

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

KENDALL D. BERKEY
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Jan I. Goldsmith
CITY ATTORNEY

June 14, 2010

REPORT TO THE PUBLIC SAFETY AND
NEIGHBORHOOD SERVICES COMMITTEE

ECONOMIC DEVELOPMENT AUTHORITY OF REDEVELOPMENT AGENCIES

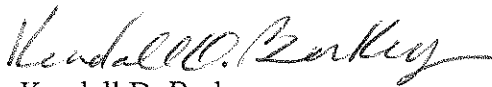
INTRODUCTION

The City Attorney's Office has been advised that the Public Safety and Neighborhood Services Committee will be discussing at an upcoming meeting (i) the extent to which the Centre City Development Corporation (CCDC) may assist the City of San Diego (City) with economic development within the Centre City Redevelopment Project Area and (ii) the extent to which the Redevelopment Agency of the City of San Diego (Agency) may expend its redevelopment project funds, including tax increment funds and other funds collected by the Agency, to further economic development.

A legal analysis of the extent to which Agency funds may be used to further economic development is discussed in the attached Memorandum prepared by Murray O. Kane of the law firm Kane, Ballmer & Berkman, the Agency's Special Legal Counsel, dated June 4, 2010.

Additionally, the Agency and CCDC entered into an Amended and Restated Operating Agreement in April, 2010 for the purpose of CCDC providing certain staff services for the implementation of projects for redevelopment within the Centre City and Horton Plaza Redevelopment Project Areas. CCDC and the City, however, have not entered into a similar operating agreement for CCDC to provide economic development services on behalf of the City.

Respectfully submitted,

By 
Kendall D. Berkey
Deputy City Attorney

KDB:nda
Attachment
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KANE BALLMER & BERKMAN
A LAW CORPORATION
www.kbblaw.com

515 South Figueroa Street
Suite 1850
Los Angeles, California 90071
Telephone (213) 617-0480
Fax (213) 625-0931

402 West Broadway
4th Floor
San Diego, California 92101
Telephone (619) 567-3450
Fax (619) 567-3448

MEMORANDUM

TO: Kendall D. Berkey, Deputy General Counsel, Redevelopment Agency of the
City of San Diego

FROM: Murray O. Kane, Kane Ballmer & Berkman, Special Counsel
Murray O. Kane

DATE: June 4, 2010

RE: Economic Development Authority for Redevelopment Agencies

INTRODUCTION

The City of San Diego [City] has directed the Centre City Development Corporation [CCDC] to increase its emphasis on the economic development of the Centre City Redevelopment Project Area [Project Area]. Members of the City Council have inquired regarding the extent to which the Redevelopment Agency of the City of San Diego [Agency] may expand its Redevelopment Project funds, including tax increment funds and other funds collected by the Agency to further economic development. In light of these inquiries, we have been asked to provide a legal opinion on this matter.

QUESTION PRESENTED

To what extent may the Agency use tax increment and other Project Area funds to further the economic development of the Project Area?

SUMMARY

The California Community Redevelopment Law set forth in California Health & Safety Code Sections 33000 et seq. [Community Redevelopment Law] contemplates economic development as part of the redevelopment of a blighted redevelopment project area, yet currently provides few tools and only limited authority to expend public funds on economic development programs such as job creation, small business incubators and business retention.

The tools provided in the Community Redevelopment Law to redevelopment agencies to eliminate blight in a redevelopment project principally relate to property acquisition, property management, relocation of persons and businesses, demolition, clearance, construction and installation of public improvements, public facilities and publicly owned structures, property disposition, property rehabilitation, hazardous substance release cleanup, and the increase and improvement of the supply of affordable housing. The use of these tools to eliminate blight frequently results in the attainment of economic development goals, and is undertaken in part to achieve such goals, but such achievement generally results indirectly rather than directly from the Agency expenditures.

For example, there is no authority in the Community Redevelopment Law for the Agency to directly make operational loans and grants to private businesses specifically for job creation or business retention, or for small business incubator activities.

This lack of redevelopment agency economic development authority is broadly recognized, and is currently the subject of State legislative activity. Assembly Bill 2531 (Fuentes) has been introduced this year to expand and clarify the Community Redevelopment Law to add specific authority to redevelopment agencies to more directly provide for the creation of jobs and the retention and attraction of businesses.

As stated by the Legislative Counsel in the Digest of AB 2531, the bill would give new programmatic authority to a redevelopment agency "...to provide loans, financial guarantees, or other financial assistance to owners or tenants in a redevelopment project area for retaining or expanding employment in the project area..."

Despite these limitations, redevelopment agencies in California have developed a number of limited approaches to accomplish economic development, and these are described below.

ANALYSIS

1. **Financing Redevelopment**

The Agency is a public body, corporate and politic, that exercises governmental functions and has the powers prescribed to it in the Community Redevelopment Law. Cal. Health and Safety Code sections 33100, 33122.

Since the Agency is a creature of statute, the Agency's authority to act and spend funds must be provided in the Community Redevelopment Law. The legal justification for use of the extraordinary public powers authorized by the Community Redevelopment Law is the elimination of blight. *Berman v. Parker*, 348 U.S. 26 (1954).

The primary funding source relied on by the Agency to finance its activities under the Community Redevelopment Law is tax increment revenue used "to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project." Cal. Health and Safety Code section 33670(b); Cal. Const. art. XVI, § 16.

Tax increment revenue is the Agency's ability to receive and spend a portion of property tax revenues from the increase in assessed value of real property that has occurred after adoption a redevelopment plan for a project area. Cal. Health and Safety Code sections 33670 and 33678.

2. **Limitation on the Use of Tax Increment Funds for Redevelopment Activity**

Tax increment revenue must be spent on redevelopment activity, which includes redevelopment as prescribed in sections 33020 and 33021 of the Cal. Health and Safety Code that primarily benefits the project area (Cal. Health and Safety Code section 33678(a) and (b)).

Although the Community Redevelopment Law includes in the goals and purposes of redevelopment the provision of "genuine employment opportunities" (Cal. Health and Safety Code section 33070) and the expansion of "employment opportunities for jobless, underemployed, and low-income persons" (Cal. Health and Safety Code section 33071), specific job creation and business retention authority cannot be found in the crucial statutory definitions of redevelopment nor in the descriptions of redevelopment agency legal authority set forth in the Community Redevelopment Law.

Redevelopment is defined, in part, as 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. Cal. Health and Safety Code section 33020.

Additionally, redevelopment is defined to include: (a) the alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area; (b) the provision for open-space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public or private recreation areas and other public grounds; and (c) the replanning or redesign or original development of undeveloped areas that are stagnant or improperly utilized or that require replanning and land assembly for reclamation or development in the interest of the general welfare. Cal. Health and Safety Code section 33021.

Neither section 33020 nor section 33021 of the Cal. Health and Safety Code provide that redevelopment includes the provision of economic development programs such as loans or grants to businesses for job creation or business retention, or the provision of any similar type of assistance, and Cal. Health and Safety Code Section 33678 limits the expenditure of tax increment revenue to redevelopment activity as prescribed in sections 33020 and 33021.

3. Economic Development Authority Currently in the Community Redevelopment Law

Limited statutory authorization for redevelopment agencies to expend funds for economic development purposes can be found in the following provisions of the California Redevelopment Law:

Section 33127: Authorizes a redevelopment agency to obtain services.

Section 33131: Authorizes a redevelopment agency to “prepare and carry out plans for the improvement, rehabilitation, and redevelopment of blighted areas” and to “disseminate redevelopment information”;

Section 33135: Authorizes a redevelopment agency to provide “aid and assistance to property owners in connection with rehabilitation loans and grants.”

Section 33444.5: Authorizes a redevelopment agency to “establish a program under which it loans funds to owners or tenants for the purpose of rehabilitating commercial buildings or structures within the project area.”

Section 33444.6: Authorizes a redevelopment agency to “assist with the financing of [industrial or manufacturing] facilities or capital equipment, including, but not necessarily related to, pollution control devices.”

4. **Examples of Economic Development Activity by California Redevelopment Agencies**

- A. Reimbursement agreements with owners and tenants to pay for capital equipment for companies that are using space for industrial or manufacturing purposes under Section 33444.6.
- B. The sublease of Agency-owned or leased space under Section 33430 to entities that operate business incubators. This would be where the Agency owns or leases the real estate.
- C. Assistance to tenants for tenant improvements as a part of the Agency's rehabilitation program. Section 33444.5.
- D. Financial support of a job fair or other community activity so long as program materials include the dissemination of redevelopment information, such as a description of relevant Agency accomplishments, activities and proposed related projects in the area. Section 33131.
- E. Requiring developers and owner participants to donate funding to community job training programs as a condition of otherwise authorized redevelopment assistance, and recognizing such expenditures as a project cost for purposes of analyzing the amount of any economic feasibility gap for the proposed project.
- F. Requiring developers and owner participants to provide necessary outreach and to give preference to jobs to those meeting certain criteria, such as income levels, as a condition of otherwise authorized redevelopment assistance, and recognizing such expenditures as a project cost for purposes of analyzing the amount of any economic feasibility gap for the proposed project.
- G. Expending funds to acquire interests in real property, such as covenants running with the land, which impose operating covenants and add restrictive covenants, pursuant to the Agency's general authority to "acquire ...any interest in real property..." (Section 33391(a)).
 - a. For example, in order to retain a business in the Project Area, an Agency enters into an owner participation agreement with that business whereby the Agency expends funds to acquire from the property owner/business covenants running with the land that require the continuation of the current use, or that restrict uses to the current use. Funds are either expended up front or paid out over time as the business stays in the community.
 - b. For example, in order to assist in the increase of jobs in the Project Area, an Agency enters into an owner participation agreement with

that business whereby the Agency expends funds to acquire from the property owner/business covenants running with the land that require the creation of a specific number of jobs. Funds are either expended up front or paid out over time as the business stays in the community, and can be advanced in the form of either a grant, or a loan which is forgiven over time as job creation goals are satisfied.

- H. Imposing the same covenants as described in the examples in subparagraph G, but in connection with the disposition of Agency property pursuant to the Agency's general powers of disposition of real property (Section 33430).
- I. Redevelopment agencies have used their authority to enter into contracts to obtain services and to prepare plans for improvement and redevelopment by hiring consultants or utilizing staff to prepare and implement business/retail attraction and marketing plans. Also, a redevelopment agency may use the same legal powers to the same end by entering into a contract with an outside non-profit entity to hire staff and/or consultants to prepare and implement business/retail attraction and marketing plans.

CONCLUSION

Since the Agency is a creature of statute, the Agency's authority to act and spend funds must be provided in the Community Redevelopment Law. The Community Redevelopment Law currently provides very limited authority for the Agency to directly use Agency funds for specific economic development programs.

cc: William Anderson, Assistant Executive Director
Janice L. Weinrick, Deputy Executive Director
Frank Alessi, CCDC Executive Vice President/Chief Financial Officer
Jeff Graham, CCDC Vice President, Redevelopment