

ORDINANCE NO. 2011-035

Adopted by the Sacramento City Council

August 9, 2011

AUTHORIZING THE CITY OF SACRAMENTO TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM UNDER AS X1 27 AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. Findings.

The City Council of the City of Sacramento finds and declares as follows:

- A. Since adoption of the Redevelopment Plans, the Redevelopment Agency of the City of Sacramento ("Agency") has undertaken redevelopment projects in the Redevelopment Project Areas within the City to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into agreements with private industries to create jobs and expand the local economy. In 2010, the Agency invested over \$25 Million in 76 redevelopment projects. Of those projects, 18 were completed in 2010 resulting in 530 temporary and permanent jobs and
- B. As part of the 2011-12 State budget bill, the California Legislature enacted an the Governor signed into law AB X1 26 ("AB 26") and AB X1 27 ("AB 27") as companion bills requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to make certain payments into a Special District Allocation Fund and an Educational Revenue Augmentation Fund established for each county and administered by the county auditor-controller; and
- C. Specifically, AB 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
- D. Once a redevelopment agency is dissolved, AB 26 makes its existing assets and future property tax revenues available for use by third parties for their own benefit; and
- E. AB 27, codified as Part 1.9 of the California Health and Safety Code ("Part 1.9"), establishes the Voluntary Alternative Redevelopment Program (VARP) under which the Agency would be authorized to continue to exist upon the enactment of an ordinance by the City to comply with the provisions of Part 1.9; and
- F. AB 27 requires the City to notify the County Auditor-Controller ("County"), the State Controller, and the State Department of Finance on or before November 1, 2011, that

the City will comply with Part 1.9; and

- G. AB 27 requires the City to make specified remittances to the County Auditor-Controller, in order to continue the existence of the Agency, as prescribed in Part 1.9; and
- H. AB 27 authorizes the County to charge a fee that does not exceed the reasonable costs of the County to implement the provisions of Part 1.9; and
- I. On July 18, 2011, the League of California Cities ("LOCC") and the California Redevelopment Association ("CRA") filed a petition on behalf of cities, counties and redevelopment agencies asking the California Supreme Court to stay enforcement of AB 26 and AB 27 and to declare these bills unconstitutional or otherwise violative of state law ("Laws"); and
- J. The City Council does not intend to waive any constitutional and/or legal rights by enactment of this Ordinance and , reserves all of its rights under the law to challenge the validity of any or all provisions of AB 26 and AB 27 in an administrative or judicial proceeding and/or repeal this ordinance, without prejudice to the City's right to recover any amounts remitted under Part 1.9; and
- K. While the City currently intends to make the remittances required under Part 1.9 in order to prevent the total loss of benefits provided by the Agency to the taxpayers, property owners and residents of the City, the City will make the remittances under protest and without prejudice to the City's and/or Agency's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 26 and AB 27 are unconstitutional and otherwise illegal or repealed; and
- L. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or other City assets, to make the remittance payments contemplated by Part 1.9. it being understood by the City Council that any remittance payments required under AB 27 will be funded solely from Agency funds and/or assets transferred to the City in accordance with Part 1.9; and
- M. Upon adoption and immediate effectiveness of this Ordinance, City will enter into a Remittance Agreement with the Agency as authorized pursuant to Health and Safety Code Section 34194.2 and Part 1.9, under which Agency will transfer tax increment to City in the amount of the annual remittance payments to enable the City, directly or indirectly, to make the annual remittance payments; and
- N. The City Council does not intend by enactment of this Ordinance to waive any rights of appeal regarding the amount of any remittance established by the Department of Finance, as provided in Part 1.9; and

- O. It is necessary to adopt this Ordinance as an emergency measure to take effect immediately pursuant to City Charter Section 32 (g) (2) in order to implement AB 27 for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Sacramento because unless and until this VARP ordinance is enacted, the Agency's redevelopment activities are suspended and it cannot take any and Implementation Plans as they pertain to Project Areas within the City of Sacramento to eliminate blight, and the Agency would otherwise be dissolved as of October 1, 2011 under AB 26; and
- P. Over the next few years, the Agency has plans to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, to stimulate and expand the Project Area's economic growth, to create and develop local job opportunities and alleviate deficiencies in public infrastructure.

Section 2. Authorization to Continue Agency.

Subject to Sections 3 and 4 of this Ordinance, the City commits to comply with and make the remittances required by Part 1.9, and authorize the continuation of the Agency pursuant to AB 27. Any remittance payments required to be paid by the City by Part 1.9 shall be paid solely from Agency funds and/or assets transferred by the Agency to the City in accordance with Part 1.9 and the Remittance Agreement between the City and Agency.

Section 3. Application

If any of the provisions of this Ordinance or the application thereof is held to be invalid for any reason, the remainder of this Ordinance and the application of provisions thereof shall not be affected thereby.

Section 4. Reservation of Rights

Based upon the legal challenges raised by the LOCC and CRA, it is the position of the City that certain or all provisions of AB 26 and AB 27 violate the Laws, as referenced in Section 1 above, and are invalid and unenforceable. Neither the adoption of this Ordinance, nor the acknowledgement of or references to any provisions of AB 26 and AB 27, nor the City's payment of any remittances contemplated by AB 27 shall be deemed to be, nor are they intended as, an acknowledgement of the validity of AB 26 and AB 27, and the City reserves all rights in its sole discretion to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and/or repeal this ordinance, without prejudice to the City's right to recover any amounts remitted under Part 1.9.

Section 5. Payment under Protest

Except as set forth in Section 6 below, the City hereby determines that the City shall make the remittances as required in Chapter 3 of Part 1.9.

Section 6. Effect of Stay or Determination of Invalidity

The City shall not make any remittance under this Ordinance pursuant to Chapter 3 of Part 1.9 in the event a court of competent jurisdiction issues an order (1) staying the

enforcement of AB 26 and AB 27 and during the pendency of that order; or (2) ruling that AB 26 and AB 27 are constitutional or otherwise unlawful and therefore invalid and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed ("final judicial order"); or in the event the legislature repeals AB 26 and AB 27. Any remittance made shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final judicial order. If there is a final judicial order, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 7. Authorization of Implementing Actions

The City Manager is hereby authorized to take any actions necessary to implement this Ordinance and comply with Part 1.9, including without limitation, providing required notices to the County Auditor-Controller, and the Department of Finance; and making any remittance payments.

Section 8. Declaration of Emergency

The City Council declares that it is necessary to adopt this ordinance as an emergency measure pursuant to City Charter Section 32 (g) (2) for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Sacramento because unless and until this VARP ordinance is enacted the Agency's redevelopment activities are suspended and it cannot take any actions to eliminate blight within the redevelopment project areas in the City as set forth in the Redevelopment Plans. Specifically, without adoption of this Ordinance, the following projects will be immediately impacted:

- A. 65th Street Bus Transfer Relocation, 14th Avenue Extension, Rio Linda Superblock, Grand Theater Renovation, Township 9 Affordable Housing Component, 800 K Block and 731 K Street, and Martin Luther King, Jr. Boulevard Street Enhancements.
- B. La Valentina Mixed-Use Development, Del Paso Nuevo, Broadway Triangle, and the San Juan Motel Redevelopment Project; all requiring further Agency assistance and oversight of existing agreements.

Section 9. Effective Date

This Ordinance shall be effective immediately upon its adoption.

Adopted by the City of Sacramento City Council on August 9, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

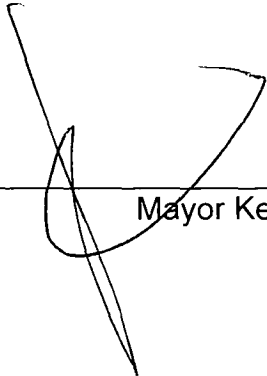
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk


Mayor Kevin Johnson

Effective August 9, 2011