



Legislation Details (With Text)

File #: 12-381 **Version:** 1 **Name:** SR: AB 1484 & SA Resos
Type: Staff Report **Status:** Filed
In control: City Council
On agenda: 7/16/2012 **Final action:** 7/16/2012
Enactment date: **Enactment #:**
Title: Staff Report for Update on AB 1484: Redevelopment Dissolution/Unwind Trailer Bill and Resolutions to Acknowledge the Legal Existing of the Successor Agency and Adopt Successor Agency Procedures
Sponsors: Luke Sims
Indexes:
Code sections:
Attachments: 1. Meyers Nave AB 1484 Memorandum.pdf

Date	Ver.	Action By	Action	Result
7/16/2012	1	City Council	Received and Filed	

Staff Report for Update on AB 1484: Redevelopment Dissolution/Unwind Trailer Bill and Resolutions to Acknowledge the Legal Existing of the Successor Agency and Adopt Successor Agency Procedures

SUMMARY AND RECOMMENDATIONS

This Staff Report provides a summary of key provisions of Assembly Bill 1484 (“AB 1484”), the redevelopment budget trailer bill that was signed into law on June 27, 2012. The bill became effective immediately upon the Governor’s signature. A more detailed Memorandum is attached. Consistent with the provisions of AB 1484, staff recommends that the City Council adopt the resolution acknowledging the legal existence of the Successor Agency to the Redevelopment Agency of the City of San Leandro (“Successor Agency”). Additionally, staff recommends that the Successor Agency adopt the resolution designating officers and adopting administrative and operating procedures.

BACKGROUND

AB 1484 was intended to amend and/or revise several components of the Redevelopment dissolution bill, AB x1 26. Although AB 1484 will have numerous impacts on San Leandro, its most immediate effect requires the acknowledgement of the Successor Agency as a separate legal entity and submission of a Recognized Obligation Payment Schedule (ROPS), approved by the Successor Agency and Oversight Board, by September 1, 2012. This report provides a summary of AB 1484 and the related actions before the Council at this time.

Analysis

PURPOSE/GOALS OF THE LEGISLATION

The primary purpose of the legislation is to require Successor Agencies to remit certain funds for distribution to the taxing entities. To summarize, the legislation:

1. Requires Successor Agencies to remit the residual balance calculated to be due to taxing entities from the December 2011 tax increment distribution, net of ROPS obligations for January to June, 2012. This payment is due July 12, 2012.
2. Requires Successor Agencies to remit fund balances determined to be unobligated following "Due Diligence Reviews" of housing and non-housing asset transfers that took place after January 1, 2011. These reviews will take place during the fall and winter, 2012.
3. Requires Successor Agencies to pay pass-through obligations due to taxing entities for Fiscal Year 2011-12.

If all of these payments are made, the legislation provides certain "safe harbors" relating to retention of land, use of bond proceeds and repayment of City-Agency loans, subject to specified restrictions.

IMMEDIATE REQUIREMENTS

1. Separate Legal Entity. The legislation establishes Successor Agencies as separate legal entities, distinct from the city, county or city and county that formed the redevelopment agency (the "Sponsoring Jurisdiction"). Prior to any new Successor Agency action, the City Council, acting in its capacity as the legislative body of the Sponsoring Jurisdiction and acting in its capacity as the governing board of the Successor Agency, should adopt resolutions acknowledging the separate legal existence of the Successor Agency. In addition, the governing board for the Successor Agency should adopt a resolution adopting operational procedures, and ratifying or affirming prior actions. Resolutions for this purpose accompany this report.
2. Payment of January - June Residual Balance. By July 12, 2012, the Successor Agency is obligated to pay the amount that the County Auditor-Controller determines is owed to the taxing entities for the period January through June 2012, based upon the December 2011 distribution of tax increment and the January - June 2012 ROPS. Failure to pay amounts due may subject the Sponsoring Jurisdiction and the Successor Agency to penalties equal to 10% of the amount due plus 1.5% for each month the payment is late. In addition, the legislation provides that until the amount determined to be due is paid the Sponsoring Jurisdiction will not receive sales and use tax scheduled to be distributed on July 18, 2012 or any subsequent payment.
3. Housing Asset Inventory. By August 1, 2012, the City, serving as "Housing Successor," is required to submit to the Department of Finance ("DOF") a comprehensive listing of all housing assets that were transferred to the Housing Successor. The legislation provides an expanded definition of "housing assets" that includes properties acquired or restricted for use as affordable housing, loans and grants receivable, loan repayments, and rents and other income from operations. Staff is currently assembling this inventory.

NEW DEADLINES AND REQUIREMENTS FOR ROPS.

By September 1, 2012, the January- June 2013 ROPS must be submitted to the State Controller and DOF in the form approved by the Oversight Board. Penalties apply if the ROPS is not timely submitted. A separate staff report presents a draft ROPS for the January - July 2013 period.

PASSTHROUGH PAYMENTS FOR FY 2011-12

AB 1484 provides that if any passthrough payment obligation has not yet been paid to the taxing entities for fiscal year 2011-12, the County Auditor-Controller shall make such payments and shall reduce property tax allocations to the Successor Agency by the amount of such payments. It is the understanding of staff that all pass-through payments due for San Leandro were paid by the County Auditor-Controller and that this amount has already been reflected in the June distribution from the Redevelopment Property Tax Trust Fund.

DUE DILIGENCE REVIEW AND PAYMENT OBLIGATIONS

The Successor Agency must hire a licensed accountant to perform a “Due Diligence Review” of all housing and non-housing redevelopment agency and successor agency financial activities that took place between January 1, 2011 and June 30, 2012. The purpose of the review is to determine the unobligated fund balance that will be available for distribution to the taxing entities.

The Due Diligence Review will establish the value of all assets transferred by the Redevelopment Agency to the Successor Agency and by either the Redevelopment Agency or the Successor Agency to the Sponsoring Jurisdiction or any other entity during the period January 1, 2011 through June 30, 2012. Evidence demonstrating the requirement for each transfer will be required to document that each transfer was made pursuant to an enforceable obligation.

The review of the Housing Fund must be completed by October 1, 2012. The Oversight Board must hold a public hearing on the audit by October 15, 2012. The deadline for payment is five business days following the DOF’s final determination which may follow a meet and confer if requested by the Successor Agency. The review of all other funds must be completed by December 15, 2012. The Oversight Board must hold a public hearing on the non-housing audit by January 15, 2013. The deadline for payment is also five business days following the DOF’s determination.

If the Successor Agency does not remit the amounts determined to be payable as a result of the Due Diligence Review, and is unable to recover funds that were transferred to other public agencies without an enforceable obligation, any public agency to which funds were transferred without an enforceable obligation may be subject to an offset of its sales and use or property tax allocations.

FINDING OF COMPLETION (“SAFE HARBOR”)

Issuance of Finding of Completion. After the Successor Agency pays (i) the housing fund balance as determined by Due Diligence Review, (ii) the non-housing fund balance as determined by Due Diligence Review, and (iii) the balance of any outstanding taxing entity passthrough obligations and residual payments, DOF will issue a Finding of Completion (“FOC”).

City-Agency Loans. Upon issuance of an FOC, loans made by the City to the Agency may be repaid if the Oversight Board finds that the loan was for a legitimate redevelopment purpose. Repayment is subject to certain restrictions, including, a reduction of the interest rate to the LAIF rate, restrictions on the timing and amount of annual repayments, and a requirement that 20% of the repayment amount must be deposited into a restricted housing set-aside fund.

Use of Bond Proceeds. Upon issuance of an FOC, the proceeds of bonds issued prior to December

31, 2010 may be used for purposes consistent with the bond covenants. Obligations to be paid with bond proceeds are subject to review by the Oversight Board and the DOF.

Property Management Plan. Upon receiving an FOC, the Successor Agency may prepare a long-range property management plan that addresses the disposition and use of real property assets. The plan must be submitted to the Oversight Board and DOF within six months after issuance of the FOC. The plan must address the use or disposition of all properties, which may include: (i) retention of property for governmental use, (ii) retention of the property for future development, (iii) sale of the property, (iv) use of the property to fulfill an enforceable obligation. If the property will be conveyed for a purpose identified in the redevelopment plan or pursuant to an enforceable obligation, the Successor Agency may retain the sale proceeds.

ADDITIONAL PROVISIONS

1. Annual Audit. An agreed upon procedures audit of the Successor Agency, commissioned by the County Auditor-Controller, is to be completed by October 1, 2012. This audit is in addition to the housing fund and non-housing Due Diligence Reviews. In addition, an audit of the Successor Agency's financial transactions and records is to be conducted at least annually by a certified public accountant.
2. Public Purpose Properties. The Oversight Board may authorize the transfer of public purposes properties to the Successor Agency or other public entity for which a public facility was constructed. In addition, the Department of Finance may extend its review period for public purpose transfers to 60 days.
3. Land Disposition. AB 1484 suspends the "forced disposition" provisions of Section 34177(e) (which provides for disposition to be undertaken "expeditiously and in a manner aimed at maximizing value"). Instead, the legislation provides that upon issuance of an FOC, a Successor Agency may develop a property management plan, subject to Oversight Board and DOF approval as described above. Although AB 1484 includes some contradictory language, a reasonable interpretation is that a Successor Agency that wishes to voluntarily convey certain properties in advance of approval of a property management plan may do so, provided that the Oversight Board approves and DOF does not object.
4. Amended and Restated Agreements. AB 1484 restricts the ability of a Successor Agency to re-enter into agreements with its Sponsoring Jurisdiction if DOF has previously rejected the items to be funded by such agreements, unless such obligations are permitted as a result of a meet and confer process with DOF. The legislation specifically prohibits reauthorization of Sponsoring Jurisdiction loan agreements except as permitted pursuant to the FOC process.
5. Administrative Budget Allowance. Litigation expenses, property management expenses incurred prior to disposition, and project-specific employee costs are excluded from the administrative budget cap.

ATTACHMENTS

- Memorandum from Meyers Nave on AB 1484.

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