

MEMORANDUM OF LAW

DATE: March 22, 1990

TO: Maureen Stapleton, Deputy City Manager

FROM: City Attorney

SUBJECT: Tax Increment Housing Set-Aside

You have asked this office to review a second memorandum prepared by Roger A. Clay, Jr., of Goldfarb & Lipman (attached), dated August 16, 1989, on the subject of Tax Increment Housing Set-Aside funds ("Set-Aside Funds"). Specifically, you have inquired as to whether the Redevelopment Agency ("Agency") can adopt the income standards or guidelines proposed by the Housing Trust Fund Task Force for the Agency's Set-Aside Funds.

This Memorandum of Law will address that issue but should be read in conjunction with the Memorandum of Law prepared for you on March 20, 1990, on the same general topic.

DISCUSSION

The issue of income requirements for use by the Agency in the disbursal of its Set-Aside Funds should be looked at in the context of two separate requirements of the California Redevelopment Law (Health and Safety Code section 33000 et seq.). The first involves the income requirements as set out in Section 33334.2(a) and the second involves the housing element of any redevelopment plan. Each will be dealt with separately.

Income Requirements

California Health and Safety Code section 33334.2(a) states in pertinent part:

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 as defined by Section 50052.5, to persons of low

or moderate income as defined by Section 50093, and very low income households, as defined in Section 50105. . . .

Section 50052.5 defines the term "affordable housing cost" in the context of lower income households to mean that housing cost shall not exceed 25 percent of gross income. It does allow the

Agency to adopt alternative percentages of income pursuant to Section 50462(f) which will be discussed below.

Section 50093 defines "persons of low or moderate income" to mean persons and families:

whose income does not exceed 120 percent of area median income, adjusted for family size by the department State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

It does allow higher income limitations in some instances, but that does not appear to be pertinent at this time.

The statute goes on to say:

"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105 and lower income households as defined in Section 50079.5, and includes persons and families of low income, persons and families of moderate income, and middle-income families.

Finally, while the Department of Housing and Community Development defines the term "income," a redevelopment agency is not prevented from "adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons and families for programs of the agency or department. . . ."

Section 50105 states that persons and families of very low income households are those whose "incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937."

Lower income households, as defined by Section 50079.5, are those persons and families who do not exceed the qualifying

limits for such "as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937."

Section 50462(f) holds that the Department of Housing and Community Development may "initiate, develop and propose regulations for adoption by the agency and review regulations proposed by the board of the Agency" as pertains to the maximum percentage of income paid towards housing costs which may be paid by low or moderate income persons or families.

This somewhat tedious recitation points out that while departures from the income standards set out in Section 33334.2(a) are allowed, presumably to fit the needs within a community, the California Redevelopment Law has set

forth a scheme for the use of Set-Aside Funds.

Redevelopment Plans

Section 33330 of the Health and Safety Code holds that a redevelopment agency is to prepare and approve a redevelopment plan for every project area. The plan should spell out how its adoption will help in the elimination of blight and is prepared in consultation with the planning commission and a project area committee if one is found necessary or desirable pursuant to Section 33385.

The plan is ultimately presented to the legislative body for approval and must be accompanied by a report which contains, among other things, a complete analysis of the housing needs of the project area and an analysis for how the redevelopment plan shall meet those needs. Section 33352.

As you can see, a redevelopment plan must take into account the housing needs for its project area. This pre-supposes that each project area may have different housing needs dependent in part on what is already existing, what sort of housing must be replaced (see Section 33334.5) and what is required for a balanced housing market.

CONCLUSION

While it is possible to use the standards or guidelines proposed by the Housing Trust Fund Task Force in some instances, the issue is fairly complex.

Redevelopment plans are developed and adopted to meet the needs of a particular community. Using the scheme developed in Redevelopment Law, it allows for income levels to be determined

on an area by area basis (see Health and Safety Code section 50093) rather than a city-wide basis as the Task Force is proposing. It would have to be determined whether it was in a particular project area's best interest (in its goal of eliminating blight) to follow the proposed standards or guidelines. In this vein, it should be pointed out that a blanket recommendation that only non-Set-Aside Funds be used to develop housing for people above the Task Force's standards or guidelines, (see the attached Goldfarb & Lipman report, page 222) is probably not feasible. The best use of the tax increment funds must be determined on a project basis only. Section 33670.

Nothing in this memorandum should be interpreted to mean that the Redevelopment Agency could not work with the Housing Authority as both share a joint goal of providing affordable housing. However, given the requirements set out in this office's prior Memorandum of Law, dated March 20, 1990, and the concerns expressed here, it is suggested that any actual proposals by the Agency and Housing Authority to use Set-Aside

Funds be carefully reviewed by this office to ensure compliance with the law.

If you have any further questions, please contact me.

JOHN W. WITT, City Attorney

Allisyn L. Thomas

Deputy City Attorney

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Attachment

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