



AGENDA REPORT

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE SAN CLEMENTE REDEVELOPMENT AGENCY

MEETING DATE: FEBRUARY 26, 2015

Agenda Item 7-B
Approvals:
 City Manager jm
 Dept. Head ES
 Attorney Jmw
 Finance jck

Department: Finance and Administrative Services
Prepared By: Jake Rahn, Financial Services Officer

Subject: *STATUS UPDATE ON REDEVELOPMENT AGENCY DISSOLUTION*

Fiscal Impact: None.

Summary: The Successor Agency has been completing steps to dissolve the Redevelopment Agency (RDA). These steps include the distribution of assets that were held by the RDA and paying enforceable obligations that existed as of February 1, 2012 (date of dissolution). This report outlines steps completed and the remaining steps to be approved by the Oversight Board prior to dissolution.

Background: As part of the State of California FY 2012 budget, legislation was passed dissolving redevelopment agencies. This legislation, and related subsequent legislation, provides procedures to dissolve redevelopment agencies statewide. This report provides a brief status on what the City has completed to dissolve the operations of the San Clemente RDA.

The following activities have been completed as part of the dissolution process:

Dissolution Action	Status
True up payment to County	Completed
LMIHF Due Diligence Review/payment to County	Completed
Other Funds Due Diligence Review/payment to County	Completed
Housing Asset report filing with the State	Completed
State Controllers Office Asset Transfer Review report	Completed
State approval of Finding of Completion	Received State approval
State approval of the General Fund Loan repayment	Received State approval
State approval of Long Range Property Management Plan	Received State approval
Transfer deeds for governmental use assets to the City	Transfer documents in process

Discussion: The dissolution of the former RDA is almost complete. The background section of this report provides a summary of the dissolution actions required and the current status of each. Remaining dissolution actions to be completed are:

- 1) Enforceable obligation payments (General Fund loan to the City of San Clemente and related administrative costs), and
- 2) Collection of outstanding loans due to the former RDA.

As part of the next State budget, the State has proposed a budget trailer bill which addresses the redevelopment agency dissolution process. Staff has printed out a summary of the proposed legislation, based a law firm review, and included the summary as an attachment.

The proposed legislation includes items that would not effect the San Clemente dissolution process. However, the proposed legislation does include items that would, such as, the transition to the County-wide oversight board (see item 10 of attachment) and refinement of the ROPS process (see item number 13 of attachment).

Recommended

Action: STAFF RECOMMENDS THAT the Oversight Board:
1) Receive and file the report.

Attachment: Attachment 1 - Burke, Williams & Sorenson, LLP – Public Law Alert

2-26-15

7B-2

February 11, 2015

**DEPARTMENT OF FINANCE PUBLISHES BUDGET TRAILER BILL
LANGUAGE ADDRESSING REDEVELOPMENT DISSOLUTION**

The California Department of Finance ("Department") has published proposed budget trailer bill language addressing the redevelopment agency dissolution process. In a recent webinar, the Department characterized the forthcoming legislation as an attempt to simplify the dissolution process and clarify existing law. However, although some of the proposed provisions would streamline successor agency operations and facilitate their wind-down, there are a number of terms that would negatively affect successor agencies, their sponsoring jurisdictions, and the availability of financing for affordable housing and oversight board-approved economic development and public improvement projects. The proposed legislation undermines many of the incentives that AB 1484 provided for compliance with the Due Diligence Review process. Furthermore, if enacted, the proposed legislation would effectively abrogate several recent court rulings that are favorable to cities and successor agencies.

The proposed legislation would do the following:

1. **Exempts Dissolution Act Implementation from the Administrative Procedures Act.** Many successor agencies that have filed litigation challenging the Department's determinations regarding implementation of the Dissolution Law assert that the Department has failed to comply with the Administrative Procedures Act ("APA"). The APA requires state agencies to follow a statutorily-defined process that includes significant opportunities for public review and comment in connection with the adoption of regulations. The proposed legislation provides that all Department actions in carrying out the Dissolution Law are exempt from the APA. [§34170.1]
2. **Limits Administrative Costs and Administrative Allowance.** For fiscal years beginning July 1, 2016, the proposed legislation would limit the successor agency administrative allowance payable from the Redevelopment Property Tax Trust Fund ("RPTTF") to 3% of the property taxes allocated to the successor agency to pay enforceable obligations in the preceding fiscal year, minus amounts paid for the administrative allowance and amounts paid to the sponsoring jurisdiction to repay loans reinstated pursuant to Section 34191.4(b). The annual administrative allowance would not be less than \$250,000 unless the successor agency agrees to a reduced amount or the oversight board imposes a reduction. (It should be noted that beginning July 1, 2016, the individual successor agency oversight boards will be replaced by one oversight board operating in each county.) In addition to the limit on the administrative allowance, the proposed legislation also limits annual administrative costs to 50% of RPTTF funds distributed to the successor agency to pay enforceable obligations in the prior fiscal year. This cost limit would not apply to administrative costs paid with bond proceeds or grant funds. In addition, although current law provides that litigation expenses and the cost of maintaining assets prior to disposition can be listed as separate line items on the ROPS, apart from the administrative

allowance, the proposed legislation eliminates the authority to treat such expenses as separate line items. It is not clear how the limitation on the administrative allowance will be reconciled with the proposed new limit on administrative costs. Furthermore, these limits may impair the ability of successor agencies to successfully carry out necessary administrative activities since there is not necessarily a correlation between the extent to which such services are needed and the amount distributed to pay outstanding enforceable obligations. [§§34171(b)(3), 34171(b)(4), 34171(b)(5)]

3. Provides that the Administrative Cost Allowance is the Sole Source for Payment of Litigation Expenses. The proposed legislation states that the administrative cost allowance (limited as described above) is the sole funding source for payment of legal expenses related to actions contesting the validity of the Dissolution Law or challenging actions taken pursuant to the Dissolution Law. This proposal reverses the direction taken by AB 1484 which added language providing that litigation expenses related to assets or obligations, settlements, and judgments were to be treated as separate line items on the Recognized Obligation Payment Schedule ("ROPS"), and not included within the administrative allowance. The proposed legislation may significantly curtail the ability of successor agencies to address incorrect and unconstitutional interpretations and applications of the Dissolution Law. [§§34171(b)(5), 34171(d)(1)(F)]

4. Retroactively Eliminates Ability to Re-enter into City-Agency Agreements. Prior to the adoption of AB 1484, pursuant to Health and Safety Code Section 34178(a), successor agencies were permitted to re-enter into agreements with their sponsoring jurisdiction, with oversight board approval. Although AB 1484 eliminated that right, there are several dozen agencies that approved re-entry of such agreements prior to the effective date of AB 1484. The Department has consistently refused to honor such agreements, and has argued that the limitation imposed by AB 1484 applies retroactively. In half a dozen cases, the trial court has sided with the successor agencies, and has rejected the Department's arguments. On January 16, 2015, in *City of Emeryville v. Cohen*, the Third District Court of Appeal affirmed the trial court decision, holding that the City and the Successor Agency had the right to re-enter into several agreements that provided for completion of long-planned economic development and public works projects, and that the AB 1484 limitation did not apply retroactively. In response, the Department has proposed legislation that provides that the only agreements that oversight boards may approve, and that successor agencies may execute pursuant to Section 34178(a), are agreements that address the wind-down of the redevelopment agency, and that agreements relating to remediation, design, development and similar activities are specifically unauthorized. In addition, the legislation would explicitly make these limitations retroactive, effectively eviscerating the *Emeryville* decision. [§34178(c)]

5. Limits Ability to Reinstate City-Agency Loans. Current law permits successor agencies that have received a finding of completion to reinstate loans provided by their sponsoring jurisdiction upon an oversight board determination that the loans were for legitimate redevelopment purposes. In practice, in many instances, the Department has rejected loan reinstatement on a variety of grounds. In a recent trial court opinion, *City of Watsonville v. Cohen*, the court held that reimbursement agreements obligating the Redevelopment Agency to repay the City for funds the City had paid for public

improvements qualified as loans eligible for reinstatement. The proposed legislation would undermine this opinion. It provides that loan agreements that are eligible to be reinstated are limited to “loans for money” pursuant to which a sponsoring jurisdiction transferred funds to the redevelopment agency for the redevelopment agency’s use and which the redevelopment agency was obligated to repay pursuant to a required repayment schedule. The legislation further provides that “loan agreements” do not include agreements that obligated a redevelopment agency to reimburse the sponsoring jurisdiction for the cost of services provided by third parties or for obligations incurred under contracts between the sponsoring jurisdiction and third parties. This language would significantly undercut the loan reinstatement incentive provided by AB 1484 by precluding the reinstatement of commonly-used reimbursement or cooperative agreements pursuant to which cities advanced funds for public improvements with the expectation of repayment by the redevelopment agency. As described in Section 14 below, in connection with the “last and final” ROPS, the legislation would impose additional limitations on the interest rate payable on reinstated loans, and may prolong the schedule for their repayment. [§34191.4(b)(2)]

6. **Limits Sponsoring Jurisdiction Cash-Flow Loans to Successor Agencies.** Current law permits sponsoring jurisdictions to loan funds to the successor agency to cover cash shortfalls, administrative expenses, enforceable obligations, and project-related expenses. Repayment of these loans is on a current basis (as distinguished from city-agency loans that are reinstated pursuant to Section 34191.4 following receipt of a finding of completion). The proposed legislation would permit such cash flow loans to be made only to the extent there is insufficient RPTTF to pay enforceable obligations in a particular ROPS period, provides that interest payable on such loans is limited to a fixed rate of simple annual interest not to exceed the most-recently published quarterly LAIF rate, and provides that repayment of such loans is subordinate to the payment of other enforceable obligations. [§34173(h)]

7. **Limits Repayment of SERAF/ERAF Loans to Housing Asset Fund.** Current law permits repayment of amounts that were owed to former redevelopment agencies’ low- and moderate-income housing funds (“LMI Funds”), either because the redevelopment agency had deferred payment of the required annual 20% deposits to the LMI Fund, or because the redevelopment agency had borrowed LMI Funds. These repayments are required to be deposited into the housing successor’s Low and Moderate Income Housing Asset Fund. As currently drafted, the proposed legislation could be construed to eliminate the ability to repay ERAF/SERAF and other loans that were made with LMI Funds, instead limiting repayments to the amounts necessary to restore deferred 20% LMI Fund deposits. The legislation specifically permits repayment of LMI Fund deferrals that had been authorized pursuant to Health and Safety Code Sections 33334.2(k) or 33334.6(g). It contains no comparable language authorizing repayment of loans that were made using LMI Funds, including ERAF/SERAF loans that had been authorized under other sections of the Health and Safety Code. [§34171(d)(1)(G)]

8. **Limits Successor Agency Activities.** The proposed legislation provides that although successor agencies may -- as under current law-- create new enforceable obligations to conduct the work of winding down the redevelopment agency (e.g., to procure professional administrative services, legal advice, and insurance), this authority does not extend to “planning, design, redesign, development, demolition, alteration,

construction, construction financing, site remediation, site development or improvement, removal of graffiti, land clearance, seismic retrofits, and other similar work." These limitations would apply retroactively. [§ 34177.3(b)]

9. Redevelopment Plan Time and Fiscal Limits. The proposed legislation provides that solely for the purpose of paying bond debt service, redevelopment plan time limits and tax increment caps do not apply. This exemption will not benefit cities whose reinstated loans to former redevelopment agencies will be repaid over the long-term schedule provided by existing Section 34191.4 or the proposed new Section 34191.6. In a variety of venues, Department representatives have indicated that redevelopment plan time and fiscal limits would not impair the repayment of these loans, but the proposed legislation does not reflect that view. [§34189(a)]

10. County-Wide Oversight Boards. The proposed legislation provides that county auditor-controllers shall provide staff to the county-wide oversight boards that are to be established on July 1, 2016, and further provides that the auditor-controller may recover all associated costs, including the costs of services provided by other county departments, directly from RPTTF. The legislation contains no limitations on, or review of, such costs. [§34179(j)]

11. Parking Lots. The proposed legislation adds "public parking lots" to the list of assets that an oversight board may direct to be transferred to the "appropriate public jurisdiction" pursuant to "existing agreements relating to the construction or use" of such assets. The legislation provides that "public parking lots" do not include properties that generate revenue in excess of reasonable maintenance costs. Successor agencies that have received approval of long-range property management plans prior to January 1, 2016, would be permitted to amend their plans one time solely to provide for the retention of properties that qualify as "public parking lots" for governmental use. Any such amendment must be submitted to the Department prior to July 1, 2016. [§§34181(a), 34191.3(b)]

12. Final and Conclusive Determinations. The proposed legislation would impose a 100-day time limit for the Department's consideration of requests for issuance of final and conclusive determinations. Such determinations provide assurance that the Department will approve future payments pursuant to enforceable obligations that require recurring payments over time. The Department would have until September 30, 2015, to issue determinations on pending requests submitted prior to June 30, 2015. [§34177.5(i)]

13. Annual ROPS and ROPS Refinements. The proposed legislation provides that beginning with the period commencing July 1, 2016, ROPS will be prepared for the 12-month fiscal year instead of each six months. The first annual ROPS will cover the period July 1, 2016 through June 30, 2017, and will be due to the Department on February 1, 2016. Successive annual ROPS will be due each year on February 1. The proposed legislation provides that payments may be scheduled beyond the particular ROPS cycle upon a showing that a "lender requires cash on hand" beyond that cycle. In addition, the legislation would permit successor agencies to use "reasonable estimates and projections" to support payments that will come due during a ROPS cycle but for which invoices are not yet available, provided that such estimates are accompanied by supporting documentation. The legislation would permit successor

agencies to include expenditure of the proceeds of bonds anticipated to be issued during the ROPS cycle when an enforceable obligation requires the successor agency to issue the bonds and use the proceeds for project expenses. Successor agencies would be permitted to submit one request to amend the ROPS by not later than October 1 of each year if the oversight board determines that a revision is necessary to pay enforceable obligations during the upcoming January through June component of the ROPS cycle. [§34177(o)]

14. Last and Final ROPS. The proposed legislation would permit successor agencies that meet specified conditions to submit a “last and final” ROPS beginning August 1, 2015. To qualify, a successor agency may not be a party to outstanding litigation, and the agency’s remaining debt must be limited to administrative costs and enforceable obligations that have defined payment schedules and that have been previously listed and approved for payment on a ROPS. The last and final ROPS must list the outstanding balance and a schedule of remaining payments for each enforceable obligation. In addition, the last and final ROPS must list the total outstanding balance and the interest rate for sponsoring jurisdiction loans that were reinstated pursuant to Section 34191.4 and for repayment of housing set-aside deferrals and loans (if permitted – see discussion at Section 7 above). The legislation specifies that such loans and deferrals shall be “recalculated” to accrue simple annual interest at a rate not to exceed 1% plus the LAIF rate that was operative in the quarter immediately prior to the oversight board’s initial approval to reinstate such loans. In addition, the maximum repayment amount for reinstated sponsoring jurisdiction loans and housing set-aside deferrals is limited to 15% of the funds remaining in the RPTTF after the payment in each six-month period of county auditor-controller expenses, passthrough obligations, debt service, enforceable obligations, and the administrative cost allowance. [§34191.6]

Legislative Process

Because the legislation is proposed as a budget trailer bill, it will be considered on an expedited basis that does not include subject matter committee hearings. Once the bill is officially published, it will be heard by the Senate and Assembly Budget Subcommittees, and will go to the floor of the Senate and Assembly. If passed by a majority of both houses and signed by the Governor, the bill will take immediate effect. The Department’s proposed language is available on the DOF’s website at this link:

http://www.dof.ca.gov/budgeting/trailer_bill_language/local_government/documents/701RDADissolutionSimplification_000.pdf



For further information regarding the proposed legislation or other successor agency matters, contact Susan Bloch at sbloch@bwslaw.com or 510.903.8809.

Susan Bloch represents public agencies and nonprofit and private developers in real estate, economic development, and affordable housing matters.

Founded in 1927, Burke, Williams & Sorensen, LLP represents public agencies and private entities throughout California on transactional, litigation and regulatory compliance matters.