



# City of San Leandro

Meeting Date: October 19, 2015

## Staff Report

---

**File Number:** 15-573 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.H.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** David Baum  
Finance Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for Resolution Appropriating \$2,437,273 from the General Fund Economic Uncertainty Reserve Fund for the Purpose of Making a Required Payment to the Alameda County Auditor-Controller Related to the Dissolution of the San Leandro Redevelopment Agency

---

### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council approve a resolution appropriating \$2,437,273 from the General Fund Economic Uncertainty Reserve Fund for the Purpose of Making a Required Payment to the Alameda County Auditor-Controller. This payment is required pursuant to a determination made by the California Department of Finance as part of the Due Diligence Review process. The payment demand was subsequently upheld by the Superior Court of the State of California.

### BACKGROUND

In 2002, the City of San Leandro loaned \$2,887,617.44 to the Redevelopment Agency of the City of San Leandro for the purposes of carrying out redevelopment activities in the Plaza Project Area ("Plaza Project Loan"). The loan was memorialized in a December 5, 2002 Promissory Note with an interest rate of six percent and no penalty for pre-payment. The Plaza Project Loan was subsequently confirmed by Redevelopment Agency Resolution No. 2004-011 RDA.

On March 7, 2011, in response to a proposal by the State Legislature to eliminate all redevelopment agencies state-wide, the Redevelopment Agency passed Resolution No. 2011-006 RDA, which authorized full repayment of the Plaza Project Loan. The balance due at the time was \$2,137,273.49. Earlier, on January 21, 2011 the Redevelopment Agency also made a regularly scheduled debt service payment on this loan of \$300,000, which included both principal and interest.

In June of 2011, the State Legislature adopted Assembly Bill AB x1 26 ("AB 26"), which

caused the dissolution of all redevelopment agencies and outlined the process and procedures for winding down their activities and finances. AB 26 included a provision that retroactively invalidated payments made on City-Agency loan agreements after January 1, 2011. After a legal challenge, the California Supreme Court upheld AB 26 and it went into effect on February 1, 2012.

On January 11, 2013 the City, in its capacity as Successor Agency to the Redevelopment Agency, submitted a Due Diligence Review (“DDR”) for the non-housing funds of the former Redevelopment Agency. The intent of the DDR was to determine the fund balance of the former Redevelopment Agency that was available for redistribution to the local taxing entities. The DDR, which was prepared by a licensed accounting firm, determined that the Agency had an unencumbered fund balance of \$438,604. Consistent with the requirements of AB 26, the Successor Agency remitted that amount to the Alameda County Auditor-Controller on May 7, 2013. In its review of the DDR, the California Department of Finance (“DOF”) demanded that the Successor Agency also remit an additional payment of \$2,610,750. That amount constituted a demand to reverse the full repayment of the Plaza Project Loan, the regular debt service payment on the Plaza Loan made in January 2011, and an additional debt service payment on a separate Joint Project Loan made in January 2011. This demand was based on the “claw back” provision of AB 26 that retroactively invalidated these payments.

On December 12, 2013, the Successor Agency initiated litigation asserting that the “claw back” provision violated the State Constitution. In the lawsuit, the Successor Agency also challenged the DOF’s denial of approximately \$11.1 million in enforceable obligations, comprised of the separate Joint Project Loan (\$2.0 million) and \$9.1 million in funding for capital projects that had been re-authorized by the Successor Agency Oversight Board.

On September 23, 2014, the Superior Court of California, County of Sacramento issued a decision siding with the Successor Agency on the issue of the \$11.1 million in enforceable obligations, but predominantly siding with the DOF on the issue of the “claw back.” The court determined that the Successor Agency was obligated to remit the two payments made on the Plaza Project Loan in 2011; the \$300,000 debt service payment and the subsequent full repayment of \$2,137,273. In total, this demand is \$2,437,273.

Both the DOF and the Successor Agency filed appeals on the Superior Court’s decision. On May 14, 2015, the Successor Agency received a letter from the DOF indicating that it would no longer oppose the \$11.1 million in enforceable obligations and that it had instructed the Attorney General to cease litigation, including the appeal. In response, the Successor Agency agreed to drop its appeal of the “claw back” demand.

On June 23, 2015 the Successor Agency received a revised DDR Determination letter from the DOF that included a revised payment demand for \$2,437,273.

### **Analysis**

In general, the Successor Agency received a favorable outcome from this litigation. A total of \$13.5 million was disputed, and the Successor Agency prevailed on \$11.1 of that amount. The re-entered Joint Project Loan was listed on the recently submitted Recognized Obligation Payment Schedule for January-June 2016 and almost \$2 million in funding will be received in January and remitted to the City General Fund. The City will also start receiving funding for

the \$9.1 million in capital projects in January.

However, the Successor Agency was not successful in fighting the “claw back” demand. This is consistent with the outcome for several other cities that were in similar situations. Given that the Successor Agency exhausted its options for disputing this determination, and that it succeeded in most of its other litigation with the State, staff recommends appropriating funding to make the \$2,437,273 payment at this time.

Upon remittance of this payment, the Successor Agency will be eligible to receive a Finding of Completion from the DOF. A Finding of Completion is a required prerequisite for seeking approval of a Long Range Property Management Plan. The Property Management Plan will in turn enable the Successor Agency to make its real estate assets available for sale and development. The status of these properties has been in limbo for the past four years in spite of strong interest from the development community. Additionally, the Finding of Completion will enable the Successor Agency to seek approval to spend so-called “stranded bond proceeds.” The Successor Agency presently has over \$2 million in proceeds from a 2008 bond issuance that could be spent for qualified capital projects in the Joint Project Area.

Once payment is made on the \$2,437,273 demand, the funds will be redistributed by the County Auditor-Controller to the local taxing entities. As a taxing entity itself, the City will receive a portion of this amount, proportionate to its share of local property tax revenues. Staff estimates that the City will receive approximately 12 percent of the payment, or \$290,000.

### **Previous Actions**

- On June 21, 2004 the Redevelopment Agency passed Resolution No. 2004-011 confirming the loan from the City General Fund to the Plaza Project Area
- On March 7, 2011 the Redevelopment Agency passed Resolution No. 2011-006 appropriating funding to pay the full remaining balance on the Plaza Project Loan of \$2,137,273.49

### **Fiscal Impacts**

Remittance of the full DDR payment demand will cost \$2,437,273, which requires increasing the FY 2015-16 Budget by the same amount and will be funded by a new appropriation of funds from the General Fund Economic Uncertainty Reserve Fund. The City will subsequently receive \$290,000 in revenue from the redistribution of these funds.

### **Budget Authority**

\$2,437,273 from the General Fund Economic Uncertainty Reserve Fund is available.

## **ATTACHMENTS**

### **Attachments to Staff Report**

- May 14, 2015 Letter from Department of Finance Regarding Reentered Agreements
- June 23, 2015 Revised Due Diligence Review Letter from the Department of Finance

**PREPARED BY:** Jeff Kay, Business Development Manager, Community Development Department



May 14, 2015

To: Redevelopment Agency Successor Agency for the City of Riverside, Citrus Heights, Coronado, Santa Rosa, Loma Linda, San Leandro, Sunnyvale, Twenty-Nine Palms Union City, and Sonoma County

Subject: Reentered Agreements

Consistent with recent appellate decisions, the Department of Finance (Finance) will no longer seek to reverse lower court rulings upholding "reentered" agreements that oversight boards authorized between February 1, 2012 and June 27, 2012, pursuant to Health and Safety Code (HSC) Section 34177.3. Accordingly, Finance will comply with applicable court orders and has instructed the Attorney General's Office to cease litigation of this issue.

**ROPS 15-16A (July 2015 through December 2015)**

For those Successor Agencies with a current Meet and Confer request, Finance is approving Recognized Obligation Payment Schedule (ROPS) 15-16A line item(s) that relate to reentered agreements approved and executed between February 1, 2012 and June 27, 2012, pursuant to HSC section 34177.3, assuming funding was actually requested and the funding amount that was requested corresponds to the approved amount denoted in the applicable agreement(s).

**ROPS 15-16B (January 2016 through June 2016)**

For all other Successor Agencies, beginning with the Recognized Obligation Payment Schedule (ROPS) 15-16B period and on future ROPS periods, Finance will approve your successor agency's ROPS line item(s) that relate to reentered agreements approved and executed between February 1, 2012 and June 27, 2012, pursuant to HSC section 34177.3, assuming you request funding and the funding amount requested correspond to the approved amount denoted in the applicable agreement(s).

In the interim, your legal counsel may contact the respective Deputy Attorney General to discuss the disposition of your case, including reentered agreements issues not involving ROPS determinations, or await further communication from the Attorney General's Office in the near future. Any non-litigation related questions may be directed to Chris Hill, Principal Program Budget Analyst, at (916) 445-1546.

Sincerely,

JUSTYN HOWARD  
Program Budget Manager



REVISED

June 23, 2015

Mr. Jeff Kay, Business Development Manager  
City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

Dear Mr. Kay:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letters dated March 22, 2013 and April 27, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Leandro Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 11, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on March 22, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on April 9, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Transfer in the amount of \$173,477. Our review indicates that the Agency transferred \$48,141 in principal and \$125,336 in interest on January 23, 2012 to the City of San Leandro (City) to repay the Joint Project Area Loan. Pursuant to an October 2014 court order, Finance no longer objects to the transfer of these funds to the City.
- Transfers in the amount of \$2,437,273. Our review indicates \$2,437,273 was transferred to the City for the Plaza Project City Loan as follows:
  - Plaza Loan Repayments in January 21, 2011 for \$171,764 principal and \$128,236 interest
  - Plaza Loan Repayments in March 7, 2011 for balance repayment totaling \$2,137,273.
  - We note the balance repayment exceeds the outstanding amount at the time the payment was made. After the January 21, 2011 payment, the outstanding balance was \$1,965,510.

Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency or successor agency to the city, county, or city and county

that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states enforceable obligation includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA. Further, HSC section 34171 (d) (2) states enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA.

The Plaza Project Area City loan was denied as an enforceable obligation in Finance's April 11, 2012 letter related to the January through June 2012 Recognized Obligation Payment Schedule. Additionally, the Agency confirmed this loan was not made within two years of the former RDA's creation, nor was it entered into at the time of and solely for the purpose of issuing debt. Therefore, the transfers were not made pursuant to an enforceable obligation and are not permitted.

Finance notes the repayment of this loan may become an enforceable obligation after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loan was for legitimate redevelopment purposes, this loan should be placed on future Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- During the review of the OFA DDR, Finance noted a reserve amount of \$825,000 related to the 2002 Plaza Tax Allocation Bonds (TAB) that is legally restricted for a sinking fund requirement. However, this amount was not included in the restricted cash held with a fiscal agent balances. Our review of the 2002 Plaza TABs bond indentures indicates the Agency is required to set aside funds to account for a forecasted shortage of property tax increment toward the end of the bond's repayment period. Therefore, Finance recommends that the Agency establish a separate reserve account and or escrow account held with a trustee to set these funds aside in order to comply with bond indenture requirements.

The Agency's OFA balance available for distribution to the affected taxing entities is \$2,875,877 million (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 438,604
Finance Adjustments	
Disallowed transfers	\$ 2,437,273
<b>Total OFA available to be distributed:</b>	<b>\$ 2,875,877</b>

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the

county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Supervisor, Dispute Resolution Supervisor, or Danielle Brandon, Analyst at (916) 445-3274.

Sincerely,



JUSTYN HOWARD  
Program Budget Manager

cc: Mr. David Baum, Finance Director, City of San Leandro  
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County  
California State Controller's Office





# City of San Leandro

Meeting Date: October 19, 2015

## Resolution - Council

---

**File Number:** 15-575 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** David Baum  
Finance Director

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION Appropriating \$2,437,273 from the General Fund Economic Uncertainty Reserve Fund for the Purpose of Making a Required Payment to the Alameda County Auditor-Controller Related to the Dissolution of the San Leandro Redevelopment Agency

---

WHEREAS, in a June 23, 2015 "Other Funds and Accounts Due Diligence Review Determination" letter, the California Department of Finance Determined that the Successor Agency to the Redevelopment Agency of the City of San Leandro owes a payment of \$2,437,273 to satisfy the Due Diligence process pursuant to Health and Safety Code Section 34179.6(c); and

WHEREAS, the amount owed constitutes a reversal of debt service payments made by the Redevelopment Agency of the City of San Leandro to the City of San Leandro in January and March of 2011 on a loan made to the Plaza Redevelopment Project Area; and

WHEREAS, said loan was subsequently denied by the Department of Finance as an enforceable obligation; and

WHEREAS, remittance of this payment will make the Successor Agency eligible to receive a Finding of Completion pursuant to Health and Safety Code Section 34191.4.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That an appropriation of funds be made in the amount of \$2,437,273 from the General Fund Economic Uncertainty Reserve Fund for the purpose of making the aforementioned required payment.