



CITY COUNCIL STAFF REPORT

MEETING DATE: January 18, 2012

Agenda Item #	18
Prepared By:	
City Attorney	
Submitted By:	
City Manager	

DECLARATION THAT CITY OF MORGAN HILL WILL SERVE AS THE SUCCESSOR AGENCY FOR THE MORGAN HILL REDEVELOPMENT AGENCY AND ELECTION TO RETAIN THE HOUSING ASSETS AND FUNCTIONS PERFORMED BY THE MORGAN HILL REDEVELOPMENT AGENCY

RECOMMENDED ACTION: Adopt resolution (Exhibit A) declaring the City of Morgan Hill to be the successor agency to the Morgan Hill Redevelopment Agency ("Agency") and electing to be the successor housing agency to retain the affordable housing assets and functions performed by the Agency, effective February 1, 2012.

BACKGROUND (for a more detailed discussion, see Attachment B). As part of the State of California FY 2011/2012 budget adoption, the Governor signed two trailer bills: ABx1 26 (the Dissolution Act) and ABx1 27 (the Voluntary Alternative Redevelopment Program). ABx1 26 immediately suspended RDAs from any new redevelopment activities and from incurring indebtedness. The legislation became effective on June 29, 2011.

On December 29, 2011, the California Supreme Court ruled in *California Redevelopment Association v. Matosantos* that ABx1 26 is constitutional and ABx1 27 unconstitutional. The Court's decision means that all California redevelopment agencies will be dissolved effective February 1, 2012.

DISCUSSION: Under the Dissolution Act, the Agency's non-housing funds and assets will be turned over to a successor agency charged with the responsibility of paying off the former Agency's existing debts, disposing of the former Agency's properties and assets to help payoff debts and winding up the affairs of the former Agency. The Agency's affordable housing assets will be turned over to a successor housing agency.

The Dissolution Act provides that the City will be the Successor Agency to the former Agency *unless* the City elects not to serve as the Successor Agency by or before January 13, 2012. While the Successor Agency will be overseen by an "Oversight Board" of seven representatives selected by the County and various local education districts, the Successor Agency will control the assets of the former Agency and will administer its functions.

The Dissolution Act also authorizes the City to elect to become the Successor Housing Agency of the former Agency and to retain the housing assets (other than any existing housing fund balance) and affordable housing functions of the former Redevelopment Agency. If the City does not elect to become the Successor Housing Agency, then the local Housing Authority (or if there is no local Housing Authority, the California Department of Housing and Community Development) will become the Successor Housing Agency.

FISCAL IMPACT The fiscal impact of the dissolution of the Redevelopment Agency is substantial, complex and still under analysis. While the City will get additional property taxes as all taxing entities will, the loss of RDA tax increment revenues is much greater. The City has relied on such tax increment revenues to pay staff and programming costs for RDA program delivery, administration and support. A recommendation will be forthcoming on how much of that staff cost can be retained for the benefit of the Successor Agency and the Successor Housing Agency, with the remainder either eliminated or redirected to other programs and purposes in another fund (General Fund, Community Development Fund, Housing Mitigation Fund, and/or capital projects).

The Dissolution Act does permit the Successor Agency to receive an annual administrative operating budget, subject to the approval of the Oversight Board, to defray its administrative costs. At this time, the exact calculation of this allowance is unclear (a minimum of \$250,000), it is however not expected to be sufficient to cover current staffing costs.

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Attachment A

RESOLUTION NO. ___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL TO DECLARE THAT IT SHALL SERVE AS THE SUCCESSOR AGENCY FOR THE MORGAN HILL REDEVELOPMENT AGENCY, PURSUANT TO HEALTH AND SAFETY CODE SECTION 34171(j) AND SECTION 34173, AND TO ELECT TO RETAIN THE HOUSING ASSETS AND FUNCTIONS PERFORMED BY THE MORGAN HILL REDEVELOPMENT AGENCY, PURSUANT TO HEALTH AND SAFETY CODE SECTION 34176

WHEREAS, the California State legislature enacted Assembly Bill 26X (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health & Safety Code §33000, et seq. (the "Redevelopment Law")); and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Dissolution Act and, on December 29, 2011, ruled that the Dissolution Act is constitutional; and

WHEREAS, the Court's decision means that all California redevelopment agencies will dissolve on February 1, 2012 pursuant to the Dissolution Act; and

WHEREAS, the Dissolution Act provides that the city that authorized the creation of the redevelopment agency shall be the "successor agency" for the dissolved redevelopment agency unless the city elects not to serve as the successor agency under Section 34173(d)(1) of the Redevelopment Law; and

WHEREAS, Section 34176(a) of the Redevelopment Law provides that the city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the former redevelopment agency; and

WHEREAS, the City of Morgan Hill (the "City") intends to, and shall serve as, the successor agency for the Redevelopment Agency of the City of Morgan Hill (the "Agency") in accordance with Section 34171(j) and Section 34173 of the Redevelopment Law; and

WHEREAS, the City desires to elect to retain the housing assets and functions performed by the Agency and assume all the rights, powers, duties and obligations relating to such assets and functions under the Redevelopment Law.

NOW, THEREFORE, BE IT RESOLVED, that the City hereby accepts the designation, and hereby declared itself to be the Successor Agency effective February 1, 2012 for the Agency in accordance with Section 34171(j) and Section 34173 of the Redevelopment Law.

BE IT FURTHER RESOLVED, the City hereby elects to retain the housing assets and functions previously performed by the Agency in accordance with Section 34176 of the Redevelopment Law, and, effective February 1, 2012, shall assume the housing assets and functions performed by the Agency, including all rights, powers duties and obligations relating to such housing assets and functions as provided for under the Redevelopment Law.

BE IT FURTHER RESOLVED, that the City, as the Successor Agency of the Agency, shall take control of all assets (including all cash or cash equivalents and amounts owed to the Agency as of February 1, 2012), properties contracts, leases, books and records, buildings, and equipment of the

Agency (collectively, the "Agency Assets") as of February 1, 2012 pursuant to Section 34175(b) of the Redevelopment Law and that that the City, as the Successor Agency of the Agency, shall administer the Agency Assets pursuant to the Dissolution Act and the Redevelopment Law.

BE IT FURTHER RESOLVED, that the City Manager, or his designee, is hereby directed to file a copy of this Resolution with the County Auditor-Controller.

BE IT FURTHER RESOLVED, that the City Manager, or his designee, is hereby authorized to take such actions, and to execute all documents necessary and appropriate, for the City to accept and take control of the Agency Assets, to administer such Agency Assets pursuant to Sections 34175 and 34176 of the Redevelopment Law, including the creation within the City treasury a Redevelopment Obligation Retirement Fund in compliance with Section 34170.5(a) of the Redevelopment Law.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the _____ Day of _____, 2012, by the following vote.

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:
COUNCIL MEMBERS:

DATE: _____

Steve Tate, MAYOR

Attachment B

Summary of AB1x 26 (“Dissolution Act”)

I. The Supreme Court Decision

California Supreme Court found, in *California Redevelopment Association v. Matosantos*, that the Dissolution Act constitutional and AB1x 27 (the “Alternative Redevelopment Program Act”) unconstitutional.

The Court’s bifurcated decision means that all RDAs will be dissolved under the Dissolution Act, and none will have the opportunity to opt into continued existence under the unconstitutional Alternative Redevelopment Program Act.

The Court also determined to push back the deadlines in the Dissolution Act arising prior to May 1, 2012 by four months. For instance, all RDAs will be dissolved and their successor agencies will begin to function on February 1, 2012 under the Court’s decision (as opposed to the October 1, 2011 deadline specified in the Dissolution Act itself).

II. Effect of the Dissolution Act

The Dissolution Act:

- continues the suspension and prohibition of most redevelopment activities in effect since late June, 2011;
- dissolves RDAs as of February 1, 2012 (the new dissolution date established by the Supreme Court);
- creates successor agencies and oversight boards to continue to satisfy enforceable obligations of each former RDA, and administer the dissolution and wind down of each dissolved RDA;
- permits the City to continue the functions and exercise the powers of the Agency affordable housing program (without the tax increment funding however), and
- establishes roles for the County-Auditor Controller, the Department of Finance and the State Controller’s Office in the dissolution process and satisfaction of enforceable obligations of former RDAs.

A. Dissolution of RDAs/Creation of Successor Agencies

As of February 1, 2012:

Every RDA will be dissolved.

A Successor Agency will be created for each RDA. The Successor Agency will be the City unless it elects not to serve in that capacity. In that case, the Successor Agency will be the first taxing entity submitting to the County Auditor-Controller a duly adopted resolution electing to become the Successor Agency. The actions of the Successor Agency will be monitored, and in some cases approved, by the Oversight Board. All assets, properties, contracts, leases, records, buildings and equipment of former RDAs would be transferred to the control of the Successor Agency, except as described below for affordable housing assets.

B. Transfer of Housing Functions of Former RDA

The City may elect to assume the housing functions and take over the housing assets of the former RDA, excluding amounts in the former RDA’s Housing Fund, along with related rights, powers, liabilities, duties and obligations thereby becoming a “Successor Housing Agency” to the former RDA. If the City

does not elect to become the Successor Housing Agency and assume the former RDA's housing functions, such housing functions and all related assets will be transferred to the local Housing Authority (or Department of Housing and Community Development, if there is no local Housing Authority).

The entity that becomes the Successor Housing Agency and assumes the housing functions of a former RDA will be able to use its inherent powers (not limited by the Dissolution Act's restrictions on Successor Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations.

The Dissolution Act requires Successor Agencies to repay amounts previously borrowed from the Housing Fund (i.e. to make SERAF payments in prior years), repayment of which had been deferred as of the effective date of the Dissolution Act. These repaid funds would presumably be paid to the entity that becomes the Successor Housing Agency and assumes the housing functions of the former RDA.

The Dissolution Act requires Oversight Boards to direct Successor Agencies to list amounts owed to the Housing Fund on the Recognized Obligation Payment Schedule.

C. Role of Successor Agencies

All assets, properties, contracts, leases, books and records, buildings, equipment and the existing Housing Fund balance of a former RDA will be transferred to the control of the Successor Agency on February 1, 2012. A Successor Agency is required to make payments and perform other obligations due for Enforceable Obligations of the former RDA, which include:

- Bonds;
- Loans borrowed by the RDA (including amounts borrowed in past years from the Housing Fund);
- Payments required by federal or state government or for employee pension obligations;
- Judgments or settlements; and
- Legally binding and enforceable agreements or contracts.

To facilitate this payment of Enforceable Obligations, a Successor Agency is required to prepare a Recognized Obligation Payment Schedule for each six month period of each fiscal year, including identifying the funding source for all Enforceable Obligations of the former RDA. The first draft of the Recognized Obligation Payment Schedule is now due by March 1, 2012, and should cover the balance of the current fiscal year through June 30, 2012.

The Successor Agency's duties and obligations are as follows:

- dispose of the former RDA's assets or properties;
- effectuate the transfer of housing functions of the former RDA to its Successor Housing Agency;
- wind down all other affairs of the former RDA;
- prepare administrative budgets for Oversight Board approval and pay administrative costs. Subject to the approval of the Oversight Board, the Successor Agency's annual administrative cost allowance will be an amount up to five percent of the property tax allocated to the Successor Agency for FY 2011-12 and up to three percent of the property tax allocated to the Successor Agency each succeeding fiscal year; provided, however, that the annual amount shall not be less than \$250,000 for any fiscal year (or such lesser amount as agreed to by the Successor Agency).

D. Treatment of Agreements between a RDA and its Sponsoring Community or Other Public Agency/Public Entity

With limited exceptions, the Dissolution Act expressly states that Enforceable Obligations to be paid by Successor Agencies do not include agreements, contracts or arrangements between a RDA and its Sponsoring Community, and that such agreements, contracts or arrangements are invalid and not binding on Successor Agencies upon dissolution of the RDA. These provisions do not apply to agreements relating to bonds, notes, certificates of participation or other similar indebtedness, and solely for the purpose of securing or repaying such indebtedness.]

Beginning upon effectiveness of the Dissolution Act in late June 2011, the State Controller has been directed to review RDA activities and determine whether an asset transfer has occurred after January 1, 2011 between the RDA and its Sponsoring Community or other public agency. If the State Controller determines that such an asset transfer did occur and the recipient has not contractually committed such assets to a third party to expend or otherwise encumber those assets, such assets will be ordered returned to the RDA or Successor Agency for payment of recognized obligations or distribution as property taxes.

III. Oversight Boards

An Oversight Board is generally intended to supervise the activities of the Successor Agency. The Oversight Board has a fiduciary responsibility to holders of Enforceable Obligations and the taxing entities that benefit from distributions of property tax and other revenues.

The Oversight Board of the Successor Agency will consist of 7 members appointed by/representing:

- County Board of Supervisors (two members);
- Mayor (one member);
- County Superintendent of Education (one member);
- Chancellor of California Community Colleges (one member);
- Largest special district taxing entity, which is the County Library District in Morgan Hill's case (one member); and
- A former RDA employee appointed by Mayor, from the recognized employee organization representing the largest number of former RDA employees employed by the successor agency at that time (one member).

The Oversight Board membership must be completed by May 1, 2012.

The Dissolution Act requires the Oversight Board to direct the Successor Agency to determine whether contracts, agreements or other arrangements between the former RDA and private parties should be terminated or renegotiated to reduce the Successor Agency's liabilities and to increase net revenues to the taxing entities.

The actions of the Oversight Board of each Successor Agency will in turn be overseen by the Director of the Department of Finance and may be subject to disapproval or modification. Oversight Board actions will not be effective for three business days pending a request for review by the Department of Finance. If the department requests a review of a given Oversight Board action, the department shall have ten days from the date of its request to approve the Oversight Board action or return it to the Oversight Board for reconsideration. The Oversight Board has specified obligations with respect to maintaining a website and providing specified notification to various state officials.

IV. Role of County Auditor-Controller

The Dissolution Act, as modified by the Court's decision, requires the County Auditor-Controller to:

- By July 1, 2012, conduct an audit of each former RDA's assets and liabilities, including pass-through payment obligations and the amount and terms of any RDA indebtedness, and provide the State Controller's Office with a copy of such audit by July 15, 2012;
- Annually determine the amount of property tax increment that would have been allocated to a RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund"); and
- Administer the Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes.

Actions of the County Auditor-Controller will not be effective for three business days pending a request for review by the State Controller. If the department requests a review of a given County Auditor-Controller action, the department will have ten days from the date of its request to approve the County Auditor-Controller action or return it to the County Auditor-Controller for reconsideration.

V. Payments from Trust Fund

The Dissolution Act requires the County Auditor-Controller to allocate moneys in the Trust Fund established for each former RDA as follows:

- To pay pass-through payments to affected taxing entities in the amounts that would have been owed had the former RDA not been dissolved;
- To the Successor Agency to enable the Successor Agency to pay Enforceable Obligations of the former RDA, including bonds;
- To the Successor Agency to pay for administrative costs under the administrative budget approved by the Oversight Board; and
- Any remaining balance in the Trust Fund, to school entities and other local taxing entities as property taxes.

The Dissolution Act allows statutory pass-through payments received by school districts, community college districts and offices of education between FY 2011-2012 and FY 2015-2016 to be used for land acquisition, construction, reconstruction, remodeling, maintenance or deferred maintenance of educational facilities.

No later than May 16, 2012 and June 1, 2012 and each January 16 and June 1 thereafter, the County Auditor-Controller must transfer the amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule from the Trust Fund of each Successor Agency into a Redevelopment Obligation Retirement Fund to be administered by each Successor Agency. The Successor Agency must then make payments on listed Recognized Obligation Payment Schedule from that fund.

VI. Miscellaneous

The Dissolution Act provides that a former RDA's obligations to its employees pursuant to a collective bargaining agreement become Enforceable Obligations of the Successor Agency. An employee's civil service status and classification remain the same for a minimum of two years.

The Dissolution Act includes a provision lengthening the period to challenge RDA actions taken after January 1, 2011 from ninety days to two years.

VII. KEY MILESTONES FOR IMPLEMENTATION OF THE DISSOLUTION ACT

The Supreme Court promulgated simple reformation rules calling for a four month extension of those dates and deadlines contained in the Dissolution Act that were prior to May 1, 2012. The milestone schedule from today to the formation of the oversight board is outlined:

- No later than January 31, 2012: a RDA should consider any appropriate amendments to its previously adopted Enforceable Obligation Payment Schedule to reflect payments due after December 31, 2011.
- January 30, 2012: The existing terms of any memorandum of understanding with an employee organization expires, unless a new agreement is reached with a recognized employee organization prior to that date.
- February 1, 2012: RDA is dissolved.
- February 1, 2012: RDA agreements with Sponsoring Community void (with limited exceptions).
- February 1, 2012: All dissolved RDA assets (including properties, contracts, leases, books and records, buildings and equipment, and existing Housing Fund balance), except other housing assets, transferred to Successor Agency. RDA delivers Enforceable Obligation Payment Schedule to Successor Agency. Transfer of RDA housing assets (excluding existing Housing Fund balances) to Successor Housing Agency.
- On and after February 1, 2012: Successor Agency permitted to make payments only as listed on Enforceable Obligation Payment Schedule.
- From February 1, 2012 to July 1, 2012: Successor Agency prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to February 1, 2012.
- By March 1, 2012: Successor Agency prepares initial draft of Recognized Obligation Payment Schedule for the Enforceable Obligations of the former RDA, subject to review and certification by external auditor as to accuracy and approval by Oversight Board.
- No later than April 1, 2012 and May 1, 2012, and each December 1 and May 1 thereafter: Successor Agency reports to the County Auditor-Controller if the total amount available to the Successor Agency is insufficient to fund the specified payments in the next six-month fiscal period. County Auditor- Controller notifies State Controller and DOF no later than 10 days from the date of that notification from the Successor Agency.
- April 15, 2012: Successor Agency submits first Recognized Obligation Payment Schedule to State Controller and DOF for the period of January 1, 2012 to June 30, 2012. Successor Agency prepares new Recognized Obligation Payment Schedule for each six month period thereafter for approval by Oversight Board. Approved Recognized Obligation Payment Schedules are posted on Successor Agency website and submitted to DOF, Controller and County Auditor-Controller.
- Commencing on May 1, 2012: Successor Agency may pay only those payments listed in the approved Recognized Obligation Payment Schedule. Statements of Indebtedness are no longer recognized for dissolved RDAs.
- By May 1, 2012: Oversight Board elects and reports name of chairperson and other members to DOF.

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