

(O-2012-7) 202
8/11

ORDINANCE NUMBER O- 20078 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 01 2011

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (i) COMMITTING THE CITY OF SAN DIEGO (CITY) TO MAKE REMITTANCES TO THE SAN DIEGO COUNTY AUDITOR-CONTROLLER AS REQUIRED BY ASSEMBLY BILL X1 27 (AB 27) FROM FUNDS AND ASSETS TRANSFERRED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (AGENCY) TO THE CITY, AND (ii) AUTHORIZING COMPLIANCE WITH THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM ESTABLISHED BY AB 27 IN ORDER TO ALLOW THE AGENCY'S CONTINUED OPERATION, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS.

WHEREAS, the Redevelopment Agency of the City of San Diego (Agency) administers the implementation of various redevelopment projects, programs, and activities within fourteen designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, on June 15, 2011, the State Legislature passed Assembly Bill x1 26 (AB 26) and Assembly Bill x1 27 (AB 27), and on June 28, 2011, Governor Edmund G. Brown Jr. approved AB 26 and AB 27; and

WHEREAS, AB 26 generally prevents redevelopment agencies from entering into new or amended obligations or contracts, and eliminates redevelopment agencies and winds down their operations; and

WHEREAS, AB 27 allows redevelopment agencies to remain in existence, and to gain an exemption from the provisions of AB 26, in exchange for the payment of substantial sums of money on an annual basis to the San Diego County Auditor-Controller (County Auditor); and

WHEREAS, AB 27 codified Part 1.9 of Division 24 of the California Health and Safety Code (Part 1.9), which now comprises a portion of the California Community Redevelopment Law; and

WHEREAS, AB 27 establishes a “voluntary alternative redevelopment program” (Alternative Program), whereby the Agency is authorized to continue to exist upon the City’s enactment of an ordinance to comply with the provisions of Part 1.9; and

WHEREAS, AB 27 provides that, in order to enable the Agency to be included in the Alternative Program, the City must notify the County Auditor, the State Controller, and the State Department of Finance, on or before November 1, 2011, that the City will comply with the provisions of Part 1.9; and

WHEREAS, AB 27 requires the City to make specified remittances to the County Auditor in order to continue the existence of the Agency, as prescribed in Part 1.9; and

WHEREAS, AB 27 authorizes the City to enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the City, in an amount not to exceed the annual remittance required that year pursuant to AB 27, for the purpose of financing certain activities within the City’s redevelopment area; and

WHEREAS, AB 27 imposes specified sanctions on the City in the event that the City fails to make the required remittances, as determined by the Director of Finance; and

WHEREAS, AB 27 authorizes the County Auditor to charge a fee that does not exceed the reasonable costs to the County Auditor to implement the provisions of Part 1.9; and

WHEREAS, AB 27 authorizes the City to establish a new redevelopment agency if its former agency has been dissolved pursuant to AB 26 only after the debt obligations of the former agency have been retired and the City satisfies the provisions of Part 1.9; and

WHEREAS, AB 27 provides that the City's decision to have the Agency participate in the Alternative Program will constitute the City's agreement to assign, in favor of the State, the City's rights to any payments owed from the Agency, including, but not limited to, payments from loan agreements, in the event that the City fails to make any future remittance to the County Auditor required under Part 1.9; and

WHEREAS, the Council acknowledges that the redevelopment industry in California generally has taken the position that certain or all provisions of AB 26 and AB 27, including but not limited to the effectiveness date, violate the State Constitution and other laws (collectively, Laws), and that AB 26 and AB 27 are invalid and unenforceable in whole or in part; and

WHEREAS, the City Council does not intend, by enactment of this Ordinance, to waive any constitutional or legal rights by virtue of the enactment of this Ordinance and, therefore, reserves all of its rights and the Agency's rights under Laws to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and to repeal this Ordinance at a later date, without prejudice to the City's right to recover any amounts remitted under Part 1.9; and

WHEREAS, the Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or other assets in order to make the remittance payments contemplated by Part 1.9, and any remittance payments will be funded solely from Agency funds and assets transferred to the City in accordance with Part 1.9; and

WHEREAS, the Council does not intend, by enactment of this Ordinance, to waive any rights of appeal regarding the amount of any remittance established by the Department of Finance, as provided in Part 1.9; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Authorization to Continue Agency. Subject to Sections 2 and 3 herein, the City commits to comply with and make the remittances required by Part 1.9, and authorizes the continuation of the Agency after enactment of AB 27. Any remittance payments required to be paid by the City under Part 1.9 shall be paid solely from Agency funds and assets transferred to the City in accordance with Part 1.9.

Section 2. Reservation of Rights. It is the position of the City that certain or all provisions of AB 26 and AB 27 violate the Laws, as referenced in the recitals above, and are invalid and unenforceable. Neither the adoption of this Ordinance, nor the acknowledgment of or references to any provisions of AB 26 and AB 27, nor the City's payment of any remittances contemplated by Part 1.9, shall be deemed to be, nor are they intended as, an acknowledgment of the validity of AB 26 and AB 27. The City reserves all rights of the City and the Agency to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and to repeal this Ordinance, without prejudice to the City's right to recover any amounts remitted under Part 1.9. The City shall not make any remittance under Part 1.9 in the event that a court of competent jurisdiction either grants a stay on the enforcement of AB 26 and AB 27 or determines that AB 26 and AB 27 are unconstitutional and therefore invalid, and all judicial appeals are exhausted or unsuccessful, or the time for filing an appeal has lapsed. Any remittance under Part 1.9 shall be made under protest and without prejudice to the City's right to recover the remittance amount and accrued interest thereon in the event that there is a final judicial determination that AB 26 and AB 27 are invalid. In addition, the City reserves all rights of the City and the Agency to pursue any and all appeals and any available legal or equitable remedy provided or available by law to obtain the correction of any erroneous decision

regarding the amount of payments that may be required to be paid by the City under Part 1.9 or other applicable statutes or regulations.

Section 3. Enactment and Effective Date. This Ordinance shall only be deemed as “enacted” within the meaning of Part 1.9 upon (i) the Council’s adoption of this Ordinance and the Mayor’s signature approving this Ordinance, and (ii) the legally effective date of AB 26 and AB 27. Subject to the immediately preceding sentence, this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage. If there is a final judicial determination that AB 26 and AB 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 4. Authorization of Implementing Actions. The Mayor, or designee, is hereby authorized to take any actions necessary to implement this Ordinance and to comply with Part 1.9, including without limitation, providing required notices to the County Auditor, the State Controller, and the Department of Finance, entering into any agreements with the Agency to make the remittance payments, and making any remittance payments.

Section 5. Objections Considered. All written and oral objections to this Ordinance, if any, filed with and presented to the Council, and any written responses thereto, have been considered by the Council at the time and in the manner required by law, and such written and oral objections are hereby overruled.

Section 6. Invalidity of Parts. If any part of this Ordinance is held to be invalid or is not adopted for any reason, such decision shall not affect the validity of any remaining portion of this Ordinance.

Section 7. No Full Reading. A full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the Council and the public prior to the day of its final passage.

Section 8. Publication. The City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation.

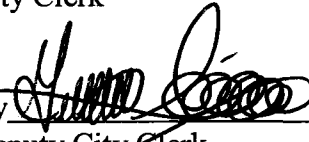
APPROVED: JAN I. GOLDSMITH, City Attorney

By Kevin Reisch
Kevin Reisch
Deputy City Attorney

KR:nja
7/15/2011
Or.Dept:Redev.Agency
O-2012-7
PL#2011-07018
Comp. R-2012-52
RA-2012-2
RA-2012-3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 8/1/2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8-1-11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor