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REPORT TO THE MEMBERS OF THE
LAND USE AND HOUSING COMMITTEE

USE OF REDEVELOPMENT FUNDS FOR HISTORICAL
DESIGNATION INCENTIVE PROGRAMS

INTRODUCTION

At the June 21, 2006 meeting of the Land Use and Housing Committee, proposed fees for historical nomination and Mills Act agreements were on the agenda. In the course of the discussion, issues were raised as to how these fees were sometimes barriers to the designation of historical homes and that, consequently, these homes were being lost. City Council Member Toni Atkins asked this office to research whether Redevelopment Agency funds can be used in connection with incentive programs to encourage preservation of historical properties.

QUESTION PRESENTED

To what extent can Redevelopment funds be used for historic preservation or as incentives to the historic designation process?

SHORT ANSWER

Redevelopment funds can be used for any of the designated purposes set forth in the California Health & Safety Code sections 33020 and 33021. Under these sections, "redevelopment" would include "rehabilitation" of historical properties within a redevelopment area, as it provides a direct benefit to the project area. For example, funds can be used for historic facades.

California Health & Safety Code section 33678 places limitations on the use of tax increment funds by the Redevelopment Agency. The funds must only be used for purposes defined in California Health & Safety Code sections 33020 and 33021. The funds cannot be used for the purpose of paying for employee or contractual services of any local government agency unless the services are directly related to defined redevelopment purposes. If necessary, an

agreement can be drafted to permit Redevelopment Agency funds to pay for City Planning and Community Investment staff to assist in redevelopment of historic residences in redevelopment areas.

ANALYSIS

The California Legislature has adopted a comprehensive statutory scheme, the Community Redevelopment Law (California Health & Safety Code sections 33000 through 37964), "[t]o protect and promote the sound development and redevelopment of blighted areas and the general welfare of the inhabitants of communities in which they exist…" Cal. Health & Safety Code § 33037(a). Under provisions of the Community Redevelopment Law, there is in "each community a public body, corporate and politic, known as the redevelopment agency of the community." Cal. Health & Safety Code § 33100. "Redevelopment" is defined in section 33020 as follows:

> "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them…

The funding mechanism provided for community redevelopment is known as "tax increment financing." *Redevelopment Agency v. County of San Bernardino*,1 Cal. 3d 255, 259 (1978). This financing system anticipates that redevelopment will increase tax revenues produced by a community by virtue of the increased valuation of property, thus raising the tax base. *Bell Community Redevelopment Agency v. Woolsey*,169 Cal. App. 3d 24, 27 (1985).

Tax increment funds are allocated to redevelopment agencies by the county auditor or other appropriate county official at the same time as property taxes are allocated to the taxing entities. Cal. Health & Safety Code § 33675(g). The Redevelopment Agency must conform to accounting and reporting requirements with regard to any tax increment funds it receives. The agency may receive tax increment funds only if its redevelopment plan contains the necessary authority and only to the extent that the agency has debt, which must be reported annually. Cal. Health & Safety Code §§ 33670, 33675.

Certain limitations apply to the expenditure of tax increment funds. These limits were modified by AB 1290 (Chapter 942, Statutes of 1993). First, the funds must be spent for redevelopment activities. After the passage by voters of Proposition 4, adding Article. XIIIB to

the California Constitution requiring governmental entities to adopt spending limits, the state legislature enacted California Health & Safety Code section 33678, which exempted tax increments from these limits if the following requirements are met:

1. The funds must be used for *redevelopment purposes* defined in sections 33020 and 33021.

2. The expenditures *must primarily benefit the project area*.

3. The funds cannot be used for the purpose of paying for employee or contractual services of any local governmental agency *unless the services are directly related to the purpose of the defined redevelopment purposes* set forth in sections 33020 and 33021.

As discussed above, California Health and Safety Code section 33020 includes in its definition of redevelopment the "planning", "redevelopment" or "rehabilitation" (or any combination of these) of residential or commercial structures "in a survey area" and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare. section 33021(a) further provides that redevelopment includes: "(a) The alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area."

Presented with questions related to a community redevelopment agency's use of money in its fund, the California Attorney General has indicated that well established principles of statutory construction should be applied as follows:

> To interpret statutory language, we must 'ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citation.] (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.*,14 Cal.4th 627, 632 (1977). "[W]e interpret a statute in context, examining other legislation on the same subject, to determine the Legislature's probable intent. [Citation.]" (*Id.* at p. 642.). . ."[A] court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose." (*California Peace Officers Assn. v. State Personnel Bd.*,10 Cal.4th 1133, 1147 (1995).

81 Op. Cal. Atty. Gen. 281 (1998).

California Health & Safety Code section 33678 sets forth the express intention to exempt tax increment funds from the general prohibition against increased spending limits by local government *only* if the funds are used for the uses specified, so as not to violate the limitations on new fees and taxes otherwise provided by the state Constitution, including Cal. Const. article XIIIB of the California Constitution. Accordingly, general use of such funds to pay City staff and administrative costs in order to process a backlog of historical designation applications that have been delayed due to lack of staffing would not be a use directly related to redevelopment purposes. One reason is that many of the properties on the wait list would be outside a particular redevelopment area, and the apportionment of City staff time to a particular project would invite the type of accounting problems that occurred recently with the improper allocation of enterprise funds under Service Level Agreements. However, if those funds were earmarked specifically for redevelopment purposes, to be used in redevelopment areas, this would be permissible.

Based on the foregoing, the City can create a program to assist owners of historic residential properties in redevelopment areas in rehabilitating their historic properties. The City has an existing Storefront Improvement Program that offers rebates to owners of historic commercial properties. In this program, the City contributes matching funds up to $7,500 to cover construction costs of enhancements to historic business properties. The Redevelopment Agency also contributes funds for this purpose in specific project areas to increase the incentive amount, beyond the City's base program. A similar program could be established for owners of historic residential properties, whereby the Redevelopment Agency would contribute matching funds up to a certain amount as an incentive to homeowners qualifying their homes under the Mills Act.

In addition, it is possible to create an agreement between the City Planning and Community Investment Department [CPCI] and the Redevelopment Agency for the purpose of providing CPCI staff to work on historical redevelopment projects. For example, in 2005 an agreement between the Planning Department/CPCI and the Redevelopment Agency was set up to enhance plan review of redevelopment projects and improve coordination between the two agencies. A companion agreement could be drafted to allow for Redevelopment funds to pay for CPCI staff to provide assistance with processing Mills Act applications, implementing the historic residence rehabilitation matching fund program as proposed above, and otherwise assisting with rehabilitation of historic residences within redevelopment areas. Any programs created that will utilize Redevelopment Agency funds must be strictly designed and implemented to ensure compliance with Redevelopment goals.

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CONCLUSION

Redevelopment Agency funds may be used to allow homeowners within redevelopment project areas to rehabilitate their properties for general redevelopment purposes (i.e., "rehabilitation" of a structure "within the survey area"), so long as identified funds are used directly within a particular redevelopment area only to provide owners with assistance in rehabilitating existing historical structures. Also, an agreement can be drafted to allow for redevelopment funds to pay for CPCI staff for work done in connection with redevelopment of residential historic properties.

Respectfully submitted,

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