

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA, TO TAKE EFFECT ONLY IF ASSEMBLY BILLS 1X 26 AND 27 ARE UPHELD AND THE STAY IS LIFTED, DETERMINING THAT IT WILL COMPLY, UNDER PROTEST, 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 AND OPERATION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA

WHEREAS, the City Council of the City of Santa Barbara (“City”) approved and adopted the Redevelopment Plan for the Central City Redevelopment Project Area (“Redevelopment Plan”) encompassing certain properties within the City (the “Project Area”);

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

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

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, to stimulate and expand the Project Area’s economic growth, to renovate and construct affordable housing, to create and develop local job opportunities and to alleviate deficiencies in public infrastructure;

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor has signed Assembly Bills 1X 26 and 27 which dissolve all California redevelopment agencies and transfer their assets to successor agencies unless the community that created the redevelopment agency enacts an ordinance committing the agency to making certain payments;

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

WHEREAS, once a redevelopment agency is dissolved, AB 1X 26 makes its existing assets and future property tax revenues available for use by third parties for their own benefit;

WHEREAS, AB 1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code;

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

WHEREAS, under the threat of dissolution pursuant to the AB 1X 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance in the amount of Seven Million Eighty-Five Thousand Two Hundred Fifty Seven Dollars (\$7,085,257), as well as the subsequent annual community remittances as set forth in the CRL;

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;

WHEREAS, on July 18, 2011, the League of California Cities and the California Redevelopment Association filed a petition on behalf of cities, counties and redevelopment agencies asking the California Supreme Court to overturn AB 1X 26 and AB 1X 27 on the following grounds:

1) AB 1X 27 violates the State Constitution because it requires redevelopment agencies to use their tax increment funds for the benefit of the state and other local jurisdictions;

2) AB 1X 26's attempt to restrict the use of redevelopment agencies' funds pending their dissolution violates the State Constitution;

3) AB 1X 26's attempt to dissolve the redevelopment agencies violates the State Constitution;

4) The payments violate the State Constitution to the extent they are made with property tax proceeds;

5) The payments violate the State Constitution to the extent they are made with proceeds of local taxes other than property taxes; and

6) Requiring local governments to shoulder part of the state responsibility to fund schools constitutes an unfunded state mandate;

WHEREAS, while the City intends to make these community remittances, in order to prevent the total loss of benefits provided by the Agency to the taxpayers, property owners and residents of the City, if AB 1X 26 and 27 are upheld by the Court and the currently imposed stay is lifted, the remittances shall be made by the City under protest and without prejudice to the City's and the Agency's right to recover such amounts and interest thereon, to the extent there is a further determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise illegal or repealed;

WHEREAS, on August 11, 2011 the State Supreme Court issued a stay suspending the relevant provision of AB 1X 27 that authorized the adoption of Continuation Ordinances, therefore, adoption of this Ordinance is expressly made contingent upon the stay being lifted and a ruling by the Court to uphold AB 1X 26 and 27 or the relevant portions thereof;

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to further challenge the legality of the of AB 1X 26 and AB 1X 27 on behalf of the City and or the Agency;

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 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

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

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

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

SECTION 2. Participation in the Alternative Voluntary Redevelopment Program. Subject to the contingencies provided in Section 4 below, 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 submit, under protest, to the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

SECTION 3. Payment Under Protest. Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances, under protest, set forth in Health and Safety Code section 34194 *et seq.*

SECTION 4. Effect of Stay or Determination of Invalidity.

(a) The City shall not make any Community Remittance and this Ordinance shall be rendered null and void, in the event any of the following events occur: (i) a court of competent jurisdiction grants a further stay on the enforcement of AB 1X 26 and AB 1X 27, (ii) a court of competent jurisdiction determines that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise illegal and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed, or (iii) Health and Safety Code Section 34194.2, providing that the sponsoring jurisdiction and redevelopment agency may enter an agreement providing that the agency may transfer to the sponsoring jurisdiction sufficient tax increment to make the jurisdiction's Community Remittance payment, is repealed or otherwise held invalid or inapplicable.

(b) Any Community Remittance shall be made under protest and without prejudice to the City's or Agency's right to recover such amount and interest thereon in the event that there is a further and or final determination that AB 1X 26 and AB 1X 27 are unconstitutional.

(c) If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed automatically null and void and of no further force or effect, without any further action by the City or its City Council.

SECTION 5. Implementation. The City Council hereby authorizes and directs the City Administrator or designee to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Santa Barbara 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 submission to the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.

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

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

filed with the County Clerk of the County of Santa Barbara in accordance with CEQA Guidelines.

SECTION 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at 735 Anacapa Street, Santa Barbara, CA. The custodian for these records is the City Clerk.

SECTION 9. Severability. The City Council declares that, should any provision section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 10. 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 Santa Barbara, 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 11. Effective Date. Subject to AB 1X 26 and 27 being upheld and the stay being lifted, this Ordinance shall become effective thirty (30) days from its adoption.