disclosed on the face of the financial statements as well.

## **BACKGROUND / LEGISLATIVE HISTORY**

The City received a demand letter from the grantor of the EDA RLF Award No. 07-39-02873, for the City to finalize the write-off of the three loans listed in the Executive Summary of this report by May 31, 2019 to be in compliance with 13 CFR 307.20 -21 (a) and to decrease the reportable default rate.

Previously, EDA staff issued a Risk Analysis to the City in November 2018, indicating that the total uncollected on these loans without an official write-off of the loans by the City has placed the City between a level B and C rating of the EDA Risk Analysis with a C rating indicating "at risk".

City staff, prior to the above notice, researched the history of these loans and consulted with the City's Revenue/Collections Office and City Attorney's Office and agreed that due to statute of limitations and loss of contact with the borrowers and their contacts, these loans should be written-off.

Much research was required by City staff, as the former Manager and former Loan Servicing Specialist who typically managed such matters were both recently retired when the pre-existing default issue initially presented itself to the acting manager for the Commercial Lending and Community Development Block Grant divisions at the time (2016). In addition, City Attorney staff that historically worked with Commercial Lending staff on the EDA RLF grant first awarded April 8, 1988, were no longer with the City.

Staff is now requesting City Council to approve the official write-off of the loans in this report to maintain the balance of the EDA RLF to benefit Oakland businesses that satisfy EDA RLF program requirements, as set forth in the City's EDA RLF Plan and EDA Federal regulations.

## **ANALYSIS AND POLICY ALTERNATIVES**

Under the City's Commercial Lending EDA RLF Plan, last updated October 26, 2018, loans with an outstanding balance that have been placed in default and remain outstanding after 180 days will generally be written off. In the event a loan is written-off, collection efforts will continue until determined not to be cost effective or prospects for recovery no longer exist. A reasonable loss through defaults will be considered without establishing a loan loss reserve.

In consultation with the City Attorney's Office and the City's Revenue/Collections Office in 2016 it was concluded that the three subject defaulted EDA loans are uncollectible for the following reasons:

1. At the time of review, each of the loans listed above had reached the statute of limitation for legal action (four years); and
2. The borrowers and the contacts listed in the loan files had been non-responsive to the City's Commercial Lending Staff for an extended period of concentrated efforts to collect on these loans.

### **FISCAL IMPACT**

In accordance with the City's EDA RLF Plan and Generally Accepted Accounting Principles (GAAP), the City establishes an allowance for doubtful accounts for accounts over 180 for EDA RLF Plan and 360 days under the GAAP at the end of each year. As a result, the Accounts Receivable balance in the City's books should reflect only the net receivables. Consequently, writing-off the proposed amount of \$241,926.74 will not influence the fund balance.

The staff hours spent on research, collection efforts and producing additional reports to the EDA from 2016, to-date further justifies the official write-off of the three subject loans. It would not be cost effective to continue to devote significant staff time to this effort.

Writing-off this debt on the City's accounts does not preclude collection of these obligations by the City. These debts will still exist. Also, if a debtor later has a claim against the City, the existing debt, no matter how old, can be used to offset any obligation owed by the City to that debtor.

### **COORDINATION**

This report was coordinated with the City Attorney's Office and Budget Bureau. Each Office has reviewed the report in support of the recommendation to write-off the uncollectible loans under the City EDA RLF program named below:

<b><u>Borrower</u></b>	<b><u>Uncollectible Debt</u></b>	<b><u>Default Year</u></b>
La Placita de Micro Negocios	\$ 43,678	2012
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<b>Total</b>	<b>\$241,926</b>	

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** EDA RLF funds will support businesses that can demonstrate that financing is not otherwise available on terms or conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The primary evidence for this will be the analysis provided in the credit memo supported by outside documentation, for example, bank declination letters.

**Environmental:** Staff encourages loan recipients to make substantial use of recycled content building materials, energy-conserving building designs and appliances, and water conserving fixtures and landscaping.

**Social Equity:** Loan services to be provided under the EDA RLF program will benefit Oakland businesses by promoting fair and equitable access to business loan sources.

**ACTION REQUEST OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To:

- 1) Write-Off Three Subject Uncollectible Loans For A Total Of \$241,926 Under The Economic Development Administration Revolving Loan (EDA RL) Program To Decrease Reportable Default Rate, Enabling The City To Maintain The EDA RL Balance For Future Loans To Oakland Small Businesses; And
- 2) Authorize Without Returning To Council, Future Small Business Loans That Meet The EDA RL Grant Requirements Up To The Available Balance Of \$201,676.30 Under EDA Award #07-39-02873.

For questions regarding this report, please contact Gregory Garrett, CDBG Manager, at 510.238.6183.

Respectfully submitted,



MARAKESHIA SMITH  
Assistant City Administrator

Reviewed by:

Maryann Leshin, Deputy Director, HCD

Prepared by:

Gregory Garrett, Manager  
Community Development Block Grant Division

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO:**

- 1) **WRITE-OFF THREE UNCOLLECTIBLE LOANS FOR A TOTAL OF \$241,926 UNDER THE ECONOMIC DEVELOPMENT ADMINISTRATION REVOLVING LOAN (EDA RL) PROGRAM TO DECREASE REPORTABLE DEFAULT RATE, ENABLING THE CITY TO MAINTAIN THE EDA RL BALANCE FOR FUTURE LOANS TO OAKLAND SMALL BUSINESSES; AND**
- 2) **AUTHORIZE WITHOUT RETURNING TO COUNCIL, FUTURE SMALL BUSINESS LOANS THAT MEET THE EDA RL GRANT REQUIREMENTS UP TO THE AVAILABLE BALANCE OF \$201,676.30 UNDER EDA AWARD #07-39-02873**

**WHEREAS**, the U.S. Department of Commerce awarded the City \$750,000 in 1988 (award number 073902873) under the Economic Development Administration Revolving Loan Fund (EDA RLF) Program; and

**WHEREAS**, the City has funded approximately more than fourteen loans since 1991 for a total of \$972,396 under the EDA RLF program, with three loans currently in default status as follows:

<u>Borrower</u>	<u>Default Amount</u>	<u>Default Year</u>
La Placita de Micro Negocios	\$ 43,678	2012
Merritt Bakery & Restaurant	\$162,000	2009
Victor London Photography	\$ 36,248	2009
Total	\$241,926	

and

**WHEREAS**, the U.S. Department of Commerce EDA strongly advises the City to write-off said loans as uncollectible in order for the City to maintain the balance of EDA RLF Award No. 073902873; and

**WHEREAS**, the defaulted loans have reach the statute of limitations; and

**WHEREAS**, a balance of \$201,676.30 is available to the City for future loans to small businesses in Oakland; and

**WHEREAS**, failure to write-off said EDA RLF balances would put the City in non-compliance with the regulations governing the EDA RLF Program, thereby jeopardizing the City's future use of funds; now, therefore, be it

**RESOLVED:** That the City Council hereby authorizes and directs the City Administrator or designee, to authorize the write-off of EDA RLF loans listed above for a total of \$ 241,926; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Administrator or her designee to execute any and all documents related to the write off of the EDA RLF loans listed above; and be it

**FURTHER RESOLVED:** That upon approval of said loan write-offs the U.S. Department of Commerce EDA will be officially informed by the City Administrator's Office of this action; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator or designee, to negotiate, authorize, and/or appropriates future EDA RLF loans up to the \$241,926 currently available; and be it

**FURTHER RESOLVED:** That prior to execution, loan agreements shall be reviewed and approved as to form and legality by the City Attorney, and executed copies shall be filed with the City Clerk; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Administrator or designee to conduct negotiations, execute documents, and take any other action with respect to the EDA RLF program and requirements; and be it

**FURTHER RESOLVED:** That the EDA RLF loans listed above shall remain subject to collections activity by the City until determined by staff that such activity alone is no longer cost effective or that prospects for recovery no longer exist.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON-MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2019 MAY 16 PM 6:23

Approved as to Form and Legality

  
City Attorney's Office

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ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California