



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Margaret O'Brien  
Interim Director of  
Finance

**SUBJECT:** OAB Penalties Spending  
Authority

**DATE:** November 3, 2020

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City Administrator Approval 

Date: Nov 19, 2020

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## **RECOMMENDATION**

**Staff Recommends That the City Council Adopt A Resolution Amending Resolution No. 88174 C.M.S., Which Adopted the Fiscal Year 2020-21 Mid-Cycle Budget Amendments, To Appropriate From Fund 5671 Project 1004290, Penalties Collected By The City From The Contractors Who Failed To Comply With The City's Construction Jobs Policy For The Oakland Army Base Project In The Amount Of Three Hundred Fifty-One Thousand, Six Hundred Seventy-Eight Dollars and Twenty-Eight Cents (\$351,678.28) And Any Future Penalties Collected by the Department Of Workplace and Employment Standards (DWES), If Any, To The DWES For Training, Monitoring, or Technical Assistance.**

## **EXECUTIVE SUMMARY**

Staff recommends that the City Council approve appropriation of liquidated damages to support the training, monitoring, or technical assistance functions performed by the Department of Workplace and Employment Standards (DWES). Such liquidated damages revenues were derived from non-compliance penalties under the jobs policies for the Oakland Army Base (OAB), as provided for within Ordinance No. 13131 C.M.S. and use of these revenues is restricted by the Jobs Policy.

The use of these funds for training, monitoring, and technical assistance by the DWES is consistent with the aforementioned Ordinance and policies. By funding these functions from this earmarked revenue source, DWES will be able to reduce expenditure and relieve some fiscal pressure in the General Purpose Fund while complying with the restrictions on the use of those funds. The expenditure reductions will help address a substantial projected General Purpose Fund deficit in FY 2020-21.

## **BACKGROUND / LEGISLATIVE HISTORY**

In June of 2012, the City of Oakland enacted Ordinance No. 13131 C.M.S., which, among other things, allowed the City to enter into a design build contract for the public improvements at the former OAB, and allowed the private development of the lease areas on the OAB. Both the public improvements and private improvements are subject to construction and operations jobs policies

(OAB Jobs Policies). The OAB Jobs Policies require work on the OAB property to create jobs for Oakland residents. Contractors participating in the construction of the public and private improvements are mandated to comply with terms of the Jobs Policies as a condition of operation.

The stated purpose of the OAB Jobs Policies was to set forth certain requirements regarding hiring and employment for work at the OAB. For the public improvements, the OAB Jobs Policies require 50 percent of the project work hours to be performed by Oakland residents, 20 percent of the project work hours to be performed by apprentices, and 25 percent of the 20 percent of the project hours to be performed by disadvantaged workers. Section IV Part F Subpart 1 of the Public Improvements Construction Jobs Policy sets forth the penalties for non-compliance such that the contractor shall pay to the City liquidated damages in an amount equal to twenty dollars (\$20.00) for each hour short of the percentage requirement. The non-compliance determination is based on a review of certified payroll reports, Oakland resident utilization reports, and other supporting documentation.

In addition, the OAB Jobs Policies generally require that for any large employers, such employers must follow a specified hiring procedure to work towards the goal of 50% of workers hired for on-site jobs during a particular year are residents and 25% are disadvantaged workers. Section III Part B Subpart 4 sets forth liquidated damages for each large employer that is not compliant with these hiring requirements as \$5,000 per job short of the threshold.

### **ANALYSIS AND POLICY ALTERNATIVES**

The Council President requested staff locate the penalty assessment revenue collected thus far for non-compliance with the OAB Jobs Policies. Due to competing priorities related to the economic impacts of COVID-19 pandemic, Finance staff was delayed in providing this analysis. In discussion and collaboration with the DWES, staff identified the project and fund where penalty funds were deposited. Furthermore, once identified, staff was able to ensure that liquidated damages remitted to the City in FY 2018-19 and FY 2019-20 were still available for appropriation.

Thus far, \$351,678.28 in penalty revenue collected for non-compliance with requirements set out in the OAB Jobs Policies is currently available for use. The allowable use of these funds is provided in in the OAB Jobs Policies which state:

*“Any liquidated damages collected by the City shall be used solely to support training, referral, monitoring, or technical assistance to advance the purposes of this Policy.”*

As directed, funds from this action will support the ongoing work of the DWES to provide ongoing training, monitoring, and technical assistance related to the OAB Project. This is the required purpose of such funds as designated in the Jobs Policies as approved by Ordinance No. 13131.

**General Fund dollars appropriated in the FY 2020-21 Adopted Mid-cycle Budget for this purpose will be returned to the fund balance to help offset the substantial deficit projected in the FY 2020-21 due to the continued impact of the COVID-19 pandemic.** Based on the first few months of data, staff is anticipating significant declines among several categories of General

Purpose Fund revenues. This, in combination with projected overspending, will create a shortfall that may impact the City's ability to preserve services for residents. More information related to the current year financial projection will be made available this month.

### **FISCAL IMPACT**

\$351,678.28 derived from the collection of penalty assessments will be appropriated in the DWES Fund 5671 OBRA Leasing and Utility. Funds in the same amount appropriated in the General Purpose Fund in the FY 2020-21 Mid-cycle Budget in the DWES will be removed and allocated to fund balance.

### **PUBLIC OUTREACH / INTEREST**

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

### **COORDINATION**

This report and legislation have been reviewed by the City Administrator's Office, City Attorney's Office and the Budget Bureau.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The City will realize increased revenue resulting from approval of the recommendation contained in this report.

***Environmental:*** There are no environmental impacts associated with this report.

***Race and Equity:*** Approval of this recommendation will provide staff capacity to serve more persons seeking employment on projects funded with City funds, improving the livelihood of Oakland residents.

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

Staff recommends that the City Council adopt a Resolution amending Resolution No. 88174 C.M.S., which adopted the Fiscal Year 2020-21 Mid-Cycle Budget Amendments, to appropriate from fund 5671 Project 1004290, penalties collected by the City from the contractors who failed to comply with the City's Construction Jobs Policy for the Oakland Army Base Project in the amount of Three Hundred Fifty-One Thousand, Six Hundred Seventy-Eight Dollars and Twenty-Eight Cents (\$351,678.28) and any future penalties collected by the Department Of Workplace and Employment Standards, if any, to the DWES for training, monitoring, or technical assistance.

For questions regarding this report, please contact Margaret O'Brien at (510) 238-7480.

Respectfully submitted,

*Margaret L. O'Brien*

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Department of Finance

Prepared by:  
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Budget Bureau

Attachments (1):  
Ordinance 13131 C.M.S.