

NOTICE AND CALL OF SPECIAL MEETING
AND
AGENDA

CITY OF HAWAIIAN GARDENS

SPECIAL JOINT MEETINGS
CITY COUNCIL
COMMUNITY REDEVELOPMENT AGENCY

MONDAY, AUGUST 8, 2011 AT 3:00 P.M.

NOTICE IS HEREBY GIVEN that I, SUZANNE UNDERWOOD, City Clerk/ Records Manager of the City of Hawaiian Gardens hereby give notice and certify that Mayor/Chairmember Michael Gomez has called Special Joint Meetings of the City Council and, Community Redevelopment Agency of the City of Hawaiian Gardens to be held on Monday, August 8, 2011, commencing at 3:00 p.m., at the City of Hawaiian Gardens, City Council Chambers, Pioneer Blvd., Hawaiian Gardens, CA 90716.

ADA Information: The City of Hawaiian Gardens complies with the provisions of the Americans with Disabilities Act (ADA). Anyone needing special assistance please contact the City Clerk's Department at **(562) 420-2641**, at least one (1) business day prior to the meeting so that we may accommodate you.

Bilingual Information: Anyone needing a bilingual Spanish translator for **ORAL COMMUNICATION ONLY**, please contact the City Clerk's Department at **(562) 420-2641**, at least one (1) business day prior to the meeting so that we may accommodate you.

PLEASE TURN OFF YOUR PAGERS AND CELL PHONES DURING THE MEETING.

CALL TO ORDER

ROLL CALL

MAYOR/CHAIRMEMBER	MICHAEL GOMEZ
MAYOR PRO TEM/VICE CHAIRMEMBER	MICHIKO A. OYAMA-CANADA
COUNCILMEMBER/DIRECTOR	BARRY BRUCE
COUNCILMEMBER/DIRECTOR	REYNALDO O. RODRIGUEZ
COUNCILMEMBER/DIRECTOR	VICTOR FARFAN

ORAL COMMUNICATIONS – ITEMS ONLY ON THE AGENDA

This is the time reserved for members of the public wishing to speak on items on the agenda only. This period will be limited to three (3) minutes per speaker, maximum time allocated is fifteen (15) minutes. Upon conclusion of Oral Communications, the City Council, or City Staff, at the direction of the Mayor, may respond to any questions or statements that were presented by members of the public. The City Council is prohibited by law from discussing or taking any action on items presented during Oral Communications that are not on the agenda.

A. ORDINANCES

1. CONDUCT FIRST READING AND INTRODUCE ORDINANCE NO. 540, TO AUTHORIZE THE CITY TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF HAWAIIAN GARDENS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS.

ORDINANCE NO. 540

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AUTHORIZE THE CITY TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF HAWAIIAN GARDENS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS.

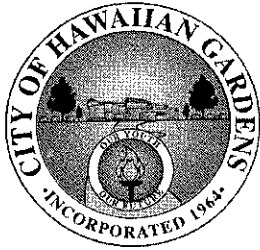
COUNCIL ACTION: Waive further reading, read by title only and introduce Ordinance No. 540. Designate the City Attorney to prepare a summary for Ordinance No. 540.

B. ADJOURNMENT

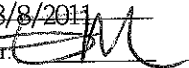
Adjourn to the next Meeting to be held on **TUESDAY, AUGUST 9, 2011**
AT 6:00 P.M.

THIS NOTICE IS HEREBY DATED ON THIS 4TH DAY OF AUGUST 2011.


SUZANNE UNDERWOOD, CITY CLERK



**CITY OF HAWAIIAN GARDENS
CITY COUNCIL
STAFF REPORT**

Agenda Item No.: A-1
Meeting Date: 8/8/2011
City Administrator: 

TO: Honorable Mayor and Members of the City Council
BY: Ernesto Marquez, City Administrator
DATE: August 8, 2011

SUBJECT: ORDINANCE NO. 540, AUTHORIZING THE CITY TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAWAIIAN GARDENS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS.

SUMMARY

This item is to permit the City Council to make a determination whether the City should participate in the "Alternative Voluntary Redevelopment Program" and make the required payments to the State of California and continue redevelopment activities under AB X1 27. It is also to allow the City Council to introduce and give first reading of an Ordinance authorizing the City to participate in the Program to permit the continued existence and operation of the Agency. Staff also is seeking the City Council's delegation to the City Attorney and City Administrator the authority to file an appeal of the California Department of Finance's determination of the City's FY 2011-12 AB X1 27 payment amount, if warranted, and to direct staff to propose necessary budget adjustments and prepare transfer agreement between the Agency and City for consideration at a future meeting.

BACKGROUND

The City and Agency have carried out an active and successful redevelopment program since the activation of the Agency. However, the continuing ability of the Agency to eliminate blight and create economic development opportunities has been threatened by the Legislature's adoption of the recent budget package which, in part, solves State budget problems by taking revenue from redevelopment agencies. AB X1 26, which was signed by the Governor of California on June, 29, 2011, immediately suspends most redevelopment agency activities and, among other things, prohibits redevelopment agencies from incurring indebtedness or entering into or modifying contracts. Then, on October 1, 2011, AB X1 26 dissolves all existing redevelopment agencies and

designates successor agencies as successor entities to the former redevelopment agencies, and imposes numerous requirements on the successor agencies and subjects successor agency actions to the review of oversight boards established under the new law.

AB X1 27 was signed by the Governor concurrently with AB X1 26. This companion law establishes an Alternative Voluntary Redevelopment Program whereby a redevelopment agency will, notwithstanding AB X1 26, be authorized to continue to exist and carry out the provisions of the Redevelopment Law. To "opt into" this "voluntary" alternative program, the City must adopt an ordinance evidencing the City's compliance with the onerous exactions imposed by the Legislature. To restore the ability to continue redevelopment activities, the City must make specified annual payments to the County Auditor-Controller on a schedule, and the Auditor-Controller will then allocate the payments to special districts and educational entities. The amount to be paid in FY 2011-12 is the Agency's proportionate share of \$1.7 billion, as determined by the State of California Department of Finance pursuant to a formula specified in AB X1 27. That determination, which was required to be made on August 1, 2011, is subject to appeal by the City within 15 days of the determination. This payment obligation is an ongoing obligation of the City in subsequent years. For FY 2012-13 and thereafter, the City is required to calculate its own payment amount, subject to audit by the Department of Finance, with the payments based on the Agency's proportionate share of \$400 million (with adjustments based on growth/decline of tax increment revenues, and with additional payments triggered if the Agency incurs new debt).

Thus, the Legislature has created a system where a city is liable for making continuing annual payments out of city funds in order for the agency to be able to continue its activities. AB X1 27 provides that a participating city and the redevelopment agency may enter into an agreement whereby the agency will transfer a portion of its tax increment to the participating city in an amount not to exceed the annual remittance required that year. Any tax increment funds transferred from the agency to the city are required to be spent only "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals."

If the City Council determines that it will not opt into the AB X1 27 Alternative Voluntary Redevelopment Program, the activities of the Agency will continue to be severely curtailed. Ultimately, the Agency will be dissolved as of October 1, 2011 and a number of "wind-down" activities must be undertaken by a successor entity. No further redevelopment activities could be undertaken and the assets of the Agency would be disposed of. The State Controller would have the authority to review, and potentially unwind, asset transfer transactions between the City and the Agency which occurred after January 1, 2011. In addition, AB X1 26 provides that except in very limited circumstances, the Agency could not repay amounts currently owed to the City. The "wind-down" activities of the Agency would be subject to the supervision of a new "Oversight Board" with the authority to give direction to City and Agency staff, and to usurp the existing authority of the City Council and Agency Board.

Copies of the legislation are available in the City Administrators Office.

ANALYSIS

At a threshold level, the City Council must determine whether to take the steps necessary to continue the activities of the Redevelopment Agency or allow the Agency to be dissolved.

This determination requires answers to the following questions:

1. Do the benefits of keeping the Agency in operation outweigh the costs and risks to the City of opting into the "voluntary" program?
 - a. The benefits of keeping the Agency in operation include:
 - i. Economic Development and associated opportunities;
 - ii. Completion of necessary public improvements, and
 - iii. Removal of blighted conditions
 - b. The cost to the City of making the payments are:
 - i. For FY 2011-2012: \$ 1,590,022
 - ii. For FY 2012-2013 (with annual payments continuing thereafter):
Estimated to be \$376,962
 - c. There are some significant risks to the City if it chooses to "opt into" the "voluntary" program. Those risks include:
 - i. The risk that the City will not have sufficient available funds in subsequent years to continue making the required payments, or that at some future time, the net benefits of making the payments will not exceed the actual cost of making those payments. If the City stops making the payments in future years, the provisions of Part 1.8 (prohibitions on Agency activities) and 1.85 (dissolution of the Agency) will be applicable to the Agency. In addition, Part 1.9 provides that the State will be entitled to an assignment of any rights of the City to any payment from the Agency to which the City is entitled for purposes of mitigating the fiscal impact to the State related to the failure of the City to make the annual payments.
 - ii. The risk that the Legislature makes changes to the program, or requires additional payments, in future years. For example, if the total amount paid by agencies in FY 2011-12 does not equal the \$1.7 billion anticipated by the State budget, this could trigger the need for additional exactions.
 - iii. The risk that the City will be unable to recover its payments to the State if AB X1 26 and AB X1 27 are ultimately invalidated by the courts.

2. Before it "opts into," the "voluntary" program, the City Council should consider whether the City will have the resources to make the annual payments required under AB X1 27.

a. What source will the City use to make the payment in the current fiscal year?

The source of funding would be the City's General Fund reserve. Currently the reserve is \$2,427,869. Note that this \$2.4 million does not include the reserve for contingencies in the amount of \$6.4 million, the amount set aside for Fedde Sports Complex, which is \$6 million, and the amount set aside for Capital Projects, which is \$515,139.

b. Will the Agency have sufficient funds to make transfers to the City in amounts not to exceed the City's payment amounts under a transfer agreement between the City and Agency?

For FY 2011-12, AB X1 27 authorizes the Agency to repay the City with the 20% Housing Set-Aside for 2011-12. The amount of Housing Funds available for reimbursement to the City is \$2,131,427.

The answers to the foregoing questions will help the City Council determine whether to "opt into" the "voluntary" program established by AB X1 27. If the City Council determines that the City will "opt into" the program, the first step in the process is to introduce the attached Ordinance. In addition, the City Council must direct staff to propose the City budget adjustments necessary to facilitate the required payment for FY 2011-12 and prepare a transfer agreement between the Agency and City.

The California Redevelopment Association and the League of California Cities believe that the redevelopment bills violate the State Constitution and other laws. They have already filed their litigation. Thus, the ordinance would limit the City's commitment to make the payments to net tax increment funds and other funds or assets that the Agency transfers to the City for this purpose. The City's general fund would not be pledged to make these payments, although it does not preclude the City from using general funds. The proposed ordinance further reserves all rights to challenge the validity of the legislation and it also reserves the right of the City Council to repeal the ordinance at any time in the future, in the City's sole discretion.

If the City Council determines not to participate in AB X1 27's voluntary program, the City Council should direct staff to start the actions necessary to comply with AB X1 26, and to bring those actions before the Agency Board and City Council as necessary.

In either case, staff requests that the City Council delegate to the City Administrator and City Attorney the authority to file an appeal of the Department of Finance's determination regarding the City's FY 2011-12 AB X1 27 payment amount, as the short time frame for appeal may not permit consideration at a future City Council meeting.

OPTIONS

1. Determine that the City and Agency will participate in the Alternative Voluntary Redevelopment Program.
2. Determine that the City and Agency will not participate in the Alternative Voluntary Redevelopment Program.
3. Delay making the determination, and direct staff to prepare additional information and analysis. In such case, direct staff, in the meantime, to start the actions necessary to comply with AB X1 26 and to bring those actions before the Agency Board and City Council as necessary.

FISCAL IMPACT

The source of funding would be the Housing Fund. The cost to the City of making the payments is \$1,590,022 this FY 2011-12.

For FY 2012-2013 the amount of \$376,962 is anticipated each year forward as this amount is what was required this year.

RECOMMENDATION

Staff recommends that the City Council consider the foregoing facts and analysis and determine that the City and Agency will participate in the Alternative Voluntary Redevelopment Program established by AB X1 27.

COUNCIL ACTION REQUIRED

If the City Council concurs, the appropriate motion would be to:

1. Agree to comply with Part 1.9 of Division 24 of the California Health and Safety Code and, introduce, read by title only and waive further reading of the ORDINANCE AUTHORIZING THE CITY TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAWAIIAN GARDENS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS, and direct the City Attorney to prepare a summary for publication;
2. Direct staff to prepare and present at a future City Council meeting the recommended adjustments to the City budget necessary to make the required AB X1 27 payment for FY 2011-12 and a transfer agreement between the City and Agency for reimbursement to the City by the Agency;

3. Delegate to the City Administrator and City Attorney the authority to file an appeal, if warranted, of the Department of Finance's determination of the amount of the City's required AB X1 27 payments for FY 2011-12.

ATTACHMENTS

Draft Ordinance

ORDINANCE NO. 540

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, CALIFORNIA, AUTHORIZING THE CITY TO PARTICIPATE IN THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF HAWAIIAN GARDENS, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS.

WHEREAS, the City Council of the City of Hawaiian Gardens (“City”) in 1973 approved and adopted the Redevelopment Plan for the 1973 Project Area (“Redevelopment Plan”) covering certain properties within the City (the “Project Area”); and

WHEREAS, the Hawaiian Gardens Community Redevelopment Agency (“Agency”) is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) (“CRL”); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills AB X1 26 and AB X1 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB X1 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB X1 27 provides that a community may participate in an “Alternative Voluntary Redevelopment Program,” in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code as enacted by AB X1 27; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB X1 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance in the amount of One Million Five Hundred Ninety Thousand Twenty-Two dollars (\$1,590,022) as well as the subsequent annual community remittances as set forth in the CRL as enacted by AB X1 27; and

WHEREAS, the City does not intend, by enacting this ordinance, to pledge any of its general fund revenues or other assets, to make the remittance payments contemplated by the CRL as enacted by AB X1 27, it being understood that any remittance payments will be funded from Agency funds and/or assets transferred to the City in accordance with AB X1 27; and

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, City understands and believes that an action challenging the constitutionality of AB X1 26 and AB X1 27 will be filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that AB X1 26 and AB X1 27 are unconstitutional; and

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB X1 26 and AB X1 27; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB X1 26 and AB X1 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

**THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, CALIFORNIA,
DOES ORDAIN AS FOLLOWS:**

Section 1. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. **Participation in the Alternative Voluntary Redevelopment Program.** Subject to Sections 3 and 4 herein, in accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply

with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB X1 27 and hereby authorizes the continuation of the Agency after enactment of AB X1 27. Subject to Section 6, any remittance payment required to be paid by the City shall be paid from Agency funds and/or assets transferred to the City in accordance with AB X1 27.

Section 3. Payment Under Protest/Reservation of Rights. Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health and Safety Code section 34194 *et seq.* Neither the adoption of this ordinance, nor the acknowledgment of or references to any provisions of AB X1 26 and AB X1 27, nor the City's payment of any remittances contemplated by AB X1 27 shall be deemed to be, nor are they intended as, an acknowledgment of the validity of AB X1 26 and AB X1 27, and the City reserves all rights in its sole discretion to challenge the validity of any or all provisions of AB X1 26 and AB X1 27 in any administrative or judicial proceeding and/or repeal of this ordinance, without prejudice to the City's right to recovery any amounts remitted in accordance thereof.

Section 4. Effect of Stay or Determination of Invalidity. City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB X1 26 and AB X1 27 or determines that AB X1 26 and AB X1 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB X1 26 and AB X1 27 are unconstitutional.

Section 5. Implementation. The City Council hereby authorizes and directs the City Administrator to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Los Angeles County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB X1 27.

Section 6. Additional Understandings and Intent. It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge its general fund revenues or assets to make the remittance payments.

Section 7. CEQA. The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program.

Section 8. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 9. Certification; Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Hawaiian Gardens, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Section 10. Effective Date. This ordinance shall take effect 30 days after its adoption.

PASSED AND ADOPTED at a regular meeting of the City Council on the _____ day of August, 2011, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk