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2009 APR 16 PM 1:04

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

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: April 28, 2009

RE: **Adopt An Agency Resolution Amending Resolution Number 01-85 To Decrease The Redevelopment Agency's Contribution Of An Additional 5% To The Low And Moderate Income Housing Fund By An Amount Sufficient To Provide A Proportional Share Of The Amount Required To Be Paid To The Educational Revenue Augmentation Fund (ERAF) In FY 2008-09, And In FY 2009-10 And FY 2010-11 If A Payment To The ERAF Is Required, and Reallocating \$2,504,000 of FY 2009-10 ERAF Payments to Non-Housing Redevelopment Funds**

SUMMARY

A resolution has been prepared for the Redevelopment Agency to temporarily authorize deposits to the Low and Moderate Income Housing Fund (LMIHF) in an amount less than the 25 percent specified in the policy adopted by the Agency in December 2001. This would permit a technical amendment to the FY08-09 budget adopted in October 2008 to pay a portion of the mandatory payment to the Educational Revenue Augmentation Fund (ERAF) required by the State before funds are deposited to the LMIHF, since payments to ERAF may not be made from the LMIHF itself. The resolution would also permit similar adjustments in FY 2009-10 and FY 2010-11 if ERAF payments are again required by the State.

FISCAL IMPACT

There is no net fiscal impact from this action, to the LMIHF or to the Agency as a whole.

In the FY 2008-09 Redevelopment Agency Budget adopted in October 2008, the LMIHF was budgeted to make \$2.5 million in ERAF payments. Under the proposed resolution, the Project Areas would pay this \$2.5 million to the ERAF, and the Project Areas would reduce their contributions to the LMIHF by a corresponding \$2.5 million. The LMIHF would thus receive \$2.5 million less in contributions from project areas; but would also not be responsible for \$2.5 million in ERAF payments.

BACKGROUND

In December 2001, the Redevelopment Agency enacted Resolution Number 01-85 C.M.S., which established a policy to increase the deposit of funds to the LMIHF from the statutory

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minimum of 20 percent of gross tax increments to 25 percent of gross tax increments. Since FY 2001-02, the Agency has funded the LMIHF at this level.

In October 2008, the Redevelopment Agency adopted an amended budget that included both an increase in revenues and an expenditure of approximately \$8.25 million for a mandatory payment to the ERAF that was required by the State. As part of the amended budget, the Agency specified that \$2.5 million of the ERAF payment come from the LMIHF. That portion paid by the LMIHF was based on the LMIHF's proportionate share of net tax increment revenue received by the Redevelopment Agency after mandatory pass-through payments to other taxing entities.

KEY ISSUES AND IMPACTS

As part of the solution to the State's budget problems, legislation was enacted to require ERAF payments by redevelopment agencies for FY 2008-09. Payments are due no later than May 10, 2009.

The State legislation that requires the ERAF payment prohibits the use of LMIHF for this purpose. A Redevelopment Agency may borrow funds from its LMIHF, but those funds must be repaid to the LMIHF within ten years.

Because the amended budget specified that a portion of the ERAF payment come from the LMIHF, it is in conflict with State law.

POLICY DESCRIPTION

The Low and Moderate Income Housing Fund (LMIHF) has been in place since 1988. Until FY 2001-02, the Agency deposited 20 percent of gross tax increments into this fund as required by law. Since FY 2001-02, the deposits to the LMIHF have included both the mandatory 20 percent payment and a voluntary contribution of an additional 5 percent. These funds are used to support affordable housing activities, particularly the City's annual housing development Notice of Funding Availability (NOFA) and the Mortgage Assistance Program (MAP) for first-time homebuyers, and are the principal source of funds for the City and Agency's affordable housing programs.

The Educational Revenue Adjustment Fund was created by the State in the 1990s as a mechanism to shift State costs onto redevelopment agencies by requiring agencies to pay into a fund for public education, thereby reducing the amount that had to be paid from the State's own revenues. ERAF payments were discontinued several years ago, but the FY 2008-09 State budget requires a one-time payment into the ERAF by redevelopment agencies.

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It is not known at this time whether the State will require ERAF payments again for FY 2009-10 and FY 2010-11. This will depend on the State's budget situation and the outcome of the May 19, 2009 statewide election, which includes several revenue measures.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities from this action

Environmental: There are no environmental opportunities from this action.

Social Equity: There are no environmental opportunities from this action,.

DISABILITY AND SENIOR CITIZEN ACCESS

The actions requested in this report have no impact on disability and senior citizen access.

RECOMMENDATIONS AND RATIONALE

While the Agency cannot make a payment to the ERAF directly from the LMIHF, it does have the option of amending the 2001 policy to reduce the voluntary contribution of an additional five percent of gross tax increment in order to provide funds for a portion of the ERAF payment. The effect on housing programs is the same either way – funds for the NOFA would be reduced by approximately \$2.5 million. By amending the Agency's 2001 policy on deposits to the LMIFH, the FY 2008-09 budget can be adjusted to make this payment prior to depositing funds into the LMIHF, thereby ensuring that the Agency will be in compliance with State law.

Staff is also recommending that the Agency authorize a similar mechanism for FY 2009-10 and FY 2010-11 in the event that the State requires additional ERAF payments in those years.

A formal resolution is required from the Agency because this action would require an exception to the adopted policy requiring deposit of the extra five percent to the LMIHF.

ALTERNATIVE RECOMMENDATION

As an alternative, the Agency could leave the five percent contribution intact, and then borrow funds from the LMIHF for a portion of the ERAF payment. This approach would require that the funds be repaid to the LMIHF within ten years and would ensure that over the long run the LMIHF is made whole, thereby permitting more affordable housing activities. Requiring repayment would reduce the amount of redevelopment funds available for non-housing activities, and could have a negative impact on the fund balances in some redevelopment project areas if revenues are insufficient to make those payments on top of already planned activities. For this reason, staff recommends against this course of action.

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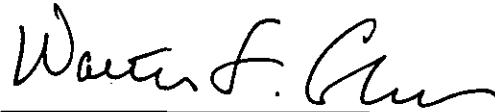
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ACTION REQUESTED OF THE CITY COUNCIL


Staff requests that the Agency adopt the resolution as described in this report, thereby creating a temporary exception to the policy requiring deposits of 25 percent of gross tax increments to the Low and Moderate Income Housing Fund in order to cover a portion of the cost of the mandatory payment into the Educational Revenue Adjustment Fund.,

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:

 Alan Rogan, Deputy Director
Housing and Community Development

Prepared by:

Jeffrey P. Levin
Housing and Community Development Division

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



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Approved as to Form and Legality


Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

AGENCY RESOLUTION AMENDING RESOLUTION NUMBER 01-85 C.M.S. TO DECREASE THE REDEVELOPMENT AGENCY'S CONTRIBUTION OF AN ADDITIONAL 5% TO THE LOW AND MODERATE INCOME HOUSING FUND BY AN AMOUNT SUFFICIENT TO PROVIDE A PROPORTIONAL SHARE OF THE AMOUNT REQUIRED TO BE PAID TO THE EDUCATIONAL REVENUE AUGMENTATION FUND (ERAF) IN FY 2008-09, AND IN FY 2009-10 AND FY 2010-11 IF A PAYMENT TO THE ERAF IS REQUIRED, AND REALLOCATING \$2,504,000 IN FY 2008-09 ERAF PAYMENTS TO NON-HOUSING REDEVELOPMENT FUNDS

WHEREAS, on December 11, 2001, the Redevelopment Agency adopted Resolution Number 01-85 C.M.S. to require the deposit annually into the Low and Moderate Income Housing Fund of an additional amount equal to five percent of the gross tax increment revenues from all redevelopment project areas, if certain conditions are met; and

WHEREAS, redevelopment law requires redevelopment agencies to make payments to the Educational Revenue Augmentation Fund (ERAF) for Fiscal Year 2008-09; and

WHEREAS, the Redevelopment Agency's required ERAF payment for Fiscal Year 2008-09 is approximately \$8.5 million; and

WHEREAS, it is uncertain whether additional such payments will be required in Fiscal Years 2009-10 and 2010-11; and

WHEREAS, the amended Agency Budget for Fiscal Year 2008-09 specifies that \$2,504,000 of this amount shall come from the Low and Moderate Income Housing Fund (LMIHF); and

WHEREAS, California Redevelopment Law does not permit ERAF payments directly from the Agency's Low and Moderate Income Housing Fund unless such payments are reimbursed by the Agency within ten years; and

WHEREAS, payment of the entire ERAF payment from non-housing Agency funds would jeopardize the Agency's ability to carry out other priority redevelopment activities; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby amends Resolution Number 01-85 C.M.S. to reduce the Agency's additional contribution of funds to the LMIHF for Fiscal Year 2008-09 by \$2,504,000 in order to allow this amount to be used to pay a portion of the ERAF; and be it

FURTHER RESOLVED: That the Redevelopment Agency further amends Resolution Number 01-85 to permit a reduction of the Agency's additional contribution of funds to the LMIHF for Fiscal Years 2009-10 and 2010-11 by an amount equal to (a) the LMIHF's percentage share of tax increment received by the Agency net of any pass-through requirements times (b) the amount of the total ERAF payment, should such payments be required; and be it

FURTHER RESOLVED: That the Agency's budget for FY 2008-09 is hereby amended in accordance with the foregoing provisions to reallocate \$2,504,000 of ERAF payments from the LMIHF to non-housing Agency funds; and be it

FURTHER RESOLVED: That the Agency Administrator is hereby authorized to take all necessary actions with regard to such payments consistent with this Resolution and its basic purpose.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California