



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **CITY COUNCIL AGENDA**

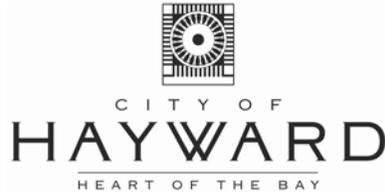
**JULY 19, 2011**

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**MAYOR MICHAEL SWEENEY  
MAYOR PRO TEMPORE FRANCISCO ZERMEÑO  
COUNCIL MEMBER BARBARA HALLIDAY  
COUNCIL MEMBER OLDEN HENSON  
COUNCIL MEMBER BILL QUIRK  
COUNCIL MEMBER MARVIN PEIXOTO  
COUNCIL MEMBER MARK SALINAS**

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**CITY COUNCIL MEETING FOR TUESDAY, JULY 19, 2011**

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**BOARD, COMMISSIONS, COMMITTEE AND TASK FORCE INTERVIEWS**

**Room 2B  
1:00 PM**

**CALL TO ORDER**

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**PUBLIC COMMENTS:** *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session or Informational Staff Presentation items. The Council 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 City or are within the jurisdiction of the City. As the Council 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.)*

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**Board/Commissions/Committee and Task Force Interviews**

**Selection of New Members**

**Adjournment to Special Meeting**

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**SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY/  
HOUSING AUTHORITY MEETING  
Council Chambers - 7:00 PM**

**CALL TO ORDER Pledge of Allegiance** Council Member Salinas

**ROLL CALL**

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**PUBLIC COMMENTS:** *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council 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 City or are within the jurisdiction of the City. As the Council 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.)*

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HAYWARD CITY COUNCIL, 777 B STREET, HAYWARD, CA 94541  
[HTTP://WWW.HAYWARD-CA.GOV](http://www.hayward-ca.gov)

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**ACTION ITEMS:** *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk anytime before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

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***The following order of business applies to items considered as part of Public Hearings and Legislative Business:***

- *Disclosures*
  - *Staff Presentation*
  - *City Council Questions*
  - *Public Input*
  - *Council Discussion and Action*
- 

## **LEGISLATIVE BUSINESS**

1. Consideration of Options Related to Alternative Voluntary Redevelopment "Opt-In" Program
  - [Staff Report](#)
  - [Attachment I Legislative Analysis](#)
  - [Attachment II Draft Ordinance](#)

## **COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS**

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items

## **ADJOURN TO A CLOSED SESSION**

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### **CLOSED SESSION Closed Session Room 2B**

1. Conference with Labor Negotiators
  - Pursuant to Government Code 54957.6
  - Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Human Resources Director Robustelli, and Interim Finance Director Stark
  - Under Negotiation: All Bargaining Units
2. Adjournment



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*PUBLIC COMMENT RULES: The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker's Card must be completed by each speaker and is available from the City Clerk at the meeting.*

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*PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. PLEASE TAKE FURTHER NOTICE that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

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*\*\*\*Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4<sup>th</sup> Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. \*\*\**

**NEXT MEETING – 7:00 PM, TUESDAY, JULY 26, 2011**

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*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.*



**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.

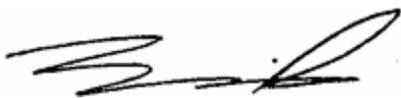
## **NEXT STEPS**

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:



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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

# goldfarb lipman attorneys

Oakland Los Angeles San Diego

## SUMMARY OF ENACTED STATE BUDGET LEGISLATION REGARDING REDEVELOPMENT

(ABX1 26 AND ABX1 27)

JUNE 29, 2011

*The laws described below could be impacted by proposed cleanup legislation and other bills described in this summary. Goldfarb & Lipman intends to update this summary as appropriate, but please contact us to get the most up-to-date information on the status and content of this legislation.*

Goldfarb & Lipman LLP  
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619 239 6336

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## PART A. INTRODUCTION AND PURPOSE

### I. Introduction and Overview of Redevelopment Restructuring Acts

Governor Brown has now signed several budget trailer bills to implement the State Budget for Fiscal Year (FY) 2011-2012 that was approved by the Legislature and sent to the Governor on the evening of June 28, 2011.

Among the signed trailer bills are two addressing redevelopment that significantly modify the California Community Redevelopment Law (the "CRL"): ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; and together with the Dissolution Act, the "Redevelopment Restructuring Acts").<sup>1</sup> If upheld against anticipated constitutional challenge, the Redevelopment Restructuring Acts will fundamentally alter the future of California redevelopment.

Working in tandem:

- (1) The Dissolution Act first immediately suspends all new redevelopment activities and incurrence of indebtedness,<sup>2</sup> and dissolves redevelopment agencies ("RDAs") effective October 1, 2011; and
- (2) The Voluntary Program Act then allows RDAs to avoid dissolution under the Dissolution Act by opting into an "alternative voluntary redevelopment program" (the "Voluntary Program") requiring specified substantial annual contributions to local school and special districts. If all RDAs were to opt-in to the Voluntary Program, these contributions would amount to \$1.7 Billion for FY 2011-2012 and appear intended to amount to \$400 Million in each succeeding year (subject to certain adjustments described below).

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<sup>1</sup> As of the time of this summary, it is unclear whether the Governor signed the Redevelopment Restructuring Acts before or after midnight on June 28. The Redevelopment Restructuring Acts were chaptered by the Secretary State on June 29 as Chapter 5 and Chapter 6 of the 2011-2012 First Extraordinary Session. As of the time of this summary, the Governor has not yet signed the main budget bill (SB 87) and certain other budget trailer bills acted upon by the Legislature on June 28. Under these circumstances, there is uncertainty among legal experts as to whether the effective date of the Redevelopment Restructuring Acts is the date the Governor signed the acts or the date the Governor signs the main budget bill to which the Redevelopment Restructuring Acts are related trailer bills.

<sup>2</sup> It is highly questionable under the "contract clauses" of the Federal and State constitutions whether the Dissolution Act could be retroactive to 12:01 a.m. of its effective date, thereby purporting to render invalid contracts entered into by a RDA earlier in the day on which the Dissolution Act becomes effective.

Following this Part A overview, this summary describes the Dissolution Act (Part B) and the Voluntary Program Act (Part C), and concludes with a schedule of key dates set forth in the Redevelopment Restructuring Acts (Part D).

## **II. Potential Litigation**

The California Redevelopment Association ("CRA") and the League of California Cities (the "League") have strongly indicated their intent to challenge in court the validity and constitutionality of the Redevelopment Restructuring Acts on numerous grounds, including that the acts violate the following provisions of the California Constitution:

- Article XIII A, Section 25.5 , which prohibits city or county property tax from being used for schools;
- Article XIII A, Section 1, which prohibits the transfer of property tax to transit districts;
- Article XIII, Section 24, which prohibits the Legislature from restricting the use of taxes imposed by local governments for their local purposes;
- Article XIII A, Section 25.5, which prohibits indirect allocation of tax increment to schools, transit districts and fire protection districts;
- Article XVI, Section 6, which prohibits the transfer of city or county revenues to schools and transit districts and fire protection districts as an unlawful gift of public funds;
- Article XIII B, which prohibits the use of property tax to fund state mandates;
- Article XVI, Section 16, which requires all tax increment to be used to repay indebtedness incurred by the redevelopment agency to carry out its redevelopment projects; and
- Article XIII A, Section 25.5, which prohibits city and county property tax from being transferred to special districts without a 2/3 vote.

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. Goldfarb & Lipman will monitor and provide client advice regarding the major steps in this anticipated litigation.

Given the complexity and magnitude of impact of the Redevelopment Restructuring Acts, it is also highly likely that these acts will engender litigation from individual RDAs regarding the constitutionality and applicability of various provisions of the acts to the litigating RDA's individual situation.

### **III. Additional Potential Redevelopment Legislation**

The Voluntary Program Act itself states the legislative intent to enact legislation later in the current legislative session to address the RDA special payment formula for fiscal years after the FY 2011-2012 Budget, as described further below.

In addition, at the time of Senate passage, the President Pro Tem of the Senate outlined a series of "clean-up" provisions to the Redevelopment Restructuring Acts that he intends to pursue later in the 2011 legislative session, including:

- Provide mechanisms for RDAs that would not otherwise be able to opt-in to the Voluntary Program to avoid dissolution by spreading their FY 2011-12 payments over multiple years;
- Provide for redevelopment plan time extensions for RDAs that opt-in to the Voluntary Program to partially offset the financial impact of the Voluntary Program;
- Require RDAs to repay any Low and Moderate Income Housing Funds used to make payments under the Voluntary Program; and
- Focus eligible expenditures of RDA funds to projects that encourage infill development and improve the jobs/housing balance.

Other potential clean-up provisions have also come to light during our review of the Redevelopment Restructuring Acts, some of which are noted in the following analysis.

Finally, separate from the Redevelopment Restructuring Acts, but also important to the future of California Redevelopment for those RDAs that opt-in to the Voluntary Program and continue to operate, the following key bills have been introduced in the 2011 legislative session:

- SB 450 (Lowenthal), which would enact major reforms to the affordable housing provisions of the CRL;<sup>3</sup> and
- SB 286 (Wright) and AB 1250 (Alejo), similar legislation that would address major CRL reforms related to non-housing redevelopment activities and the adoption of future redevelopment plans.<sup>4</sup>

Goldfarb & Lipman will continue to carefully monitor and provide timely information regarding the progress of these various legislative actions that could affect the CRL for RDAs that choose to opt-in to continued existence under the Voluntary Program.

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<sup>3</sup> SB 450 is scheduled to be heard on June 29, 2011 in the Assembly Committee on Housing and Community Development.

<sup>4</sup> SB 286 is being held in the Senate Committee on Governance and Finance and AB 1250 has been sent to the Assembly Committee on Rules.

## **PART B. DISSOLUTION ACT**

### **I. Introduction**

As detailed in this Part B, the Dissolution Act:

- Immediately suspends and prohibits most redevelopment activities;<sup>5</sup>
- Dissolves RDAs as of October 1, 2011 (unless a RDA opts in to continued existence under the Voluntary Program);
- Creates successor agencies (“Successor Agency” or “Successor Agencies”) and oversight boards (“Oversight Board” or “Oversight Boards”) to continue to satisfy enforceable obligations of a former RDA, and administer the dissolution and wind down of each dissolved RDA; and
- Establishes roles for the County-Auditor Controller, the Department of Finance and the State Controller’s Office in the dissolution process and satisfaction of enforceable obligations of former RDAs.

### **II. Suspension of RDA Activities and Preservation of RDA Assets and Revenues**

Upon effectiveness of the Dissolution Act, a RDA is generally no longer authorized to:

- 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;

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<sup>5</sup> This suspension will become permanent on the dissolution date of October 1, 2011 for RDAs not participating in the Voluntary Program, and will be lifted for RDAs that opt-in to continued existence under the Voluntary Program upon enactment of the Sponsoring Community’s opt-in ordinance (see Part C.I). See also footnotes 1 and 2.

- Transfer funds out of the Low and Moderate Income Housing Fund;
- Dispose of or transfer assets;
- Acquire real property in most circumstances;
- Prepare, adopt, amend or merge redevelopment plans;
- Approve any program, project or expenditure;
- Prepare or amend implementation plans, relocation plans or other planning documents;
- Cause development or rehabilitation of housing units;
- Join a joint powers authority;
- Form or join a separate legal entity;
- Bring a validation action in connection with issuance of revenue bonds;
- Commence an eminent domain proceeding;
- Prepare a draft EIR;
- Undertake various affordable housing activities;
- Accept financial assistance; or
- Increase employee compensation, bonuses or number of RDA employees and officials.

According to the Dissolution Act, this suspension and prohibition of most redevelopment activities is intended, to the maximum extent possible, to preserve the revenues and assets of RDAs so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools.

### III. Permitted and Required RDA Activities Prior to Dissolution

Until October 1, 2011 (when RDAs are dissolved unless they opt-in to continued existence under the Voluntary Program), a RDA is authorized to:

- Make scheduled payments on and perform obligations required under its "Enforceable Obligations,"<sup>6</sup> which include:
  - Bonds;
  - Loans borrowed by a RDA;
  - Payments required by federal or state government or for employee pension obligations;
  - Judgments or settlements;
  - "Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy"; and
  - Contracts for administration or operation of the RDA.
- Set aside reserves as required for bonds;
- Preserve all assets and records and minimize RDA obligations and liabilities;
- Cooperate with its Successor Agency and auditing entities (as described below); and
- Avoid triggering defaults under Enforceable Obligations.

In addition, during this suspension period the Dissolution Act requires each RDA to:

- Prepare an Enforceable Obligation Payment Schedule setting forth specified information about the RDA's Enforceable Obligations;
- Adopt the Enforceable Obligation Payment Schedule at a public meeting;
- Post the Enforceable Obligation Payment Schedule on the RDA's or its Sponsoring Community's website;

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<sup>6</sup> With a minor exception that may be a drafting error, "Enforceable Obligations" are defined in the same way during the suspension period described in this section as during the post-dissolution period discussed in succeeding sections.

- Transmit the Enforceable Obligation Payment Schedule by mail or electronic means to the County Auditor-Controller, the State Controller and the Department of Finance;<sup>7</sup>
- Designate an RDA official to whom the department<sup>8</sup> may make information requests;
- Prepare a preliminary draft of the initial Recognized Obligation Payment Schedule and deliver the such schedule to the Successor Agency; and
- Produce documents associated with Enforceable Obligations upon request of the State Controller or Department of Finance.

The Department of Finance may review a RDA action or Successor Agency action pursuant to an Enforceable Obligation Payment Schedule or a Recognized Obligation Payment Schedule, and such actions will not be effective for three business days, pending a request for review by the department. If the department requests a review of a given RDA action, the department shall have ten days from the date of its request to approve the RDA action or return it to the RDA for reconsideration.<sup>9</sup>

#### **IV. Treatment of Agreements between a RDA and its Sponsoring Community or Other Public Agency/Public Entity**

With limited exceptions, the Dissolution Act expressly states that Enforceable Obligations to be paid by Successor Agencies do not include agreements, contracts or arrangements between a RDA and the city, the county or the city and county that created the RDA (the “Sponsoring Community”), and that such agreements, contracts or arrangements are invalid and not binding on Successor Agencies. These provisions do not apply to the following agreements, which may be deemed Enforceable Obligations and binding upon Successor Agencies:

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<sup>7</sup> Notification providing the Website location of the Payment Schedule will suffice to meet this requirement.

<sup>8</sup> It is unclear whether the reference in the Dissolution Act to the “department” is intended to refer to the California Department of Housing and Community Development (which is the normal meaning of that term in the CRL) or, more likely, to the Department of Finance which is the department to which responsibilities are given under the Dissolution Act.

<sup>9</sup> It appears difficult to reconcile the Dissolution Act’s requirement that RDAs continue to pay scheduled Enforceable Obligations with the provision that payments under a Payment Schedule are not effective for 3 business days.

- A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of bonds, notes, certificates of participation or other similar indebtedness, and solely for the purpose of securing or repaying such indebtedness;
- A written agreement between a RDA and its Sponsoring Community that provided loans or other startup funds for the RDA that was entered into within two years of the formation of the RDA; or
- A joint exercise of powers agreement in which the RDA is a member of the joint powers authority.<sup>10</sup>

Beginning upon effectiveness of the Dissolution Act, the State Controller is directed to review RDA activities and determine whether an asset transfer has occurred after January 1, 2011 between the RDA and its Sponsoring Community or other public agency.

If the State Controller determines that such an asset transfer did occur and the recipient has not contractually committed such assets to a third party to expend or otherwise encumber those assets, such assets will be ordered returned to the RDA or Successor Agency for payment of recognized obligations or distribution as property taxes.

In any instance where the Oversight Board has found that early termination would be in the best interest of the taxing entities, the Dissolution Act directs Oversight Boards to ensure that Successor Agencies terminate any agreement between the former RDA and any local public entity within the same county that obligates the former RDA to provide funding for debt service obligations of such local public entity or for the construction or operation of facilities owned or operated by such local public entity.

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<sup>10</sup> However, upon assignment to the Successor Agency by operation of the Dissolution Act, the Successor Agency's rights, duties and performance obligations under that joint exercise of powers agreement will be limited by the constraints imposed on Successor Agencies by the Dissolution Act.

## V. Dissolution of RDAs/Creation of Successor Agencies

For each RDA that has not opted in to the Voluntary Program, under the Dissolution Act, as of October 1, 2011:

- The RDA will be dissolved; and
- A Successor Agency will be created for each RDA.

The Successor Agency will be the Sponsoring Community of the RDA unless it elects not to serve in that capacity. In that case, the Successor Agency will be the first taxing entity submitting 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 the Oversight Board as described in Section VIII below.

All assets, properties, contracts, leases, records, buildings and equipment of former RDAs would be transferred to the control of the Successor Agency, except as described in Section VII below for affordable housing assets.

## VI. Transfer of Housing Functions of Former RDA

The Sponsoring Community may elect to assume the housing functions and take over the housing assets of the former RDA, excluding amounts in the former RDA's Low and Moderate Income Housing Fund,<sup>11</sup> along with related rights, powers, liabilities, duties and obligations.<sup>12</sup>

If the Sponsoring Community does not elect to assume the former RDA's housing functions, such housing functions and all related assets would be transferred to the local Housing Authority (or Department of Housing and Community Development, if there is no local Housing Authority).

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<sup>11</sup> Clean up legislation has been proposed, but not yet introduced, to reverse this provision so that existing Low and Moderate Income Housing Fund deposits would be transferred to the Sponsoring Community (as was the case in the predecessor bill to the Dissolution Act).

<sup>12</sup> However, in what is believed to be inadvertent drafting, the Dissolution Act makes it less clear how the former RDA's housing assets, such as property, would be transferred.

The entity that assumes the housing functions of former RDA will be able to use its inherent powers (not limited by the Dissolution Act's restrictions on Successor Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations.

The Dissolution Act requires Successor Agencies to repay amounts previously borrowed from the Low and Moderate Income Housing Fund (i.e. to make SERAF payments in prior years), repayment of which had been deferred as of the effective date. These repaid funds would presumably be paid to the entity that assumes the housing functions of the former RDA.

The Dissolution Act requires Oversight Boards to direct Successor Agencies to list amounts owed to the Low and Moderate Income Housing Fund on the Recognized Obligation Payment Schedule.

## **VII. Role of Successor Agencies**

The Dissolution Act requires a Successor Agency to perform the following functions.

A Successor Agency is required to make payments and perform other obligations due for Enforceable Obligations<sup>13</sup> of the former RDA, which include:

- Bonds;
- Loans borrowed by the RDA (including amounts borrowed in past years from the Low and Moderate Income Housing Fund);
- Payments required by federal or state government or for employee pension obligations;
- Judgments or settlements; and
- "Any legally binding and enforceable agreement or contract<sup>14</sup> that is not otherwise void as violating the debt limit or public policy" (at Oversight

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<sup>13</sup> With a minor exception that appears to be a drafting error, "Enforceable Obligations" are defined in the same way during the post-dissolution period described in this section as during the suspension period discussed in Section III above.

<sup>14</sup> See Section IV above regarding the exception that most contracts between a former RDA and its Sponsoring Community will be void and will not constitute an Enforceable Obligation.

Board direction, a Successor Agency may terminate existing agreements and pay required compensation or remediation for such termination).

To facilitate this payment of Enforceable Obligations, a Successor Agency is required to prepare a Recognized Obligation Payment Schedule for each six month period of each fiscal year, including identifying the funding source for all Enforceable Obligations of the former RDA.

A Successor Agency is required to dispose of the former RDA's assets or properties expeditiously and in a manner aimed at maximizing value (proceeds to be distributed similar to normal property tax proceeds).<sup>15</sup>

A Successor Agency is required to effectuate the transfer of housing functions of the former RDA to its Sponsoring Community (or applicable Housing Authority or the Department of Housing and Community Development).

A Successor Agency is required to wind up all other affairs of the former RDA.

A Successor Agency is required to prepare administrative budgets for Oversight Board approval and pay administrative costs. Subject to the approval of the Oversight Board, the Successor Agency's annual administrative costs will be an amount up to five percent of the property tax allocated to the Successor Agency for FY 2011-12 and up to three percent of the property tax allocated to the Successor Agency each succeeding fiscal year; provided, however, that the annual amount shall not be less than \$250,000 for any fiscal year (or such lesser amount as agreed to by the Successor Agency).

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<sup>15</sup> The Oversight Board may direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose to the appropriate public jurisdiction pursuant to any existing agreements related to the construction or use of such asset.

## VIII. Oversight Boards

An Oversight Board is generally intended to supervise the activities of the Successor Agency. The Oversight Board has a fiduciary responsibility to holders of Enforceable Obligations and the taxing entities that benefit from distributions of property tax and other revenues as described in Section X below.

The Oversight Board of the Successor Agency will consist of 7 members appointed by/representing:<sup>16 17</sup>

- 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); and
- A former RDA employee appointed by Mayor/Board of Supervisors (one member).

The Dissolution Act requires the Oversight Board to direct the Successor Agency to determine whether contracts, agreements or other arrangements between the former RDA and private parties should be terminated or renegotiated to reduce the Successor Agency's liabilities and to increase net revenues to the taxing entities.

The actions of the Oversight Board of each Successor Agency will in turn be overseen by the Director of the Department of Finance and may be subject to disapproval or modification.

Oversight Board actions will not be effective for three business days pending a request for review by the Department of Finance. If the department requests a review of a given Oversight Board action, the department shall have ten days from

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<sup>16</sup> Different rules apply for the composition of the Oversight Board for the former RDA of a city and county (i.e., the City and County of San Francisco).

<sup>17</sup> Commencing July 1, 2016, all of the Oversight Boards for the various former RDAs in a particular county will be consolidated into a single county-wide Oversight Board of specified composition.

the date of its request to approve the Oversight Board action or return it to the Oversight Board for reconsideration. The Oversight Board has specified obligations with respect to maintaining a Website and providing specified notification to various state officials.

### **IX. Role of County Auditor-Controller**

The Dissolution Act requires the County Auditor-Controller to:

- By March 1, 2012, conduct an audit of former RDA assets and liabilities, including pass-through payment obligations and the amount and terms of any RDA indebtedness, and provide the State Controller's Office with a copy of such audit by March 15, 2012;
- Annually determine the amount of property tax increment that would have been allocated to the RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund"); and
- Administer the Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes, as described in Section X below.

Actions of the County Auditor-Controller will not be effective for three business days pending a request for review by the State Controller. If the department requests a review of a given County Auditor-Controller action, the department will have ten days from the date of its request to approve the County Auditor-Controller action or return it to the County Auditor-Controller for reconsideration.

### **X. Payments from Trust Fund**

The Dissolution Act requires the County Auditor-Controller to allocate moneys in the Trust Fund established for each former RDA as follows:

- To pay pass-through payments to affected taxing entities in the amounts that would have been owed had the former RDA not been dissolved;
- To the Successor Agency to enable the Successor Agency to pay Enforceable Obligations of the former RDA, including bonds;

- To the Successor Agency to pay for administrative costs under the administrative budget approved by the Oversight Board; and
- Any remaining balance in the Trust Fund, to school entities and other local taxing entities as property taxes.

If a Successor Agency determines, and the County Auditor-Controller and the State Controller verify, that the Successor Agency will not have sufficient funds to pay all amounts above, then the deficiencies shall be deducted in the following order from the Trust Fund payments to:

- School entities and local agencies (as normal property taxes);
- Administrative costs of the Successor Agency;
- Pass-through payments to school entities and local entities that have been subordinated to the payment of Enforceable Obligations;
- Enforceable Obligations payable by the Successor Agency; and
- Non-subordinated pass-through payments to school entities and local entities.

The Dissolution Act allows statutory pass-through payments received by school districts, community college districts and offices of education between FY 2011-2012 and FY 2015-2016 to be used for land acquisition, construction, reconstruction, remodeling, maintenance or deferred maintenance of educational facilities.

## **XI. Miscellaneous**

The Dissolution Act clarifies that community development commissions may continue their housing authority and other local community development functions (other than redevelopment) unaffected by the Act.

The Dissolution Act provides that a former RDA's obligations to its employees pursuant to a collective bargaining agreement become Enforceable Obligations of the Successor Agency. An employee's civil service status and classification remain the same for a minimum of two years.

The Dissolution Act includes a provision lengthening the period to challenge RDA actions taken after January 1, 2011 from ninety days to two years.

The Dissolution Act requires that any action contesting the validity of portions of the Dissolution Act or challenging acts taken pursuant to the Dissolution Act be brought in the Sacramento County Superior Court.

If any legal challenge to invalidate a provision of the Dissolution Act is successful, a RDA shall be prohibited from issuing new bonds, notes, interim certificates, debentures or other obligations, whether funded, refunded, assumed or otherwise pursuant to the financing provisions of the CRL.

The Dissolution Act appropriates \$500,000 to the Department of Finance for allocation to the State Controller, State Treasurer and Director of Finance to undertake the duties listed above.

If a RDA is dissolved pursuant to the Dissolution Act, the Sponsoring Community may not establish a new RDA until all debts of the dissolved RDA 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.

## **PART C. ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM ACT**

### **I. "Alternative Voluntary Redevelopment Program" Opt-In**

To avoid being dissolved and to lift the suspension of new redevelopment activities and indebtedness under the Dissolution Act, a RDA and its Sponsoring Community may elect to continue operating under the current CRL if they make specified substantial payments ("Remittances") to their County Auditor-Controller beginning in FY 2011-2012 and in all succeeding years the RDA's redevelopment program continues to operate.

To avoid dissolution, by November 1, 2011, the RDA's Sponsoring Community must enact an ordinance in which it agrees to comply with the Voluntary Program by making the Remittances and must notify the Department of Finance, the State Controller and the County Auditor-Controller of its agreement to comply with the Voluntary Program.

If the Sponsoring Community does not enact such an ordinance before October 1, 2011, but intends to do so by November 1, it must, prior to October 1, indicate that intention by adopting a non-binding resolution of intent and notifying the Department of Finance, the State Controller and the County Auditor-Controller.

Once a Sponsoring Community enacts the appropriate opt-in ordinance, its RDA 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.<sup>18</sup>

### **II. Sources and Uses of Remittances**

The Remittances are technically required to be made by a RDA's Sponsoring Community on behalf of the RDA.<sup>19</sup> Remittances may be made from any available funds of the Sponsoring Community, including funds made available by its RDA, as follows:

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<sup>18</sup> If the Sponsoring Community subsequently fails to make a required Remittance, its RDA will then become subject to the Dissolution Act again and will be dissolved (see Section VI. below).

<sup>19</sup> While the Sponsoring Community is technically the party paying the Remittances, the only sanction for failure to make a Remittance is that the RDA will be dissolved and become subject to the Dissolution Act, and any agreement that the Sponsoring Community has with the RDA to receive RDA funds for such Remittances 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.

- A RDA and its Sponsoring Community may enter into an agreement whereby the RDA transfers a portion of its tax increment to the Sponsoring Community in an amount not-to-exceed the required annual Remittance;<sup>20</sup>
- For FY 2011-2012 only, a RDA will be exempt from making its full deposit into the Low and Moderate Income Housing Fund (and not required to repay unmade deposits<sup>21</sup>), 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 RDA participating in the Voluntary Program are due in equal installments each fiscal year by January 15 and May 15; and
- By November 1 of each year commencing in 2012, a Sponsoring Community must notify the Department of Finance, the State Controller and the County Auditor-Controller of the Remittance amount for the applicable fiscal year. Those entities may audit and verify the Remittance amount, and if it is determined that a Sponsoring Community has miscalculated the Remittance amount, the next Remittance amount will be adjusted accordingly. County Auditor-Controller costs for overseeing this process are subject to reimbursement by the Sponsoring Community.

Remittances received by the County Auditor-Controller from a participating RDA/Sponsoring Community are to be distributed as follows:

- Through a special district allocation fund, a minor portion of FY 2011-2012 Remittances (and thereafter 15% of annual Remittances) would be distributed to special districts that provide fire protection services to the participating RDA's project area(s) and transit districts that serve the participating RDA's project area(s); and

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<sup>20</sup> The Voluntary Program Act does not provide an exemption for amounts paid by a RDA towards Remittances against any dollar cap limitations on the participating RDA's receipt of tax increment.

<sup>21</sup> See Part A.II regarding the President Pro Tem of the Senate's intention to require RDAs to repay any Low and Moderate Income Housing Fund proceeds used to make payments under the Voluntary Program.

- Through the Educational Revenue Augmentation Fund, the balance of all Remittances would be distributed to school entities<sup>22</sup> that serve the participating RDA's project area(s).

### III. Calculation of FY 2011-2012 Remittances

The Voluntary Program Act is designed to generate \$1.7 Billion for FY 2011-2012 if every Sponsoring Community/RDA agrees to participate in the Voluntary Program.

The formula for calculating each Sponsoring Community/RDA's FY 2011-2012 Remittance is similar, but not identical, to the formula used to calculate each RDA's share of the statewide \$1.7 Billion Special Educational Revenue Augmentation Fund ("SERAF") obligations in FY 2009-2010.

For FY 2011-2012, the Voluntary Program Act formula works as follows:

- First, each participating RDA's share of statewide net tax increment<sup>23</sup> revenue for FY 2008-2009 is determined and multiplied by \$1.7 Billion (the "Net Tax Increment Share");
- Second, each participating RDA's share of statewide gross tax increment for FY 2008-2009 is determined and multiplied by \$1.7 Billion (the "Gross Tax Increment Share"); and
- Third, each participating RDA's Net Tax Increment Share and Gross Tax Increment Share are averaged to determine the Sponsoring Community/RDA's Remittance for FY 2011-2012.

By August 1, 2011 the Department of Finance is directed to specify the required Remittance amount for FY 2011-2012 to each Sponsoring Community and the County Auditor-Controller. The Sponsoring Community may appeal the amount of the Remittance to the Director of Finance by August 15, 2011 on the basis that the information in the FY 2008-2009 State Controller's Annual Report was an error or the percentage of tax increment necessary to pay for tax allocation bonds

<sup>22</sup> For FY 2011-2012, such Remittances would count against the State's Proposition 98 obligations (thereby providing State general fund relief), but for FY 2012-2013 and beyond, such Remittances would not count against the State's Proposition 98 obligations.

<sup>23</sup> Net tax increment means the RDA's gross tax increment less various forms of pass-through payments and required debt service payments in FY 2008-2009 (the SERAF formula did not net-out debt service payments for this portion of the formula).

and interest payments have increased by 10 percent or more over the percentage calculated pursuant to the State Controller's FY 2008-2009 Annual Report. The Voluntary Program Act then provides for the Director of the Department of Finance to resolve such appeals by a specified date.

#### IV. Calculation of FY 2012-2013 Remittances

The Voluntary Program Act appears to be designed to generate \$400 Million if every Sponsoring Community/RDA agreed to participate in the Voluntary Program. However, the FY 2012-2013 formula is complex and appears to be incorrectly drafted, thereby requiring a certain degree of good-faith interpretation. The formula may be intended to require an RDA to increase its Remittance to account for the State budget impact of having to backfill foregone school entity property taxes attributable to new non-housing RDA obligations or indebtedness incurred on or after November 1, 2011.

For FY 2012-2013, each participating Sponsoring Community/RDA must make a Remittance equal to the sum of the following two amounts:

- Amount 1 equals the Sponsoring Community/RDA's:

$$(\text{FY 2011-2012 Remittance amount}) \times (23.52\%^{24}) \times \frac{(\text{FY 2012-2013 Adjusted Tax Increment})}{(\text{FY 2011-2012 Year Adjusted Tax Increment})}$$

For the purpose of calculating Amount 1,

“Adjusted Tax Increment” for a given fiscal year means the RDA’s total tax increment minus the amount of debt service or other payments for new non-housing fund payable debt or obligations incurred by the RDA on or after November 1, 2011.

- Amount 2 equals:

$$(\text{Net School Share}) \times (\text{New Debt Service}) \times (\text{Percentage Factor})$$

For the purposes of calculating Amount 2,

"Net School Share" means the school entities' (defined as "school districts, community college districts, the educational revenue augmentation fund, and

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<sup>24</sup> This percentage reflects the ratio of \$400 Million to \$1.7 Billion.

county superintendents of schools") "share of the property tax increment revenues, less any pass-through payments to school entities, that would have been received by the school entities in the absence of redevelopment";<sup>25</sup>

"*New Debt Service*" means the debt service or other payments made by the RDA in FY 2012-2013 for new non-housing fund payable debt or obligations that are displayed on a RDA's statement of indebtedness for the first time after the statement of indebtedness filed on October 1, 2011;<sup>26</sup> and

"*Percentage Factor*" means 80%, or such lesser percentage as may be determined by subsequent legislation, it being the stated intent of the legislature under the Voluntary Program Act to enact legislation setting forth reduced percentages that will apply to bonds issued for the purpose of funding projects that advance the achievement of statewide goals with respect to transportation, housing, economic development and job creation, environmental protection and remediation and climate change, including, projects that are consistent with the Sustainable Communities Strategies developed pursuant to SB 375.

These definitions also apply to Amount 2 for Remittances for FY 2013-2014 and beyond; see Section V below.

## V. Calculation of Remittances for FY 2013-2014 and Beyond

For FY 2013-2014 and beyond, each participating Sponsoring Community/RDA must make a Remittance equal to the sum of the following two amounts (terms used below have the same meaning as defined in Section IV above):

- Amount 1 equals the sponsoring community/RDA's:

*(Remittance amount for the previous fiscal year) x (Current Fiscal Year Adjusted Tax Increment) / (Previous Fiscal Year Adjusted Tax Increment)*

- Amount 2 equals:

*(Net school share) x (New Debt Service) x (Percentage Factor)*

<sup>25</sup> This definition appears to combine concepts of percentage shares and absolute dollar amounts in a technically incompatible fashion, and would benefit from clarification through clean-up legislation.

<sup>26</sup> This definition appears to be inconsistent with the operative provision regarding the Amount 2 payment in the preceding sentence of the Voluntary Program Act, which refers to "debt or obligations issued or incurred on or after November 2, 2011." Clarification of this apparent inconsistency would be appropriate.

If a Sponsoring Community/RDA fails to make a Remittance, the RDA will become subject to the Dissolution Act and will be dissolved. As discussed above, while the Sponsoring Community is technically the party paying the Remittances, the only sanction to the Sponsoring Community for failure to make a Remittance is dissolution of its RDA. Any agreement between the Sponsoring Community and its RDA to receive RDA funds for such Remittances 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.

Any new debts incurred by the RDA or obligations entered into by the RDA on or after January 1 of the calendar year preceding the year the Sponsoring Community/RDA fails to make a Remittance would be subject to the same limitations and sanctions set forth in the Dissolution Act.

## **VI. Miscellaneous**

If any legal challenge to invalidate a provision of the Voluntary Program Act is successful, a RDA shall be prohibited from issuing new bonds, notes, interim certificates, debentures or other obligations, whether funded, refunded, assumed or otherwise pursuant to the financing provisions of the Community Redevelopment Law.

If a RDA is dissolved pursuant to the Dissolution Act, the Sponsoring Community may not establish a new RDA until all debts of the dissolved RDA have been retired by the applicable Successor Agency, and the Sponsoring Community has enacted an ordinance agreeing to make the Remittances required under the Voluntary Program.

## **PART D. KEY MILESTONES FOR IMPLEMENTATION OF REDEVELOPMENT RESTRUCTURING ACTS**

### **I. Milestones Related To Voluntary Program Act**

- **By August 1, 2011:** Department of Finance ("DOF") notifies Sponsoring Community of 2011-2012 Remittance amount.
- **By August 15, 2011:** Sponsoring Community may appeal the amount of 2011-2012 Remittance to DOF director.
- **By September 15, 2011:** DOF director notifies Sponsoring Community and County Auditor-Controller of the decision on the appeal, unless director extends deadline to October 15, 2011.
- **Before October 1, 2011:** Sponsoring Community adopts a non-binding resolution of intent to opt-in to Voluntary Program if unable to adopt ordinance to that effect by October 1, 2011, and notifies DOF, State Controller and County Auditor-Controller of adoption of resolution. This action delays the dissolution of a RDA until November 1, 2011.
- **November 1, 2011:** Sponsoring Community enacts ordinance to opt-in to Voluntary Program, and notifies DOF, State Controller and County Auditor-Controller of adoption of ordinance. (December 1, 2011 if DOF director has extended time for decision of appeal of Remittance amount.)
- **Commencing January 15, 2012 and May 15, 2012 and every January 15 and May 15** thereafter, the Sponsoring Community shall pay one-half of the Remittance amount for the applicable year. County Auditor-Controller notifies the DOF director of any failure to make the payment within 30 days of due date.
- **November 1, 2012 and each November 1** thereafter, Sponsoring Community notifies DOF, State Controller and County Auditor-Controller of Remittance amounts for each fiscal year.

### **II. Milestones Related to Dissolution Act**

- **Upon effectiveness of the Dissolution Act:** State Controller commences review of RDA asset transfers after January 1, 2011.
- **Upon effectiveness of the Dissolution Act:** Redevelopment activities suspended except for limited specified activities.

- **No specified date:** State Controller may order the assets improperly transferred by a RDA to its Sponsoring Community after January 1 to be returned to the RDA (or to its Successor Agency).
- **No specified date:** RDA informs DOF of a designated contact person and related contact information for the purpose of communicating with the DOF.
- **In August 2011:** Sponsoring Community decides whether to serve as a Successor Agency by resolution.
- **Within 60 days after effectiveness of the Dissolution Act:** Agency adopts at public meeting an Enforceable Obligation Payment Schedule for obligations through December 1, 2011. Posts schedule on website and delivers it to DOF, State Controller and County Auditor-Controller.
- **September 1, 2011:** Sponsoring Community that elects not to serve as a Successor Agency files a copy of resolution to that effect with the County Auditor-Controller.
- **No later than September 30, 2011:** RDA prepares a preliminary draft of the initial Recognized Obligation Payment Schedule and provides it to the Successor Agency.
- **September 30, 2011:** The existing terms of any memorandum of understanding with an employee organization expires, unless a new agreement is reached with a recognized employee organization prior to that date.
- **No specified date but prior to October 1, 2011:** Sponsoring Community decides whether to serve as successor housing entity by resolution.
- **October 1, 2011:** RDA is dissolved if its Sponsoring Community has not enacted an ordinance opting in to Voluntary Program. (November 1, 2011 if Sponsoring Community adopted non-binding resolution of intent before October 1, 2011.)
- **October 1, 2011:** Successor Agency created.
- **October 1, 2011:** RDA agreements with Sponsoring Community void (with limited exceptions).

- **October 1, 2011:** All dissolved RDA assets (including properties, contracts, leases, books and records, buildings and equipment), except housing assets, transferred to Successor Agency. RDA delivers Enforceable Obligation Payment Schedule to Successor Agency. Transfer of RDA housing assets (excluding existing Housing Fund balances) to successor housing entity.
- **On and after October 1, 2011:** Successor Agencies permitted to make payments only as listed on Enforceable Obligation Payment Schedule.
- **From October 1, 2011 to July 1, 2012:** Successor Agency prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to October 1, 2011.
- **By November 1, 2011:** Successor Agency prepares initial draft of Recognized Obligation Payment Schedule for the Enforceable Obligations of the former RDA, subject to review and certification by external auditor as to accuracy.
- **No later than December 1, 2011 and May 1, 2012, and each December 1 and May 1 thereafter:** Successor Agency reports to the County Auditor-State Controller if the total amount available to the Successor Agency is insufficient to fund the specified payments in the next six-month fiscal period. County Auditor-Controller notifies State Controller and DOF no later than 10 days from the date of that notification from the Successor Agency.
- **December 15, 2011:** Successor Agency submits first Recognized Obligation Payment Schedule to State Controller and DOF for the period of January 1, 2012 to June 30, 2012. Successor Agency prepares new Recognized Obligation Payment Schedule for **each six month period** thereafter for approval by Oversight Board. Approved Recognized Obligation Payment Schedules are posted on Successor Agency website and submitted to DOF, Controller and County Auditor-Controller.
- **Commencing on January 1, 2012:** Successor Agency may pay only those payments listed in the approved Recognized Obligation Payment Schedule. Statements of Indebtedness are no longer recognized for dissolved RDAs.
- **By January 1, 2012:** Oversight Board elects and reports name of chairperson and other members to DOF.

- **No specified date but after formation of Oversight Board:** Each Oversight Board informs DOF of a designated contact person and related contact information for the purpose of communicating with DOF.
- **January 15, 2012:** Governor appoints persons to unfilled positions on Oversight Board (or any member position that remains vacant for more than 60 days).
- **No later than January 16, 2012 and June 1, 2012, and each January 16 and June 1 thereafter:** County Auditor-Controller transfers from the Redevelopment Property Tax Trust Fund of each Successor Agency into the Redevelopment Obligation Retirement Fund of that Successor Agency, an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule. Successor Agency makes payments on listed Recognized Obligation Payment Schedule from those funds.
- **By March 1, 2012:** County Auditor-Controller completes audit of each dissolved RDA.
- **By March 15, 2012:** County Auditor-Controller provides the State Controller copy of all audits performed on dissolved RDAs.
- **By October 1, 2012:** County Auditor-Controller reports specified financial information to the Controller and DOF.
- **January 1, 2013:** California Law Revision Commission drafts a Community Redevelopment Law cleanup bill for consideration by the Legislature.
- **July 1, 2016:** Consolidation of all Oversight Boards into one county-wide Oversight board in each county where more than one Oversight Board was created.
- **After July 15, 2016:** Governor appoints persons to unfilled positions on county-wide Oversight Board (or any member position that remains vacant for more than 60 days).

ORDINANCE NO. \_\_\_\_\_

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

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS AND BACKGROUND INFORMATION

a. 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 Hayward (the "City") adopted Ordinance No. \_\_\_\_ on \_\_\_\_\_, 1969 declaring the need for the Redevelopment Agency of the City of Hayward (the "Agency") to function in the City.

b. Also in accordance with the Redevelopment Law, the City Council adopted Ordinance No. \_\_\_\_\_ on December \_\_, 1975 adopting the Redevelopment Plan for the Downtown Hayward Redevelopment Project (the "Redevelopment Plan"), as amended in accordance with the Redevelopment Law on \_\_\_\_\_, 1987 by Ordinance No. \_\_\_\_, on \_\_\_\_\_, 1998, by Ordinance Number \_\_\_\_, and on \_\_\_\_\_, 2001 by Ordinance Number \_\_\_\_\_. The Agency is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law.

c. 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 avoid dissolution under the Dissolution Act by opting into an alternative voluntary redevelopment program requiring specified annual contributions to local school and special districts.

d. 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.

e. 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.

f. 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 any payments owed by the Agency, including, but not limited to, payments from loan agreements, to the State of California.

g. 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.

**SECTION 2. 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 the 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 3. 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 4. AUTHORIZATION OF IMPLEMENTING ACTIONS**

The City Manager 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 using funds as determined by the City Council and Agency Board.

**SECTION 5. 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 Alameda in accordance with the CEQA guidelines.

**SECTION 6. SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared unconstitutional or invalid.

**SECTION 7. ENACTMENT AND EFFECTIVE DATES**

This Ordinance is deemed enacted as of July 26, 2011 for purposes of Section 34193(a) of the Redevelopment Law, and shall take effect and will be enforced thirty (30) days after its adoption.

**SECTION 8. PUBLICATION AND POSTING**

The City Clerk is directed to post and/or publish this Ordinance (or summary thereof) as required by law.

The foregoing Ordinance was duly introduced before the City Council of the City of Hayward, County of Alameda, at a regular meeting of the City Council held on the 19th day of July, 2011, and finally adopted at a regular meeting of the City Council held on the 26th day of July, 2011, by the following votes to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney