Transmittal letter

To: Commissioners
From: Natasha Jones, Interim Commission Secretary
Date: October 30, 2013
Re: Legal Status of the Successor Agency

Dear Commissioners,

Please find attached for your information a letter from Robert A. Bryan, Deputy City Attorney regarding the legal status of the Successor Agency dated October 30, 2013.

Thank you.

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MEMORANDUM

TO: Successor Agency Commission
   Tiffany Bohee, Executive Director
   Successor Agency

FROM: Robert A. Bryan  
       Deputy City Attorney

DATE: October 30, 2013

RE: Legal Status of the Successor Agency

During its October 16, 2013 executive session meeting, the Successor Agency Commission (the "Commission") requested written advice regarding the Successor Agency's legal status relative to the City and County of San Francisco (the "City"). At that meeting a Commission member also asked whether the Successor Agency is a department of the City, and if not, what was the legal authority of the City's Board of Supervisors (the "Board") to create the Commission. We address those two questions below.

Summary

The Successor Agency is an independent legal entity, separate from the City. Accordingly, it is not a department or agency of the City. Instead, it is a subdivision of the state, much like the former Redevelopment Agency of the City and County of San Francisco was, or like the Transportation Authority of the City and County of San Francisco currently is.

Because the boundaries of the Successor Agency and the City are coterminous and the legislation mandating the dissolution of redevelopment agencies did not provide for a governing body for the Successor Agency, the Board, by operation of law, became and remains the governing body of the Successor Agency. In that capacity, the Board created the Commission and delegated to it certain of the Board's responsibilities over the Successor Agency. And because the law dissolving redevelopment agencies did not dictate how the governing body should manage the affairs of the Successor Agency, the Board had the authority to delegate powers to the Commission.

Discussion

With the Supreme Court's ruling in California Redevelopment Association v. Matosantos, 53 Cal.4th 231, Assembly Bill No. 1 X26 (AB 26), dissolving redevelopment agencies, became operative on February 1, 2012. AB 26 amended the California Community Redevelopment Law, California Health & Safety Code section 33000 et seq. (the 'CRD'), to provide, among other things, that a city and county that authorized the creation of a redevelopment agency 'may elect not to serve as a successor agency' by filing a duly authorized resolution to that effect with its auditor-controller not later than December 31, 20111. Cal. Health & Safety Code §34173(d).

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1 Assembly Bill 1484 extended this deadline to January 13, 2012.
Implicit in this provision is the Legislature's intent that the authorizing city and county serve as the successor agency unless it affirmatively rejects that status.

The City declined to make that election. Instead, by Board Resolution No. 11-12 adopted on January 24, 2012, the City acknowledged that it would become the successor agency, and would accept the transfer of the non-housing assets of the San Francisco Redevelopment Agency (SFRA). AB 26 also vested in successor agencies "all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies." Accordingly, given the City's affirmative acceptance of its role as successor agency, upon dissolution of the SFRA such authority, rights, powers, duties, and obligations over the successor agency became vested in the City. Cal. Health & Safety Code §34173. When AB 26 became operative, opinions differed throughout the state as to the legal status of successor agencies in cities that served as successor agencies. Relying on its election to become the Successor Agency and on the express terms of AB 26, the City operated as if the Successor Agency was not a separate legal entity and had instead merged into and become an agency of the City, though the City had limited liability for the Successor Agency's affairs. AB 26 provides that the liability of any successor agency is limited to the extent of its assets transferred by the former redevelopment agency and the total sum of property tax revenues the successor agency is entitled to receive.

But then in June 2012 the California Legislature adopted Assembly Bill 1484 (AB 1484), amending AB 26. AB 1484 declared that a successor agency is a separate public entity from the public entity that provides for its governance and the two entities shall not merge. . . . A successor agency has its own name, can be sued, and can sue. . . . The separate former redevelopment agency employees shall not automatically become sponsoring entity employees of the sponsoring entity and the successor agency shall retain its own collective bargaining status." Cal. Health & Safety Code §34173(g). By this declaration, AB 1484 resolved the uncertainty regarding the status of successor agencies and clarified that the Successor Agency and the City (the sponsoring entity of the SFRA and the entity that provides for the governance of the Successor Agency) are separate legal entities. One of the main purposes of these amendments was to help insulate local cities and counties from general fund liability attributable to the state-mandated transfer of the assets and obligations of former redevelopment agencies to successor agencies.2

Since the adoption of AB 1484 the City has considered the Successor Agency to be a separate legal entity. As a result, the Successor Agency succeeded to the legal and organizational authority, powers, rights and duties of the former SFRA for the purpose of completing existing redevelopment projects based on enforceable obligations. Id. Like the SFRA, the Successor Agency is not a City department.

2 The California Department of Finance (DOF) also emphasizes this point on its webpage: "As stated in Section 34173, successor agencies are separate legal entities. As such, a successor agency is a separate employer from the city or county for labor law purposes." DOF, "Frequently Asked Questions":
MEMORANDUM

TO: Successor Agency Commission
   Tiffany Bohee, Executive Director
   Successor Agency

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While it clearly declares that successor agencies are separate legal entities, AB 1484, like its predecessor AB 26, still does not specify the body with authority to govern successor agencies. The Successor Agency's and City's boundaries continue to be coterminous. Therefore, as we explain further below, because state law does not otherwise specify a governing body for successor agencies, the Board, separate from its authority as the governing body of the City, also is the governing body of the Successor Agency.

Under the California Constitution the Board is the governing body of the City. Cal. Const. Art. XI sec. 1(b). Redevelopment dissolution law provides the City the option to elect not to serve as the successor agency. Since the City declined to do so, state law makes the City the successor agency and the power to govern the Successor Agency devolves upon the Board as the City's governing body. City Charter §1.101 (All rights and powers of a City and County which are not vested in another officer or entity by this Charter shall be exercised by the Board of Supervisors); see also Cal. Gov't Code §25207 (The board [of supervisors] may do and perform all other acts and things required by law not enumerated in this part, or which are necessary to the full discharge of the duties of the legislative authority of the county government).

The Board's authority as governing body of the Successor Agency is also consistent with its authority under the CRL before AB 26 became operative. Under the CRL, the Board had two options once it activated the former SFRA. Simple implementation without more resulted in a governing body whose members would be appointed by the Mayor and approved by the Board. Or the Board could have declared itself as the redevelopment agency, in which case, "all rights, powers, duties, privileges and immunities of the agency would vest in Board as its governing body. Cal. Health & Safety Code §§ 33110, 33200. The Board's role and powers for the Successor Agency are not unique. For instance, the Board also serves as the governing body of the Transportation Authority of the City and County of San Francisco. Proposition B (Municipal Election, November 7, 1989) Section 1404; San Francisco Business and Tax Regulation Code Section 1404.

In its capacity as the governing body of the Successor Agency, the Board in October 2012 adopted Ordinance No. 215-12, which among other things, created the Commission and delegated to it certain of the Board's powers as the governing body of the Successor Agency. In the ordinance, the Board granted the Mayor the authority to appoint Commission members, subject to confirmation by the Board. The Board was able to exercise this authority because the redevelopment dissolution law does not dictate how the Successor Agency should be governed. 3

3 Also, DOF informed the City that the creation of the Commission was a local matter, provided that creating the Commission would not modify the composition, structure, and responsibilities of the Oversight Board of the Successor Agency, and that DOF was not opposed to creating the Commission so long as there are adequate checks and balances between the Oversight Board and the Commission. Letter dated September 5, 2012 from Steve Szalay, Local Government Consultant, DOF; see also Letter dated August 10, 2012 from Mayor Edwin M. Lee to Pedro Reyes, Chief Deputy Director, Policy DOF. Ordinance No. 215-12 satisfies both requirements.
The delegation of authority to the Commission enables it to make decisions within the scope of that delegation without the Board's approval.

Please do not hesitate to contact me with any further questions.