



## **Staff Report**

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RESOLUTION AUTHORIZING THE BELMONT REDEVELOPMENT AGENCY PARTICIPATION AS A PLAINTIFF IN THE PROPOSED CALIFORNIA REDEVELOPMENT ASSOCIATION LAWSUIT AGAINST THE STATE OF CALIFORNIA REGARDING THE STATE BUDGET BALANCING TAKING OF \$ 2.3 MILLION IN LOCAL BELMONT PROPERTY TAX

Honorable Chair and Board Members:

### **Summary**

Last month, the State Legislature voted to take \$2.05 billion statewide from redevelopment agencies this year and next, and the Governor signed that legislation. The Belmont Redevelopment Agency share of this loss is \$ 2.3 million dollars.

The California Redevelopment Association (CRA), of which Belmont is a member, believes this action is unconstitutional, and their Board of Directors has authorized filing of a suit against the State to prevent this taking of our funds. The CRA was successful in a previous suit against the State last year when it tried to take \$350 million of redevelopment funds. CRA is soliciting plaintiff's redevelopment agencies for this next lawsuit.

This report and attached resolution, if approved, would authorize Belmont Redevelopment Agency participation in the CRA lawsuit

### **Background**

#### ***California Redevelopment Association***

Every City in the state with a redevelopment agency will suffer material harm from this State action. In July, the State Legislature passed a devastating take of \$2.05 billion in redevelopment funds as part of a \$30 billion package that allegedly will close most of the State's current budget deficit. The State intends to take \$1.7 billion in FY 2009-10 and another \$350 million in FY 2010-11, which will be deposited in county "Supplemental" Educational Revenue Augmentation Funds (SERAF) to be distributed to meet the State's Prop 98 obligations to schools. The Legislature also voted to borrow \$1.9 billion from local governments under Prop. 1A emergency borrowing authority. The Governor signed all bills in the budget package.

In response to the unconstitutional taking of redevelopment funds, CRA's legal team has begun preparation of another lawsuit to challenge the State's action.

A table of each agency's estimated redevelopment fund loss for the current fiscal year is posted on the CRA website, [www.calredevelop.org](http://www.calredevelop.org), under Hot Topics.

### **Provisions Taking \$2.05 Billion from Local Agencies**

The provisions implementing the \$2.05 billion taking of redevelopment tax increment are contained in AB 26 4x and are summarized as follows:

The structure for the redevelopment take is similar to that in last year's budget trailer bill, AB 1389, which attempted to take \$350 million from local communities. The Department of Finance will determine each agency's ERAF payment by November 15 of each year. The formula for calculating the amount each agency must surrender is based half on net tax increment (net of pass-throughs) and half on gross tax increment. The legislation states that the calculations for FY 2009-10 and FY 2010-11 both will be based for some unknown reason on old State Controller's Office Tax Increment data for FY 2006-07. (The table CRA posted on their website used more current 2007-08 data.)

Payments are due by May 10 of the applicable year. Agencies that do not make their payment by the May 10 deadline suffer the "death penalty" and must increase their housing set-aside to 25%.

If an agency is unable to pay its required amount because of existing indebtedness, it must adopt a resolution by December 31 of the relevant year. The legislative body of the redevelopment agency must report to the county auditor by March 1 how it intends to fund the payment.

The agency can use any available funds to make the SERAF payment. For FY 2009-10, the agency may "suspend" all or part of the required allocation to its low- and moderate-income Housing Fund in order to make the payment. The Housing Fund must be repaid by June 30, 2015. If the agency fails to repay the Housing Fund, the required allocation of tax increment to the Housing Fund is increased to 25% for as long as the project area continues to receive tax increment.

A separate, but overlapping (and confusing), section of the bill permits an agency to borrow the amount required to be allocated to the Housing Fund in order to make the SERAF payment. This provision apparently applies to fiscal years 2009-10 and 2010-11. It requires a finding that there are insufficient other funds to make the SERAF payment. (There is no parallel requirement to make findings for the "suspension" in FY 2009-10.) Amounts "borrowed" from the current year allocation to the Housing Fund under this section must also be repaid by June 30, 2015.

In an effort to get around the finding in CRA's successful lawsuit against the State overturning

the ERAF shift last year, the funds must be deposited into a county Supplemental ERAF and distributed to K-12 school districts located in any project area of the agency in proportion to the average daily attendance of the district. The funds distributed to schools from the SERAF must be used to serve pupils living in the project area or in housing supported by redevelopment funds. The total amount of SERAF funds received by a school district is deemed to be local property taxes and will reduce dollar-for-dollar the State's Prop 98 obligations to fund education – the real purpose of the legislation.

The funds in the Supplemental ERAF can not go to cities and counties to compensate them for the Vehicle License Fee swap and Triple Flip as is the case under ERAF.

An agency that fails to make payments to ERAF must increase the set-aside for their Housing Fund to 25% for the remainder of the redevelopment project area's life, in addition to suffering the "death penalty."

The local legislative body may lend the ERAF payment to the agency and in that case, the agency is authorized to repay the legislative body from tax increment. The legislative body is also authorized to make the payment on behalf of the agency. The provisions of existing law which permit a joint powers authority to sell bonds and loan the proceeds to redevelopment agencies in order to make ERAF payments are also available for the 2009-10 and 2010-11 payments.

Agencies are entitled to a one-year extension on their AB 1290 time limits if they make timely ERAF payments. This extension does not trigger pass-through payments under Health and Safety Code Section 33607.7.

The obligation to make the ERAF payment is subordinate to obligations to repay bonds and other indebtedness. An agency may pay less than the amount required if it finds that it is necessary to make payments on existing obligations required to be committed, set-aside or reserved by the agency during the applicable fiscal year. An agency that intends to pay less than the required amount in order to pay existing obligations must adopt a resolution prior to December 31, 2009, listing the existing indebtedness and the payments required to be made during the applicable fiscal year.

An agency failing to timely make its ERAF payment – even if it must do so to pay existing obligations – is subject to what we call the "death penalty." An agency subject to the death penalty may not adopt a new redevelopment plan, amend an existing plan to add territory, issue bonds, further encumber funds or expend any moneys derived from any source except to pay pre-existing indebtedness, contractual obligations and 75% of the amount expended on agency administration for the preceding fiscal year. This penalty would last until the required payments have been made. CRA believes this entire scheme violates Article 16, Section XVI of the State Constitution because funds would not flow to redevelopment agencies for the purpose of paying

debts and obligations. CRA believes the use of redevelopment funds for non-redevelopment purposes is unconstitutional, and CRA expects it would prevail again in court.

### **California Redevelopment Agency Solicits Lawsuit Plaintiffs**

The CRA believes this “State Taking” is unconstitutional, and its Board of Directors has authorized filing suit against the State to prevent this taking of your funds. CRA wants to include agencies as plaintiffs for this next lawsuit. They have issued a solicitation of City redevelopment agency interest in being a plaintiff. Every agency in the State will suffer harm from this action, and those with certain characteristics will make the strongest plaintiffs for the lawsuit. Described below are the fact patterns CRA thinks would be most helpful in making the case that AB 26 4x is unconstitutional:

1. **An agency that will not be able to make the ERAF payment because of pre-existing obligations to pay bonded or contractual indebtedness (i.e., an obligation to pay money).**
2. An agency that will be unable to perform contractual obligations because of the requirement to transfer funds to ERAF. This could include a DDA or OPA with a developer or property owner where the agency has a duty to acquire land or remediate hazardous materials, or a cooperation agreement with another public agency where the redevelopment agency has a duty to construct public improvements.
3. An agency that will have to use tax increment from one project area to make the ERAF payment allocable to another project area. The Director of the Department of Finance spreads the ERAF take among redevelopment agencies on an agency-wide basis, not on a project area basis. This could lead to agencies using tax increment from one project to pay the ERAF transfer allocable to a different project.
4. An agency with a project that has no K-12 schools located in the project area, or few or no residents in the project area.
5. **An agency with a project that has a basic aid school district within its project area.**
6. **An agency with a project having 2 or more school districts where a very large district has only a small portion of the district within the project area.**
7. Any other fact patterns showing a disproportionate distribution of ERAF funds among school districts.
8. An agency with a dollar cap that could be exceeded because the legislation does not exempt payments to ERAF from the dollar cap.

9. Any other facts showing extreme hardship caused by the ERAF payment.

The Belmont RDA would likely meet at least criteria 1, 5 and 6 above. Becoming a plaintiff in CRA's lawsuit will not require us to share in the expenses of the lawsuit or provide legal staff for preparation and presentation of the suit. CRA will front the expenses of the lawsuit and use its existing legal team. We will, however, need to expend some staff and attorney time to coordinate our role in the lawsuit with our legal team. The CRA contact person is Brent Hawkins at McDonough Holland & Allen at bhawkins@mhalaw.com or (916) 444-3900. The McDonough Holland firm is also legal council to the Belmont RDA.

**General Plan/Vision Statement**

N/A

**Fiscal Impact**

The Belmont Redevelopment agency gross tax increment is \$ 9.1 mil dollars. Senior obligations to the County of San Mateo (\$ 2.1 mil), pass-throughs to the schools (\$2.2 mil), debt service on outstanding senior bonds (\$ 1.2 mil), 20% housing set aside (\$ 1.4 mil) and administrative costs (\$ .6 mil) deducted from the gross tax increment leave \$ 1.5 mil in net tax increment funding for debt service on outstanding subordinated bonds \$ .6 mil) and redevelopment projects each year. The State took \$ 1.4 mil in the current year and another \$ .3 mil next year. In the current year, the State actually took \$ 900,000 more than we have available. This is not the first time the State has helped themselves to **local property tax** to balance the State budget. They began doing this in FY 2004, but the amounts were much smaller.

A nuance lost in this loss is that our pass-through agreements to schools allow us to offset losses if there is a State take of RDA, but to do so is to create an instant new deficit in the local school budgets at a time when they are also dealing with impacts from the State budget process. They do not need to be hit again with a second impact from the State budget. We can borrow from our low/mod housing money, but as a practical matter, we may not have the money to pay back the loan, especially if the State raids continue.

Countywide, the State RDA take ripped \$ 27.3 mil of **local property tax** out of City RDAs in San Mateo County. Belmont's downtown revitalization efforts have essentially been gutted in the short term.

**Public Contact**

Posting of City Council agenda

**Recommendation**

Direct staff to put a resolution on the August 11<sup>th</sup> RDA agenda authorizing the Belmont RDA Executive Director and Agency legal council to join the CRA lawsuit as a plaintiff.

**Alternatives**

1. Take no action

**Attachments**

- A. Resolution

Respectfully submitted,

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Jack R. Crist  
Executive Director

**Staff Contact:**

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**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF BELMONT  
PARTICIPATION AS A PLAINTIFF IN THE PROPOSED CALIFORNIA REDEVELOPMENT  
ASSOCIATION LAWSUIT AGAINST THE STATE OF CALIFORNIA REGARDING THE  
STATE BUDGET BALANCING TAKING OF \$ 2.3 MILLION IN LOCAL BELMONT  
PROPERTY TAX**

**WHEREAS**, the current economic crisis has placed cities under incredible financial pressure and caused them to make painful budget cuts, including layoffs and furloughs of city workers, decreasing maintenance and operations of public facilities, and reductions in direct services to keep spending in line with declining revenues; and

**WHEREAS**, since the early 1990s the State government of California has seized over **\$10 billion** of city property tax revenues Statewide, now amounting to over \$900 million each year to fund the State budget even after deducting public safety program payments to cities by the State; and

**WHEREAS**, since the early 1990s the State government also has seized \$1.04 billion of redevelopment tax increment Statewide, and the Governor and Legislature are now considering seizing \$350 million each year for three years, beginning in the current fiscal year; and

**WHEREAS**, on April 30, 2009, in the case of *CRA v. Genest*, the Sacramento Superior Court found similar efforts by the State to seize redevelopment tax increment for the State general fund to be in direct violation of Article XVI, Section 16 of the State Constitution, added by the voters in 1952 as Proposition 18, which requires that tax increment be used exclusively for the benefit of redevelopment project areas; and

**WHEREAS**, in his proposed FY 2009-10 budget the Governor has proposed transferring \$1 billion of local gas taxes and weight fees to the State general fund to balance the State budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring public; and

**WHEREAS**, the loss of almost all of cities' gas tax funds will seriously compromise cities' ability to perform critical traffic safety related street maintenance, possibly including, but not limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk and curb ramp maintenance and repair, and more; and

**WHEREAS**, cities and counties maintain 81% of the State road network while the State directly maintains just 8%, and according to a recent Statewide needs assessment<sup>1</sup> on a scale of zero (failed) to 100 (excellent), the Statewide average pavement condition index (PCI) is 68, or "at risk."

**WHEREAS**, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our State overwhelmingly imposed restrictions on the State's ability to do what the Governor has proposed and the

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<sup>1</sup> *California Statewide Local Streets and Roads Needs Assessment*, Nichols Consulting Engineers, Chtd. (2008), sponsored by the League of California Cities, California State Association of Counties and County Engineers Association of California.

Legislature is considering, and any effort to permanently divert the local share of the gas tax would violate the State constitution and the will of the voters.

**NOW, THEREFORE, BE IT RESOLVED THAT THE REDEVELOPMENT AGENCY BOARD OF THE CITY OF BELMONT** hereby directs the City Attorney and Redevelopment Agency Attorney to take all necessary steps to cooperate with the League of California Cities, California Redevelopment Association, other cities, counties and redevelopment agencies in supporting litigation against the State of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the redevelopment tax increment and the City’s share of funding from the Highway Users Tax Account (HUTA), also known as the “gas tax,” to fund the State general fund; and

**RESOLVED FURTHER,** that the Agency Executive Director shall send this Resolution with an accompanying letter from the Agency Chair to the Governor and each of the City’s State legislators, informing them in the clearest of terms of the City’s adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 18 (1952), Proposition 5 (1974) and Proposition 2 (1998) concerning the proper use and allocation of the redevelopment tax increment and the gas tax; and

**RESOLVED FURTHER,** that a copy of this Resolution shall be sent by the Agency Executive Director to the League of California Cities, the California Redevelopment Association, the local chamber of commerce, and other community groups whose members are affected by this proposal to divert funds from vital local services and projects.

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I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Redevelopment Agency of the City of Belmont at a regular meeting thereof held on August 11, 2009 by the following vote:

AYES, DIRECTORS: \_\_\_\_\_

NOES, DIRECTORS: \_\_\_\_\_

ABSTAIN, DIRECTORS: \_\_\_\_\_

ABSENT, DIRECTORS: \_\_\_\_\_

\_\_\_\_\_  
Secretary, Redevelopment Agency

APPROVED:

\_\_\_\_\_  
Chair, Redevelopment Agency