HAYWARD REDEVELOPMENT AREA COMMITTEE
SPECIAL MEETING

October 19, 2011 at 7:00 P.M.

Conference Room 1C
Hayward City Hall
777 B Street
Hayward, CA 94541

The Public Comments section provides an opportunity to address the Committee on items not listed on the agenda. The Committee welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the Committee or are within the jurisdiction of the City. As the Committee is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

AGENDA

I. Call to Order

II. Public Comments

III. Approval of Minutes of May 11, 2011 Meeting

IV. Update on State Budget/Redevelopment Legislation ABx1 26 and ABx1 27

V. Update on Foothill Boulevard Façade Improvement Project

VI. Update on Downtown Plan – Cal Poly City & Regional Planning Department Project

VII. Future Agenda Items

VIII. Adjournment

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Please request the accommodation at least 48 hours in advance of the meeting by contacting the Redevelopment Agency at (510) 583-4260 or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

Minutes
Hayward Redevelopment Area Committee (HRAC)
Special Meeting
May 11, 2011

Present: David Long, Rosemarie Ramos, Bill Vandenburgh, and Michael Aahl

Absent: Mike Brewer, Terry Lee (resigned 5/11/2011)

Staff: Kelly Morariu, Assistant City Manager/Interim Redevelopment Agency Director; Gloria Ortega, Redevelopment Project Manager; David Rizk, Development Services Director; Richard Patenaude, Planning Manger; John DeClercq, Consultant; Morad Fakhrai, Deputy Director of Public Works; Kevin Briggs, Senior Civil Engineer, Public Works

Others: Barbara Halliday, Councilmember

I. Call to Order

The meeting was called to order by the Chair at 7:09 p.m.

II. Public Comments

Councilmember Barbara Halliday provided Committee Members with an update on Eden Housing's "B" and Grand Senior Housing Project. She noted that the City Council approved the project, and that four of the ground level units will have individual entrances.

III. Approval of Minutes

The minutes of the April 13, 2011 meeting were approved by general consensus of the Committee members present, with corrections noting that Mike Brewer and Terry Lee were not present at the meeting.

IV. Update on State Budget/Governor's Redevelopment Proposal – Kelly McAdoo Morariu

Kelly Morariu presented an overview of two Assembly bills, AB1X26 and AB1X27, which propose elimination of Redevelopment Agencies and/or gives cities the option of paying a "voluntary" contribution toward the State's deficit in order to stay in business. She also addressed the response to these measures by the California Redevelopment Association and the California League of Cities.

V. Update on Mission Blvd Form Based Code

David Rizk provided an update on the Mission Boulevard Corridor Specific Plan and form Based Code. The specific plan area covers 240 acres and 600 parcels. Form-Based Code in the designated areas will replace traditional zoning, which focuses more on use. Form-Based Code focuses more on design and functional uses. Documents and studies related to the Mission Boulevard Corridor Specific Plan and Form-Based Code can be found on-line under Projects and Studies at: http://www.hayward-ca.gov

VI. Update on Route 238 Improvement Project

Kevin Briggs provided an overview of the Route 238 Improvement Project. The City Council approved the project in April 2010. For the project, thirty-three parcels have been acquired, forty-two public utility easements recorded, and seventeen buildings demolished. The current estimated project cost of $94.5 million is below the original estimate due to changes in the economy. The project was funded using a variety of sources including Measure B sales tax, city funds, Local Area Transportation Improvement Plan, utility companies, and private development fees. Construction started in September 2010, and has faced challenges of wet weather, and unanticipated underground utility lines. The overall project completion is anticipated by Spring 2013.

More information about the Route 238 Improvement Project can be found on-line under Projects and Studies at: http://www.hayward-ca.gov

VII. Update on Revisions to South Hayward BART Project

Richard Patenaude provided an overview of the project reviewing the revised configuration of the project based on changes in market conditions. Eden Housing, Inc. has taken a lead on the project and has executed agreement with BART and the Redevelopment Agency.

More information about the South Hayward BART Project can be found on-line under Projects and Studies at: http://www.hayward-ca.gov

VIII. Future Agenda Items

- Update on the City Center Site
- Updated on Foothill Façade Improvement Initiative
- Update on Retail Attraction Program

IX. Adjournment

The meeting was adjourned at 9:00 pm.

CITY OF
HAYWARD
HEART OF THE BAY

DATE: October 19, 2011

TO: Hayward Redevelopment Area Committee (HRAC)

FROM: Interim Redevelopment Agency Director

SUBJECT: **Update on State Budget/Redevelopment Legislation ABx1 26 and ABx1 27**

At the October 19, 2011 HRAC Special Meeting, staff will provide an update on the State Budget and recent legislation passed to eliminate redevelopment agencies. Attached for the Committee's information and review are two staff reports previously presented to City Council; the first dated July 19, 2011, the second dated July 26, 2011. Due to the length of each report with attachments, only the reports have been included in hard copy with this agenda packet. The reports in their entirety, including attachments, can be viewed on the City's website www.hayward-ca.gov, or by clicking on the links below.

Attachments:

Attachment I – Staff report dated July 19, 2011
Attachment II – Staff report dated July 26, 2011

DATE: July 19, 2011

TO: Mayor and City Council
Agency Chair and Board Members

FROM: Assistant City Manager/Interim Redevelopment Agency Director

SUBJECT: Consideration of Options Related to Alternative Voluntary Redevelopment "Opt-In" Program

RECOMMENDATION

That the City Council reviews this report, receives a preliminary cost-benefit analysis of the Redevelopment Agency "opt-in" legislation and its impacts on the Hayward Redevelopment Agency, and provides direction to staff on whether to bring forward an "opt-in" ordinance to the Council for adoption.

SUMMARY

Between June 28 and June 30, 2011, the Governor approved the FY2012 State budget, which included two trailer bills (ABx1 26 and ABx1 27) that fundamentally restructure operations of local redevelopment agencies throughout the State. ABx1 26 dissolves redevelopment agencies as they currently exist and establishes successor entities to determine ongoing payment of enforceable obligations similar to the Governor's original redevelopment elimination proposal from January 2011. ABx1 27 provides redevelopment agencies with a mechanism for voluntarily deciding to continue redevelopment activities (although with new restrictions) while requiring the local agencies to provide the State with significant on-going financial contributions in order to be allowed to continue these activities (Voluntary Program).

The California Redevelopment Association (CRA) has estimated that the City of Hayward would need to pay approximately $4.1 million in FY2012 and then make ongoing annual payments of approximately $960,000 in order to participate in the Voluntary Program. Attachment I provides a synopsis of the legislation as prepared by the Agency's outside counsel, Goldfarb & Lipman.

If the Council and Agency Board choose to opt-in under the Voluntary Program, they would need to adopt an opt-in ordinance prior to October 1, 2011. Given that no new redevelopment business or activities can occur until the ordinance is adopted, staff recommends that, if the Council and Agency Board choose to opt-in, then the introduction and adoption of the ordinance occur as quickly as possible.

If the Council and Agency Board choose not to opt-in, they would still have to hold a special meeting in August in order to adopt the schedule of enforceable obligations of the Agency that needs to be submitted to the State before August 27. Given the complexities involved in preparing said schedule, staff does not believe it would be feasible to have this prepared in time for the July 26 meeting if the decision is not to opt-in.

BACKGROUND

Between June 28 and June 30, 2011, the Governor approved the State Budget for FY 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.

For all intents and purposes, business associated with the Hayward Redevelopment Agency has halted until the Council and Agency Board make a decision on whether Hayward will opt-in to the Voluntary Program. The Agency is making payments to staff and on existing active contracts but is not undertaking any new activities or filling vacant staff positions. The legislation provides the Agency with authority to pay staff and certain administrative expenses prior to the dissolution date of October 1, 2011. This staff report outlines some important background for the Council and Agency Board on the legislation, pending litigation, and the process and timelines under various scenarios. It also provides a draft opt-in ordinance for the Council and Agency Board to review (Attachment II).

DISCUSSION

Dissolution Act

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 redistributed to local taxing entities based on the normal allocations of property tax dollars. 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 (meaning adoption of an "opt-in" ordinance), 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 Hayward), 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) (for Hayward, this would be the Hayward Area Recreation and Park District (HARD))
- A former redevelopment agency employee appointed by the Mayor/City Council (one member)

The successor agency, under supervision of the oversight board, is required to liquidate all assets of the redevelopment agency in a manner aimed at maximizing value, with the proceeds to be distributed similar to the distribution of normal property tax proceeds.

The Dissolution Act requires the County Auditor-Controller to conduct an audit of former agency assets and liabilities by March 1, 2012, to deposit tax increment that would have gone to a dissolved agency into a Redevelopment Property Tax Trust Fund administered by the County Auditor-Controller, and to allocate monies in the Trust Fund to pay enforceable obligations of the former redevelopment agency, with any remaining proceeds each year going to school entities and other local taxing entities as property taxes.

Alternative Voluntary Redevelopment Program Act

To avoid being dissolved and to lift the suspension of new 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 payments to their County Auditor-Controller beginning in FY 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 remittances are technically required to be made by the redevelopment agency's sponsoring community on behalf of the redevelopment agency (i.e., the City would make the payments). Remittances may be made from any available funds of the sponsoring community, including funds made available by its redevelopment agency, as follows:

- A redevelopment agency and its sponsoring community may enter into an agreement whereby the redevelopment agency transfers a portion of its tax increment to the sponsoring community in an amount not-to-exceed the required annual remittance.

- For FY 2011/12 only, a redevelopment agency will be exempt from making its full deposit into the Low and Moderate Income Housing Fund (and 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.

- 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.

Remittances received by the County Auditor-Controller from a participating redevelopment agency/sponsoring community will be distributed, as follows:

- Through a special district allocation fund, a minor portion of FY 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. For Hayward, this may include BART and/or AC Transit.

- 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 FY 2011/12 and $400 million in each subsequent year if 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 FYs 2009/10 and 2010/11, respectively. The State Department of Finance will provide information about the FY 2011/12 amount for each sponsoring community/redevelopment agency by August 1. The CRA has done the calculations for each sponsoring community/redevelopment agency and the amount for Hayward in FY2012 is

estimated at $4,073,124. In subsequent years, the opt-in amount is estimated to be roughly $958,382 (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. In addition, any agreement between the sponsoring community and its redevelopment agency to receive redevelopment agency funds will be assigned to the State. Therefore, the sponsoring community's General Fund and other funds are not at risk if it fails to make a remittance, but the sponsoring community might forego future repayments owed by its redevelopment agency that would be diverted to the State to make-up for the missed remittance payments.

On July 12, the Fremont City Council introduced and approved an opt-in ordinance by unanimous vote, as did the County Board of Supervisors for the Alameda County Redevelopment Agency. Livermore will be opting in with a first reading of the ordinance on July 25. Oakland and Berkeley have not yet acted, but there are indications that both will also opt-in to the Voluntary Program. Staff will continue to monitor actions of other agencies and will present this information to Council and the Agency Board as part of Tuesday's presentation and the report for the July 26 meeting.

The California Redevelopment Association ("CRA") and the League of California Cities ("League") intend to file a lawsuit within days to challenge the validity and constitutionality of the Redevelopment Restructuring Acts. CRA and the League will petition to have their lawsuit heard initially by the California Supreme Court to accelerate the ultimate court decision, and to seek a court "stay" or injunction to prevent the Redevelopment Restructuring Acts from being operative pending the final court decision on the merits of the lawsuit, although the stay is not expected to affect the suspension status of agencies while the lawsuit is pending.

If the lawsuit is successful, and both ABx1 26 and ABx1 27 are declared unconstitutional, adopted opt-in ordinances will be inoperative by operation of law or can be rescinded, and redevelopment agencies will return to normal operations under the law as it existed prior to June 28, 2011. In the unlikely event that the Supreme Court were to find ABx1 27 (the Alternative Voluntary Program Act) unconstitutional while finding ABx1 26 (the Dissolution Act) constitutional, all agencies will dissolve and any adopted opt-in ordinances will be inoperative by operation of law.

For all intents and purposes, business within the Hayward Redevelopment Agency has halted until the Council and Agency Board make a decision on whether Hayward will opt-in to the Voluntary Program. The Agency is making payments to staff and on existing ongoing contracts, but is not undertaking any new activities or filling vacant staff positions. In order to assist the Council and Agency Board in determining the financial feasibility of opting in under the Voluntary Program, staff has hired Keyser Marston Associates to perform a cost-benefit analysis for Hayward. Given the tight timelines involved, staff will present this analysis at tonight's

meeting in presentation format, rather than as a written part of this report. This presentation will also discuss the legal implications for Hayward of choosing to opt in. Staff intends to present a full written analysis as part of the staff report for the July 26 meeting as outlined in the schedule below.

The fiscal analysis will begin with a baseline comparison of property tax revenue generation both with and without the Redevelopment Agency. This analysis would then be layered with additional considerations (both fiscal and policy) that the Council will need to weigh in making the decision on whether to opt-in. These additional considerations may include:

1. Implications if Agency does not opt-in
    a. Analysis of contracts that may be invalidated
    b. Analysis of activities that may be terminated
    c. List of assets that may be in jeopardy
    d. No more tax increment
    e. No more Housing Fund deposits
    f. Potential loss of existing Housing Fund balance
    g. Fiscal impact on General Fund if Agency is eliminated
        i. Implications for Loan between General Fund and the Agency
    h. Impacts on Agency and other City employees

2. Costs for Agency to Opt-in
    a. Amount of remittances and possible sources of payment
    b. Projections of available revenue to make future year payments

3. Benefits to City if Opt-in
    a. Fiscal projection of how much tax increment will be available to agency for projects, including continuation of 20% set-aside for affordable housing
    b. Projects that can be completed
    c. New projects
    d. Powers of the Agency

If the Council and Agency Board choose to opt-in under the Voluntary Program, they would need to adopt an opt-in ordinance prior to October 1, 2011. Given that no new redevelopment business or activities can occur until the ordinance is adopted, staff recommends that, if the Council and Agency Board choose to opt-in, then the introduction and adoption of the ordinance occur as quickly as possible. This would also give staff added time to comply with other administrative provisions of the Voluntary Program that need to occur before October 1, for example, more detailed preparation of the Agency Statement of Indebtedness.

Given the Council meeting schedule, staff proposes that the Council and Agency Board have a preliminary discussion at the July 19 meeting. The Council can then continue this discussion on July 26 and staff will structure that item to allow introduction of the opt-in ordinance if the Council and Agency Board wish to proceed in that direction. Adoption of the ordinance then be scheduled for a special meeting in early August (possibly Tuesday, August 9 to coincide with the date of the Police Chief swearing in ceremony).

If the Council and Agency Board choose not to opt-in, they would still have to hold a special meeting in August in order to adopt the schedule of enforceable obligations of the Agency that needs to be submitted to the State before August 27. Given the complexities involved in preparing said schedule, staff does not believe it would be feasible to have this prepared in time for the July 26 meeting if the decision is not to opt-in.

ECONOMIC AND FISCAL IMPACT

Staff will present an analysis of the economic and fiscal impact of the proposed legislation and of the decision to opt-in at the July 19 meeting.

NEXT STEPS

Staff will return at the July 26 meeting with further analysis and the introduction of an ordinance allowing the Agency to opt in to the Voluntary Program, if the Council and Agency Board wish to proceed in that direction. Adoption of the ordinance would be scheduled for a special meeting in August (possibly Tuesday, August 9).

If the Council and Agency Board choose not to opt-in, staff would work to schedule a special meeting in August so that the Agency Board can adopt a schedule of enforceable obligations that would need to be submitted to the State prior to August 27.

Prepared and Recommended by: Kelly McAdoo Morariu, Assistant City Manager/Interim Redevelopment Agency Director

Approved by:

Fran David, City Manager/Executive Director

Attachments:

Attachment I: Analysis of ABx1 26 and ABx1 27 prepared by Goldfarb & Lipman (Agency outside counsel)
Attachment II: Draft Opt-in Ordinance

DATE: July 26, 2011

TO: Mayor and City Council
Agency Chair and Board Members

FROM: Assistant City Manager/Interim Redevelopment Agency Director

SUBJECT: Introduction of an Ordinance to "Opt-In" to an Alternative Voluntary Redevelopment Program under ABx1 27, the Voluntary Program Act

RECOMMENDATION

That the City Council introduces an Ordinance to "Opt-In" to an Alternative Voluntary Redevelopment Program under ABx1 27, the Voluntary Program Act, to maintain the operations of the Hayward Redevelopment Agency (RDA); and provides preliminary direction to staff on the source of funds for the "opt-in" payment.

SUMMARY

Between June 28 and June 30, 2011, the Governor approved the FY2012 State budget, which included two trailer bills (ABx1 26 and ABx1 27) that fundamentally restructure operations of local redevelopment agencies throughout the State. ABx1 26 dissolves redevelopment agencies as they currently exist and establishes successor entities and oversight boards to determine ongoing payment of enforceable obligations similar to the Governor's original redevelopment elimination proposal from January 2011. ABx1 27 provides redevelopment agencies with a mechanism for voluntarily deciding to continue redevelopment activities (although with new restrictions) while requiring the local agencies to provide the State with significant on-going financial contributions in order to be allowed to continue to exist (Voluntary Program).

The California Redevelopment Association (CRA) has estimated that the City of Hayward would need to pay approximately $4.1 million in FY2012 and then make ongoing annual payments of approximately $960,000 in order to participate in the Voluntary Program. On July 19, 2011, staff presented a preliminary fiscal analysis of the implications of the "opt-in" decision to the Council and Agency Board at a special meeting.

Based on continued analysis and review, staff recommends that the Council and Agency Board choose to "opt-in" to the Voluntary Program by introducing the Ordinance in Attachment I. Given that no new redevelopment business or activities can occur until the ordinance is adopted, staff recommends that the Council and Agency Board then hold a special meeting in early August to adopt the ordinance if the ordinance is introduced this evening.

BACKGROUND

Between June 28 and June 30, 2011, the Governor approved the State Budget for FY 2011/12, and signed a number of implementing trailer bills. Two of these trailer bills significantly modify 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.

During a July 19 special meeting, the Council and Agency Board considered a preliminary fiscal analysis of the impacts associated with the "opt-in" decision (see Attachment II for the July 19 presentation). The Council asked for additional information as follows: 1) provide a more detailed fiscal analysis on the expenditure side of the RDA budget; 2) describe the key assumptions made as part of the Keyser Marston fiscal analysis; and 3) analyze the pros/cons of adopting the ordinance now versus waiting until closer to the October 1 deadline imposed by the legislation. This staff report further expands on the July 19 staff report, presentation and preliminary fiscal analysis, presents an analysis of the Agency assets potentially subject to forfeiture and disposition by the Successor Agency and Oversight Board in an "opt-out" scenario, and identifies other issues for the Council and Agency Board to consider. As the July 19 staff report[1] provided a comprehensive discussion of the State legislation, this discussion is not repeated here.

Update on CRA Lawsuit and Surrounding Agency Opt-in Decisions

As of July 22, Fremont, Union City, Oakland, the City of Alameda, and Alameda County have introduced or approved opt-in ordinances. The City of Livermore will introduce an "opt-in" ordinance on July 25. San Leandro and Berkeley have not yet acted, but are expected to opt-in to the Voluntary Program.

On July 18, 2011, the California Redevelopment Association (CRA), the League of California Cities (League), the City of Union City, the City of San Jose, and John Shirey (as an individual taxpayer) filed a lawsuit challenging the validity and constitutionality of the Redevelopment Restructuring Acts. The lawsuit was filed directly with the California Supreme Court to accelerate the ultimate court decision, and includes a request that the Court issue a "stay" or injunction to prevent the Redevelopment Restructuring Acts from being operative pending the final court decision on the merits of the lawsuit. The requested stay would delay the dissolution and opt-in timelines in the Acts (including dates for payment of opt-in payments), but is not expected to affect the suspension status of agencies while the lawsuit is pending. It is not known whether or when the Court will issue a stay or final decision.

If the lawsuit is successful, and both ABx1 26 and ABx1 27 are declared unconstitutional, adopted opt-in ordinances will be inoperative by operation of law or can be rescinded, and redevelopment agencies will return to normal operations under the law as it existed prior to June

[1] July 19 staff report: http://www.hayward-ca.gov/citygov/meetings/cca/2011/CCA11PDF/cca071911full.pdf

28, 2011. In the unlikely event that the Supreme Court were to find ABx1 27 (the Alternative Voluntary Program Act) unconstitutional while finding ABx1 26 (the Dissolution Act) constitutional, all agencies will dissolve and any adopted opt-in ordinances will be inoperative by operation of law.

DISCUSSION

For all intents and purposes, business within the Hayward Redevelopment Agency (RDA) has halted until the Council and Agency Board make a decision on whether Hayward will opt-in to the Voluntary Program. The Agency is making payments to staff and on existing ongoing contracts, but is not undertaking any new activities or filling vacant staff positions. The legislation provides the Agency with authority to pay staff and to cover certain administrative expenses prior to the dissolution date of October 1, 2011. In order to assist the Council and Agency Board in determining the financial feasibility of opting in under the Voluntary Program, staff has hired Keyser Marston Associates to perform a cost-benefit analysis for Hayward. Staff presented the preliminary analysis as part of the July 19 presentation. The complete Keyser Marston analysis is included with this report as Attachment III. This section provides a more detailed written financial analysis of the "opt-in" implications as well as options for making the requirement "opt-in" remittance for FY2012 (totaling approximately $4.1 million).

Keyser Marston Fiscal Analysis

The fiscal analysis prepared by Keyser Marston (Attachment III) is intended to assist the City and the Redevelopment Agency in evaluating options related to ABx1 26 and ABx1 27. As identified in the cover memo from Keyser Marston, the analysis is intended to "illustrate the financial implications to the City and Agency under the two scenarios on an illustrative 'order of magnitude' basis." The analysis relies heavily on assumptions made in prior studies and by staff. Keyser Marston notes that while further review and analysis may change the numbers slightly, the basic conclusions presented in the analysis would stand. The basic conclusions of the analysis are:

1) Even after the required "opt-in" payments are made to the State in FY2012 and in the subsequent years, the combined net resources available to the City and Agency (for both housing and non-housing activities) are approximately $83 million greater over the tax increment receipt limit (currently FY2047) if the City elects to maintain its RDA through the Voluntary Program (Table 1 of Keyser Marston (K/M) analysis). In simplistic terms, the City will receive more local property tax revenues between now and FY2047 for redevelopment, economic development and affordable housing purposes under the "opt-in" scenario than if the Agency dissolves.
2) There are currently assets at risk in excess of $28 million if the City does not choose to maintain its Agency and "opt-in" to the Voluntary Program (Table 2 of K/M analysis).
3) Based on an illustrative cash flow projection, the Agency will have enough resources to fund its ongoing obligations, required payments to the State, and still maintain discretionary funds for staff, projects, and programs (although limited in the first few years after opting-in) (Table 3 of K/M analysis).

The basic assumptions of the analysis include the following:

1) Property tax increment (TI) revenues for the RDA are anticipated to grow at an average rate of approximately 2.8% annually between FY2012 and FY2029 (at which point TI revenues experience a one year drop off due to approaching plan subarea tax increment limits with continued growth from that new lower revenue base through 2047.)
2) Non-discretionary expenses of the Agency include the following items: Pass through payments to other taxing entities; bond debt service (2004 and 2006 Tax Allocation Bonds); repayment of the SERAF loan from Housing Fund (between FY2012-FY2016 totaling $3.877 million); and future payments to the State required under ABx1 27.
3) The FY2012 payment to the State required under ABx1 27 (approximately $4.1 million) would come from sale of the residual Burbank property or other sources that would not impact the non-housing TI cash flow. Use of the Burbank sale proceeds is just one option that the Council could consider for making the required first year "opt-in" payment. Given the recent agreement to complete utility undergrounding on the residual Burbank site, the Agency would need to use some available cash balances (between $100,000-$200,000) to supplement the sale proceeds if this source was utilized to make the FY2012 payment to the State. Even if additional cash balances were needed to make the FY2012 payment, this would not impact the conclusions of the Keyser Marston analysis.
4) If the City did not choose to "opt-in" under ABx1 27, then the enforceable obligations of the Agency would only include existing pass through payments and bond debt service (totaling between $5-6 million annually in the first ten years analyzed).
5) In the "opt-out" scenario, the Successor Agency would receive approximately $250,000 annually for an administrative allowance and the City would receive 17.6% of the net property tax available for distribution to taxing agencies (less the existing pass through payment received by the City).

Table 1: Disposition of Tax Increment Revenues (Dollars in $Millions/Net Present Value through TI Receipt Limit of Agency – FY2047)

	RDA Continues[1]	RDA Dissolves[2]	Delta
Net Non-Housing Redevelopment Revenue	$56	$4	($52)
Housing Set-Aside Revenue	$46	n/a	($46)
Property Taxes Redistributed to General Fund	n/a	$15	$15
Total	$102	$19	($83)

Note 1: Potentially retain assets on Table 2 of Attachment III
Note 2: Potentially forfeit assets on Table 2 of Attachment III

Table 1 above presents a recap of the Tax Increment Revenue Disposition prepared by Keyser Marston and reflected in Table 1 of Attachment III. This table compares the net revenues available for discretionary uses through the Tax Increment receipt limit of the Agency (currently FY2047) if the RDA continues against the amount of property taxes redistributed to the General Fund if the RDA dissolves. These net revenue numbers assume non-discretionary expenses as outlined in (2) and (4) above are paid in the respective applicable scenarios. Table 1 of Attachment III also presents an overview of the potential uses of available funds. If the RDA continues and pays its respective staff/administrative costs and obligations to the General Fund, there would be approximately $29 million in non-housing funds and $35 million in housing funds available through FY2047 to devote to future local projects and programs. Comparatively, if the RDA dissolves, the General Fund would only receive $15 million in redistributed property tax dollars during this same period. To help demonstrate this in a more practical and tangible manner, Table 2 below shows the analysis for the next three years.

Table 2: Three Year Revenue Comparison with and without RDA ($ in thousands)

	FY12 RDA Continues[1]	FY 12 RDA Dissolves[2]	FY13 RDA Continues[1]	FY13 RDA Dissolves[2]	FY14 RDA Continues[1]	FY14 RDA Dissolves[2]
Net Non-Housing Redevelopment Revenue	$1,969	$0	$2,012	$0	$2,056	$0
Housing Set-Aside Revenue	$3,683	$0	$2,913	$0	$3,107	$0
Property Taxes Redistributed to General Fund	$0	$690	$0	$723	$0	$753
Total	$5,652	$690	$4,925	$723	$5,163	$753

Note 1: Potentially retain assets on Table 2 of Attachment III
Note 2: Potentially forfeit assets on Table 2 of Attachment III

The analysis above is helpful in showing an annual comparison of the revenues with and without the RDA, but needs to be reviewed in the context of expenses. The expense analysis is really only relevant if the RDA continues as it is useful to understand if there will be any discretionary dollars left for projects following payment of non-discretionary expenses. Table 3 below provides a summary of Tables 3 and 4 in the Keyser Marston analysis (Attachment III). . This allows a comparison of revenues and anticipated baseline expenses over the next three fiscal years if the Agency continues.

The important point to remember is that expenses in this table reflect current projected staffing and administrative expenses (including two vacant but budgeted positions). If the Agency does continue under the Voluntary Program, the Agency Board would likely reevaluate the annual budget in light of the new operating environment. Again, the non-housing non-discretionary expenses include: pass through payments to other taxing entities; bond debt service (2004 and 2006 Tax Allocation Bonds); repayment of the SERAF loan from Housing Fund (between FY2012-FY2016 and totaling $3.877 million); and future payments to the State required under ABx1 27.

Table 3: Three Year Revenue/Expense Comparison if RDA Continues ($ in thousands)

	FY12 Non-Housing	FY12 Housing	FY13 Non-Housing	FY13 Housing	FY14 Non-Housing	FY14 Housing
Total Revenues	$8,740	$3,683	$9,038	$2,913	$9,304	$3,107
Non-Housing Non-Discretionary Expenses	($6,772)	$0	($7,026)	$0	($7,248)	$0
General Fund Related Expenses	($1,417)	$0	($1,443)	$0	($1,471)	$0
Staff and Administrative Expenses	($551)	($494)	($568)	($511)	($585)	($526)
Net Available for Projects/Programs	$0	$3,189	$1	$2,402	$0	$2,581

As staff highlighted in summary form during the July 19 Council presentation, there are not many non-housing dollars left for discretionary local projects and expenses over the next four fiscal years. However, this is consistent with earlier budget projections for the Agency even before the adoption of the recent State legislation and required "opt-in" payments. The economic recession coupled with required repayment of the funds borrowed from the Low-Moderate Housing Fund to make the FY2010 and FY2011 SERAF payments to the State resulted in projected budget scenarios where the Agency had very few discretionary dollars available. Both in the Agency's previously prepared ten-year financial forecasts and in the Keyser Marston analysis, the Agency begins to recognize discretionary dollars of some substance beginning around FY2016 (See Table 3 of Attachment III). Under the "opt-in" scenario, the Low-Moderate Housing Fund retains significant discretionary dollars for local projects and programs.

The basic conclusion stemming from the Keyser Marston analysis is that continuing the RDA under the "opt-in" program allows significantly more property tax dollars to remain under local control, thereby providing additional resources for local redevelopment, economic development, and housing activities. These baseline conclusions must then be considered in the context of the potential Agency assets at risk if the Agency dissolves, which Keyser Marston identifies in Table 2 of Attachment III, and which are discussed further below.

Analysis of Agency Assets Potentially Subject to Forfeiture and Oversight Board Disposition if Agency Dissolves

In addition to the baseline fiscal analysis presented in the preceding section, the Council and Agency Board need to consider both non-housing and housing assets that may be at risk if the City does not choose to "opt-in." Staff is presenting the analysis below based on preliminary legal review of the legislation, specifically the provisions within the Agency dissolution legislation (ABx1 26) that would allow the Oversight Board to review any Agency actions taken since January 1, 2011 and determine whether those actions should be rescinded. These provisions were written specifically to address actions taken by redevelopment agencies throughout the State since January and to allow the Successor Agency to rescind these transactions, "claw back" the assets, and then dispose of the assets so that the proceeds can be redistributed to the other taxing entities. In addition to assets at risk, this section also includes a

discussion of the financial implications for the General Fund if the City does not choose to "opt-in."

Non-Housing Assets ($11.8M):

1) Non-Housing Cash Balances and Anticipated Revenues ($1.8M)
2) Burbank Residual Site Land Sale ($4M)
3) Land Held by City for Re-sale and Redevelopment ($6M +) – not including Burbank Residual Site. These assets were transferred to the City from the Agency in March 2011 and include: several properties along Mission Boulevard; the land under the Cinema Place project (currently subject to a ground lease); two properties on Russell Way; and one property on Foothill Boulevard. These assets are outlined on Table 2 of Attachment III to this report.
4) Disposition of Other Public Facilities (TBD) – the City currently holds numerous other assets that were transferred from the Agency to the City in March 2011. These assets are outlined on Table 2 of Attachment III to this report. They include: Municipal Parking Lot No. 2; the Cinema Place parking structure; the City Hall parking structure; the surface parking lot next to the City Hall parking hall; and some small parcels surrounding City Hall.
5) Other Contracts/Activities Subject to Termination (TBD) – the impacts of the legislation are far reaching and staff is continuing to analyze these implications. This asset list identifies the major items of concern, but there may be other smaller items also impacted by the dissolution legislation.

Housing Assets ($8.4M):

1) Housing Cash and CIP Balances ($1.7M)
2) Eden Housing South Hayward BART Project Loan ($4.3M)
3) 238 Settlement Agreement Funds ($2.4M)
4) Affordable Housing Sites Held by City (TBD)

General Fund Implications:

1) General Fund Loan to RDA ($7.8M outstanding balance; $800,000 annual payments)
2) Agency Employees/City Employees Supporting Agency Activities ($200,000 annually)
3) Annual Cost Allocation from RDA to City ($400,000 annually)

Estimated annual total General Fund loss:	($1.4 million)
Redistributed Prop Tax Revenue to GF:	$690,000
Est Net Annual Loss to General Fund if Agency Dissolves	*($710,000)*

Options for Funding "Opt-in" Payment for FY2012

Under the Alternative Voluntary Program, the remittances to the State are technically required to be made by the redevelopment agency's sponsoring community on behalf of the redevelopment agency (i.e., the City would make the payments). Remittances may be made from any available funds of the sponsoring community, including funds made available by its redevelopment agency, as follows:

- A redevelopment agency and its sponsoring community may enter into an agreement whereby the redevelopment agency transfers a portion of its tax increment to the sponsoring community in an amount not-to-exceed the required annual remittance.

- For FY 2011/12 only, a redevelopment agency will be exempt from making its full deposit into the Low and Moderate Income Housing Fund (and 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.

- 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.

The Voluntary Program is designed to generate $1.7 billion for FY 2011/12 and $400 million statewide in each subsequent year if every sponsoring community/redevelopment agency in the State 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 FYs 2009/10 and 2010/11, respectively. The State Department of Finance will provide information about the FY 2011/12 amount for each sponsoring community/redevelopment agency by August 1. The CRA has done the calculations for each sponsoring community/redevelopment agency and the amount for Hayward in FY2012 is estimated at $4,073,124. In subsequent years, the opt-in amount is estimated to be roughly $958,382 (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 the City adopts an "opt-in" ordinance, the City must make the remittance payments to the State on behalf of the Redevelopment Agency. As such, the Agency Board and City Council would also need to approve a remittance agreement that would allow the City to use Agency funds to make the required State payments. The ongoing annual payments of approximately $960,000 would be made beginning in FY2013 from Agency property tax increment receipts and this payment was incorporated into the fiscal analysis conducted by Keyser Marston.

Due to the size of the one-time FY2012 payment (est. $4.1 million), the City and Agency would need to explore other options for making this payment as there are not non-housing redevelopment funds to make this entire payment. Staff has begun to identify these potential sources and believes that there are sufficient funds available from acceptable sources that will not impact the General Fund. Given that the first half of the FY2012 payment is not due to the State until January 2012, the Council has additional time to consider the sources used to make the $4.1 million payment. Staff would propose returning to Council in September or October for a further discussion of this issue and authorization to make the payment from the appropriate source. By the time this discussion occurs, there may be further updates on the status of the CRA lawsuit and the actual necessity of making this payment come January 2012. Below is a list of preliminary options explored by staff:

- **Withhold FY2012 deposit to Low/Moderate Income Housing Fund (est. $2.2 million)** – The Voluntary Program legislation specifically authorizes agencies to utilize the 20% of tax increment revenues set aside for low/moderate income housing in FY2012 to make the required remittance payment. The legislation does not require repayment of these funds.
- **Estimated Agency non-housing cash balance (minimum available $500,000)** – At a minimum, there is $500,000 of existing non-housing fund balance available to use towards the required remittance payment. Depending on receipt of revenues and prudent financial management through FY2012, there may be funds in excess of $500,000 available to put towards the FY2012 payment.
- **Proceeds from Sale of Residual Burbank Site ($4 million)** – The City Council approved a Purchase and Sale Agreement for the property on July 12, 2011. If the project proceeds as planned, the City would close escrow with the developer in November 2011 and would recognize $4 million from the proceeds of the sale. As part of the final approval, the Council approved an agreement to complete utility undergrounding on the residual Burbank site. As such, the total sales proceeds available would be less than $4 million (approx. $3.8-3.9 million) and the Agency would need to use some available cash balances to supplement the sale proceeds if this source was utilized to make the FY2012 payment to the State.
- **Borrow funds from Enterprise Fund reserves –** In March 2011, the Agency paid off loans to the Sewer and Water Funds totaling approximately $1.8 million. The City could consider loaning some of these funds back to the Agency in order to make the required remittance payment. Given the current status of the Enterprise Fund reserves, staff does not recommend pursuing this option. In order to smooth out the impact on ratepayers of needed rate increases and to fund necessary capital improvement projects, these reserves have significantly decreased in recent fiscal years.
- **Borrow funds from General Fund reserves** – Although this is an option for making the remittance payment, staff does not recommend pursuing this given the current structural deficit and economic uncertainty facing the General Fund.

ECONOMIC IMPACT

The previous sections of this report outline the fiscal impact of the "opt-in" decision. The general conclusion of the analysis is that continuing the RDA under the "opt-in" program allows significantly more property tax dollars to remain under local control, thereby providing additional resources for local redevelopment, economic development, and housing activities. These activities will, in turn, spur further private investment and job creation in the community. Without a Redevelopment Agency, the City of Hayward will be able to support little to no economic development activity over the next ten years. The Agency has funded retail attraction loans, loans to support construction of tenant improvements for businesses in the Downtown, and a myriad of other items to support and encourage new business attraction and retention. These activities are critical to the generation of jobs, sales tax, and other benefits to the City and the General Fund. The current economic recession has severely impacted the General Fund and the City will continue to feel the lasting impacts for many years to come. Without redevelopment, the General Fund will not be able to fund critical economic development programs.

FISCAL IMPACT

If the City Council does not introduce the "opt-in" ordinance, the Redevelopment Agency would be dissolved and the City would lose a significant amount of property tax increment revenue over the twenty to thirty years that would be redistributed to other taxing entities. This could total upwards of $83 million.

In addition, without the Redevelopment Agency, the General Fund could stand to lose approximately $710,000 annually if the Successor Agency and Oversight Board do not recognize the loan between the RDA and the City as an enforceable obligation. In addition to the annual debt service payment of $800,000, the Agency pays for General Fund staff and services that support Agency activities. Without Agency funds and activities, this could result in additional staff and service cuts in the General Fund. Below is a summary of the impacts to the General Fund of redevelopment agency dissolution:

Estimated annual total General Fund loss:	($1.4 million)
Redistributed Prop Tax Revenue to GF:	$690,000
Est Net Annual Loss to General Fund if Agency Dissolves	*($710,000)*

In addition, if the Agency dissolves, there are potentially $28 million of Agency assets at risk. Under the dissolution legislation, the Successor Agency would be required to dispose of these assets as quickly as possible and distribute the proceeds to the taxing entities. Although the City is one of these taxing entities, it is unclear how this distribution would occur or what percentage of the proceeds the City would realize. If the City chooses to adopt the "opt-in" ordinance, the Agency would retain these assets and have 100% control over their disposition.

NEXT STEPS

If the Council and Agency Board choose to opt-in under the Voluntary Program, they would need to adopt an opt-in ordinance prior to October 1, 2011. Given that no new redevelopment business or activities can occur until the ordinance is adopted, staff recommends that, if the Council and Agency Board choose to opt-in, then the introduction and adoption of the ordinance occur as quickly as possible.

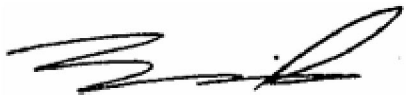
If the Council and Agency Board choose to "opt-in" at this meeting, staff recommends that adoption of the ordinance be scheduled for a special meeting in early August (possibly Tuesday, August 9 to coincide with the date of the Police Chief swearing in ceremony).

Analysis of Timing Impacts Related to Adoption of Opt-in Ordinance
As part of the July 19 discussion, the Council asked staff to explore the positives and negatives of adopting the "opt-in" ordinance relatively quickly (in early August) versus waiting until closer to the October 1 adoption deadline. Below is a table that provides this analysis:

OPT IN NOW	DO NOT OPT IN NOW
Ability to continue with Agency business as normal beginning in August without risk to the GF	Pending lawsuit – may receive clarity from Court system, making the Council's opt-in action unnecessary
Staff morale – give staff clarity and security regarding employment status; Staff morale low. Staff may leave as other more certain opportunities arise, taking valuable resources and program knowledge needed to conduct further analysis.	
Allows Agency to sign on to South Hayward TOD project agreements, particularly HCD grant documents and Eden/Housing Authority loan documents; provides developers with reassurances of funding availability allowing project to continue implementation. Also, having Agency sign HCD documents provides additional financial security for the General Fund.	
Allows staff to proceed with Statement of Indebtedness preparation and related activities, which may need to be more comprehensive this year (and must be filed by October 1)	

Prepared and Recommended by: Kelly McAdoo Morariu, Assistant City Manager/Interim Redevelopment Agency Director

Approved by:



Fran David, City Manager/Executive Director

Attachments:

Attachment I: Ordinance of the City of Hayward to "Opt-In" to an Alternative Voluntary Redevelopment Program under ABx1 27, the Voluntary Program Act
Attachment II: July 19 City Council Meeting Presentation
Attachment III: Keyser Marston Fiscal Impact Analysis