



Agency Meeting: August 23, 2011

SUBJECT: Approval and Adoption of an Enforceable Obligation Payment Schedule Pursuant to Part 1.8 of the California Community Redevelopment Law

BACKGROUND

As part of the FY 2011/2012 State budget adoption, two trailer bills, ABX1 26 and ABX1 27, were signed into law that significantly modifies the California Community Redevelopment Law and redirects local tax increment funds from Redevelopment Agencies (RDAs) to other local taxing agencies (which in turn reduces pressure on the State treasury).

ABX1 26 (the Dissolution Act) immediately suspended RDAs from any new redevelopment activities and from incurring indebtedness. RDAs are now prohibited from taking any actions other than paying off existing indebtedness and performing existing contractual obligations unless its local community opts into the voluntary redevelopment program described below. Effective October 1, 2011, RDAs will dissolve, and successor agencies (presumed to be the community creating the RDA) will wind down the operations of the former RDAs under the review of oversight boards.

ABX1 27 (the Voluntary Program Act) allows cities and counties the option to avoid dissolution of their affiliated RDAs under ABX1 26 by adopting an ordinance opting in to an "Alternative Voluntary Redevelopment Program" requiring specific, annual contributions to schools and special districts. The annual contributions, or remittance payments, are expected to generate \$1.7 billion statewide for FY 2011/2012 and \$400 million in each subsequent year. The remittances are due in two equal installments each fiscal year by January 15th and May 15th.

On July 18, 2011, the California Redevelopment Association (CRA), the League of California Cities (League) and the cities of Union City and San Jose challenged in court the constitutionality of the State's actions on a number of grounds, including as a violation of the recently passed Proposition 22 (November 2010). Proposition 22 prohibits the State from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with revenue dedicated to local government. The revenues protected by Proposition 22 specifically include the annual tax increments allocated to redevelopment agencies.

The lawsuit also requested the California Supreme Court to issue a stay to prevent the legislation from going into effect until the Court can rule on the merits of these claims.

EXISTING POLICY

The Redevelopment Implementation Plan Goal 1 states: *Meet the Agency's Existing Financial and Administrative Obligations*

DISCUSSION

On August 11, 2011, the California Supreme Court agreed to review the petition challenging the constitutionality of the legislation and issued an order granting a partial stay on specified portions of the legislation. With the partial stay, action items and deadlines contained in the legislation are impacted. Staff is working closely with our legal counsel and CRA to clarify and interpret the impacts and necessary actions to take within the time frames outlined in the legislation.

Important dates in the legislation include:

- August 15, 2011 – the last date for the City to appeal the amount of the remittance and only if there is an error in the numbers in the State Controller's 2008-09 annual report on redevelopment agencies or if the tax increment revenue required to meet its tax allocation debt service and interest payments has increased by ten percent or more.

The State Department of Finance (DOF) published on August 1, 2011 the amount of the FY 2011/2012 remittance that must be paid by each RDA that “volunteers” to continue operations. The City of Sunnyvale’s amount is \$3,650,428. The DOF has not published the subsequent year payments for Sunnyvale thus far; however, calculations by the California Redevelopment Association estimate payments of approximately \$900,000 each year through the end of the RDA plan. Staff has reviewed the numbers the State used for Sunnyvale’s remittance and determined that the calculations are accurate, so no appeal was filed.

- August 27, 2011 – the RDA must adopt an Enforceable Obligation Payment Schedule if the City has not adopted or does not intend to adopt an ordinance opting in to an “Alternative Voluntary Redevelopment Program”.

Under the partial stay issued by the Supreme Court, Health and Safety Code Section 34167(h), was not stayed by the court order. This code provides that after August 27, 2011, an agency cannot make a payment

on any enforceable obligation unless it is listed on an Enforceable Obligations Payment Schedule with the exception of bond payments. This means that after August 27, 2011, the RDA will not be able to make loan payments to the City or other payments unless the agency has adopted an Enforceable Obligation Payment Schedule. Because a stay was issued on the "Alternative Voluntary Redevelopment Program" (ABX1 27), opting into the voluntary program will no longer take the place of adopting an Enforceable Obligation Payment Schedule. Accordingly, the RDA's legal counsel is advising the RDA to adopt an Enforceable Obligations Payment Schedule by the end of August 2011 regardless of whether the RDA adopts an ordinance to opt-in to the voluntary program at a later date.

- September 30, 2011 – the RDA is required to file the annual Statement of Indebtedness.

Each year the RDA files its annual Statement of Indebtedness with the State which lists all of the debt of the RDA. This year it is critical that all of the RDA debt is listed, particularly if the City opts into the voluntary program. Future indebtedness not listed on this statement of indebtedness will trigger additional payments to school districts which will reduce the amount of revenue available for redevelopment purposes.

- October 1, 2011 – if the City has not adopted an ordinance or a non-binding resolution of intent to opt-in to the voluntary program by October 1, the RDA will be dissolved and all assets will be transferred to the Successor Agency (the City) that is charged with selling RDA assets and transferring funds to the State.
- November 1, 2011 – the last date the City has to enact an ordinance to opt-in to the voluntary program, and notify the DOF, State Controller and County Auditor- Controller of the adoption of the ordinance.

Although a stay has been issued on the voluntary program, staff is still anticipating moving forward with the analysis of opting in or opting out of the voluntary program prior to October 1, 2011 and any other actions required in the legislation pending the outcome of the lawsuit to ensure that Sunnyvale is in the best position to react to any future circumstance. The Court anticipates ruling on the merits of the case before January 15, 2012 which is the date of the first payment for RDAs that opted into the voluntary program.

The Enforceable Obligation Payment Schedule must list all of the agency's enforceable obligations and must include the following information for each obligation:

- Project name associated with the obligation;
- Payee;
- Description of the nature of the work, product, service, facility or other thing of value for which payment is to be made;
- Payments the Agency is obligated to make, by month, through December 2011.

The RDA's Enforceable Obligation Payment Schedule and accompanying Resolution are Attachment A and B to this report. The intent of this action is to retain the ability of the RDA to make timely payments on its obligations during the period of suspension.

FISCAL IMPACT

Adoption of the Enforceable Obligation Payment Schedule will allow the agency to continue operation during the period of suspension. If the schedule is not adopted no payments after August 27, 2011 can be made toward the enforceable obligations. This would include the outstanding contractual obligations to the City and administrative services covered by the reimbursement agreement between the City and the RDA. The City's General Fund would experience a shortfall of approximately \$4.6 million in FY 2011/2012. This loss would grow in future years as property values increase. The current budget estimates the RDA will repay the General Fund a total of \$120 million through the end of the RDA plan.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve a Resolution of the Redevelopment Agency of the City of Sunnyvale approving and adopting the Enforceable Obligation Payment Schedule Pursuant to Part 1.8 of the Redevelopment Law.
2. Do not adopt a Resolution. If Resolution is not adopted, the RDA will not be able to make any payments on the outstanding contractual obligations to the City.

RECOMMENDATION

Staff recommends that the RDA Board approve Alternative #1 to approve a Resolution of the Redevelopment Agency of the City of Sunnyvale approving and adopting the Enforceable Obligation Payment Schedule pursuant to part 1.8 of the Redevelopment Law allowing the RDA to make payments on loan obligations to the City.

Reviewed by:

Grace K. Leung, Treasurer, Redevelopment Agency
Prepared by: Brice McQueen, Redevelopment Manager

Reviewed by:

David Kahn, General Counsel, Redevelopment Agency

Approved by:

Gary M. Luebbbers
Executive Director, Redevelopment Agency

Attachments

- A. Resolution of the Redevelopment Agency of the City of Sunnyvale Approving and Adopting the Enforceable Obligation Payment Schedule Pursuant to Part 1.8 of the Redevelopment Law
- B. Enforceable Obligation Payment Schedule

RESOLUTION NO. _____-RA

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING THE ENFORCEABLE OBLIGATION PAYMENT SCHEDULE PURSUANT TO PART 1.8 OF THE REDEVELOPMENT LAW

WHEREAS, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Sunnyvale (the "City") adopted in accordance with the Redevelopment Law Ordinance No. 1796-75, on November 26, 1975, adopting the Redevelopment Plan for the Central Core Redevelopment Project Area (the "Redevelopment Plan"), as amended from time to time; and

WHEREAS, the Redevelopment Agency of the City of Sunnyvale (the "Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law; and

WHEREAS, AB x1 26 (the "Dissolution Act") and AB x1 27 (the "Voluntary Program Act," and together with the Dissolution Act, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law; and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts and issued an order granting a partial stay on specified portions of the Redevelopment Restructuring Acts (the "Stay"); and

WHEREAS, under the terms of the Stay and pursuant to Section 34167(h) of the Redevelopment Law, after August 29, 2011, the Agency can only make payments on bond obligations until the Agency adopts an enforceable obligation payment schedule listing all of the obligations that are enforceable within the meaning of Section 34167(d) of the Redevelopment Law (the "Enforceable Obligation Payment Schedule"); and

WHEREAS, as further set forth in the staff report accompanying this Resolution (the "Staff Report"), under the terms of various Agency contracts and obligations, the Agency is required to make payments on its enforceable obligations after August 29, 2011; and

WHEREAS, to avoid defaulting under its enforceable obligations, the Agency has prepared and desires to adopt an Enforceable Obligation Payment Schedule, under protest and reserving the Agency's rights to recognize and perform any and all obligations listed therein without regard to the provisions of the Redevelopment Restructuring Acts; and

WHEREAS under Title 14 of the California Code of Regulations, Section 15378(b)(4), the approval of this Enforceable Obligation Payment Schedule is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a project, but instead consists of the continuation of an existing governmental funding mechanism for potential future

projects and programs, and does not commit funds to any specific project or program, because it merely lists enforceable obligations previously entered into and approved by the Agency; and

WHEREAS, the Agency Board has reviewed and duly considered the Staff Report, the proposed Enforceable Obligation Payment Schedule, and documents and other written evidence presented at the meeting.

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project. The Agency Board therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves and adopts the Enforceable Obligation Payment Schedule under protest and with a reservation of its rights to perform any and all obligations listed therein without regard to the provisions of the Redevelopment Restructuring Acts and to challenge any contrary determination by the State of California, the County Auditor-Controller or any other body under the provisions of the Redevelopment Restructuring Acts..

BE IT FURTHER RESOLVED, that the Agency Board authorizes and directs the Agency's Executive Director or the Executive Director's designee to: (1) post the Enforceable Obligation Payment Schedule on the Agency or the City's websites, (2) designate an Agency representative to whom all questions related to the Enforceable Obligation Payment Schedule can be directed, (3) notify, by mail or electronic means, the County Auditor-Controller, the Department of Finance, and the Controller of the Agency's action to adopt the Enforceable Obligation Payment Schedule and to provide those persons with the internet website location of the posted schedule and the contact information for the Agency's designated contact; and (4) to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Enforceable Obligation Payment Schedule on behalf of the Agency.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

Adopted by the Redevelopment Agency of the City of Sunnyvale at a regular meeting held on _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Clerk, Redevelopment Agency
(SEAL)

Chair of the Redevelopment Agency

APPROVED AS TO FORM AND LEGALITY:

By _____
David E. Kahn
Redevelopment Agency Counsel

ENFORCEABLE OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation (until 11/26/2028)	Total Due During Fiscal Year 2011/12	Payments by Month						
					Aug**	Sept	Oct	Nov	Dec	Total	
1) 2003 Tax Allocation Refunding Bonds	US Bank	1977 Bonds issued to fund redevelopment projects in the Central Core Project area, refunded in 1992 and again in 2003.	7,235,082.00	609,776.00	500,468.00						\$ 500,468.00
2) 1998 Certificates of Participation (Parking Facility Refunding)	US Bank	1978 Bonds issued to fund redevelopment projects in the Central Core Project area, refunded in 1992, 1998, and in 2003.	14,625,954.00	1,205,118.00		948,158.00					\$ 948,158.00
3) Repayment Obligations-1977 Loan Repayment Agreement	City of Sunnyvale	RDA is obligated to reimburse the City for cost of land and improvements with interest. The City's project lease payments secured the issuance of 1978 Parking Lease Revenue Bonds and subsequent Refunding COPs, enabling RDA to meet the costs of acquisition and construction of the Project.	42,499,280.00	8,487,423.00							\$ -
4) Repayment Obligations-2003 Loan Repayment Agreement	City of Sunnyvale	RDA is obligated to reimburse the City with interest for the administrative costs since 1986, and the project loan for street improvements.	124,048,650.00	0.00							\$ -
5) Amended Disposition and Development and Owner Participation Agreement Article 8	Town Center Developer	Annual payment in consideration for developer constructing and operating the required public improvements.	45,380,726.00	2,004,644.00							\$ -
6) 2010 Amended Disposition and Development and Owner Participation Agreement Article 4	State Water Resources Control Board, legal fees and environmental work costs	Shared 50-50 with Developer	1,875,266.00	1,875,266.00							\$ -
7) 20% Housing Set Aside	Low & Moderate Income Housing Fund	Due to pre-existing debt obligations, RDA must defer payments into the Low and Moderate Income Housing Fund.	37,322,997.00	0.00							\$ -
8) Administration and operation of RDA	Agency staff and professional services	Administrative, audit, legal services, and General Fund in-lieu payments for treasury and accounting support.	5,858,172.00	372,357.00	31,030.00	31,030.00	31,030.00	31,030.00	31,030.00	31,030.00	\$ 155,150.00
9) RDA Special Projects	Professional services	Special studies, economic analysis, plan amendments, implementation plan adoption, mid-term review and outside legal counsel services for the RDA.	768,358.00	421,247.00	35,103.92	35,103.92	35,103.92	35,103.92	35,103.92	35,103.92	\$ 175,519.60
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Totals - This Page			\$ 279,614,485.00	\$ 14,975,831.00	\$ 566,601.92	\$ 1,014,291.92	\$ 66,133.92	\$ 66,133.92	\$ 66,133.92	\$ 66,133.92	\$ 1,779,295.60
Totals - Page 2			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals - Page 3			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals - Page 4			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals - Other Obligations			\$ 45,341,284.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals - All Pages			\$ 324,955,769.00	\$ 14,975,831.00	\$ 566,601.92	\$ 1,014,291.92	\$ 66,133.92	\$ 66,133.92	\$ 66,133.92	\$ 66,133.92	\$ 1,779,295.60

* This Enforceable Obligation Payment Schedule (EOPS) is to be adopted by the redevelopment agency no later than late August. It is valid through 12/31/11. It is the basis for the Preliminary Draft Recognized Obligation Payment Schedule (ROPS), which must be prepared by the dissolving Agency by 9/30/11. (The draft ROPS must be prepared by the Successor Agency by 11/30/11.)

If an agency adopts a continuation ordinance per ABX1 27, this EOPS will not be valid and there is no need to prepare a ROPS.

** Include only payments to be made after the adoption of the EOPS.

Name of Redevelopment Agency: Redevelopment Agency of the City of Sunnyvale

Project Area(s) Central Core

OTHER OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation (until 11/26/2028)	Total Due During Fiscal Year 2011/12	Payments by month						
					Aug**	Sept	Oct	Nov	Dec	Total	
1) Housing Fund Deficit	City Low and Moderate Income Housing Fund (L&M)	Due to pre-existing debt obligations, RDA deferred funding (20% set aside) the L&M	23,500,062.00								\$ -
2) Pass Through to Taxing Agencies	County of Santa Clara	The payment will start once the original \$118 million tax increment cap is reached.	8,747,073.00								\$ -
3) Basic Aid Payments to Schools	Schools	CRL Section 33676 (b)	13,094,149.00								\$ -
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Totals - Other Obligations	\$ 45,341,284.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
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 If an agency adopts a continuation ordinance per ABX1 27, this EOPS will not be valid and there is no need to prepare a ROPS.
 ** Include only payments to be made after the adoption of the EOPS.
 *** All payment amounts are estimates