

## RESOLUTION NO. 99-2011

*Adopted September 20, 2011*

**CONDITIONALLY AUTHORIZING REIMBURSEMENTS TO THE CITY AND COUNTY OF SAN FRANCISCO FOR ITS PAYMENT OF THE COMMUNITY REMITTANCE IN AN AMOUNT NOT TO EXCEED \$24,445,279 FOR FISCAL YEAR 2011-2012 AND OTHER AMOUNTS IN SUBSEQUENT FISCAL YEARS, AS REQUIRED UNDER THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM ESTABLISHED BY AB 27 (PART 1.9 OF THE COMMUNITY REDEVELOPMENT LAW), SUBJECT TO A STATE SUPREME COURT DECISION UPHOLDING THE CONSTITUTIONALITY OF AB 27**

### BASIS FOR RESOLUTION

1. The Redevelopment Agency of the City and County of San Francisco (the "Agency") has implemented various redevelopment plans that the Board of Supervisors (the "Board") of the City and County of San Francisco (the "City") and Agency have approved, all in accordance with the California Community Redevelopment Law, California Health and Safety Code Section 33000 et. seq. (the "CRL")<sup>1</sup>.
2. On June 15, 2011, the California Legislature adopted two companion bills relating to community redevelopment: Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and Assembly Bill No. 1X 27 (Chapter 6, Statutes of 2011-12, First Extraordinary Session) ("AB 27"). On June 28, 2011, the Governor approved AB 26 and AB 27; on June 29, 2011, the Secretary of State chaptered those bills; and on June 30, 2011, the Governor signed the State budget bill.
3. AB 26 dissolves redevelopment agencies as of October 1, 2011 and establishes a process for transferring their assets and obligations to successor local agencies to wind down their affairs. As a budget trailer bill, AB 26 became effective immediately and suspended new redevelopment activities (other than compliance with existing contracts and payment of outstanding indebtedness.)
4. AB 27 (as codified in Part 1.9 of the CRL) establishes the Alternative Voluntary Redevelopment Program under which the City may choose to continue redevelopment activities, upon the Board's enactment of an ordinance complying with the provisions of Part 1.9 and committing the City to make certain annual payments for the benefit of the local school districts and other taxing entities as described in Section 34194 ("Community Remittances"). The California Department of Finance (DOF) establishes, under Part 1.9, the amount of the Community Remittance, which is subject to the City's right to appeal such amount to the DOF. Under Section 34194(d)(1), each annual Community Remittance is

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<sup>1</sup> All subsequent statutory references in this resolution are to the California Health and Safety Code.

due in two equal installments. The first installment is due on January 15<sup>th</sup>. The second installment is due on May 15<sup>th</sup>.

5. AB 27 establishes formulas for determining the amount of the Community Remittances in fiscal year 2011-2012 and future years (the “AB 27 Formula”). The AB 27 Formula is designed to generate \$1.7 billion this fiscal year and \$400 million in 2012-2013 if every city or county participates in the Alternative Voluntary Redevelopment Program. Accordingly, the amount due this fiscal year is significantly larger than the estimated amount due next fiscal year. Under the AB 27 Formula, the amount of the Community Remittance may increase in 2012-2013 if a redevelopment agency enters into new debts on or after November 1, 2011. In essence, the AB 27 Formula assumes that increases in tax increment revenues received by an agency for new debt justify an increase in payments to local schools and other taxing entities.
6. The AB 27 Formula defines new debt to mean “debt that is displayed on a statement of indebtedness filed after a statement of indebtedness filed on October 1, 2011, that was not displayed on the statement of indebtedness filed on October 1, 2011.” Section 34194 (c) (2) (A). Under the CRL, every redevelopment agency is obligated to prepare and file, by October 1, a statement of indebtedness listing the amount of all of the agency’s loans, advances, or indebtedness, the outstanding balances of these obligations, available revenues and other information (“SOI”). Section 33675. The SOI is filed with the county auditor (i.e. the City Controller), does not require a public hearing, and establishes the basis for allocating tax increment to the agency.
7. The CRL broadly defines indebtedness. “The agency may estimate the amount of principal or interest, the interest rate, or term of any loan, advance, or indebtedness if the nature of the loan, advance, or indebtedness is such that the amount . . . cannot be precisely determined.” Section 33675 (c) (2). The California Supreme Court has affirmed this broad definition of indebtedness for purposes of the SOI. “The term ‘indebtedness’ has no rigid or fixed meaning, but rather must be construed in every case in accord with its context.’ [citations.] It can include all financial obligations arising from contract . . . and it encompasses ‘obligations which are yet to become due as [well as] those which are already matured.’ [Citations.]” Marek v. Napa Community Redevelopment Agency (1988) 46 Cal.3d 1070, 1081.
8. AB 27 establishes that the payment of the Community Remittance is an obligation of the City—not the Agency—and that the City “may use any available funds not otherwise obligated for other uses.” CRL, Section 34194.1 (a). AB 27 further provides that the City and Agency may enter into an agreement “whereby the redevelopment agency will transfer a portion of its tax increment to the city or county, in an amount not to exceed the annual remittance required that year pursuant to this chapter, for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.” Section 34194.2.

9. On July 29, 2011, the California Department of Finance (DOF) determined that, under the formula established in Section 34194 of the CRL, the City would have to pay a Community Remittance of \$24,445,279 in fiscal year 2011-12 to allow the Agency to continue under the CRL's Alternative Voluntary Redevelopment Program. On August 15, 2011, the City, with Agency support, appealed the DOF's determination of the Community Remittance amount on the grounds that the DOF relied on inaccurate information from the Agency's 2008-2009 fiscal reports and that the correct amount was \$20,371,382. DOF must decide the City's appeal by September 15, 2011 or, with an extension allowed under Section 34194 (b)(2)(L), by October 15, 2011.
10. On July 18, 2011, the California Redevelopment Association, League of California Cities, and certain other parties filed a petition for writ of mandate and an application for temporary stay in the Supreme Court of the State of California ("Court"), challenging the constitutionality of AB 26 and AB 27, California Redevelopment Assoc. v. Matosantos, No. S194861 (the "Action"). On August 11, 2011 and August 17, 2011, the Court issued orders staying portions of AB 26 and most of AB 27. The effect of these orders is to continue the suspension of new redevelopment activities by the Agency and to stop the alternative redevelopment program authorized under AB 27, including the payment of Community Remittances, until the Supreme Court issues a decision. The Court expressed an interest in deciding the case by January 2012.
11. The Court's order stops the City and Agency from approving those steps necessary to participate in the Alternative Voluntary Redevelopment Program. Nonetheless, staff of both the City and Agency is preparing the required documents to participate in the program if and when the Court upholds the constitutionality of AB 27. The most important step that the City must take is adoption of an ordinance committing the City to pay the Community Remittances (the "Continuation Ordinance").
12. Prior to the Court's order, the City had expressed an interest in adopting a Continuation Ordinance. On August 2, 2011, the Board passed and on August 3, 2011 the Mayor approved Resolution No. 350-11, expressing the City's non-binding intent to comply with AB 27 for the purpose of extending the date for Agency dissolution under AB 26 and extending the deadline for the Board to enact an ordinance committing the City to make the Community Remittance.
13. Preliminary discussions with City officials indicate that the City intends to pay the Community Remittances with funds that the Agency will reimburse and that the Board and Agency have approved for this purpose in the Agency Budget for each year that the City is required to make a Community Remittance. If and when the Court upholds the constitutionality of AB 27 and the Board adopts a Continuation Ordinance, the City and Agency will approve a Community Remittance Reimbursement Agreement ("Reimbursement Agreement") and an amendment to the Agency's 2011-2012 budget, as approved by Agency Resolution No. 52-2011 and Board Resolution No. 289-11 ("Agency Budget"), to provide a source of payment for some or all of the Community Remittance.
14. Agency staff desires to list the Agency's future obligation to reimburse the City for some or all of the Community Remittance as an indebtedness on the SOI that


the Agency will file on or before October 1, 2011 and thus avoid the characterization of the reimbursement obligation as a "New Debt" that would increase the amount of future Community Remittances under the AB 27 Formula.

15. This conditional authorization to reimburse the City for payment of the Community Remittance is subject to the Supreme Court's decision on the constitutionality of AB 27, the adoption of a Continuation Ordinance by the Board, the approval of an amended Agency Budget by the Agency Commission and Board, and the approval of a Community Remittance Reimbursement Agreement by the Agency Commission and Board. Accordingly, this resolution does not specify the source of City or Agency funds that will be used to make the Community Remittance.
16. Adoption of this conditional authorization to reimburse the City for future Community Remittances is not a project as defined by the California Environmental Quality Act ("CEQA") Guidelines, Sections 15378(b)(4) and 15378(b)(5), because it is an administrative and fiscal activity that will not independently result in a physical change in the environment. For this reason, it is not subject to environmental review under CEQA.

#### **RESOLUTION**

**ACCORDINGLY, IT IS RESOLVED** by the Redevelopment Agency of the City and County of San Francisco that the Agency conditionally authorizes the reimbursement of the City for its payment of some or all of the Community Remittance required for participation in the Alternative Voluntary Redevelopment Program, subject to a final decision by the California Supreme Court upholding the constitutionality of AB 27 and that the Executive Director is authorized to list the Agency's reimbursement as an indebtedness on the Statement of Indebtedness that will be filed with the City Controller by October 1, 2011.

**APPROVED AS TO FORM:**

  
James B. Morales  
Agency General Counsel