

MEMORANDUM OF LAW

DATE: March 20, 1990

TO: Maureen Stapleton, Deputy City Manager

FROM: City Attorney

SUBJECT: Redevelopment Agency Set-Aside Funds

On March 14, 1990, by oral request, you asked this office to discuss the legality of using the Low- and Moderate-Income Housing Set-Aside Funds ("Set-Aside Funds") mandated by California Redevelopment Law (California Health and Safety Code section 33000 et seq.) to help provide funding for the Housing Trust Fund. I have reviewed the memorandum prepared by Roger A. Clay, Jr., of the law firm of Goldfarb & Lipman for the Housing Trust Fund Task Force (attached) and while I find it correct in its conclusions, several issues should be highlighted to provide you with further guidance in this area.

Discussion

Generally speaking, Health and Safety Code section 33334.2(a) requires that:

Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing and improving the community's supply of low- and moderate-income housing available at affordable housing cost . . . to persons and families of low or moderate income . . . and very low income

Section 33670 sets up the mechanism by which tax increment funding may be used as a method of financing projects in a redevelopment area. Specifically, such funds should be used "to pay the principal of and interest on loans, moneys advanced to, or indebtedness . . . incurred by the redevelopment agency to finance or refinance . . . the redevelopment project." See Section 33670(b).

Thus, out of the tax increment used to finance redevelopment projects (such financing used to pay off various forms of indebtedness), a minimum of 20 percent must be used for low- and moderate-income and very low income housing, except in certain instances which are not relevant to this discussion (see Health and Safety Code section 33334.2(a)(1-3)).

Health and Safety Code section 33334.2(c) allows for a broad range of activities to satisfy the mandate to increase and improve housing. However, it is not without restrictions. A redevelopment agency may use Set-Aside Funds inside the project

area from which the Set-Aside Funds were generated, or outside the project area if the agency and the legislative body make a finding, by resolution, that the expenditure of funds outside the project area will benefit the project area. This would appear to require that findings be made by the Redevelopment Agency and the City Council on a case-by-case basis for each expenditure of Set-Aside Funds outside a project area.

Another requirement which must be taken into account is that Health and Safety Code section 33334.3(a) requires that Set-Aside Funds be "held in a separate Low and Moderate Income Housing Fund until used."

Finally, as set out in the memorandum prepared by Goldfarb and Lipman (see pages 136 and 137), there is usually a requirement that the housing generated with Set-Aside Funds remain available as low income housing for a certain period of time, but not less than 10 years.

Conclusion

In conclusion, the California Legislature has set up very precise ways in which Set-Aside Funds are to be used and monitored. Of importance to your inquiry, the following must be accounted for:

1. Set-Aside Funds must be used to provide housing to persons of certain income levels. See Sections 33334.2(a) and 33334.6.
2. If Set-Aside Funds are used outside of the redevelopment project area, the Redevelopment Agency and City Council must pass a resolution making findings of fact that the housing activity contemplated will benefit the redevelopment project area. See Section 33334.2(g).
3. Set-Aside Funds must be placed in a separate Low and Moderate Housing Fund until used. See Section 33334.3(a).
4. Each activity paid for out of Set-Aside Funds must be monitored to ensure the required availability period is set out and observed.

If you have any questions regarding this discussion or need additional information, please contact me.

JOHN W. WITT, City Attorney
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Deputy City Attorney

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