

Memo

To: Honorable Mayor and City Council

From: Sheri Marie Spediacci, City Clerk

Date: Meeting of August 1, 2011

Re: Adoption of Ordinance 563 to comply with 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 of the Redevelopment Agency

The attached Ordinance was introduced at the Brisbane City Council meeting of July 18, 2011. No changes were made at that time. It is on this agenda for consideration of adoption.

City of Brisbane

Agenda Report

To: City Council via City Manager

From: Administrative Services Director

Subject: Introduction of Ordinance 563 to comply with 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 of the Redevelopment Agency.

Date: July 18, 2011

Purpose:

Continue the Redevelopment Agency in order to remediate blighted conditions located on Sierra Point and the Baylands.

Recommendation:

Introduce Ordinance No. 563 to allow for the continuation of the City's Redevelopment Agency. Schedule regular City Council meeting on August 1, 2011 for adoption of ordinance.

Background:

When the State Legislature passed its budget it also passed AB X1 26 and AB X1 27. AB X1 26 basically suspends Redevelopment Agencies as of June 30, 2011 except for the continuation of bond payments and other enforceable obligation payments. It creates a successor agency to ensure obligations of the Agency would be paid. The successor agency may be the City or other affected taxing entity, which will be overseen by an Oversight Board which is made up of the various affected taxing entities of the Agency. AB X1 27 allows for the continuation of the Redevelopment Agency if the City adopts an ordinance which calls for the City to make voluntary payments to affected taxing entities including schools. The amount of the voluntary payment is based on a formula set forth in the legislation and determined by the State for Fiscal Year 2011-12. It is recommended that this ordinance be adopted prior to August 26, 2011. However, if it is not adopted by October 1, 2011 the City would need to pass a non-binding Resolution prior to October 1, 2011 stating its intent to adopt the Ordinance by November 1, 2011. In order to avoid any problem in meeting the state deadlines, staff strongly recommends that the proposed ordinance be introduced at this meeting and adopted on August 1st.

A more detailed summary of the two bills is provided in the memorandum from the Agency's special redevelopment counsel submitted with this Agenda Report.

Discussion:

The State has not yet provided the dollar amount owed by individual agencies. However, the California Association of Redevelopment Agencies (CRA) (an organization of redevelopment agencies

in California similar to the League of California Cities) has developed estimated costs per agency based on the 2008-2009 State Controller's Report. The estimated cost for Brisbane's RDA is \$2,200,000 for FY 2011-12. We can pay for this using an exemption from the 2011-12 Housing Set Aside Funds as well as current tax increment. Any amount not funded by these two methods would need to be paid for by a loan from the City to the Agency. Based on our adopted budget, the RDA would need to borrow about \$780,000 from the City to cover the cost as estimated by the CRA.

Staff disagrees with the analysis put together by the CRA and believes the Agency will owe a dollar figure between \$1,400,000 and \$1,700,000. The difference is based on the debt obligation the Agency owes the Brisbane Financing Authority. This debt does not show up on the State Controller's Report since it is considered an advance instead of direct debt. Staff has made contact with the Controller's Office concerning this issue but as of the writing of this report has not resolved the issue. If the indebtedness owed by the Agency to the Authority is acknowledged by the Controller's Office, the loan from the City to the Agency could be between \$0 and \$300,000.

The amount owed after 2011/12 will be reduced since the overall take by the State is reduced from \$1.7 billion to \$400 million. When this happens there should be enough increment for the Agency to make the payment without borrowing from the City.

Since it is recommended that this Ordinance be adopted prior to August 26, 2011 and Council has not scheduled any additional meetings until September, it would be necessary to reinstate one of the regular meetings in August. Staff recommends that a meeting be scheduled for August 1st. On the assumption that the Council accepts this recommendation, the date of August 1st has been set forth in the proposed ordinance as the date of its enactment.

Fiscal Impact:

The actual impact will not be known until the State provides its estimate to the Agency. However, as stated above the first year's cost should wipe out the full amount of reserves in the RDA as well as eliminate the transfer to the Low/Mod Housing Fund for 2011-12 and possibly require an additional loan from the City.

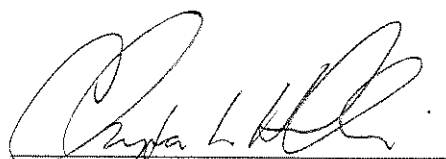
Measure of Success

The Community can continue to reduce the blight associated with the brownfields located at Sierra Point and the Baylands. Also, the Agency can continue working on the affordable housing project with Habitat For Humanity on the property now being purchased from the Lau family.

Attachments:

Proposed Ordinance No. 563.
Memorandum from Goldfarb & Lipman


Administrative Services Director


City Manager

ORDINANCE NO. 563

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA, DETERMINING IT WILL COMPLY WITH 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 BRISBANE

WHEREAS, the City Council of the City of Brisbane adopted the Redevelopment Plan for the Brisbane Community Redevelopment Project Area Number One by Ordinance No. 219, adopted on December 6, 1976, as amended by Ordinance No. 396, adopted on January 9, 1995, as amended by Ordinance No. 442, adopted on November 8, 1999, as amended by Ordinance No. 465, adopted on March 25, 2002, as amended by Ordinance No. 464, adopted on May 13, 2002, as amended by Ordinance No. 491, adopted on July 19, 2004, and as further amended by Ordinance No. 510, adopted on April 17, 2006 (the "Redevelopment Plan One") establishing the Brisbane Community Redevelopment Project Area Number One (the "Project Area One"); and

WHEREAS, the City Council of the City of Brisbane adopted the Redevelopment Plan for the Brisbane Community Redevelopment Project Area Number Two by Ordinance No. 284, adopted on June 14, 1982, as amended by Ordinance No. 342, adopted on October 12, 1988, as amended by Ordinance No. 397, adopted on January 9, 1995, as amended by Ordinance No. 442, adopted on November 8, 1999, as amended by Ordinance No. 471, adopted on July 22, 2002, as amended by Ordinance No. 472, adopted on July 22, 2002, as amended by Ordinance No. 492, adopted on July 19, 2004, and as further amended by Ordinance No. 511, adopted on April 17, 2006 (the "Redevelopment Plan Two ") establishing the Brisbane Community Redevelopment Project Area Number Two (the "Project Area Two") (collectively, the Redevelopment Plan One and Redevelopment Plan Two shall be referred to as "Redevelopment Plans" and Project Area One and Project Area Two shall be referred to as "Project Areas"); and

WHEREAS, the Redevelopment Agency of the City of Brisbane ("Agency") is engaged in activities to execute and implement the Redevelopment Plans 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 Plans, the Agency has undertaken redevelopment projects in the Project Areas 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 Areas' 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, budget trailer bills AB X1 26 and AB X127, 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," 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 ("Voluntary Program Act"); 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, as well as the subsequent annual community remittances as set forth in the Voluntary Program Act; 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, pursuant to Section 34193.2(b) of the Health and Safety Code, the City Council understands that participation in the Alternative Voluntary Redevelopment Program requires remittance of certain payments as set forth in the Voluntary Program Act and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements, to the State of California.

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

THE CITY COUNCIL OF THE CITY OF BRISBANE, 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. To the extent required by law to maintain the existence and powers of the Agency under the CRL, 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 the Voluntary Program Act contained in Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB X1 27, including the making of the community remittance payments called for in Section 34194 of the CRL (the "Remittance Payments") except as set forth in Section 3 below.

Section 3. 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 4. Implementation. The City Council hereby authorizes and directs the City Manager or the City Manager's designee to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the San Mateo 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, entering into any agreements with the Agency to obtain funds for the Remittance Payments, and making the Remittance Payments.

Section 5. 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 ("Agency Transfer Payments") to enable the City, directly or indirectly, to make the annual remittance payments. Unless otherwise specified by resolution of the City Council, it is the City Council's intent that the City's annual Remittance Payments shall be made exclusively from the Agency Transfer Payments or from other funds that become available as a result of the City's receipt of the Agency Transfer Payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments, it being understood by the City Council that any Remittance Payments will be funded solely from the Agency Transfer Payments and/or other assets transferred to the City in accordance with the Voluntary Program Act.

Section 6. 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. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Mateo in accordance with CEQA Guidelines.

Section 7. 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 8. 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 Brisbane, 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 9. Enactment and Effective Dates. This Ordinance is enacted as of August 1, 2011, and shall become effective thirty (30) days from its enactment and adoption.

The foregoing Ordinance was duly introduced before the City Council of the City of Brisbane, County of San Mateo, at a regular meeting of the City Council held on the 18th day of July, 2011, and was finally enacted and adopted at a regular meeting of the City Council held on the 1st day of August, 2011, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

CYRIL G. BOLOGOFF,
Mayor

ATTEST:

SHERI MARIE SPEDIACCI,
City Clerk

APPROVED AS TO FORM:



HAROLD S. TOPPEL,
City Attorney

July 12, 2011

memorandum

To
Honorable Mayor and City Council Members
City of Brisbane

From
Lynn Hutchins

RE
Redevelopment Legislation

The Governor signed two bills that result in dramatic changes to redevelopment in California. This memo is intended to provide information on the impact of this legislation on the Redevelopment Agency of Brisbane ("Agency"). We have prepared a more detailed summary of the legislation that provides additional background and analysis of the legislation that City staff can provide to you upon request.

Redevelopment Suspension and Dissolution.

Under the provisions of SB1X 15/ AB1X 26 (the "Dissolution Act") redevelopment agency activities are suspended from the effectiveness date of the legislation. Although there is some confusion about when the legislation is effective, it is reasonable to assume that the agency is suspended commencing on June 30, 2011. The purpose of the suspension period is for agencies to preserve their assets prior to dissolution. The effect of suspension means that the Agency can only undertake limited activities. These activities include paying existing debt obligations, including loan payments, bonds payments and any other legally binding obligations of the Agency. Obligations of the Agency includes contracts for administration and operation of the Agency and would appear to include staff costs and other administrative expenses. The Agency can also set aside reserves for bonds. All other activities are suspended. Activities that the Agency are prohibited from taking during the suspension period include transferring land or other assets, acquiring real property, entering into new contracts or leases or making loans.

Under the Dissolution Act, if the Agency does not participate in the voluntary opt-in program, described below, the Agency will be dissolved on October 1, 2011. After dissolution, all assets of the Agency will be transferred to a Successor Agency. The City can elect to be the Successor Agency and most likely would want to do so. However, the City will not control the Successor Agency. The Successor Agency's

actions with regard to the redevelopment assets are controlled by a seven-person oversight board. The City will have one appointee to the oversight board. Other members of the oversight board will be appointed by the Board of Supervisors (2 members), the County Superintendent of Education (1 member), the Chancellor of California Community Colleges (1 member), the largest special district taxing entity (1 member) and a former redevelopment agency employee appointed by the Mayor (1 member). The Oversight Board will direct the Successor Agency to determine whether contracts, agreements or other arrangements between the Agency and private parties should be terminated or renegotiated to reduce the liabilities of the Successor Agency and to increase revenues to the taxing entities. The Department of Finance may review any decisions of the Oversight Board.

If the Redevelopment Agency is dissolved, the tax increment is deposited into a trust fund with the County and used to pay pass-through obligations to taxing agencies and the existing obligations of the Agency. Funds remaining after payment of the pass through obligations, the existing obligations, and limited administrative expenses of the Successor Agency are distributed by the County to school entities and other local taxing entities as property taxes.

If the Agency elects to dissolve, any agreements between the Agency and the City would be considered null and void. The Dissolution Act specifically provides that enforceable obligations to be paid by the Successor Agency do not include agreements, contracts or arrangements between the Agency and the City except in limited circumstances.

Under the dissolution scenario, the Successor Agency would be limited to the greater of 5% of the tax increment or \$250,000 to pay for administrative expenses in 2011-12. In 2013-14 this amount would decrease to the greater of 3% of the tax increment or \$250,000.

Voluntary Opt-In

The Legislature also passed SB 1X 15/AB 1X 27 ("Voluntary Program") that provides agencies an option to avoid dissolution. Under the provisions of the Voluntary Program, to avoid dissolution, the City must adopt an ordinance no later than November 1, 2011 agreeing to make certain annual payments. The first year's payment, due in two equal installments on January 15, 2012 and May 15, 2012, is the Agency's proportionate share of \$1.7 billion dollars as determined in accordance with a formula based on the 2008-09 tax increment collections. The Agency's estimated payment in 2011-12 would be \$2,200,000. In subsequent years the Agency would be required to pay its proportionate share of \$400 million. The Agency payments in 2012-13 and following years will vary depending upon the amount of debt the Agency incurs after October 1, 2011 and the amount of the pass through payments to the school entities in each year. The estimated payment in 2012-13 is approximately \$520,900. Subsequent year's

payments would be based on the \$520,900 for 2012-13 but would increase or decrease based on the growth in tax increment and would also increase based on the amount of debt issued after October 1, 2011. If the City elects to opt into the voluntary program, the Agency, upon enactment of the required ordinance can conduct business as usual.

The Voluntary Program payments can be paid from the Agency's available tax increment. Additionally, the Agency can suspend its deposit into the Housing Fund for 2011-12 to make the payment if there are no other sources of funds available. The legislation is not clear whether existing deposits in to the housing fund can be used for the payments, however, the Agency should assume they are not available for this purpose. As the legislation is currently drafted, the 2011-12 deposit to the Housing Fund, if suspended, does not have to be repaid, but there are rumors about clean up legislation that may require a repayment of these funds over a period of five years.

Timing

If the City and the Agency elect to opt-in to the Voluntary Program there are a reasons to consider doing so quickly to remove the cloud of suspension from the Agency. Opting-in requires the adoption of an Ordinance by the City Council which requires two readings. Upon enactment of the ordinance, the Agency will no longer be considered suspended.

Additionally, if the City and the Agency elect to opt-in to the Voluntary Program, the Agency may want to consider what if any programs and obligations it wants to consider incurring before October 1, 2011. Debts incurred after October 1, 2011 have the potential to increase the payments that the Agency will have to make in 2012-13 and subsequent years.