



STAFF REPORT

DATE: JANUARY 11, 2012
TO: MAYOR AND CITY COUNCIL MEMBERS
FROM: ROD FOSTER, CITY MANAGER
BONNIE JOHNSON, MANAGEMENT SERVICES DIRECTOR
PREPARED BY: DEAN DERLETH, CITY ATTORNEY
DELMAR WILLIAMS, AGENCY COUNSEL
SUBJECT: ADOPTION OF CITY RESOLUTION ELECTING TO BECOME THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY FOR THE CITY OF COLTON PURSUANT TO PART 1.85 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. R-01-12 electing to become the successor agency to the Redevelopment Agency (“Agency”) for the City of Colton pursuant to part 1.85 of division 24 of the California Health and Safety Code.

GOAL STATEMENT

The proposed action will allow the City to take on the responsibility of winding down the Agency upon its dissolution under AB 1X 26 and have some control over that process.

BACKGROUND

On June 28, 2011, as part of the 2011-2012 State of California budget bill, companion bills Assembly Bill 1X 26 (“AB 26”) and Assembly Bill 1X 27 (“AB 27”) were enacted, which would dissolve the Agency, unless the City adopts an ordinance to participate in the “Alternative Voluntary Redevelopment Program” established by AB 27 and pay an annual “community remittance” payment to the County of San Bernardino. On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 (“Legal Action”), challenging the constitutionality of AB 26 and AB 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 26 and AB 27, pending the Supreme Court’s determination of the legality of AB 26 and AB 27. On August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of AB 26, exclusive of Health and Safety Code Sections 34161 through 34167 (which suspend new redevelopment activity), and a complete stay of AB 27, such that the City and the Agency could not pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, “Stay”). On August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affected Health and Safety Code Sections 34167.5 through 34169.5, in addition to California

Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Sections 34194(b)(2). On December 29, 2011, the Supreme Court issued its final decision in the Legal Action, upholding AB 26, invalidating AB 27, extending all statutory deadlines under Health and Safety Code Sections 34170 through 34191, and essentially dissolving all redevelopment agencies throughout the State, effective February 1, 2012.

ISSUE/ANALYSIS

AB 26 provides that the City of Colton (“City”) will be “successor agency” to the Redevelopment Agency for the City of Colton (“Agency”) and responsible for the wind down of the Agency’s affairs. The activities of the City, as successor agency, will be overseen by an oversight board, comprised primarily of representatives of other affected taxing agencies, until such time as the debts of the Agency are paid off. All Agency assets liquidated and all property taxes are redirected to local taxing agencies.

AB 26 designates the City as the successor agency unless the City expressly elects not to serve as a successor agency. The election not to serve as the successor agency must be made by City Council resolution, and a copy of the resolution must be filed with the County Auditor-Controller by January 13, 2012 (within 15 days of the Supreme Court’s decision). Although the City may adopt a resolution electing to be the successor agency, the City will automatically become the successor agency by operation of law, unless the City affirmatively elects not to serve as the successor agency by City Council resolution.

If the City elects not to serve as the successor agency, another local agency (such as the County, another city in the County or special district) could choose to serve as the successor agency and control the wind down of the Agency’s affairs. The wind down process is likely to be time consuming and complex. There is risk that there will be disputes over the proper implementation of the wind down process. However, if the City chooses not to serve as the successor agency, it will have little or no control over the manner in which the existing obligations and agreements of the Agency are handled during the wind down process.

The City should also be aware of certain potential risks involved in electing to be the successor agency, including not receiving reimbursement for administrative costs either because such costs exceed the City’s budget, or because there are insufficient tax increment funds to cover higher priority costs, and defending lawsuits brought against the City, as successor agency, at its own cost. However, the City should also know that pursuant to AB 26, each of these potential risks are subject to the statutory limitation on successor agency liability to the amount of property tax received by the successor agency and the value of assets transferred to the successor agency.

Staff has prepared the attached Resolution with the assumption that the City Council will wish to be the successor agency. If the City Council decides otherwise, it can easily be amended to reflect your wishes.

FISCAL IMPACT

No City funds are involved with the election of the City to serve as the successor agency.

ALTERNATIVES

The City Council may wish to consider the following alternative:

1. Direct staff to revise the Resolution to reflect the City Council's determination not to be the successor agency.
2. Provide alternative direction to staff.

ATTACHMENTS

- (1) City Council Resolution No. R-01-12

1 AB 1X 26 and AB 1X 27, on behalf of cities, counties and redevelopment agencies and requesting a
2 stay of enforcement of AB 1X 26 and AB 1X 27, pending the Supreme Court's determination of the
3 constitutionality of AB 1X 26 and AB 1X 27; and

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5 **WHEREAS**, on August 11, 2011, the Supreme Court issued an order in the Legal
6 Action granting a partial stay of California Health and Safety Code Section 34161 et seq., exclusive
7 of California Health and Safety Code Sections 34161 through 34167 (which prohibit all new
8 redevelopment activity), and a complete stay of California Health and Safety Code Section 34192 et
9 seq., such that the City and the Agency could not pursue new redevelopment activity under the
10 Alternative Voluntary Redevelopment Program (collectively, "Stay"); and

11 **WHEREAS**, on August 17, 2011, the Supreme Court modified the Stay such that the
12 Stay no longer affected California Health and Safety Code Sections 34167.5 through 34169.5, in
13 addition to California Health and Safety Code Sections 34161 through 34167, or California Health
14 and Safety Code Section 34194(b)(2); and

15 **WHEREAS**, on December 29, 2011, the Supreme Court issued its final decision in
16 the Legal Action, upholding AB 1X 26, invalidating AB 1X 27, extending all statutory deadlines
17 under Health and Safety Code Sections 34170 through 34191, and dissolving all redevelopment
18 agencies throughout the State of California, effective February 1, 2012; and

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20 **WHEREAS**, AB 1X 26 further provides that, upon their dissolution, any property
21 taxes that would have been allocated to redevelopment agencies will no longer be deemed tax
22 increment, and will be allocated first to successor agencies to make payments on the existing
23 indebtedness of the dissolved redevelopment agencies, with remaining balances allocated in
24 accordance with applicable constitutional and statutory provisions; and

25 **WHEREAS**, AB 1X 26 provides that the City will be the successor agency to the
26 dissolved Agency, unless the City elects not to act as the successor agency, and that, with certain
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1 exceptions, all authority, rights, powers, duties and obligations previously vested with the Agency,
2 under the CRL, will be vested in the City as of February 1, 2012; and

3 **WHEREAS**, all other legal prerequisites to the adoption of this Resolution have
4 occurred.

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6 **NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF COLTON DOES**
7 **HEREBY RESOLVE AND FIND AS FOLLOWS:**

8 **Section 1.** **Recitals.** The Recitals preceding this Resolution are true and correct and are
9 incorporated into this Resolution.

10 **Section 2.** **CEQA Compliance.** The determination and election made in this Resolution
11 do not commit the City to any action that may have a significant effect on the environment. As a
12 result, such approvals do not constitute a project subject to the requirements of the California
13 Environmental Quality Act. The City Clerk is authorized and directed to file a Notice of Exemption
14 with the appropriate official of the County of San Bernardino, California, within five (5) days
15 following the date of adoption of this Resolution.

16 **Section 3.** **Election to be Successor Agency.** In accordance with Health and Safety Code
17 Section 34173, and based on the Recitals set forth above, the City Council hereby elects and
18 determines that the City of Colton shall become the “successor agency” to the former Redevelopment
19 Agency for the City of Colton. Upon dissolution of the Redevelopment Agency for the City of Colton
20 pursuant to Part 1.85 of Division 24 of the California Health and Safety Code, and except as provided
21 under the CRL, all authority, rights, powers, duties and obligations previously vested with the former
22 Redevelopment Agency for the City of Colton, under the CRL, shall be vested in the City as the
23 successor agency to the Redevelopment Agency for the City of Colton.

24 **Section 4.** **Implementation.** The City Council hereby authorizes and directs the City
25 Manager to take any action and execute any documents necessary to carry out the purposes of this
26 Resolution, including but not limited to notifying the County of San Bernardino Auditor-Controller,
27 the Controller of the State of California, and the California Department of Finance of the adoption of
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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss.
3 CITY OF COLTON)

4 I, EILEEN C. GOMEZ, City Clerk of the City of Colton, do hereby certify that the
5 foregoing Resolution No. R-XX-12 was duly and regularly adopted by the City Council of the City of
6 Colton at a regular meeting thereof on the 11th day of January, 2012 and that the same was passed
7 and adopted by the following vote, to wit:

8 AYES:

9 NOES:

10 ABSENT:

11 ABSTAIN:

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13 Eileen C. Gomez, City Clerk, CMC
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