



**REPORT TO THE CITY COUNCIL
AND AGENCY BOARD**

CITY COUNCIL ITEM NO. 9:30am "A"
BOARD MEETING: 8/25/11
APPROVED BY
 (Executive Director)

DATE: August 18, 2011
FROM: Marlene Murphey, Executive Director

SUBJECT: Agency Board and the City Council take the following actions:

1. RESOLUTION – Joint Resolution authorizing certain payments, under protest, pursuant to AB 1X 27; CEQA findings (*Council and Agency action*)
2. ORDINANCE – (For Introduction) Bill authorizing certain payments, under protest, pursuant to AB 1X 27; CEQA findings (*Council action*), and

RECOMMENDATION

Staff recommends that the City Council and Agency Board:

Adopt a joint resolution and a Council ordinance to allow the Redevelopment Agency to continue to implement a variety of redevelopment projects and programs for the purpose of eliminating and preventing blight, stimulating and expanding economic growth, creating and developing local job opportunities and alleviating deficiencies in public infrastructure.

BACKGROUND

As part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed, companion bills Assembly Bill 1x 26 (AB1X 26) and Assembly Bill 1X 27 (AB1X 27), requiring that each redevelopment agency be dissolved unless the community that created it enact an ordinance committing it to making certain payments.

AB1X 26 prohibits redevelopment agencies from taking numerous actions, effective on June 29, 2011, and purportedly retroactively and additionally provides that agencies are deemed to be dissolved as of October 1, 2011 unless they opt-in through voluntary remittance. Should a redevelopment agency be dissolved, AB1X 26 makes its existing assets and future property tax revenues available for use by third parties for their own benefit.

AB1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the Community Redevelopment Law, by enacting an "opt-in" ordinance no later than November 1, 2011, agreeing to make certain "voluntary" community remittance payments. If the City does not adopt an "opt-in" ordinance by October 1, 2011, it would have to adopt a "non-binding" resolution of intent to adopt an "opt-in" ordinance by November 1, 2011, in order to avoid automatic dissolution of the Redevelopment Agency.

Presented to Fresno Redevelopment Agency
Date 8/18/11
Disposition Yes 2011-178/1794
adopted; Bill B-32
into fund laid over

Basically, the Alternative Voluntary Redevelopment Program requires an agreement by ordinance to remit specified annual amounts to the county auditor-controller. In the case of Fresno's Redevelopment Agency, it would have to agree to make a Fiscal Year 2011-2012 community remittance in the amount of nine million, two hundred and twenty thousand, three hundred and forty seven dollars (\$9,220,347), as well as subsequent annual community remittances estimated at approximately \$2.19 million. For Fiscal Year 2011-12 half is due in January 2012 and the other half in May 2012. The Fresno Redevelopment Agency does have the financial ability to pay the \$9,220,347 community remittances from tax increment funds.

Currently, the new law allows the Agency to use the 20% Housing Set Aside (HSA) (only for Fiscal Year 2011-12) to meet its \$9,220,347 payment obligation based on a finding that other funds are not available. The Agency is prepared to pay the remittance from non-housing funds and therefore will not use its 20% HSA.

The Agency, prior to AB1X 26 and 27 anticipated that a remittance to the state might be required in FY 11/12 and therefore set aside about \$2 million in the adopted budget. On June 29, 2011 the State adopted AB1X 26 and 27 and on August 1, 2011 notified the Agency that the remittance would be \$9,220,347. The Agency has identified the balance of \$7.22 million within the FY 11/12 budget guided by objectives to:

1. Fulfill obligations and payment schedules for executed agreements for adopted projects; and,
2. Spread the necessary reductions across all project areas to enable continued activity throughout redevelopment areas

The proposed reductions that together comprise the voluntary remittance payments for 2011/12 are summarized in the attachment.

PROPOSED ORDINANCE

In light of the above financial capability and under the threat of dissolution of the Redevelopment Agency, it is recommended that the City Council and Agency Board adopt the requisite ordinance so that we can continue to implement a variety of redevelopment projects and programs for the purpose of eliminating and preventing blight, stimulating and expanding economic growth, creating and developing local job opportunities and alleviating deficiencies in public infrastructure.

While the proposed ordinance expresses the Agency's intent to make the required community remittances, in order to prevent a total loss of benefits provided by the Agency to the taxpayers, property owners and residents, the ordinances make it clear that the required remittances shall be made "under protest and without prejudice to the City's and Agency's

right to recover such amounts and interest thereon, to the extent there is a final determination that AB1X 26 and AB1X 27 are unconstitutional or otherwise illegal or repealed." In other words, the Agency and City will reserve the right, regardless of any community remittance made pursuant to the ordinances, to challenge the legality of AB1X 26 and AB1X 27 on behalf of the City and/or Agency.

LAWSUIT CHALLENGING AB1X 26 AND 27

On July 18, 2011, the League of California Cities and the California Redevelopment Association filed a petition on behalf of cities, counties and redevelopment agencies asking the California Supreme Court to overturn AB1X 26 and AB1X 27 on the following grounds:

- AB1X 27 violated the State Constitution because it requires redevelopment agencies to use their tax increment funds for the benefit of the state and other local jurisdictions;
- AB1X 26's attempt to restrict the use of redevelopment agencies' funds pending their dissolution violates the State Constitution;
- AB1X 26's attempt to dissolve the redevelopment agencies violates the State Constitution;
- The payments violate the State Constitution to the extent that they are made with property tax proceeds;
- The payments violate the State Constitution to the extent they are made with proceeds of local taxes other than property taxes; and
- Requiring local governments to shoulder part of the state responsibility to fund schools constitutes an unfunded state mandate.

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 AB1X 26 and AB1X 27, the Agency shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay.

Attachments:

1. Joint Resolution
2. Council Ordinance

FY 11/12 Summary After s1.7B State Take

Project Area	1 FY 11/12 Adopted Budget	2 Increase in Sources - Prop Sales	3 Revenue Added to ERAF Pmt	4 Reductions in Expenses to Cover ERAF Payment			5 Real Property	6 Industrial Development	7 Streets & Infrastructure		8 Other Projects	9 FY 11/12 Adjusted Budget	10 ERAF Per Adjusted FY12 Budget	11 % of \$9,220,990	12 FY08/09 Total Gross Tax Increment	13 % of 08/09 Tax Increment	14 FY12 ERAF Allocation (% of 08/09)
				Storefront Improvement	Storefront Improvement	Streets & Infrastructure											
Central Business District	347,514											177,514	245,569			361,195	
Chinatown	(92,707)							(40,000)			(105,000)	(162,707)	90,600	867,458		52,845	
West Fresno Rehab												(45,000)	126,913	1,209,807		29,077	
Convention Center	(7,974,833)										(815,000)	(8,789,833)	915,000	998,862		415,909	
Fulton	720,714										720,714	65,900	65,900	445,848		185,643	
Jefferson	693,093										693,093	68,400	68,400	664,582		276,720	
Mariposa	6,341,709										6,301,709	158,140	1,290,591	1,290,591		533,216	
South Van Ness	(532,973)						(400,000)				(972,973)	488,000	456,903	456,903		190,246	
West Fresno #1	1,143,783										1,138,783	24,960	233,857	233,857		97,374	
West Fresno #2	3,821,357										3,821,357	80,550	959,756	959,756		399,626	
Total - Merger 1	4,467,657	0	0	(55,000)	(125,000)	(400,000)	(400,000)	(40,000)	(965,000)	(965,000)	2,882,657	2,182,119	6,104,603	6,104,603	27.57%	2,541,851	
Fruit/Church	224,581										184,581	99,970	494,938	494,938		206,084	
Southwest Fresno	2,887,399										1,672,399	1,497,430	3,534,678	3,534,678		1,471,779	
Total - Merger 2	3,111,980	0	0	(45,000)	(300,000)	0	(590,000)	(590,000)	(300,000)	(320,000)	1,856,980	1,597,400	4,029,616	4,029,616	18.20%	1,677,863	
Airport Area Revitalization	1,423,007										823,007	810,886	2,224,121	2,224,121	10.04%	926,086	
Central City	793,200										607,000	274,200	1,009,807	1,009,807	4.56%	420,466	
Corridor 99/Golden State	3,915,902	580,000	(580,000)	(3,000)	(31,200)	(235,000)	(550,000)	(550,000)	(100,000)		3,127,902	1,572,100	2,738,953	2,738,953	12.37%	1,140,453	
Fresno Air Terminal	87,989										16,539	96,450	444,332	444,332	2.01%	185,012	
Reading Business Park	938,556										283,556	726,000	1,058,460	1,058,460	4.78%	440,724	
South Fresno Industrial	1,678,717										765,717	1,099,050	1,630,619	1,630,619	7.36%	678,961	
Southeast Fresno	1,588,097										998,622	862,775	2,903,413	2,903,413	13.11%	1,208,931	
Litigation	18,533										18,533	0	0	0	0.00%		
Total - Other Areas	10,444,001	580,000	(580,000)	(51,500)	(566,200)	(1,280,000)	(1,520,000)	(1,520,000)	(385,425)	(385,425)	6,640,876	5,441,471	12,009,704	12,009,704	54.23%	5,000,633	
Total Non-Housing	18,023,638	580,000	(580,000)	(151,500)	(991,200)	(1,680,000)	(2,150,000)	(2,150,000)	(1,670,425)	(1,670,425)	11,380,513	9,220,990	22,143,924	22,143,924	100.00%	9,220,347	
Housing	16,955,344										16,955,344						
Total All Areas	34,978,982	580,000	(580,000)	(151,500)	(991,200)	(1,680,000)	(2,150,000)	(2,150,000)	(1,670,425)	(1,670,425)	28,335,857	9,220,990	22,143,924	22,143,924	100.00%	9,220,347	

Source of Funds to Make ERAF Pmt

FY 12 Approved Budget	\$1,997,865
Decrease in funds for Redevelopment Projects (\$34,978,982 - \$28,335,857)	\$6,643,125
Sales Proceeds - Corridor 99	\$580,000
	<u>9,220,990</u>

FY 11/12 Summary After \$1.7B State Take

Project Area	Estimated FY12 ERAF Payment	FY 11/12 Original Budget	Reductions in Expenses to Cover ERAF Payment					FY 11/12 Adjusted Budget
			Storefront Improvement	Real Property	Industrial Develop	Streets & Infrastructure	Other Projects	
Central Business District	301,541	347,514						
SIP			(25,000)	(40,000)				
Not identified								
Our Town Grant							(105,000)	
Adjusted Budget - CBD								177,514
Chinatown	44,117	(92,707)	(30,000)			(40,000)		
SIP								
Plan Implementation/Streetscape/Street Imp								
West Fresno Rehab	24,275							
Not identified			(45,000)					
Adjusted Budget - Chinatown								(207,707)
Convention Center	347,219	(7,974,833)						
OAT							(815,000)	
Adjusted Budget - Conv Cntr								(8,789,833)
Fullton	154,983	720,714						720,714
Jefferson	231,018	693,093						693,093
Mariposa	445,152	6,341,709						
Ice House							(40,000)	
Adjusted Budget - Mariposa								6,301,709
South Van Ness	158,826	(532,973)						
Real Property				(40,000)				
SVN Industrial Target					(400,000)			
Adjusted Budget - SVN								(972,973)
West Fresno #1	81,292	1,143,783						
Plan Implementation							(5,000)	
Adjusted Budget - WF1								1,138,783
West Fresno #2	333,625	3,821,357						3,821,357
Total - Merger 1	2,122,048	4,467,657	(55,000)	(125,000)	(400,000)	(40,000)	(965,000)	2,882,657
Fruit/Church	172,047	224,581						
Plan Amendment/Implementation								
Real Property - not identified				(20,000)				
Adjusted Budget - Fruit/Church								184,581
Southwest Fresno	1,228,705	2,887,399	(45,000)					
SIP								
Real Property - Liquor Store				(280,000)				
B Street Parking							(90,000)	
Tulare Medians							(75,000)	
EOC Splash Park							(425,000)	
California Ave Improvements							(300,000)	
Adjusted Budget - SWF								1,672,399
Total - Merger 2	1,400,752	3,111,980	(45,000)	(300,000)	0	(590,000)	(320,000)	1,856,980
Airport Area Revitalization	773,136	1,423,007						

ORDINANCE NO. _____

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

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 _____ day of _____, 2011.

AYES :
NOES :
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2011
Mayor Approval/No Return: _____, 2011
Mayor Veto: _____, 2011
Council Override Vote: _____, 2011

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

FRESNO CITY ATTORNEY'S OFFICE

BY: 
DOUGLAS T. SLOAN
Assistant City Attorney

Dated: August 12, 2011

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