

**CITY OF GARDEN GROVE**

**INTER-DEPARTMENT MEMORANDUM**

**Oversight Board of the Successor Agency to  
The Garden Grove Agency for Community Development**

To: Matthew J. Fertal From: Economic Development

Dept: Director

Subject: TRANSFER OF THE FORMER AGENCY'S HOUSING ASSETS AND RESPONSIBILITIES, ALONG WITH THE ENCUMBERED AMOUNTS FROM TO THE GARDEN GROVE HOUSING AUTHORITY Date: March 28, 2012

OBJECTIVE

To have the Oversight Board adopt the attached Resolution affirming the transfer by operation of law of the former Garden Grove Agency for Community Development's (Agency) Housing assets and responsibilities and all rights, powers, duties and obligations along with the encumbered amounts from the Low and Moderate Income Housing Fund to the Garden Grove Housing Authority.

BACKGROUND

Under the Dissolution Act, the city that formed a redevelopment agency became the successor agency, unless it opted not to by January 13, 2012. As of February 1, 2012, all redevelopment agencies were dissolved and thereby all assets properties, contracts, leases, books and records, buildings, and equipment of the former Agency (except for most affordable housing assets) transferred by operation of law to The City of Garden Grove as Successor Agency of the Garden Grove Agency for Community Development (Successor Agency.) The Successor Agency manages redevelopment projects that are the subject of Enforceable Obligations, makes payments on Enforceable Obligations identified on the Enforceable Obligation Payment Schedule (EOPS) and Recognized Obligation Payment Schedule (ROPS), unwinds and liquidates the non-affordable housing assets and properties under the supervision and control of and as directed by this Oversight Board.

Prior to February 1 and pursuant to Section 34176, the City of Garden Grove made an election whether to retain, or decline to retain, the affordable housing assets and functions previously performed by the Agency. The City so declined and selected the Garden Grove Housing Authority to assume the housing assets and functions of the former Agency. Housing assets that transfer to this "Housing Successor" include real property, personal property, contracts, leases, books and records, buildings, equipment, encumbered fund balance of the Low and Moderate Income Housing Fund ("Housing Fund"), and other revenues of the former Agency. However, the

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unencumbered balances in the former Agency's Housing Fund did not transfer to the Housing Successor and now remain on account with the Successor Agency until such monies are remitted to the County Auditor-Controller.

DISCUSSION

While the Housing Successor is not subject to control by the Oversight Board (with limited exceptions), as the Housing Successor the Garden Grove Housing Authority is subject to the California Housing Authorities Law, Health & Safety Code Section 34200, *et seq.*) and is acting in that capacity. On February 1, 2012, under Section 34176 all affordable housing assets of the former Agency (excluding unencumbered Housing Fund balances) were transferred by operation of law to the Garden Grove Housing Authority acting as the Housing Successor. However, Section 34181 clouds the presumption of this transfer as it provides the Oversight Board direct the Successor Agency to "[t]ransfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176."

Since the Successor Agency has existed since February 1, but the Oversight Board is just now being formed (it can be formed as late as May 1), there has not been legal certainty among attorneys, title companies, banks, and other interested parties that all housing assets have in fact transferred to the Garden Grove Housing Authority acting as the Housing Successor; however, most arguably the Housing Successor does now hold all housing assets of the former Agency. Also unclear is the disposition of the existing Housing Fund balance since (i) Section 34177(d) requires the Successor Agency to remit unencumbered funds, both non housing and housing, to the County Auditor-Controller for distribution to the taxing entities as property taxes; but, as noted, (ii) Section 34181(d) states that the Oversight Board directs this transfer; and, again, (iii) Section 34176 provides the entire Housing Fund balance (except unencumbered funds) is assumed by Housing Successor.

In its February 17, 2012, "Report on Unwinding Redevelopment", the Legislative Analyst's Office (LAO) states that Successor Agencies and Oversight Boards together will distinguish between encumbered and unencumbered balances in the Housing Fund to determine what are the unencumbered funds to be remitted to the County Auditor-Controller for distribution to taxing entities. The LAO report also notes that "HCD and SCO have separate criteria for distinguishing between encumbered and unencumbered funds." The ROPS includes and lists the enforceable obligations that encumber Housing Fund monies, and will be brought to the Oversight Board prior to April 15, 2012, for consideration.

As written, the Dissolution Act is not clear if the Housing Successor must meet any existing or future affordable housing obligations (such as replacement housing or inclusionary housing); nor is it clear whether the Housing Successor exercises powers and performs activities pursuant to the Community Redevelopment Law (CRL")

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statutes that have been repealed or otherwise declared inoperative. However, the DOF responded to this question posed by a Successor Agency stating: "there may be specific housing-related enforceable obligations that would have been satisfied out of the low-moderate income housing fund. These could include construction contracts, and purchase of replacement housing for housing that has been demolished as part of an ongoing project," by which the DOF implies that certain types of housing obligations may continue to apply. Under Section 34176, the Housing Successor may enforce affordability covenants and perform related activities pursuant to the CRL (SB 654 & AB1585 would change "may" to "shall").

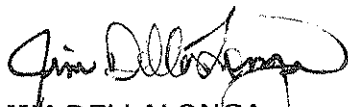
The Successor Agency requests that the Oversight Board affirm that the former Agency's housing assets and housing functions transferred to the Garden Grove Housing Authority as of February 1, 2012. Further, the Successor Agency requests that the Oversight Board affirm that the Garden Grove Housing Authority, acting as Housing Successor, now has "rights, powers, duties and obligations" of the former Agency as set forth in the Dissolution Act. These actions are included in the attached Oversight Board Resolution No. 2012-04.

It should be noted that actions of the Oversight Board shall not become effective for three business days, pending any request for review by the DOF. Should the DOF request a review of the Board's actions, it will have 10 days from the date of its request to approve the Oversight Board action or return it to the Oversight Board for reconsideration and the action, if subject to review by DOF, will not be effective until approved by DOF.

RECOMMENDATION

It is recommended that the Oversight Board take the following actions:


- Affirm the transfer of the former Agency's housing assets and responsibilities and all rights, powers, duties and obligations along with the encumbered amounts from the Low and Moderate Income Housing Fund to the Garden Grove Housing Authority to Sections 34176 and 34181.
- Adopt the attached Resolution affirming the transfer of the former Agency's housing assets and responsibilities and all rights, powers, duties and obligations along with the encumbered amounts from the Low and Moderate Income Housing Fund to the Garden Grove Housing Authority to Sections 34176 and 34181.



JIM DELLALONGA  
Department Administrative Officer

Attachment 1: Draft Oversight Board Resolution 02-12

Recommended for Approval



Matthew Fertal  
Director

**OVERSIGHT BOARD**

**RESOLUTION NO.**

**A RESOLUTION OF THE OVERSIGHT BOARD  
TO THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN  
GROVE AGENCY FOR COMMUNITY DEVELOPMENT AFFIRMING THE  
TRANSFER BY OPERATION OF LAW OF THE FORMER AGENCY'S HOUSING  
ASSETS AND RESPONSIBILITIES AND ALL RIGHTS, POWERS, DUTIES AND  
OBLIGATIONS ALONG WITH THE ENCUMBERED AMOUNTS FROM THE LOW  
AND MODERATE INCOME HOUSING FUND TO THE GARDEN GROVE HOUSING  
AUTHORITY PURSUANT TO SECTIONS 34176 AND 34181**

**WHEREAS**, the Garden Grove Agency for Community Development ("Agency") was established as a redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"), and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council of the City of Garden Grove ("City"); and

**WHEREAS**, Assembly Bill x1 26 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which laws cause the dissolution and wind down of all redevelopment agencies ("Dissolution Act"); and

**WHEREAS**, on December 29, 2011, in the petition *California Redevelopment Association v. Matosantos*, Case No. S194861, the California Supreme Court upheld the Dissolution Act and thereby all redevelopment agencies in California were dissolved as of and on February 1, 2012, under the dates in the Dissolution Act that were reformed and extended thereby ("Supreme Court Decision"); and

**WHEREAS**, the Agency is now a dissolved redevelopment agency pursuant to the Dissolution Act; and

**WHEREAS**, by Resolution No. 9077-11 considered and approved by the City Council at an open public meeting, the City chose to become and serve as the successor agency to the dissolved Agency under the Dissolution Act; and

**WHEREAS**, as of and on and after February 1, 2012, the City serves and acts as the "Successor Agency" and will perform its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board"); and

**WHEREAS**, Section 34179 of the Dissolution Act provides that the Successor Agency shall have an Oversight Board composed of seven members; and

**WHEREAS**, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Act; and

**WHEREAS**, pursuant to Section 34179 the Successor Agency's Oversight Board has been formed and the initial meeting has occurred on March 28, 2012; and

**WHEREAS**, by Resolution No. 9089-12 considered and approved by the City Council at an open public meeting on January 17, 2012 pursuant to Section 34176 of the Dissolution Act, the City Council declined to assume the housing assets and functions of the Agency and selected the Garden Grove Housing Authority to so assume such housing assets and functions, and on January 24, 2012, also pursuant to Section 34176 the Garden Grove Housing Authority accepted and assumed the housing assets and functions of the Agency and as of February 1, 2012, became and serves as the "Housing Successor" of the former Agency pursuant to the Dissolution Act; and

**WHEREAS**, the Oversight Board desires to affirm that the former Agency's housing assets and housing functions transferred to the Garden Grove Housing Authority, acting as Housing Successor, as of February 1, 2012; and

**WHEREAS**, the Oversight Board desires to affirm that that the Garden Grove Housing Authority, acting as Housing Successor, now has "rights, powers, duties and obligations" relating to the housing assets and functions of the former Agency pursuant to the Dissolution Act; and

**WHEREAS**, pursuant to the Dissolution Act, the actions of the Oversight Board, including those approved by this Resolution, do not become effective for three (3) business days pending any request for review by the DOF, and if the DOF requests review hereof, DOF will have ten (10) days from the date of its request to approve this Oversight Board action or return it to the Oversight Board for reconsideration and the action, if subject to review by DOF, will not be effective until approved by the DOF.

**NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD TO THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:**

**Section 1.** The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

**Section 2.** Pursuant to the Dissolution Act, the Oversight Board affirms that the former Agency's housing assets and housing functions transferred to the Garden Grove Housing Authority, acting as Housing Successor, as of February 1, 2012.

**Section 3.** Pursuant to the Dissolution Act, the Oversight Board affirms that the Garden Grove Housing Authority, acting as Housing Successor, now has all "rights, powers, duties and obligations" relating to the housing assets and functions of the former Agency pursuant to the Dissolution Act.

**Section 4.** The Oversight Board authorizes the Successor Agency to transmit this Resolution to the County Auditor-Controller, the State Department of Finance, and the State Controller's Office.

**Section 5.** The City Manager of the Successor Agency or his authorized designee is directed to post this Resolution on the City/Successor Agency's website.

**Section 6.** This Resolution shall be effective after this Resolution is transmitted to the DOF and the expiration of three (3) business days pending a request for review by the DOF within the time periods set forth in the Dissolution Act; in this regard, if the DOF requests review hereof it will have ten (10) days from the date of its request to approve this Oversight Board action or return it to the Oversight Board for reconsideration and the action, if subject to review by DOF, will not be effective until approved by the DOF.

**Section 7.** The Secretary of the Oversight Board shall certify to the adoption of this Resolution.