

AGENDA REPORT

OVERSIGHT BOARD FOR THE CITY OF MAYWOOD
AS SUCCESSOR AGENCY OF THE MAYWOOD
COMMUNITY REDEVELOPMENT AGENCY

DATE: OCTOBER 11, 2012

TO: HONORABLE CHAIR AND MEMBERS OF THE OVERSIGHT BOARD

FROM: ANDRE DUPRET, PROJECT MANAGER

SUBJECT: RESOLUTION OF THE MAYWOOD OVERSIGHT BOARD REVIEWING AND APPROVING THE DUE DILIGENCE REVIEW (“AUDIT”) AND AUTHORIZING SUCCESSOR AGENCY STAFF TO TRANSMIT IT TO THE STATE OF CALIFORNIA DEPARTMENT OF FINANCE AND OTHER REQUIRED GOVERNMENTAL ENTITIES PURSUANT TO HEALTH AND SAFETY CODE SECTION 34179.5 ET. SEQ.

RECOMMENDATION

That the Maywood Oversight Board review and approve the Due Diligence Review and authorize the City of Maywood Successor Agency staff to transmit it to the State of California Department of Finance (“DOF”) and other required governmental entities pursuant to Health and Safety Code Section 34179.5 et. seq.

FISCAL IMPACT

Pursuant to AB 1484, cities must remit the unobligated balance in their Low and Moderate-Income Housing Fund (“LMIHF”). Based on the Maywood LMIHF Audit, \$1,281,021 in the City’s LMIHF must be remitted to the County of Los Angeles to be distributed to the other taxing entities.

LEGAL REVIEW

The Successor Agency Attorney has reviewed this report.

BACKGROUND

An independent Audit was conducted pursuant to Health and Safety Code Section 34179.5 to determine the unobligated balances available in the Low Moderate Income Housing Fund (“LMIHF”) for transfer to affected taxing entities.

The Due Diligence Review is attached hereto for the Maywood Oversight Board’s review and approval.

DISCUSSION

Due Diligence Review Procedure

Under Health and Safety Code Section 34179.5 et. seq., an audit commonly referred to as a Due Diligence Review of all Successor Agency balances is required. The Due Diligence Review is conducted in two parts. First, a review of the LMIHF is completed and submitted to the Successor Agency for review and transmittal to the Oversight Board by October 1, 2012. Once the Oversight Board has reviewed and approved the Due Diligence Review, Successor Agency staff must transmit the final report to the DOF by October 15, 2012.

Independent Audit Conducted to Make These Findings

The Due Diligence Review was an independent audit by the public accounting firm Moss Levy & Hartzheim (“Auditor”)¹ based upon procedures developed by the Certified Public Accountant Society, the State of California Controller’s Office and the DOF.

On September 21, 2012, the Auditor completed the Due Diligence Review of the LMIHF that is attached hereto. A brief summary of the Due Diligence Review finds that, as of June 30, 2012, the Successor Agency held \$3,188,030 in its LMIHF. According to the Due Diligence Review, the Successor Agency is entitled to retain \$1,379,953 that was borrowed from the LMIHF to make a payment to the Supplemental Education Revenue Augmentation Fund (“SERAF”).

In addition, after all allowable deductions are accounted for, the remaining balance of \$1,281,021 in the LMIHF is unobligated and should be remitted to the County of Los Angeles for disbursement to the other taxing entities pursuant to AB 1484.

RDA Authority to Borrow from LMIHF to Make SERAF Payment

Health and Safety Code Section 33690(c)(1) explicitly permitted redevelopment agencies to borrow from the LMIHF to make SERAF payments. Over the past two decades, the State of California has decreased its funding to schools and community colleges.² As a result, several bills were passed that expanded the definition of “redevelopment” to include “education” so that local redevelopment agencies would make up the State of California’s shortfall in education spending.³ After a number of lawsuits between the State of California and local redevelopment agencies⁴, the courts

¹ The Auditor has no previous affiliation to the Maywood Successor Agency or the former redevelopment agency prior to the audits conducted pursuant to ABx1 26.

² Health and Safety Code Section 33680

³ Assembly Bill 1389 and AB 26 4x

⁴ City of El Monte v. Commission on State Mandates (2000) 83 Cal. App. 4th 266; County of Los Angeles v. Sasaki, (1994) 23 Cal. App. 4th 1442; California Redevelopment Agency v. Genest, Civil Case No. 34-2009-80000359

ultimately upheld the expanded definition of “redevelopment” to include “education” so that redevelopment agencies were required to make SERAF payments to schools located within their project area.

In many cases, redevelopment agencies did not have excess funds available to make their SERAF payment. As a result, on November 12, 2009, Governor Schwarzenegger signed Senate Bill 68 (“SB 68”) allowing redevelopment agencies to use accumulated balances in their housing fund to make SERAF payments. SB 68 is codified in Health and Safety Code Sections 33690 and 33690.5. Section 33690(c)(1) specifically provides,

Notwithstanding any other law, to make the full allocation required by this section, an agency may borrow from either the amount required to be allocated to the Low and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and 33334.6, or any moneys in that fund, or both, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund or the amount of moneys in the fund, or both, pursuant to the authority of this subdivision. (Emphasis added.)

Conclusion

In conclusion, the Due Diligence Review was performed by an independent auditor pursuant to procedures set forth by the State of California Department of Finance.

The Due Diligence Review finds that \$1,379,953 borrowed from the Low/Moderate-Income Housing Fund (“LMIHF”) to make a payment to the Supplemental Educational Revenue Augmentation Fund (“SERAF”) should be retained in the LMIHF as a housing asset while \$1,281,021 is unobligated and should be remitted to the County of Los Angeles for disbursement to the other taxing entities. Health and Safety Code Section 33690 expressly permitted the former redevelopment agency to borrow from the LMIHF to make its SERAF payment.

Thus, the Successor Agency respectfully requests the Maywood Oversight Board’s approval of the Due Diligence Review and authorize the Successor Agency staff to transmit it to the State of California Department of Finance and other required governmental entities pursuant to Health and Safety Code Section 34179.5 et. seq.

Attachments: 1) Resolution
2) Due Diligence Review