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DATE: September 14, 2011

TO: Chairman and Members of the Community Development Commission

FROM: Economic and Community Development Department

SUBJECT: **ORDINANCE DETERMINING THAT THE CITY OF OCEANSIDE SHALL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE REDEVELOPMENT AGENCY OF THE CITY OF OCEANSIDE**

**SYNOPSIS**

Staff recommends that the City Council and Community Development Commission (CDC) introduce an ordinance determining that the City of Oceanside shall comply with the voluntary alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in order to permit the continued existence and operation of the Redevelopment Agency of the City of Oceanside.

**BACKGROUND**

As part of the 2011-12 State budget bills, the California Legislature has recently enacted and the Governor has signed companion bills AB 1X 26 and AB 1X 27 that took effect on June 29, 2011, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to make certain payments.

AB 1X 26, known as the Redevelopment "Dissolution Bill", prescribes strict limits on what redevelopment agencies may do between its effectiveness date and October 1, 2011, when all redevelopment agencies would be legally dissolved. AB 1X 27 the "Continuation Bill" provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency to remain in existence and continue with redevelopment activities. The Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit a specified annual amount to the county auditor-controller.

The California Redevelopment Agency and the League of California Cities has filed lawsuits to challenge the constitutionality of the legislation as violating Proposition 22, Article XVI, section 16 and other provisions of the California Constitution. The Court has issued a stay that suspends portions of AB 26 and AB 27; therefore, payments would not be made until the Court finally concludes they are constitutional.

## ANALYSIS

The Dissolution Bill states that agencies are prohibited from entering into any new agreements, amending the terms of existing agreements, acquiring or disposing of real property and other assets. Once the City enacts the Continuation Ordinance, the Dissolution Bill is inapplicable to the agency and the agency may continue to operate normally as long as its legislative body makes the Continuation Payments. For Fiscal Year 2011-2012 it is estimated that the City's share as prescribed by the State, would be approximately \$2.9 million. In future years the Continuation payments are expected to be significantly less, but are estimated at \$680,000. If payments are not made, the agency would be legally dissolved pursuant to Dissolution Bill. Staff will seek direction, at a later date to address the manner and method for making the payments to the County.

In addition to providing funding for Redevelopment area projects, approximately 20% of the Tax Increment generated in the Redevelopment Area or, \$2.2 million annually, is allocated to affordable housing projects throughout the City. The Redevelopment funding is currently the City's largest funding source for affordable housing projects.

The following two summaries are the key issues associated with either the elimination and/or continuation of redevelopment:

### Elimination of Redevelopment:

- The City will receive an additional \$1.2 million in annual property tax revenues
- The City will lose \$4.8 million in accumulated affordable housing funds
- The City will lose \$1.9 million in accumulated Redevelopment funds
- The City will lose \$2.2 million in annual affordable housing funds
- All future Redevelopment projects, including the Hotel, parking structure and beach area and amphitheater improvements would be eliminated
- All City costs associated with Redevelopment and Housing activities and staffing, including building rents and interfund charges would be transferred to the General Fund (approximately \$1.2 million)
- The loan from the City's General Fund to the Agency would be extinguished and the City would never be paid back
- The transfer of assets from the Agency to the legislative body after January 1, 2011, are unauthorized and must be transferred back to the Agency for the County to potentially dispose of for cash distribution to the pass-through agencies

### Continuation of Redevelopment:

- Redevelopment Agency would need to pay \$2.9 million in FY 2011-12 and \$680,000 on-going ransom payments to the State

- The Agency would continue to receive approximately \$1.0 million annually in Tax Increment through 2018 for additional Redevelopment Area projects
- The City would continue to receive \$2.2 million in annual affordable housing funds
- Redevelopment projects, including the Hotel, parking structures and similar projects could continue, but would be delayed
- Provides an opportunity for the City's General Fund loan to be repaid, which is \$3.1 million annually starting in 2018
- Provides flexibility in the event the CRA and League lawsuits prevail

Both the Redevelopment and Affordable Housing tax increment funds could provide funding for the \$2.9 million payment to the State. The continuation payment to the State does not need to be made until January 2012; therefore, should the Council approve a Continuation Ordinance, there is sufficient time to develop a payment strategy. Approving the Continuation Ordinance does not commit the City to making these payments. The City can rescind the Continuation Ordinance at a future date or not make the Continuation payments, and then the Agency becomes subject to the Dissolution Bill.

### **COMMISSION OR COMMITTEE REPORTS**

The Redevelopment Advisory Committee (RAC) reviewed the Ordinance at its August 3, 2011, meeting, and voted 6-0 to approve.

### **FISCAL IMPACT**

The fiscal impact of approving this ordinance is listed above Continuation of Redevelopment in the analysis section; however, staff will be bringing forth a request for budget appropriation at a future date pending the resolution of repayment terms, should the City Council approve the continuation ordinance.

### **CITY ATTORNEY'S ANALYSIS**

The City Attorney has reviewed said Ordinance and has approved it to form.

**RECOMMENDATION**

Staff recommends that the City Council and Community Development Commission (CDC) introduce an ordinance determining that the City of Oceanside shall comply with the voluntary alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in order to permit the continued existence and operation of the Redevelopment Agency of the City of Oceanside.

PREPARED BY:

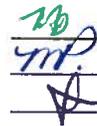
  
\_\_\_\_\_  
Kathy Baker  
Redevelopment Manager

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
Margery Pierce, Neighborhood Services Director  
Teri Ferro, Financial Services Director



**EXHIBITS/ATTACHMENTS**

- 1. Ordinance
- 2. Notice of Exemption



1 community to remain in existence and carry out the provisions of the CRL, by enacting an  
2 ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

3 **WHEREAS**, the Alternative Voluntary Redevelopment Program requires that the  
4 community agree by ordinance to remit specified annual amounts to the county auditor-  
5 controller; and

6 **WHEREAS**, under the threat of dissolution pursuant to AB 1X 26, and upon the  
7 contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012  
8 community remittance, currently estimated to be \$2,873,285 as well as the subsequent annual  
9 community remittances as set forth in the CRL; and

10 **WHEREAS**, the City reserves the right to appeal the California Director of Finance's  
11 determination of the Fiscal Year 2011-12 community remittance, as provided in Health and  
12 Safety Code Section 34194; and

13 **WHEREAS**, City understands and believes that an action challenging the  
14 constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and  
15 redevelopment agencies; and

16 **WHEREAS**, while the City currently intends to make these community remittances,  
17 they shall be made under protest and without prejudice to the City's right to recover such  
18 amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB  
19 1X 27 are unconstitutional; and

20 **WHEREAS**, the City reserves the right, regardless of any community remittance made  
21 pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27; and

22 **WHEREAS**, to the extent a court of competent jurisdiction enjoins, restrains, or grants a  
23 stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment  
24 obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community  
25 remittance for the duration of such injunction, restraint, or stay; and

26 **WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have  
27 occurred.

28 **THE CITY COUNCIL OF THE CITY OF OCEANS DIE, CALIFORNIA, DOES  
ORDAIN AS FOLLOWS:**

**Section 1. Recitals.** The Recitals set forth above are true and correct and  
incorporated herein by reference.

1           **Section 2. Participation in the Alternative Voluntary Redevelopment Program.**

2 In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth  
3 above, the City Council hereby determines that the City shall comply with the provisions of Part  
4 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

5           **Section 3. Payment Under Protest.** Except as set forth in Section 4, below, the City  
6 Council hereby determines that the City shall make the community remittances set forth in Health  
7 and Safety Code section 34194 *et seq.*

8           **Section 4. Effect of Stay or Determination of Invalidity.** City shall not make any  
9 community remittance in the event a court of competent jurisdiction either grants a stay on the  
10 enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are  
11 unconstitutional and therefore invalid, and all appeals there from are exhausted or unsuccessful, or  
12 time for filing an appeal there from has lapsed. Any community remittance shall be made under  
13 protest and without prejudice to the City's right to recover such amount and interest thereon in the  
14 event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional. If there  
15 is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed  
16 to be null and void and of no further force or effect.

17           **Section 5. Implementation.** The City Council hereby authorizes and directs the  
18 Executive Director to take any action and execute any documents necessary to implement this  
19 Ordinance, including but not limited to notifying the San Diego County Auditor-Controller, the  
20 Controller of the State of California, and the California Department of Finance of the adoption  
21 of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division  
22 24 of the Health and Safety Code, as set forth in AB 1X 27.

23           **Section 6. Additional Understandings and Intent.** It is the understanding and  
24 intent of the City Council that, once the Agency is again authorized to enter into agreements  
25 under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to  
26 Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the  
27 City in amounts not to exceed the annual community remittance payments to enable the City,  
28 directly or indirectly, to make the annual remittance payments. The City Council does not  
intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to  
make the remittance payments.

1           **Section 7. CEQA.** The City Council finds, under Title 14 of the California Code of  
2 Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the  
3 California Environmental Quality Act (“CEQA”) in that it is not a “project,” but instead consists  
4 of the creation and continuation of a governmental funding mechanism for potential future  
5 projects and programs, and does not commit funds to any specific project or program. The City  
6 Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the  
7 County of San Diego in accordance with CEQA Guidelines.

8           **Section 8. Custodian of Records.** The documents and materials that constitute the  
9 record of proceedings on which these findings are based are located at the City Clerk’s office at  
10 300 North Coast Highway, Oceanside, 92054 (North Building).

11           **Section 9. Severability.** If any provision of this Ordinance or the application  
12 thereof to any person or circumstance is held invalid, such invalidity shall not affect other  
13 provisions or applications of this Ordinance which can be given effect without the invalid  
14 provision or application, and to this end the provisions of this Ordinance are severable. The  
15 City Council hereby declares that it would have adopted this Ordinance irrespective of the  
16 invalidity

17           **Section 10. Certification; Publication.** The City Clerk shall certify to the adoption of  
18 this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption  
19 in a newspaper of general circulation printed and published within the City of Oceanside, and  
20 shall post a certified copy of this Ordinance, including the vote for and against the same, in the  
21 Office of the City Clerk in accordance with Government Code § 36933.

22           **Section 11. Effective Date.** This Ordinance shall become effective thirty (30) days  
23 from its adoption.

24           **INTRODUCED** at a regular meeting of the City Council of the City of Oceanside,  
25 California held on the \_\_\_\_\_th day of \_\_\_\_\_2011, and, thereafter,  
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**PASSED AND ADOPTED** by the Oceanside City Council on this \_\_\_\_ day of \_\_\_\_\_ 2011, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor of the City of Oceanside  
APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney



**CITY OF OCEANSIDE  
PLANNING DEPARTMENT**

# NOTICE OF EXEMPTION

TO: X RECORDER/COUNTY CLERK  
COUNTY OF SAN DIEGO  
P.O. BOX 1750  
SAN DIEGO, CA 92112-4147

PROJECT TITLE AND FILE NUMBER:  
CONTINUATION ORDINANCE FOR THE REDEVELOPMENT PROJECT AREA

PROJECT LOCATION - SPECIFIC:  
No specific project location

PROJECT LOCATION - GENERAL:  
Redevelopment Project Area

CONTINUATION ORDINANCE

DESCRIPTION OF NATURE, PURPOSE AND BENEFICIARIES OF PROJECT:

THIS ORDINANCE IS NOT A PROJECT BUT INSTEAD CONSISTS OF THE CREATION AND CONTINUATION OF A GOVERNMENTAL FUNDING MECHANISM FOR POTENTIAL FUTURE PROJECTS AND PROGRAMS, AND DOES NOT COMMIT FUNDS TO ANY SPECIFIC PROJECT OR PROGRAM

NAME OF PUBLIC AGENCY APPROVING PROJECT:

City of Oceanside

NAME OF PERSON(S) OR AGENCY CARRYING OUT PROJECT:

City of Oceanside

300 North Coast Highway

Oceanside, CA 92054

(760) 435-3354

Exempt Status per the Guidelines to Implement the California Environmental Quality Act (CEQA)  
(Public Resources Code Section 21000 et. al.):

NOT SUBJECT TO CEQA PER THE GENERAL RULE, SECTION 15061(B)(3)

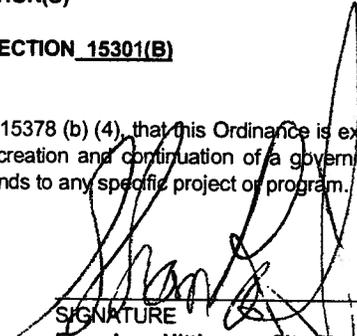
STATUTORY EXEMPTION PER ARTICLE 18, SECTION(S)

X CATEGORICAL EXEMPTION PER ARTICLE 19, SECTION 15301(B)

**REASONS WHY PROJECT IS EXEMPT:**

Title 14 of the California Code of Regulations, Section 15378 (b) (4), that this Ordinance is exempt from the requirements of CEQA in that it is not a "project", but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program.

Contact Person: Shan Babick, Associate Planner

  
SIGNATURE

July 13, 2011

DATE

For: Jerry Hittleman, City Planner

CITY HALL, 300 NORTH COAST HIGHWAY, OCEANSIDE CA 92054, TELEPHONE (760) 435-3354, FAX (760) 722-1057

