

STAFF REPORT

TO: OVERSIGHT BOARD OF THE CITY OF GROVER BEACH SUCCESSOR AGENCY
FROM: GAYLA R. CHAPMAN, ADMINISTRATIVE SERVICES DIRECTOR
SUBJECT: REQUEST THAT CITY LOANS ARE DEEMED TO BE ENFORCEABLE OBLIGATIONS

Gayla R. Chapman

BACKGROUND

Pursuant to Redevelopment Law, the Recognized Obligation Payment Schedule (ROPS) for January 1, 2012 to June 30, 2012 and July 1, 2012 to December 31, 2012 were sent to the County Property Tax Manager, the State Controller's Office and the Department of Finance on May 1, 2012. This submission began the review process for the ROPS.

Three loans between the City and the improvement Agency were included in the ROPS. These loans included a loan between the Water Fund and the Agency, a loan between the General Fund and the Agency and a loan between the Wastewater Fund and the Agency. During the review process, the Department of Finance denied: 1) the loan for start up costs for Agency Area One, which were advanced from the Water Fund, and 2) the Agency Area Two start-up costs from the General Fund.

DISCUSSION

The League of California Cities issued a memo on the Major Provisions of AB 1484 on June 28, 2012. (Please see Attachment 2) One of the provisions is what is called the Safe Harbor. The City is in the process of meeting the Safe Harbor criteria and once it is met the Department of Finance will issue a Finding of Completion. Once the Agency receives its finding of completion, the Agency's loans with the City may become eligible for repayment.

The following applies to a successor agency that is issued a finding of completion:

Loan Agreements entered into between the redevelopment agency and the city are deemed to be enforceable obligations if oversight board makes a finding that loan was for legitimate redevelopment purposes. As enforceable obligations, payments are listed on ROPS.

Repayment of loans may not begin prior to FY 14 at a maximum amount described in statute. Repayment amounts received by City must first be used to retire outstanding amounts borrowed and owed to LMIHF of the former redevelopment agency for purposes of the SERAF payment, 20% of loan repayment amount must be transferred to LMIH Asset Fund.

Approved For Forwarding:


ROBERT PERRAULT
CITY MANAGER

Please Review for Potential Conflict of Interest:

- None Identified by Staff
- Laferriere
- Jarvis
- Evans
- Green
- Hill
- Shepard
- Shoals

Meeting Date: August 27, 2012

Agenda Item No. 3a

Staff is of the opinion that all loans made to the former Improvement Agency were for legitimate redevelopment purposes. When a redevelopment agency is formed, it takes a minimum of two years before any redevelopment funds are received through tax increment. Start-up funds are necessary during that period of time.

In order for a redevelopment agency to receive tax increment, debt needs to be incurred. Without debt, there would be no tax increment paid. Therefore, most redevelopment agencies have start-up loans from other funds so that tax increment would be received. Since there is no revenue at the beginning of a redevelopment agency, bonding is not possible until a later date. A revenue stream is needed in order for bonds to be issued.

The Water Fund initially loaned the Agency funds that were used to cover start-up costs for Agency Area One. It takes approximately two years for an Agency to begin receiving tax increment. In FY 99 Agency Area One received \$24,933, which was not enough to cover staff costs. It took until FY 02 for there to be over \$100,000 in tax increment that could be used to cover start-up costs.

The Grover Beach Improvement Agency Area Two was formed on February 17, 2004. Tax increment was not received until FY 06 when the Agency received \$86,600. In FY 07 there was over \$100,000 in tax increment for staff time, debt service and projects for Agency Area Two.

Therefore staff is requesting that the Oversight Board make a finding that all City Loans to the Former Grover Beach Improvement Agency were for legitimate redevelopment purposes, are enforceable obligation payments, and should be listed on the ROPS. If the Oversight Board were to determine that the City Loans were not enforceable obligations, then the City would not recover the loans made to the former Redevelopment Agency. This would cause a loss of funds to the Water Fund in the amount of \$1,000,334.99 and a loss to the General Fund of \$337,909.83.

The loan repayment schedule will need to be updated with correct repayment dates once the Supplemental Education Relief Augmentation Fund (SERAF) payments to the Housing Successor Agency are complete.

ALTERNATIVES

The Oversight Board has the following alternatives to consider:

1. Adopt the Resolution of the Oversight Board of the Successor Agency to the Grover Beach Improvement Agency making a finding that all loans made by the City of Grover Beach to the former Grover Beach Improvement Agency were for legitimate redevelopment purposes, are enforceable obligations, and the payments should be listed on the ROPS, or
2. Provide direction to staff.

RECOMMENDED ACTION

Adopt the Resolution of the Oversight Board of the Successor Agency to the Grover Beach Improvement Agency making a finding that all loans made by the City of Grover Beach to the former Grover Beach Improvement Agency were for legitimate redevelopment purposes, are enforceable obligations, and the payments should be listed on the ROPS.

FISCAL IMPACT

Adoption of the Resolution will allow the Successor Agency to continue to list the loans made to the former Improvement Agency by the City on the ROPS and will enable repayment to occur after the SERAF payments have been made to the Housing Successor Agency.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

The agenda and staff report were sent to the County Administrative Officer, County Auditor-Controller and Department of Finance.

Attachments

1. Resolution deeming all City loans of the former Grover Beach Improvement Agency to be Enforceable Obligations and Authorizing Placement of the loans on the Recognized Obligation Payment Schedule.
2. League of California Cities listing of Major Provisions of AB 1484

RESOLUTION NO. OB 12-__

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF GROVER BEACH DEEMING ALL CITY LOANS TO THE FORMER GROVER BEACH IMPROVEMENT AGENCY TO BE ENFORCEABLE OBLIGATIONS AND AUTHORIZING PLACEMENT OF THE LOANS ON THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, from the 2011-12 First Extraordinary Session, Assembly Bill 1X 26 ("AB 1X 26") requiring that each redevelopment agency be dissolved; and

WHEREAS, on December 29, 2011, the California Supreme Court upheld the validity of AB 1X 26 and modified certain of the dates pertaining to actions related to the dissolution of redevelopment agencies; and

WHEREAS, as of February 1, 2012, the Improvement Agency of the City of Grover Beach was dissolved pursuant to the provision of AB 1X 26; and

WHEREAS, the City Council of the City of Grover Beach by operation of law and by action duly and regularly taken became the successor agency to the dissolved redevelopment agency ("Successor Agency"); and

WHEREAS, the Oversight Board to the Successor Agency has been appointed pursuant to Health and Safety Code Section 34179; and

WHEREAS, the Successor Agency has been presented with the following facts regarding the loans between the former Grover Beach Improvement Agency and the City of Grover Beach:

1. Redevelopment Agency needed to have debt in order to collect tax increment and loans were set up between the City and the Former Grover Beach Improvement Agency in order to collect tax increment.
2. The loans were to pay ongoing expenses of both Improvement Agency Areas until the Agency Areas were able to receive enough tax increment to pay for ongoing costs associated with the operation of the Improvement Agency.
3. Initial tax increment for both Improvement Agency Areas was not received until 22 months after the inception of each Agency Area, and the funding was insufficient to meet expenditures for several years.
4. Due to tax increment not being available for 22 months after the inception of each Agency Area, there was insufficient tax increment to repay City loans.
5. As soon as there was sufficient income for Debt Service Payments, as well as projects, all available tax increment was used to pay for project-related expenses and the City loans began to be repaid as excess tax increment became available.
6. The Board of the former Grover Beach Improvement Agency Areas felt the best use of tax increment was first to projects and secondly to repay loans to the City of Grover Beach.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board resolves as follows:

Section 1. The forgoing Recitals are incorporated herein and made a part hereof.

Section 2. The Board has certified that all loans between the City of Grover Beach and the former Grover Beach Improvement Agency are deemed to be enforceable obligations by the Oversight Board and that all said loans were for legitimate redevelopment purposes.

Section 3. That as enforceable obligations all loans between the former Grover Beach Improvement Agency Areas and the City of Grover Beach are to be listed on the Recognized Obligation Payment Schedule.

Section 4. The Secretary shall certify to the adoption of this Resolution.

On motion by Board Member _____, seconded by Board Member _____, and on the following roll-call vote, to wit:

AYES: Board Members -
NOES: Board Members -
ABSENT: Board Members -
ABSTAIN: Board Members -

the foregoing Resolution was **PASSED, APPROVED, and ADOPTED** at a meeting of the Oversight Board, Grover Beach, California this 27th day of August, 2012.

DRAFT

JOHN LAFERRERE, BOARD CHAIR

Attest:

DONNA L. MCMAHON, CITY CLERK



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Major Provisions of AB 1484¹

1. Three payments: Successor agency must make three payments:

- July 12: Taxing entities' share of December 2011 property tax distribution to redevelopment agency/successor agency
- November 28: Low-Moderate Income Housing Fund
- April 10: Unencumbered cash

In addition to these three payments, if a successor agency did not make complete 2011-12 pass-through payments, amount of payment not made will be deducted from property tax distribution from auditor-controller.²

2. New audit by October 1: Successor agency must retain licensed accountant to audit books:³

- Audit of LMIHF
- Audit of cash assets
- Audit of cash transfers to public agencies and private parties⁴

3. New penalties:

- **Failure to make July 12 payment:** successor agency subject to civil penalty of 10% of the amount owed plus 1.5% of the amount owed for each month that payment is not made unless DOF finds that payment of penalty will jeopardize payment of enforceable obligations. Until payment is made,

¹ This Initial Draft summary of AB 1484 was prepared by the League's Special Counsel, Betsy Strauss, on June 28, 2012, with the objective of providing something quickly to city officials. The League will continue to refine this analysis with the assistance of its RDA Attorney Working Group and other city officials.

² Additional information about these payments is found in the Appendix.

³ Agreed-upon procedures audit completed by auditor-controller can substitute for the licensed accountant audit if it includes all statutory requirements

⁴ Successor agency must attempt to recover cash transferred to public agency without an enforceable obligation.

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successor agency may only pay bond debt. City subject to same civil penalty. City will not receive July 18 sales tax payment (up to amount owed).⁵

- **Failure to transfer LMIHF funds:** Offset of city sales tax or property tax of the amount required to be transferred⁶
- **Failure to transfer cash assets:** Offset of city sales tax or property tax of the amount required to be transferred⁷
- **Failure to recover cash transferred to local agency without enforceable obligation:** Offset of sales tax or property tax of the local agency to which the cash was transferred.⁸
- **Failure to submit ROPS by September 1, 2012 and subsequent deadlines:** City to pay civil penalty of \$10,000 per day for each day beyond deadline

4. Safe Harbor: Finding of Completion⁹

The Department of Finance will issue a **finding of completion** to a successor agency that pays the following amounts:

- ✓ The amount determined in the audit of the LMIHF¹⁰
- ✓ The amount determined in the audit of all other funds¹¹
- ✓ The amount (if any) owing to taxing entities from the December 2011 property tax payment¹²

The following applies to a successor agency that is issued a finding of completion:

- ✓ **Loan agreements** entered into between the redevelopment agency and the city are deemed to be enforceable obligations if oversight board makes a finding that loan was for legitimate redevelopment purposes. As enforceable obligations, payments are listed on ROPS¹³.

Repayments of loans may not begin prior to 2013-14 fiscal year at maximum amount described in statute. Repayment amounts received by city must first be used to retire outstanding amounts borrowed and owed to LMIHF of the

⁵ Section 34183.5(b)(2)

⁶ Section 34179.6(h)

⁷ Section 34179.6(h)

⁸ Section 34179.6(h); see, also 34179.8

⁹ Section 34191.1.

¹⁰ Section 34179.6

¹¹ Section 34179.6

¹² Section 34183.5

¹³ DOF continues to retain final authority to approve items listed on ROPS.

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former redevelopment agency for purposes of the SERAF payment. 20% of loan repayment amount must be transferred to LMIH Asset Fund.¹⁴

- ✓ **Bond proceeds** derived from bonds issued on or before 12/31/10 shall be used for the purposes for which the bonds were sold. Proceeds which cannot be spent consistent with bond covenants shall be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.¹⁵ Use of bond proceeds listed on ROPS.¹⁶
- ✓ **Real property assets:** In lieu of the provisions of AB 26 which require disposal of real property assets at the direction of the oversight board, successor agency prepares a long-range property management plan and submits to oversight board and DOF for approval. Permissible uses of property include retention for governmental use; retention for future development; sale of property; use of the property to fulfill enforceable obligations. If plan directs use or liquidation of property for a project identified in an approved redevelopment plan, the property shall transfer to the city. No transfers until plan approved by oversight board and DOF.¹⁷
- ✓ **Statute of Limitations:** The longer statutes of limitations (2 years) to challenge actions of the former redevelopment agencies do not apply.¹⁸

5. New Power of State Controller¹⁹

AB 1484 directs the Controller to review the activities of successor agencies to determine whether an asset transfer occurred after January 31, 2012, between the successor agency and the city or county that created the redevelopment agency, or any other public agency that was not pursuant to an enforceable obligation on an approved ROPS. The Controller is directed to order the assets returned to the successor agency. "City" is defined very broadly to include any entity which is controlled by the city or for which the city is financially responsible or accountable.²⁰

6. Increase in authority for Department of Finance

- DOF may eliminate or modify any item on an oversight board-approved ROPS. The auditor-controller must distribute property tax in accordance with changes made to the ROPS by DOF. If successor agency disputes DOF

¹⁴ 34191.4(b)(2).

¹⁵ 34191.4(c)

¹⁶ DOF continues to retain final authority to approve items listed on ROPS.

¹⁷ Section 34191.5

¹⁸ Section 33500, 33501

¹⁹ Section 34178.8

²⁰ Section 34167.10. **AB 26** directed the State Controller to review asset transfers from redevelopment agencies to the city or county that created the agency that occurred after January 1, 2011. If the city or county was not contractually committed to a third party for the expenditure or encumbrance of those assets, the Controller was directed to order the return the assets to the redevelopment agency or successor agency.

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action, disputed item may be carried on ROPS. If dispute resolved in favor of successor agency in the future, the past allocation of property tax to the successor agency is not changed nor is a "liability" created for any affected taxing entity.²¹

- DOF may review and object to oversight board actions approving (1) establishment of new repayment terms for outstanding loans; and (2) setting aside amounts in reserves as required by bond indentures, and similar documents²²

7. New restrictions on authority of Successor agency

- No new enforceable obligations except (1) as specifically authorized by the statute; (2) in compliance with enforceable obligations that existed prior to June 28, 2011; or (3) to hire staff, acquire professional services and procure insurance.²³
- May not transfer revenues or powers to any other public or private party except pursuant to enforceable obligation on an approved ROPS. Any such transfer of authority or revenues are "void" and successor agency required to reverse transfers. Controller may audit and order return of transfers of authority or revenues.²⁴
- Actions taken by redevelopment agencies pursuant to VARP (Voluntary Alternative Redevelopment Program in AB 27) are "ultra vires" and do not create enforceable obligations.²⁵
- If successor agency exercised power to reenter into agreements with city (section 34178) and agreement was approved by oversight board but rejected by DOF, successor agency and oversight board may not act to restore funding for the reentered agreement.²⁶
- No reestablishment of loan agreements between successor agency and city except pursuant to safe harbor provisions.²⁷

8. Miscellaneous

- City loans to successor agency: City may loan or grant funds for administrative costs, enforceable obligations or project-related expenses. Receipt and use of these funds shall be reflected on the ROPS or in the

²¹ Section 34179(h)

²² Section 34181(f)

²³ Section 34177.3(a); 34177.3(b)

²⁴ Section 34177.3(c)

²⁵ Section 34177.3(d)

²⁶ Section 34178(a)

²⁷ Section 34180(a)

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✓ **Transfer of Unencumbered Balances³⁵**

AB 26 requires that a successor agency transfer unencumbered cash balances and low and moderate income housing funds to the county auditor-controller for distribution to the taxing entities. AB 1484 requires a successor agency to retain the services of a licensed accountant to audit (1) the balance in the LMIHF; (2) the balance in other cash funds; (3) cash payments that were made in compliance with an enforceable obligation; and (4) cash transfers that were made without an enforceable obligation. In addition to transferring the balances in the LMIHF and other cash funds, a successor agency must make efforts to recover the cash transferred without an enforceable obligation.

✓ **Payment of December 2011 Taxing Entity Property Tax³⁶**

AB 26 distributes property tax through a "waterfall" of payments which includes passthrough payments, payments to successor agencies for enforceable obligations, payments to successor agencies for administrative costs, and payments to taxing entities. The waterfall for the December 2011 property tax payment did not operate as intended because of the stay imposed by the Court in *Matosantos*. The property tax payment to taxing entities was not made. AB 1484 requires successor agencies to make those payments by July 12.

✓ **Payment of 2011-12 Passthrough Payments**

Some successor agencies made 2011-12 passthrough payments and some did not. AB 1484 requires the auditor-controller to reduce property tax payments to those successor agencies that did not make pass through payments in 2011-12.

³⁵ Section 34179.5; 34179.6

³⁶ Section 34183.5

administrative budget subject to oversight board approval. An enforceable obligation is created for repayment of loans.²⁸

- **New Oversight Board Provisions**²⁹
 - ✓ Auditor-controller may determine “largest special district”
 - ✓ Section 1090 does not apply to employee representative on oversight board
 - ✓ Oversight board members are protected by immunities applicable to public entities and public employees
 - ✓ Written notice and information about all oversight board actions must be provided to DOF by electronic means. DOF has 40 (instead of 10) days to review and approve, reject, or modify oversight board action.
 - ✓ Oversight board may direct successor agency to provide additional legal or financial advice.
 - ✓ Authorized to contract with the county or other public or private agencies for administrative support
 - ✓ On matters within its purview, decisions made by oversight board “supersede those made by the successor agency or the staff of the successor agency.”³⁰
- **New authority for auditor-controller**³¹: A county auditor-controller can object to an item on the ROPS or to the funding source listed for an item on the ROPS. Objections are sent to DOF to resolve.
- **Polanco Act protection for successor agency**: Cleanup plans and liability limits of redevelopment agency transferred to successor agency and to housing entity, upon entity’s request.³²
- **Limited authority for successor agency to refinance existing debt**.³³
- **Successor agency is separate public entity**.³⁴

Appendix – Successor Agency Required Payments/Fund Transfers

²⁸ Section 34175(h)

²⁹ Section 34180

³⁰ Section 34179

³¹ Section 34182.5

³² Section 34173(f)

³³ Section 34177.5

³⁴ Section 34173(g)

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