

Agenda Report

January 30, 2012

TO: Honorable Mayor and City Council

FROM: Economic Development, Office of the City Manager

SUBJECT: DISSOLUTION OF THE PASADENA COMMUNITY DEVELOPMENT COMMISSION ("PCDC") PURSUANT TO AB X1 26.

RECOMMENDATION:

It is recommended that the City Council take the following actions:

1. Adopt a resolution confirming that the City will serve as the Successor Agency to the Pasadena Community Development Commission ("PCDC"), pursuant to Assembly Bill X1 26; and
2. Adopt a resolution assuming all functions previously assigned to the Community Development Committee in the Pasadena Municipal Code.

EXECUTIVE SUMMARY:

On December 29, 2011 the California Supreme Court issued a decision in the case entitled Community Redevelopment Association et. al., v. Ana Matosantos. The Court upheld Assembly Bill X1 26 ("AB 26"), the redevelopment elimination bill and struck down Assembly Bill X1 27 ("AB 27"), the bill that would have allowed redevelopment agencies to remain in operation as long as they made payments to the state. As a result of this ruling, the redevelopment operations of the PCDC will be eliminated effective February 1, 2012. This report outlines the impacts of this action on the City of Pasadena.

BACKGROUND:

On December 29, 2011, the California Supreme Court ("Court") issued its final opinion in the redevelopment related litigation action, California Redevelopment Association et al. v. Ana Matosantas et al. ("CRA Litigation"). Specifically, the Court upheld as constitutional AB 26, the legislation that freezes redevelopment activities and dissolves community redevelopment agencies throughout the State, and struck down as unconstitutional AB 27, the legislation that would have allowed cities and counties to continue to operate redevelopment agencies by making voluntary payments to the

State, counties, school districts and other local government bodies. The Court found that AB 26 was a proper exercise of the legislative power vested in the Legislature by the California Constitution but found that AB 27 violated Proposition 22.

The Court's decision to uphold AB 26 and strike down AB 27 effectively eliminates redevelopment in California which for the past 60 years enabled local governments to address blight, produce affordable housing and facilitate economic development thereby increasing the tax-base and producing jobs. Considering the legislative intent was not the complete elimination of redevelopment, there is some hope that State lawmakers will ultimately pursue the creation of a similar program to facilitate economic development, affordable housing, brownfield mitigation, and sustainable development. In the near term, however, it doesn't appear likely that efforts to breathe new life into redevelopment, including a postponement of the effective date of elimination, will be successful. Consequently, the City must move forward in a manner consistent with the current state of the law.

As discussed above, AB 26 eliminates all redevelopment agencies effective February 1, 2012 and replaces them with Successor Agencies, which in turn are subject to review by Oversight Boards, the Department of Finance ("DOF") and the State Controller's Office ("SCO").

Successor Agencies

Pursuant to AB 26 "Successor Agencies" are designated as successor entities to the former redevelopment agencies. The Successor Agencies possess "all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies under the Community Redevelopment Law." Successor Agencies are responsible for:

- Paying for and performing Recognized Enforceable Obligations.
- Maintaining reserves in the amount required by tax allocation bonds or similar documents.
- Paying unencumbered balances of funds, including Low and Moderate Housing funds to the County Auditor-Controller ("CA-C") for distribution to the taxing entities.
- Disposing of assets and properties aimed in a manner at maximizing value as directed by the Oversight Board. Proceeds from asset sales and related funds that are no longer needed to close-out the affairs of redevelopment agencies, as determined by the Oversight Board, shall be transferred to the CA-C for distribution as property tax proceeds.
- Transferring all of the housing functions and assets to the appropriate entity.
- Collection of debts.
- Oversee the development activities of properties deemed to be enforceable obligations by the Oversight Board and the California Department of Finance ("DOF").

Essentially, the main purpose of Successor Agencies is to wind down the operations of redevelopment agencies through the extinguishing of Recognized Enforceable Obligations, which are defined as payments for outstanding bonds and loans, payments required by federal or state government or for employee pension obligations, judgments and settlements, legally binding and enforceable agreements or contracts including those for administration or operations, subject to the approval of Oversight Board, discussed below, and the DOF.

Under the provisions of AB 26, cities and counties that established redevelopment agencies would become the Successor Agency for the respective agency unless they opted out by January 13, 2012. Some cities, including the cities of Los Angeles, Pico Rivera, Merced and Pismo Beach have chosen to opt out. In the case of Los Angeles, the two primary reasons for this decision are concerns regarding the cost of shifting employees from the Community Redevelopment Agency of Los Angeles, which operates as an independent entity, to the City of Los Angeles and potential liability from lawsuits that are expected to arise as a result of that city's inability to complete projects.

For Pasadena, and the majority of other cities with redevelopment agencies, electing to serve as the Successor Agency is considered the best way to ensure the City's interests are maintained, albeit within the limited scope provided by AB 26. The PCDC is currently not engaged in any development activity that should give rise to litigation concerns such as those cited by Los Angeles and some other agencies. And while there are significant fiscal impacts which must be addressed and are discussed further in this report, this would be the case whether or not the City serves as the Successor Agency.

While it is not necessary for the City Council to do so based on the language of AB 26, legal counsel recommends the adoption of a resolution confirming the City's election to serve as the successor agency to the Pasadena Community Development Commission.

Oversight Board

In addition to the creation of Successor Agencies, AB 26 increases the power of the County Auditor-Controller, the State Controller, and the State Department of Finance and establishes the creation of Oversight Boards. The Oversight Boards, which are to be appointed by May 1, 2012 will report to the DOF, and will supervise the activities of Successor Agencies. Oversight Boards will have "fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues." Each Board will consist of seven (7) members, four of which are under the control of the County and to be appointed as follows:

- One member appointed by the county board of supervisors.
- One member appointed by the mayor for the city that formed the redevelopment agency.
- One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency.

- One member appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment shall be made by the county board of supervisors.
- One member appointed by Chancellor of the California Community Colleges to represent community college districts in the county.
- One member of the public appointed by the county board of supervisors.
- One member representing the employees of the former redevelopment agency appointed by the mayor or chair of the board supervisors, as the case may be, from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time.

AB 26 provides that if the Board positions are not filled by May 15, 2012, then the Governor shall make the appointments.

The specific powers of the Board include, but are not limited to:

- Approving new repayment terms for outstanding loans.
- Issuance of refunding bonds in order to provide for savings or to finance debt service.
- Maintaining reserves in the amount required by tax allocation bonds or similar documents.
- Merging of project areas.
- Continuing the acceptance of grants if they require a match of more than five percent.
- Approving the retention of certain projects as development projects by the Successor Agency.
- Approving the Recognized Obligation Payment Schedule ("ROPS"). The ROPS will need to be submitted to the State Controller and Department of Finance by April 15, 2012, which is prior to the May 1, 2012 date for Board formation.
- Approving requests by the City to hold portions of the moneys of the Low and Moderate Income Housing Funds in reserve in order to provide cash to fund recognized obligations.
- Approving disposal of all assets and properties not deemed part of approved development projects. In the alternative, the Board may direct the Successor Agency to transfer ownership of assets used for a governmental purpose, such as roads, schools, parks and fire stations, to the appropriate public jurisdiction for compensation as determined by the agreement relating to the construction or use of the asset.
- Ceasing and terminating all existing agreements that do not qualify as Enforceable Obligations.
- Transferring housing responsibilities and all rights, powers, duties and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity.

- Terminating any agreement between the former redevelopment agency and any public entity that obligates funding for debt service obligations of the public entity or for construction or operation of facilities of the public entity if that would be in the best interest of the Property Tax Recipients.
- Re-negotiating or terminating contracts with third parties to reduce liabilities or increase net revenues. This may include payments or remediation as necessary.

The Board may not enter into new contracts for any new economic development projects that are not included on the approved Enforceable Obligations list. All actions of the Board may be reviewed by the DOF. The DOF will have three days from the date of Board actions to request a review and 10 days to approve an action or return it to the Board for reconsideration. This final action must be approved by the DOF.

Administrative Budget

AB 26 requires the Successor Agency to prepare an Administrative Budget that is subject to the approval of the Oversight Board. The bill provides for an Administrative Cost Allowance (i.e., cap) equal to five percent of the debt service payments as listed on the Enforceable Obligation Payment Schedule ("EOPS") for the remainder of FY 2012. Beginning in FY 2013, the cap is three percent of the debt service payments as listed on the Recognized Obligations Payment Schedule, with a minimum amount of \$250,000. Additionally, certain administrative and general costs directly related to Enforceable Obligations may be included on the Recognized Obligations Payment Schedule for which property tax dollars will be provided over and above the Administrative Cost Allowance.

Based on projections for both the Housing Department and the City Manager's Office of Economic Development, which were both funded in part by Redevelopment, the Administrative Cost Allowance should be sufficient to cover anticipated expenditures through the remainder of the current fiscal year without any additional impact on the General Fund. That this is the case is testament to Pasadena's conservative use of redevelopment funds.

Nevertheless, on a go-forward basis, in order to remain within the three percent limit/\$250,000 minimum, significant budget reductions will be necessary. These reductions, which will include staffing, will be made contemporaneously with other budget reductions expected to occur in the City's General Fund within the next several weeks.

Community Development Committee and the Municipal Code

With the elimination of the Pasadena Community Development Commission, it is no longer possible for the Community Development Committee to carry out the purpose and functions assigned to it in the Municipal Code which are to "review and make recommendations on all matters to come before the community development commission prior to commission action" (PMC Section 2.70.110). To the extent the Municipal Code contains requirements calling upon the Community Development Committee to take particular actions on matters prior to the time those matters are

brought before the City Council, staff recommends that the City Council adopt a resolution assuming responsibility for carrying out those actions itself.

Next Steps

Effective February 1, 2012 the City of Pasadena will become the successor agency for the Pasadena Community Development Commission. In its role as successor agency there are a number of steps for the City to take. These items are outlined below and will be presented during the month of February.

1. Appoint members to the Oversight Board as outlined above.

2. Make an Election with respect to Housing Assets and Functions of the Former Redevelopment Agency. Pursuant to AB 26 a city may elect to retain the housing assets and functions previously performed by the redevelopment agency.

Alternatively, the city may select either the city housing authority (if there is one) or the county housing authority (if there is one) or the Department of Housing and Community Development (only if there is no local housing authority) to receive the housing assets and perform the housing functions.

The provisions of AB 26 relating to housing assets and functions are vague and ambiguous and it is likely that cleanup legislation will be adopted in the future. In the meantime, AB 26 provides that moneys on deposit in the Low and Moderate Income Housing Fund are to be turned over to the county auditor-controller for distribution to the taxing entities. AB 26 does not appear to provide for any ongoing funding for housing. Furthermore, it is unclear under AB 26 what constitutes a housing asset and what rights, powers, duties, obligations, and liabilities are associated with the housing assets and functions of former redevelopment agencies. Examples of unresolved issues include the following:

- What constitutes a housing asset? Is vacant property acquired with moneys in the Low and Moderate Income Housing Fund a housing asset to be retained by the entity performing housing functions, or an asset that must be sold to raise proceeds for the benefit of the taxing agencies?
- Will the entity performing housing functions be entitled to keep rents and other income derived from housing assets or the proceeds from the repayment to the Low and Moderate Income Housing Fund of loans previously made from the Low and Moderate Income Housing Fund?
- Will the entity performing housing functions be obligated to comply with the affordable housing requirements of the Redevelopment Law, such as housing production and inclusionary requirements, replacement housing requirements, and targeting requirements (by age and income)?
- Will the entity performing housing functions have all of the powers set forth in the Redevelopment Law with respect to affordable housing, such as the authority to provide rental subsidies to low and moderate income households?

3. **Adopt a resolution of the City Council (acting as the Governing Body for the Successor Agency) Establishing Basic Governance, Rules, and Regulations for the Successor Agency.** The language of AB 26 is not clear as to the legal status of the successor agency and whether it is a different and separate legal entity from the City. Some language in AB 26 supports the conclusion that the Legislature intended that the successor agency and the City are separate legal entities. In addition, a recent letter by the author of AB 26, Assembly member Blumenfield, to the California State Assembly supports the conclusion that when a city elects to act as a successor agency, the successor agency is separate from the city and the liabilities of the successor agency are not the liabilities of the city. Ultimately, this issue may be one that the State Legislature or the courts are called on to clarify. However, it is in the best interests of cities electing to serve as successor agencies to proactively take steps within their power to support the position that the city and the successor agency are separate legal entities under AB 26, including by treating them as separate legal entities from the start.
4. **Adopt a resolution of the Successor Agency -- Creating a Redevelopment Obligation Retirement Fund.** Each successor agency is required to create a Redevelopment Obligation Retirement Fund. The purpose of this fund is to receive moneys from the county auditor-controller for the payment of enforceable obligations of the former redevelopment agency.
5. **Adopt a resolution of the Successor Agency -- Adopting an Enforceable Obligation Payment Schedule and Recognized Obligation Payment Schedule.** On September 26, 2011, PCDC adopted an EOPS from which the successor agency will continue to make payments due for enforceable obligations of the former redevelopment agency. However, AB 26 established the following schedule for adopting certain documents:
 1. Following establishment, the successor agency is required to adopt its own EOPS. In the coming weeks, staff will present an EOPS to the successor agency for review, and modification and readopt. The EOPS is subject to review and approval by the Oversight Board. The successor agency may only make payments for those obligations identified in the EOPS.
 2. By March 1- successor agency must adopt an ROPS. This is a permanent schedule of obligations that replaces the interim EOPS once the ROPS has been approved. The County Auditor-Controller will allocate property tax to the successor agencies to pay debts listed on the ROPS.
 3. By April 1 - successor agency reports to the County Auditor-Controller whether the total amount of property tax available to the agency will be sufficient to funds its ROPS obligations over the next six month fiscal period.

4. By April 15 – successor agency must send the ROPS to the SCO and the DOF for approval. The ROPS is also subject to approval of the Oversight Board.
5. By May 1 – Oversight Boards begin operations, files report of membership with DOF.
6. Starting May 1 – successor agency may only pay those obligations listed in the approved ROPS. The approved ROPS replaces the EOPS.
7. On May 16 and June 1 and each Jan 16 and June 1 thereafter– the County Auditor-Controller transfers property tax to the successor agency in an amount equal to the cost of the obligations specified in the ROPS. This amount is transferred into the successor agency’s Redevelopment Obligation Retirement Fund, and payments from this fund are used to satisfy the obligations identified in the ROPS.

COUNCIL POLICY CONSIDERATION:

The loss of redevelopment will have a significant impact on the City’s ability to further its strategic plan goals to: improve, maintain and enhance public facilities and infrastructure; increase conservation and sustainability; improve mobility and accessibility throughout the city, and support and promote the quality of life and the local economy.

ENVIRONMENTAL ANALYSIS:

Under the CEQA Guidelines Article 5 (Section 15061 (b) (3) describes the “general rule.” The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. In this case, electing to become a Successor Agency,” under AB X1 26 is a council policy decision that does not have the potential of impacting the environment.

FISCAL IMPACT:

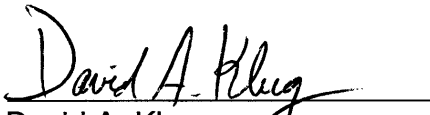
There are several fiscal impacts as a result of the elimination of redevelopment. It is estimated that the lost opportunity cost in future tax allocation bonding capacity is approximately \$72 million. Second, under AB 26 successor agencies may only collect tax increment needed to fulfill recognized enforceable obligations, and there is likelihood that prior agreements between the redevelopment agency and City will not be recognized as binding resulting in a loss of repayment to the General Fund. The Housing Department will no longer receive approximately \$3 million in tax increment dollars used to support the development of affordable housing. And the amount of funding available for economic development throughout the City will be measurably reduced.

Respectfully submitted,



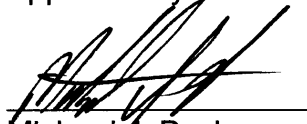
Steve Mermell
Assistant City Manager

Prepared by:



David A. Klug
Redevelopment Manager

Approved by:



Michael J. Beck
City Manager

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF PASADENA
CONFIRMING THE ELECTION OF THE CITY OF
PASADENA AS SUCCESSOR AGENCY UNDER
PART 1.85 OF THE HEALTH AND SAFETY CODE
SUBJECT TO RESERVATIONS HEREIN STATED**

WHEREAS, the City of Pasadena, a municipal corporation (“City of Pasadena”) formed the Pasadena Community Development Commission, a public body, corporate and politic (“Commission”) which has continuously engaged in redevelopment activities under the Community Redevelopment Law (Health and Safety Code sections 33000 et seq.); and

WHEREAS, by enactment of Part 1.85 of the Health and Safety Code, subject to all reservations herein stated, the Commission, is subject to dissolution on February 1, 2012 such that the Commission shall be deemed as a former redevelopment agency under Health and Safety Code section 34173(a); and

WHEREAS, Health and Safety Code section 34173(a) designates successor agencies as successor entities to former redevelopment agencies; and

WHEREAS, the City Council of the City of Pasadena desires to confirm the City of Pasadena as the successor agency upon the dissolution of the Commission, subject to all reservations herein stated; and

WHEREAS, the City Council of the City of Pasadena hereby desires to adopt this Resolution, subject to the express reservation of rights of the City of Pasadena and the Commission under law and/or equity, including without limitation the effectiveness of Assembly Bill No. 26 (2011-2012 1st Ex. Sess.) (“AB 1x 26”), collectively, “Laws”; and

WHEREAS, the City Council does not intend, by adoption of this resolution, to waive any constitutional and/or legal rights under law and/or equity, including without limitation the effectiveness of AB 1x 26, by virtue of the adoption of this Resolution and, therefore, reserves all of its rights under Laws to challenge the applicability of AB 1x 26 to the Commission and/or the City of Pasadena in any administrative or judicial proceeding; and

WHEREAS, All other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASADENA AS FOLLOWS:

1. Subject to all reservations herein stated, the City of Pasadena hereby confirms that it has elected to become the successor agency under Health and Safety Code section 34173(a) and implement all duties of successor agencies under Part 1.85 of the Health and Safety Code.

2. The City Manager is hereby authorized to administer the responsibilities of the City of Pasadena under Part 1.85 of the Health and Safety Code.
3. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the City Council of the City of Pasadena at a meeting held on the ___ day of _____, 2012, by the following vote:

AYES:

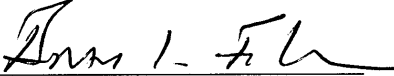
NOES:

ABSENT:

ABSTAIN:

MARK JOMSKY
City Clerk

APPROVED AS TO FORM:


Brad L. Fuller
Assistant City Attorney

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PASADENA ASSUMING ALL
RESPONSIBILITIES PREVIOUSLY DELEGATED
TO THE PASADENA COMMUNITY
DEVELOPMENT COMMITTEE**

WHEREAS, the City of Pasadena, a municipal corporation (“City of Pasadena”) formed the Pasadena Community Development Commission, a public body, corporate and politic (“Commission”) which has continuously engaged in redevelopment activities under the Community Redevelopment Law (Health and Safety Code sections 33000 et seq.); and

WHEREAS, the Commission previously delegated responsibilities for review and advise on certain matters involving redevelopment activities under the Community Redevelopment Law to the Pasadena Community Development Committee; and

WHEREAS, by enactment of Part 1.85 of the Health and Safety Code the Commission, is subject to dissolution on February 1, 2012 such that the Commission shall be deemed as a former redevelopment agency under Health and Safety Code section 34173(a); and

WHEREAS, it is no longer possible for the Community Development Committee to carry out the purpose and functions assigned to it in the Pasadena Municipal Code to “review and make recommendations on all matters to come before the community development commission prior to commission action;” and

WHEREAS, the City Council of the City of Pasadena hereby desires to adopt this Resolution, subject to the express reservation of rights of the City of Pasadena and the Commission under law and/or equity, including without limitation the effectiveness of Assembly Bill No. 26 (2011-2012 1st Ex. Sess.) (“AB 1x 26”), collectively, “Laws”; and

WHEREAS, the City Council does not intend, by adoption of this resolution, to waive any constitutional and/or legal rights under law and/or equity, including without limitation the effectiveness of AB 1x 26, by virtue of the adoption of this Resolution and, therefore, reserves all of its rights under Laws to challenge the applicability of AB 1x 26 to the Commission and/or the City of Pasadena in any administrative or judicial proceeding; and

WHEREAS, All other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASADENA AS FOLLOWS:

1. The City of Pasadena hereby assigns to itself and assumes all of the duties previously assigned and/or delegated to the Community Development Committee under any provisions found in the Pasadena Municipal Code containing requirements calling upon the Community Development

Committee to take particular actions on matters prior to the time those matters are considered by the Commission or City Council; and

2. This Resolution shall take effect immediately upon its adoption.

ADOPTED by the City Council of the City of Pasadena at a meeting held on the ___ day of _____, 2012, by the following vote:

AYES:

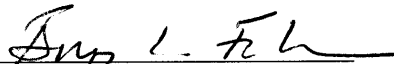
NOES:

ABSENT:

ABSTAIN:

MARK JOMSKY
City Clerk

APPROVED AS TO FORM:



Brad L. Fuller
Assistant City Attorney