



THE CITY OF SAN DIEGO

DATE ISSUED: January 5, 2012 REPORT NO.: RTC-12-03

ATTENTION: Council President and City Council
Docket of January 10, 2012

ORIGINATING DEPT: Redevelopment Department

SUBJECT: Election to serve as the Successor Agency and Retain Housing
Assets and Functions pursuant to the Dissolution Act - Assembly
Bill 1X 26 ("AB 26").

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

STAFF CONTACT: Janice Weinrick (619) 236-6250

REQUESTED ACTION: That the City Council ("Council") designate the City of San Diego ("City") to serve as the successor agency to the Redevelopment Agency of the City of San Diego ("Agency") and to retain the Agency's housing assets and assume the Agency's housing responsibilities pursuant to AB 26, subject to a reservation of rights.

STAFF RECOMMENDATION: Approve resolution to effectuate the requested actions.

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 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 ("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. Numerous AB 26 implementation effective dates and deadlines passed during the effectiveness of the Court's interim stay, which was in effect for a total of four (4) months. The Court revised most of the effective dates or deadlines arising before May 1, 2012, to take effect four (4) months later.



Among the revised deadlines, on or before January 13, 2012, the City may:

- elect to or not to serve as the successor agency to the Agency pursuant to section 34173(d)(1) of AB 26; and
- elect to or not to retain the housing assets and functions previously performed by the Agency pursuant to section 34176(a) of AB 26.

BACKGROUND

On June 15, 2011, the California State Legislature approved several “trailer bills” to implement the State Budget for Fiscal Year 2012, and later sent them to California Governor Edmund G. “Jerry” Brown Jr. for approval and signature. Two of those trailer bills, AB 26 and AB 27, modified California Community Redevelopment Law and became effective upon Governor Brown’s signature on June 28, 2011.

AB 26 (the “Dissolution Act”) immediately suspended all new redevelopment activities by restricting the authority of redevelopment agencies to take actions or engage in activities to incur new or increased debt, obligations and redevelopment activities; set out to dissolve redevelopment agencies effective October 1, 2011; and provided for the establishment and designation of successor agencies and oversight boards to “unwind” the affairs of the dissolved redevelopment agencies.

AB 27 (the “Voluntary Program Act”) established a voluntary alternative program whereby a redevelopment agency would be exempt from the dissolution measures of AB 26 if the legislative body of the community (such as the City) enacted an ordinance on or before October 1, 2011, requiring that the City pay specified sums of money on an annual basis to the local county auditor-controller for deposit into the Special District Allocation Fund and Educational Revenue Augmentation Fund. The City enacted such an ordinance (“Opt-In Ordinance”) on August 1, 2011, whereby the City committed 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 would transfer redevelopment funds to the City in an amount sufficient for the City to make the required payments to the County Auditor-Controller under AB 27.

On July 18, 2011, the California Redevelopment Association (“CRA”), the League of California Cities (“League”), and other entities filed a petition of writ of mandate with the Court, requesting that the Court declare AB 26 and AB 27 unconstitutional and that the Court issue a stay, suspending the effectiveness of both bills, until the Court rules on the constitutionality of the two bills.

As mentioned above, the Court issued its final opinion on December 29, 2011, upholding AB 26 and striking down AB 27. Attachment 1 provides a summary of the Court decision and related AB 26 implementation actions, prepared by the law firm of Goldfarb & Lipman LLP.

DISCUSSION

Should the City elect to serve as the Successor Agency to the Redevelopment Agency?

The City as Successor Agency would be required to:

- continue to make payments due for Enforceable Obligations (Attachment 2 provides a summary of Enforceable Obligations),
- maintain reserves required by indentures governing outstanding redevelopment agency bonds,
- perform obligations required pursuant to any Enforceable Obligation,
- prepare a Recognized Obligation Payment Schedule for each six-month period of each fiscal year, including funding sources for approval by the Oversight Board,
- remit unencumbered balance of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including but not limited to the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency,
- continue to oversee development of properties until the contracted work has been completed or transferred to other parties,
- ensure that bond proceeds are used for the purposes that the bonds were sold, unless the purposes can no longer be achieved, in which case bond proceeds can be utilized to defease the bonds,
- dispose of assets and properties of the former redevelopment agency expeditiously, in a manner to maximize value,
- remit proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency to the County auditor-controller for distribution as property tax proceeds,
- enforce all former agency rights for the benefit of the taxing entities, including collecting loans, rent and other revenues due to the agency,
- effectuate the transfer of housing functions and assets to the appropriate entity,
- expeditiously unwind the affairs of the agency, and
- prepare an administrative budget for approval by the Oversight Board.

Section 34173(e) of AB 26 states: “The liability of any successor agency, acting pursuant to the powers granted under the act adding [Part 1.85 of AB 26], shall be limited to the extent of the total sum of property tax revenues it receives pursuant to [Part 1.85] and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency.” This provision has been commonly interpreted as shielding a city’s general fund from additional risk or exposure if the city carries out its role as the successor agency.

What happens if the City elects not to be the Redevelopment Agency’s Successor Agency?

In the event the City elects not to serve as the Agency’s successor agency, the County Auditor-Controller would make a determination as to the first local agency (city, county or special district in the county of the former redevelopment agency) that elects by duly adopted resolution to become the successor agency. If no local agency elects to serve, then a “designated local authority” would be formed by the Governor’s appointment of three county residents to serve as the governing board of the authority. If the City does not serve as the

successor agency, then the City will have virtually no control over the orderly disposition of the Agency's unencumbered assets, and the City may be unable to docket any items for formal consideration in the process of winding down the Agency's affairs.

Should the City elect to retain the housing assets and functions previously performed by the Redevelopment Agency?

AB 26 also provides that the city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If the City elects to retain the responsibility for performing these functions, then all rights, powers, duties and obligations would be transferred to the City, except for a portion of housing funds as described below. The City would also be responsible for assuring compliance with the Agency covenants and restrictions, maintaining the Agency assets as necessary and implementing existing obligations.

What happens if the City does not elect to retain the housing assets and functions previously performed by the Redevelopment Agency?

In the event the City does not elect to take on these responsibilities, then these same rights, powers, duties and obligations would be transferred to the Housing Authority of the City of San Diego ("Housing Authority"). The Housing Authority would also be responsible for assuring compliance with the Agency covenants and restrictions, maintaining the Agency assets as necessary and implementing existing obligations. One potential disadvantage in allowing the Housing Authority to serve as the housing successor agency is that AB 26 does not clearly allow an administrative cost allowance under section 34171(b) of AB 26 to be allocated partially to the Housing Authority. Subsequent legislation may be needed to clarify the legislative intent on this point.

AB 26 contains internal inconsistencies regarding the disposition of the Low and Moderate Housing Fund of the Agency upon its dissolution. However, the legislative intent appears to be as follows: Based on section 34177(d) of AB 26, the successor agency will remit the unencumbered balance of the Low and Moderate Income Housing Fund to the County Auditor-Controller for distribution to the taxing entities. Based on section 34181(c) of AB 26, the housing successor agency will retain the encumbered balance of the Low and Moderate Income Housing Fund in order to fulfill any existing enforceable obligations related to housing functions. Again, subsequent legislation may be needed to clarify the legislative intent on this point.

FISCAL CONSIDERATIONS: None with this action. AB 26 Sections 34171 and 34177 provide language as to the meaning of such terms as the successor agency's "Administrative budget" and the "Administrative cost allowance" that is payable from property tax revenues deposited with the successor agency. These items are subject to approval by the oversight board. Adequate information is not available at this time to determine what, if any, impact this would have on the City General Fund.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS: None

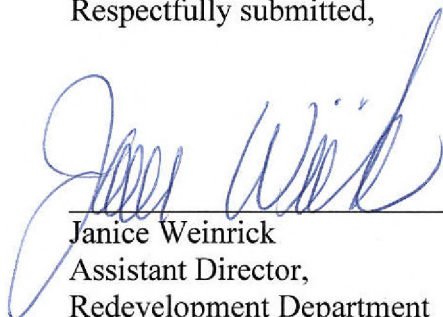
PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

EQUAL OPPORTUNITY CONTACTING INFORMATION (IF APPLICABLE): N/A

ENVIRONMENTAL IMPACT: The proposed 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).

KEY STAKEHOLDERS: The Agency and the City

Respectfully submitted,



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Redevelopment Department



Jay M. Goldstone
Chief Operating Officer,
City of San Diego

Attachments:

- Attachment 1 Goldfarb Lipman LLP – Summary of California Supreme Court Decision in *California Redevelopment Association v. Matosantos* and Related Implementation Actions
- Attachment 2 Enforceable Obligations Summary - AB 26 the “Dissolution Act”