



THE CITY OF SAN DIEGO

DATE ISSUED: January 24, 2012 REPORT NO: RA-12-01

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of January 31, 2012

SUBJECT: Amended and Restated Enforceable Obligation Payment Schedule

COUNCIL DISTRICTS: 1, 2, 3, 4, 5, 6, 7, 8

STAFF CONTACT: Janice Weinrick 236-6250, Scott Mercer 236-6242

REFERENCES: 1. September 13, 2012 Redevelopment Agency Staff Report
No. RA-11-29
2. September 13, 2011 Enforceable Obligations Schedule

REQUESTED ACTION: Should the Redevelopment Agency (“Agency”) adopt an Amended and Restated Enforceable Obligation Payment Schedule that updates and lists all of the Agency’s “enforceable obligations” as defined in California Health Safety Code Section 34167(d)?

STAFF RECOMMENDATION: It is recommended that the Agency adopt the Amended and Restated Enforceable Obligation Payment Schedule.

SUMMARY: The California Supreme Court (“Court”) issued its final opinion in the redevelopment related litigation action, California Redevelopment Association et al. v. Ana Matosantos et al. (“CRA Litigation”), on December 29, 2011. The Court upheld Assembly Bill 1X 26, the “Dissolution Act” (“AB 26”) as constitutional. AB 26 is the legislation that freezes redevelopment activities and dissolves community redevelopment agencies throughout the State of California. The Court struck down Assembly Bill 1X 27, the “Voluntary Program Act” (“AB 27”) as unconstitutional. AB 27 is the legislation that would have allowed cities and counties to continue to operate their redevelopment agencies by making continuation payments to the State, counties, school districts and other local public agencies. The Court decision became final immediately upon its issuance.

Under this decision, each redevelopment agency will be dissolved and its rights, powers, duties and obligations will vest in its successor agency as of February 1, 2012. The successor agency and an oversight board will oversee the winding down of each former agency’s affairs and the liquidation of the former agency’s unencumbered assets for distribution to counties, school districts and other local public agencies.

The Court’s final opinion in the CRA Litigation established a modified set of deadlines for the implementation of AB 26, to account for the circumstance in which the Court had suspended the Dissolution Provisions for approximately four months while deciding the merits of the CRA Litigation. The Agency’s initial EOP Schedule included payments for the period of time through



Redevelopment Agency

1200 Third Avenue, Suite 1400, MS 56D • San Diego, CA 92101-4110
Tel (619) 236-6700 Fax (619) 533-3219

December 2011. That schedule is no longer current and requires amendments to include payments for the months January 2012 through June 2012. In addition, additional details to describe the background and authority for the listed Enforceable Obligations have been added, and Enforceable Obligations that have been fulfilled have been deleted.

BACKGROUND: AB 26 and AB 27 were passed by the State Legislature on June 15, 2011, and signed by Governor Edmund G. Brown Jr. on June 28, 2011. AB 26 immediately suspended all new redevelopment activity and dissolved all redevelopment agencies effective October 1, 2011. AB 27 established a voluntary alternative program whereby a redevelopment agency would be exempt from the dissolution measures of AB 26 if the legislative body were to enact an ordinance on or before October 1, 2011 to comply with the requirements of the voluntary payment program provided with AB 27. The Agency elected to "Opt-In" and to comply with the requirements of AB 27 on August 1, 2011.

The Court issued a partial stay of AB 26 and AB 27 on August 11, 2011 and further modified the stay on August 17, 2011. The modification expanded the operative provisions of AB 26 to include Sections 34167.5 through 34169.5, thereby activating provisions including but not limited to, the requirement for agencies to prepare and submit Enforceable Obligation Payment Schedules, even those like San Diego who elected to Opt-In to the Voluntary Payment Act.

The Agency prepared and adopted an Enforceable Obligation Payment Schedule ("EOP Schedule") on September 13, 2011 and submitted the document to the State Controller, State Department of Finance, and the County Auditor-Controller pursuant to Chapter 2 of Part 1.8 of AB 26 ("*Redevelopment Agency Responsibilities*"), specifically Health and Safety Code Section 34169(g). In compliance with AB 26, the EOP Schedule included payment schedules for the months September 2011 through December 2011. (See References on page 1 of this report for links to Redevelopment Agency Staff Report No RA-11-29, dated September 13, 2011 and associated EOP Schedule.)

The Court's final opinion on December 29, 2011, set in motion short time frames for agencies and legislative bodies to take necessary actions to comply with the unwinding of the redevelopment agencies pursuant to AB 26. In response, the City took action to serve as the Agency's successor agency (similar in some respects to a receiver) on January 10, 2012. In addition, an Amended and Restated EOP Schedule (See Attachment) has been prepared for Agency approval to include payments for the months January 2012 through June 2012, to provide further details regarding the background and authority for the listed Enforceable Obligations, and to delete obligations that were paid in full on or before December 31, 2011.

DISCUSSION

Under AB 26, a successor agency is designated to administer existing enforceable obligations of each former redevelopment agency and to wind down the operations of each former redevelopment agency, subject to the review and approval of the oversight board and certain State entities, including the State Controller and the State Department of Finance ("DOF"). Redevelopment agencies are responsible to make all scheduled payments and perform

obligations for enforceable obligations, set aside or maintain required reserves, preserve all assets, and minimize liabilities until the agencies are dissolved, at which time the rights, powers, duties and obligations of the former agencies will vest in its successor agencies.

It is necessary to amend the September 13, 2011 EOP Schedule to facilitate the transition to the successor agency on February 1, 2012. The Amended and Restated EOP Schedule includes payment obligations for the period of January 1, 2012 through June 30, 2012, expanded project summaries providing greater supporting information on enforceable obligations, and the deletion of obligations that were fulfilled during the time frame of the initial EOP Schedule. The Amended and Restated EOP Schedule will be transmitted to the City as successor agency, the County Auditor-Controller, the State Controller and the DOF following approval by the Agency in compliance with Section 34169(g)(2). Section 34169(i) allows the DOF to review the approved EOP Schedule and any amendment thereto during a relatively brief period of time and, if deemed appropriate, to return the EOP Schedule to the Agency for consideration of any requested modifications. Specifically, the DOF may request a review within three business days after receipt of the EOP Schedule or any amendment thereto. If the DOF timely requests a review, then the DOF has ten calendar days from the date of its request to complete the review. The Amended and Restated EOP Schedule will not be considered "final" until it has been approved or deemed approved by the DOF.

Although AB 26 is not entirely clear on this point, Section 34177(a)(1) appears to require the City as successor agency, at the earliest practicable opportunity, to approve the most recent EOP Schedule that has been adopted by the Agency, but to remove from the EOP Schedule any agreements between the City and the Agency, subject to limited exceptions (as discussed below). Section 34177(a)(1) also states that any amendment to the EOP Schedule is subject to the approval of the oversight board as soon as the oversight board has sufficient members to form a quorum. It is not entirely clear whether the DOF or any other entity has the right to review and approve amendments to the EOP Schedule made by the City as successor agency. At this time, the agreements between the City and the Agency generally have been retained in the Amended and Restated EOP Schedule because legal arguments can be made to the effect that those agreements have been validated by operation of law and cannot be retroactively voided by AB 26. This issue has not yet been resolved by the Supreme Court's decision or any other court.

The City as successor agency will be required to prepare and certify a Recognized Obligation Payment Schedule ("ROP Schedule") covering the next six-month period, July 1, 2012 through December 31, 2012, and submitted to the Oversight Board for approval no later than April 15, 2012. The ROP Schedule is submitted to the State Controller and DOF and posted on the successor agency web site following approval by the Oversight Board. The successor agency may only make payments listed on the approved ROP Schedule. This process is repeated every six months for the following six-month period, on a "forward-looking" basis.

What is considered an Enforceable Obligation?

When the dissolution provisions of AB 26 become effective on February 1, 2012, the definition of an "enforceable obligation" will be the same in most respects, but narrower in other respects,

compared to the definition that applies during the current freeze period in Part 1.8 of AB 26 that applies through January 31, 2012. The definition of an “enforceable obligation” under the dissolution provisions will continue to include several main categories, as follows:

- (i) outstanding bonds, including debt service and reserve set-asides, owed by the former redevelopment agency;
- (ii) loans of moneys borrowed by the former redevelopment agency for a lawful purpose;
- (iii) payments required by the federal government, preexisting obligations to the State or obligations imposed by State law (except for statutory and contractual pass-through payments), and legally enforceable payments required in connection with the employees of the former such as pension payments and obligations conferred through a collective bargaining agreement;
- (iv) judgments or settlements entered by a court of competent jurisdiction, and binding arbitration decisions against the former redevelopment agency;
- (v) any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy;
- (vi) contracts or agreements necessary for the administration or operation of the successor agency, such as leases of office space and insurance expenses; and
- (vii) amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of the former redevelopment agency, which had been earlier deferred.

The dissolution provisions will cause the definition of an “enforceable obligation” to be narrowed in a couple of important ways, as follows:

- (i) Subject to limited exceptions, enforceable obligations will exclude all agreements, contracts, and arrangements between the former redevelopment agency and its sponsoring city. [Sections 34171(d)(2), 34178(b)]
- (ii) Enforceable obligations will exclude agreements between the former redevelopment agency and other public agencies, to perform services or provide funding for governmental or private services or capital projects outside of redevelopment project areas that do not provide benefit to the redevelopment project and thus were not properly authorized. [Section 34171(d)(3)]

During the Council meeting on January 23, 2012, a representative of the San Diego Housing Federation asserted that funding for the future production of affordable housing should be included in the Amended and Restated EOP Schedule. While some jurisdictions in California may be adopting this view, the language and overall intent of AB 26 does not provide substantial support for the position that an “enforceable obligation” includes the future production of affordable housing where no contractual commitment presently exists for construction of the affordable housing units by a particular developer at a specific site. AB 26 requires the City as successor agency to transfer the unencumbered balance of the Low and Moderate Income Housing Fund to the County Auditor-Controller for pro rata distribution to local taxing entities.

Moreover, AB 26 does not provide a successor agency with any future property tax revenue stream to carry out any new affordable housing projects and programs. As a result, the Amended and Restated EOP Schedule will not include funding for the future production of affordable housing in the absence of an existing contractual commitment for a particular project. It is possible that future legislation, such as Senate Bill 654, will provide at least a partial source of funding for the future production of new affordable housing, such as allowing the successor agency to retain and expend the entire current balance of the Low and Moderate Income Housing Fund for the intended purposes. If such legislation is enacted, the City as successor agency can amend the payment schedules at the appropriate time to reflect the circumstances then in effect.

During the same Council meeting, representatives of the Girls Think Tank asserted that funding for the installation of public restrooms in the downtown area should be included in the Amended and Restated EOP Schedule on the basis of a prior Council action expressing support for the installation of such public restrooms and on the basis of an alleged oral contract for the purchase and installation of such public restrooms. However, no legally binding and enforceable contract exists at this time for the Agency's purchase, installation or long-term maintenance of the public restrooms; thus, the Agency has no "enforceable obligation" in that regard. Yet, line item 323 in the Cooperation Agreement between the City and the Agency provides substantial funding for the future installation of the downtown public restrooms. This project and all other projects in the Cooperation Agreement are being included in the Amended and Restated EOP Schedule. To the extent that the Cooperation Agreement remains a valid agreement in the future despite certain provisions of AB 26 seeking to invalidate most agreements between the City and the Agency, then the City could administer the installation of the downtown public restrooms utilizing Cooperation Agreement funds.

Is there a prescribed structure for the EOP Schedule?

Section 34169(g) requires the EOP Schedule to contain the following information about each obligation: (1) the project name associated with the obligation, (2) the payee, (3) a short description of the nature of the work, product, service, or thing of value for which payment is to be made, and (4) the amount of payments obligated to be made, by month.

Are there posting requirements?

The statute also requires the EOP Schedule and subsequent amendments to be adopted by the Agency Board at a public meeting and posted on the Agency's website.

Are there formal review requirements beyond the Agency action?

Section 34169(i) allows the DOF to review the approved EOP Schedule and any subsequent amendments during a relatively brief period of time and, if deemed appropriate, to return the EOP Schedule and subsequent amendments to the Agency for consideration of any requested modifications. For practical purposes, however, the Agency could not consider any comments submitted by the DOF in response to the Amended and Restated EOP Schedule because the Agency is scheduled to dissolve on February 1, 2012. Therefore, the City as successor agency should consider any such comments when deciding whether to ratify the Amended and Restated EOP Schedule in February 2012.

FISCAL CONSIDERATIONS: The fiscal impact to the City as successor agency is dependent on the review and potential challenge of the Amended and Restated EOP Schedule. AB 26 limits the “administrative cost allowance” available to the City as successor agency. The actual level of funds that the City may utilize in fulfilling its role as the Agency’s successor agency will not be known until the DOF and State Controller review and potentially challenge items listed in the Amended and Restated EOP Schedule, and until any such challenge is finally resolved. Under Section 34167(h), the City as successor agency is generally prohibited from remitting payment for any purpose, other than payments required to meet obligations with respect to bonded indebtedness, unless the payment relates to an “enforceable obligation” listed in the Amended and Restated EOP Schedule adopted by the Agency Board and approved or deemed approved by the DOF. The Amended and Restated EOP Schedule will remain the document that governs payments made by the City as successor agency until the ROP Schedules have been reviewed and approved by the appropriate entities, as described immediately below. The subsequent ROP Schedules and administrative budgets to be approved by the City as successor agency, subject to certification by the County Auditor-Controller and review and approval by the Oversight Board, will determine the exact amount of administrative cost allowance available to the successor agency for every six-month fiscal period. The administrative cost allowance for a successor agency is defined in Section 34171(b) as an amount that, subject to the approval of the Oversight Board, is payable from the property tax revenue of up to five percent (5%) of the property taxes allocated to the successor agency for the 2011-12 fiscal year and up to three percent (3%) of the property taxes allocated to the Redevelopment Obligation Retirement Fund administered by the successor agency for each fiscal year thereafter. The DOF has indicated in a recent guidance document that the payment schedules under AB 26 may include expenses for ongoing project management and construction inspection where required on specific projects, without subjecting such expenses to the cap on the administrative cost allowance.

Any costs to the successor agency beyond those allowed by AB 26 would impact the City’s general fund. These costs could be offset by increased property tax revenues distributed to the City, given that a portion of the tax increment revenue previously allocated to the Agency will be reallocated to the City and other local taxing entities as general property taxes, to the extent that the City as successor agency does not need the continued property tax revenue in order to pay enforceable obligations. It is anticipated that the City will receive approximately 17% of the general property taxes that are reallocated to local taxing entities in accordance with AB 26.

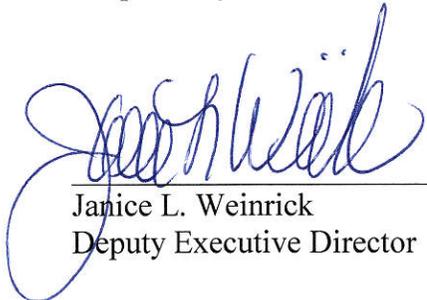
ENVIRONMENTAL REVIEW: The proposed action is not a “project” within the meaning of the California Environmental Quality Act (“CEQA”), specifically CEQA Guidelines section 15378(b)(4)-(5), and thus is not subject to CEQA pursuant to CEQA Guidelines section 15060(c)(3). The approval of the Amended and Restated EOP Schedule is a fiscal activity that relates to the future administration of redevelopment operations and is being conducted in order to comply with the provisions of AB 26. The approval of the Amended and Restated EOP Schedule will not result in the commitment to any new, specific project that may cause a physical change in the environment.

PREVIOUS AGENCY and/or COUNCIL ACTION: On July 18, 2011, the City Council introduced an Opt-In Ordinance pursuant to AB 27, whereby the City commits to utilize solely redevelopment funds to make annual payments to the County Auditor-Controller in exchange for the Agency's exemption from the provisions of AB 26 and the Agency's continued operation pursuant to California Community Redevelopment Law. In addition, the Agency and City approved a Remittance Agreement, whereby the Agency will transfer redevelopment funds to the City in an amount sufficient for the City to make the required payments to the County Auditor-Controller. The Opt-In Ordinance was enacted by the City Council, and signed by the Mayor, on August 1, 2011. The Agency approved an EOP Schedule on September 13, 2011, covering the period of September 1, 2011 through December 31, 2011. The City took action to serve as the Agency's successor agency under AB 26 on January 10, 2012.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Redevelopment Project Area Committees (PACs), the Southeastern Economic Development Corporation Board, the Centre City Development Corporation Board, and pertinent community groups have received updates on the legislative matters that have been considered by the State Legislature since January 2011. There has been no opportunity for additional formal community participation or public outreach on the Amended and Restated EOP Schedule due to the short time frame provided to prepare the Amended and Restated EOP Schedule for Agency consideration and transmittal to the City as successor agency since the Court decision on the CRA Litigation.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders include the communities within the boundaries of the fourteen (14) redevelopment project areas as well as the communities outside of the project areas who benefit from the revitalization of the project areas. Key stakeholders also include the Agency's vendors, consultants, development partners and the City.

Respectfully submitted,



Janice L. Weinrick
Deputy Executive Director



Jay M. Goldstone
Assistant Executive Director

Attachment: Amended and Restated Enforceable Obligation Payment Schedule