# AGENDA REPORT

City of Santa Clara, California





**Date:** August 8, 2011

**To:** City Manager/Executive Director for Council/Redevelopment Agency Action

From: Administrative Analyst to the City Manager

**Subject:** Pass to Print an Ordinance to Elect and Implement Participation in the Alternative

Voluntary Redevelopment Program

#### **EXECUTIVE SUMMARY:**

Between June 28 and 30, 2011, the Governor approved the State Budget for fiscal year 2011-12, and signed a number of implementing trailer bills, including ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"). Effective at the time of enactment, the impact of these bills is to suspend a redevelopment agency's ability to issue debt or enter into new obligations until October 1, 2011, at which time the Redevelopment Agency would be dissolved unless the City enacts an ordinance to participate in the Voluntary Redevelopment Program and makes certain required contributions to local schools and special districts. If the City enacts such an ordinance, then the Redevelopment Agency will continue to be subject to existing rules and regulations in the California Community Redevelopment Law.

On July 18, 2011 California Redevelopment Association and the League of California Cities filed a petition asking the California Supreme Court to declare AB 1X 26 and AB 1X 27 unconstitutional. They also requested that the Court issue a stay to prevent the legislation from going into effect until the Court can decide the lawsuit. On August 11, 2011 the Court agreed to hear the case and issued a partial stay until it can rule on the constitutionality of these two bills. The Court anticipates ruling on the merits of the case before January 15, 2012. Although a partial stay has been granted, because of the ambiguity in the language of AB 1X 26 and AB 1X 27 staff believes it is prudent to move forward with actions required in the two bills pending the outcome of the lawsuit.

Background: In late June 2011, the Governor approved the State Budget for fiscal year 2011-12, and signed a number of implementing trailer bills. Two of these trailer bills significantly modify the California Community Redevelopment Law ("CRL") and fundamentally alter the future of California redevelopment: ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act") (together, the "Redevelopment Restructuring Acts"). The Dissolution Act first immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies, effective October 1, 2011. The Voluntary Program Act then allows redevelopment agencies to avoid dissolution under the Dissolution Act by opting in to an "alternative voluntary redevelopment program" (the "Voluntary Program") that requires annual contributions to local schools and special districts.

The California Redevelopment Association ("CRA") and the League of California Cities ("League") have filed a petition with the California Supreme Court challenging the constitutionality of both the Dissolution Act and the Voluntary Program Act and have requested a stay delaying enforcement of certain provisions of

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these two acts while the lawsuit is pending. Briefing of the issues raised by CRA in its petition is underway, but it is not known when the Supreme Court will make a decision on the challenge.

<u>ABx1 26, Dissolution Act</u>: The Dissolution Act immediately suspends and prohibits most redevelopment activities. Accordingly, redevelopment agencies are no longer authorized to do the following:

- Incur new indebtedness or other obligations or restructure existing indebtedness and other obligations
- Make loans or grants
- Enter into contracts
- · Amend existing agreements, obligations or commitments
- · Renew or extend leases or other agreements
- Transfer funds out of the Low and Moderate Income Housing Fund
- Dispose of or transfer assets
- Acquire real property
- Cause development or rehabilitation of housing units

The above is only a partial listing. This suspension and prohibition of most redevelopment activities is intended, to the maximum extent possible, to preserve the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations (generally, bonds and existing contracts with outside third parties) may be used by various local governments to fund core governmental services and schools. With limited exceptions, the Dissolution Act expressly states that enforceable obligations do not include agreements, contracts or arrangements between a redevelopment agency and the city or county that created the redevelopment agency.

If a redevelopment agency has not opted into the Voluntary Program by October 1, 2011, it will be dissolved and a successor agency will be created. The successor agency will be the sponsoring community of the redevelopment agency (in this case, the City of Santa Clara), unless it elects not to serve in that capacity. In that case, the successor agency will be the first taxing entity that submits to the County Auditor-Controller a duly adopted resolution electing to become the successor agency. The actions of the successor agency will be monitored, and in some cases approved, by an Oversight Board. The Oversight Board will consist of seven members appointed by (and representing) the following:

- County Board of Supervisors (two members)
- Mayor (one member)
- County Superintendent of Education (one member)
- Chancellor of California Community Colleges (one member)
- Largest special district taxing entity (one member)
- A former redevelopment agency employee appointed by the Mayor/Board of Supervisors (one member)

The Dissolution Act also includes a provision lengthening the period to challenge redevelopment agency actions taken after January 1, 2011, from ninety days to two years. If a redevelopment agency is dissolved pursuant to the Dissolution Act, the sponsoring community may not establish a new redevelopment agency until all debts of the dissolved redevelopment agency have been retired by the applicable successor agency,

and the sponsoring community has enacted an ordinance agreeing to make the payments required under the Voluntary Program.

ABx1 27. Alternative Voluntary Redevelopment Program Act: To avoid being dissolved and to lift the suspension of redevelopment activities and indebtedness under the Dissolution Act, a redevelopment agency and its sponsoring community may elect to continue operating under the current CRL if they make specified remittances to their County Auditor-Controller beginning in fiscal year 2011-12 and in all succeeding years the redevelopment agency's redevelopment program continues to operate. Once a sponsoring community enacts the appropriate opt-in ordinance, its redevelopment agency will no longer be subject to the provisions of the Dissolution Act and may immediately recommence normal redevelopment activities under the CRL, such as entering into contracts, disposing of assets, and incurring new indebtedness and obligations.

The opt-in remittances are technically required to be made by the redevelopment agency's sponsoring community on behalf of the redevelopment agency, but may be made from any available funds, including funds made available by its redevelopment agency. Funding can result from:

- The local redevelopment agency transferring a portion of its tax increment to the sponsoring community in an amount not-to-exceed the required annual remittance.
- For fiscal year 2011-12 only, a redevelopment agency is exempt from making its full deposit into the Low and Moderate Income Housing Fund (and as of now not required to repay unmade deposits), but only to the extent that it makes a finding that there are insufficient other monies to meet its debt and other obligations, current priority program needs, or its obligations to reimburse the sponsoring community for that year's remittance. Clean up legislation might be proposed that would require repayment of the 2011-12 Housing Fund deposit in a similar manner as was required for the SERAF payments made in 2009-10 and 2010-11.

The remittances payable by a sponsoring community and its redevelopment agency participating in the Voluntary Program are due in equal installments each fiscal year by January 15 and May 15, and will be distributed, as follows:

- Through a special district allocation fund, a minor portion of 2011-12 remittances (and thereafter 15% of annual remittances) will be distributed to special districts that provide fire protection services to the participating redevelopment agency's project areas, and transit districts that serve the redevelopment agency's project areas.
- Through the Educational Revenue Augmentation Fund (ERAF), the balance of all remittances will be distributed to school entities that serve the participating redevelopment agency's project areas.

The Voluntary Program is designed to generate \$1.7 billion for fiscal year 2011-12 and \$400 million in each subsequent year, assuming every sponsoring community/redevelopment agency agrees to participate. The formula for calculating each sponsoring community/redevelopment agency's share is similar, but not identical, to the formula used to calculate each redevelopment agency's share of the statewide \$1.7 billion and \$350 million Special Educational Revenue Augmentation Fund (SERAF) obligations in fiscal years

2009-10 and 2010-11, respectively. The 2011-12 amount calculated by the Department of Finance for City's Redevelopment Agency is \$11,151,131. The Voluntary Program Act allows agencies to appeal its remittance amount under limited circumstances, if the Agency has increased bonded debt service from what was reported to the State Controller in 2008-09 or if there is an error in the report for 2008-09. Staff has prepared an appeal based on the fact that a portion of interest expenses paid by the Agency were erroneously reported on the State Controller's Report under the category "Miscellaneous Financing Sources (Uses). The remittance amount in subsequent years is estimated to be roughly \$2.7 million, which is subject to increase under a complicated formula to the extent the Agency incurs new non-Housing Fund debt or other obligations on or after October 1, 2011.

If a sponsoring community/redevelopment agency fails to make a remittance, the redevelopment agency will become subject to the Dissolution Act and will be dissolved. While the sponsoring community is technically the party paying the remittances, the primary sanction to the sponsoring community for failure to make a remittance is dissolution of its redevelopment agency.

# ADVANTAGES AND DISADVANTAGES AND EFFECTS OF CHOICES:

Anticipated effects on the City and Agency if an opt-in ordinance is not adopted include:

- The City's General Fund could lose approximately \$15 million per year in property lease revenues
  and reimbursements from the Agency as a result of provisions of the legislation that could require the
  disposal of Agency assets for the benefit of other taxing agencies. Loss of this important source of
  General Fund revenue would be devastating to the City and cause severe reductions to City services
  and job loss.
- The Agency would no longer have available its 20% allocations of tax increment for very low-, low-, and moderate-income housing projects, so monies available for new affordable housing would be minimal, if any.
- The State Controller could order the return of property previously owned by the Agency and conveyed to the City earlier this year to the Agency. If that were to happen the property would be under the control of the Oversight Board. In addition to revenue issues raised by the Oversight Board potentially disposing of the property, some property expected to be used for the Stadium could no longer be available for such use.
- The Agency would be dissolved and redevelopment activity would be terminated as of October of this year, with certain very limited exceptions. As a result, Agency activity in the downtown (University) and North Bayshore areas would end.

Whereas opting-in would avoid the dramatic negative effects just cited, opting-in will still cause certain negatives as follows:

- Council policy has been to set aside from available tax increment an additional 10% discretionary setaside to the required 20% Affordable Housing Fund. However, in order to pay the annual remittance, the Agency will no longer be able to make this additional set-aside payment.
- If other funds are not available to pay remittance to the State within a given year, it could be necessary to draw on funds now set aside for Bayshore North Library or other capital improvements, or to defer payments due to the City.
- The Term Sheet with the 49ers provided for an Agency Contribution to the Stadium of up to \$40 million, with the 49ers advancing the majority of this amount up front and the Agency repaying the term from net tax increment. Based on current projections, payment of the annual remittance could result in delay or deferral of payments to the 49ers until the end of the term of the redevelopment plan.
- Finally, although current projections indicate that the Agency will be able to fund ongoing opt-in remittances, should the Agency in a given year be unable to make the payments due, the Agency would be dissolved and all agreements between the Agency and the City would be considered null and void at that time, unless an alternative City funding source for paying the remittance was found.

While neither choice is ideal, staff believes that continuation of the Redevelopment Agency will provide benefits to the community that the City would not otherwise be able to fund and recommends that the City Council adopt an ordinance to opt-in to the Voluntary Program.

#### ECONOMIC/FISCAL IMPACT AND CAPACITY TO PAY OPT-IN REMITANCES:

Capacity exists to pay the opt-in remittances even if the Agency appeal to reduce the amount due is denied. Worst case, as noted earlier, is to pay \$11,151,131 in the first year and then roughly \$2.7 million per year subject to increase under a complex formula.

To fund the initial year remittance of \$11,151,131 the following fund sources are available:

- Forgo 2011-12 deposit into the Housing Fund, which should yield about \$6 million (\$5.5 million of the \$6 million is currently appropriated in the Downtown Affordable Housing capital improvement project)
- Use 11-12 Net Tax Increment, which should yield about \$2 million
- Finally, use unspent (although allocated to affordable housing capital improvement projects)
  discretionary 10% Housing Fund monies, which should be sufficient to satisfy remaining remittance
  due.

In future years, current projections indicate that sufficient tax increment will be available to pay the remittance due to the State as well as fund the 20% Housing Fund, meet pass through obligations to other agencies, and meet the Agency's debt service requirements. However, projections also indicate there likely will be a short fall of tax increment to fully fund the administrative costs of running the Agency.

Further, as noted earlier, the Agency's ability to repay the full amount of the 49ers Agency Advance contemplated in the Term Sheet will be reduced as a result of these required payments. In order to make the mandated payments to the State, the Agency will no longer be able to make the discretionary 10% set-aside payments to its housing fund. Additionally, some affordable housing projects contemplated or planned by the Agency may be foregone or delayed as a result of the suspension of the 2011-12 Housing Fund deposit and the Agency's use of the additional 10% Housing Funds for the 2011-12 Voluntary Program Payment. If tax increment grows at a higher rate than that used in the projections, more resources will be available.

If the City were to choose not to opt-in, certain City/Agency arrangements that provide funding to the General Fund will be in jeopardy. Dissolution of the Agency may result in a potential net decrease to the City's General Fund of about \$15 million annually. Additionally, the Agency will no longer receive its estimated \$6 million per year allocation of tax increment for Very Low- and Moderate-Income Housing.

## RECOMMENDATION:

That the Council:

- 1) Pass to print an Ordinance to elect and implement participation by the City of Santa Clara and the Redevelopment Agency of the City of Santa Clara in the Alternative Voluntary Redevelopment Program as set forth in Part 1.9 of the California Community Redevelopment Law, and
- 2) The Redevelopment Agency of the City of Santa Clara note and file the agenda report.

Pamela J. Mørrißon

Administrative Analyst to the City Manager

APPROVED:

Jehnifer Sparacino

City Manager/Executive Director

Documents Related to this Report:

1) Ordinance to Elect and Implement Participation in the Alternative Voluntary Redevelopment Program

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### ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA ENACTED PURSUANT TO HEALTH AND SAFETY CODE SECTION 34193 TO ELECT AND IMPLEMENT PARTICIPATION BY THE CITY OF SANTA CLARA AND THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW

#### BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council (the "City Council") of the City of Santa Clara (the "City") adopted Ordinance No. 605 on December 3, 1957 declaring the need for the Redevelopment Agency of the City of Santa Clara (the "Agency") to function in the City; WHEREAS, Also in accordance with the Redevelopment Law, the City Council adopted Ordinance No. 1283 on December 28, 1973 adopting the Redevelopment Plan for the Bayshore North Redevelopment Project, and Ordinance No. 972 on February 3, 1961 adopting the Redevelopment Plan for the University Redevelopment Project (the "Redevelopment Plans"), and the Agency is responsible for implementing the Redevelopment Plans pursuant to the Redevelopment Law; WHEREAS, ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; and together with the Dissolution Act, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law generally as follows:

- 1. The Dissolution Act first immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and
- 2. The Voluntary Program Act, through the addition of Part 1.9 to the Redevelopment Law (the "Alternative Voluntary Redevelopment Program"), then allows a redevelopment agency to

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avoid dissolution under the Dissolution Act by opting into an alternative voluntary redevelopment

program requiring specified annual contributions to local school and special districts;

WHEREAS, Specifically, Section 34193(a) of the Redevelopment Law (as added to the

Redevelopment Law by the Voluntary Program Act) authorizes the City Council to enact an

ordinance to comply with Part 1.9 of the Redevelopment Law, thereby exempting the Agency from

the provisions of the Dissolution Act, and enabling the Agency to continue to exist and function

under the Redevelopment Law, so long as the City and the Agency comply with the Alternative

Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law;

WHEREAS, Through the adoption and enactment of this Ordinance, it is the intent of the City

Council to enact the ordinance described in Section 34193(a) of the Redevelopment Law and to

participate for itself and on behalf of the Agency in the Alternative Voluntary Redevelopment

Program set forth in Part 1.9 of the Redevelopment Law;

WHEREAS, Pursuant to Section 34193.2(b) of the Redevelopment Law, the City Council

understands that participation in the Alternative Voluntary Redevelopment Program requires

remittance of certain payments as set forth in the Voluntary Program Act (as further described

below), and also constitutes an agreement on the part of the City, in the event the City fails to make

such remittance payments, to assign its rights to the State of California to any payments owed by the

Agency to the City, including, but not limited to, payments from loan agreements; and

WHEREAS, The City Council does not intend, by enactment of this Ordinance, to waive any rights

of appeal regarding the amount of any remittance payments established by the California Department

of Finance, as provided in the Voluntary Program Act.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS

**FOLLOWS:** 

**SECTION 1**: Enactment of Ordinance Pursuant to Redevelopment Law Section 34193(a).

To the extent required by law to maintain the existence and powers of the Agency under the

Redevelopment Law (including the Redevelopment Restructuring Acts), the City Council hereby

enacts this ordinance authorized by Section 34193(a) of the Redevelopment Law, whereby the City,

on behalf of itself and the Agency, elects to and will comply with the provisions of Part 1.9 of the

Redevelopment Law, including the making of the community remittance payments called for in

Section 34194 of the Redevelopment Law (the "Remittance Payments"), and whereby the Agency

will no longer be subject to dissolution or the other prohibitions and limitations of Parts 1.8 and 1.85

of the Redevelopment Law as added by the Dissolution Act.

**SECTION 2:** Additional Understandings and Intent.

It is the understanding and intent of the City Council that, once the Agency is again authorized to

enter into agreements under the Redevelopment Law, the City will enter into an agreement with the

Agency as authorized pursuant to Section 34194.2 of the Redevelopment Law, whereby the Agency

will transfer annual portions of its tax increment to the City in amounts not to exceed the annual

Remittance Payments (the "Agency Transfer Payments") to enable the City, directly or indirectly, to

make the annual Remittance Payments. Unless otherwise specified by resolution of the City

Council, it is the City Council's intent that the City's annual Remittance Payments shall be made

exclusively from the Agency Transfer Payments or from other funds that become available as a result

of the City's receipt of the Agency Transfer Payments. The City Council does not intend, by

enactment of this Ordinance, to pledge any of its General Fund revenues or other assets to make the

Remittance Payments, it being understood by the City Council that any Remittance Payments will be

funded solely from the Agency Transfer Payments and/or other assets transferred to the City in

accordance with the Voluntary Program Act.

**SECTION 3**: Authorization of Implementing Actions.

The City Manager or the City Manager's designee is hereby authorized, on behalf of the City, to take

any actions necessary to implement this Ordinance and comply with the Voluntary Program Act,

including, without limitation, providing required notices to the County Auditor-Controller, the State

Controller, and the Department of Finance, entering into any agreements with the Agency to obtain

the Agency Transfer Payments, and making the Remittance Payments.

**SECTION 4:** 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 it is 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 appropriate environmental review shall be completed

in accordance with CEQA prior to the commencement of any future Agency-supported project or

program. The City Council therefore directs that a Notice of Exemption be filed with the County

Clerk of the County of Santa Clara in accordance with the CEQA guidelines.

**SECTION 5:** Savings clause.

The changes provided for in this ordinance shall not affect any offense or act committed or done or

any penalty or forfeiture incurred or any right established or accruing before the effective date of this

ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered

prior to the effective date of this ordinance.

**SECTION 6:** Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held

by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision

shall not affect the validity of the remaining portions of the ordinance. The City Council hereby

declares that it would have passed this ordinance and each section, subsection, sentence, clause,

phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s),

sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

**SECTION 7**: Effective date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final

adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The

Charter of the City of Santa Clara, California." For the purposes of Section 34193(a) of the

Redevelopment Law, this ordinance shall be deemed enacted as of August 30, 2011.

PASSED FOR THE PURPOSE OF PUBLICATION this 16th day of August, 2011, by the

following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

ROD DIRIDON, JR. CITY CLERK CITY OF SANTA CLARA

Attachments incorporated by reference:

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