City of Culver City, California

Agenda Item Report

Meeting Date: 07/11/11	Item Number: J-1
JOINT CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD AGENDA ITEM: (1) City Council Introduction of an Ordinance Opting-in to an Alternative Redevelopment Program, (2) Agency Board Approval of a Resolution Reducing the Fiscal Year 2011/2012 Affordable Housing Allocation, and (3) City Council and Agency Board Approval of an Agreement between the City of Culver City and the Culver City Redevelopment Agency Providing Funding for the Required Payments.	
Contact Person/Dept.: Sol Blumenfeld, CDD Todd Tipton, CDD	Phone Number: (310) 253-5760
Fiscal Impact: Yes [X] No []	General Fund: Yes [] No [X]
Public Hearing: [] Action Item: []	Attachments: [X]
Commission Action Required: Yes [] No [X]	Date: ________________
Public Notification: (E-Mail) Meetings and Agendas – Redevelopment Agency and City Council (07/08/11)	
Department Approval: Sol Blumenfeld: (07/06/11)	City Attorney Approval: Carol Schwab (by H. Baker) (07/07/11) Agency General Counsel Approval: Murray Kane: (07/06/11)
Chief Financial Officer Approval: Jeff Muir /07/07/11)	City Manager/Executive Director Approval: John M. Nachbar (07/07/11)

RECOMMENDATION:

Staff recommends that the City Council introduce an ordinance to opt-in to an alternative redevelopment program, that the Agency Board adopt a resolution reducing the Fiscal Year 2011/2012 Affordable Housing Allocation, and the City Council and Agency Board approve an agreement between the City of Culver City and the Culver City Redevelopment Agency to provide funding for the required $12.1 million Opt-In Payment in Fiscal Year 2011/2012.

BACKGROUND:

On June 29, 2011, the Governor signed ABX1 26 and ABX1 27 (collectively the Bills). ABX1 26 immediately suspends redevelopment agencies' operations and effectively dissolves redevelopment agencies statewide. ABX1 27 allows agencies whose legislative bodies (in the City's case, the City Council) that are willing to comply with "voluntary" payments to the State (via the County Auditor-Controller) to be exempted from the elimination provisions in ABX1 26. The California Redevelopment Association (CRA) and League of California Cities (League) have indicated their intent to file lawsuits in either the State Appellate Court or the State Supreme Court challenging the constitutionality of the Bills.

DISCUSSION:

Agency General Counsel has opined that ABX1 26 and ABX1 27 are unconstitutional under a number of different theories. Pending action by a Court declaring the contrary (or the issuance of a stay), the Bills are now law. To best position the City and the Agency pending resolution of the proposed lawsuit (or the issuance of a stay), Agency Counsel and the City Attorney have the following recommendations:

To protect the options of the City and Redevelopment Agency going forward and to guard against possible future actions by the State, Agency General Counsel has recommended the following actions be taken:

1. CITY COUNCIL: Under the terms of ABX1 27, enact an ordinance to "Opt in" to make the "voluntary" payments and authorize the City to participate in the "alternative voluntary redevelopment program"; and,

2. AGENCY BOARD: Adopt a resolution reducing the allocation to the Low and Moderate Income Housing Fund (Housing Fund) for Fiscal Year 2011/2012 to facilitate the State payment; and

3. BOTH THE CITY COUNCIL AND AGENCY BOARD: Approve a remittance agreement between the City and the Agency to establish funding the Opt-In Payments by the City.

The Opt-In Ordinance, if enacted by the City Council, exempts the Agency from the immediate suspension of powers it would otherwise be subject to under ABX1 26 (except for existing obligations) as well as avoiding the successor agency and oversight committees that are part of ABX1 26.

Given the opinion of Agency General Counsel and the City Attorney regarding the illegality of the Bills, even with enaction of the Opt-In Ordinance, the Opt-In Payment will be made under protest with a full reservation of rights of the City and Agency. Additionally, the City retains the options of repealing the Opt-In Ordinance or not making any future payment (starting with the January 15, 2012 payment); however, either action would subject the Agency to immediate termination. Thus, Agency General Counsel concludes that there is no apparent downside to rapid enaction of the Opt-In Ordinance.

Absent an action by a Court to stay enforcement of the Bills, the City will need to make a one-time payment to the State of approximately $12.1 million in Fiscal Year 2011-2012 (with one half of the payment due on January 15, 2012 and the other half on May 15, 2012) and $3 million in payments in Fiscal Year 2012/2013 in addition to the payment in the on-going years that includes 80 percent of the school district's share of any post November 1, 2011 new indebtedness. Thus, staff has assumed the $3 million payments will continue indefinitely. The attached Cash Flow reflects these payments.

To assist cities that intend to make the Opt-In Payment utilizing Agency funds, the resolution presented for Agency Board consideration allows a one-time withholding of the normally required 20% set aside to the Housing Fund. The total amount of the normal set-aside payment is estimated at $7.6 million in Fiscal Year 2011/2012. Since existing housing funds cannot be used to make the Opt-In Payment, the proposed resolution authorizes staff to withhold an amount up to 100% of the normal set-aside payment ($7.6 million) for Fiscal Year 2011/2012. . Staff has determined that approximately $3.1 million are required in Fiscal Year 2011/2012 for Housing operations, administrative and staff costs. Because the 80% funds are less restricted than 20% set aside funds, staff proposes to use 100% of the withheld funds as part of the Opt-In Payment and fund the $3.1 million for the Housing operations from existing 80% funds.

The Agency will use additional unencumbered tax increment proceeds to fund the remaining portion of the initial payment and subsequent payments.

Staff is presenting a proposed Remittance Agreement to the City Council and Agency Board for recommended approval. The Remittance Agreement provides the vehicle by which the City would receive Agency funds for payment of the Opt-In Payment.

FISCAL ANALYSIS:

Should the City Council decide to make the $12.1 million Opt-In Payment, staff proposes it will be funded as follows:

▪ Withheld Funds	$ 7,600,000
▪ Existing 80% Tax Increment Funds	$ 4,500,000
Total	$12,100,000

With the “voluntary” breakdown as indicated above the Agency will be able to fund all of its proposed Redevelopment and Housing programming this fiscal year and may allow for the potential to fund other projects related to the cooperation agreement, and/or new project opportunities that may arise as the development market continues to improve.

During the budget presentation for Fiscal Year 2011/2012, staff recommended phasing in the elimination of certain Agency reimbursements to the General Fund over a four year period starting in Fiscal Year 2012/2013. Funding the Opt-In Payment in future years requires this assumption to be implemented. Agency reimbursements to the General Fund would be decreased by an additional $800,000 per year in each year beginning in Fiscal Year 2012/2013, reaching a total of $3.2 million in Fiscal Year 2015/2016.

ATTACHMENTS:

1. Proposed Resolution
2. Proposed Ordinance
3. Draft Remittance Agreement

MOTION:

That the City Council:

1. Introduce an ordinance which authorizes the City to (a) participate in the "alternative voluntary redevelopment program" and (b) make the $12.1 million "voluntary" Opt-In Payment; and,

2. Approve a Remittance Agreement between the City and the Agency to establish Agency funding of the "voluntary" Opt-In Payment by the City; and,

3. Authorize the City Attorney to review/prepare the necessary documents; and,

4. Authorize the City Manager to execute such documents on behalf of the City.

That the Redevelopment Agency:

1. Adopt a resolution reducing the allocation to the low moderate income housing fund by 100% of the amount otherwise required to be deposited into the Low and Moderate Income Housing Fund (currently estimated at $7.6 million) for Fiscal Year 2011/2012 to facilitate the payment; and,

2. Approve a Remittance Agreement between the City and the Agency to establish Agency funding of the "voluntary" Opt-In Payment by the City; and,

3. Authorize the Agency General Counsel to review/prepare the necessary documents; and,

4. Authorize the Executive Director to execute such documents on behalf of the Agency.