

REPORT TO CITY COUNCIL

DATE: JULY 23, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER

SUBJECT: APPROVAL OF RESOLUTION NO. 12-1679; MAKING AN ELECTION IN CONNECTION WITH HOUSING ASSETS AND FUNCTIONS UNDER PART 1.85 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

This report is to address the changes made by the passage of Assembly Bill (AB) 1484 which was signed by the Governor of California on June 25, 2012, as a Budget Trailer Bill.

As previously presented to the City Council, the outcome of the California Supreme Court's decision in *California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861), the litigation challenging AB X1 26 ("AB 26) and AB X1 27("AB 27") AB 26 and AB 27, which were signed by the Governor of California on June 29, 2011, added Parts 1.8 and 1.85 to the Community Redevelopment Law, which had a major effect on the operations of the former Agoura Hills Redevelopment Agency and led to the recommendation that the affordable housing responsibilities and assets be transferred to the County of Los Angeles Housing Authority.

The Agoura Hills Redevelopment Agency (the "Redevelopment Agency") was in the planning and design process for two affordable housing developments at the time AB 26 was passed and, as such, had not acquired any property nor completed the proposed designs. Thus, there were no housing assets beyond the monies in the Low and Moderate Income Housing Fund (LMIHF), and some plans and related documents. The fact that the Redevelopment Agency had no large housing assets, combined with the fact that AB 26 did not appear to authorize a funding mechanism for performing housing functions in the future, led to the original recommendation to transfer the housing responsibilities to the Housing Authority of the County of Los Angeles.

Since that time, the recent passage of AB 1484 has amended and added language in an effort to "clean up" previous inconsistencies or overlooked issues in AB 26. Specifically of interest to the City of Agoura Hills and the Successor Agency to the Agoura Hills Redevelopment Agency (the "Successor Agency") is the language in California Health and Safety Code, Section 34176. In particular, Section 34176(a) authorizes a city that created a redevelopment agency to elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city elects to retain the responsibility for performing housing functions previously performed by

the redevelopment agency, Section 34176(a) provides that all rights, powers, duties, obligations, and housing assets, excluding any amounts on deposit in the LMIHF and enforceable obligations retained by the successor agency, shall be transferred to the city.

AB 1484 added Section 34176(g), providing the ability of the housing successor agency to utilize unexpended bond proceeds in a manner consistent with the bond covenants, including covenants related to the tax status of the bonds. This new language poses potential liability to the City and Successor Agency in that the 2008 housing bonds were issued as tax-exempt bonds and thus come with various regulations and requirements that fall under the auspices of the Internal Revenue Service. Allowing another agency to control and expend the housing bond proceeds poses the potential for several situations that would be disadvantageous to the City and Successor Agency.

This new language also gives the housing successor agency authority to make a determination on the defeasance of outstanding bonds. Successor Agency staff presented a proposal to partially defease a large portion of the 2008 housing bonds to the Oversight Board to the Successor Agency to the Agoura Hills Redevelopment Agency in June 2012. The defeasance would free up revenues to pay taxing entities (via existing pass-through agreements) and to repay the City for its loan to the Redevelopment Agency, which could be upwards of \$32 million.

In addition, AB 1484 does not provide a consistent stream of revenue for housing obligations. Thus, if all of the steps to acquire and/or construct affordable housing units as defined under California Law were accomplished with unexpended bond proceeds, there would be no reliable funding source to provide for maintenance and management of these housing units in the future. Based on this information, staff feels that it is in the best interest of the City and several other local agencies that staff continue to work towards defeasance of the bonds, which may prove difficult if the City is not the housing successor agency.

Health and Safety 34176(c) provides that the entity assuming the housing functions formerly performed by the redevelopment agency may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Redevelopment Law, including, but not limited to, Health and Safety Code Section 33418. There is no requirement as such and the Department of Finance has taken the position that any previous housing obligations are no longer applicable except for those specifically required in an agreement with another party (enforceable obligation). Agoura Hills did not have any such agreements in place at the time of dissolution and is not authorized to enter into that type of agreement post AB 26.

Although the language in AB 1484 covers a variety of topics and establishes dates and timelines for certain actions, there is an August 1, 2012 deadline for the housing successor agency to report housing assets as defined in Section 34176(e), to the State Department of Finance. The City Attorney has recommended that this item be considered by the City Council prior to the August 1, 2012 date, in order to avoid any conflicts in regard to the unexpended housing bond proceeds, distribution of housing assets, and responsibilities.

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 12-1679, electing to retain the responsibility for performing housing functions previously performed by the Redevelopment Agency, and determining that all of the rights, powers, assets, liabilities, duties, obligations, and housing assets associated with the housing activities of the Redevelopment Agency be transferred to the City of Agoura Hills.

Attachment: Resolution No. 12-1679

RESOLUTION NO. 12-1679

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS MAKING AN ELECTION IN CONNECTION WITH HOUSING ASSETS AND FUNCTIONS UNDER PART 1.85 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH

RECITALS:

A. AB X1 26 and AB X1 27 were signed by the Governor of California on June 29, 2011, making certain changes to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the “Redevelopment Law”), including adding Part 1.8 (commencing with Section 34161) (“Part 1.8”) and Part 1.85 (commencing with Section 34170) (“Part 1.85”).

B. The California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California (*California Redevelopment Association, et al. v. Matosantos, et al.* (Case No. S194861)) alleging that AB X1 26 and AB X1 27 are unconstitutional. On December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case, largely upholding AB X1 26, invalidating AB X1 27, and holding that AB X1 26 may be severed from AB X1 27 and enforced independently.

C. The Supreme Court generally revised the effective dates and deadlines for performance of obligations in Part 1.85 arising before May 1, 2012, to take effect four months later.

D. As a result of the Supreme Court’s decision, the Agoura Hills Redevelopment Agency (the “Redevelopment Agency”), a redevelopment agency in the City of Agoura Hills (the “City”), created pursuant to the Redevelopment Law, was dissolved pursuant to Part 1.85 on February 1, 2012.

E. Health and Safety Code Section 34176(a) authorizes a city that created a redevelopment agency to elect to retain the housing assets and functions previously performed by the redevelopment agency. Pursuant to Section 34176(a), if a city elects to retain the authority to perform housing functions previously performed by the redevelopment agency, all rights, powers, duties, and obligations, excluding any amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the City.

F. Health and Safety Code Section 34176(b) provides that if a city does not elect to retain the responsibility for performing housing functions previously performed by the redevelopment agency, all rights, powers, assets, liabilities, duties, obligations, and housing assets associated with the housing activities of the redevelopment agency, excluding any amounts in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred as follows: (1) where there is no local housing

authority in the territorial jurisdiction of the former redevelopment agency, to the Department of Housing and Community Development; (2) where there is one local housing authoring in the territorial jurisdiction of the former redevelopment agency, to that local housing authority; and (3) where there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, to the local housing authority selected by the city that authorized the creation of the redevelopment agency.

G. The City of Agoura Hills is in the territorial jurisdiction of the former Redevelopment Agency.

H. Health and Safety 34176(c) provides that the entity assuming the housing functions formerly performed by the redevelopment agency and receives the transferred housing assets may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Redevelopment Law, including, but not limited to, Health and Safety Code Section 33418.

I. The City Council desires to adopt this resolution in connection with the housing assets and functions previously performed by the Redevelopment Agency.

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. This Resolution is adopted pursuant to Health and Safety Code Section 34176.

Section 3. Pursuant to Health and Safety Code Section 34176(a), the City Council hereby elects for the City to retain the housing assets, as allowed by law, and functions previously performed by the Redevelopment Agency and hereby accepts the transfer of all rights, powers, duties, obligations, and housing assets associated with the housing activities of the Redevelopment Agency. The City Council reserves its right to rescind this election and to subsequently determine that all of the rights, powers, assets, liabilities, duties, obligations, and housing assets associated with the housing activities of the Redevelopment Agency shall be transferred to the housing authority selected by the City.

Section 4. The officers and staff of the City are hereby authorized and directed, jointly and severally, to make all notifications of the Council's election, as set forth in Section 3 hereof, as deemed necessary or advisable and to execute all documents and take all actions which they may deem necessary or advisable to effectuate this Resolution, and any such actions previously taken by such officers and staff are hereby ratified and confirmed.

Section 5. The adoption of this Resolution is not intended to and shall not constitute a waiver by the City of any right the City may have to challenge the legality of all or any portion of AB X1 26 or AB 1484 through administrative or judicial proceedings.

Section 6. This Resolution has been reviewed with respect to applicability of the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the “Guidelines”), and the City’s environmental guidelines. The City Council has determined that this Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment. (Guidelines Section 15378(b) (5)).

Section 7. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 23rd day of July, 2012, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSTAIN: (0)
ABSENT: (0)

John M. Edelston, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk