



# Special Meeting A G E N D A

**IMPERIAL BEACH CITY COUNCIL  
REDEVELOPMENT AGENCY  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY**



**AUGUST 24, 2011**

**5:00 P.M.**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY,  
PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY.**

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## **SPECIAL MEETING CALL TO ORDER BY MAYOR**

## **ROLL CALL BY CITY CLERK**

## **PUBLIC COMMENTS**

## **REPORTS**

- 1. RESOLUTION NO. R-11-265 IMPERIAL BEACH REDEVELOPMENT AGENCY REDUCING ITS ALLOCATION TO THE LOW AND MODERATE INCOME HOUSING FUND FOR THE 2011-12 FISCAL YEAR AND MAKING CERTAIN FINDINGS AND DETERMINATIONS. (0640-05)**  
City Manager's Recommendation:
  1. Approve the Remittance Agreement; and
  2. Adopt Resolution No. R-11-265.
- 2. RESOLUTION NO. R-11-266 TO APPROVE AND ADOPT AN ENFORCEABLE OBLIGATION PAYMENT SCHEDULE (EOPS). (0640-05)**  
City Manager's Recommendation: Adopt Resolution R-11-266.

## **ADJOURNMENT**

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Jacqueline M. Hald, MMC  
City Clerk

**Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.**



**STAFF REPORT  
CITY OF IMPERIAL BEACH AND IMPERIAL  
BEACH REDEVELOPMENT AGENCY**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
CHAIR AND MEMBERS OF THE REDEVELOPMENT  
AGENCY

**FROM:** GARY BROWN, CITY MANAGER AND EXECUTIVE  
DIRECTOR

**MEETING DATE:** August 24, 2011

**ORIGINATING DEPT.:** Susan Cola, Agency Special Counsel  
Jennifer Lyon, City Attorney  
Greg Wade, Community Development Director  
Mike McGrane, Finance Director

**SUBJECT:** Adoption of Resolution No. R-11-265 by the Imperial  
Beach Redevelopment Agency Reducing its Allocation  
to the Low and Moderate Income Housing Fund for the  
2011-12 Fiscal Year and Making Certain Findings and  
Determinations; and Approval by the City Council and  
the Agency of the Remittance Agreement Pursuant to  
California Health and Safety Code Section 34194.2.

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**BACKGROUND:**

There have been several attempts by the Governor, the Senate, and the Assembly to eliminate or substantially restructure existing redevelopment agencies, essentially abolishing local control and authority of redevelopment funds and on Wednesday, June 15, 2011, the state legislature passed ABx1 26 ("AB 26") and ABx1 27 ("AB 27") relating to the dissolution and voluntary continuance of redevelopment agencies throughout the state. These bills were signed by Governor Brown on June 28, 2011, became effective immediately upon signing, and will eliminate Redevelopment Agencies, except in certain cases where the Redevelopment Agency pays money to the county to fund state obligations to schools, fire protection districts, and transit districts.

The California League of Cities, the California Redevelopment Association, and special counsel for the City/Agency have respectively opined that certain or all provisions of 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. On July 18, 2011, the California Redevelopment Association, League of California Cities, City of Union City, City of San Jose and John F. Shirey filed a petition for Writ of Mandate; Application for Temporary Stay and supporting memorandum and declarations

with the Supreme Court of the State of California (the "Petition"). On August 11, 2011 and on August 17, 2011, the California Supreme Court agreed to review the Petition challenging the constitutionality of AB 26 and AB 27 and granted a stay to prevent the operation of AB 26 and AB 27 ("Stay"), except for Part 1.8 of the Health and Safety Code (Health & Safety Code §§ 34161-34169.5) and Health and Safety Code Section 34194(b)(2). It is possible that the Stay will remain in effect through January 15, 2012.

## **DISCUSSION:**

With the adoption of AB 26 and AB 27, the legislature provided two options to cities regarding their redevelopment agencies. Cities could either proceed with the dissolution of its redevelopment agency pursuant to AB 26 or adopt an ordinance committing to comply with the Voluntary Alternative Redevelopment Program of AB 27. On August 3, 2011, the City Council adopted Ordinance No. 2011-1121 ("Ordinance") as required by AB 27, in order to allow the Agency to continue in operation and performing its functions; however, the Stay now prevents the Agency from operating under AB 27.

Under AB 27, to effect the future payments required by AB 27 and committed by the City in the Ordinance, the City and the Agency may enter into a "Remittance Agreement" as contemplated by the legislation. Special Counsel has advised that, while the Stay is in effect, the City and Agency may only approve the Remittance Agreement as long as the Remittance Agreement will not have any operative effect unless and until the Stay is lifted and AB 27 is deemed operative. The terms of the Remittance Agreement will be presented to the City Council and the Agency Board at this meeting for consideration. The Remittance Agreement will be between the City and Agency and would, upon operative effect, commit the Agency to transfer sufficient funds to the City to make the required payments. Such an agreement would be necessary for the Agency to transfer funds to the City to comply with AB 27, assuming that AB 27 is deemed constitutional.

AB 27 also specifically provides to the Agency an exemption from making the full allocation required to be made to the Low and Moderate Income Housing Fund, pursuant to Health and Safety Code sections 33334.2, 33334.4, and 33334.6, by allowing the Agency to reduce its allocation of tax increment to the Low and Moderate Income Housing Fund for the 2011-12 fiscal year only, if the City complies with the provisions of AB 27, and the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority programs or its obligations under the Remittance Agreement. As has been shown through recent Council meetings and budget workshops, the City's General Fund cannot sustain the payment required under AB 27. A resolution is presented to the Agency Board at this meeting for consideration to allow the Agency to reduce its otherwise required allocation to the Agency's Low and Moderate Income Housing Fund for FY 11-12, including a finding that there are insufficient other moneys available to the Agency to meet the Agency's debt and other obligations, current priority program needs and its obligations under the legislation to make the required remittances. Again, as with the Remittance Payment, the resolution would have no operative effect until the Stay is lifted and AB 27 is deemed operative.

There is no certainty with respect to the outcome of the Supreme Court lawsuit and staff believes it is prudent to have these actions in place if AB 27 is upheld. The Agreement and Resolution contain the necessary reservation of rights and effectiveness dates to make clear when they will take effect.

**ENVIRONMENTAL DETERMINATION:**

Pursuant to Title 14 of the California Code of Regulations, section 15378(b)(4), this item is not subject to California Environmental Quality Act ("CEQA") review pursuant to CEQA Guidelines Section because such approvals are not considered a project, are government funding mechanisms and fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact.

**FISCAL IMPACT:**

The FY11-12 payment is \$2,859,141 million plus additional County fees and estimated to be \$673,000 each year thereafter. On August 17, 2011, the City filed an appeal of the State's determination of the FY11-12 payment, however a response to the appeal has not been received from the State. For FY11-12, funding for the voluntary remittance is likely to be paid half from Low and Moderate Income Housing Funds and half from Redevelopment Bond Funds. The exact amount will be requested for appropriation under future action.

**DEPARTMENT RECOMMENDATION:**

Staff recommends that the Mayor and City Council, and the Chair and the Members of the Redevelopment Agency consider this report and the attached resolution and agreement. If Council chooses:

1. Approve the Remittance Agreement.

If the Agency Board chooses:

1. Approval of the Remittance Agreement.
2. Adopt Resolution No. R-11-265.

**CITY MANAGER'S AND EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager and Executive Director

Attachments:

1. Resolution No. R-11-265
2. Remittance Agreement

**RESOLUTION NO. R-11-265**

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, REDUCING ITS ALLOCATION TO THE LOW AND MODERATE INCOME HOUSING FUND FOR THE 2011-12 FISCAL YEAR AND MAKING CERTAIN FINDINGS AND DETERMINATIONS**

THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. Sections 33334.2 and 33334.3 of California's Community Redevelopment Law [Health & Safety Code §§33000, et seq.] ("CRL") require the Redevelopment Agency of the City of Imperial Beach ("Agency") to use 20 percent of taxes allocated to the Agency pursuant to Section 33670 of the CRL ("Tax Increment") for the purpose of increasing, improving, and preserving the community's supply of low and moderate income housing and to hold such funds in a separate Low and Moderate Income Housing Fund until used ("Low and Moderate Income Housing Fund").

Section 2. Assembly Bill x1 27 ("AB 27") was passed by the State Legislature on June 15, 2011 and signed by the Governor on June 28, 2011.

Section 3. AB 27 is to be codified as Part 1.9 of the California Health and Safety Code ("Part 1.9").

Section 4. AB 27 establishes a voluntary alternative redevelopment program whereby the 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, including payment of an annual remittance to the County Auditor-Controller ("Remittance Ordinance").

Section 5. On August 3, 2011, the City Council of the City of Imperial Beach adopted its Remittance Ordinance by adopting Ordinance No. 2011-1121 as required by AB 27, in order to allow the Agency to continue in operation and performing its functions.

Section 6. The California League of Cities, the California Redevelopment Association, and special counsel for the City/Agency have respectively opined that certain or all provisions of 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. On July 18, 2011, the California Redevelopment Association, League of California Cities, City of Union City, City of San Jose and John F. Shirey filed a petition for Writ of Mandate; Application for Temporary Stay and supporting memorandum and declarations with the Supreme Court of the State of California (the "Petition"). On August 11, 2011 and on August 17, 2011, the California Supreme Court agreed to review the Petition challenging the constitutionality of AB 26 and AB 27 and granted a stay to prevent the operation of AB 26 and AB 27 ("Stay"), except for Part 1.8 of the Health and Safety Code (Health & Safety Code §§ 34161-34169.5) and Health and Safety Code Section 34194(b)(2).

Section 7. AB 27 authorizes the Agency to enter into an agreement with the City whereby the Agency would transfer a portion of its Tax Increment to the City in an amount not to exceed the amount of the City's annual remittance to the County Auditor-Controller ("Remittance Agreement").

Section 8. AB 27 authorizes the Agency to reduce its allocation of Tax Increment to the Low and Moderate Income Housing Fund for the 2011-2012 Fiscal Year if the City complies with the provisions of Part 1.9 and the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority program needs or its obligations under the Remittance Agreement because the tax exempt bond funds are not an available source for other than as specifically provided in the indenture, the City's general fund is not an available source to the Agency in these difficult economic times with the country possibly facing a new recession, and further bond issuance is unavailable to the Agency as a result of the uncertainty caused by the petition for Writ of Mandate; Application for Temporary Stay and supporting memorandum and declarations filed with the Supreme Court of the State of California on July 18, 2011, by the California Redevelopment Association, League of California Cities, City of Union City, City of San Jose and John F. Shirey.

Section 9. The Agency has reviewed and duly considered the Staff Report, documents and other written evidence presented at the meeting and believes that it will be in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements to reduce its allocation of Tax Increment to the Low and Moderate Income Housing Fund for the 2011-2012 Fiscal Year by \$1,440,000 ("Allocation Reduction").

Section 10. All other legal prerequisites to the adoption of this Resolution have occurred.

Section 11. The Agency has received and heard all oral and written objections pertaining to this matter, and all such oral and written objections are hereby overruled.

Section 12. The Agency hereby finds and determines that the foregoing recitals are true and correct.

Section 13. Based upon evidence in the record, the Agency finds that there are insufficient other moneys to meet its debt and other obligations, current priority program needs or its obligations under the Remittance Agreement.

Section 14. The Agency finds and determines that it is necessary to implement the Allocation Reduction for the 2011-2012 Fiscal Year.

Section 15. The Agency Executive Director, or designee, is hereby authorized to take such actions as are necessary and appropriate to carry out and implement the Allocation Reduction for the 2011-2012 Fiscal Year upon the City's enactment of the Remittance Ordinance.

Section 16. This Resolution shall take effect only if the current California Supreme Court Stay is lifted on AB 27 and/or the Supreme Court has determined that AB 27 is constitutional and the City is required to make a voluntary remittance payment under AB 27. Further, the Agency is reserving any and all rights with respect to the Stay and the Petition.

**PASSED, APPROVED, AND ADOPTED** by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 24<sup>th</sup> day of August 2011, by the following vote:

**AYES:           BOARDMEMBERS:**  
**NOES:           BOARDMEMBERS:**  
**ABSENT:       BOARDMEMBERS:**

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**JAMES C. JANNEY,**  
**CHAIRPERSON**

**ATTEST:**

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**JACQUELINE M. HALD, MMC**  
**SECRETARY**

**REMITTANCE AGREEMENT  
PURSUANT TO  
CALIFORNIA HEALTH AND SAFETY CODE SECTION 34194.2**

**THIS REMITTANCE AGREEMENT** (this "**Agreement**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF IMPERIAL BEACH, a municipal corporation (the "**City**") and the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, a public body, corporate and politic (the "**Agency**"), with reference to the following facts:

- A. Assembly Bill No. X1 27 ("**AB 27**") was passed by the State Legislature on June 15, 2011 and signed by the Governor on June 28, 2011.
- B. AB 27 is to be codified as Part 1.9 of the California Health and Safety Code, commencing with Section 34192 ("**Part 1.9**").
- C. AB 27 establishes a voluntary alternative redevelopment program whereby the City may choose to continue redevelopment pursuant to Part 1.9, upon the enactment of an ordinance by the City to comply with the provisions of Part 1.9 and make certain remittances described in Health and Safety Code Section 34194 to the county auditor-controller.
- D. On August 3, 2011, the City Council of the City of Imperial Beach (the "**City Council**") adopted an ordinance to comply with Part 1.9 (the "**Ordinance**").
- E. Pursuant to the Part 1.9 Ordinance, the City Council has committed to comply with and make the remittances required by Part 1.9 and authorize the continuation of the Agency in accordance with the provisions of AB 27.
- F. Pursuant to Health and Safety Code Section 34194.1, in making remittances to the county auditor-controller pursuant to Health and Safety Code Sections 34194 or 34194.5, the City may use any available funds not otherwise obligated for other uses.
- G. Pursuant to Health and Safety Code Section 34194.2, the City may enter into an agreement with the Agency, whereby the Agency will transfer a portion of its tax increment to the City, in an amount not to exceed the annual remittance required that year pursuant to Chapter 3 of Part 1.9, for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.
- H. The purpose of this Agreement is to provide for the transfer of funds by the Agency to the City in an amount sufficient for the City to make the remittances required by Part 1.9, with net available tax increment in this current fiscal year and forthcoming fiscal years.

I. The term "Net Available Tax Increment" is defined as any tax increment funds allocated to the Agency, net of existing debt service payments and existing third-party contractual obligations, not including any funds on deposit in the Agency's Low and Moderate Income Housing Fund.

J. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment plan for each of the Agency's redevelopment project areas.

**NOW, THEREFORE,** the parties hereto do mutually agree as follows:

## **I. INTRODUCTORY PROVISIONS**

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

## **II. OBLIGATIONS OF THE PARTIES**

1. The Agency shall transfer to the City in a timely manner Net Available Tax Increment or other funds in an amount sufficient for the City to make the remittance payments required by Part 1.9. The amounts to be transferred to the City shall be sufficient for the City to pay the remittance amount determined by the State Director of Finance pursuant to Part 1.9, subject to the City's right to appeal the amount of remittance to the director pursuant to Part 1.9.

2. Subject to receipt of sufficient Net Available Tax Increment or other funds from the Agency, the City shall timely remit to the county auditor-controller the payments required by Part 1.9 as provided in the Ordinance. The City's obligation to make such remittances shall be a special limited obligation of the City payable solely from Net Available Tax Increment or any other funds made available to the City by the Agency, including but not limited to amounts previously or subsequently pledged to the City for payment of redevelopment expenses that remain unencumbered. Nothing contained in this Agreement shall be deemed to be a pledge of the City's general fund revenues or other assets to make the remittance payments contemplated by Part 1.9, it being understood that any remittance payments shall be funded solely from Agency funds and/or assets.

3. The obligations of Agency under this Agreement shall be payable out of Net Available Tax Increment, as defined in the above recitals and/or as defined or provided for in any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, levied by or for the benefit of taxing agencies in the Agency's redevelopment project area(s), and allocated to the Agency and/or any lawful successor entity of the Agency and/or any entity established by law to carry out the redevelopment plan for the redevelopment project area(s) and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Health and Safety Code Section 33670 or any applicable constitutional provision,

statute or other provision of law now existing or adopted in the future. In the event that additional funds are required in order to make the Agency payments to the City required by this Agreement, the Agency shall make such payments from income received by the Agency from its projects and programs or any other additional funds available to it.

### **III. LIABILITY AND INDEMNIFICATION**

In contemplation of the provisions of California Government Code section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code section 895.2.

### **IV. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS**

1. This Agreement shall be executed in duplicate originals, each of which is deemed to be an original. This Agreement consists of four (4) pages which constitute the entire understanding and agreement of the parties.

2. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

3. This Agreement is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

4. Any waiver or amendment of the provisions of this Agreement must be in writing and signed by the authorized representatives of the parties.

5. This Agreement shall take effect only if the current California Supreme Court Stay issued on August 11, 2011 and amended on August 17, 2011 is lifted on AB 27 and/or the Supreme Court has determined that AB 27 is constitutional and the City is required to make a voluntary remittance payment under AB 27. Further, the Agency and City are reserving any and all rights with respect to the Stay and the Petition.

### **V. SEVERABILITY**

If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the

provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**VI. BINDING ON SUCCESSORS**

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law. This Agreement shall survive any full or partial merger of the City and the Agency and shall remain in effect and be fully enforceable according to its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Attest:

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Jacqueline M. Hald  
City Clerk

By: \_\_\_\_\_  
Gary Brown  
City Manager

Attest:

REDEVELOPMENT AGENCY OF  
THE CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Jacqueline M. Hald  
Secretary

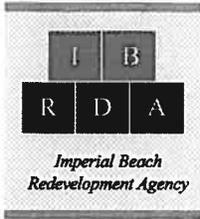
By: \_\_\_\_\_  
Gary Brown  
Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jennifer M. Lyon  
City Attorney

APPROVED AS TO FORM:  
Kane Ballmer & Berkman

By: \_\_\_\_\_  
Agency Special Counsel



**STAFF REPORT  
IMPERIAL BEACH REDEVELOPMENT AGENCY**

**TO:** CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

**FROM:** GARY BROWN, EXECUTIVE DIRECTOR

**MEETING DATE:** August 24, 2011

**ORIGINATING DEPT.:** Mike McGrane, Finance Director

**SUBJECT:** Adoption of Resolution No. R-11-266 of the Redevelopment Agency of the City of Imperial Beach, California, to approve and adopt an Enforceable Obligation Payment Schedule (EOPS)

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**BACKGROUND:**

There have been several attempts by the Governor, the Senate, and the Assembly to eliminate or substantially restructure existing redevelopment agencies, essentially abolishing local control and authority of redevelopment funds and on Wednesday, June 15, 2011, the state legislature passed ABx1 26 ("AB 26") and ABx1 27 ("AB 27") relating to the dissolution and voluntary continuance of redevelopment agencies throughout the state. These bills were signed by Governor Brown on June 28, 2011, and purport to eliminate Redevelopment Agencies, except in certain cases where the Redevelopment Agency pays money to fund state obligations to schools, fire protection districts, and transit districts.

The California League of Cities, the California Redevelopment Association, and special counsel for the City/Agency have respectively opined that certain or all provisions of 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. On July 18, 2011, the California Redevelopment Association, League of California Cities, City of Union City, City of San Jose and John F. Shirey filed a petition for Writ of Mandate; Application for Temporary Stay and supporting memorandum and declarations with the Supreme Court of the State of California (the "Petition"). On August 11, 2011 and on August 17, 2011, the California Supreme Court agreed to review the Petition challenging the constitutionality of AB 26 and AB 27 ("Order") and granted a stay to prevent the operation of AB 26 and AB 27 ("Stay"), except for Part 1.8 of the Health and Safety Code (Health & Safety Code §§ 34161-34169.5) and Health and Safety Code Section 34194(b)(2).

**DISCUSSION:**

With the adoption of AB 26 and AB 27, the legislature provides two options to cities regarding their redevelopment agencies. Cities can proceed with the dissolution of its redevelopment agency pursuant to AB 26 or adopt an ordinance committing to comply with the Voluntary Alternative Redevelopment Program of AB 27. On August 3, 2011, the City Council adopted Ordinance No. 2011-1121 as required by AB 27, in order to allow the Agency to continue in operation and performing its functions.

However, as a result of the Order and Stay issued by the California Supreme Court, the effectiveness of AB 27 has been stayed. Many provisions of AB26 were not stayed, therefore, it is recommended that the Agency comply with certain provisions of AB 26 that were exempted from the Stay. Health and Safety Code Section 34167(h) provides that the Agency may not make a payment pursuant to AB 26 unless it is listed in an adopted enforceable obligation payment schedule [EOPS], other than payments required to meet obligations with respect to bonded indebtedness. It is necessary that all redevelopment agencies adopt an EOPS in order to ensure that the Agency continues to have authority to fulfill its applicable financial obligations during the effectiveness of the Stay. Immediate action is needed because agencies are required to adopt a list of enforceable obligations within sixty days of the effective date of AB 26, which is before the end of August. Attached to Resolution No. R-11-266 is Exhibit "A" that details anticipated payment obligations through December 2011.

**ENVIRONMENTAL DETERMINATION:**

Pursuant to Title 14 of the California Code of Regulations, section 15378(b)(4), this item is not subject to California Environmental Quality Act ("CEQA") review because such approvals are not considered a project, are government funding mechanisms and fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact.

**FISCAL IMPACT:**

Adoption of the attached Resolution does not by itself cause a fiscal impact. However, and notwithstanding any actions planned or already taken with respect to compliance with AB 27, it is necessary that all redevelopment agencies adopt an EOPS in order to ensure that the Agency continues to have authority to fulfill its applicable financial obligations during the effectiveness of the Stay. The Agency's EOPS, which is consistent with the requirements of Health and Safety Code Section 34169 (g), is attached to the Resolution as Exhibit "A."

**DEPARTMENT RECOMMENDATION:**

Staff recommends the Redevelopment Agency:

1. Adopt Resolution No. R-11-266; and
2. Authorize and direct the Executive Director, or designee, to: (i) post the EOPS on the City's website; (ii) notify the County Auditor-Controller, the State Controller and the State Department of Finance concerning this Resolution, in accordance with the applicable provisions of the California Community Redevelopment Law; and (iii) take such other actions and execute such other documents as are necessary and appropriate to effectuate the intent of this Resolution, to implement the Enforceable Obligation Payment Schedule on behalf of the Agency, and to comply with Section 34167(h) and the Stay.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Resolution No. R-11-266.

## RESOLUTION NO. R-11-266

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, TO APPROVE AND ADOPT AN ENFORCEABLE OBLIGATION PAYMENT SCHEDULE (EOPS)**

**WHEREAS**, the Redevelopment Agency of the City of Imperial Beach (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Imperial Beach; and

**WHEREAS**, on February 7, 1996, the City Council (the "City Council") of the City of Imperial Beach (the "City") adopted Ordinance No. 96-901, which approved the Redevelopment Plan (the "Plan") for the Palm Avenue/Commercial Redevelopment Project (the "Project Area") and has amended the Plan for the Project Area on several occasions; and

**WHEREAS**, the Agency is actively engaged in activities to redevelop the Project Area pursuant to the provisions of the CCRL; and

**WHEREAS**, continued redevelopment of the Project Area to eliminate blight, improve public facilities and infrastructure, renovate and construct affordable housing, and enter into partnerships with private industries to create jobs and expand the local economy is vital to the health, safety and welfare of the City; and

**WHEREAS**, Assembly Bill x1 26 ("AB 26") and Assembly Bill x1 27 ("AB 27") were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 28, 2011; and

**WHEREAS**, among other things, AB 26 amends Sections 33500, 33501, 33607.5 and 33607.7 of the Health and Safety Code and adds Part 1.8 and Part 1.85 to the California Health and Safety Code; and

**WHEREAS**, the dissolution of the Agency would be detrimental to the health, safety and economic well-being of the residents of the City and cause irreparable harm to the community, because, among other reasons, the redevelopment activities and projects made possible, implemented and funded by the Agency are highly significant and of enduring benefit to the community and the City and are a critical component of the City's future; and

**WHEREAS**, on July 18, 2011, the California Redevelopment Association, League of California Cities, City of Union City, City of San Jose and John F. Shirey filed a petition for Writ of Mandate; Application for Temporary Stay and supporting memorandum and declarations with the Supreme Court of the State of California (the "Petition"); and

**WHEREAS**, on August 3, 2011, the City Council adopted Ordinance No. 2011-1121 as required by AB 27, in order to allow the Agency to continue in operation and performing its functions; and

**WHEREAS**, on August 11, 2011 and on August 17, 2011, the California Supreme Court agreed to review the Petition challenging the constitutionality of AB 26 and AB 27 ("Order") and granted a stay to prevent the operation of AB 26 and AB 27 ("Stay"), except for Part 1.8 of the Health and Safety Code (Health & Safety Code §§ 34161-34169.5) and Health and Safety Code Section 34194(b)(2); and

**WHEREAS**, the Stay postponed certain provisions of AB 26 and AB 27, but left in place Health and Safety Code Section 34167(h) ("Section 34167(h)") that provides that the Agency may not make a payment unless it is listed in an adopted enforceable obligation payment schedule [EOPS], other than payments required to meet obligations with respect to bonded indebtedness; and

**WHEREAS**, the Order declared that its briefing schedule is designed to facilitate oral arguments as early as possible in 2011, and a decision before January 15, 2012; and

**WHEREAS**, based on the foregoing, it appears that the Stay could be in effect for approximately five (5) months; and

**WHEREAS**, therefore and notwithstanding any actions planned or already taken with respect to compliance with AB 27, it is necessary that all redevelopment agencies adopt an EOPS in order to ensure that the Agency continues to have authority to fulfill its applicable financial obligations during the effectiveness of the Stay; and

**WHEREAS**, subject to the contingencies and reservations set forth herein, the Agency nevertheless desires to adopt an EOPS and to amend it from time to time as necessary; and

**WHEREAS**, the Agency's EOPS, which is consistent with the requirements of Health and Safety Code Section 34169(g), is attached to this Resolution as Exhibit "A."

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency of the City of Imperial Beach as follows:

1. The Agency hereby finds and determines that the foregoing recitals are true and correct.
2. Without waiving its rights under the Stay, any rights or remedies, in law or in equity, to challenge AB 26 and AB 27, or any of its objections that certain or all of the provisions of AB 26 and AB 27 violate the State Constitution and other laws and are invalid and unenforceable, the Agency desires to adopt the EOPS attached hereto and incorporated by reference herein to preserve its rights to make payments as authorized under Section 34167(h).
3. All other legal prerequisites to the adoption of this Resolution have occurred.
4. The EOPS attached hereto as Exhibit "A" and incorporated by reference herein is hereby approved and adopted.
5. The Agency Executive Director, or designee, is hereby authorized and directed to: (i) post the EOPS on the City's website; (ii) notify the County Auditor-Controller, the State Controller and the State Department of Finance concerning this Resolution, in accordance with the applicable provisions of the California Community Redevelopment Law; and (iii) take such other actions and execute such other documents as are necessary and appropriate to effectuate the intent of this Resolution, to implement the Enforceable Obligation Payment Schedule on behalf of the Agency, and to comply with Section 34167(h) and the Stay.
6. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 24<sup>th</sup> day of August 2011, by the following vote:

**AYES:           BOARDMEMBERS:**  
**NOES:           BOARDMEMBERS:**  
**ABSENT:       BOARDMEMBERS:**

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**JAMES C. JANNEY**  
**CHAIRPERSON**

**ATTEST:**

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**JACQUELINE M. HALD, MMC**  
**SECRETARY**

**EXHIBIT A**

**ENFORCEABLE OBLIGATION PAYMENT SCHEDULE**  
Per AB 26 - Section 34167 and 34169 (\*)

Project Name / Debt Obligation	Payee	Description	Total Due During Fiscal Year	Payments by Month						
				July	August	Sept	Oct	Nov	Dec	Total
1) 2003 Tax Allocation Bonds Series A	Union Bank	Bonds issue to fund projects	1,553,204.00						1,553,204.00	\$ 1,553,204.00
2) 2010 Tax Allocation Bonds Series	Union Bank	Bonds issue to fund non-housing projects	1,051,906.26						1,051,906.26	\$ 1,051,906.26
3) City Loan 1995	City of Imperial Beach	Loan to finance start up costs	448,572.00						448,572.00	\$ 448,572.00
4) DDA Seacoast Inn	Imperial	Redevelopment Project - Seacoast Drive	200,000.00						200,000.00	\$ 200,000.00
5) Façade Improvement Contract 1	Stanford Sign	Retail/Commercial Blight	2,100.00	2,100.00						\$ 2,100.00
6) Façade Improvement Contract 2	CES Chula Vista	Retail/Commercial Blight	2,173.54	2,173.54						\$ 2,173.54
7) Façade Improvement Contract 3	Seabreeze	Retail/Commercial Blight	3,675.00	3,675.00						\$ 3,675.00
8) Reimbursement Agreement	City of Imperial Beach	Financial, personnel, use of facilities, etc.	1,700,000.00	1,700,000.00						\$ 1,700,000.00
9) American Legion Project (H05202)	Keyser Marston Assoc.	Project Financial Analysis Consulting	40,117.50						40,117.50	\$ 40,117.50
10) Affordable Housing (H05201)	South Bay Community Svs	Energy Project	16,130.04				16,130.04			\$ 16,130.04
11) Marina Vista (F05501)	Tran Consulting Engineers	Facility Improvement	3,850.00				3,850.00			\$ 3,850.00
12) Veterans Park (P03502)	Geocon Inc.	Park Improvement	1,306.50			1,306.50				\$ 1,306.50
13) Skate Park (P07101)	Buccola Engineering, Inc.	Park Improvement	680.00			680.00				\$ 680.00
14) Commercial Zoning (R05203)	Eagle Newspaper	Notice requirements	395.00			395.00				\$ 395.00
15) Street Improvement III (S04108)	Sim J. Harris, Inc.	Street Improvement Construction	1,302.09			1,302.09				\$ 1,302.09
16) Eco Bikeway (S05104)	KOA Corporation	Bikeway Improvements	3,861.58			3,861.58				\$ 3,861.58
17) Date Ave Street End (S08103)	Nasland Engineering	Street Improvement Contract	10,554.05			10,554.05				\$ 10,554.05
18) 9th & Palm (R05201)	Edco Disposal	Redevelopment Project site waste removal	141.05							\$ -
19) 9th & Palm (R05201)	U.S. Bank	Redevelopment Project site supplies	81.91							\$ -
20) 9th & Palm (R05201)	Mireles Landscaping	Redevelopment Project clean up	1,325.00							\$ -
21) Sports Park Improvements (P05401)	BDS Engineering	Park Improvement	3,121.25							\$ -
22) Street Improvement IV (S11105)	Recon Environmental	Street Improvement Contract	93,308.42							\$ 93,308.42
23) RDA Ending Deficit	City of Imperial Beach	Debt created from SERAF payment	300,000.00			300,000.00				\$ 300,000.00
24) Housing Operating Costs	Imperial Beach Housing Auth	Operating costs	257,351.00	21,445.92	21,445.92	21,445.92	21,445.92	21,445.92	21,445.92	\$ 128,675.52
25) Façade Improvement Contract 4	El Tapatio	Retail/Commercial Blight	20,000.00				20,000.00			\$ 20,000.00
26)										\$ -
27)										\$ -
28)										\$ -
29)										\$ -
30)										\$ -
										\$ -
										\$ -
<b>Totals - This Page</b>			<b>\$ 5,715,156.19</b>	<b>\$ 1,729,394.46</b>	<b>\$ 321,445.92</b>	<b>\$ 132,853.56</b>	<b>\$ 61,425.96</b>	<b>\$ 21,445.92</b>	<b>\$ 3,315,245.68</b>	<b>\$ 5,581,811.50</b>
Totals - Page 2			\$ 349,716.17	\$ -	\$ -	\$ 349,716.17	\$ -	\$ -	\$ -	\$ 349,716.17
Totals - Page 3			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals - Page 4			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals - Other Obligations			\$ 2,047,352.59	\$ -	\$ -	\$ 2,047,352.59	\$ -	\$ -	\$ -	\$ 2,047,352.59
<b>Totals - All Pages</b>			<b>\$ 8,112,224.95</b>	<b>\$ 1,729,394.46</b>	<b>\$ 321,445.92</b>	<b>\$ 2,529,922.32</b>	<b>\$ 61,425.96</b>	<b>\$ 21,445.92</b>	<b>\$ 3,315,245.68</b>	<b>\$ 7,978,880.26</b>

Project Area(s) \_\_\_\_\_

**ENFORCEABLE OBLIGATION PAYMENT SCHEDULE**  
Per AB 26 - Section 34167 and 34169 (\*)

Project Name / Debt Obligation	Payee	Description	Total Due During Fiscal Year	Payments by month						Total
				July	August	Sept	Oct	Nov	Dec	
1) Clean & Green	Andrassy 850 Emory St	Residential Home Improvement Program	24,000.00			24,000.00				\$ 24,000.00
2) Clean & Green	Cortez 1211 7th St	Residential Home Improvement Program	16,490.00			16,490.00				\$ 16,490.00
3) Clean & Green	Jackson 898 5th St	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
4) Clean & Green	Barbato 1401 9th St	Residential Home Improvement Program	4,739.23			4,739.23				\$ 4,739.23
5) Clean & Green	Mendoza 936 Florence	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
6) Clean & Green	Valdez 1176 Georgia St	Residential Home Improvement Program	20,517.83			20,517.83				\$ 20,517.83
7) Clean & Green	Lamssies 337 Evergreen	Residential Home Improvement Program	20,640.00			20,640.00				\$ 20,640.00
8) Clean & Green	Martin	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
9) Clean & Green	Elder 735 Iris Ave	Residential Home Improvement Program	4,254.97			4,254.97				\$ 4,254.97
10) Clean & Green	Sorrels 526 9th St	Residential Home Improvement Program	9,396.00			9,396.00				\$ 9,396.00
11) Clean & Green	McDonald	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
12) Clean & Green	Stevens/Lowery 740 Oneo	Residential Home Improvement Program	12,879.14			12,879.14				\$ 12,879.14
13) Clean & Green	Wilson 822 Carolina St	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
14) Clean & Green	Pendergraft 1029 4th St	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
15) Clean & Green	Valadez 606 Spruce	Residential Home Improvement Program	30,000.00			30,000.00				\$ 30,000.00
16) Clean & Green	Valdez 1131 Connecticut	Residential Home Improvement Program	26,799.00			26,799.00				\$ 26,799.00
17)										\$ -
18)										\$ -
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40)										\$ -
<b>Totals - This Page</b>			<b>\$ 349,716.17</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 349,716.17</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$349,716.17</b>

Project Area(s) All

**OTHER OBLIGATION PAYMENT SCHEDULE**  
Per AB 26 - Section 34167 and 34169 (\*)

Project Name / Debt Obligation	Payee	Description	Total Due During Fiscal Year	Payments by month							
				July	August	Sept	Oct	Nov	Dec	Total	
1) Section 33676 Payments	County General	Pass Thru Payments Amended Area	529,026.06			529,026.06					\$ 529,026.06
2) Section 33676 Payments	County Library	Pass Thru Payments Amended Area	63,652.34			63,652.34					\$ 63,652.34
3) Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Amended Area	297,147.39			297,147.39					\$ 297,147.39
4) Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Amended Area	397,383.18			397,383.18					\$ 397,383.18
5) Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Amended Area	107,082.86			107,082.86					\$ 107,082.86
6) Section 33676 Payments	County Office of Education	Pass Thru Payments Amended Area	47,739.97			47,739.97					\$ 47,739.97
7) Section 33676 Payments	Imperial Beach City Gen Fund	Pass Thru Payments Amended Area	281,924.23			281,924.23					\$ 281,924.23
8) Section 33676 Payments	City of San Diego	Pass Thru Payments Amended Area	8,909.48			8,909.48					\$ 8,909.48
9) Section 33676 Payments	CWA City of San Diego	Pass Thru Payments Amended Area	68.05			68.05					\$ 68.05
10) Section 33676 Payments	San Diego City Zoological Exhibi	Pass Thru Payments Amended Area	225.98			225.98					\$ 225.98
11) Section 33676 Payments	MWD D/S Remainder of SDCWA	Pass Thru Payments Amended Area	193.86			193.86					\$ 193.86
12) Section 33676 Payments	County General	Pass Thru Payments Original Area T1	59,448.14			59,448.14					\$ 59,448.14
13) Section 33676 Payments	County Library	Pass Thru Payments Original Area T1	9,443.37			9,443.37					\$ 9,443.37
14) Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Original Area T1	81,686.41			81,686.41					\$ 81,686.41
15) Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Original Area T1	46,137.69			46,137.69					\$ 46,137.69
16) Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Original Area T1	12,432.63			12,432.63					\$ 12,432.63
17) Section 33676 Payments	County Office of Education	Pass Thru Payments Original Area T1	5,542.82			5,542.82					\$ 5,542.82
18) Section 33676 Payments	Imperial Beach City	Pass Thru Payments Original Area T1	79,308.13			79,308.13					\$ 79,308.13
19) Section 33676 Payments	County General	Pass Thru Payments Original Area	5,538.02			5,538.02					\$ 5,538.02
20) Section 33676 Payments	County Library	Pass Thru Payments Original Area	879.72			879.72					\$ 879.72
21) Section 33676 Payments	Gen Elem South Bay Union	Pass Thru Payments Original Area	7,609.67			7,609.67					\$ 7,609.67
22) Section 33676 Payments	High Sweetwater Union	Pass Thru Payments Original Area	4,298.05			4,298.05					\$ 4,298.05
23) Section 33676 Payments	Southwestern Community Colleg	Pass Thru Payments Original Area	1,158.19			1,158.19					\$ 1,158.19
24) Section 33676 Payments	County Office of Education	Pass Thru Payments Original Area	516.35			516.35					\$ 516.35
<b>Totals - Other Obligations</b>			<b>\$ 2,047,352.59</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,047,352.59</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 2,047,352.59</b>