



Meeting Date: 12/13/2011

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other

Prepared By: Kymerly R. Horner *K.H.* Agenda Item No. **I-8**
 Reviewed By: City Manager *[Signature]* City Attorney Alan Holmberg *AH* Finance *[Signature]* Other N/A

DATE: December 13, 2011

TO: City Council

FROM: Curtis P. Cannon, Community Development Director
Community Development

Curtis P. Cannon

SUBJECT: Extension of Plan Effectiveness Deadlines and the Tax Increment Receipt Deadline for the Redevelopment Plan for the Downtown Renewal (R-108) Project Area Pursuant to California Health and Safety Code Sections 33331.5 concerning Supplemental Educational Revenue Augmentation Fund ("SERAF") Payments

RECOMMENDATION

That City Council:

1. Approve the first reading by title only and subsequent adoption of an Ordinance to amend the Redevelopment Plan for the Downtown Renewal Project Area ("R-108"), to extend certain time limits in accordance with California Health and Safety Code Section 33331.5.
2. Adopt a Resolution to amend the Redevelopment Plan for the Downtown Renewal Project Area (R-108), to extend certain time limits in accordance with California Health and Safety Code Section 33331.5.

DISCUSSION

ABx4-26, adopted in 2009, established and required all state redevelopment agencies to make an allocation to their county's SERAF in both fiscal years 2009-2010 and 2010-2011. It permitted the amendment of all redevelopment plans for projects making SERAF allocations to extend dates of effectiveness and receipt of tax increment each by one year. The extensions are permitted, subsequent to payment of the allocation, but only for the 2009-2010 payment.

If approved, the recommended action would amend the Redevelopment Plan by extending the time limits for the date of effectiveness and receipt of tax increment by one (1) year with respect to the R-108 Project Area. The existing time limits and the new time limits that would be extended are outlined in Table 1 on the following page:

TABLE 1: PROJECT AREA OPERATIVE LIMITS

Project Area	Plan Adoption Date	Current Plan Expiration	Proposed Extended Plan Expiration	Current Last Date to Receive Tax Increment and Repay Indebtedness	Proposed Extended Last Date to Receive Tax Increment and Repay Indebtedness
R-108	May 14, 1968	January 1, 2012	January 1, 2013	January 1, 2022	January 1, 2023

PREVIOUS ACTIONS

May 4, 2010 – Community Development Commission (“CDC”) authorized the Community Development Director to transfer funds in the amount of \$6,242,637 to the County Auditor-Controller’s office for payment into SERAF.

May 10, 2010 – CDC hand-delivered its allocation of the SERAF payment to the County Auditor-Controller’s Office. Included with the payment was a letter to the County Auditor-Controller reserving the agency’s rights to recover funds in the event a judgment by the Superior Court was favorable to redevelopment agencies.

ADOPTION OF ORDINANCES AND RESOLUTIONS

California Health and Safety Code Section 33331.5 allows redevelopment agencies to extend certain time limits as a result of being required to make a SERAF payment for fiscal year 2009-2010. It should be further noted that in accordance with 33331.5, the time limit extensions may be made without undertaking the full project area amendment process. When amending a redevelopment plan for this purpose, the agency is not required to comply with the administrative requirements set forth in California Health and Safety Code Section 33354.6 or Section 33607.7, or any other provision of this part relating to the amendment of redevelopment plans. Accordingly, while Section 33331.5 does not specifically state that it is necessary for the City Council to adopt an ordinance for the aforementioned time extensions, legal counsel recommends that the prudent course of action to take is to carryout the time extensions by way of an ordinance, as a measure, in addition to approving such extensions by resolution which would take effect sooner and prior to expiration of the Redevelopment Plan .

The CDC was required to, and did, make certain payments to the Ventura County Auditor/Controller-Recorder for deposit into the County’s SERAF for fiscal year 2009-2010. Therefore, the date of effectiveness and receipt of tax increment may be extended for one (1) year for the R-108 Project Area.

LEGAL ISSUES FOR CONSIDERATION

In California Redevelopment Association et al v. Genest et al, Case No. 34-2009-80000359-CU-WM-GDS, in the Third Court of Appeals ("CRA v. Genest"), the California Redevelopment Association ("CRA") challenged the validity of the legislation mandating the SERAF transfers (ABX4 26, codified in California Health and Safety Code Sections 33690 and 33690.5). The case alleges that the deposit in County SERAFs of funds received from redevelopment agencies would be in violation of the U.S. Constitution and the California Constitution.

The Sacramento Superior Court, on May 4, 2010, denied the CRA's petition and rejected its request for a stay. The CRA is appealing the decision, and it is not known when the Third Court of Appeals will hand down a decision.

When making its SERAF payments, the CDC reserved any rights that it may have to recover those funds based on any order or judgment of the court in CRA v. Genest. Because it is the making of the SERAF payment that would entitle the CDC to carry out the extension of the redevelopment plan, if the CRA succeeds in its appeal and a final judgment ultimately holds that ABx4 26 is unconstitutional, then the CDC would most likely be able to recover its funds, but the extension (as well as any agreements made in reliance thereon) would be called into question, and most likely held to be invalid. However, the CDC will not have another opportunity to exercise the permitted extensions prior to the date of expiration of the Redevelopment Plan.

FINANCIAL IMPACT

The proposed amendments to the time limits are expected to capture \$152,000 in additional gross tax increment revenue as depicted in Table 2 below. Of this sum, the City is expected to receive \$127,000 in net revenue. Roughly 20% of these funds would be earmarked exclusively for affordable housing, while the balance would be available to underwrite capital projects.

TABLE 2: TIME EXTENSION IMPACTS ("000's Omitted)					
	Gross Revenue	Fixed Costs	Net CDC/City Tax Increment Revenue		
			Affordable Housing	Capital Projects	Total
					Gross Amount
Downtown R-108	\$152	\$26	\$31	\$96	\$127

NOTES:

1. Revenue projections appearing in Table 2 above are based on the current adopted Five-Year Implementation Plan and associated methodology. Actual amounts will likely differ.
2. "Fixed Costs" include fees, charges, statutory pass through payments, and proposed "remittance" amounts under AB 1x26 and AB 1x27.

Attachment #1 – Ordinance for R-108
 #2 – Resolution for R-108

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF OXNARD, CALIFORNIA, EXTENDING THE
PLAN EFFECTIVENESS DEADLINE AND REPAYMENT OF
INDEBTEDNESS DEADLINE/TAX INCREMENT RECEIPT
DEADLINE FOR DOWNTOWN RENEWAL (R-108) PROJECT
AREA

WHEREAS, pursuant to Ordinance No. 1142 adopted on May 14, 1968, the City Council of the City of Oxnard ("City Council") adopted a redevelopment plan ("Downtown Renewal Redevelopment Plan") for the Downtown Renewal Project (R-108) ("Downtown Renewal Project Area"); and

WHEREAS, the Downtown Renewal Redevelopment Plan was amended by the City Council pursuant to Ordinance No. 2075 (adopted on May 6, 1986), Ordinance No. 2344 (adopted on November 8, 1994), and Ordinance No. 2478 (adopted on January 12, 1999) imposing various operative dates and financial limits in compliance with the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*); and

WHEREAS, pursuant to Ordinance No. 1621 adopted on July 6, 1976, the City Council adopted a redevelopment plan ("CCRP Redevelopment Plan") for the Central City Revitalization Project Area ("CCRP"); and

WHEREAS, the CCRP Redevelopment Plan was amended by the City Council pursuant to Ordinance No. 1744 (adopted on February 6, 1979, adding authority for the acquisition of real property, providing relocation assistance and authorizing a Project Area Committee), Ordinance No. 2038 (adopted on May 7, 1985, adding 138 acres of new territory [hereinafter referred to as "CCRP Annex"] to the original project area), Ordinance No. 2075 (adopted on May 6, 1986), Ordinance No. 2343 (adopted on November 8, 1994), and Ordinance No. 2477 (adopted on January 12, 1999), all of which imposed various operative dates and financial limits in compliance with Community Redevelopment Law, and Ordinance No. 2524 (adopted on July 18, 2000, relating to the CCRP Annex, adding authority for tax increment financing and use of eminent domain and establishing initial statutory limits); and

WHEREAS, the City Council adopted Ordinance No. 2526 on July 18, 2000, approving and adopting the Amended and Restated Redevelopment Plan for the Merged Downtown Renewal (R-108) and Central City Revitalization Project Area (the redevelopment plans for the Downtown Renewal Project Area and CCRP, including the CCRP Annex, and all amendments thereto including the Amended and Restated Redevelopment Plan for the Merged Downtown Renewal (R-108) and Central City Revitalization Project Area are hereinafter collectively referenced as the "Redevelopment Plan"); and

WHEREAS, pursuant to provisions of the Community Redevelopment Law, the Oxnard Community Development Commission ("CDC") is engaged in activities necessary to execute and implement the Redevelopment Plan; and

WHEREAS, the Redevelopment Plan currently provides, among other things, that the Redevelopment Plan's effectiveness expires on: January 1, 2010, with respect to the Downtown Renewal Project Area; July 6, 2017, with respect to the CCRP; and May 7, 2026, with respect to the CCRP Annex (collectively the "Effectiveness Deadline"), and that the CDC's authority to repay indebtedness with the proceeds of property taxes received pursuant to Health and Safety Code section 33670 expires on January 1, 2020, with respect to the Downtown Renewal Project Area; July 6, 2027, with respect to the CCRP; and May 7, 2036, with respect to the CCRP Annex (collectively the "T/I Deadline"); and

WHEREAS, Health and Safety Code section 33331.5 provides that when an agency is required pursuant to portions of Health and Safety Code section 33690, to make a payment to the county auditor for deposit in the county's Supplemental Educational Revenue Augmentation Fund, the legislative body of the agency may amend, by ordinance, the redevelopment plan to extend the time limits required pursuant to Health and Safety Code section 33333.2.(a)(2) and 33333.2(a)(3) and Section 33333.6(a) by one (1) year. In adopting the ordinance, neither the legislative body nor the agency is required to comply with Health and Safety Code section 33354.6, Article 12 (commencing with Health and Safety Code section 33450), or any other provision of the Community Redevelopment Law relating to the amendment of redevelopment plans; and

WHEREAS, pursuant to Health and Safety Code section 33690, the CDC was required to and did make certain payments to the Ventura County Auditor/Controller-Recorder for deposit into the County's Supplemental Educational Revenue Augmentation Fund ("SERAF Payment") for fiscal year 2009-2010; and

WHEREAS, because the CDC was required to and did make the SERAF Payment, pursuant to section 33331.5, the aforementioned Effectiveness Deadline and T/I Deadline may be extended for one (1) year; and

WHEREAS, the CDC and City Council desire to take advantage of the above mentioned provisions of the Health and Safety Code and adopt an ordinance to extend the time limit on the effectiveness of the Redevelopment Plan and extend the time limit for paying indebtedness and receiving property taxes for the Project Area for one (1) year each; and

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

NOW, THEREFORE, the City Council ordains as follows:

Section 1. The City Council hereby finds and determines that all of the foregoing recitals are true and correct.

Section 2. The City Council hereby finds and determines, with respect to the Project Area, for fiscal year 2009-2010, that during fiscal year 2009-2010, the CDC, prior to May 10, 2010, remitted an amount for deposit in the County's Supplemental Educational Revenue Augmentation Fund pursuant to Health and Safety Code section 33690;

Section 3. Amendment of Time Limits. Based upon the above findings and in accordance with Health and Safety Code section 33331.5, and notwithstanding any other provisions in the Redevelopment Plan, the City Council hereby amends the R-108 Redevelopment Plan by extending the time limits for plan effectiveness and payment of indebtedness and receipt of property taxes by one (1) additional year each for the Project Area, as stated herein by adoption of this ordinance, and thereby establishes the following limitations:

- (1) Plan Effectiveness. The effectiveness of the R-108 Redevelopment Plan is extended to expire on January 1, 2013.
- (2) Repayment of Indebtedness; Receipt of Property Taxes. Except as provided in subdivisions (f) and (g) of Health and Safety Code section 33333.6, no indebtedness shall be repaid from the division and allocation of property taxes and no allocation of property taxes shall be made to the CDC from the Project Area beyond January 1, 2023.

Section 4. The City Council finds and determines that the amendment to the Redevelopment Plan as provided in this ordinance is in compliance with Health and Safety Code section 33331.5

Section 5. The Redevelopment Plan, as amended, shall remain in full force and effect, unmodified except to the extent of the amendment expressly set forth in this ordinance.

Section 6. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, or invalid, or ineffective.

Section 7. The City Council hereby authorizes and directs the City Manager and CDC Executive Director to undertake such actions and execute such document as may be reasonably necessary or convenient to the carrying out and administration of the actions authorized by this ordinance.

Section 8. Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City. Ordinance No.

_____ was first read on _____, 2011, and finally adopted on _____, 201__ to become effective thirty (30) days thereafter.

PASSED, APPROVED and ADOPTED this _____ day of _____, 201__.

AYES:

NOES:

ABSENT:

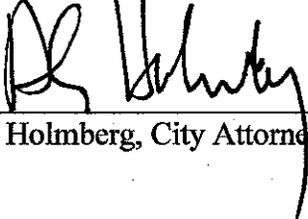
THE CITY OF OXNARD

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney

CITY OF OXNARD

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF OXNARD AMENDING THE TIME LIMITATIONS TO EXTEND BY ONE YEAR THE EFFECTIVENESS OF THE REDEVELOPMENT PLANS AND THE LAST DAY TO REPAY INDEBTEDNESS WITH RESPECT TO THE REDEVELOPMENT PLANS FOR THE DOWNTOWN RENEWAL (R-108) PROJECT AREA

WHEREAS, ABX4 26 required the Community Development Commission ("CDC") to make payments for deposit in the Supplemental Educational Revenue Augmentation Fund ("SERAF") in the amount of \$7.5 million over FY 2009-10 and FY 2010-11; and

WHEREAS, Section 33331.5 of the Health and Safety Code was added by ABX4 26 and provides that when an agency is required to make payments pursuant to a part of ABX4 26, the legislative body may amend a redevelopment plan to extend by one year the time limits required pursuant to Sections 33333.2(a)(2) and 33333.2(a)(3) or Section 33333.6(a) without being required to comply with Section 33354.6, Article 12, or any other provision relating to the amendment of redevelopment plans; and

WHEREAS, the proposed one-year extension of the effectiveness of the Project Area plans and the time limit to repay indebtedness would enable the CDC to lessen the long-term impacts of the SERAF take by providing additional time and funding for the CDC to complete its work in the Project Areas affected by the State's action and will provide a greater level of surety that tax increment is available to meet the CDC's committed indebtedness in light of the budget actions at the State level.

NOW, THEREFORE, the City Council of the City of Oxnard does hereby resolve, as follows:

Section 1: The City Council of the City of Oxnard hereby amends the time limitations to extend by one year the effectiveness of the redevelopment plan and the last day to repay indebtedness with respect to the Redevelopment Plan for the R-108, Project Area.

PASSED AND ADOPTED this ____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney