



Community Redevelopment Agency Staff Report

DATE: August 25, 2011 NEW BUSINESS

SUBJECT: Approval and Transmittal of Enforceable Obligations Payment Schedule (EOPS)

FROM: David H. Ready, Executive Director

BY: Community & Economic Development Department

SUMMARY:

The Legislature recently passed ABX1 26 and ABX1 27 as part of approval of the state budget. ABX1 26 (Health and Safety Code Section 34169(g)(1)) requires agencies to submit an Enforceable Obligation Payments Schedule (EOPS) within 60 days of the effective date of Part 1.8, or by August 28, 2011. The EOPS must be adopted at a public meeting and then posted on the agency's or its jurisdiction's website. It must also be submitted by mail or electronic means to the County Auditor-Controller, the State Controller's Office and the State Department of Finance.

The State Supreme Court recently stayed all of the provisions of ABX1 27, but only granted a partial stay order on ABX1 26. Due to the impact of the partial stay order, the Agency must now adopt an Enforceable Obligations Payment Schedule (EOPS). The State deadline of sixty days after the effective date of the legislation to file the payment schedules has necessitated this special August 25th Agency meeting.

RECOMMENDATION:

Adopt Resolution No. _____, "A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS AUTHORIZING THE APPROVAL AND TRANSMITTAL OF AN ENFORCEABLE OBLIGATIONS PAYMENT SCHEDULE (EOPS) PURSUANT TO ASSEMBLY BILL X1 26 (ABX1 26)

STAFF ANALYSIS:

In January, 2011, the Governor proposed ending the 425 local redevelopment agencies in California, in a move to secure \$1.7 billion in local property taxes to be used to patch

the State's \$25 billion budget deficit. The Legislature passed ABX1 26, which will abolish redevelopment agencies by October 1, 2011: it requires that all agency activities be terminated, except for the implementation of existing obligations. The unwinding of a redevelopment agency would be overseen by a successor entity designed to liquidate the Agency's assets as rapidly as possible.

These bills became effective on June 29, 2011. Agencies were prohibited from entering into any new agreements until they have enacted an ordinance committing to make the payments as required by ABX1 27. The Legislature also adopted ABX1 27, which would allow cities to sponsor redevelopment agencies if they agreed to "voluntarily" make certain payments to the State for the remaining life of the agency. In the case of Palm Springs, the first year payment would be over \$3.4 million, with subsequent annual payments over \$800,000.

ABX1 27 requires a city to adopt a resolution if it intends to continue its redevelopment agency by September 30, 2011, and was to be followed by the adoption of a continuation ordinance. The continuation ordinance must be adopted prior to October 28, 2011. Staff had planned to bring the "Opt In" ordinance to City Council on September 7, 2011 in order for the Agency to continue under ABX1 27.

Additionally, ABX1 26 (Section 34169(g)(1)) requires Agencies to submit an Enforceable Obligation Payments Schedule (EOPS) within 60 days of the effective date of Part 1.8, or by August 28. The EOPS must be adopted at a public meeting and then posted on the agency or its jurisdiction's website. It must be submitted by mail or electronic means to the County Auditor-Controller, the State Controller's Office and the State Department of Finance.

Section 34167(h) provides that after the EOPS is adopted, the Agency shall not make a payment unless the obligation is listed on the EOPS (other than payments required to meet obligations with respect to bonded indebtedness).

Most redevelopment attorneys in California viewed the law as requiring those agencies which were opting out to adopt an EOPS by August 28th, but agencies that were prepared to opt in under ABX1 27 were not bothering to prepare these schedules. It was even confirmed by the State Finance Office that the EOPS was only for opting out agencies and NOT required for those agencies opting in.

Therefore, the assumption was that Palm Springs would adopt the "Opt-In Ordinance" under ABX1 27 at its regular meeting of September 7, before the Agency adopted the EOPS. If that had occurred, the Agency could go back to its normal operations.

However, the California Redevelopment Association (CRA) and California League of Cities (League) challenged the constitutionality of both bills in the California Supreme Court (the "Court"). They also submitted a request for a stay order to enable agencies to

continue operating while the case is being decided, suspending the effectiveness of the legislation until the Court rules on the case.

On August 11, 2011, the Court issued a partial stay on the effectiveness of ABX1 26 and ABX1 27 until it can rule on the constitutionality of the two bills. As a result, Sections 34161 through 34167 of ABX1 26 are currently in effect and call for the suspension of non-administrative redevelopment agency activities and commencement of some wind down activities including agency board adoption and filing of an EOPS by August 28. After this date, an agency may only pay for obligations listed on the EOPS unless it is necessary to meet bonded indebtedness.

On August 17, the Supreme Court revised its August 11 partial Stay of ABX1 26 and ABX1 27 by clarifying that all of Part 1.8 (H & S.C. Sections 34161-34169.5) remains in effect. That means all agencies are required to adopt an EOPS by August 28, 2011.

In the August 11 ruling, the Court also established an expedited briefing schedule to facilitate oral arguments as early as possible in 2011, and a decision before January 15, 2012, the date when agencies are required to make their first payment. The key deadlines as laid out in the court's order are as follows:

- **September 9, 2011:** If the State wishes to challenge the stays of ABX1 26-27, they must file a "return" showing "cause" to the Court.
- **September 24, 2011:** CRA and the League must file their response to the State's filing.
- **September 30, 2011:** Amicus curiae briefs must be filed with the Court.
- **October 7, 2011:** Replies to individual amicus briefs must be filed.

In the August 17 clarification, the Court requested that the parties provide alternative dates for statutory compliance, including enacting a continuation ordinance and paying the remittance amount, in the event that the Court upholds both statutes. The Court did not express any opinion on the merits of the legislation, but noted that if ABX1 26 and 27 are upheld, they will be implemented "with as little delay as possible."

The Agency can only make payments that are on the EOPS. The law requires that the Agency indicate payments from September through December of 2011. The adoption of this resolution allows the Agency to continue to pay bills for projects and activities that are allowed to continue under ABX1 26, and establishes the obligations that allow the City/Agency to continue with existing projects without a redevelopment agency. The schedule includes a list of all the agency's enforceable obligations for housing and non-housing funds, including:

- Project name
- Payee
- Short description
- Monthly payment through December 31, 2011

Payment schedules for bonds and payments to employees may be aggregated. Enforceable obligations are defined in Section 34167(d) as bonds, loans, payments required by other governmental entities, judgments or settlements, any legally binding and enforceable agreement or contract, and contracts and agreements for agency administration or operation costs.

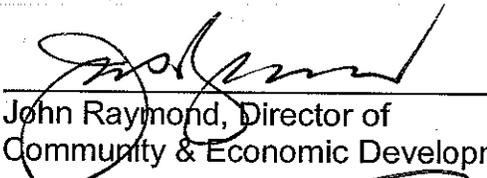
The procedures for adopting an EOPS are:

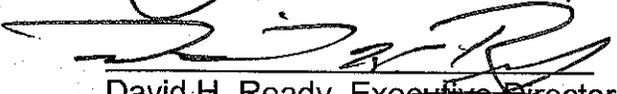
- Must be adopted by the agency at a public meeting (no public hearing is required)
- Must be posted on either the agency's or legislative body's website
- Copies of the EOPS, or its location on the website, must be transmitted to county auditor-controller, State Controller, and Department of Finance

All of these activities must be completed by August 28, 2011. The Agency may amend the EOPS at any public meeting.

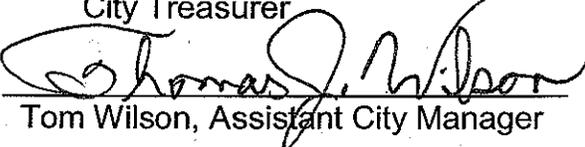
Enforceable Obligation List:

The State Controller has provided a format for the payment schedule, which is attached as Exhibit A to the Resolution. The Agency has a series of tax allocation bonds, which are shown on Lines 1-8 of the EOPS. The Agency also has statutory pass through payments and a number of annual tax sharing agreements based on SB 211. The other obligations include the payment of loans from the City to the Agency, as well as reimbursements from the Agency to the City for administrative services, including staff costs, auditing and legal services. The EOPS also includes obligations under owner participation agreements and disposition & development agreements.


John Raymond, Director of
Community & Economic Development


David H. Ready, Executive Director


Geoffrey Kiehl, Director of Finance/
City Treasurer


Tom Wilson, Assistant City Manager

Attachments:

1. Resolution
2. Enforceable Obligations Payment Schedule (Exhibit "A" to the Resolution)
3. Original Schedule of Actions to be Taken by Agencies Under ABX1 26 and ABX1 27.

Schedule of Actions to be Taken Under ABX1 26 and ABX1 27

The State Senate and Assembly passed ABX1 26 and ABX1 27, which effectively dissolves redevelopment agencies, but allows agencies willing to comply with a "voluntary" payment to be exempted from elimination. The Governor signed these bills and they became effective on June 29, 2011. The California Redevelopment Association (CRA) and California League of Cities (League) have filed legal challenges to both bills in Supreme Court. Prior to the stay granted to agencies by the California Supreme Court on August 11, 2011, CRA had advised agencies to take the following actions to protect the community from any possible future actions by the State. The Court has asked both parties for amended dates under these bills for implementation of the law if it determines their constitutionality.

Important Actions to Be Taken

To Dissolve the Agency:

Now	<ul style="list-style-type: none"> • Gather all loans, agreements, affordable housing covenants, etc.
August 27, 2011	<ul style="list-style-type: none"> • Adopt Enforceable Obligation Payment Schedule by resolution [34169(g)1] • Transmit Enforceable Obligation Payment Schedule to county auditor-controller, the State Controller, and the Department of Finance [34169(g)2]
Sept 1, 2011	<ul style="list-style-type: none"> • Determine if the City that formed the Agency will NOT be the Successor Agency and adopt a resolution station this [34173(d)(1)] • Determine allowed administrative costs, including staffing [34171(b)]
Sept 30, 2011	<ul style="list-style-type: none"> • Prepare and transmit to Successor Agency a preliminary draft of the initial Recognized Obligation Payment Schedule [34169(h)]
Oct 1, 2011	<ul style="list-style-type: none"> • Determine if City should retain housing responsibilities or transfer to a Housing Authority [34176(a) and (b)] • File Statement of Indebtedness
After Oct 1, 2011	<ul style="list-style-type: none"> • As Successor Agency, administer Recognized Obligation Payment Schedule [34177(a)(1)]

To Continue the Agency:

Aug 15, 2011	<ul style="list-style-type: none"> • Should City/County appeal payment amount? [34194(b)(2)(L)(i)]
Aug 27, 2011	<ul style="list-style-type: none"> • Adopt Enforceable Obligation Payment Schedule by resolution, if the "Opt-In" Ordinance electing to make "Voluntary Payment" will not be adopted within 60 days (by 8/27/11 [34169(g)(1)])
Oct 1, 2011	<ul style="list-style-type: none"> • Carefully prepare the October 1, 2011 Statement of Indebtedness to include all legal debt. This will minimize the additional school pass through payment [34194(c)(2)(A)] • City adopts and complete the second reading of the Ordinance [34193(b)] • If the City does not adopt the Ordinance by October 1, 2011, adopt a resolution to extend the date to complete second reading of Ordinance to November 1, 2011 [34193(b)]
Oct 31, 2011	<ul style="list-style-type: none"> • Last day to complete the 2nd reading of the ordinance
After adoption of Ordinance	<ul style="list-style-type: none"> • Continues normal redevelopment activities
Jan 15, 2012 & May 15, 2012 - annually thereafter	<ul style="list-style-type: none"> • Remit payments [34194(d)(1)]

RESOLUTION NO. 1424

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS AUTHORIZING THE APPROVAL AND TRANSMITTAL OF AN ENFORCEABLE OBLIGATIONS PAYMENT SCHEDULE (EOPS) PURSUANT TO ABX1 26 AND ABX1 27.

WHEREAS, the Agency Board of the Palm Springs Community Redevelopment Agency ("Agency") approved and adopted the Amended and Restated Redevelopment Plans for the Merged Project Areas No. 1 and No. 2 ("Redevelopment Plan") covering properties within the Agency (the "Project Areas"); and

WHEREAS, the Agency is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since the dates of adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area's economic growth, create and develop local job opportunities, and alleviate deficiencies in public infrastructure, to name a few; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills ABX1 26 and ABX1 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts a resolution committing it to making certain payments; and

WHEREAS, specifically, ABX1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, additionally, ABX1 26 which eliminates redevelopment agencies also requires all Agencies to wind-down their affairs unless the Agencies are extended through compliance with the requirements of ABX1 27; and

WHEREAS, as part of this wind-down process, all redevelopment agencies are required to file a schedule of "enforceable obligations" that require payments to be made through the end of the calendar year 2011; and

WHEREAS, under the threat of dissolution pursuant to ABX1 26, and based upon the contingencies and reservations set forth herein, the Agency establishes the foregoing Enforceable Obligation Payment Schedule (the "Schedule") to be able to continue redevelopment activities that were begun prior to the effective date of ABX1 26; and

WHEREAS, the Agency reserves the right to appeal any determination of the California Director of Finance or other entity regarding the propriety of this resolution as well as any future determinations; and

WHEREAS, the Agency is aware that an action challenging the constitutionality of ABX1 26 and ABX1 27 has been filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the Agency currently intends to comply with the state-mandated obligations established hereunder, they shall all be made under protest and without prejudice to the Agency's right to recover such amounts and interest thereon, to the extent there is a final determination that ABX1 26 and ABX1 27 are unconstitutional or otherwise infirm, including state-mandated costs for complying with the establishment of the Schedule and any amendments thereto; and

WHEREAS, the Agency reserves the right, regardless of any actions taken pursuant to this resolution, to challenge the legality of ABX1 26 and ABX1 27 and seek reimbursement for compliance costs of this state-mandated program; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or invalidates the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of ABX1 26 and ABX1 27, the Agency shall not be obligated to this Schedule or comply with the terms and conditions of ABX1 26 and ABX1 27 and this resolution shall not be construed as any waiver or disclaimer of its rights with respect to such injunction, restraint or stay; and

WHEREAS, all other legal prerequisites to the adoption of this resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED that the Agency Board of the Palm Springs Community Redevelopment Agency does resolve as follows:

SECTION 1. The Recitals set forth above are true and correct and incorporated herein by reference.

SECTION 2. The Enforceable Obligation Payment Schedule, attached hereto and incorporated herein by reference as "Exhibit A", is hereby adopted, subject to all reservations of rights and contingencies set forth above.

SECTION 3. The Executive Director or designee is authorized to take all actions necessary to implement this Resolution, including without limitation, the posting of this Resolution and the Enforceable Obligation Payment Schedule on the Agency's website, and the provision of notice of adoption of this Resolution and such Schedule to County auditor-controller, the State Controller and the State Department of Finance.

PASSED, APPROVED, AND ADOPTED at a special meeting of the Community Redevelopment Agency of the City of Palm Springs, California, on this 25th day of August, 2011.

David H. Ready, Executive Director

ATTEST:

James Thompson, Agency Secretary

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, Secretary of the Community Redevelopment Agency of the City of Palm Springs, California, hereby certify that Resolution No. 1493 was adopted by the Agency at a special meeting held on the 25th of August, 2011, and that the same was adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, Agency Secretary
Community Redevelopment Agency
City of Palm Springs, California