

**City of Culver City, California
Agenda Item Report**

Meeting Date: 08/22/2011		Item Number: <u> J-1 </u>	
JOINT CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD AGENDA ITEM: (1) Agency Board Adoption of a Resolution Adopting the Enforceable Obligations Payment Schedule Pursuant to Sections 34167 and 34169 of the Health and Safety Code, (1) Agency Board Authorization to the Executive Director to Make Such Payments on Behalf of the Agency Utilizing Available Agency Revenues, Including, but not Limited to, Newly Received Tax Increment Proceeds; and, (3) City Council Authorization to the City Manager and Chief Financial Officer to Make Such Payments on Behalf of the Agency Utilizing Former Agency Assets in the Case Sufficient Agency Revenues are Unavailable .			
Contact Person/Dept.: Sol Blumenfeld/Community Development Jeff Muir/Finance Department		Phone Number: (310) 253-5760 (310) 253- 5865	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: (E-Mail) Meetings and Agendas – City Council (08/17/2011); (E-Mail) Meetings and Agendas – Redevelopment Agency (08/17/11)			
Department Approval: Sol Blumenfeld (08/16/11)		City Attorney Approval: Carol Schwab (by H. Baker) (08/16/11) Agency General Counsel Approval: Murray Kane (08/17/11)	
Chief Financial Officer Approval: Jeff Muir (08/17/11)		City Manager Approval: John Nachbar (08/17/11)	
<u>RECOMMENDATION:</u> Staff recommends the Agency Board (1) adopt a Resolution adopting the Enforceable Obligations Payment Schedule (EOPS) as required under Sections 34167 and 34169 of the Health and Safety Code; and (2) provide authorization to the Executive Director to make such payments on behalf of the Agency utilizing available Agency revenues, including, but not limited to, newly received tax increment proceeds, AND Staff recommends the City Council authorize the City Manager and Chief Financial Officer to make such payments on behalf of the Agency utilizing former Agency assets in the case sufficient Agency revenues are unavailable. <u>BACKGROUND:</u>			

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The Senate and Assembly recently passed ABx1 26 (Dissolution Bill) and ABx1 27 (Continuation Bill) during an extraordinary legislative session as part of the state budget approval process. ABx1 26 purports to dissolve redevelopment agencies throughout the State as of October 1st. The assets of the dissolved redevelopment agencies would be transferred to each agency's successor entity. The successor entities will administer the shutdown of the redevelopment agencies and will be overseen by oversight boards that are not related to the governing body.

ABx1 27 provides an opportunity for redevelopment agencies to avoid dissolution if the community that created the redevelopment agency enacts a Continuation Ordinance committing to make certain payments to the State called Voluntary Alternate Redevelopment Agency Payments (VARP).

The California Redevelopment Association ("CRA"), the League of California Cities, the Cities of Union City and San Jose, and John F. Shirey, Executive Director of the CRA, filed a Petition for Writ of Mandate in the California Supreme Court on July 18, 2011, requesting (1) a declaration that the RDA Bills are unconstitutional and (2) a stay of enforcement of the RDA Bills during the pendency of the litigation (Litigation). Pursuant to the Petition, a partial stay was issued in the case by the California Supreme Court on August 11, 2011. The Court's Order states, in pertinent part:

“The request for a stay of chapter 5, Statutes 2011, First Extraordinary Session (Assembly Bill No. 26 X1) is granted, except that the request to stay Division 24, Part 1.8 of the Health and Safety Code (Health & Saf. Code, §§ 34161-34167) is denied. The request for a stay of chapter 6, Statutes 2011, First Extraordinary Session (Assembly Bill No. 27 X1) is granted.”

On July 25, 2011, the City Council enacted the Continuation Ordinance in accordance with ABx1 27. However, the California Supreme Court's action of August 11th stays the implementation of ABx1 27 in its entirety until the matter is settled and/or the stay is lifted by the Court. Section 34167(h) (which was not stayed by the Court) states, in pertinent part:

“After the enforceable obligation payment schedule is adopted pursuant to Section 34169, or after 60 days from the effective date of this part, whichever is sooner, the agency shall not make a payment unless it is listed in an adopted enforceable obligation payment schedule, other than payments required to meet obligations with respect to bonded indebtedness.

However, it is interesting to note that Section 34169, which contains the specific duty of the Agency to adopt the Enforceable Obligations Payment Schedule and the detailed content requirements of the EOPS, was stayed by the Court's Order.

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While the impact of the Court's Order is not completely clear, to ensure the Agency is able to continue to make payments on "enforceable obligations," Agency General Counsel recommends the Agency Board adopt a Resolution adopting an EOPS to ensure that the Agency has the authority to continue to make payments on existing obligations until the Litigation is settled.

It is the City's and the Agency's position that Assembly Bills x1 26 and 27 (collectively the RDA Bills), including but not limited to the effectiveness date, violate the State Constitution and other laws, and that the RDA Bills are invalid and unenforceable in whole or in part.

The City's actions in compliance with the RDA Bills (including without limitation the City's preparation and filing of this Resolution establishing an Enforceable Obligations Schedule) shall not be deemed to be, and are not intended as, an acknowledgment of the validity of the RDA Bills. The City reserves all rights of the City and the Redevelopment Agency to challenge the validity of any or all provisions of the RDA Bills in any administrative or judicial proceeding. By delivering this Resolution, the City and the Redevelopment Agency do not waive any of their legal rights concerning or arising out of the RDA Bills and/or the Litigation.

The proposed resolution (Attachment 1) is presented for consideration and action by the Agency Board to adopt an EOPS to determine what payments can be made by the Agency under the new legislation. The Agency can only make payments that are on the EOPS. Per Health & Safety Code Sec. 34169(g)(1), the EOPS must include the following elements about each obligation:

- The Project name associated with the obligation;
- The payee;
- A short description of the nature of the work, product, service, facility, or other thing of value for which the payment is to be made; and
- The amount of payments obligated to be made, by month, through December 2011.

The legislation requires that all obligations be listed with specific payment schedules. However, it also allows further actions to implement enforceable obligations that cannot be altered after the effective date of the legislation. Some obligations to implement agreements that are considered Enforceable Obligations have yet to be established (i.e. construction contracts required to implement the Hayden Tract Spur). These will be listed with budgeted amounts shown.

DISCUSSION:

The EOPS includes the Payment Schedules to the extent that they can be determined at this time. Some of the Enforceable Obligations still have steps that have not been completed and do not have defined contract amounts established yet.

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For example, a contract for construction has not been issued for aspects of the Hayden Tract Spur project, but the MOU with the Spur owners requires the Agency to take these steps. The payment Schedule will list budgeted amounts that are obligated under the MOU (or other enforceable contract) to comply with this requirement. Staff will bring back future amendments to the EOPS to add new implementing payments as appropriate.

The adoption of this resolution allows the Agency to continue to pay bills for projects and activities that are allowed to be continued under the Dissolution Bill (ABx1 26). While the Continuation Legislation that would allow the Agency to continue by paying the Agency's VARP amount (\$12,044,227) has been stayed by the California Supreme Court, this resolution establishes the obligations that will allow the Agency/City to continue to proceed with existing projects. The Resolution establishing the EOPS must be filed with the State by August 29, 2011.

FISCAL ANALYSIS:

Funding for all agreements, contracts and projects included in the EOPS is included in the Fiscal Year 2011-12 Adopted Budget. No City funds are being obligated except the "former Agency assets" now held in City's accounts.

ATTACHMENTS:

Proposed resolution (with EOPS attached)

MOTION:

That the Agency Board:

1. Adopt a Resolution adopting the Enforceable Obligations Payment Schedule; and
2. Authorize the Executive Director to file the Schedule in accordance with law; and,
3. Authorize the Executive Director to make such payments on behalf of the Agency utilizing available Agency revenues, including, but not limited to, newly received tax increment proceeds.

AND

That the City Council:

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Authorize the City Manager and Chief Financial Officer to make such payments on behalf of the Agency utilizing former Agency assets in the case that sufficient Agency revenues are unavailable.