

MEMORANDUM

July 24, 2012

To: All Santa Clara County Oversight Boards

From: City Attorneys/Successor Agencies' General Counsel
Offices of the County Executive and County Counsel, Santa Clara County

Re: Changes in RDA Dissolution Law – AB 1484

INTRODUCTION

On June 27 2012, Governor Jerry Brown signed into law Assembly Bill 1484, a budget trailer bill. The purpose of this memorandum is to outline the significant provisions of the bill and to provide collective guidance to the Oversight Boards in Santa Clara County regarding the revised role of the Oversight Boards in the dissolution process. In addition, this memorandum highlights some changes in the authority and responsibilities of the Successor Agencies, County Auditor-Controller, State Controller and Department of Finance (“DOF”) in the dissolution process. This memorandum represents a collaborative effort of the city attorneys in Santa Clara County, the Office of the County Executive and the Santa Clara County Counsel.

SUMMARY OF SIGNIFICANT CHANGES

AB 1484 address many of the ambiguities of AB1X 26, adds new and modified timelines, clarifies the permitted uses of real property and bond proceeds and imposes penalties and financial consequences for non-compliance. The most significant provisions include:

- Immediate payment to taxing entities of property tax distributions that would have been paid from the January 2012 property tax distribution (ROPS I Period) had AB1X 26 not been stayed by the California Supreme Court.
- A “due diligence” process to determine “unobligated balances” and timelines for the payment of these to taxing entities. The bill requires “offsets” against local agency sales and property tax revenues for failure to transfer unobligated balances to the County Auditor-Controller for distribution to the taxing entities.
- A definition of “housing assets” that are transferable to the cities that elected to retain the responsibility for performing the housing functions previously performed by a redevelopment agency. Provides for approval of a housing inventory list.
- A DOF-issued “Finding of Completion” upon the proper payment by the successor agency of unobligated funds and the ROPS I property tax distributions.
- Upon receipt of a Finding of Completion, the Successor Agency may:
 - Propose a long range property management plan, subject to the approval of the Oversight Board and DOF, to use real property for “permitted uses,” including

- governmental uses, future development, sale, or use of property to fulfill an enforceable obligation.
- Use remaining pre-2011 bond proceeds for the purposes for which the bonds were issued.
- Request that loan agreements entered into between the redevelopment agency and the city be deemed enforceable obligations, if the Oversight Board makes a finding the loan was for legitimate redevelopment purposes and pursuant to statutory criteria for calculation and repayment.
- Providing Successor Agencies with authority to enter into enforceable obligations to conduct the work of winding down, including hiring staff, acquiring administrative services, legal counsel and procuring insurance.
- Clarifying that the Oversight Board may direct the Successor Agency to “provide additional legal or financial advice than what was given by agency staff” and “contract with the county or other public or private agencies for administrative support.”

MOST IMMEDIATE REQUIRED ACTIONS

Payment to Taxing Entities for January 1, 2012 through June 30, 2012 Period

AB 1484 seeks to recapture those payments that would have been made to the taxing entities for the January 1, 2012, to the June 30, 2012, period (“ROPS I Period”) from the December 2011 property tax distribution had the California Supreme Court not stayed the original effective dates of AB1X 26. Therefore:

- The County Auditor-Controller is required to deduct any pass-through payments not made during the ROPS I Period from future allocations to the Successor Agency.
- By **July 9, 2012**, the County Auditor-Controller is to issue a demand for payment for the residual property tax allocations from the ROPS I Period paid to the Successor Agency, in the amount that would have been paid to the taxing entities had the California Supreme Court not stayed AB1X 26.
- The Successor Agency must make the payment by **July 12, 2012**, and the distributions to the taxing entities must be made by **July 16, 2012**.
- Successor Agencies (and their host cities) that fail to remit the payment are (a) subject to lawsuits and civil penalties, (b) prohibited from making payments on enforceable obligations (except for bond debt service) and (c) are subject to property and sales tax offsets.

Transfer of Housing Assets

By **August 1, 2012**, the city assuming the housing functions must submit to DOF a list of all housing assets. The DOF has up to 30 days to object to any transferred assets on the inventory list. If DOF objects, the housing successor has five (5) business days to request a meet and confer process with DOF. If the asset “is deemed not to be a housing asset” it must be returned

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to the successor agency. Housing assets must be deposited in a Low and Moderate Income Housing Asset Fund (“LMIHAF”). “Housing assets” include:

- Real property, whether improved or not, and any personal property provided in residences, that were acquired for low- and moderate-income housing purposes, with any source of funds.
- Funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing.
- Loan or grant receivables, including any loan or grant receivable from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income.
- Rents and payments from operations, including a stream of rents or other payments from housing tenants or operators of low- and moderate-income housing.
- Amounts owed to the Low and Moderate Income Housing Fund (“LMIHF”), meaning:
 - Repayment of amounts previously borrowed from, or owed to, the LMIHF (*i.e.*, to make Supplemental Educational Revenue Augmentation Fund (“SERAF”) payments in prior years), repayment of which had been deferred as of the effective date of AB1X 26, are considered housing assets. The repayments can only be made pursuant to a schedule that must be approved by the Oversight Board. The repayments cannot start before FY 2013-14 and the maximum annual repayment is strictly limited by statutory formula. The repayments related to the LMIHF must be made before specified loan repayments to the city.
- Mixed-use assets, where a development includes both affordable housing and other types of property, determined by the following process:
 - The Oversight Board determines if this mixed use property should remain intact or be split into affordable housing and non-affordable housing components. AB 1484 leaves to the Oversight Board (subject to DOF review) the decision on whether to make an allocation and, if so, how to accomplish this allocation. The legislation directs the Oversight Board to consider the overall value to the community as well as the benefit to taxing entities of keeping the mixed use development intact or dividing the property in making its decision. The legislation also provides that the disposition of mixed assets may be accomplished by a revenue sharing arrangement as approved by the Oversight Board on behalf of the taxing entities.
- Housing Bond Proceeds, determined as follows:
 - Housing bond proceeds from bonds issued prior to January 1, 2011, for affordable housing purposes and secured by a pledge of LMIHF, remaining after satisfaction of enforceable obligations approved on a ROPS (the “Excess Housing Bond Proceeds”), are considered housing assets. The city must provide notice to the Successor Agency of any designations of use or commitments of funds from Excess Housing Bond Proceeds at least 20 days before the deadline for submission of the ROPS to the Oversight Board (**August 10, 2012** being the first such date).

Submission of ROPS III (January 1, 2013 to June 30, 2013)

By **September 1, 2012**, ROPS III (for January 1, 2013 to June 30, 2013) must now be approved by the Oversight Board and submitted to DOF and the County Auditor-Controller. It is no longer required that the ROPS be certified by the County Auditor-Controller prior to submission to the Oversight Board for approval. However, the County Auditor-Controller may object to items and funding sources on a future ROPS, before or after the ROPS is submitted to the Oversight Board but no later than 60 days prior to the relevant RPTTF distribution. If an Oversight Board disputes the objection, it may refer the dispute to DOF for final determination.

The city faces a \$10,000/day fine for every day the ROPS is late and the administrative cost allowance for the Successor Agency is reduced by 25% if the ROPS is not submitted within ten (10) days of the deadline. The civil penalty is paid to the County Auditor-Controller for allocation to the taxing entities. As a result of the timelines imposed under the new law, the Oversight Board must review and approve ROPS III in July or August in order for the Successor Agency to comply with the required due dates.

Due Diligence Review of Unencumbered Cash Balances and Payment

The new law creates a new “due diligence” process to determine the amount of unobligated redevelopment funds or available cash assets and to disburse those funds to the taxing entities over the next year. This due diligence review process, and the Oversight Board’s involvement, will continue until April 2013 and will require a number of meetings.

In order to determine the amount of unobligated former redevelopment funds, each Successor Agency is required to employ a licensed accountant approved by the County Auditor-Controller and with expertise and experience in local government accounting to conduct a due diligence review. The first review is of the LMIHF and the second review includes all remaining redevelopment funds. Alternatively, the Successor Agency may use the County Auditor-Controller’s audit, with the concurrence of Oversight Board, to satisfy the due diligence review requirement. The new law also postpones the due date for the County Auditor-Controller’s audit of each redevelopment agency from July 1, 2012, to October 1, 2012.

The Oversight Board has a significant role in this new due diligence review process. The law establishes a timeline for completion of the reviews by the Successor Agency, approval of the reviews by the Oversight Board and DOF, and a process to disburse any unobligated funds to the taxing entities.

The Oversight Board must review the due diligence review or County Auditor-Controller’s audit for both categories of funding, convene a public comment session, and have a separate meeting at least five (5) days after the public comment session to approve a determination of the amount of cash and cash equivalents available for disbursement to taxing entities from these funds. The mandatory timeline for this process is set forth in the attached schedule of AB 1484 milestones.

FINDING OF COMPLETION

After the due diligence review and determination of the amount of cash and cash equivalents available for disbursement to taxing entities as described above, the Successor Agency submits the Oversight Board's determination of the amounts available for allocation to the taxing entities to the DOF. Upon receipt of notification from the DOF of approval of the determination, the Successor Agency is required to transfer the funds to the County Auditor-Controller. The County Auditor-Controller will disburse the funds to the taxing entities and report the payments to DOF.

If the Successor Agency does not transfer the unobligated funds within the required timeframes, the DOF and the County Auditor-Controller can offset sales and property tax distributions to the sponsoring entity or city to recover any outstanding funds.

Upon full payment of the unobligated funds, DOF then issues a Finding of Completion to the Successor Agency (assuming that the Successor Agency has made the ROPS I Payments described earlier) within five (5) days of receiving a report from the County Auditor-Controller that the unobligated funds have been disbursed to the taxing entities. Upon the issuance of a Finding of Completion, several post compliance provisions apply, as described below:

Long-Range Property Management Plan

Successor Agencies may retain real property owned by the former redevelopment agency, upon the Finding of Completion and approval of a long range property management plan. The Finding of Completion entitles Successor Agencies to submit a long-range property management plan governing the disposition and use of former redevelopment agency property to the Oversight Board and DOF for approval. Permissible uses of property include retention for governmental use; retention for future development; sale of property; or use of the property to fulfill enforceable obligations. If a property is to be used for future development, it transfers to the city. If a property is to be sold or generates revenues, the proceeds/revenues are distributed to taxing entities. Consequently, the Successor Agency may not be able to dispose of the real property until completion of the due diligence review process and approval of a long range property management plan. Long range property management plans cannot be submitted for approval until the Successor Agency has received a Finding of Completion from DOF. Successor Agencies have six (6) months following receipt of a Finding of Completion to submit a plan. The due diligence process and issuance of a Finding of Completion by DOF, if applicable, should be completed by April 2013.

Reinstatement of Loans

Following receipt of a Finding of Completion, the Oversight Board may authorize the Successor Agency to repay the city for loans it made to the former redevelopment agency. Loan agreements entered into between the former redevelopment agency and the city are deemed to be enforceable obligations if the Oversight Board makes a finding that the loan was for legitimate redevelopment purposes. As enforceable obligations, the loan repayments will be listed on the ROPS. Loan amounts must be recalculated back to their inception at the LAIF interest rate, and, going forward, must not exceed the LAIF rate. Moreover, no loan repayments are allowed until fiscal year 2013-14 and must first be used to retire outstanding amounts borrowed and owed to

the former redevelopment agency for purposes of the SERAF payment. In addition, 20% of any repayment amount would have to be set aside for affordable housing.

Use of Excess Bond Proceeds

Under AB 1484, following receipt of a Finding of Completion, a Successor Agency is authorized to spend excess bond proceeds (proceeds not already committed to satisfy approved enforceable obligations) from bonds issued prior to 2011. Such expenditures of excess pre-2011 bond proceeds are considered enforceable obligations to be separately listed on the ROPS submitted by the Successor Agency. If such excess bond proceeds cannot be spent in a manner consistent with the bond covenants, then those proceeds are to be used to defease or purchase bonds.

ROPS APPROVAL PROCEDURE BEYOND ROPS III

After the approval of ROPS III (January 1, 2013 to June 30, 2013), a Successor Agency will be required to submit an Oversight Board-approved ROPS to the County Auditor-Controller and the DOF at least ninety (90) days prior to the semiannual RPTTF property fund distribution (*i.e.*, October 4 for the January distribution and March 3 for the June distribution). The Successor Agency will be subject to penalties if the deadlines are not met. As described earlier, the County Auditor-Controller has a revised process to object to ROPS items.

OTHER CHANGES

DOF Review of ROPS

AB 1484 greatly expands the review period and authority of the DOF and significantly changes the ROPS review and approval process. Under AB1X 26, the DOF had a period of three (3) business days to request a review of an Oversight Board action. AB 1484 extends the deadline to request review to five (5) business days after affirmative notice is provided to DOF. DOF is required to make its determination “of the enforceable obligations and the amounts and funding sources of the enforceable obligations” no later than forty-five (45) days after the ROPS has been submitted by a Successor Agency. DOF also has the authority to eliminate or modify any item on the ROPS being reviewed prior to DOF approval.

A Successor Agency may request additional review by DOF and an opportunity to meet and confer on disputed items, but such a request must be made within five (5) business days of the Successor Agency’s receipt of a DOF determination. DOF is then required to notify a Successor Agency and the County Auditor-Controller of its review at least fifteen (15) days before the date of the property tax distribution (*i.e.*, by December 18 for the January 2 distribution and May 17 for the June 1 distribution).

A Successor Agency and Oversight Board may approve amendments to a ROPS to reflect the resolution of a dispute between the DOF and a Successor Agency, but such amendments will not affect a past allocation of property taxes or create a liability to any affected taxing entity with respect to past allocations.

Penalties

Failure to approve and submit a timely ROPS may result in the assessment of various penalties to a Successor Agency and/or to the city. If a Successor Agency does not timely submit a ROPS pursuant to the deadlines set forth in AB 1484, the city may be subject to a \$10,000 per day civil penalty for each day the ROPS is delinquent. In addition, failure of a Successor Agency to submit a ROPS within ten (10) days of the deadline (*i.e.*, by October 14 for the January 2 distribution and March 13 for the June 1 distribution) may result in a 25% reduction of a Successor Agency's maximum administrative cost allowance for the period covered by the delinquent ROPS.

If a Successor Agency fails to submit an Oversight Board approved ROPS pursuant to the requirements of AB 1484 within five (5) business days after the April 1 and October 1 dates on which the County Auditor-Controller releases the estimated property tax allocations from the RPTTF, DOF may determine if any amount should be withheld to pay enforceable obligations. Funds not withheld are to be distributed to affected taxing entities as residual. If DOF orders the County Auditor-Controller to withhold funds to pay for a Successor Agency's enforceable obligations, those funds will only be disbursed to the Successor Agency upon approval of a ROPS.

Definition of "City"

AB 1484 specifically defines "city" to include component units and entities controlled by the city. This definition may affect prior asset transfers and agreements between cities and former redevelopment agencies.

CHANGES IN OVERSIGHT BOARD COMPOSITION AND ROLES.

Composition

Under AB1X 26, one member of the Oversight Board is to be selected by the largest special district. Disputes arose in several jurisdictions related to making that determination and the AB1X 26 did not provide for an arbiter of the dispute. Under AB 1484, the County Auditor-Controller is given the authority to determine which special district is the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency. In addition, the bill provides clarification regarding the member of the Oversight Board appointed by the Mayor to represent the employees of the former redevelopment agency.

Staffing

Under the AB1X 26, a Successor Agency is charged with providing staffing to its Oversight Board. Under AB 1484, the Oversight Board can direct a Successor Agency to provide additional legal or financial advice independent from Successor Agency staff and the Oversight Board is also authorized to contract with the county or other public or private agencies for administrative support.

Powers

Under the AB1X 26, a Successor Agency was guaranteed an administrative cost allowance of not less than \$250,000 for each fiscal year. Under AB 1484, the Oversight Board may reduce a

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Successor Agency's administrative cost allowance below \$250,000. AB 1484 further provides that Oversight Board decisions on matters within its purview supersede decisions of a Successor Agency or Successor Agency staff. AB 1484 also prohibits Oversight Boards from restoring funding for an enforceable obligation deleted or reduced by DOF or reestablishing a loan between the Successor Agency and the city.

Immunities

Oversight Board members have the same immunities applicable to public entities and public employees when exercising the authority granted to the Oversight Board under AB1X 26 and AB 1484.

Process for and Review of Oversight Board Actions by DOF

AB 1484 requires that all actions taken by an Oversight Board be adopted by resolution. A Successor Agency must notify the County Administrative Officer, the County Auditor-Controller, and the DOF, at the same time the Successor Agency transmits a proposed action to the Oversight Board for its approval. All actions taken by an Oversight Board require transmittal of notice to the DOF by electronic means in a manner of DOF's choosing. Under AB1X 26, DOF had a period of three (3) business days to request review of Oversight Board actions. AB 1484 extends that time for DOF to request review of an action to five (5) business days after it receives affirmative notice. Actions of the Oversight Board are deemed effective if DOF does not request a review within that period. If DOF requests a review of a particular Oversight Board action, DOF has forty (40) calendar days to approve the action or return it to the Oversight Board for its reconsideration, giving DOF an additional thirty (30) days to review actions of the Oversight Board beyond the deadline originally in the Dissolution Act. For Oversight Board actions related to the disposition of real property and housing assets, DOF may extend the review period for up to sixty (60) calendar days.

SUCCESSOR AGENCIES' LEGAL STATUS AND POWER TO CREATE ENFORCEABLE OBLIGATIONS FOR PURPOSE OF WINDING DOWN

The status of Successor Agencies as separate legal entities has been clarified. As such, the Successor Agency may sue and be sued. AB 1484 has also clarified that Successor Agencies have the authority to create enforceable obligations to conduct the wind down activities of the dissolved redevelopment agencies, including hiring staff, acquiring necessary professional administrative services and legal counsel and procuring insurance.

AB 1484: SCHEDULE OF IMPORTANT DATES

<u>No Later Than:</u>	<u>Task:</u>
July 9:	County Auditor-Controller notifies successor agency of amounts of funds owing taxing entities based upon Fall/Winter 2011/12 property tax payments.
July 12:	Successor agency must make payment to County Auditor-Controller for deposit into RPTTF and distribution to taxing entities.
July 16:	County Auditor-Controller distributes money received from successor agencies to taxing entities. Monies received after July 12 date distributed within five (5) days of receipt.
July 18:	City sales tax payment suspended if successor agency does not make July 12 payment.
August 1:	Successor housing entity must submit to DOF on a DOF approved form a list of housing assets that contains an explanation of how assets meet criteria set forth in the law. DOF may object to any of the assets within thirty (30) days. If after meet and confer, DOF continues to object, asset must be returned to the successor agency.
September 1:	ROPS for January 1, 2013 through June 30, 2013 must be submitted electronically to DOF <u>after</u> oversight board approval. DOF makes determinations within forty five (45) days. Within five (5) days of determination, successor agency may request additional review and meet and confer.
October 1:	Successor agency submits to oversight board, County Auditor-Controller, State Controller, and DOF results of the review of the LMIHF.
October 1:	County Auditor-Controller completes agreed-upon procedures audit of each former redevelopment agency. Auditor-controller provides estimate of property tax payments to successor agency for upcoming six (6) month period.
October 1:	Last date for County Auditor-Controller to object to items and/or funding sources for January 1, 2013, through June 30, 2013, ROPS.
October 8:	Oversight Board must convene a public comment session at least <u>five (5) days before</u> it holds approval vote regarding determination of the amount of cash and cash equivalents available for disbursement of taxing entities.
October 15:	Oversight Board must review, approve and transmit LMIHF audit to DOF and County Auditor-Controller.
November 9:	DOF completes review of LMIHF audit and reports findings, determinations, and any decision to overturn Oversight Board decision to allow retention of successor agency assets.

Joint Cities/County Memorandum to All Santa Clara County Oversight Boards
Re: Changes in RDA Dissolution Law – AB 1484
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- November 16: Successor agency may request meet and confer to resolve disputes with DOF findings on LMIHF audit. DOF must confirm or modify its determination and decisions within thirty (30) days.
- November 28: Successor agency to transfer LMIHF funds to County Auditor-Controller. City sales tax/property tax may be offset for unfunded amounts.
- December 15: Successor agency submits to Oversight Board, County Auditor-Controller, State Controller, and DOF results of the review of all other fund and account balances by licensed accountant.
- Dec/Jan: Oversight Board must convene a public comment session at least five (5) days before it holds approval vote regarding determination of the amount of cash and cash equivalents available for disbursement of taxing entities.
- January 2: Distribution from RPTTF by County Auditor-Controller.
- January 15: Oversight Board must review, approve, and transmit other funds audit to DOF, County Auditor-Controller.
- March 3: ROPS for July 1, 2013 through December 31, 2013 must be submitted electronically to DOF after oversight board approval. DOF makes determinations within forty-five (45) days. Within five (5) days of determination, successor agency may request additional review and meet and confer.
- April 1: DOF completes review of other funds audit and reports findings, determinations, and any decision to overturn Oversight Board decision to allow retention of successor agency assets.
- April 1: County Auditor-Controller provides estimate of property tax payments to successor agency for upcoming six-month period.
- April 2: Last date for County Auditor-Controller to object to items and/or funding sources for July 1, 2013, through December 31, 2013, ROPS.
- April 6: No later than five (5) days after receiving DOF determination on other funds audit, successor agency may request meet and confer to resolve disputes with DOF findings. DOF must confirm or modify its determination and decisions within thirty (30) days.
- April 10: Successor agency to transfer other “cash and assets” audit payment to County Auditor-Controller if meet and confer process complete. City sales tax/property tax may be offset for unfunded amounts.
- June 1: Distribution from RPTTF by County Auditor-Controller.