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6/4/09

Lee Brand  
Councilmember  
District 6

**"BETTER BUSINESS ACT"**

May 21, 2009

TO: Fresno City Council Members

FROM: Councilmember Lee Brand *B*

Presented to City Council  
Date: 5/21/09  
Proposition: Bill 45-20-100  
laid over for 2009-10  
Adopted

**AGENDA ITEM**

Consideration of Better Business Act to Ensure Uniform Due Diligence Procedures and Oversight for Private Sector Applicants Seeking City Financing Assistance:

- A. BILL (*For Introduction*) - Amending the Fresno Municipal Code Section 7-912 Relating to Qualifications of Applicants for City Financing - Councilmember Brand.
- B. Adoption of Resolution No. \_\_\_ Establishing Better Business Act to Ensure Uniform Due Diligence and Oversight on Private Projects Seeking Public Financial Assistance - Councilmember Brand.

**BACKGROUND**

Fresno Municipal Code Section 7-912, Qualifications of Applicants for City Financing, (see attached amended Ordinance) provides general guidelines for screening of applicants requesting financial assistance on private projects. A more detailed Comprehensive Economic Development Policy and Program was adopted by the Fresno City Council on May 12, 1987, and subsequently amended on June 26, 1990 (copy attached). This economic plan outlines the objectives, policies, strategies and functions the City will undertake to promote economic development. The amendment adopted on June 26, 1990, requires that a private applicant must complete a business plan to obtain City financial assistance.

Fresno Municipal Code Section 7-912 and the Economic Development Policy and Program only provide general guidelines and minimal criteria for selecting and evaluating private sector proposals for City financial assistance.

Since the inception of the City's economic development program over the past 20 years, there have been several high profile private projects that received financial assistance from the City. Some of these projects have resulted in the City absorbing substantial financial losses. The projects that did not succeed in the short term have tended to erode public confidence with elected officials and City government in general. Most importantly, they are costing City taxpayers money that could be better utilized to deliver improved municipal services.

It is essential that the City encourage economic development to expand our economic base, increase employment opportunities and generate long term sustainable revenues to support public services. It is important for the City to make investments and partner with the private sector to achieve our economic goals. We must, however, have a mechanism in place that provides specific due diligence policies and procedures modeled after private sector best practices. We also must have specific implementation and oversight procedures to effectively monitor projects that are approved for financial assistance. Consistent with the Fresno City Charter, the City Manager or his/her designee shall be responsible for oversight.

The attached Resolution will provide specific policies and procedures to enhance our existing ordinance and economic development policy. The attached amended Ordinance proposes to modify Fresno Municipal Code Section 7-912 to allow for implementation of the attached Resolution. All future proposals by private sector applicants for direct/indirect assistance that exceeds \$1,000,000 in actual or contingent liability will require a comprehensive, objective evaluation and, if approved, a stringent oversight policy to insure that taxpayer dollars are protected. A separate, parallel resolution for the Redevelopment Agency will also be examined.

#### **FISCAL IMPACT**

Adopting Resolution No. \_\_\_\_\_ could yield savings to the City of Fresno measured in the millions of dollars.

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO  
PROPOSED AND INITIATED BY \_\_\_\_\_  
MOVED BY \_\_\_\_\_ SECONDED BY \_\_\_\_\_

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,  
ADDING SUBSECTION (c) TO SECTION 7-912, OF THE  
FRESNO MUNICIPAL CODE, RELATING TO  
QUALIFICATIONS OF APPLICANTS FOR CITY FINANCING.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 7-912 of the Fresno Municipal Code is amended by adding subsection (c) thereto to read:

SEC. 7-912. QUALIFICATIONS OF APPLICANTS FOR CITY FINANCING.

(a) The City Manager or his designee shall ascertain and make available to the Council information with respect to the qualifications and financial status of all applicants seeking city financial assistance or funding for private projects pursuant to the city's economic development program, whether such assistance consists of loans, grants, bond issuance, or otherwise. In order to comply with this requirement, and to safeguard city funds and protect the city's bond rating, the City Manager or his designee shall cause an investigation to be made of the facts stated in each application for city financing. Conviction (including pleas of guilty and nolo contendere) of any felony or misdemeanor involving moral turpitude shall constitute prima facie grounds for denying financial assistance to an applicant, except that such conviction may be disregarded if it is determined that mitigating circumstances exist. For purposes of this section, the term "applicant" includes but is not limited to an individual in a sole proprietorship, all general partners in a partnership, any

person holding 10% or more of the voting stock in a corporation, and in cases where the partner or stockholder is other than an individual, the individuals who are the beneficial owners of the stock or partnership interest.

(b) In order to further the objectives set forth in subsection (a) and as authorized by California Penal Code Sections 11105(b) and 13300(b)(10), the City Manager or his designee is hereby authorized to have access to and utilize summary criminal history information on file with the State of California Department of Justice and/or local law enforcement agencies when it is necessary for such records to be utilized to fulfill the certification duties required in this section.

[(c) Notwithstanding subsections (a) and (b) of this section and in addition thereto, Council may establish by resolution policies and procedures to implement this section and/or to provide for due diligence and oversight regarding private projects which seek public financing or other public assistance.]

SECTION 2. EFFECTIVE DATE. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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