City of Culver City, California

Redevelopment Agency Agenda Item Report

Meeting Date: 05/04/09	Item Number: A-1
AGENDA ITEM: (1) Adoption of a Resolution Making a Finding Pursuant to Health and Safety Code Section 33685 in Connection with the 2008-2009 Payment to the Educational Revenue Augmentation Fund required by State Law and (2) Approval of a Related Budget Amendment.	
Contact Person/Dept.: John Fisanotti	Phone Number: (310) 253-5767
Fiscal Impact: Yes [X] No []	General Fund: Yes [] No [X]
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Master E-Mail Notification List (04/29/09)	
Department Approval: Sol Blumenfeld (04/23/09)	Executive Director Approval: Jerry B. Fulwood (04/29/09)
Chief Financial Officer Approval: Jeff Muir (04/29/09)	

RECOMMENDATION:

Staff recommends the Culver City Redevelopment Agency (“The Agency”): (1) approve the attached Resolution 2009 A___ making a finding pursuant to Health and Safety Code Section 33685 in connection with the 2008-2009 payment to the Educational Revenue Augmentation Fund required by State Law; and, (2) approve a related budget amendment.

BACKGROUND:

Last Fall, the Governor signed into law AB 1389 as part of the resolution of the California budget crisis. Assembly Bill 1389 required redevelopment agencies to make a payment from their tax increment income to the Educational Revenue Augmentation Fund (commonly known as “ERAF”). The State has established ERAF as a mechanism to meet its obligation towards school funding by appropriating tax increment funds intended for redevelopment agencies. Statewide, the amount of money to be shifted to ERAF this year is $350 million. The Agency’s share of this total is $2,251,463. Payment must be made by May 10, 2009.

Pursuant to Section 33685(b) of the California Health and Safety Code, an agency may borrow up to fifty percent (50%) of its annual revenue to its Low- and Moderate-Income Housing Set Aside Fund to make the payment required by AB 1389 if it finds that there are insufficient funds to meet the requirements of subdivision (a) of Health and Safety Code Section 33685 (i.e. the payment to the ERAF) from the Agency’s general tax increment revenues.

Section 33685 (b) reads:

(1) *Notwithstanding any other provision of law, to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6, unless, in a given fiscal year, executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund pursuant to the authority of this subdivision.*

(2) *As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full within 10 years following the date on which moneys are remitted to the county auditor for deposit in the county Educational Revenue Augmentation Fund pursuant to subdivision (a).*

The California Redevelopment Association and the City of Moreno Valley (collectively the Plaintiffs) filed suit in Sacramento County Superior Court against the State of California Department of Finance and the County Auditors on behalf of all redevelopment agencies in California in regards to this year's ERAF payment. It is Plaintiffs' contention that the ERAF payment violates Article XVI, Section 16 of the California Constitution on a variety of counts. The scheduled payment to ERAF by May 10, 2009 may not be needed if the court rules in favor of the Plaintiffs before May 10, 2009, or if the Plaintiffs seek and are granted an injunction to stay the payments until the court can resolve the matter.

Since this matter may not be conclusively resolved prior to the May 10, 2009 deadline, the California Redevelopment Association recommends redevelopment agencies pay the required ERAF payment under protest in order to avoid the onerous penalties for non-payment. In order to maximize interest earnings and allow sufficient time for the lawsuit to potentially be resolved, it is staff's intention to wire the Agency's ERAF payment on the last possible date (i.e., Friday, May 8, 2009).

DISCUSSION:

Staff has examined the Agency's financial position and concludes that the Agency can meet its pending ERAF payment obligation if it borrows the payment from the Agency's Low- and Moderate-Income Housing Set Aside Fund. As previously stated, the Agency may borrow up to fifty percent (50%) of its annual revenue to its Low- and Moderate-Income Housing Set Aside Fund to make the payment required by AB 1389. The projected Low - and Moderate-Income Housing Set Aside Revenue for FY 2008-09 is $6,892,000. Consequently, the Agency may borrow up to $3,446,000 to pay the ERAF obligation. Staff is, therefore, recommending the

Agency borrow the entire required amount of $2,251,463 from the Low- and Moderate-Income Housing Set Aside Fund. In order to do so, the Agency must find that there are insufficient other funds available to make the required payment. Given the current state of the Agency's finances, staff recommends the necessary finding can be made.

The recommended action will allow the Agency to make a timely ERAF payment should the pending court case not be resolved prior to May 10, 2009. To reserve the Agency's rights to recover funds should the lawsuit be conclusively resolved in favor of plaintiffs, such a payment would be accompanied by a letter from the Executive Director indicating such payment is made under protest.

FISCAL ANALYSIS:

In the event the Agency must make the ERAF payment by May 10, 2009, with the Agency's approval, the payment may be made by borrowing $2,251,463 from the Low- and Moderate-Income Housing Set Aside Fund (Account No. 55492000.517500). The borrowed funds will have to be repaid from future tax increment revenues within 10 years of the payment. Subject to availability of funds, the Agency will pay $225,000 per year to the Low- and Moderate-Income Housing Set Aside Fund until this debt is repaid in 2018-19.

Funds for the necessary payment were appropriated by the Agency Board during the mid-year budget presentation on February 9, 2009. At that time the Agency Board approved a budget amendment to allocate $1.125 million of the $2.25 million ERAF payment from unrestricted Tax Increment funds and $1.125 million from Low/Moderate Income Housing Set Aside Funds. The obligation was split 50/50 to be consistent with previous instances when the Agency needed to borrow from Housing Set Aside Funds to pay an ERAF obligation and because staff believed that the Agency could pay 50% of the obligation at that time. Since then, the economy has continued to worsen and one time revenues that the Agency had originally expected to receive prior to the end of this fiscal year (e.g. land sale proceeds from Parcel B) are now expected to be delayed. Therefore, due to a deteriorated financial position from mid-year, staff recommends that the entire ERAF obligation is borrowed from the Housing Set Aside Fund. A budget amendment is required to increase the amount currently allocated in the Housing Set Aside Fund (55492000.517500) by $1,126,000 and decrease the amount currently allocated in the Redevelopment Agency Unrestricted Tax Increment Fund (54292000.517500) by $1,126,000. There are sufficient funds available in the Housing Set Aside fund balance to cover this payment.

ATTACHMENTS:

Resolution No. 2009 A-___

MOTION:

That the Culver City Redevelopment Agency:

1. Adopt Resolution No. making the finding that there are insufficient other moneys to meet the requirements of Health and Safety Code Section 33685(a); and,

2. Approve a budget amendment to increase the amount currently allocated in the Housing Set Aside Fund (55492000.517500) by $1,126,000, for a total allocation of $2,252,000 and decrease the amount currently allocated in the Redevelopment Agency Unrestricted Tax Increment Fund (54292000.517500) by $1,126,000.