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# CITY OF OAKLAND



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CITY HALL

FRANK H. OGAWA PLAZA - OAKLAND - CALIFORNIA  
94612

To: Members of the Oakland City Council

From: Councilmember Kalb

Date: June 28, 2013 - *REVISED REPORT*

**Subject: AN ORDINANCE (1) AMENDING OAKLAND MUNICIPAL CODE SECTION 15.68.100 THAT ESTABLISHED THE AFFORDABLE HOUSING TRUST FUND TO SET ASIDE AN AMOUNT EQUAL TO 25% OF FUNDS DISTRIBUTED TO THE CITY AS A TAXING ENTITY UNDER THE REDEVELOPMENT DISSOLUTION LAWS INTO THE AFFORDABLE HOUSING TRUST FUND, (2) AMENDING ORDINANCE NO. 12502 C.M.S. THAT ESTABLISHED A GENERAL FUND RESERVE POLICY TO EXEMPT THESE DISTRIBUTIONS FROM THE REQUIREMENT TO USE ONE TIME REVENUES TO PAY FOR ONE TIME EXPENSES OR REDUCE NEGATIVE FUND BALANCES, AND (3) APPROPRIATING AND TRANSFERRING SUCH DISTRIBUTIONS FROM THE GENERAL PURPOSE FUND TO THE AFFORDABLE HOUSING TRUST FUND**

In recognition of the severe loss of funding for affordable housing that accompanied the dissolution of the Redevelopment Agency, my office is putting forth the attached Ordinance, which would designate 25% of unbudgeted "boomerang" funds to be deposited into the City's Affordable Housing Trust Fund (the "AHTF"). Before Redevelopment Agencies were dissolved, the Low and Moderate Income Housing Fund, which received 25% of the funds generated by redevelopment, was the primary local funding source for affordable housing opportunities in Oakland. For example, in the three years 2009-2011, before the Redevelopment Agency was dissolved, the City awarded an average of over \$23 million per year in financing to create and preserve affordable housing. Since the dissolution of the Redevelopment Agency, and in conjunction with significant cuts in federal HOME funds received by the City, the City is left with only \$2 million each year in HOME funds to award for affordable housing development. In addition to housing development and preservation programs, the City's first-time homebuyer program was also cut significantly.

While the City no longer receives the funds generated by redevelopment, the City will receive a share of the property taxes (formerly redevelopment tax increment funds) that are now distributed to the various taxing entities. These "boomerang" funds fall into three primary categories:

1) The City's share of Due Diligence Review ("DDR") payments, which have already been received by the City. The City will not receive additional DDR payments, and these funds are

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already budgeted in the 2013-15 budget. The attached Ordinance only applies to funds received after July 1, 2013, and therefore would not designate any DDR boomerang funds for the AHTF;

2) The City's share of Redevelopment Property Tax Trust Funds ("RPTTF") payments, which are made every six months from unobligated RPTTF (what used to be known as tax increment). Some RPTTF boomerang funds are already included in the FY 2013-15 budget and are not subject to this Ordinance. The ongoing future deposit of 25% of the RPTTF boomerang funds into the AHTF would begin at the next budget cycle, starting July, 2015;

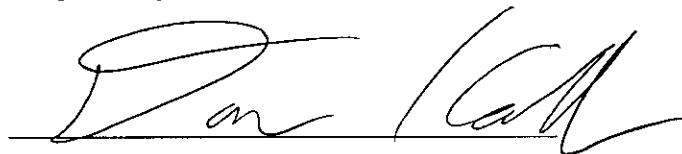
3) The City's share of one-time proceeds whenever the successor agency sells property or other compensation is paid to the taxing entities. The amount or timing of these one-time distributions is unknown at this time. Any one-time boomerang funds received by the City after July, 2013 would be subject to the Ordinance, with 25% of the City's distribution deposited into the AHTF.

For the receipt of one-time boomerang funds that might occur, the existing general fund reserve policy, adopted by City Ordinance No. 12502 and subsequently amended, would require that one time revenues be used only for one-time expenses or for reducing negative fund balances. The attached proposed Ordinance would exempt one-time future deposits of boomerang funds into the AHTF from this policy. This would permit Council to use those funds more flexibly for ongoing programs, such as first-time homebuyer loans, owner-occupied rehabilitation programs, or staffing costs, rather than for one-time projects only. It would also eliminate the potentially burdensome process of tracking those one-time funds separately from the general pot of AHTF dollars.

A number of other jurisdictions in the Bay Area have already designated boomerang funds for affordable housing, or are in the process of doing so.

- Santa Clara County: Adopted a policy to set-aside 20% of ongoing boomerang funds for affordable housing. Also will allocate 100% of boomerang funds "swept" from affordable housing for that purpose.
- San Mateo County: Will allocate 100% of boomerang funds "swept" from affordable housing to construct and improve homeless shelters and create affordable housing.
- Fremont: Allocated 100% of last year's one-time boomerang funds and 20% of ongoing boomerang funds to affordable housing.
- San Leandro: Allocated \$350,000 per year in boomerang funds for affordable housing.
- Emeryville: In July 2013 will consider allocating 100% of one-time boomerang funds and 20% of ongoing boomerang funds for affordable housing.

Respectfully submitted,



Dan Kalb, Councilmember

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APPROVED AS TO FORM AND LEGALITY:

  
Deputy City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE (1) AMENDING OAKLAND MUNICIPAL CODE SECTION 15.68.100 THAT ESTABLISHED THE AFFORDABLE HOUSING TRUST FUND TO SET ASIDE AN AMOUNT EQUAL TO 25% OF FUNDS DISTRIBUTED TO THE CITY AS A TAXING ENTITY UNDER THE REDEVELOPMENT DISSOLUTION LAWS INTO THE AFFORDABLE HOUSING TRUST FUND, (2) AMENDING ORDINANCE NO. 12502 C.M.S. THAT ESTABLISHED A GENERAL FUND RESERVE POLICY TO EXEMPT THESE DISTRIBUTIONS FROM THE REQUIREMENT TO USE ONE TIME REVENUES TO PAY FOR ONE TIME EXPENSES OR REDUCE NEGATIVE FUND BALANCES, AND (3) APPROPRIATING AND TRANSFERRING SUCH DISTRIBUTIONS FROM THE GENERAL PURPOSE FUND TO THE AFFORDABLE HOUSING TRUST FUND**

**WHEREAS**, the City of Oakland has a long-standing commitment to the preservation and development of affordable housing for very-low, low and moderate income households; and

**WHEREAS**, prior to the dissolution of redevelopment agencies in California, redevelopment agencies were required to set aside at least twenty percent of gross tax increment funds into a low and moderate income housing fund to provide funding for affordable housing; and

**WHEREAS**, pursuant to Oakland Redevelopment Agency Resolution No. 01-85 C.M.S., adopted in 2001, the Redevelopment Agency of the City of Oakland adopted a policy to deposit twenty-five percent of its gross tax increment funds into its Low and Moderate Income Housing Fund; and

**WHEREAS**, with the dissolution of redevelopment agencies, these funds are no longer available; and

**WHEREAS**, ABX 26, AB 1484, and other statutes governing the dissolution of redevelopment agencies and the wind-down of redevelopment activities provide for the distribution of funds to taxing entities, including cities, in a variety of circumstances, including, among other things, ongoing distributions of property tax from the Redevelopment Property Tax Trust Fund ("RPTTF") from funds not needed by successor agencies to fulfill enforceable

obligations, distributions of sales proceeds and other revenues from the use or disposition of assets of successor agencies, and distributions of available cash assets of successor agencies; and

**WHEREAS**, the City desires to continue funding affordable housing to further its planning goals and to comply with the regional Sustainable Communities Strategy and the Regional Housing Needs Allocation; and

**WHEREAS**, Section 15.68.100 of the Oakland Municipal Codes establishes the Affordable Housing Trust Fund to provide assistance in developing and maintaining affordable housing in the City; and

**WHEREAS**, Ordinance No. 12502, as amended by Ordinance Nos. 13008, 13134 C.M.S., et al., which establishes a general fund reserve policy, requires among other things that one time revenues be used either to pay for one time expenses, to pay off negative fund balances in the Internal Service Fund or other funds, or to remain as fund balance; and

**WHEREAS**, some of the distributions to the City under the Dissolution Laws will be in the form of one time revenues; now, therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

Section 1. Section 15.68.100 of the Oakland Municipal Code is hereby amended to read as follows (deletions are indicated by ~~strikeout text~~, and additions are indicated by double-underlined text):

15.68.100 Affordable Housing Trust Fund.

The City Administrator shall establish an Affordable Housing Trust Fund to provide assistance in developing and maintaining affordable housing in the City. The Affordable Housing Trust Fund shall receive all monies contributed pursuant to Sections 15.68.050 and 15.68.060 of this chapter, as well as those funds indicated below. The Affordable Housing Trust Fund may also receive funds from any other source.

An amount equal to twenty-five percent of all funds distributed to the City as a taxing entity under the Dissolution Laws, including both one time and ongoing distributions, shall be deposited into the Affordable Housing Trust Fund. For purposes of this section, the "Dissolution Laws" include Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code, commencing with Section 34170, and other statutes governing the dissolution of redevelopment agencies and the wind-down of redevelopment activities. The funds subject to this setaside shall include, without limitation, distributions of property tax from the Redevelopment Property Tax Trust Fund ("RPTTF"), distributions of sales proceeds and other revenues from the use or disposition of assets of the Oakland Redevelopment Successor Agency ("ORSA"), compensation paid to taxing entities by ORSA, and distributions of available cash assets of ORSA to

taxing entities. This policy shall apply to distributions from the RPTTF under California Health and Safety Code Section 34183 starting in Fiscal Year 2015-2016, and shall apply to all other distributions received starting in Fiscal Year 2013-2014.

Funds deposited into the Affordable Housing Trust Fund, and all interest and investment earnings thereon, shall be used to increase, improve, and preserve the supply of affordable housing in the City, with priority given to housing for very low income households. For purposes of this paragraph, to "preserve" affordable housing means to acquire, finance, refinance, or rehabilitate housing that is at imminent risk of loss to the affordable housing supply due to termination of use restrictions, non-renewal of subsidy contract, mortgage default or foreclosure, or physical conditions that are likely to result in vacation of the property.

Funds may also be used to cover reasonable administrative or related expenses of the City not reimbursed through processing fees. No portion of the Affordable Housing Trust Fund may be diverted to other purposes by way of loan or otherwise.

Funds in the Affordable Housing Trust Fund shall be used in accordance with the adopted housing element to the City's General Plan, the Consolidated Plan, and subsequent housing plans adopted by the City Council, to subsidize or assist the City, other government entities, nonprofit organizations, private organizations or firms, or individuals in the construction, preservation or substantial rehabilitation of affordable housing. Monies in the Affordable Housing Trust Fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the City Administrator so determines is appropriate to accomplish the purposes of the Affordable Housing Trust Fund. Eligible uses include, but are not limited to, assistance with staff costs or other administrative costs attributable to a specific affordable housing project, equity participation in affordable housing projects, loans and grants (including, predevelopment loans or grants) to affordable housing projects, or other public/private partnership arrangements. Monies from the Affordable Housing Trust Fund may be extended for the benefit of rental housing, owner occupied housing, limited equity cooperatives, mutual housing developments, or other types of affordable housing projects.

Notwithstanding the above, funds deposited into the Affordable Housing Trust Fund from fines and penalties received under the Foreclosed and Defaulted Residential Property Registration Program pursuant to Section 8.54.620 of this Code, or from fines, penalties, or other funds under other programs that designate the use of funds deposited into the Affordable Housing Trust Fund for foreclosure prevention or mitigation purposes, may be used for foreclosure prevention and mitigation activities, including but not limited to homebuyer or tenant assistance, rehabilitation, housing counseling, education, outreach, and advocacy activities, along with staff costs or other

administrative costs attributable to such activities. Upon a finding by the City Council or the City Administrator that funds are no longer needed for foreclosure prevention or mitigation activities, such funds may also be used for other eligible Affordable Housing Trust Fund uses or for other low income or very low income tenant or homebuyer assistance. Funds received pursuant to Section 8.54.620 shall be appropriated to a separate project. For funds received under the Foreclosed and Defaulted Residential Property Registration Program or other programs that designate the use of funds for foreclosure prevention or mitigation purposes, the City Administrator or his or her designee is authorized to award grants and enter into grant contracts or service contracts without returning to the City Council in amounts not to exceed \$100,000.00.

The Affordable Housing Trust Fund shall be administered by the City Administrator, who shall have the authority to govern the Affordable Housing Trust Fund consistent with this section and to prescribe regulations for the administration and use of the Affordable Housing Trust Fund. Funds deposited to the Affordable Housing Trust Fund shall be appropriated on a continuous basis to projects to be established consistent with this section. Notwithstanding the foregoing, all allocations of funds from the Affordable Housing Trust Fund, except as provided for above with respect to grants or service contracts from funds received under the Foreclosed and Defaulted Residential Property Registration Program or other programs, shall be approved by the City Council. An annual report showing impact fees imposed, revenues collected, funds committed, expenditures made, and any decisions made as to requests for reductions or exceptions shall be forwarded by the City Administrator to the City Council.

Section 2. Section E of Ordinance No. 12502 C.M.S., as subsequently amended, is hereby amended to read as follows (deletions are indicated by ~~strikeout text~~, and additions are indicated by double-underlined text):

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**E. Use of One Time Revenues To Repay Negative Fund Balances in Internal Service and Other Funds; and Provide Criteria for Project Carryforwards and Encumbrances in the GPF.**

- 1) From time to time, the City may receive "one time revenues", defined as financial proceeds that will not likely occur on an ongoing basis, such as sales of property or proceeds from the refinancing of debt, but not including additional Real Estate Transfer Tax revenues discussed in Section "D" above.
- 2) Fiscal prudence and conservancy requires that one time revenues not be used for recurring expenses, that outstanding negative balances in various City funds be paid off, and that municipal capital projects addressing health and safety issues be adequately funded. Therefore, upon receipt of one time revenues, such revenues shall be used in the following manner, unless legally restricted to other purposes: to pay for

one time expenses, to payoff negative fund balances in the Internal Service Fund, to payoff negatives in all other funds, or shall remain as fund balance in the appropriate fund.

- 3) Use of the "one time revenues" for purposes other than those established above may only be allowed upon declaration of a fiscal emergency. For the purposes of this Ordinance, "emergency" may be declared (1) by the Mayor and approved by the majority of the City Council or (2) by a majority vote of the City Council.
- 4) One time revenues set aside into the Affordable Housing Trust Fund under Oakland Municipal Code Section 15.68.100 from distributions of funds to the City under laws dissolving redevelopment agencies, as defined in the Municipal Code, shall be exempt from the restrictions in this Section E.

**Section 3.** The City Council hereby appropriates and transfers from the General Purpose Fund (1010), funds from distributions to the City as taxing entity designated for deposit into the Affordable Housing Trust Fund pursuant to the policy set forth in Section 1 above, to the Affordable Housing Trust Fund (fund number to be established).

**Section 4.** The City Council hereby appoints the City Administrator and his/her designee as agent of the City to take any actions necessary with respect to the setaside funding consistent with this Ordinance and its basic purpose.

**Section 5.** This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of the City Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2013

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and  
PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council,  
City of Oakland

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**NOTICE AND DIGEST**

This Ordinance adopts a policy of setting aside an amount equal to 25% of funds distributed to the City as a taxing entity under the state law dissolving redevelopment agencies into the City's Affordable Housing Trust Fund. This Ordinance also amends the City's General Fund reserve policy to exempt these distributions from the requirement to use one time revenues only to pay for one time expenses or reduce negative fund balances. Finally, this Ordinance appropriates and transfers such distributions from the General Purpose Fund to the Affordable Housing Trust Fund

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