

LAST MINUTE AGENDA INFORMATION

7/20/11 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the July 20, 2011 Regular meeting.)

ITEM NO. DESCRIPTION

3.2	ORDINANCE 2011-1121 OF THE CITY OF IMPERIAL BEACH AUTHORIZING THE CITY OF IMPERIAL BEACH TO PARTICIPATE IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS. (0640-05) a. Revised Ordinance No. 2011-1121
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RECEIVED

ORDINANCE NO. 2011-1121

2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING THE CITY OF IMPERIAL BEACH TO PARTICIPATE IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM, SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS

WHEREAS, Assembly Bill x1 26 ("AB 26") and Assembly Bill x1 27 ("AB 27") have been enacted to significantly modify Redevelopment Law in the State of California such that local redevelopment agencies will no longer exist as of October 1, 2011 unless local agencies enact ordinances pursuant to AB 27 by November 1, 2011; and

WHEREAS, ~~Assembly Bill x1 27 ("AB 27")~~ is to be codified as Part 1.9 of the California Health and Safety Code ("Part 1.9"); and

WHEREAS, AB 27 establishes a voluntary alternative redevelopment program whereby the Redevelopment Agency of the City of Imperial Beach ("Agency") would be authorized to continue to exist upon the enactment of an ordinance by the City of Imperial Beach ("City") to comply with the provisions of Part 1.9; and

WHEREAS, AB 27 requires the City to notify the County Auditor-Controller ("County"), the State Controller, and the State Department of Finance on or before November 1, 2011, that the City will comply with Part 1.9; and

WHEREAS, AB 27 requires the City to make specified remittances to the County in order to continue the existence of the Agency, as prescribed in Part 1.9; and

WHEREAS, AB 27 authorizes the City to enter into an agreement with the Agency, whereby the Agency would transfer a portion of its tax increment to the City for the purpose of financing certain activities within the City's redevelopment areas, as specified in Part 1.9; and

WHEREAS, AB 27 imposes specified sanctions on the City in the event that the City fails to make the required remittances, as determined by the Director of Finance; and

WHEREAS, AB 27 authorizes the County to charge a fee that does not exceed the reasonable costs to the County auditor-controller to implement the provisions of Part 1.9; and

WHEREAS, AB 27 authorizes the City to establish a new redevelopment agency if its former agency has been dissolved only after the debt obligations of the Agency have been retired and the City satisfies the provisions of Part 1.9; and

WHEREAS, it is hereby acknowledged by the City Council of the City of Imperial Beach (“City Council”) that the California League of Cities, the California Redevelopment Association, and special counsel for the City have respectively opined that certain or all provisions of ~~Assembly Bill x1 26 (“AB 26”)~~ and AB 27, including but not limited to the effectiveness date, violate the State Constitution and other laws (collectively, “Laws”), and are invalid and unenforceable; and

[WHEREAS, due to the purported effect of AB 26 of gutting local redevelopment agencies, and the City of Imperial Beach in particular, of tools to ensure the future quality of life and economic viability of local agencies and citizens, the City Council of Imperial Beach is left with no other option but to consider enactment of this Ordinance; and](#)

WHEREAS, the City Council does not intend, by enactment of this Ordinance, to waive any constitutional and/or legal rights by virtue of the enactment of this Ordinance and, therefore, reserves all of its rights under Laws to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and/or repeal this ordinance, without prejudice to the City’s right to recover any amounts remitted under Part 1.9; and

WHEREAS, the City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or other assets, to make the remittance payments contemplated by Part 1.9, it being understood by the City Council that any remittance payments will be funded solely from Agency funds and/or assets transferred to the City in accordance with Part 1.9; and

WHEREAS, the City Council does not intend, by enactment of this Ordinance to waive any rights of appeal regarding the amount of any remittance established by the Department of Finance, as provided in Part 1.9; and

WHEREAS, City staff has determined that the Ordinance is exempt from California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15378(b)(4), because such authorizations are not considered a project subject to CEQA review. The community remittance is a government funding mechanisms and fiscal activity, which do not involve any commitment to any specific project which may result in a potentially significant environmental impact.

NOW, THEREFORE, the City Council of the City of Imperial Beach, California does ordain as follows:

SECTION 1. Authorization to Continue Agency. Subject to Sections 3 and 4, herein, the City hereby commits to comply with and make the remittances required by Part 1.9, and authorizes the continuation of the Agency in accordance with the provisions of AB 27, [and whereby the Agency will no longer be subject to dissolution or the other prohibitions and limitations of Parts 1.8 and 1.85 of AB 26.](#) Any remittance payments required to be

paid by the City by Part 1.9 shall be paid solely from Agency funds and/or assets transferred to the City in accordance with Part 1.9.

SECTION 2. Application. If any provisions of this Ordinance or the application thereof is held to be invalid for any reason, the remainder of this Ordinance and the application of provisions thereof shall not be affected thereby.

SECTION 3. Reservation of Rights. It is the position of the City that certain or all provisions of AB 26 and AB 27 violate the Laws, as referenced in the recitals, above, and are invalid and unenforceable. Neither the adoption of this Ordinance, nor the acknowledgment of or references to any provisions of AB 26 and AB 27, nor the City's payment of any remittances contemplated by AB 27 shall be deemed to be, nor are they intended as, an acknowledgment of the validity of AB 26 and AB 27, and the City reserves all rights in its sole discretion to challenge the validity of any or all provisions of AB 26 and AB 27 in any administrative or judicial proceeding and/or repeal this Ordinance, without prejudice to the City's right to recover any amounts remitted under Part 1.9.

SECTION 4. Enactment. This Ordinance shall only be deemed as "enacted" within the meaning of Part 1.9 upon (i) adoption of this Ordinance and (ii) the legally effective date of AB 26 and AB 27.

SECTION 5. Authorization of Implementing Actions. The City Manager or his designee is hereby authorized to take any actions necessary to implement this Ordinance and comply with Part 1.9, including without limitation, providing required notices to the Auditor Controller, the State Controller, and the Department of Finance; entering into any agreements with the Agency to make the remittance payments; making any remittance payments; or filing appeals.

SECTION 6. CEQA. The City Council determines that approval of this Ordinance is exempt from CEQA, pursuant to CEQA Guidelines Section 15378(b)(4), because such approval is not considered a project subject to CEQA review. The payment is a government funding mechanism and fiscal activity, which do not involve any commitment to any specific project which may result in a potentially significant environmental impact.

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared unconstitutional or invalid.

EFFECTIVE DATE: This Ordinance shall be effective thirty days after its adoption; and the City Clerk shall certify the adoption of this Ordinance and cause it to be published at least once in a newspaper of general circulation in the City of Imperial Beach within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach on the 20th day of July, 2011, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON