

Communication from Public

Name: FIX THE CITY
Date Submitted: 06/10/2024 08:58 PM
Council File No: 23-1066
Comments for Public Posting: Please confirm receipt of the attached opposition letter.

Fix The City

June 10, 2024

Subject: Council File 23-1066, Item 21 on the June 11, 2024 Agenda

Opposition to the Motion for Use of Emergency Stabilization Beds (ESB) Funds for The Midvale Project

We are writing to formally oppose the motion proposing the use of Emergency Stabilization Beds (ESB) funds to cover cost overruns for The Midvale Project. The motion was introduced late Friday, June 7, 2024, waived by the Homeless & Housing Committee and scheduled for council on the 11th.

The motion itself is wholly lacking in transparency or any explanation of how a project that has not started and was fully funded suddenly has a 20% overrun – an overrun that is not explained in any way. As of 5p on June 10th, 2024, there is no explanation of any kind nor is there enough information provided for the public to understand or participate in the action. As a result of the complete lack of information provided, our opportunity to reasonably object to the motion has been curtailed.

Our opposition is based on multiple grounds, all of which highlight non-compliance with statutory requirements and intended use of these funds. Below are the detailed reasons for our opposition:

1. **Violation of the Non-Supplanting Requirement** No information can be located regarding the source of funds, restrictions or other requirements related to the Emergency Stabilization Bed Grant. However, the motion does make a reference to the “Behavioral Health Continuum Infrastructure Program (BHCIP).” BHCIP was created by AB 133 and was codified as Welfare and Institutions Code (WIC) 5960 et seq. WIC Section 5960.15(b) explicitly states that grant funds must be used to supplement and not supplant existing funds. The Midvale Project is an existing project, with full funding already approved through initial allocations from existing sources, as documented in the CAO report dated September 28, 2023. There is no evidence that BHCIP funds can be used to cover budget shortfalls for an existing and previously fully funded project. This would constitute supplanting, which directly violates this provision.

Reference: • Cal. Welf. and Inst. Code § 5960.15 (“(b) Expend funds to supplement and not supplant existing funds to construct, acquire, and rehabilitate real estate assets.”)

2. **Non-Compliance with the 30-Year Operation Requirement** WIC Section 5960.15(d) mandates that services in the financed facility operate for a minimum of 30 years. The Midvale Project, however, is planned for a duration of only “up to” 10 years, which fails to meet this requirement. Therefore, the use of BHCIP funds for a project with a shorter operational period is non-compliant.

Reference: • Cal. Welf. and Inst. Code § 5960.15 (“(d) Operate services in the financed facility for the intended purpose for a minimum of 30 years.”)

3. **Funding Shortfall and Lack of Transparency** The motion references a mystery, undisclosed funding shortfall of \$980,000 without providing any justification or explanation for this shortfall. Specifically, there is no disclosure as to why the initial budget of \$4.6 million was underestimated by such a significant margin (20%).
4. **Lack of Staff Reports/Transparency** At the time the agenda was published, no staff reports of any kind were made available to the public. This is still true as of 5p on June 10th, 2024. This lack of documentation prevents

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an informed discussion and decision-making process. The absence of reports raises significant concerns about transparency and accountability in handling public funds or if the use of such funds is permitted, which it appears not to be.

5. **Alleged Project Authority** The motion asserts that the City Council and Mayor approved both the funding and authority for the interim housing project on October 27, 2023. However, the approval granted was specifically for construction, not for operation. The CAO's report dated September 28, 2023, clearly states that the recommendation was for the design and construction of the interim housing site at 2377 Midvale Avenue, with funding from the General Fund and Homeless Housing, Assistance, and Prevention Round 1 (HHAP-1) funds. There was no explicit "authority" granted for the project as the motion suggests and certainly no entitlement pathway was presented.
6. **Initiation of Original Project Action** The original action for the project was not initiated through a proper motion or resolution as mandated by the City Charter. This procedural lapse raises serious questions about the legitimacy and legality of the current motion, undermining the foundational processes required for such significant decisions.
7. **CAO Report** There is no accompanying report from the City Administrative Officer (CAO) regarding the source or availability of funding for this motion. Such a report is crucial for understanding the financial implications and ensuring that the funding is properly sourced and utilized.
8. **Eligibility and Use of ESB Funds** The CAO has not provided an opinion on whether the 2377 Midvale project is an allowable source of funding under the BHCIP/Emergency Stabilization Beds (ESB) grant. The city has stated in other documents that the ESB grant is specifically intended to support the Inside Safe Initiative, which the Midvale project does not cite as its authority. There is no evidence that the CAO has issued the necessary draw-down on the ESB funds, nor is there any disclosure of the existing balance of the ESB grant or how these funds have been encumbered. The Midvale project predates the performance period for ESB funds starting on March 22, 2024.
9. **Co-Mingling of Grant Funds** There is no discussion on how funds associated with the ESB will be co-mingled with non-ESB funds. This is a critical compliance issue that needs to be addressed to avoid financial mismanagement. There is no evidence that the funds can be comingled or that the different requirements of each funding source can be harmonized.
10. **Eminent Domain Exclusion** The property at 2377 Midvale Avenue was acquired by eminent domain in 1990. According to Cal. Welf. & Inst. Code § 5960.3(b)(1), a project acquired by eminent domain does not qualify for the CEQA exemption. This historical fact means the exclusion for eminent domain projects applies, and thus, the property would not qualify for the CEQA exemption under this provision, regardless of the time that has passed since the acquisition.

Conclusion Based on the aforementioned points, it is clear that the motion to use BHCIP/ESB funds for The Midvale Project as proposed is not compliant with the statutory requirements. We urge you to reject the motion and, at the very least, require some back-up information and substantial evidence on why there is a shortfall of \$980,000.

Sincerely,
Fix The City