



## Legislation Details (With Text)

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<b>Enactment date:</b>		<b>Enactment #:</b>		<b>Title:</b>	Staff Report for a Resolution to Approve a Loan and Authorizing the City Manager to Execute a Loan Agreement of \$400,000 from the City of San Leandro to Dan and Gina Dillman, Owners of the BAL Theatre, to Assist in Refinancing the BAL Theatre and a Forgivable Loan Agreement of \$100,000 from the City of San Leandro to Curtain Call Performing Arts to Support Ongoing Renovations

### Indexes:

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**Attachments:** 1. Attachment 1, 2. Attachment 2

Date	Ver.	Action By	Action	Result
10/16/2017	1	City Council	Received and Filed	

Staff Report for a Resolution to Approve a Loan and Authorizing the City Manager to Execute a Loan Agreement of \$400,000 from the City of San Leandro to Dan and Gina Dillman, Owners of the BAL Theatre, to Assist in Refinancing the BAL Theatre and a Forgivable Loan Agreement of \$100,000 from the City of San Leandro to Curtain Call Performing Arts to Support Ongoing Renovations

## SUMMARY AND RECOMMENDATIONS

That the City Council review this staff report, the agreements, and adopt the resolution 1) to approve a \$400,000 Loan Agreement, Secured Promissory Note, and Deed of Trust between the City and Dan and Gina Dillman to assist with the refinancing of the BAL Theatre; and 2) approving a \$100,000 Forgivable Loan Agreement to support ongoing renovations.

## BACKGROUND

The Historic BAL Theatre, located at 14808 East 14th Street, is a unique and valuable cultural asset for the City of San Leandro. In the past two years, updates on the BAL to the City Council included a presentation at the July 5, 2016 regular City Council meeting, a discussion at the October 19, 2016 Facilities and Transportation Committee meeting, a discussion at the Council's January 28, 2017 annual Planning Session, a discussion at the May 2, 2017 City Council Finance Committee meeting, and recent discussion at the October 3, 2017 Finance Committee meeting. At each of these presentations, the City Council indicated a desire to provide financial assistance to the BAL in order to support ongoing renovation and modernization of the facility as well as continued operations. The City Council has repeatedly stated that support for the BAL is in the public's interest by supporting the performing arts, and the secondary effects to the City's economy, especially to south San Leandro.

Per City Council direction, staff engaged in extensive discussions with representatives of the BAL and Curtain Call Performing Arts. Curtain Call is a nonprofit organization that holds the lease for the

facility and serves as its operator. The BAL was represented in these discussions by Dan Dillman, a member of Curtain Call's Board of Directors whose family owns the building, and Chris Crow, another member of the Curtain Call Board of Directors.

## **Analysis**

**Needs** - Although the current ownership has been successful in revitalizing the BAL and expanding programming in recent years, the facility has significant deferred maintenance. The Dillman family, which owns the building, also faces a December 2017 balloon payment on the building's mortgage of approximately \$400,000. The BAL's representatives have indicated that additional operating funds would enable them to secure more ambitious programming, ultimately increasing operating revenues and enhancing the theatre's long-term viability.

**Financial Status** - Staff performed due diligence on the property and requested a Title Report from First American Title Insurance Company for the BAL, 14808 East 14th Street. The Title Report (Attachment 1) states the following:

- Lien of defaulted taxes for fiscal year 2010 are due for an amount of \$42,439.51 (currently, according to the Alameda County Property Assessment Information the amount has been reduced to \$13,359.96).
- A certified copy of a judgment or an abstract thereof, recorded July 6, 2010 as Instrument No. 2010186885 by American Express Centurion Bank for an amount of \$10,969.49
- A certified copy of a judgment or an abstract thereof, recorded February 21, 2012 by AT&T Advertising for an amount of \$30,463.40

The total amount of debt due is currently \$54,793.85. Because those obligations predate any potential loans from the City, they would need to be repaid first if any future act of default on the \$400,000 loan were to result in a forced sale of the property. As discussed below, the market value of the BAL in its current condition exceeds the total amount of any existing and proposed City-issued debt on the property.

To understand the current market value of the BAL, staff requested an Appraisal Report from The Schmidt-Prescott Group, Inc. Based on that report, the property is valued at \$1,090,000. The appraisal report (Attachment 2) indicates that the theatre use is the highest and best use for the property, in its current state. Most existing theatres operate as movie or performance theatres. There are few economically feasible alternative uses. Absent any parking, few retail users would be interested in the property, and they would likely have to obtain a conditional use permit to support a retail use without parking. Several theatres that have been converted to other retail uses in recent years were vacant and non-operating prior to sale. The appraiser concluded the highest and best use as improved is to continue the current theatre use.

The appraisal indicates that the property has value in excess of the amount of the proposed City loans. Although the intent of any financial assistance from the City is obviously to enable the BAL to thrive under its current ownership, the appraisal suggests that, if an event of default were to occur in the future, there is sufficient value in the property to ensure that the City investment could be repaid through a sale of the property. With that said, the prospective pool of buyers for a historic theater is

likely small, so the appraised value does come with significant uncertainty.

**Proposed Loan Structure** - Based on the ongoing discussions, staff understands the upcoming balloon payment to be the most urgent need facing the BAL. Refinancing this debt to a secure, long-term repayment plan will eliminate an impending financial challenge and enable Curtain Call to focus on continuing and expanding programming and operations. Staff also recognizes that facility improvements can improve the viability of the theatre and begin to address some maintenance needs. Consequently, staff proposed the following two-part package of financial assistance for the BAL:

#### Loan Term

1. A City General Fund loan to the Dillman family of \$400,000 at 3% interest for a term of 30 years. This will enable the BAL owners to address the upcoming balloon payment and secure long-term financing at a lower interest rate. Although City staff would normally deem it preferable to make such a community assistance loan to a non-profit entity, in this case the loan would be to the family that owns the building and holds the debt. This allows the loan to be secured by the value of the property.

Semi-annual debt service payments would be \$10,157.37, with the option to pay monthly, and total interest payments over the life of the loan would be \$209,442.26. The loan would be secured by a deed of trust. Additionally, the loan agreement requires full repayment upon transfer and does not permit the borrower to encumber or borrow against the value of the property without the written consent of the City.

The 30-year term reflects an effort by staff to balance the need to offer low payments to the borrower and a desire to minimize risk and uncertainty to the extent possible. This term is considerably longer than typical City-funded financing instruments and does create some risk because it is impossible to foresee what the economic climate for a theater will be in 30 years. It is also possible (and perhaps likely) that physical issues will arise with the structure, given its age.

The 3% interest is recommended by staff to adequately protect the investment of taxpayer funds. Although interest rates are currently at historic lows and the City does not earn 3% on its investments, that situation is unlikely to last through the duration of the loan term. After accounting for inflation, the City does not expect to earn any net profit on this loan. Staff also believes that the rate is lower than what the borrowers could find from another lender.

2. Forgivable loan to Curtain Call Performing Arts for \$100,000, for a term of three years. The City commonly uses forgivable loans to incentivize physical improvements to commercial buildings. For example, the City provided a \$50,000 loan to the BAL for exterior façade improvements that was ultimately forgiven. For the proposed loan, staff recommends a term of three years, and the full loan amount would be forgiven if the BAL complied with all terms. According to the proposed Agreement, the forgivable loan could be used for the following:

- Re-treat the curtains, movie screen cleaning or a brand new screen including installation, or a new projector (\$90,000)
- New carpets (\$70,000)
- Additional surveillance cameras (\$15,000)

- Outside terrazzo repair (\$10,000)
- Reupholstered seats (\$100,000)

The estimated costs of the eligible improvements exceed the total amount of the forgivable loan in order to give Curtain Call flexibility to determine which improvements will yield the greatest benefit for the theater. Under the agreement, Curtain Call is required to obtain all applicable permits and approvals for any improvements undertaken. The disbursement of loan proceeds will be structured as a reimbursement (after project completion), although the City will have an option to advance up to 30% of the proceeds prior to the completion of work.

The forgivable loan agreement also includes a Joint Use clause requiring the operators to make the BAL Theatre available for City events at least four times per year as long as the agreement is in effect. This clause is part of the forgivable loan because that loan is with the theater operator rather than the property owner. The forgivable loan has a shorter term (three years vs. thirty). Staff recommends that the City Council pursue a longer-term joint use arrangement as part of a later Memorandum of Understanding, as discussed below.

**Insurance Requirements** - Both agreements include detailed insurance requirements that mitigate some risks arising from this public/private partnership. All insurance requirements were reviewed by the City's Risk Manager and the City's self-insurance risk pool.

At the October 3, 2017 Finance Committee earthquake insurance was discussed. After conducting additional research, staff does not recommend requiring earthquake insurance because:

- The cost is prohibitive. If the theater owners or Curtain Call were required to purchase and maintain this insurance, it would severely compromise the spending power of the \$100,000 forgivable loan.
- If the City were to fully or partially fund earthquake insurance, either through direct payment, an extension of the loan term, or a reduction in the interest rate, the cost would be substantial, especially given that the City's financial interest will be less than half of the total value of the property.
- Deductibles associated with earthquake insurance are extremely high. Even if insurance were in place, it is not a foregone conclusion that it would be practical to pay the deductible in the event of a covered incident.
- The current assessed value of the raw land at this property is \$388,000. In a worst case scenario, there is sufficient value in the property, even without the theater building, for the City to recoup the vast majority of its investment.

**Next Steps** - After execution of the loan agreements, City staff and Curtain Call have agreed to work on a Memorandum of Understanding (MOU) and an Economic Impact Analysis. The MOU will outline terms of an extended partnership and provide a basis for the City and the BAL to work together to secure grant funding for additional improvements in the future. The MOU may also detail an extended joint-use arrangement. The Economic Impact Analysis will provide a quantitative assessment of the BAL's contributions to the San Leandro economy and the potential return on investment from future investments.

### **Previous Actions**

- July 5, 2016 - City Council recommended staff present to the Facilities and Transportation Committee
- January 28, 2017 - City Council Special Meeting and Planning Session presentation

### **City Council Committee Review and Actions**

- October 19, 2016 - Facilities and Transportation Committee recommended staff work with the BAL Theatre to draft a proposed funding agreement and that the draft be brought to the committee for review and discussion
- May 2, 2017 - Finance Committee recommended staff work with representatives of the BAL and Curtain Call Performing Arts to create a two-part package of financial assistance to assist with 1) December 2017 balloon payment of \$400,000 and 2) a forgivable loan agreement to assist with renovations
- October 3, 2017 - Finance Committee recommended approval of the two-part package of financial assistance for the BAL Theatre that includes 1) a \$400,000 Loan Agreement and 2) a \$100,000 Forgivable Loan Agreement for renovations

### **Permits and/or Variances Granted**

PLN2008-00048 Conditional Use Permit  
PLN2012-00021 Conditions of Approval

### **Legal Analysis**

The General Fund Loan and Forgivable Loan Agreements were reviewed by the City Attorney and approved as to form.

### **Fiscal Impacts**

The Two-Part Package of Financial Assistance for the BAL Theatre will cost \$500,000. The \$100,000 forgivable loan is included in the adopted 2017-2019 budget. The General Fund loan of \$400,000 does not need to be budgeted as an expenditure.

Although the budgeted expenditure for this action amount to \$100,000, issuance of the \$400,000 loan does result in a long-term reduction in liquidity for the City because those funds will not be available for other uses for up to 30 years.

It must also be noted that the loans come with risk for the City. Almost by definition, Curtain Call is a non-profit organization that is not well capitalized. Although both staff and the City Council are encouraged by the work being done by Curtain Call and the value it brings to the community, continued solvency is not a foregone conclusion. Thus, in reviewing this action, Council must balance the value of investing in a cultural asset with the risk that the loan may not be repaid in full.

## **ATTACHMENT(S)**

### **Attachment(s) to Staff Report**

- Attachment 1 - Title Report
- Attachment 2 - Appraisal Report

### **Attachment(s) to Resolution**

- Traditional Loan Agreement (\$400,000)
- Forgivable Loan Agreement (\$100,000)

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