



ORDINANCE NO. 2011-28

A ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING IT WILL COMPLY, UNDER PROTEST, WITH THE "VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM" PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO

WHEREAS, the City Council of the City of Fresno ("City") approved and adopted the Redevelopment Plan ("Redevelopment Plan") covering certain properties within the City (the "Project Areas"); and

WHEREAS, the Redevelopment Agency of the City of Fresno ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken vital redevelopment projects in the Project Areas to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, over the next few years, the City and Agency hope to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Areas' economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each

Adopted 8-25-11
Approved 8-31-11
Effective 9-30-11

2011-28



redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB 1X 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, the “Alternative Voluntary Redevelopment Program” requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, the City strongly opposes AB 1X 26 and AB 1X 27, as the bills are unconstitutional, and fully supports the efforts of the plaintiffs in the suit captioned *California Redevelopment Association, et al., v. Matosantos, et al.*, California Supreme Court case no. S194861, filed on behalf of taxpayers, cities, counties and redevelopment agencies; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, and under protest, the City agrees to cause to be made the Fiscal Year 2011-2012 community remittance of nine million, two hundred twenty thousand, three hundred and forty-seven dollars (\$9,220,347), as well as the subsequent annual community remittances as set forth in the CRL; and



WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise unenforceable; and

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the "Alternative Voluntary Redevelopment Program's" payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

THE CITY COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Participation in the "Alternative Voluntary Redevelopment Program." In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.



Section 3. Payment Under Protest. Except as set forth in Section 4, below, the City Council hereby determines that the City shall cause to be made the community remittances set forth in Health and Safety Code section 34194 *et seq.*

Section 4. Effect of Stay or Determination of Invalidity. The City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid and unenforceable, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's rights to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise unenforceable. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. Implementation. The City Council hereby authorizes and directs the City Manager, or his designee, to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Fresno County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27, under protest.

Section 6. Additional Understandings and Intent. The City does not intend to and shall not, by enactment of this Ordinance, pledge any of its general fund revenues or assets, or any funds other than tax increment funds made available to the Agency, to make the remittance payments.



Pursuant to a resolution of the Agency, the Agency shall make the annual specified remittance payment directly to the Auditor/Controller from available tax increment funds.

Section 7. CEQA. The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that they are not a “project,” but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Fresno in accordance with CEQA Guidelines.

Section 8. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

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Section 9. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 25th day of August, 2011.

AYES : Baines, Olivier, Westerlund, Xiong, Brand
NOES : None
ABSENT: Borgeas, Quintero
ABSTAIN: None

Mayor Approval: August 31, 2011
Mayor Approval/No Return: N/A, 2011
Mayor Veto: N/A, 2011
Council Override Vote: N/A, 2011

REBECCA E. KLISCH
City Clerk

BY: Rebecca Klisch
~~Deputy~~

APPROVED AS TO FORM:

FRESNO CITY ATTORNEY'S OFFICE

BY: Douglas T. Sloan
DOUGLAS T. SLOAN
Assistant City Attorney

Dated: August 12, 2011

DTS:ns [56752ns/ord]- 8/12/11



August 26, 2011

RECEIVED

Council Adoption: 08/25/11
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

2011 AUG 31 AM 10:24

FROM: REBECCA E. KLISCH, CMC
City Clerk

REK CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 08/25/11, Council adopted the attached Ordinance No. 2011-28 entitled **Authorizing certain payments, under protest, pursuant to AB 1X27**, Item No. **9:30 A.M. A**, by the following vote:

Ayes : Baines, Olivier, Westerlund, Xiong, Brand
Noes : None
Absent : Borgeas, Quintero
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before September 6, 2011. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearengin, Mayor

Date: 8/31/11

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes :
Noes :
Absent :
Abstain :