

RESOLUTION NO. 136-2009

Adopted November 17, 2009

**APPROVING A POLICY REGARDING THE AGENCY'S USE OF
FUTURE TAX INCREMENT FROM THE ORIGINAL
YERBA BUENA CENTER REDEVELOPMENT PROJECT AREA
TO FULFILL ITS REPLACEMENT HOUSING OBLIGATIONS;
YERBA BUENA CENTER REDEVELOPMENT PROJECT AREA**

BASIS FOR RESOLUTION

1. The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors"), as the legislative body of the Redevelopment Agency of the City and County of San Francisco ("Agency"), originally approved the Redevelopment Plan for the Yerba Buena Center Redevelopment Project by adopting Ordinance No. 98-66 on April 25, 1966. Since then, the Board of Supervisors has amended the plan twelve (12) times, including the adoption of Ordinance No. 236-00, adding the Emporium Site Area, adopted by the Board of Supervisors on October 10, 2000 and approved by the Mayor on October 13, 2000. (The plan, as so amended, is referred to herein as the "Plan").
2. The Plan covering the area other than the Emporium Site Area will expire on January 1, 2010 ("Original Plan").
3. The Agency approved, by Resolution No. 109-2009, a one year extension of the Original Plan pursuant to Section 33331.5 of the California Health and Safety Code. (All future section references are to the Community Redevelopment Law, California Health and Safety Code, Sections 33000 et seq. unless otherwise noted.) By this same Resolution, the Agency also approved, upon the expiration or termination of the one year extension of the Original Plan, the following amendments for the sole purpose of financing Low and Moderate Income Housing Fund activities: a) an extension of time for issuance of debt; b) an extension of time for the receipt of tax increment; and c) a suspension of the limit on the total number of dollars of tax increment revenue that may be received by the Agency with respect to the Original Plan area ("Affordable Housing Plan Amendment"). This extension of tax increment authority for affordable housing is authorized under Sections 33333.7 and 33333.8.
4. A proposed ordinance to extend the Original Plan, pursuant to Agency Resolution No. 109-2009, is pending before the Board of Supervisors (File No. 091207) and is attached to this Resolution ("Proposed Ordinance"). On November 9, 2009, the Land Use and Economic Development Committee of the Board of Supervisors approved the Proposed Ordinance and referred it to the full Board of Supervisors for consideration at the meeting of November 24, 2009.

5. As introduced and as approved by the Land Use and Economic Development Committee of the Board of Supervisors, the Proposed Ordinance contains the following language: "This Ordinance shall not be effective until the Redevelopment Agency shall have adopted a policy requiring that it use, to the greatest extent feasible, any tax increment revenue authorized by the Affordable Housing Plan Amendment to fulfill the Agency's Housing Obligation by assisting Affordable Housing in the South of Market area." Section 2.n. of Proposed Ordinance.
6. The Agency now desires to adopt the policy described in Section 2.n. of the Proposed Ordinance.
7. The adoption of this Resolution expressing the Agency's policy on use of future tax increment from the Original Plan area is not a "project" as defined in the California Environmental Quality Act Guidelines Section 15378(b)(4) because this Resolution is adopted solely to enable the continued funding of Low and Moderate Income Housing Fund activities, and no specific affordable housing project is being approved at this time.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that it adopts the following policy regarding the use of future tax increment from the Original Plan area to conform to Section 2.n. of the Proposed Ordinance, a copy of which is attached. If the Board of Supervisors substantially amends Section 2.n. of the Proposed Ordinance or disapproves the Proposed Ordinance, the following policy will be null and void.

- 1) The Agency shall use, to the greatest extent feasible, any tax increment authorized by the Affordable Housing Plan Amendment, to fulfill its obligation to provide replacement housing, as defined in Sections 33333.7 and 33333.8 of the California Health and Safety Code, in the South of Market area.
- 2) In providing replacement housing pursuant to this Resolution, the Agency shall comply with the applicable requirements of Section 33413 of the California Health and Safety Code.
- 3) In any fiscal year in which the provision of replacement housing in the South of Market area is not feasible, the Agency shall use the tax increment to provide replacement housing within the territorial jurisdiction of the Agency.

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel

1 [Approving Amendments to the Yerba Buena Center Redevelopment Plan to Extend the
2 Plan's Effectiveness, to extend the Redevelopment Agency's Time for Issuing and Repaying
3 Debt and to Suspend the Limit on Total Tax Increment Revenue for Affordable Housing
4 Development.]

4 **Ordinance approving amendments to the Yerba Buena Center Redevelopment Plan to**
5 **extend by one year the time limit on the effectiveness of the plan (other than the**
6 **Emporium Site) and, upon expiration of the Plan, to extend both the time for issuance**
7 **of debt and the receipt of tax increment by the San Francisco Redevelopment Agency**
8 **and to suspend the limit on the total number of dollars of tax increment revenue that**
9 **may be received by the San Francisco Redevelopment Agency under the Plan to**
10 **continue financing Low and Moderate Income Housing Fund activities under the Plan.**

11
12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. FINDINGS FOR PLAN EXTENSION. The Board of Supervisors of the City
14 and County of San Francisco hereby finds and declare as follows:

15 a. The Board of Supervisors of the City and County of San Francisco ("Board of
16 Supervisors"), as the legislative body of the Redevelopment Agency of the City and County of
17 San Francisco ("Redevelopment Agency"), originally approved the Redevelopment Plan for
18 the Yerba Buena Center Redevelopment Project by adopting Ordinance No. 98-66 on
19 April 25, 1966. Since then, the Board of Supervisors has amended the Yerba Buena Center
20 Redevelopment Plan twelve times, most recently by: (1) the adoption of Ordinance No. 236-
21 00, adding the Emporium Site Area, adopted by the Board of Supervisors on October 10,
22 2000 and approved by the Mayor on October 13, 2000, (2) the adoption of Ordinance
23 No. 211-03, extending the time limit for the establishment of loans, advances, and
24 indebtedness to the date of Plan expiration, adopted by the Board of Supervisors on
25 August 12, 2003 and approved by the Mayor on August 22, 2003, and (3) the adoption of

1 Ordinance No. 1-05, extending the effectiveness of the Plan by one year as to all portions of
2 the Yerba Buena Redevelopment Plan Area other than the Emporium Site Area (the "Original
3 Plan Area"), adopted by the Board of Supervisors on January 4, 2005 and approved by the
4 Mayor on January 8, 2005. All references herein to the "Plan" shall mean the Yerba Buena
5 Center Redevelopment Plan, as amended. The Plan contains several limitations on the use
6 of property taxes received pursuant to California Health and Safety Code Section 33670
7 previously imposed by the Community Redevelopment Law, California Health and Safety
8 Code Sections 33000 et seq. (All future section references are to the California Health and
9 Safety Code unless otherwise noted.)

10 b. The Plan presently expires as to the Original Plan Area on January 1, 2010,
11 after which time the Redevelopment Agency has no authority to act with regard to the Original
12 Plan Area pursuant to the Plan except to pay previously incurred indebtedness, to comply with
13 its housing obligations and to enforce existing covenants, contracts or other obligations. (The
14 Emporium Site Area will remain subject to the Plan for thirty years from the adoption date of
15 Ordinance No. 236-00.)

16 c. The Plan imposes a \$600 million limit on the total amount of tax increment
17 revenue that the Redevelopment Agency may receive with regard to the Original Plan Area
18 cumulatively over the life of the Plan for redevelopment activities. The total amount of tax
19 increment revenue received or projected to be received by the Redevelopment Agency with
20 regard to the Original Plan Area over the life of the Plan is over \$516,647,829.

21 d. Under Section 33333.6(b), a redevelopment agency may not pay indebtedness
22 or receive property taxes after the date that is ten years following the termination of any
23 redevelopment plan initially adopted before 1994. In accordance with Section 33333.6(b), the
24 Plan currently prohibits the Redevelopment Agency from repaying any debt incurred for the
25 Plan with regard to the Original Plan Area after January 1, 2020.

1 e. On July 24, 2009, the California Legislature enacted, in a special legislative
2 session, Assembly Bill No. 26 (Statutes 2009, Chapter 21), which added Sections 33690 and
3 33690.5 and requires the Redevelopment Agency to make a payment estimated to be \$28.7
4 million in fiscal year 2009-10 and \$5.9 million in fiscal year 2010-11 for deposit into the
5 Educational Revenue Augmentation Fund of the City and County of San Francisco (the
6 "ERAF"). As a statute enacted at a special session of the California Legislature, Assembly Bill
7 No. 26 is effective on October 23, 2009, the 91st day after adjournment of the special session.
8 Cal. Constitution, Art. 4, Section 8 (c). Under Assembly Bill No. 26, the California Director of
9 Finance shall notify the Redevelopment Agency of the exact amount due in fiscal year 2009-
10 10 by November 15, 2009 and the amount due in fiscal year 2010-11 by November 15, 2010.
11 Upon the effective date of Assembly Bill No. 26, the Redevelopment Agency is required to
12 remit the amount due in fiscal year 2009-10 to the ERAF by May 10, 2010.

13 f. Assembly Bill No. 26 also added Section 33331.5 to provide that when a
14 redevelopment agency is required to make an ERAF payment pursuant to Section 33690 and
15 the agency has allocated the full amount of the payment, the legislative body may amend a
16 redevelopment plan adopted before 1994 to extend by one year the time limit on the
17 effectiveness of the plan (an "ERAF Extension"). Section 33331.5 also provides that when an
18 ERAF Extension is adopted, neither the legislative body nor the redevelopment agency is
19 required to comply with the process for plan amendments otherwise required by the
20 Community Redevelopment Law, including but not limited to the requirement to make the
21 payment to affected taxing entities required by Section 33607.7.

22 g. Under Section 33333.6 (b), an ERAF Extension also has the effect of extending
23 by one year the time limit under a plan to receive property taxes and repay indebtedness.

24 h. The Redevelopment Agency has allocated the full ERAF payment of \$28.7
25 million for fiscal year 2009-10 by amending its budget for fiscal year 2009-10, under Agency

1 Resolution No. 108-2009, a certified copy of which is on file with the Clerk of the Board of
2 Supervisors in File No. _____. The Board of Supervisors, by Resolution
3 No. _____, has approved the amendment to the Agency's budget which provides
4 for the allocation of the funds to ERAF. Accordingly, the Plan (with regard to the Original Plan
5 Area) qualifies for an ERAF Extension through January 1, 2011. A portion of the allocated
6 amount is tax increment revenue generated under the Plan.

7 i. A lawsuit challenging the validity of Assembly Bill No. 26 has been filed by the
8 California Redevelopment Association on the grounds that the 2009-2010 ERAF payment
9 obligation violates Article XVI, Section 16 of the California Constitution because it is not
10 sufficiently related to redevelopment purposes. If a court invalidates the 2009-10 ERAF
11 payment obligation imposed by Assembly Bill No. 26, it may also invalidate any ERAF
12 Extension which is based on an agency's allocation of funds for the ERAF payment. Any
13 such invalidation of Assembly Bill No. 26 could occur before January 1, 2011, the expiration
14 date of the Plan with respect to the Original Plan Area as extended under this Ordinance. Any
15 such invalidation, however, shall not affect the Affordable Housing Plan Amendment as set
16 forth in Section 2 below.

17 SECTION 2. FURTHER FINDINGS FOR THE EXTENSION OF TAX INCREMENT
18 AUTHORITY FOR AFFORDABLE HOUSING ACTIVITIES. The Board of Supervisors hereby
19 further finds as follows:

20 a. Upon expiration of the Plan with regard to the Original Plan Area (as extended
21 by the ERAF Extension approved in this Ordinance), the Plan will expire with regard to the
22 Original Plan Area and the Redevelopment Agency shall have no authority to act under
23 Section 33333.6 (a) except to pay previously incurred indebtedness, to comply with certain
24 housing obligations (Section 33333.8), and to enforce existing covenants, contracts, or other
25 obligations. Furthermore, Section 33333.4 provides that the Redevelopment Agency shall not

1 have the authority to establish or incur loans, advances, or indebtedness to be repaid from the
2 allocation of tax increment after Plan expiration "except as necessary to comply with
3 subdivision (a) of Section 33333.8."

4 b. To avoid the effects of expiration of the Plan with regard to the Original Plan
5 Area on the ability of the Redevelopment Agency to fulfill its affordable housing obligations,
6 this Ordinance also approves a Plan amendment extending the time for issuance of debt and
7 the receipt of tax increment under the Plan with respect to the Original Plan Area and also
8 suspending the limit on the total number of dollars of tax increment revenue that may be
9 received by the Agency under the Plan with respect to the Original Plan Area to continue
10 financing Low and Moderate Income Housing Fund activities (the "Affordable Housing Plan
11 Amendment"). The Affordable Housing Plan Amendment will become effective upon
12 expiration or termination of the ERAF Extension, whether that expiration or termination occurs
13 on January 1, 2011 or by court order at an earlier date.

14 c. Since January 1, 1976, all redevelopment agencies have had a statutory
15 obligation under Section 33413 to provide an equal number of replacement housing units
16 when they destroy or remove housing affordable by low or moderate income persons
17 ("Affordable Housing") in a redevelopment project area.

18 d. In 2000, the California Legislature added Section 33333.7 (Senate Bill
19 No. 2113), which authorized the Redevelopment Agency, with the Board of Supervisors
20 approval, to extend its tax increment revenue financing powers under any pre-1994
21 redevelopment plan "to redress the demolition of a substantial number of residential dwelling
22 units affordable to very low, low, and moderate income households during the agency's earlier
23 urban renewal efforts [prior to 1976]." (Statutes 2000, Chapter 661 § 1(a)). The California
24 Legislature found that the "Redevelopment Agency of the City and County of San Francisco,
25 due to its unique housing situation and net loss of affordable housing units in [older] project

1 areas, wishes, to the greatest extent feasible, to replace these lost units according to the
2 formulas set forth in Section 33413 of the Health and Safety Code.” (Statutes 2000,
3 Chapter 661 § 1 (b)).

4 e. By virtue of its acknowledgement of the Redevelopment Agency’s interest in
5 fulfilling its housing obligation to replace units lost prior to 1976, Section 33333.7 is a statute
6 similar, and related, to Section 33413.

7 f. The California Department of Housing and Community Development has
8 determined that, prior to 1976, the Redevelopment Agency demolished 14,207 units and
9 replaced 7,498 units, resulting in a net loss of 6,709 affordable units (“Agency’s Housing
10 Obligation”). To date, the Redevelopment Agency has not replaced these lost units, but has
11 committed funding for the construction of approximately 875 replacement units that are in the
12 predevelopment phase.

13 g. As originally enacted, Section 33333.7 (Senate Bill No. 2113) authorized the
14 Redevelopment Agency to incur indebtedness exclusively for fulfilling the Agency’s Housing
15 Obligation until the earlier of either January 1, 2014 or the Redevelopment Agency’s
16 replacement of all Affordable Housing lost as a result of the implementation of redevelopment
17 plans adopted prior to 1976. Section 33333.7 also authorized the Redevelopment Agency to
18 receive tax increment funds through 2044 to repay indebtedness incurred to fund the
19 Agency’s Housing Obligation.

20 h. In 2001, the California Legislature revised the Health and Safety Code to add
21 Section 33333.8 and Section 33333.6(f). Under Section 33333.8, a local legislative body
22 must suspend any time limit in a redevelopment plan for the receipt of tax increment revenue
23 and the repayment of debt, and any limit on the total amount of tax increment funds that a
24 redevelopment agency may receive for any project area, until the redevelopment agency
25 fulfills its affordable housing obligations. Section 33333.8(a)(1)(E) defines these housing

1 obligations to include "the obligation to provide replacement housing pursuant to
2 subdivision (a) of Section 33413, Article 9 (commencing with Section 33410), and other
3 similar and related statutes" and thus includes the Agency's Housing Obligation.
4 Section 33333.6(f) confirms that the suspension of plan limits provided by Section 33333.8
5 applies to redevelopment plans adopted on or before December 31, 1993. Under
6 Section 33333.6(e)(4)(B) and Section 33333.8, the Board of Supervisors may amend or
7 suspend the Plan limits as contemplated by this Ordinance without following the amendment
8 process otherwise required by the Community Redevelopment Law.

9 i. Section 33333.8 and its suspension of tax increment limits for the funding of
10 Affordable Housing applies to every redevelopment project area established under the
11 Community Redevelopment Law "[n]otwithstanding any other provision of law."
12 Section 33333.8(a).

13 j. Under Section 33333.8 and Section 33333.7, the Redevelopment Agency and
14 the Board of Supervisors have the authority to amend the Plan to extend the Redevelopment
15 Agency's authority: 1) to incur indebtedness for the exclusive purpose of fulfilling the Agency's
16 Housing Obligation until January 1, 2014 (or the date the Redevelopment Agency has
17 satisfied the Agency's Housing Obligation, if earlier); 2) if the Redevelopment Agency has not
18 fulfilled the Agency's Housing Obligation by January 1, 2014, to continue incurring
19 indebtedness for the exclusive purpose of fulfilling the Agency's Housing Obligation until the
20 date the Redevelopment Agency has satisfied the Agency's Housing Obligation; and 3) to
21 permit the Redevelopment Agency to receive additional tax increment revenue from the
22 Original Plan Area for use in fulfilling the Agency's Housing Obligation until January 1, 2044 or
23 later if the Redevelopment Agency must incur indebtedness after January 1, 2014 to fulfill the
24 Agency's Housing Obligation, subject only to the payment of funds to repay indebtedness.

1 k. The Board of Supervisors previously approved the following ordinances
2 extending the Redevelopment Agency's tax increment authority for the exclusive purpose of
3 financing Low and Moderate Income Housing Fund and fulfilling the Redevelopment Agency's
4 Housing Obligation: 1) in Ordinance No. 15-05, extending time limits for establishment of
5 loans, advance, and indebtedness applicable to the Embarcadero-Lower Market (Golden
6 Gateway) Redevelopment Plan, the Hunters Point Redevelopment Plan, and the India Basin
7 Redevelopment Plan; 2) in Ordinances Nos. 115-07 and 201-07, extending time limits for the
8 Redevelopment Agency's receipt of tax increment and suspending both the limit of total
9 indebtedness outstanding at any one time and the limit on the total number of dollars of tax
10 increment revenue that the Redevelopment Agency may receive under the Rincon Point-
11 South Beach Redevelopment Plan; and 3) in Ordinance No. 316-08, approving an extension
12 of time limits for issuing and repaying debt and a suspension of the limits on the total tax
13 increment that the Redevelopment Agency may receive under the Western Addition A-2
14 Redevelopment Plan.

15 l. To date, the Redevelopment Agency has made all payments to taxing entities
16 required under Section 33607.5.

17 m. At a public hearing on Tuesday, October 6, 2009, the Redevelopment Agency
18 adopted Agency Resolution No. 109-2009, a certified copy of which is on file with the Clerk of
19 the Board of Supervisors in File No. _____. The resolution recommends that the
20 Board of Supervisors: 1) pursuant to Section 33331.5, extend by one year the effective date
21 of the Plan with respect to the Original Plan Area, and 2) pursuant to Sections 33333.8 and
22 33333.7 and prior to the expiration of the Plan with respect to the Original Plan Area, extend
23 the time for issuance of debt and the receipt of tax increment under the Plan and also
24 suspend the limit on the total number of dollars of tax increment revenue that may be received
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1 by the Redevelopment Agency with respect to the Original Plan Area for the sole purpose of
2 financing Low and Moderate Income Housing Fund activities.

3 n. This Ordinance shall not be effective until the Redevelopment Agency shall have
4 adopted a policy requiring that it use, to the greatest extent feasible, any tax increment
5 revenue authorized by the Affordable Housing Plan Amendment to fulfill the Agency's Housing
6 Obligation by assisting Affordable Housing in the South of Market area.

7 o. The Board of Supervisors shall consider, in deciding whether to approve the
8 Redevelopment Agency's annual budget pursuant to Section 33606 of the California Health
9 and Safety Code, whether the Redevelopment Agency's work program includes, to the
10 greatest extent feasible, the use of tax increment revenue authorized by the Affordable
11 Housing Plan Amendment to fulfill the Agency's Housing Obligation by assisting Affordable
12 Housing in the South of Market area.

13 p. This Ordinance is exempt from the California Environmental Quality Act
14 (California Public Resources Code Sections 21000 et seq. and hereafter referred to as
15 "CEQA") because it creates a government funding mechanism that does not involve any
16 commitment to any specific project which may result in a potentially significant physical impact
17 on the environment and therefore is not a "project" under Sections 15378(b)(4) and
18 15060(c)(3) of the State CEQA Guidelines.

19 Section 3. Pursuant to Sections 33331.5, 33333.8, 33333.7, and 33333.6(e)(4)(B), the
20 Board of Supervisors of the City and County of San Francisco hereby approves the
21 Redevelopment Plan Amendment filed with the Clerk of the Board of Supervisors in
22 File No. _____ (the "Redevelopment Plan Amendment"). The Redevelopment
23 Plan Amendment will (i) initially extend the effective date of the Yerba Buena Center
24 Redevelopment Plan by one year with regard to the Original Plan Area; and (ii) subsequently,
25 upon Plan expiration with regard to the Original Plan Area, (A) extend the time limit for the

1 establishment of indebtedness to be paid with the proceeds of property taxes with regard to
2 the Original Plan Area for the exclusive purpose of enabling the Redevelopment Agency to
3 fulfill the Agency's Housing Obligations under Sections 33333.8(a) and 33333.7(d);
4 (B) extend the time limit for the receipt of tax increment revenue with regard to the Original
5 Plan Area to repay indebtedness for the exclusive purpose of enabling the Redevelopment
6 Agency to fulfill the Agency's Housing Obligation under Sections 33333.8(a) and 33333.7(d);
7 and (C) suspend, for the exclusive purpose of fulfilling the Agency's Housing Obligation the
8 \$600,000,000 limit on the amount of tax increment funds that the Redevelopment Agency may
9 receive with regard to the Original Plan Area.

10 Section 4. Nothing in this Ordinance shall be construed to: 1) extend the effectiveness
11 of the Plan with regard to the Original Plan Area beyond January 1, 2011; 2) limit the
12 Redevelopment Agency's ability to refund, in whole or in part, any indebtedness incurred by
13 the Redevelopment Agency for any purpose so long as the refunding achieves debt service
14 savings, or 3) authorize the Redevelopment Agency to incur any indebtedness not previously
15 approved by the Board of Supervisors.

16 Section 5. The Clerk of the Board of Supervisors shall without delay (1) transmit a
17 copy of this Ordinance to the Redevelopment Agency, (2) record or ensure that the
18 Redevelopment Agency records a certified copy of this Ordinance, and (3) transmit, by
19 certified mail, return receipt requested, a copy of this Ordinance, together with a copy of the
20 Redevelopment Plan Amendment and a legal description of the Yerba Buena Center
21 Redevelopment Project Area and a map indicating the boundaries of the Yerba Buena Center
22 Redevelopment Project Area, to the Controller, the Tax Assessor, the State Board of
23 Equalization and the governing body of all taxing agencies in the Yerba Buena Center.
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1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: Anita L. Wood, Deputy City Attorney
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