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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2009 APR 30 PM 6:38

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Public Works Agency
DATE: May 12, 2009

RE: Resolution Directing The City Administrator To Join The California Statewide Communities Development Authority's CaliforniaFIRST Program Which Will Make Property Tax-Based Financing Available To Oakland Property Owners For Solar Power Generation Systems And Energy Efficiency Improvements

SUMMARY

A resolution has been prepared directing the City Administrator to join the California Statewide Communities Development Authority's (CSCDA) CaliforniaFIRST sustainable energy financing program. The CaliforniaFIRST concept uses voluntary tax assessments to finance solar power and energy efficiency projects. The program began in Berkeley as a new way for property owners to finance the relatively high initial costs of energy-related building improvements that create a net environmental benefit and recover their cost over their useful life.

CSCDA is in the process of designating Renewable Funding, LLC (headquartered in Oakland) as the CaliforniaFIRST statewide program operator.

FISCAL IMPACT

The fiscal impact to the City for joining CaliforniaFIRST would be limited to the staff costs for bringing the necessary legislation to the City Council. The City can choose to increase CaliforniaFIRST's effectiveness in Oakland by promoting the program. However there are no funds identified for promotion and outreach activities. As the program administrator, CSCDA would establish an assessment district and finance the associated costs, including legal, financial, tax, and bond related expenses. CSCDA and Renewable Funding would also provide capital for the initial loans, thus assuming all financial risk.

The sustainable energy financing program is an opt-in program and will not place an additional tax burden on non-participants.

BACKGROUND

The City of Berkeley spent two years developing the BerkeleyFIRST program, officially establishing a Sustainable Energy Financing District in September 2008. BerkeleyFIRST is similar to Mello-Roos law, a type of financing well-known to local governments and the bond market. Berkeley was able to establish the program with its charter city authority.

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BerkeleyFIRST enables property owners to borrow money from the Sustainable Energy Financing District to install solar photovoltaic electric systems, with the cost to be repaid over 20 years through a special tax on their property tax bills. Depending on future funding, BerkeleyFIRST may expand funding to solar thermal and major energy efficiency projects.

Berkeley conducted an open solicitation and contracted with Renewable Funding to purchase the bonds and provide administrative services for the program. The program has received national attention because it allows property owners to install solar photovoltaic electric systems with relatively little upfront cost. The only initial cost to property owners is a \$1,000 deposit paid to contractors (the maximum allowed under state law). Interest rates are fixed throughout the financing period and set at 3.25% above the 10-year U.S. Treasury Note rate, in addition to a 1% administrative surcharge, resulting in a 7.2% overall interest rate as of April 6, 2009. Additionally, since the solar improvement is permanently affixed to the property, the tax obligation stays with the property; if the property is transferred or sold, the new owners will be responsible for the balance of the tax obligation.

Building upon the BerkeleyFIRST concept, the state legislature passed urgency measure AB 811 in July 2008, which authorized contract assessment districts in charter and general law cities. The passage of AB 811 authorized county, regional, and statewide agencies to pursue large-scale sustainable energy financing programs. A county, regional, or statewide program would theoretically spread overhead and financing costs over a much larger market area than a municipal program, making the program more feasible and encouraging broader retrofit participation. Also, administrative duties would be concentrated in an outside agency, thus minimizing the burden on a city.

On March 24, 2009, the Sonoma County Board of Supervisors and Water Agency announced that it would create a \$100 million energy efficiency and water conservation loan program, called the Sonoma County Energy Independence Program. It is the first such large-scale sustainable energy financing program.

The California Statewide Communities Development Authority (CSCDA), a joint powers authority of which the City is a member, is currently developing a statewide sustainable energy financing program called CaliforniaFIRST under the framework of AB 811. CSCDA has already conducted an open solicitation and selected Renewable Funding as the program operator. CSCDA would establish an AB 811 assessment district in Alameda County for participating communities, from which Oakland property owners could borrow money to install solar photovoltaic electric systems and energy efficiency improvements such as lighting efficiency retrofits, heating and air conditioning system efficiency improvements, and possibly weatherization and insulation. Loans would be repaid through a line item charge on the owners' property tax bills over 20 years. CSCDA is still working out the final details of the program, but expects to launch CaliforniaFIRST by June 2009.

Alameda County (in partnership with StopWaste.Org) and the Association of Bay Area Governments are each separately considering similar programs under the framework of AB 811. However, neither program is close enough to implementation to include in this report.

The state legislature is currently considering SB 279, which would authorize Mello-Roos financing to include renewable and energy efficiency improvements for charter and general law cities. If passed, the bill would resolve some legal concerns that are associated with AB 811. Under Mello-Roos, the lien would have first position seniority over a mortgage, whereas the position is ambiguous under an AB 811 contract assessment district.

CaliforniaFIRST may elect to convert their program to Mello-Roos financing if SB 279 is adopted, reducing the amount of legal work compared to AB 811 financing, and potentially resulting in significant cost savings. Additionally, SB 279 offers greater program flexibility, including the ability to finance projects for new construction in addition to developed properties.

On a Federal level, Congressman Chris Van Hollen (MD) introduced the National Home Energy Savings Revolving Fund Act on March 17, 2009. The legislation would allow local governments to provide homeowners with zero-interest loans to make certified home energy savings improvements. These loans would then be paid back at a net savings to participating homeowners through their property taxes. The Department of Energy would administer the fund in consultation with the State Energy Advisory Board. It is not immediately clear if local governments would be able to recover administration costs under this legislation.

KEY ISSUES AND IMPACTS

The City has multiple options for implementing a sustainable energy financing program. CaliforniaFIRST is the recommended program because it is expected to be available before the end of 2009, and it allows the City to leave and or join another program at any time. Although there are some outstanding legal concerns about CaliforniaFIRST's use of AB 811 contract assessment districts, staff believes they will likely be resolved before the program is operational.

Sustainable energy financing programs merit consideration because they allow property owners to spread out the high upfront costs associated with sustainable energy improvements. By reducing the upfront cost of installing solar photovoltaic electric systems and energy efficiency improvements, a financing program encourages the widespread adoption of these technologies. This will support the goals of optimizing energy use and minimizing energy costs and greenhouse gas emissions in the Oakland community to be set forth in the Oakland Energy and Climate Action Plan.

Property tax-based programs also have competitive interest rates and allow for transferability. Property owners can install a sustainable energy improvement knowing that if they transfer or sell the property, the repayment obligation for the improvement is transferred as well. The loan

application process is easier compared to that of a financial institution; for instance, a credit check is not required because the loan is secured by the property, not the owner. While this makes it easier for more property owners to participate, it also means that overleveraged property owners could possibly get further into debt. Finally, by promoting the market for sustainable energy improvements, the City would be supporting green jobs in and around Oakland. Property owners must choose installers or contractors that are registered with the California Solar Initiative (CSI), a statewide program that offers cash incentives on solar photovoltaic and solar thermal systems. CSI is administered jointly by the California Public Utilities Commission and the California Energy Commission.

In implementing a sustainable energy financing program, the City can choose from several options:

- Create an Oakland-only municipal program similar to BerkeleyFIRST
- Join a county, regional, or statewide program offered by:
 - CSCDA (CaliforniaFIRST)
 - Association of Bay Area Governments (ABAG)
 - Alameda County

Create an Oakland-only municipal program: Using Oakland's charter city status to develop and administer a municipal program like BerkeleyFIRST is feasible, but it would carry significant startup and ongoing costs. The City of Berkeley set important precedents in developing a municipal sustainable energy program, and their legislative and administrative processes are replicable. However, developing a municipal program based on special tax financing districts would still require a lengthy legislative process. In addition, the City would need to commit significant administrative and financial resources for the initial setup and loans. Such a program would take time to implement; note that BerkeleyFIRST has been under development for two years, with two projects under the program to date. Finally, Berkeley received nearly pro bono services because of its first-mover status, a financial opportunity that Oakland would not receive were the City to develop its own municipal program.

Join a County, Regional, or Statewide Program: Joining a county, regional, or statewide program based on AB 811 contract assessment districts makes better fiscal sense. Such a program would spread overhead and financing costs over a much larger market area, making the program less costly than a municipal program. Additionally, administrative duties and financial risk would be concentrated in an outside agency, thus minimizing the City's effort.

There are some legal concerns associated with AB 811 contract assessment districts that still need to be addressed. When a property owner takes out a loan to finance a sustainable energy improvement, a lien is placed on the property. There is some debate as to whether that lien has first position seniority in the event of foreclosure. Several attorneys have issued unsecured

opinions stating that the lien would have to be paid back before the mortgage, but a court ruling may be necessary to eliminate ambiguity, which would incur significant legal costs. Additionally, some mortgage contracts have language that specifically prohibits any liens be placed on the property with senior position relative to the mortgage. AB 811 programs must make it clear that property owners are responsible for checking the terms of their mortgage contracts to identify any conflicts with tax-based financing agreements. Despite the outstanding legal concerns associated with AB 811, the fiscal advantages of a large-scale program make it a better option compared to developing a new municipal program exclusively for Oakland.

CSCDA (CaliforniaFIRST): CSCDA has issued an RFP, and has selected Renewable Funding, LLC as the program operator. It is working out legal matters before launching the CaliforniaFIRST program by June. As a joint powers authority, CSCDA will establish contract assessment districts in all participating municipalities, and it will handle all administrative duties in partnership with Renewable Funding. CSCDA has the capacity and expertise to administer the program, having developed the Statewide Community Infrastructure Program (SCIP), a public financing program that has operated since 2003. Similarly, Renewable Funding is a known service provider, having developed the BerkeleyFIRST program. Note that “warehouse” financing will be done through CSCDA and Renewable Funding; as they will fund the initial loans and costs out of pocket, CSCDA and Renewable Funding will thus assume the program’s financial risk.

ABAG: ABAG is considering the creation of a regional financing district, or Solar and Energy Efficiency (SEE) District, using its joint powers authority (the ABAG Finance Authority for Nonprofit Corporations), in partnership with PG&E. The SEE District would use the framework of SB 279, assuming the legislation is enacted by the State. ABAG staff has prepared a preliminary report, and are seeking direction from the ABAG Executive Board on whether to proceed to develop the program concept.

Alameda County: Alameda County is considering a countywide program in conjunction with StopWaste.Org. Their concept is to expand an AB 811 program beyond building improvements, to also include solid materials, water, wastewater, energy, and landscapes. As the entity responsible for collecting property taxes, Alameda County could also consolidate administrative functions, resulting in further cost savings. Alameda County is currently in an exploratory phase.

Although Alameda County and the Association of Bay Area Governments are developing their own programs, CaliforniaFIRST is the closest to implementation, and offers the best option for the City to extend sustainable energy financing to local property owners right away. Furthermore, CaliforniaFIRST is an opt-in program, and the City could choose to opt-out of the program or join another program in the future without penalty.

It should be noted that if SB 279 becomes law, charter and general law cities would be authorized to establish Mello-Roos special tax districts for sustainable energy improvements. The well-known Mello-Roos financing structure would eliminate the legal ambiguities associated with AB 811 contract assessment districts. It would also allow more flexibility for financing, including the ability to finance sustainable energy features with new construction in addition to developed property. If SB 279 is enacted by the State, CaliforniaFIRST would likely incorporate the SB 279 framework rather than the AB 811 framework, thus saving on legal costs. Additionally, a Mello-Roos special tax district might yield slightly better bond interest rates compared to an AB 811 contract assessment district.

PROGRAM DESCRIPTION

By adopting the attached resolution, the City Council would direct Staff to implement a program with CaliforniaFIRST.

After CSCDA and Renewable Funding have completed legal, process, and administrative details, they will distribute detailed program information to participating cities. By June, CSCDA plans to create an AB 811 Assessment District made up of all cities and counties that have passed authorizing resolutions. Renewable Funding will launch a website for each participating city or county to initiate property owner education. Information is expected to be provided to residents and businesses in October 2009. Property owners will voluntarily sign up, install approved sustainable energy projects (including solar photovoltaic, solar thermal, and major energy efficiency improvements), and receive funding.

The application process for property owners is relatively straightforward. They apply through an Oakland-specific website branded "OaklandFIRST," created and maintained by Renewable Funding. Renewable Funding collects documentation from the property owners to determine eligibility. There is an application fee of \$200-250, which Renewable Funding uses to recover its administrative costs, that is refunded if the participant is determined to be ineligible. Eligibility is typically determined by verifying (1) legal ownership of the property, (2) current payment of all mortgages, taxes, and other obligations secured by the property, and (3) the absence of significant involuntary liens or defaults. Property owners that participate in the program are required to apply for rebates offered by the California Solar Initiative (CSI) and PG&E. Participants are also eligible for state and federal tax credits. Property owners are allowed to choose any installer or contractor registered with the CSI.

After the improvement has been installed and a building inspection is completed, the applicant sends copies of the invoice, inspection notice, and rebate documents to Renewable Funding, which conducts a final verification. Residential energy efficiency improvements will require verification with the Home Energy Rating System (HERS) program, the Home Performance with ENERGY STAR program, and/or the GreenPoint Rated program. Other verification methods will be used for improvements involving solar power and commercial properties. Applicants will

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also sign (1) the program terms and disclosures, (2) a release of information from CSI and PG&E, and (3) a unanimous consent and liability release. The information is then passed on to CSCDA, which places a lien on the property, while Renewable Funding provides the property owner with a check. CSCDA and Renewable Funding plan to provide the initial “warehouse” line of credit to pay for the program, and CSCDA will later sell bonds to acquire more financing for the program. There will be a slight markup on interest rates for CSCDA to recover its administrative costs and for Renewable Funding to make a profit, but the overall interest rates are expected to be competitive with rates that are commonly available from financial institutions. The program has been designed such that utility bill savings from solar and energy efficiency improvements will typically be greater than repayment obligations – property owners can expect a net savings.

SUSTAINABLE OPPORTUNITIES

Economic: Local contractors who install solar photovoltaic systems and other sustainable energy improvements are likely to be hired by participating property owners. Additionally, the City can benefit from sales taxes associated with the improvements, in addition to potential property taxes increase in assessed property values.

Environmental: The recommended program will help the City achieve greenhouse gas reduction by means of renewable energy and energy efficiency improvements. This will also help achieve the goals set forth in AB 32 – California Global Warming Solutions Act of 2006.

Social Equity: The recommended program extends the opportunity for sustainable energy improvements to property owners who might not otherwise be able to afford them.

DISABILITY AND SENIOR CITIZEN ACCESS

This report and resolution will not have direct impacts on access for persons with disabilities or senior citizens.

RECOMMENDATION AND RATIONALE

Staff recommends the City Council approve the attached Resolution joining CaliforniaFIRST because:

- The fiscal impact to the City for joining CaliforniaFIRST would be limited to the staff costs for bringing adopting legislation to the City Council. Should the City choose to promote the program, an appropriation of funds would be necessary.
- The program allows the City to opt in and subsequently opt out.
- The City can authorize other providers to operate similar programs within Oakland.

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CaliforniaFIRST offers the most direct route to providing Oakland property owners with access to sustainable energy financing by the end of 2009. By designating CSCDA as the program administrator, the City does not have to take on the development, legislative, bonding, and administrative processes associated with a municipal program.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution directing the City Administrator to join the CaliforniaFIRST program, administered by CSCDA, to make property tax-based financing available to Oakland property owners for Solar Power Generation Systems and Energy Efficiency Improvements.

Respectfully submitted,



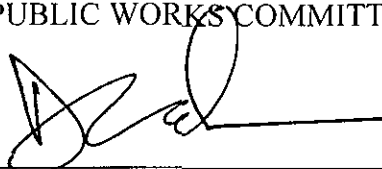
Raul Godinez II, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Assistant Director

Reviewed by:
Susan Kattchee, Environmental Services Manager

Prepared by:
Scott Wentworth, Energy Engineer
Environmental Services Division

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE



Office of the City Administrator

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OAKLAND CITY COUNCIL


City Attorney

2009 APR 30 PM 6:05 RESOLUTION NO. _____ C.M.S.

RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO JOIN THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY'S CALIFORNIAFIRST PROGRAM TO MAKE PROPERTY TAX-BASED FINANCING AVAILABLE TO OAKLAND PROPERTY OWNERS FOR SOLAR POWER GENERATION SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS

WHEREAS, the State of California Energy Action Plan has affirmed that sustainable energy improvements such as solar photovoltaic electric systems, solar thermal systems, and energy efficiency improvements as activities that create greenhouse gas emission reduction opportunities; and

WHEREAS, the City Council is committed to reducing greenhouse gas emissions in the Oakland community; and

WHEREAS, the California state legislature prioritized the reduction of greenhouse gas emissions with the passage of AB 32; and

WHEREAS, although sustainable energy improvements often recover their implementation cost over their useful lifetime, they can be prohibitively expensive to pay for as a one-time cost; and

WHEREAS, property tax-based financing enables property owners to install such improvements with little up-front cost, making payments as a line-item on property tax bills over 20 years; and

WHEREAS, Staff has identified the CaliforniaFIRST program as the best current opportunity to extend property tax-based sustainable energy financing to Oakland property owners; now, therefore be it

RESOLVED: That the City Council hereby authorizes and directs the City Administrator to join the California Statewide Communities Development Authority CaliforniaFIRST program.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California