

ORDINANCE NO. 1411

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA, CALIFORNIA, DETERMINING IT WILL COMPLY 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 CITY OF ARCATA REDEVELOPMENT AGENCY

The City Council of the City of Arcata does ordain as follows:

Section 1. FINDINGS

The City Council of the City of Arcata hereby finds and determines that:

1. The City Council of the City of Arcata (“City”) approved and adopted the Plan of the Arcata Community Development Project Area (“Redevelopment Plan”) covering certain properties within the City (the “Project Area”).
2. The Arcata Community Development Agency (“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”).
3. 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.
4. Over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area’s economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few.
5. As part of the 2011–12 State budget bill, the California Legislature enacted and the Governor signed, companion bills Assembly Bill 1X 26 (“AB 1X 26”) and Assembly Bill 1X 27 (“AB 1X 27”), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments into a Special District Allocation Fund and Educational Revenue Augmentation Fund established for each county and administered by the county auditor-controller.
6. Specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011.

7. 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.

8. 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.

9. The Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller.

10. Under the threat of dissolution under AB 1X 26, and upon the contingencies and reservations set forth herein, the City intends to make the Fiscal Year 2011–2012 community remittance to the Special District Allocation Fund and Educational Revenue Augmentation Fund, currently estimated by the California Director of Finance as of August 1, 2011, to be **ONE MILLION TWO HUNDRED THREE THOUSAND EIGHT HUNDRED THIRTY-EIGHT DOLLARS (\$1,203,838.00)**, as well as the subsequent annual community remittances currently estimated to be **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)**.

11. The City intends to reserve the right to appeal the California Director of Finance’s final calculation of the amount of the Fiscal Year 2011–12 community remittance (and subsequent annual remittances).

12. 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, among others:

- 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.

13. In order to prevent the total loss of benefits provided by the Agency to the taxpayers, property owners and residents of the City, the City will make all community remittances under protest and without prejudice to the City's and/or Agency's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise illegal or repealed.

14. The City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27 on behalf of the City and/or Agency.

15. 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.

16. Unrelated to AB 1X 26 and AB 1X 27, the Agency is currently approaching the \$50,000,000 statutory cap on its receipt of net tax increment revenue, and is required to escrow all Agency revenue to secure the Agency's bond indebtedness. As a result, without a Redevelopment Plan amendment, Agency revenue is unavailable to assist the City in making the annual community remittances.

17. While the City currently intends to make the community remittances, upon continued analysis it may choose to discontinue its participation in the Alternative Voluntary Redevelopment Program, and therefore acknowledges its right to repeal this ordinance at any time.

18. All other legal prerequisites to the adoption of this Ordinance have occurred.

Section 2. PARTICIPATION IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM

In accordance with Health and Safety Code Section 34193, and based on the Findings set forth above, the City Council hereby determines that the City will submit, under protest and subject to the reservation of all legal and equitable rights, 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 and subject to the reservation of all legal and equitable rights including but not limited to the right to appeal the California Director of Finance's final calculation of the amount of the Fiscal Year 2011–12 community remittance (and subsequent annual remittances), 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 in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or 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.

(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 final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise illegal.

(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 Manager or designee to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Humboldt 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

(a) It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*), the City will enter into an agreement with the Agency as authorized pursuant to Health and Safety Code 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, to the extent allowable by the current escrow of the Agency's tax increment revenue securing the Agency's bond indebtedness.

(b) The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make any of the community remittance payments.

(c) The City's ongoing participation in the Alternative Voluntary Redevelopment Program is subject to its continued analysis and the City therefore acknowledges its right to repeal this ordinance at any time and to discontinue its participation.

Section 7. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.

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 736 F Street, Arcata, California 95521. 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. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Municipal Code as heretofore adopted by the City of Arcata that are in conflict with the provisions of this Ordinance are hereby repealed.

Section 11. EFFECTIVE DATE

The ordinance was adopted conditionally subject to the California Supreme Court lifting its stay of 2011-2012 Assembly Bill 1X 27, and will become effective thirty days after such event.

DATE: August 17, 2011

ATTEST:

APPROVED:

/s/ Randal J. Mendosa
City Clerk, City of Arcata

/s/ Susan Ornelas
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1411, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California on the 17th day of August, 2011, by the following vote:

AYES: ORNELAS, WINKLER, BRINTON, STILLMAN, WHEETLEY

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Randal J. Mendosa
City Clerk, City of Arcata