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OFFICE OF THE CITY CLERK
OAKLAND

2011 JUL 14 PM 6:18

**REDEVELOPMENT AGENCY
AND THE CITY OF OAKLAND
AGENDA REPORT**

TO: Office of the City/Agency Administrator
ATTN: P. Lament Ewell, Interim City Administrator
FROM: Community & Economic Development Agency
DATE: July 19, 2011
RE: A City Ordinance Continuing The Existence Of The Redevelopment Agency Of The City Of Oakland And Declaring Compliance With Payment Obligations Of Part 1.9, Division 24, Of The California Health And Safety Code

SUMMARY

The adopted state budget for 2011-12 and related legislation eliminates redevelopment agencies, but allows redevelopment agencies to continue in existence if its sponsoring city agrees to make certain continuation payments for the benefit of the state. In order for a redevelopment agency to remain in existence, its city will need to adopt a so-called "continuation ordinance" continuing the agency and agreeing to comply with the payment obligation.

Also under the legislation, all major activities of redevelopment agencies, except for those required under existing contracts, were suspended as of June 29, 2011. The legislation provides that this suspension would be lifted upon adoption of the continuation ordinance.

The City Council is being requested to approve the attached ordinance continuing the Redevelopment Agency in order to (1) prevent the Redevelopment Agency from being eliminated and (2) lift the suspension and allow the Agency to continue operating. The proposed continuation ordinance provides that any payments would be made under protest, and that the ordinance would be null and void should the legal challenge to the state legislation be successful. Passage of the ordinance does not require that the City determine at this time how to fund the continuation payments, and staff will return to Council in the fall with recommendations on how to make the payments.

FISCAL IMPACT

The City is allowed to make the continuation payment from any available source, but given the recent budgetary problems the only available source would be the Redevelopment Agency. The exact amounts of Oakland's continuation payments are not known at this

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time. The state is required to provide the City with its calculation by August 1, 2011; however the California Redevelopment Association (CRA) has provided estimates based on formulas set forth in the legislation. CRA estimates Oakland would be required to make payments of approximately \$40 million in FY 2011-12 and ongoing annual payments of \$10 million beginning in FY 2012-13, with future payments increasing or decreasing with tax increment thereafter. Given the size of these payments, major adjustments will be needed in the Agency budget. Staff expects to return to the Council/ Agency Board after the recess in September with the proposed budget amendments identifying the funding sources for the continuation payments.

BACKGROUND

ABx1 26 and AB x1 27 were enacted by the state legislature and signed by the Governor effective June 29, 2011. ABx1 26 would dissolve redevelopment agencies as of October 1, 2011; however, ABx1 27 provides that, notwithstanding the elimination statute, a city that participates in a so-called "Alternative Voluntary Redevelopment Program," which obligates the city to make certain annual payments, will not have its redevelopment agency dissolved. The legislation requires a city to enact an ordinance by November 1, 2011, referred to as a "continuation ordinance," complying with the payment obligation and continuing the existence of the redevelopment agency, in order to avoid dissolution of its redevelopment agency.

ABx1 26 also suspended certain operations of redevelopment agencies effective immediately. Among other things, redevelopment agencies may not enter into new agreements, amend existing agreements, dispose of or acquire real property, issue bonds, or adopt or amend redevelopment plans. However, agencies may continue to perform under existing contractual obligations. The legislation provides that this suspension is lifted upon adoption of the continuation ordinance.

There have been several reports discussing previous proposals by the Governor to eliminate redevelopment, including written reports to the Community and Economic Development Committee on February 8th and 22nd; reports with actions to the Special Concurrent Meeting of the City Council and Agency Board on March 3, 2011; and the May 10, 2011 Community and Economic Development Committee and approved by the City Council/Agency Board on May 17, 2011.

In anticipation of possible Agency dissolution, at the March 3rd meeting the City and Agency approved various ordinances and resolutions (City Ordinance Nos. 13061 and 13062 C.M.S., City Resolution Nos. 83254 through 83256 C.M.S., and Agency Resolution Nos. 2011-0023 through 2011-0027 C.M.S.) for the following activities: (1) the transfer of various real properties from the Agency to the City, and from the City to the Agency, (2) the assignment of various commercial loans from the Agency to the City, and (3) funding commitments from the Agency to the City for certain previously approved and budgeted City improvements and programs.

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At the May 17th meeting the City and Agency approved an ordinance and various resolutions (City Ordinance No. 13068 C.M.S., City Resolution No. 83370 C.M.S., and Agency Resolution No. 2011-0045 C.M.S.) for the following activities: a City Ordinance Amending Ordinance Nos. 13061 and 13062 C.M.S. authorizing the sale of various City-Owned properties to the Redevelopment Agency, to remove 250 Fallon Street and 600-620 Washington Street, and to add the 12th Street Remainder Parcel; a City Resolution authorizing: 1) waiving advertising, competitive bid and request for proposals/qualifications requirements; and, 2) authorizing the City Administrator, or his designee, to purchase necessary design and other licensed professional services, construction labor and materials, design-build services and construction-manager at risk services on the open market for the design and construction of the redevelopment agency funded projects without return to the City Council; and a Agency Resolution amending Resolution Nos. 2011-0023 C.M.S. and 2011-0024 C.M.S. authorizing the purchase of various properties from the City, to remove 250 Fallon Street and 600-620 Washington Street, and to add the 12th Street Remainder Parcel.

PROJECT DESCRIPTION

The City Attorney's Office has drafted a continuation ordinance, attached. Under the proposed ordinance, the City declares that it will comply with the "Alternative Voluntary Redevelopment Program" obligations to make the continuation payment in order to remove the threat of Redevelopment Agency dissolution. The proposed ordinance provides that any payments would be made under protest, and that the City reserves the right to pursue legal challenges and recoup any payments made should a legal challenge be successful. The continuation ordinance would be null and void should the legal challenge to the state legislation be successful, and the effectiveness of the ordinance would be suspended should a stay be issued in the litigation challenging the legislation.

KEY ISSUES AND IMPACTS

Suspension of redevelopment activities. Approval of the continuation ordinance will end the current suspension of activities of the Redevelopment Agency. There are a number of Agency projects and programs that are being delayed because of this suspension, including:

- 1) New Façade and Tenant Improvement Grants in all redevelopment areas;
- 2) Agency loans from Commercial Lending/Oakland Business Development Corporation in Central City East, Central District and Coliseum;
- 3) Agency first time homebuyer loans throughout the City;
- 4) Agency residential rehabilitation loans in Central City East and West Oakland;
- 5) Agency seismic safety loans in Broadway/MacArthur/San Pablo, Central City East, Coliseum and West Oakland;

- 6) Use of as-needed economic consultants for analysis of proposed exclusive negotiating agreements (“ENAs”), disposition and development agreements (“DDAs”) and owner participation agreements (“OPAs”);
- 7) Amendment or execution of new ENAs, DDAs or OPAs, including:
 - a) 16th Street Train Station restoration OPA with BRIDGE;
 - b) Central City East-Foothill/Seminary DDA;
 - c) Coliseum Transit Village ENA;
 - d) Coliseum Foodsco ENA extension;
 - e) Fruitvale Transit Village ENA;
 - f) 1800 San Pablo ENA amendment;
- 8) Retainer for Julian Gross to assist with Community Benefits and Project Labor Agreement negotiations per the direction of the Mayor’s Office;
- 9) Army Base environmental remediation construction contracts to complete RAP/RMP work;
- 10) New or amended Army Base leases and other leases for Agency property;
- 11) Coliseum Transit Village predevelopment loan;
- 12) Coliseum Lexus Business Incentives Agreement-Certificate of Completion;
- 13) Coliseum Clara St/Edes Ave ENA;
- 14) Acquisition of 9400 block International Blvd parcels in the Coliseum;
- 15) Central City East Parkway Theatre loan;
- 16) Foreclosure on the 7th and Campbell sites owned by Oakland Community Housing, Inc.;
- 17) Amendment of the relocation plan for the Oaks Hotel;
- 18) Amendment of the loan and approval of the relocation plan and replacement housing plan for the California Hotel; and
- 19) Continued lease/mortgage payments for East Oakland Community Project’s transitional shelter.

Litigation challenging state legislation. As of the date of writing of this report, CRA and the League of California Cities were preparing to file a lawsuit with the California Supreme Court challenging the constitutionality of the redevelopment legislation, and asking the Court for a stay of the effectiveness of the legislation pending final resolution. It is expected that the decision on the stay request will be issued in August. The City has confirmed with CRA and the League that adoption of the continuation ordinance will not jeopardize or compromise the litigation. Since the ordinance would be null and void should the legal challenge to the state legislation be successful, and would be suspended should the legislation be stayed, adoption of the ordinance will not lock the City into making the payments if the legislation is overturned. Adoption of the continuation ordinance will not have any other adverse consequences to the City.

Funding of continuation payments. The state legislation does not require the continuation ordinance to set forth the source for funding the continuation payments. Staff will return to Council in the fall with recommendations on how to make the payments and required budget adjustments. It would be premature at this time to decide how to fund the

payments, since (1) the City has not received its formal state calculation on the amount of the payment, and (2) staff has not completed the analysis of potential funding sources and prepared its recommendations for funding the payments, which will need to be conducted during the summer recess. The first continuation payment would not be required until January 15, 2012.

SUSTAINABLE OPPORTUNITIES

Economic: The legislation will allow the Agency to continue projects and programs that will provide business and employment opportunities and encourage development activities in various redevelopment areas, improving economic vitality and increasing tax revenues for the City and Agency.

Environmental: The legislation will allow the Agency to continue projects and programs that will improve the infrastructure and the built environment including streets, public facilities and parks; remove hazardous material contamination and demolish blighted buildings.

Social Equity: The legislation will allow the Agency to continue projects and programs that will be required to meet the City's (1) Local & Small Local For Profit and Not For Profit Business Enterprise Program, (2) Local Employment Program and (3) 15% Apprenticeship Program, increasing employment and business opportunities for Oakland residents and businesses.

DISABILITY AND SENIOR CITIZEN ACCESS

The various projects and programs that the Agency will be allowed to continue through this legislation will be required to meet current standards for disability and senior citizen access, including federal Americans with Disabilities Act (ADA) and California's Title 24 accessibility requirements. Many of these projects and programs will result in significant access improvements.

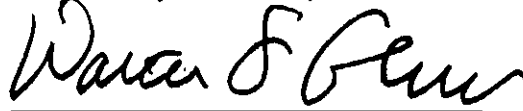
RECOMMENDATIONS AND RATIONALE

Immediate approval of the continuation ordinance will lift the current suspension of Redevelopment Agency activities, and allow the Redevelopment Agency to move forward with projects that will benefit residents, workers and businesses throughout a significant portion of Oakland.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council adopt the attached legislation continuing the existence of the Redevelopment Agency of the City Of Oakland and declaring compliance with payment obligations of Part 1.9, Division 24, of the California Health and Safety Code.

Respectfully submitted,



Waiter S. Cohen, Director
Community & Economic Development Agency

Reviewed By: Gregory Hunter, Deputy Director
Economic Development and Redevelopment

PK for
GHT

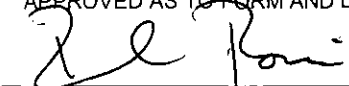
Prepared By: Patrick Lane, Redevelopment Manager

APPROVED AND FORWARDED TO
THE CITY COUNCIL:



Office of the City/Agency Administrator

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DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE CONTINUING THE EXISTENCE OF THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND AND DECLARING COMPLIANCE WITH PAYMENT OBLIGATIONS OF PART 1.9, DIVISION 24, OF THE CALIFORNIA HEALTH AND SAFETY CODE

WHEREAS, ABx1 26 and AB x1 27 were enacted by the state legislature and signed by the governor effective June 29, 2011; and

WHEREAS, ABx1 26 added Part 1.8 and Part 1.85 to Division 24 of the California Health and Safety Code, and ABx1 27 added Part 1.9 to Division 24 of the California Health and Safety Code; and

WHEREAS, Part 1.8 suspended certain operations of redevelopment agencies effective immediately, and

WHEREAS, Part 1.85 would dissolve redevelopment agencies as of October 1, 2011; and

WHEREAS, Part 1.9 provides that, notwithstanding Part 1.8 and Part 1.85, a community that participates in a so-called "Alternative Voluntary Redevelopment Program," which obligates the community to make certain payments; will not have its redevelopment agency be dissolved or face continued suspension; and

WHEREAS, California Health and Safety Code Section 34193 requires a community to enact an ordinance by November 1, 2011, complying with Part 1.9 and continuing the existence of the redevelopment agency, in order to avoid dissolution of its redevelopment agency; and

WHEREAS, the City of Oakland wishes to lift the suspension imposed on the Redevelopment Agency of the City of Oakland by Part 1.8 and wishes to avoid the dissolution of the Redevelopment Agency under Part 1.85 in order to continue

the work of the **Redevelopment Agency** in redeveloping blighted communities in Oakland; and

WHEREAS, the City of Oakland wishes to adopt an ordinance pursuant to California **Health and Safety Code Section 34193** under threat of dissolution of the **Redevelopment Agency**; and

WHEREAS, a lawsuit challenging the constitutionality of **ABx1 26** and **ABx1 27** has been filed; and

WHEREAS, while the City currently intends to make these payment, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that the provisions of **ABx1 26** and/or **ABx1 27** are unconstitutional or otherwise unlawful; and

WHEREAS, the City is reserving the right, regardless of any payments made pursuant to this **Ordinance**, to challenge the legality of **ABx1 26** and/or **ABx1 27**; and

WHEREAS, the City is the **Lead Agency** for purpose of environmental review under the California **Environmental Quality Act of 1970 ("CEQA")**; and

WHEREAS, the requirements of **CEQA** and the **CEQA Guidelines** as prescribed by the **Secretary for Resources** have been met because this action is exempt from **CEQA** under (each as a separate and independent basis) section 15061(b)(3) (no possibility of significant environmental effect), section 15320 (changes in organization of local agencies), section 15378(b)(4) (government fiscal activities without project commitment), and section 15378(b)(5) (organizational or administrative activities of government without physical changes to environment) of the **CEQA Guidelines**;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Pursuant to California **Health and Safety Code Section 34193**, the **City Council** hereby determines that the City of **Oakland** will comply with Part 1.9 of Division 24 of the California **Health and Safety Code**, including payment obligations thereunder, and the **Redevelopment Agency** of the City of **Oakland** will continue in existence.

Section 2. The **City Administrator** or his or her designee is authorized to execute documents, provide notices, and take whatever action is necessary with respect to this action, consistent with this **Ordinance** and its basic purposes.

Section 3. The **City Administrator** or his or her designee is authorized to file a notice of exemption for this action.

Section 4. Pursuant to Section 216 of the City Charter, this Ordinance shall be effective immediately upon final adoption by an affirmative vote of six or more members of the City Council; otherwise it shall become effective upon the seventh day after final adoption.

Section 5. Should a court of competent jurisdiction stay, restrain, or enjoin enforcement of Part 1.8 and/or Part 1.9 of Division 24 of the California Health and Safety Code, the effectiveness of this Ordinance shall be suspended during any such period of stay, restraint or injunction. Should a court determine that Part 1.8, Part 1.85, and/or Part 1.9 of Division 24 of the California Health and Safety Code are invalid or unlawful, the effectiveness of this Ordinance shall be suspended until all appeals are exhausted. Should there be a final court determination (including appeal) that Part 1.8, Part 1.85, and/or Part 1.9 of Division 24 of the California Health and Safety Code are invalid or unlawful, or should any such statute be repealed, this Ordinance shall be null and void. Any payments made hereunder shall be made under protest and without prejudice to the City's right to recover such payment amounts including interest thereon in the event that there is a final determination that Part 1.8, Part 1.85, and/or Part 1.9 are invalid or unlawful.

Section 6. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF AND
PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE CONTINUING THE EXISTENCE OF
THE REDEVELOPMENT AGENCY OF THE CITY OF
OAKLAND AND DECLARING COMPLIANCE WITH
PAYMENT OBLIGATIONS OF PART 1.9, DIVISION
24, OF THE CALIFORNIA HEALTH AND SAFETY
CODE**

NOTICE AND DIGEST

This ordinance is adopted pursuant to California Health and Safety Code Section 34193 to provide that the City of Oakland will comply with Part 1.9 of Division 24 of the California Health and Safety Code, including the payment obligations thereunder, and to provide that the Redevelopment Agency of the City of Oakland will continue in existence.