

October 31, 2001

REPORT TO THE COMMITTEE
ON LAND USE AND HOUSING

USING HOUSING SET-ASIDE
FUNDS FOR EMERGENCY SENIOR HOUSING

INTRODUCTION

By memorandum to the City Manager, Councilmember Toni Atkins requested a legal opinion concerning the use of the Redevelopment Agency's Low and Moderate Income Housing Set-Aside Funds. Specifically, she asked whether those funds could be used to subsidize leasing costs at two downtown single room occupancy [SRO] hotels to provide transitional housing for senior citizens. The matter was referred to the City Attorney by the Land Use and Housing Committee.

DISCUSSION

A fundamental purpose of the Community Redevelopment Law [CRL] (California Health and Safety Code sections 33000 to 34009) is to provide affordable housing to people or families of low or moderate income. CRL 33334.6, 33071. To ensure that this goal is met, redevelopment agencies are mandated to set aside and use 20 percent of the tax increment generated from a particular project area to increase, improve, or preserve low and moderate income housing, so-called "housing set-aside" [HSA] funds. CRL 33334.2(a).

A redevelopment agency has broad power in using HSA funds to benefit a community's supply of affordable housing. CRL section 33334.2(e) states that, "[i]n carrying out [this purpose], the Agency may exercise any or all of its powers," and then sets out a comprehensive list of actions an agency may take to meet the purpose of addressing the variety of affordable housing needs. Included in this list is the ability of an agency to "[p]rovide subsidies to, or for the benefit of, very low income households, . . . lower income households, . . . or persons and families of low or moderate income, . . . to the extent those households cannot obtain housing at affordable costs on the open market." CRL 33334.2(e)(8).¹

The City of San Diego's Redevelopment Agency [Agency] may use HSA funds for the Emergency Senior Housing Project [Project]. The proposed Project contemplates using \$168,000 from HSA funds to subsidize the leasing of a block of rooms at two downtown SRO hotels. These rooms would be used to provide transitional housing to senior citizens. As long as these rooms are used to benefit people who need low to medium income housing, CRL section 33334.2(e)(8) provides authority to use HSA funds for this Project.

Although the Agency may use HSA money to subsidize the Project, it must be determined from which specific project area HSA money will be used. Careful consideration of this issue is important in order to minimize legal exposure. Using money from the Centre City Redevelopment Project Area [Centre City] HSA is not without legal risk. As discussed below, these risks may be of such a nature that use of Centre City HSA funds would not be worthwhile.

Centre City is a “merged” project area.² CRL section 33487(a) applies specifically to merged project areas. CRL section 33487(a) states that:

The Agency shall use the moneys [from HSA] to assist in the construction or rehabilitation of housing units which will be available to, or occupied by, persons and families of low or moderate income, . . . and very low income households, . . . for a period of not less than 30 years. For the purposes of this subdivision, “construction and rehabilitation” shall include acquisition of land, improvements to land; the acquisition, rehabilitation, or construction of structures; or the provision of subsidies necessary to provide housing for persons and families of low or moderate income, . . . and very low income households.

CRL 33487(a).

Thus, any housing funded by HSA funds from a merged project area must be made available as affordable housing for at least thirty years. The provision of subsidies is included in the definition of those types of projects subject to the thirty-year restriction. If monies from the Centre City Project HSA were to be used to fund the Project, unless the hotel rooms were restricted to affordable housing for at least thirty years, the expenditure would be open to legal attack.

Another approach, which is more legally defensible, is to use HSA money from the Horton Plaza Redevelopment Project Area [Horton Plaza] to fund the Project. Horton Plaza is not a merged project area, and thus, is not subject to the rules placed on merged project areas. In non-merged project areas, long-term price restrictions must be placed on housing units acquired or improved with HSA funds only under certain circumstances. For example, if HSA funds are used to develop new housing units or to substantially rehabilitate existing housing units, long-term rent restrictions must be placed on those housing units. CRL 33334.3(f). However, this requirement is not applicable to the Project, because no new or substantially rehabilitated housing units are being developed.

The only additional requirement if the Project is funded through Horton Plaza HSA funds is that the City Council and the Agency are required to make findings, by resolution, that the expenditure of HSA funds outside the project area will benefit the project area. CRL 33334.2(g)(i). Thus, in order to use HSA funds from Horton Plaza to subsidize affordable housing in Centre City, findings would need to be made that the use of Horton Plaza HSA funds will be of benefit to Horton Plaza. In CRL section 33334.6, the Legislature recognizes that affordable housing outside of one redevelopment project area can be of direct benefit to another project area. Given the nature of the Project and the redevelopment project areas involved, legally sufficient findings should be able to be developed.

CONCLUSION

The Agency may use Housing Set Aside funds to subsidize the Emergency Senior Housing Project. It must be determined, however, which project area the funds will come from. Using funds from the Centre City Redevelopment Project Area for this project could subject the Agency to a successful legal challenge. The more conservative approach is to use funds from the Horton Plaza Redevelopment Project Area, after the City Council and the Agency make findings that the use of that money will benefit that area.

Respectfully submitted,

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CASEY GWINN
City Attorney

DE:lc

cc: Mayor and Council

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