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July 13, 2010

REPORT TO THE CITY COUNCIL LAND USE
AND HOUSING COMMITTEE

HOMELESS SERVICE CENTER AND HOUSING FACILITY; DONATION OF THE WORLD TRADE CENTER BUILDING

INTRODUCTION

On April 21, 2010, a proposal regarding the acquisition and development of the City-owned World Trade Center (WTC) building for a homeless service center and housing facility was discussed at the City Council's Land Use & Housing Committee. In an effort to reduce homelessness and provide appropriate services and service-enhanced housing for the most vulnerable homeless individuals, the San Diego Housing Commission, Centre City Development Corporation, and the City of San Diego issued a "Request for Proposals for the Site, Development and Operation of a Service Center and Housing for Homeless and Extremely Low Income Individuals" on April 3, 2009 (RFP). The RFP selection committee recommended the proposal submitted by a team (PATH/Affirmed Team) consisting of Affirmed Housing Group (Affirmed), a San Diego affordable/supportive housing developer, People Assisting the Homeless (PATH), a Los Angeles-based homeless service provider, and Family Health Center of San Diego. The proposal by the PATH/Affirmed Team identified the WTC building as the site most suitable for the development of a homeless service center and housing facility. The City Attorney was asked to determine the legality of donating the WTC building to either the PATH/Affirmed Team or another entity.

DISCUSSION

The City's donation of the WTC building to the PATH/Affirmed Team or another entity may violate San Diego Charter (Charter) section 93, unless the City Council can make reasonable findings that the donation of the WTC building serves a public purpose. The Office of the City Attorney recently discussed the limitations of Charter section 93 and its prohibition on gifts of public funds in the Report to the Honorable Mayor and City Council dated March 8, 2010, titled, "The City's Forgiveness of Debt or Interest Owed It by the San Diego Redevelopment Agency," attached hereto.

In that Report, this Office stated that courts have determined that forgiveness or cancellation of a debt, or forgiveness of interest charges on a debt, may constitute a gift or a thing of value encompassed within article XVI, section 6 of the California Constitution, and that

in order to exempt such forgiveness of debt or cancellation of interest from the prohibition, such forgiveness must serve a public purpose. Likewise, the donation of a City-owned building may constitute a gift or thing of value encompassed within article XVI, section 6 of the California Constitution. *People v. City of Long Beach*, 51 Cal. 2d 875, 881 (1959). To exempt the donation of the WTC building from the prohibition, the donation must serve a public purpose. This Office strongly recommends that the City Council express on the record the public interests served by the donation. In addition, this Office suggests that the instrument transferring title to the WTC building restrict the use of the building to a homeless service center and housing facility.

CONCLUSION

If the City decides to donate the WTC building to the PATH/Affirmed Team or another entity to develop a homeless service center and housing facility, it may do so without violating San Diego Charter section 93's prohibition on gifts of public funds if the City Council makes reasonable findings that the donation of the City-owned property is for a public purpose. We strongly recommend that the City Council express on the record the public interests that would be served by the donation.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By _____
Brock L. Ladewig
Deputy City Attorney

BLL:hm:nda
Attachment
RC-2010-29

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March 8, 2010

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

THE CITY'S FORGIVENESS OF DEBT OR INTEREST OWED IT BY THE SAN DIEGO REDEVELOPMENT AGENCY

INTRODUCTION

The City of San Diego has loaned federal Community Development Block Grant (CDBG) money to the City's Redevelopment Agency (Agency) for many years. In 1981, the City applied interest to these loans. *See* Report of the Agency for the February 23, 2010 City Council, No: RA-10-11, RTC-10-015 (February 17, 2010) [Report] at 6-7. The Agency proposes a plan to repay debt and interest carried on the Agency books related to these loans. Report at 16.[1] The Agency's long term CDBG-related debt (principal and interest) to the City totals over $228 million, composed of two categories: CDBG debt of more than $168 million; and CDBG Section 108 debt of more than $59 million. Report at 8.

The Agency suggests a ten year repayment plan totaling more than $78 million of CDBG-related debt to the City, which is to be considered "full obligation of the repayment." Report at 17. It also suggests retroactive discontinuation of interest accrual on CDBG loan debt back to July 1, 2007, and a forgiveness of the entirety of the balance of CDBG-related debt (including interest and principal) after successful completion of the ten year repayment plan. Report at 18. During the meeting on February 23, 2010, Agency staff verbally suggested two alternatives to those in the Report: the retroactive discontinuation of interest accrual on the CDBG loan debt going back to July 1, 2009, rather than 2007; and the Agency continuing to carry the remainder of the unpaid debt remaining after the ten year repayment plan, instead of asking City forgiveness of the balance.

This Office requested time to consider whether the suggested retroactive forgiveness of accrued interest, or any remaining balance of the CDBG-related debt the Agency owes the City is legally permissible. For the reasons set forth in more detail in this report, we conclude that it may be if the City Council determines the forgiveness serves a public interest. Should the City Council approve a repayment plan involving forgiveness of interest or debt, we recommend the documents approving the plan express the public purposes served by the forgiveness.

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[1] The repayment plan was developed in conjunction with the U.S. Department of Housing and Urban Development (HUD). The plan addresses issues uncovered during an audit of the City's CDBG program completed by HUD's Office of Inspector General in late 2008. *See* Report 16.

DISCUSSION

The City of San Diego May Forgive Accrued Interest and Debt Owed It by the San Diego Redevelopment Agency if This Serves a Public Purpose.

The San Diego Charter contains certain limitations that could apply to any proposed forgiveness of interest or debt owed by the Agency to the City. San Diego Charter section 93 provides in pertinent part: "The credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor." This Office has previously opined that this provision is similar to article XVI, section 6 of the California Constitution, which prohibits gifts of public funds or credit.[2] *See* Op. City Att'y 2002-1 (Feb. 11, 2002); 1979 Op. City Att'y 8; 1979 City Att'y MOL 168; 1952 Op. City Att'y 23. Accordingly, we look to cases interpreting that constitutional provision to guide our interpretation of Charter section 93.

Although gifts of public money will violate the constitutional provision, courts have consistently decided that money spent for public purposes is not considered a gift. *City of Oakland v. Garrison,* 194 Cal. 298, 302 (1924); *White v. State of California,* 88 Cal. App. 4th 298, 311 (2001). What constitutes a public purpose is primarily a matter for determination by a legislative body, and that determination will generally be upheld unless it is clearly illegal. *County of Alameda v. Carleson*, 5 Cal. 3d 730, 745-746 (1971); *County of Alameda v. Janssen,* 16 Cal. 2d 276, 281(1940); *Paulson v. Abdelnour*, 145 Cal. App. 4th 400, 419 (2007).

The courts have determined that forgiveness or cancellation of a debt, or forgiveness of interest charges on a debt, may constitute a gift or a thing of value encompassed within article XVI, section 6 of the California Constitution. *Westly v. U.S. Bancorp*, 114 Cal. App. 4th 577, 582 (2003) [forgiveness of interest], citing *County of San Bernardino v. Way,* 18 Cal. 2d 647, 654 (1941) [canceling county taxes]; *City of Ojai v. Chaffee,* 60 Cal. App. 2d 54, 59 (1943) [cancelling uncollected property taxes]; and *Community Television of Southern California v. County of Los Angeles,* 44 Cal. App. 3d 990, 996-997(1975) [releasing a tax lien]. In order to exempt such forgiveness of debt or cancellation of interest from the prohibition, such forgiveness must serve a public purpose. *Westly*, 114 Cal. App. 4th at 583.

Courts often find themselves trying to determine if there are valid public purposes or goals supporting the act if it is challenged in court. When the reasons are expressed by the

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[2] Article XVI, section 6 provides in pertinent part: "The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever, ..." California courts have long held that this constitutional prohibition is not applicable to charter cities unless the city's charter contains a similar prohibition. *Tevis v. City and County of San Francisco*, 43 Cal. 2d 190, 196-197 (1954); *Los Angeles Gas & Electric v. City of Los Angeles*, 188 Cal. 307, 317 (1922); *Mullins v. Henderson*, 75 Cal. App. 2d 117, 132-133 (1946).

legislative bodies taking the action in the legislative documents, the court may more easily review them to determine their validity. So long as the express purposes for the action are reasonable, they should be upheld. *White,* 88 Cal. App. 4th at 302, 311-313. Accordingly, if the Council decides to forgive any Agency debt or accrued interest as part of this repayment plan, we strongly recommend that the legislative enactments approving the repayment plan express what the City Council determines are the reasonable public interests served by that forgiveness.

The limited facts before us imply there are public purposes served by such forgiveness. For example, the release of the Agency from some debt obligations to the City could make any funds earmarked for that repayment available for future redevelopment activity in the City. Encouraging redevelopment activity plainly serves public purposes, benefitting the City as a whole, including "'job creation, attracting new private commercial investments, the physical and social improvement of residential neighborhoods, and the provision and maintenance of low- and moderate income housing.'" *White,* 88 Cal. App. 4th at 313, citing Sen. Bill No 863 (1995-1996 Reg. Sess.) § 2.[3] There may well be other public purposes to be served.

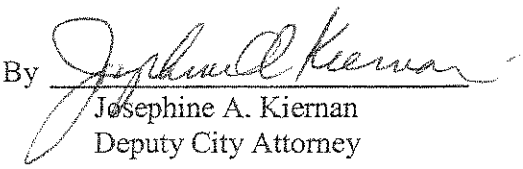
CONCLUSION

To the extent Charter section 93 mirrors article XVI, section 6 of the California Constitution, it prohibits the gift of the City's public funds or credit, unless those gifts serve public purposes. The forgiveness of any of the Redevelopment Agency's debt or accrued interest owed on loans made to it by the City of San Diego could also be considered a gift, unless such forgiveness serves a public purpose.

We leave to the City Council the ultimate decision whether or not it should forgive any or all of the Agency debt or accrued interest owed to the City. That is a policy decision for the City Council to make, not a legal one. If the City Council decides to forgive any remainder debt, or retroactively to forgive accrued interest, we strongly recommend the legislative enactments approving the loan repayment plan express what the City Council determines are the reasonable public interests served by that forgiveness.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By 
Josephine A. Kiernan
Deputy City Attorney

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[3] Consistent with this, the Community Redevelopment law specifically provides that cities may either grant *or* loan funds to their redevelopment agencies to defray administrative expenses or overhead of the agency. Cal. Health & Safety Code § 33610.