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February 11, 2011

REPORT TO REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO AD HOC COMMITTEE

STATUS OF 2008 AGENCY-EMPLOYEE PROPOSAL; AUTHORITY TO ADOPT AND
AMEND BUDGETS OF REDEVELOPMENT ENTITIES; AUTHORITY TO DESIGNATE
AGENCY DIRECTORS; AUTHORITY TO RETAIN OUTSIDE LEGAL COUNSEL

INTRODUCTION

This Report addresses several questions that were raised by members of the Redevelopment Agency of the City of San Diego Ad Hoc Committee (Committee) at the Committee meeting held on January 31, 2011. The Committee has been convened to evaluate, and make recommendations regarding, administrative and operational issues affecting the Redevelopment Agency of the City of San Diego (Agency).

QUESTIONS PRESENTED

1. In April 2008, did the Agency's board of directors (Agency Board) take any formal action to implement the "Agency-Employee Model" (i.e., employment of redevelopment staff by the Agency rather than the City of San Diego)?

2. Does the Agency Board have the legal ability to adopt and amend the budget of the Agency?

3. Does the Agency Board have the authority to designate individuals to director positions at the Agency, including the executive director and a financial director?

4. Does the Agency Board have the authority to enter into a contract directly with legal counsel, other than the Office of the City Attorney acting as the Agency's General Counsel, with respect to redevelopment matters?

SHORT ANSWERS

1. No. The Agency Board did not take any formal action to implement the Agency-Employee Model in April 2008 or subsequently.

2. Yes. The Agency Board has the legal ability to adopt and amend the budget of the Agency, which is comprised of three separate budgetary entities, namely the Redevelopment Department of the City (Redevelopment Department), the Centre City Development Corporation, Inc. (CCDC), and the Southeastern Economic Development Corporation, Inc. (SEDC).

3. Yes. The Agency Board may designate the Executive Director. In addition, the Agency Board may designate a financial director or other specific directors for the Agency. Before doing so, the Agency would need to amend the Bylaws of the Redevelopment Agency of the City of San Diego (Bylaws) by a simple majority vote since the Bylaws do not currently provide for the position of a financial director or any other director, aside from the Executive Director and a very general reference in the Bylaws to Directors.

4. Yes. The Agency Board may contract directly for legal counsel on redevelopment matters. Before doing so, the Agency Board would need to amend the Bylaws by a simple majority vote since the Bylaws presently designate the City Attorney as the Agency's General Counsel.

DISCUSSION

I. STATUS OF 2008 AGENCY-EMPLOYEE PROPOSAL

During a meeting of the Agency Board held on April 29, 2008, Agency staff made a presentation to the Agency Board concerning the potential restructuring of the Agency. After discussion occurred among the Agency Board's members, the Agency Board voted to direct Agency staff to generate a specific proposal for implementation of the Agency-Employee Model so that the specific proposal could be presented to the Agency Board for a formal decision in the Fall of 2009, thereby allowing the Agency-Employee Model to be fully implemented by January 2009. A review of Agency Board records reveals that the Agency Board has not considered this issue since the meeting of April 29, 2008. Therefore, the Agency Board did not take any formal action to implement the Agency-Employee Model in April 2008 or subsequently.

II. AUTHORITY TO ADOPT AND AMEND BUDGETS

The Agency Board is responsible for adopting the budget of, and approving any amendments to the adopted budget of, the Agency, which includes three budgetary entities, namely the Redevelopment Department, CCDC and SEDC. The process for adopting and amending the budget of the Agency is described in a Report to the Committee on Budget and Finance entitled "Budget Process of the Redevelopment Agency of the City of San Diego," dated January 12, 2011. A copy of that Report is attached to this Report as Exhibit A.

III. AUTHORITY TO DESIGNATE DIRECTORS

Health and Safety Code section 33126(a) provides, in part:

An agency may select, appoint, and employ such permanent and temporary officers, agents, counsel, and employees as it requires, and determine their qualifications, duties, benefits, and compensation, subject only to the conditions and restrictions imposed by the legislative body on the expenditure or encumbrance of the budgetary funds appropriated to the community redevelopment agency administrative fund.

This provision gives the Agency Board fairly wide latitude to select, appoint and employ officers, agents and employees of the Agency, so long as adequate funds for such positions are provided for in the Agency's budget.

The Bylaws were adopted in April, 1969. Article II, Section 1 of the 1969 Bylaws identified the titles and duties of the Officers of the Agency, but did not designate certain individuals as Officers. In 1975, Article II, Section 1 of the Bylaws was amended to provide that "[t]he Executive Director or Directors shall be the City Manager and/or such other persons as may be designated by the Agency." In 2005, Article II, Section 1 of the Bylaws was amended again to provide that "[t]he Executive Director or Directors shall be the Mayor and or such person or persons as may be designated by the Agency." In the 2005 amendment, the "slash" was left out between "and" and "or," presumably a typographical error. Notwithstanding the ambiguity, the more reasonable and likely interpretation of Article II, Section 1, in conjunction with Health and Safety Code section 33126(a), is that the Agency Board may designate the Mayor, or another person, as Executive Director.

Also, the Agency Board may designate directors in addition to the Executive Director. However, the Bylaws do not currently provide for the position of a financial director or any other director, aside from the Executive Director and a very general reference in the Bylaws to Directors. Accordingly, the Agency Board would need to amend the Bylaws in order to allow the Agency Board to designate any particular individual to any director position other than the Executive Director. Pursuant to Article IV of the Bylaws, any amendment to the Bylaws requires a majority vote of the Agency Board at a regular or special meeting, and such amendment shall not be introduced and adopted at a single meeting.

IV. AUTHORITY TO CONTRACT DIRECTLY FOR OUTSIDE LEGAL COUNSEL

Health and Safety Code section 33126(a), as quoted above, allows the Agency Board to select, appoint and employ legal counsel for the Agency, on a permanent or temporary basis, so long as adequate funding for the retention of such legal counsel is provided for in the Agency's budget. Currently, Article II, Section 1 of the Bylaws establishes that the City Attorney shall serve as the Agency's General Counsel. In its capacity as the Agency's General Counsel, the City Attorney is empowered to authorize the retention of legal counsel if the Office of the City Attorney does not have the expertise or personnel needed to handle a matter or if a conflict of interest exists. Thus, under the Bylaws, the Agency Board does not have the authority to contract directly with legal counsel on the Agency's behalf.

If the Agency Board desires to contract directly for legal services on the Agency's behalf, the Agency Board would need to amend the Bylaws, as appropriate, to either provide for replacement of the City Attorney as the Agency's General Counsel or to prescribe the Agency Board's ability to contract directly with legal counsel from time to time or on certain specified matters without any involvement from the City Attorney. As described above, any amendment to the Bylaws requires a majority vote of the Agency Board. The Agency Board would need to evaluate the cost implications associated with retaining legal counsel, other than the City Attorney, on redevelopment matters.

CONCLUSION

The Agency Board did not take any formal action to implement the Agency-Employee Model in April 2008 or subsequently. The Agency Board has the legal ability to adopt and amend the budget of the Agency, which is comprised of three separate budgetary entities. The Agency Board may designate the Mayor, or another person, as Executive Director. In addition, the Agency Board may designate a financial director or other specific directors for the Agency, so long as adequate funds are provided for in the Agency's budget and the Bylaws are amended by a simple majority vote. Similarly, the Agency Board may contract directly for legal services on redevelopment matters, so long as adequate funds are provided for in the Agency's budget and the Bylaws are amended by a simple majority vote.

JAN I. GOLDSMITH, GENERAL COUNSEL

By Kevin J. Reisch
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Deputy General Counsel

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RC-2011-9
Attachment

EXHIBIT A

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January 12, 2011

REPORT TO THE COMMITTEE ON BUDGET AND FINANCE

BUDGET PROCESS OF THE REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

INTRODUCTION

This report addresses questions raised by members of the Budget and Finance Committee regarding the process for adopting the budget of the Redevelopment Agency of the City of San Diego (Redevelopment Agency), including amending the budget after adoption.

DISCUSSION

The Redevelopment Agency was established pursuant to the Community Redevelopment Law and activated by the City Council in 1959. Pursuant to California Health & Safety Code section 33200, the City Council serves as the Board of the Redevelopment Agency but the City and the Redevelopment Agency are separate legal entities and have distinct budgetary processes. The Redevelopment Agency is required to adopt an annual budget containing certain specified information, including: proposed expenditures and indebtedness; anticipated revenues; a work program for the coming year; and an examination of the activities of the previous year. Cal. Health & Safety Code § 33606. The adopted budget may be amended by the Redevelopment Agency and all expenditures and indebtedness of the Redevelopment Agency must be in conformity with the adopted or amended budget. *Id.*

The Redevelopment Agency contains three budgetary entities: the Redevelopment Department¹ of the City; the Centre City Development Corporation (CCDC); and the Southeastern Economic Development Corporation (SEDC). Each of these entities does project implementation work for the Redevelopment Agency. Each corporation is required, pursuant to its operating agreement² with the Redevelopment Agency, to produce a "Corporation Budget" detailing revenues and expenditures for the administration of the corporation, and a "Project Budget" showing the revenues and expenditures for each project area administered by the corporation. Operating Agreements, §§ 1.05 and 1.06. Prior to submission to the Board of the

¹ For fiscal year 2011 and for prior fiscal years, the Redevelopment Department, then known as the Redevelopment Division, was a division within the City's Planning & Community Investment Department.

² The operating agreements and bylaws of both CCDC, and SEDC were amended in 2010 to bring them into conformity with each other and to allow the Redevelopment Agency and the City to exert greater control over the corporations.

Redevelopment Agency, the corporation's budget must be reviewed by its corporate board and the Chief Financial Officer of the City. Bylaws, Art. 9, § 1; Operating Agreements, §§ 1.05 and 1.06. The Board of the Redevelopment Agency has unlimited discretion to approve or revise the proposed budgets of the corporations. Operating Agreements, §§ 1.07, 1.08. The Redevelopment Department prepares a Project Budget, which also includes its administrative expenses.³ The Redevelopment Department's administrative budget also appears in the City's budget, where the costs are incurred.⁴ The Redevelopment Agency reimburses the City for costs related to redevelopment administrative activities, including staff, accounting, legal, and other necessary expenses charged to the Redevelopment Division, CCDC, and SEDC.⁵


Collectively, the budget of the Redevelopment Division and the Corporation and Project Budgets of CCDC and SEDC make up the agency-wide budget of the Redevelopment Agency. The Board of the Redevelopment Agency approves the budget via resolutions, which also appropriate the necessary funds. Any subsequent amendment to the budget of the Redevelopment Agency could be accomplished by adopting another resolution to amend the approved budget.

CONCLUSION

The Board of the Redevelopment Agency is responsible for adopting the budget of the Redevelopment Agency and has unlimited discretion to amend the adopted budget.

Respectfully submitted,

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By 

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³ All Redevelopment Department administrative costs are charged to the Redevelopment Agency's Capital Projects and Low and Moderate Income Housing funds. For convenience, these expenses are separated out in the Redevelopment Department's section of the Redevelopment Agency's budget to allow for comparison with the corporations' administrative expenses.

⁴ As noted in footnote 1, the Redevelopment Department's budget for fiscal year 2011 and prior fiscal years is included in the Planning & Community Investment Department. As of fiscal year 2012, the Redevelopment Department will appear in the City's budget as a separate department.

⁵ The legal relationship between the City and the Redevelopment Agency with respect to administrative services is laid out in the First Amended Agreement between the City and the Redevelopment Agency dated August 14, 1991, wherein the City agreed to provide all administrative services requested by the Redevelopment Agency.