



THE CITY OF SAN DIEGO

DATE ISSUED: November 30, 2011

REPORT NO.: RA-11-30
RTC-11-142

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and City Council
Docket of December 6, 2011

ORIGINATING DEPT: City Redevelopment

SUBJECT: City and Redevelopment Agency Budget Amendments associated with the
Alternative Voluntary Redevelopment Program

COUNCIL DISTRICTS: 2,3,4,6,7,8

REFERENCE: Staff Report RA-11-26 / RTC-11-103 issued July 13, 2011

STAFF CONTACT: Scott Mercer 236-6242

REQUESTED ACTION:

That the Redevelopment Agency:

1. Amend the Redevelopment Agency budget for the project areas managed by the City Redevelopment Department, Centre City Development Corporation, and Southeastern Economic Development Corporation as specified, effectively defunding specified redevelopment projects and activities utilizing those monies to fund the City's obligatory Fiscal Year 2012 remittance to the San Diego County Auditor-Controller pursuant to Assembly Bill x1 27 (AB 27) and City Ordinance O-20078, contingent upon a ruling by the California Supreme Court that upholds AB 27.
2. Make certain findings and determinations in accordance with AB 27, authorize additional reductions to its allocation to the low and moderate income housing fund for Fiscal Year 2012, and authorize adjustment of its earlier reduced allocation to the low and moderate income housing fund for Fiscal Year 2012.

That the City Council:

1. The Chief Financial Officer is authorized to reduce appropriations and transfer Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment



Redevelopment Agency

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Agency Funded Projects Funds, in accordance with the Cooperation Agreement Budget Amendment and Funds Transfer Schedule, to the Redevelopment Agency, effectively defunding specified projects and utilizing those monies to fund the City's Fiscal Year 2012 remittance to the San Diego County Auditor-Controller pursuant to AB 27 and City Ordinance O-20078, contingent upon a ruling by the California Supreme Court that upholds AB 27.

2. Authorize the Chief Financial Officer to establish a new fund, AB 27 Remittance Fund, to accept funding from the Redevelopment Agency and remit payment to the San Diego County Auditor-Controller in accordance with AB 27, contingent upon a ruling by the California Supreme Court that upholds AB 27.
3. Authorize the Chief Financial Officer to accept \$69,255,216 from the Redevelopment Agency and to appropriate and expend those monies in the AB 27 Remittance Fund for the purpose of remitting the Fiscal Year 2012 payment to the San Diego County Auditor-Controller in accordance with AB 27, contingent upon a ruling by the California Supreme Court that upholds AB 27.

STAFF RECOMMENDATION TO THE REDEVELOPMENT AGENCY: Amend the Redevelopment Agency budget take the associated actions as recommended in this report.

STAFF RECOMMENDATION TO THE CITY COUNCIL: Amend the City budget and take the associated actions as recommended in this report.

BACKGROUND:

On February 28, 2011 the Agency and the City entered into a certain *Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects* (Cooperation Agreement). In March, 2011 the Agency provided substantial funding pursuant to the Cooperation Agreement, transferring approximately \$289 million to the City. On June 14, 2011, the Agency adopted the Fiscal Year 2012 Budget which includes an additional \$57 million of funding to the City for Cooperation Agreement projects.

On June 15, 2011, the California Legislature passed, and on June 28, 2011, Governor Edmund G. Brown Jr. signed, new legislation adversely affecting all redevelopment agencies throughout California (RDAs). The new legislation consists of two budget "trailer bills" commonly known as ABxl 26 (AB 26) and ABxl 27 (AB 27), which added certain provisions to the California Health and Safety Code.

Generally, AB 26 suspends any "new business" (e.g., new or amended contracts, and new or increased debts or obligations) of RDAs as of the effective date of the legislation, eliminates RDAs as of October 1, 2011, and provides for the designation of successor agencies to wind down the operations of the dissolved RDAs expeditiously. AB 27 establishes an "alternative voluntary redevelopment program" allowing each RDA to continue its operations despite AB 26, in exchange for its counterpart city's commitment to pay significant annual remittances to the local county auditor-controller.

On July 18, 2011 the Agency adopted Resolution R-4680 that among other things authorizes a certain *Allocation Reduction* for the purpose of the Fiscal Year 2012 AB 27 Remittance to the Low and Moderate Income Housing Fund of the Centre City and North Park redevelopment project areas.

On July 29, 2011 the California Department of Finance (DOF) notified the Agency that San Diego's AB 27 remittance amount for Fiscal Year 2012 is \$69,255,216 ("FY 2012 Remittance"). The City timely appealed the FY 2012 Remittance on the primary basis that the Agency's issuance of bonds in 2010 warrants a reduction in DOF's calculation by approximately \$13 million. In mid-October 2011, DOF denied the City's appeal.

On August 1, 2011, the City enacted the "opt-in" ordinance under Section 34193(a) of AB 27, committing the City to utilize redevelopment funds provided to the City by the Agency in order to make the FY 2012 Remittance and all future annual remittance payments in accordance with AB 27, thereby ensuring the Agency's continued operation and ongoing exemption from AB 26.

On August 2, 2011, the City and Agency executed a certain *Remittance Agreement* obligating the Agency to transfer to the City funds sufficient for the City to make all future annual remittance payments required by AB 27.

The California Supreme Court ("Supreme Court") issued an order on August 11, 2011, later amended on August 17, 2011 ("Amended Order"), in the pending litigation that seeks to overturn AB 26 and AB 27. The Amended Order effectively prevents the Agency from relying upon the City's earlier enactment of the opt-in ordinance.

Under the Amended Order, all of Part 1.8 of AB 26 (consisting of sections 34161 through 34169.5), as well as Section 34194(b)(2) of AB 27, are presently operative provisions with respect to all redevelopment agencies, and all other provisions of AB 26 and AB 27 are presently "stayed" or suspended pending the outcome of the litigation on its merits. There is nothing in the Amended Order that specifically precludes the Agency from approving a proposed budget amendment, particularly where the purpose of the amendment is to achieve future compliance with the payment obligations under AB 27.

The Supreme Court established an expedited briefing schedule in the pending litigation and expects to issue a final written opinion on the merits by January 15, 2012 (i.e., the deadline for the first installment of the FY 2012 Remittance under AB 27). It is anticipated that the Supreme Court will lift the Amended Order upon its issuance of the final written opinion.

While the outcome of the pending litigation is unknown at this time, the actions recommended in this report have been prepared based on the hypothetical assumption the Supreme Court will uphold AB 27. If AB 27 is upheld, the Supreme Court may require the first installment of the Fiscal Year 2012 Remittance to be paid as early as January 15, 2012, consistent with the language of AB 27. By proceeding with the conditional budget amendments before the Supreme Court issues its final opinion, the City and the Agency will avoid a situation in which the City is unable to make the first installment of the Fiscal Year 2012 Remittance in a timely manner. A tardy payment of the Fiscal Year 2012 Remittance could result in the involuntary dissolution of

the Agency. Should the Supreme Court conclude that AB 27 is illegal or unenforceable, the budget amendments outlined in this report would become automatically inoperative.

SUMMARY:

Based on a hypothetical assumption that the Supreme Court will uphold AB 27, this action calls for the City and the Agency to amend their respective annual budgets to make the FY 2012 Remittance, effectively shifting redevelopment funds from local redevelopment projects to other purposes dictated by the State. Attachment 1 to this report summarizes the budget amendments by Managing Entity and by Project Area that are proposed to enable the Agency to make the \$69,255,216 AB 27 Remittance for Fiscal Year 2012. The accounting detail of the Agency budget amendments is provided in Attachment 2. The accounting detail of the Cooperation Agreement (City) budget amendments is provided in the *Cooperation Agreement Budget Amendment and Funds Transfer Schedule*, Attachment 3.

Use of Cooperation Agreement Monies: The majority of the monies to be utilized for the FY 2012 Remittance are monies previously transferred to the City in accordance with the Cooperation Agreement. In those instances, the Cooperation Agreement project(s) will be defunded and the monies will be returned to the Agency. The Agency in turn will transfer the monies to the City's account for actual remittance to the County Auditor-Controller. AB 27 specifically requires all remittance payments to be made by the City, not the Agency.

The Budget Amendment Summary (Attachment 1) provides a listing of projects impacted by the AB 27 Remittance.

Use of Low and Moderate Income Housing Monies: On July 18, 2011 the Agency adopted Resolution R-4680 that among other things authorizes a certain *Allocation Reduction* for the purpose of the Fiscal Year 2012 AB 27 Remittance to the Low and Moderate Income Housing Fund of the Centre City and North Park redevelopment project areas. Based on analysis performed by staff during the period that has passed since July 18 and the subsequent receipt of the official AB 27 remittance amount from DOF on July 29, staff has determined the need to revise the Allocation Reduction as follows:

- The allocation reduction of the tax increment applied to the low and moderate income housing fund for the Centre City Redevelopment Project Area will be reduced from \$9,600,000 to \$8,878,000.
- An allocation reduction of the tax increment applied to the low and moderate income housing fund for the Southeastern San Diego Merged Redevelopment Project Area ("Southeastern Project Area") of \$1,074,160 will be made.
- An allocation reduction of the tax increment applied to the low and moderate income housing fund for the Horton Plaza Redevelopment Project Area of \$580,000 will be made.
- The allocation reduction of the tax increment applied to the low and moderate income housing fund of the North Park Redevelopment Project Area shall remain unchanged at \$270,000

As is the case for Centre City and North Park, the use of low and moderate income housing funds from the Southeastern and Horton Plaza project areas are based on certain AB 27 findings that there are insufficient other monies to meet debt and other obligations, current priority

program needs, or obligations under the Remittance Agreement. As is the case in Centre City and North Park, the low and moderate income housing funds from the Southeastern and Horton Plaza project areas will be repaid, with the distinction that the Southeastern monies are proposed to be repaid over a 10 year term, rather than the three year term for the Centre City, Horton Plaza, and North Park monies. Staff has determined that the 10 year repayment period is reasonably necessary to avoid undue financial hardship and to ensure the continued financial viability and success of the Southeastern Project Area. A summary of the use of low and moderate income housing funds for the FY 2012 Remittance is provided in the table below.

Use of Low and Moderate Income Housing Funds for the FY 2012 AB 27 Remittance			
Project Area	Allocation Reduction of Low and Moderate Income Housing Funds for the AB 27 Remittance authorized by R-4680, adopted on July 25,2011	Revised Allocation under Proposed Resolution	Repayment Due under Proposed Resolution
Centre City	\$9,600,000	\$8,878,000	6/30/15
North Park	\$270,000	\$270,000	6/30/15
Horton Plaza	\$0	\$580,000	6/30/15
Southeastern Merged	\$0	\$1,074,160	6/30/22
Total	\$9,870,000	\$10,802,160	

Distribution of Remittance obligation among the Project Areas: State DOF has notified the Agency that the FY 2012 Remittance is \$69,255,216. Staff determined the proportional amount allocated to each project area by applying the State DOF formula to its project areas, then made certain adjustments in instances where impacts to project areas were particularly acute, due to limited funds or restrictions on the uses of funds available.

FISCAL CONSIDERATIONS: The proposed budget amendment as specified in this report effectively shifts funds from Agency and Cooperation Agreement (City) accounts as required to enable the Agency to remit \$69,255,216 to the City pursuant to the certain Remittance Agreement executed by the City and the Agency on August 2, 2011. The City in turn, will remit those funds to the County Auditor-Controller pursuant to AB 27. The funds provided to the County Auditor-Controller would be deposited into the Special District Allocation Fund and Educational Revenue Augmentation Fund pursuant to AB 27. *The actions recommended in this report have been prepared based on the hypothetical assumption the Supreme Court will uphold AB 27. Should the Supreme Court conclude that AB 27 is illegal or unenforceable, the budget amendments outlined in this report would become automatically inoperative.*

EQUAL OPPORTUNITY CONTRACTING: Not Applicable.

PREVIOUS AGENCY and/or COUNCIL ACTION:

1. The City Council enacted Ordinance O-20078 on August 1, 2011, committing the City to make annual remittances to the San Diego County Auditor-Controller as required by AB 27 from funds transferred by the Agency to the City and authorizing compliance with the alternative voluntary redevelopment program established by AB 27 (Voluntary Program) in order to allow the Agency's continued operation.
2. The Agency and City Council approved a certain Remittance Agreement on July 18, 2011 and authorized the execution and delivery of all documents and actions necessary and appropriate to facilitate the Agency's participation in the Voluntary Program.

3. On July 18, 2011, the Agency made certain findings and determinations in accordance with AB 27 and authorized the reduction of its allocation to the low and moderate income housing fund by \$9,870,000 during Fiscal Year 2012.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS:

The Agency and City Council held a public hearing regarding the Voluntary Program on July 18, 2011. The City Council enacted Ordinance O-20078 on August 1, 2011 to “opt-in” to the Voluntary Program.

CCDC: The CCDC Board recommended approval of the proposed budget amendment as applicable to the Centre City and Horton Plaza redevelopment project areas on September 28, 2011. The Centre City Advisory Committee (“CCAC”) recommended approval of the proposed budget amendment on September 21, 2011.

SEDC: The SEDC Board recommended approval of the proposed budget amendment as applicable to the Southeastern Project Area on October 26, 2011.

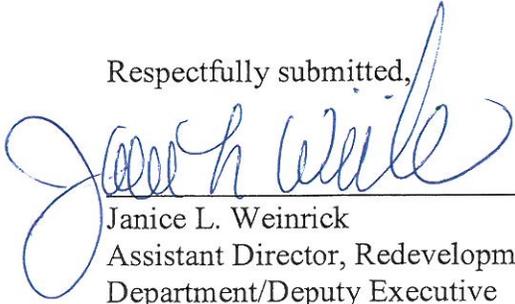
City Redevelopment Project Area Committees (PACs): The *North Park PAC* has received updates on the impact of the State Budget on the project area and recommended enactment of the “opt-in” ordinance on July 12, 2011 with an 11-0 vote. The *City Heights PAC* received information pertaining to AB 27 and the proposed impact to the project area on July 11, 2011. The *Barrio Logan PAC* received information regarding the State Budget and proposed cuts affecting the project area on July 20, 2011 voted 11-0 to recommend enactment of the opt-in ordinance.. The *College Community PAC* received information on the proposed amendment on August 2, 2011. The *Crossroads PAC* received information on the budget amendment and provided input on August 25, 2011. The *Eastern Area Community Planning Committee* received information on the proposed College Grove Redevelopment Project Area budget amendment on September 13, 2011. The *Grantville Stakeholders Committee* received a budget update including potential impacts due to AB 27 on July 11, 2011. The *Linda Vista Planning Group* received regular updates throughout the year on the impacts of the State Budget. The *San Ysidro PAC* received information on the impacts of the State Budget and the opt-in ordinance on July 26, 2011. The *North Bay PAC* received information on the impact of the budget amendment on the project area on July 13, 2011.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include all of the communities within the boundaries of the Agency’s fourteen redevelopment project areas. The budget adjustments required for the FY 2012 Remittance will greatly reduce the Agency’s ability to implement capital projects, community revitalization activities, and affordable housing projects.

ENVIRONMENTAL REVIEW: The proposed budget amendments and related actions are not a “project” within the meaning of the California Environmental Quality Act (“CEQA”), specifically CEQA Guidelines section 15378(b)(4), and thus are not subject to CEQA pursuant to CEQA Guidelines section 15060(c)(3).

Respectfully submitted,



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Department/Deputy Executive
Director, Redevelopment Agency



Approved: Jay M. Goldstone
Chief Operating Officer/
Assistant Executive Director,
Redevelopment Agency

Attachments:

1. AB 27 Budget Amendment Summary
2. Agency Budget Amendment – Accounting Detail
3. Cooperation Agreement Budget Amendment and Funds Transfer Schedule