

## STAFF REPORT

### CITY OF SAN LEANDRO SUCCESSOR AGENCY OVERSIGHT BOARD

**DATE:** September 26, 2012

**TO:** Successor Agency Oversight Board

**FROM:** Cynthia Battenberg, Business Development Manager

**SUBJECT:** Update on Assembly Bill 1484 True-Up Payment Dispute and League of California Cities Legal Challenge

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An update on two issues related to AB1484 follow for your information.

#### AB 1484 True Up Payment

The California Department of Finance (DOF) provided the attached letter dated August 28, 2012 indicating that they will not impose any penalties on the City or Successor Agency as a result of a disputed payment amount under Assembly Bill 1484.

As reported at the July 18, 2012 Oversight Board meeting, the Successor Agency received a payment demand from the DOF on July 9, 2012 intended to recover any unspent dollars from the Redevelopment Agency's final tax increment remittance in January 2012. The payment was due on July 12. After adjusting for the share allocated to the Alameda County RDA for the Joint Redevelopment Project Area, San Leandro owed \$3.6m.

Believing that the methodology behind the payment calculation was flawed, and that the 72-hour window to make payment did not allow adequate time for a dialogue with the DOF, San Leandro remitted a corrected payment of \$521,889. City staff provided documentation on how they arrived at the new payment amount, and provided all follow-up materials requested by the DOF. Additionally, two representatives from the DOF spent several hours at City Hall working with City staff to review financial records on August 9.

The determination from the DOF is positive news in regard to potential penalties. Unfortunately, the letter also indicates that the DOF may not be able to issue a Finding of Completion (FOC) to the Successor Agency because they lack the authority to officially revise the payment amount. The FOC is needed by Successor Agencies in order to:

- Re-authorize loans from a City General Fund,
- Expend "stranded" bond proceeds that are not currently encumbered for a specific project, and
- Prepare a property management plan.

City staff does not believe that the FOC should be impacted now that the corrected payment of \$521k has essentially been justified. Staff will continue to work closely with the DOF to gain further clarification.

#### League of California Cities Files Legal Challenge of AB1484

On September 6, the League of California Cities filed litigation challenging the constitutionality of the sales tax and property tax clawback and other provisions of AB 1484. The attached League of California Cities press release outlines the provisions being challenged.

Although the San Leandro Successor Agency has already received confirmation that the State will not impose any penalties related to San Leandro's disputed AB1484 payment obligation, several points of concern remain in this legislation. A favorable judgment in this case could provide needed clarification on several issues related to the winding down of redevelopment activities and assets.



DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

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August 27, 2012

Mr. Jeff Kay, Business Development Analyst  
City of San Leandro  
835 E. 14th Street, 1st Floor  
San Leandro, CA 94577

Dear Mr. Kay:

This letter is a follow-up to our July 20, 2012 letter in which the Department of Finance (Finance) asked the Successor Agency (Agency) to submit information related to the July billing dispute.

Finance contacted the Agency on July 20, 2012, regarding a discrepancy between the amount the Agency was billed on July 9, 2012 by the County Auditor-Controller (CAC) pursuant to Health and Safety Code (HSC) section 34183.5 (b) (2) (A) and the amount the Agency subsequently remitted to them on July 12, 2012. In our letter, Finance requested that the Agency provide any information that would justify the underpayment by July 31, 2012.

Finance has completed its review of the material submitted and its assessment of the Agency's situation. While Finance does not have the statutory authorization to reduce the amount the Agency has been billed by the CAC, we do not intend to pursue either the civil penalties or the Sales and Use Tax offsets that may be levied when an Agency fails to pay the billed amount.

However, please be advised that pursuant to HSC section 34179.7, as a result of not paying the demand amount, Finance may be prohibited from issuing a Finding of Completion to the Agency. Receiving a Finding of Completion can allow a Successor Agency to do several things, including expend "stranded" bond proceeds for specified purposes, repay loans from the city to the former RDA that currently are not recognized as Enforceable Obligations, and transfer land to the city so that it may be used for the purposes identified in the original redevelopment plan.

We thank you for providing all requested information and for working cooperatively with our staff as they conducted their review. If you have any questions or concerns regarding this matter, please contact Justyn Howard, Assistant Program Budget Manager, at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: County Auditor-Controller



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**Sept. 24, 2012**

**Contact: Eva Spiegel, (916) 658-8228  
Cell: (530) 400-9068**

**FOR IMMEDIATE RELEASE**

**League of California Cities Challenges Constitutionality of Portions of AB 1484,  
the Redevelopment Budget Trailer Law**

**Sacramento** — Today the League of California Cities submitted a lawsuit for filing in the Sacramento County Superior Court challenging AB 1484, the 2012 redevelopment budget trailer bill. The lawsuit contends that AB 1484 contains unconstitutional property and sales tax claw-back and other provisions that violate the California State Constitution, including both Proposition 1 A (2004) and Prop. 22 (2010). The petition does not seek to invalidate AB 1484 in its entirety, but it is being filed to ensure that the wind-down of redevelopment agencies is executed in an orderly and constitutional fashion without jeopardizing the fiscal stability of cities as they work to faithfully implement the redevelopment dissolution legislation.

The plaintiffs are: the League of California Cities, the city of Vallejo, the Vallejo Successor Agency, and League Executive Director Chris McKenzie as the taxpayer plaintiff. The defendants are: the Department of Finance, the Board of Equalization, the State Controller and the Solano County Auditor Controller.

In the lawsuit the petitioners contend that AB 1484 lacks sufficient standards to guide and constrain the Department of Finance's decision making authority in a number of significant areas. The following provisions are being challenged as unconstitutional:

- The "true-up" payment requirement;
- The Department of Finance's authority to order the Board of Equalization to withhold sales tax from those cities whose successor agencies failed to make the July "true-up" payment and in other circumstances;
- County auditor-controllers' authority to withhold property taxes in certain circumstances; and
- Those provisions of AB 1484 that establish an unconstitutional delegation of legislative authority to the Department of Finance.

The League also asserts in the lawsuit that the Department of Finance has not complied with the Administrative Procedure Act (Act), which provides the procedures by which state agencies must adopt regulations. The Department of Finance has adopted no regulations under the Act to implement AB 1484.

League President and Pasadena Mayor Bill Bogaard: "By dissolving redevelopment agencies, the Legislature and Governor eliminated California's most effective tool to build infill infrastructure, cleanup brownfields and build affordable housing. While disagreeing with that decision, city officials have accepted it and are working to implement the law in a conscientious and lawful manner. This lawsuit asks the court to require that the Legislature and the Administration follow our state constitution in carrying out the state's responsibilities in this process, including establishment of an administrative process that guarantees certainty and transparency."

League Executive Director Chris McKenzie: "AB 1484 was enacted to secure revenues for the state budget, but it also puts the property and sales tax revenues of cities at risk at a time of great fiscal uncertainty. These are the same funds cities use to provide vital public safety and other city services. We are filing this lawsuit to protect the ability of California cities to effectively deliver services to their residents

and to insist that the voter-approved constitutional protections of these revenues be respected by our state government.”

McKenzie noted that the Department of Finance has recently taken some common sense steps to improve its administration of the redevelopment dissolution law. However, serious constitutional problems remain with the current administrative process and AB 1484 itself that put the sales and property tax revenues of cities at serious risk.

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