



DATE: May 6, 2009

TO: Honorable Mayor and City Councilmembers
Chairman and Members of the Community Development Commission

FROM: Financial Services Department

SUBJECT: **APPROVE AN APPROPRIATION OF \$747,997 TO FUND FY 2008-09 EDUCATION REVENUE AUGMENTATION FUND (ERAF) TAKE OF REDEVELOPMENT FUNDS THAT WAS APPROVED BY THE GOVERNOR AND STATE LEGISLATURE WITH THE STATE BUDGET**

SYNOPSIS

Staff recommends that the City Council approve an appropriation of \$747,997 from the Redevelopment Fund balance to pay to the Education Revenue Augmentation Fund (ERAF) for FY 2008-09 in accordance with AB 1389, legislation that was passed with the State budget.

BACKGROUND

As part of the 2008 California State budget process legislators and the Governor approved budget trailer bill AB 1389 which, among other things, authorizes a one-time take of \$350 million in redevelopment funds this year. The Oceanside Redevelopment Agency must pay \$747,997 by May 10, 2009, to the San Diego County Auditors Controllers Office, which will go into the Education Revenue Augmentation Fund or ERAF and be dispensed to the schools to backfill the amount the State is required to pay. In addition, AB 1389 required Oceanside to pay \$650,255 in additional pass-through amounts to other taxing entities by February 1, 2009.

The Oceanside Redevelopment Agency was required to pay ERAF for three fiscal years, \$254,416 in FY 2003-04; \$488,768 in FY 2004-05; and \$520,774 in FY 2005-06, amounting to over \$1.2 million. When those ERAF payments occurred, the State permitted redevelopment agencies to extend their plans by one year for each year ERAF was paid. This action allowed the agencies to recoup the amount of the ERAF payment and secured the outstanding debt that was owed to bond holders and creditors. In December 2006 and January 2007, the Oceanside Community Development Commission exercised all options and extended the life of the Agency by three years. AB 1389 does not allow redevelopment agencies to extend the life of their plan by one year for this newest ERAF shift.

Since AB 1389 was passed without providing an extension or other compensation to redevelopment agencies as security for repayment of bond holders and other creditors, the California Redevelopment Association (CRA) filed a lawsuit in Sacramento Superior

Court in December 2008 to block the legislative action on the grounds that the state take of redevelopment funds is unconstitutional.

ANALYSIS

A Superior Court hearing was held to discuss the merits of CRA's lawsuit against the State of California but a decision is not expected until sometime in April 2009. Since the ERAF payment is due on May 10, 2009, CRA has asked the Judge to stay the payment of ERAF by redevelopment agencies, and the Judge has agreed to hearing a motion by April 30, 2009, to stop the payments from being made. This staff report is requesting an appropriation of \$747,997 be established and funded out of the Redevelopment Fund balance to ensure the City is prepared to make a payment to ERAF to comply with the AB 1389 legislation if the lawsuit fails.

The points presented by CRA for filing the lawsuit against the State of California include:

- “Article XVI, Section 16 of the California Constitution states that ‘redevelopment funds can only be used for specified redevelopment activities’.
Taking redevelopment funds to balance the state’s budget – the unquestionable reason for AB 1389 – does not qualify as a constitutionally permitted use of these voter approved funds and is therefore illegal.”
- “Raiding redevelopment funds also constitutes an unconstitutional impairment of bond contracts. Under Article XVI, Section 16 of the State Constitution, redevelopment agencies irrevocably pledge redevelopment (tax increment) revenues to pay back bond obligations and creditors necessary to fund the redevelopment project.
By raiding funds that are pledged to pay back bond debt and other creditors, AB 1389 impairs the constitutional rights of existing bond holders and makes selling future bonds more difficult if the money that is guaranteed to pay back the bonds can be taken away whenever the state has budget issues.”
- Governor Schwarzenegger is on record stating that raiding redevelopment funds is unconstitutional.
In 2004, Governor Schwarzenegger signed ballot arguments in support of Proposition 1A (local government revenue protection) in the voter information guide sent to millions of California voters, which read: “Redevelopment agency tax increment revenues are already protected by the state Constitution”.
- “During our slowing economy, jeopardizing redevelopment activities is irresponsible.
Economists have shown that redevelopment investments in California support hundreds of thousands of jobs (mostly in the ailing construction sector), and generate hundreds of millions of dollars in state and local taxes.”

As you can see in the table below, the Redevelopment Agency will need to utilize \$1.4 million from its fund balance to cover the FY 2008-09 expenditures. Had the AB 1389 legislation not occurred, taking money from the fund balance would not be necessary.

Redevelopment Fund Revenue & Expenditures			
REVENUES	Anticipated Revenues FY 2008-09	EXPENDITURES	Anticipated amounts that will be spent for FY 2008-09
Anticipated Tax Increment 2008-09	\$10,365,841	Senior & Subordinate Debt Service	\$5,025,926
Misc. Income to the Agency	\$535,462	Redevelopment Administration	\$1,270,000
20% Set-Aside for Housing	(\$2,073,168)	Redevelopment Projects & Programs (Façade, MainStreet, Welcome Center, Downtown Bus Development, Surf Museum, Beach Resort)	\$1,719,800
Pass-Through Amount for prior fiscal year 2007-08	(\$812,387)		
<i>Net Tax Increment available</i>	<i>\$8,015,748</i>	<i>Total Expenditures</i>	<i>\$8,015,726</i>
How AB 1389 Take of Redevelopment Funds Affects the Agency			
Additional disputed Pass-Through amounts paid February 2009, due to AB 1389 State Legislation	(\$650,255)		
ERAF amount for new legislation, AB 1389, payable by May 10, 2009	(\$747,997)		
Total Additional Disputed Amount the Agency is required to pay for AB 1389 to Fund State Budget Deficit	(\$1,398,252)	<i>Amount needed from the Redevelopment Fund Balance to cover unanticipated expenditures</i>	<i>(\$1,398,230)</i>

The State take of redevelopment funds is difficult in any year, but especially at a time when there is limited new construction anticipated in the next few years (unless the construction has already commenced) and property tax appeals are taking place. Both of these items lower the amount of tax increment the Agency receives.

The Redevelopment Agency has been fiscally prudent in spending tax increment and has built up reserves to manage unpredicted State takes and slow downs in the economy. Therefore, the Agency is able to pay the ERAF amount of \$747,997 without borrowing any funds. The Agency will need to closely monitor revenues to assure that if the State continues to balance their budget in future fiscal years with ERAF shifts from redevelopment agencies, the Agency may have to cut programs or projects to ensure the obligation to pay the bond debt is secured. Redevelopment's current capital projects are funded from past bond proceeds and other projects are funded from current tax increment. On-going State raids of Redevelopment could negatively impact Oceanside's ability to issue bonds in future years.

COMMISSION OR COMMITTEE REPORTS

The Redevelopment Advisory Committee will review this report at the April 22, 2009 meeting.

FISCAL IMPACT

Approval of an appropriation of \$747,997 from the Redevelopment Fund balance to account # 304050.5378.58517 will fund the payment to the San Diego County Auditors Controllers office ERAF for fiscal year 2008-09 in accordance with AB 1389 legislation that was passed with the State budget.

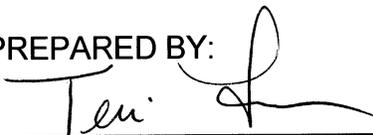
CITY ATTORNEY'S ANALYSIS

The City Attorney will continue to monitor the status of the ongoing litigation over the validity of AB 1389 and report to Council any significant developments.

RECOMMENDATION

Staff recommends that the City Council approve an appropriation of \$747,997 from the Redevelopment Fund balance to pay to the Education Revenue Augmentation Fund (ERAF) for FY 2008-09 in accordance with AB 1389, legislation that was passed with the State budget.

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