

**Bay Area Infrastructure Financing Authority
(BAIFA)**

May 25, 2022

Agenda Item 6a - 22-0738

Public Hearing: Proposed BAIFA Toll Facility Ordinance Amendment

Subject:

A public hearing on proposed changes to BAIFA's Toll Facility Ordinance to enable tolling-related pilots, allow modifications to violation penalty amounts and exceptions by board resolution, and to define the Executive Director's authority in an emergency.

Background:

In July 2016, BAIFA adopted a toll ordinance, as required by statute, so that it could enforce toll violations on the I-680 Express Lanes in Contra Costa County. BAIFA's toll ordinance specifies its tolling rules and violation enforcement practices. Since then, BAIFA has amended its toll ordinance twice to add new express lanes and change select tolling rules.

In November 2021, staff presented the outline of a toll ordinance amendment that would enable tolling-related pilots, reduce violation penalties and allow future changes by resolution, and define emergency powers. In December 2021, staff paused the amendment process to allow further conversations with other Bay Area Express Lanes operators on reduced violation penalties. In March 2022, staff updated BAIFA on its plans to proceed with the amendment process while continuing to work with Bay Area Express Lanes operators on a reduced violation penalty. In April 2022, staff promoted the opportunity for public comment on the proposed amendment (including in Spanish and Chinese) through newspaper public notices, an MTC press release, information on the MTC and 511 websites, emails to local legislators, government and community-based organizations, and a paid social media campaign. Multilingual outreach materials included the amendment text and fact sheets and encouraged the public to use a survey tool to share comments. Staff held a written public comment period from April 20, 2022 through May 24, 2022 at 5:00 p.m.

At BAIFA's May 25, 2022 meeting, staff will give a short presentation and BAIFA will hold a public hearing so that members of the public can provide feedback on the proposed toll ordinance changes remotely or in person (refer to Attachment A for the staff presentation).

The proposed amendment makes the following changes of note:

Change #1: Enable Tolling Pilots

This change would allow BAIFA to carry out pilot projects to test alternate tolling and discount policies and new technologies for up to 36 months by board action. Subsequently, for example, the Authority would have the ability to authorize the toll discount pilot for low-income drivers on the I-880 Express Lanes; this approval would be a separate board action.

Change #2: Allow Modifications to Violation Penalty Amounts and Exceptions by Board Resolution

This change would allow BAIFA to modify violation penalty amounts and exceptions to the assessment of penalties by board resolution adopted at a public meeting. For example, if approved, staff anticipates asking BAIFA to lower existing violation penalties after discussions with other Bay Area Express Lanes operators. Approval by resolution, which is consistent with the practices of other Bay Area express lanes tolling agencies, preserves the public's ability to comment on proposed changes prior to board approval at a duly noticed BAIFA meeting, while reducing the time and cost to implement changes.

Change #3: Define Emergency Authority

This change would define the Executive Director of BAIFA's authority to suspend or reduce tolls or penalties or modify policies in the ordinance like hours of operation or high occupancy vehicle (HOV) requirements to respond to an emergency. An emergency is defined in the proposed ordinance amendment as an Act of God or other threat to public safety or well-being or any declared state of emergency by a government entity of competent jurisdiction.

Issues:

The written public comment period ends on May 24, 2022 at 5:00 p.m. A record of comments submitted by May 20, 2022 will be posted on MTC's website before the public hearing at www.mtc.ca.gov/express-lanes-policies. Written public comments submitted from May 21, 2022 through May 24, 2022 at 5:00 p.m. plus comments received at the May 25, 2022 public hearing will be added to MTC's website soon after. At the June 22, 2022 BAIFA meeting, staff will present a summary of public comments received during the public comment period and public hearing and BAIFA will consider adopting the proposed amended and restated Toll Facility Ordinance (refer to Attachment B for the detailed text of the proposed amendment).

The public was encouraged to comment using multi-lingual survey forms developed by staff. Based on 870 survey forms in English and 89 in Spanish received as of April 29, 2022 and May 4, 2022 respectively, staff has some initial general observations.

- Given BAIFA's interest in a toll discount pilot for low-income drivers on the I-880 Express Lanes, staff sought public input on this idea specifically even though BAIFA would need to approve this pilot separately after the toll ordinance amendment. For English survey respondents, a slight majority of people support or are neutral to the idea of a toll discount program pilot. However, many respondents voiced strong support or opposition for the idea. Some think it is fair to help low-income drivers while others think fairness means equal treatment for all. Some people voiced concern about the middle class getting squeezed by tolls and the need for a high-income threshold for eligibility since the Bay Area is expensive. Some people are concerned about fraud in terms of people getting a discount they don't deserve. Some people think toll policies should not incentivize anyone to drive alone. Despite mixed opinions on the idea of a toll discount, there was almost no comment on the idea of BAIFA having the authority to do pilots in general. For Spanish survey respondents, a significant majority support or are neutral to the idea of a toll discount pilot. A fair number of their comments were about pilot rules.
- A significant majority of both English and Spanish respondents support or are neutral to the idea of amending toll violation penalties by BAIFA resolution. Some people reinforced the need for a public process before adjusting penalties, including public outreach, with many ways to weigh in given busy lives. People shared a mix of opinions on whether penalties should be lowered. Some supported high penalties to discourage cheating, while others supported lower penalties for all or income-based penalties for equity reasons. Some mentioned the need for grace and forgiveness for first-time offenders.
- A significant majority of both English and Spanish respondents support or are neutral to the idea of defining the Executive Director's authority in an emergency. Many think it makes sense to cease tolling and open the express lanes to all in an emergency. Many

comments were about the need to define the term ‘emergency’ and set limits on the Executive Director’s authority.

- Many English survey respondents commented they oppose tolls and believe freeways should be free; some strongly opposed all three proposed changes to the toll ordinance as an apparent protest vote. There were some Spanish survey respondents with similar concerns.
- Some English survey respondents commented they do not trust government or its decision-makers.
- Some felt they needed more information to answer the questions.

Staff will provide a more comprehensive analysis at the June BAIFA meeting.

Recommendations:

This item is provided for information only in anticipation of the public hearing on the proposed amended and restated Toll Facility Ordinance.

Attachments:

- Attachment A: Public Hearing: Proposed BAIFA Toll Facility Ordinance Amendment
- Attachment B: Proposed BAIFA Amended and Restated Toll Facility Ordinance



Therese W. McMillan