

RESPONSE TO THE GRAND JURY REPORT ENTITLED
"THE DISSOLUTION OF REDEVELOPMENT: WHERE
HAVE WE BEEN? WHAT LIES AHEAD?"
August 28, 2011
Page 2

- Direct the City Manager or his designee to submit the response to the Presiding Judge of the Superior Court of Orange County.



MARIA STIPE
Deputy City Manager

- Attachment 1: Proposed Response to the Grand Jury Report Entitled
*"The Dissolution of Redevelopment: Where Have We Been?
What Lies Ahead?"*
- Attachment 2: Grand Jury Report

Recommended for Approval



Matthew Fertal
City Manager

(714) 741-5104

August 28, 2012

Honorable Thomas J. Borris, Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

RE: City of Garden Grove's Response to Orange County Grand Jury Report, "*The Dissolution of Redevelopment: Where Have We Been? What Lies Ahead?*"

Dear Judge Borris:

We have reviewed the Orange County Grand Jury Report, "*The Dissolution of Redevelopment: Where Have We Been? What Lies Ahead?*". After studying the report findings and recommendations, we are providing our responses to Findings F1, F2, F3 and F10, and Recommendations R1, R2, R4, R5, and R6, as requested by the Grand Jury.

Response to Findings

F1: *As of the date of dissolution of redevelopment (February 1, 2012), all city operated redevelopment agencies, except Mission Viejo and Seal Beach, were exceeding the administrative costs limit of 5% of the tax increment distributed related to the ROPS as authorized by ABX1 26.*

The City agrees with this finding based on the information provided in the Grand Jury Report.

F2: *Of the agencies surveyed, only Costa Mesa and Santa Ana reported having a citizen involvement committee along the line of a Project Area Committee as authorized by Section 33385 of the Health and Safety Code.*

The City agrees with this finding based on the information provided in the Grand Jury Report. However, while there was not a requirement for agencies to have citizen involvement committees, the City of Garden Grove did form and maintain Project Area Committees in 1992, 1998 and 2002 when it was processing amendments to its redevelopment project area. These committees remained in place for several years.

F3: *Historically, external oversight over redevelopment has been missing or ineffective in monitoring redevelopment agency compliance and performance. The newly formed oversight boards offer a potential to improve on that record by providing critical evaluation of existing projects and management of the successor agency debt.*

The City disagrees partially with this finding. External oversight mechanisms have been effective in monitoring compliance and performance of the Garden Grove Agency for Community Development (Agency). Redevelopment agency business was routinely conducted through open meetings and public hearing processes, and through publicly noticed neighborhood meetings to ensure opportunities for public input. Reports related to each of the Agency's redevelopment projects have always been made available for public review in the City Clerk's office, in the lobby of City Hall, and on the City's website. Additionally, redevelopment activities have been subject to annual review and audits and local news media have consistently provided broad coverage of Agency projects. Nevertheless, the City agrees the newly formed oversight boards offer a potential for continued evaluation of existing projects and management of the successor agency debt.

F10: *The City of Garden Grove failed to adequately address citizen concerns in the pursuit of development of the parking area on Grove Street, west of historic Main Street.*

The City disagrees wholly with this finding.

Early in the process, the City introduced the concept of housing to the owners and businesses on Main Street. There appeared to be much support for the housing concept until the Agency selected a developer not supported by certain Main Street owners and businesses. Even so, the selected developer held two neighborhood meetings with the owners and businesses, and the Main Street Commission was presented the proposed development on multiple occasions. The matter then went before the Planning Commission and finally to the Redevelopment Agency and City Council. There were many opportunities for public input and discussion regarding this project.

Relative to the proposed housing project and the loss of parking spaces for Main Street businesses, various parking studies determined that no more than 50% of the existing spaces were needed for Main Street at peak times. The housing project would have provided as much as 120 spaces for businesses on Main Street. So, although there was a reduction of 40 parking spaces, there were still as many as 40 spaces more than was needed based on existing peak demand. It was never the intent of the City, or the developer, to negatively impact the businesses on Main

Street. In fact, it was the proposed addition of 100 housing units that the City was hoping would increase the number of patrons to Main Street.

Response to Recommendations

R1: *All successor agencies should review administrative costs to ensure compliance with the limit of five percent of the tax-increment or less as required by ABX1 26 and develop a plan to reduce these costs to three percent of the tax increment received or less in 2012-2013. If these percentages fall below \$250,000, the agencies are allowed to claim the higher amount. (See F1).*

The recommendation has been implemented. ROPS I, II, and III, which were approved by the Successor Agency and Oversight Board contain administrative costs that comply with ABX1 26.

R2: *Successor agencies and oversight boards should review Recognized Obligations Payment Schedule with a view toward limiting the range of projects and obligations thereby retiring the enforceable obligations debt as quickly as possible. (See F3).*

The recommendation has been implemented. The Successor Agency and Oversight Board have adopted ROPS I, II, and III. The project lists contained in these ROPS have been reduced to exclude projects that were not deemed to be enforceable obligations.

R4: *Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for debt owed to the city. (See F8).*

The recommendation has been implemented. In compliance with ABX1 26, ROPS I, II, and III do not contain any repayment of debt owed to the City.

R5: *Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for incentive payments to commercial entities. (See F9).*

The recommendation has been implemented. The Successor Agency and Oversight Board have adopted ROPS I, II, and III. The project lists contained in these ROPS have been reduced to exclude projects that were not deemed to be enforceable obligations.

City of Garden Grove's Response to Orange County
Grand Jury Report, "The Dissolution of Redevelopment:
Where Have We Been? What Lies Ahead?"
August 28, 2012
Page 4

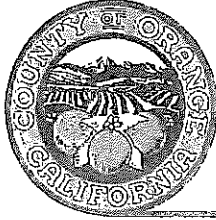
R6: *The City of Garden Grove should resume negotiations with the Downtown Business Association to come to an agreement on the scope of the Grove Street condominium Project including the availability of a suitable number of convenient public parking spaces to meet the needs of the downtown merchants. (See F10).*

The City of Garden Grove will not implement this recommendation because it is not warranted or is not reasonable. This previously approved project was not deemed an enforceable obligation. Therefore, the previous project will not proceed.

Sincerely,

WILLIAM J. DALTON
Mayor

MATTHEW J. FERTAL
City Manager



ORANGE COUNTY GRAND JURY

700 CIVIC CENTER DRIVE WEST • SANTA ANA, CALIFORNIA 92701 • 714/834-3320

FAX 714/834-5555

June 15, 2012

William J. Dalton, Mayor
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Dear Mayor Dalton:

Enclosed is a copy of the 2011-2012 Orange County Grand Jury report, "*The Dissolution of Redevelopment: Where Have We Been? What Lies Ahead?*" Pursuant to *Penal Code* 933.05(f), a copy of the report is being provided to you at least two working days prior to its public release. Please note that, "No officer, agency, department, or governing body of a public agency shall disclose any contents of the report *prior to the public release of the final report.*" (Emphasis added.) It is required that you provide a response to each of the findings and recommendations of this report directed to your office in compliance with *Penal Code* 933.05(a) and (b), copy enclosed.

Please distribute this report to your governing body.

For each Grand Jury recommendation accepted and not implemented, provide a schedule for future implementation. In addition, by the end of March of each subsequent year, please report on the progress being made on each recommendation accepted but not completed. These annual reports should continue until all recommendations are implemented.

Please mail the response to the recommendations to Thomas J. Borris, Presiding Judge of the Superior Court, 700 Civic Center Drive West, Santa Ana, CA 92701, with a separate copy mailed to the Orange County Grand Jury, 700 Civic Center Drive West, Santa Ana, CA 92701, no later than 90 days after the public release date, June 22, 2012, in compliance with *Penal Code* 933, copy attached. The due date then is September 20, 2012.

Should additional time for responding to this report be necessary for further analysis, *Penal Code* 933.05(b)(3) permits an extension of time up to six months from the public release date. Such extensions should be advised in writing, with the information required in *Penal Code* 933.05(b)(3), to the Presiding Judge of the Superior Court, with a separate copy of the request to the Grand Jury.

We tentatively plan to issue the public release on June 22. Upon public release, the report will be available on the Grand Jury web site (www.ocgrandjury.org).

Very truly yours,

Roy B. Baker III, Foreman
2011-2012 ORANGE COUNTY GRAND JURY

RBB:tk

Enclosures
Grand Jury Report
Penal Code 933,933.05

cc: City Manager

CONFIDENTIAL

CONFIDENTIAL

THE DISSOLUTION OF REDEVELOPMENT: Where Have We Been? What Lies Ahead?

"The end of RDAs earlier this year represented a major change in California finance. Over time, schools and other local governments will receive significantly more property tax revenues—and fewer funds will be reserved for redevelopment purposes. While the process for unwinding these complex agencies' financial affairs will be lengthy, it likely will launch important civic debates about the use of local property tax revenues and the role of government in promoting economic development and providing affordable housing."

*California Legislative Analyst's Office
February 17, 2012*

"As the decree to kill redevelopment takes effect, the Capitol is buzzing with efforts to bring it - or something like it, or some substitute - back."

*Dan Walters
Sacramento Bee Columnist
February 13, 2012*

SUMMARY

On February 1, 2012, all redevelopment agencies in California were dissolved and a transition process for managing their financial affairs began. Prior to February 2, 2012, Orange County Redevelopment Agencies received over \$400 million annually in property tax revenues and had debt obligations exceeding \$2 billion. This 2011-2012 Grand Jury report provides information on operational and performance data for each of the 24 city-operated agencies in the county. Included is the debt contained in the city's respective lists of enforceable obligations, representing the amounts that must be paid before the projects are complete. The dissolution legislation (ABX1 26)¹ contains very specific instructions on winding-down this complex financial system. The current legislation has created new responsibilities for the County Auditor-Controller as well as the Board of Supervisors.

Since redevelopment agencies per se no longer exist, few findings or recommendations related to the operational data will be discussed herein. The 2011-2012 Grand Jury presents this information primarily to help in understanding the scope and complexity of the system. Since there will be very little new development, many issues are no longer relevant. The findings and recommendations will, therefore, focus primarily on issues facing the cities during the transition and preparing for whatever replacement system might be in the future. Included topics are:

- The lack of effective oversight over redevelopment programs in the past;
- The need for proactive planning to prepare for a "new redevelopment" program including suggestions for a different redevelopment model;

¹ Assembly Bill ABX1 26, passed 6/28/2011 in an Extraordinary Session, dissolved Redevelopment Agencies in California.

The Dissolution of Redevelopment in Orange County

- The need to recognize fatal errors made with respect to the recently dissolved redevelopment program and suggestions for modification in planning for possible replacement programs; and
- The need for formal policies and procedures for citizen involvement in redevelopment and a non-judicial method for handling complaints and disputes.

Currently at least three bills are making their way through the legislative process. In addition to clarifying the language in the dissolution legislation (ABX1 26), the bills recently introduced appear to represent an effort to continue with at least the low-income housing side of redevelopment. It is expected this part of redevelopment will continue to operate, not only in continuing projects under way, but may also fund new low-income housing projects where funds are currently available to the successor agencies.

PURPOSE

In September 2011, this 2011-2012 Orange County Grand Jury study was initiated as an effort to identify what worked well and what did not work well in the Orange County Redevelopment community. At that time, redevelopment in California had been dissolved by ABX1 26 enacted by the State Legislature on June 28, 2011. A companion bill, ABX1 27, gave the agencies the option of continuing to operate if they agreed to pay the state a substantial amount of money in 2011 and lesser amounts in 2012 and beyond. Most of the cities with redevelopment agencies had already made the decision to pay and continue in the redevelopment business. However, the California Redevelopment Association (CRA) and League of California Cities challenged both ABX1 26 and ABX1 27 as unconstitutional and the legislation was placed on hold pending decision by the California Supreme Court.

The expectation at that time was that the Supreme Court would either grant or deny the CRA petition on both bills. To the surprise of many, this did not happen. The bills, enacted by the legislature as severable, were in fact separated. The court decision on December 28, 2011 supported the state's ability to dissolve redevelopment through ABX1 26 and denied the means to bring it back on a "pay to play" basis through ABX1 27.

The 2011-2012 Orange County Grand Jury explored the legislative events leading to the dissolution of redevelopment in more detail later in this report beginning on page 18.

What began as a study to examine redevelopment in Orange County, with a view toward addressing problems, has changed focus because of the recent court decision. The new focus is on the dissolution of the redevelopment programs, management of the transition, and encouraging local planning for whatever new program might take its place.

The revised purpose is threefold:

- Identifying the major problems that led to the legislation terminating redevelopment;
- Assessing the management responsibilities of successor agencies, oversight boards, and County offices in winding down redevelopment projects; and
- Proposing a planning effort by local government to prepare for a likely legislative effort to introduce a new version of redevelopment in the state.

The Dissolution of Redevelopment in Orange County

METHODOLOGY

In addition to a county-operated agency, the redevelopment agencies in twenty-four cities in Orange County were dissolved on February 1, 2012. All of these cities were asked to participate in two surveys to determine certain facts and make statistical comparisons among agencies.

To understand the legal and financial complexities of redevelopment, particularly with respect to “tax increment funding,” staff from the Auditor-Controller’s Office and the County Assessor were interviewed for their perspectives on various aspects of redevelopment.

Other information for the report was obtained from:

- Redevelopment report published by the State Controller dated December 31, 2010;
- Redevelopment report published by the State Controller dated November 2, 2011;
- Interviews with redevelopment staff from the County’s Community Resources Department;
- Interviews with redevelopment staff from the cities of Brea, Buena Park, Garden Grove and Westminster; and
- Various documents included as references in this report.

BACKGROUND AND FACTS

On February 1, 2012, Redevelopment Agencies (RDAs) in California were dissolved. Now a transition process is in place to begin unwinding the complex financial affairs of these agencies. Given the scope of their resources and obligations, this transition will take time. Prior to February 1, 2012, redevelopment agencies in Orange County were receiving nearly \$400 million annually in property tax revenues and had debt obligations exceeding \$2 billion.²

What is Redevelopment?

Simply stated, redevelopment is a method of financing city or county improvements by borrowing money (normally through tax allocation bonds) to finance a project in an area that has been declared “blighted,” usually by a consultant hired by the city. The debt is paid with “tax increment revenue” that represents the difference between property taxes assessed prior to the development project (the frozen base value) and taxes assessed after the improvement. This “tax increment” goes to the Redevelopment Agency as revenue. The debt on construction projects can run for long periods of time; thus the increase in assessed value and taxes collected can be substantial. Since the shared tax rate is frozen at the level when the project area was developed, all tax increases for the life of the project theoretically go to the Redevelopment Agency. This results in a loss of revenue for schools, community colleges, the county and special districts. To address this problem, many redevelopment agencies prior to 1994 negotiated “pass-through payments” to those tax supported entities as compensation for the potential loss in revenue. In 1994, legislation was introduced requiring RDAs to make pass-through payments in amounts determined by a defined formula.

² Chiang, John - *State Controller’s Annual Report*, November 3, 2011, page 146

The Dissolution of Redevelopment in Orange County

How is a Project Area Created or Expanded?

The usual first step is for the city or agency to hire a consultant to conduct a study to determine if an area suffers from physical and economic blight. Critics allege that State law is vague on the definition of blight so that almost anything can be considered blighted. The law³ defines “blight” basically as one or more of the following conditions:

- Physical blight such as buildings that have deteriorated or are unsafe for persons to live or work;
- Economic blight such as depreciated or stagnant property, abnormally high business vacancies, abandoned buildings, residential overcrowding or an excess of businesses that lead to problems of public safety and welfare.
- Blight applicable to areas for closed military bases such as the Marine Corps Air Station at El Toro.⁴

A more complete legal definition of blight can be found later in this report beginning on page 5.

A Brief History of Redevelopment

In 1945 during the aftermath of World War II, the California Legislature authorized the formation of community redevelopment agencies as a way to alleviate urban decay. The Community Redevelopment Law was intended to help local governments revitalize “blighted” communities.

During the 1950s and 1960s, not many cities established redevelopment agencies. The project areas were small, typically less than 100 acres. The modest beginnings were somewhat controlled by the competing interests for property tax revenues, particularly from schools and community college districts that normally receive about half of any property tax increase. Community interest in education therefore served as a fiscal check on redevelopment expansion.

Then two things happened. First, passage of SB 90, the Dills bill in 1972 that guaranteed each school district an overall funding level from local property taxes and state sources combined. This meant that if there was a funding shortfall at the local level, the state would “backfill” to meet the guaranteed funding level. The second was the passage of Proposition 13 in 1978 that significantly constrained local government’s ability to raise property taxes. These measures did not, however, change local authority over redevelopment. With less revenue raising authority, cities saw redevelopment as a way to generate additional funds through tax increment revenue. No longer were project areas limited to small sections of communities. Cities now adopted areas consisting of hundreds or thousands of acres frequently including farmland or other large tracts of vacant land. By 2009, approximately 12 percent of property tax revenues were going to redevelopment agencies. The state’s costs to backfill K-14 districts now exceeded \$2 billion annually.⁵

³ § 33031, subdivisions (a) and (b) of the Health and Safety Code

⁴ See Health and Safety Code Sections 33492 et. seq.

⁵ O’Malley, Marianne, Legislative Analyst’s Office – February, 2012

The Dissolution of Redevelopment in Orange County

Revenue Shifts to Schools

In the early 1990s, the state used the annual state budget process to require RDAs to shift part of their revenues to schools. The funds were deposited into countywide accounts referred to as “ERAF” (Educational Revenue Augmentation Fund) or “SERAF” (Supplemental Educational Revenue Augmentation Fund). These shifts in funds occurred nine times between 1992 and 2011. Concerned over these perceived “raids” on “their” redevelopment funds, the redevelopment community joined forces with those objecting to the state dipping into local transportation funds and sponsored Proposition 22. This initiative, approved by voters in November 2010, limited legislative authority over redevelopment and prohibited the state from requiring RDAs to make the supplemental shift of funds to the schools over and above the required pass-through payments. This proposition later served as the basis for the California Redevelopment Association’s court challenge to ABX1 27.

ANALYSIS

Redevelopment’s Reputation

The subject of redevelopment has a polarizing effect. To find a balanced perspective regarding redevelopment is difficult as most of those who articulate the subject have a bias favoring their point-of-view. A case in point is a publication, “Redevelopment: the Unknown Government”⁶ originally published in 1996 by “Municipal Officials for Redevelopment Reform” (MORR). This report is singularly critical of redevelopment and offers a set of arguments as perceived by the “anti-redevelopment” group.

Definition of Blight

According to the MORR report, *“all a city needs to do to create or expand a redevelopment area is to declare it blighted. This is easily done. State law is so vague that most anything can be designated as blight.”*

“To make a finding of blight, a consultant is hired to conduct a study. New development areas are largely driven by city staffs, which choose the consultant with the approval of the city council. Consultants know their job is not to determine if there is blight, but to declare blighted whatever community conditions may be.”⁷

The legal definition of blight is contained in § 33031, subdivisions (a) and (b) of the Health and Safety Code. These conditions, as described by statute, are summarized as follows:

- The existence of buildings in which it is unsafe or unhealthy for persons to live or work;
- The presence of conditions that prevent or substantially hinder the viable use or capacity of building or lots; and

⁶ Municipal Officials for Redevelopment Reform (MORR), *Redevelopment: the Unknown Government*

⁷ Ibid

The Dissolution of Redevelopment in Orange County

- The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.

Subdivision (b) of the same code describes conditions that cause blight. These include:

- Depreciated or stagnant property values;
- Impaired property values due in significant part, to hazardous wastes on the property where the agency may be able to use its authority;
- Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings;
- A serious lack of necessary commercial facilities that are normally found in neighborhoods;
- Serious residential overcrowding that has resulted in significant public health or safety problems;
- An area with an excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems; and/or
- An area with a high crime rate constituting a serious threat to the public safety and welfare.

While the law seems clear as to what constitutes blight, it has not always been followed or enforced in application. According to the State Controller, *“legislation has amended the meaning of redevelopment over the years to meet California’s diverse needs. In addition to rehabilitating blighted areas by making property available for new development, various legislative proposals have asked redevelopment agencies to provide shelter for the homeless, establish day care facilities for children, deal with hazardous wastes, fund fire protection, ensure notification of industrial plant and base closures, and fund pension liabilities. Although not all of these requests have become law, the Legislature has permitted redevelopment agencies to engage in these various activities. Redevelopment activities for example, have included providing flood control measures, financing housing for low-income families, assisting in the construction of sports arenas, and operating amusement parks.”*⁸

The overall result of these influences is that, although a well-defined definition of blight exists; little effort is made to control compliance. Redevelopment agencies have been able to justify projects that have little or no relationship to addressing blight. According to the State Controller, ignoring blight as a requirement has not only been allowed, but often is encouraged by the Legislature.

⁸ Chiang, John, *State Controller’s Annual Report*, November 2, 2011, page xiv

The Dissolution of Redevelopment in Orange County

Use of Eminent Domain

“Eminent Domain” is the power of local, state or federal government agencies to take private property for “public use” so long as the government pays “just compensation.” The government can exercise its power of eminent domain even if the owner does not wish to sell his or her property. Under the California Constitution, property and business owners are entitled to have just compensation determined by a jury.⁹

Concerns about the use of eminent domain in redevelopment were reinforced by the U.S. Supreme Court decision in *Kelo v. City of New London (2005)* – in which the court held that taking private property for the purpose of private development (as part of a redevelopment project) satisfied the constitutional “public use” requirement. Following this decision, in the fall of 2005, the California Legislature held a series of joint hearings on redevelopment reform and in 2006 passed several bills to reform redevelopment practices in the state. Of these, SB 1206 (Kehoe) narrowed the statutory definition of “blight,” contained provisions to increase state oversight of redevelopment and made it easier to challenge redevelopment plans through litigation.

Among Orange County redevelopment agencies, eminent domain is a little used practice and has not been a significant problem. Where used, it is considered a last resort or in fact is welcomed by the property owner as the most desirable method of disposing of the property. Out of the 24 agencies surveyed, eight reported that they have eminent domain powers and three have used eminent domain to acquire property in the last five years.

Operational Data

The information in the following section is based on responses to two surveys sent to the city RDAs, plus information from the reports from the State Controller dated November 2, 2011 and May 1, 2012. Two of the charts, Tax Increment and Administrative Costs, contain data for fiscal 2010-2011. The remaining charts are for fiscal year 2009-2010. The purpose is to provide a comparison among agencies and identify strengths, weaknesses and potential problem areas during the transition period.

⁹ The California Eminent Domain Handbook, www.eminentdomain.net

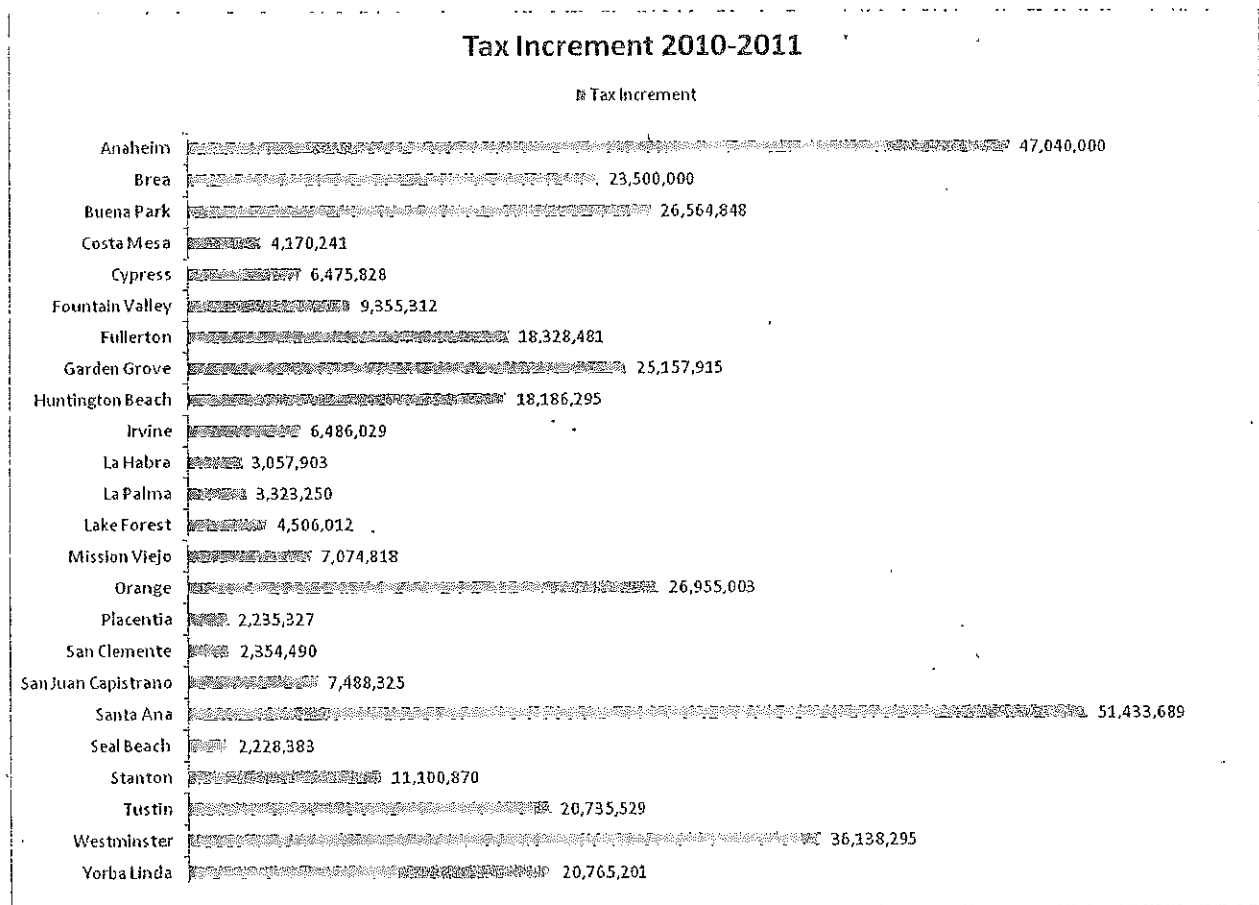
The Dissolution of Redevelopment in Orange County

Tax Increment Revenue

The major source of revenue for the former Redevelopment Agencies has been the tax-increment revenue representing the increase in property taxes collected from the frozen base prior to adoption of the redevelopment plan.

Figure 1 (below) displays the amount of tax-increment revenue for each former RDA. The amounts range from a high of \$51,433,689 in Santa Ana to a low of \$2,228,383 in Seal Beach. The average amount for all is \$ 16,027,585.

Figure 1 – Tax Increment Revenue¹⁰



Total Debt

Although debt has a negative connotation, it is an inherent part of redevelopment. Agencies must have had debt in order to qualify for tax increment revenue.

¹⁰ Based on Grand Jury Survey Number Two and State Controller's Report published 5/1/2012

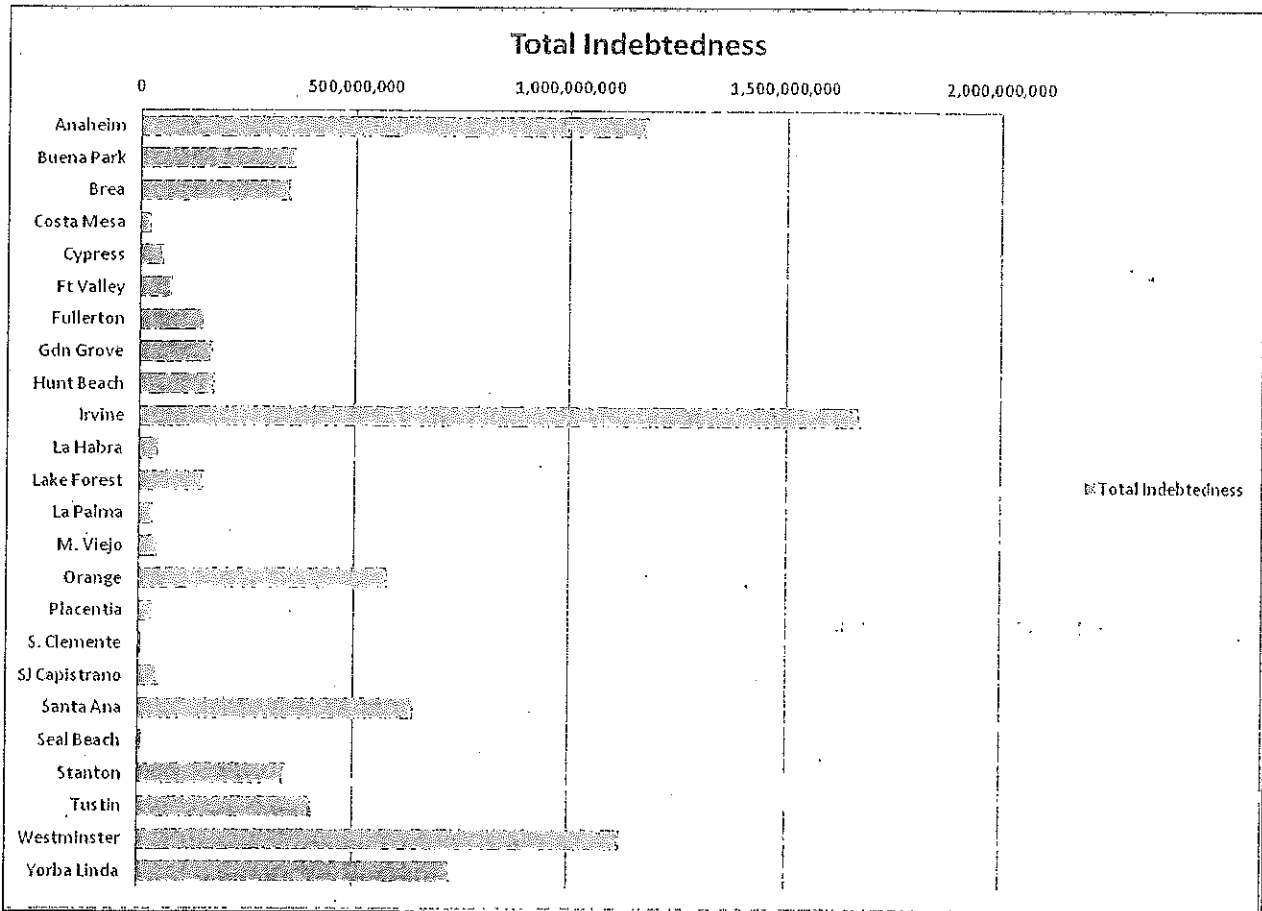
The Dissolution of Redevelopment in Orange County

Figure 2 (below) shows that three cities, Anaheim, Irvine and Westminster each have redevelopment debt in excess of \$1 billion each. An additional three cities, Orange, Santa Ana, and Yorba Linda each have debt in excess of \$500 million. It is expected that all of these will take many years to pay the debt and will, therefore, continue to draw tax-increment revenue until all debt is paid.

Irvine is a unique RDA in that none of the debt is because of a bond issue. Their indebtedness is owed to a private party, Heritage Fields, the developer of the property within the Orange County Great Park redevelopment area. Special provisions exist where the property under development is a former military base subject to provisions beyond the Community Redevelopment Law.¹¹

The status of the debt and determination as to the existence of an enforceable obligation will be made by the Department of Finance.

Figure 2 – Total RDA Debt¹²



¹¹ Supra Health and Safety Code Sections 33492

¹² John Chiang, State Controller's Report, November, 2011

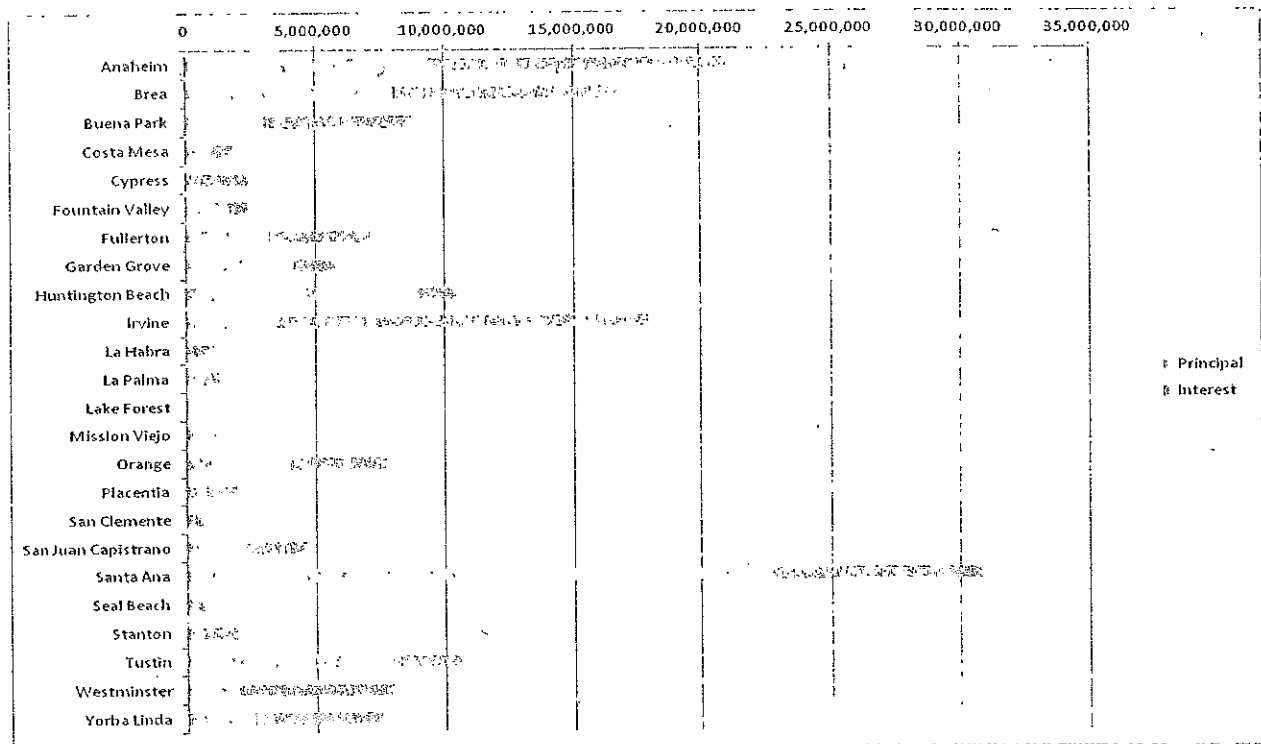
The Dissolution of Redevelopment in Orange County

Annual Debt Payment

Figure 3 (below) shows that the city of Santa Ana has the highest annual debt payment, exceeding \$30 million. Anaheim follows with an annual payment of over \$20 million. Brea and Irvine annually pay over \$15 million each with Huntington Beach and Tustin annually paying over \$10 million each.

In the case of Irvine, the total annual payment is for interest, since that is what is currently due.

Figure 3 – Annual Debt Payments¹³



Tax Increment Diversion and Pass-through Payments

Another argument in the MORR report is: “Once a redevelopment project area is created, all property tax increment within it goes directly to the agency. This means all increases in property tax revenues are diverted to the redevelopment agency and away from the cities, counties, and school districts that would normally receive them.”¹⁴

While this may have been initially true, there have been a number of changes requiring the agencies to share tax increment revenue with school districts, community college districts, special districts, and the county. Prior to 1994, terms of “pass-through” payments between the RDAs and the above tax supported entities were negotiated, usually as settlements of disputes

¹³ Supra, Chiang

¹⁴ Municipal Officials for Redevelopment Reform (MORR), *Redevelopment: the Unknown Government*

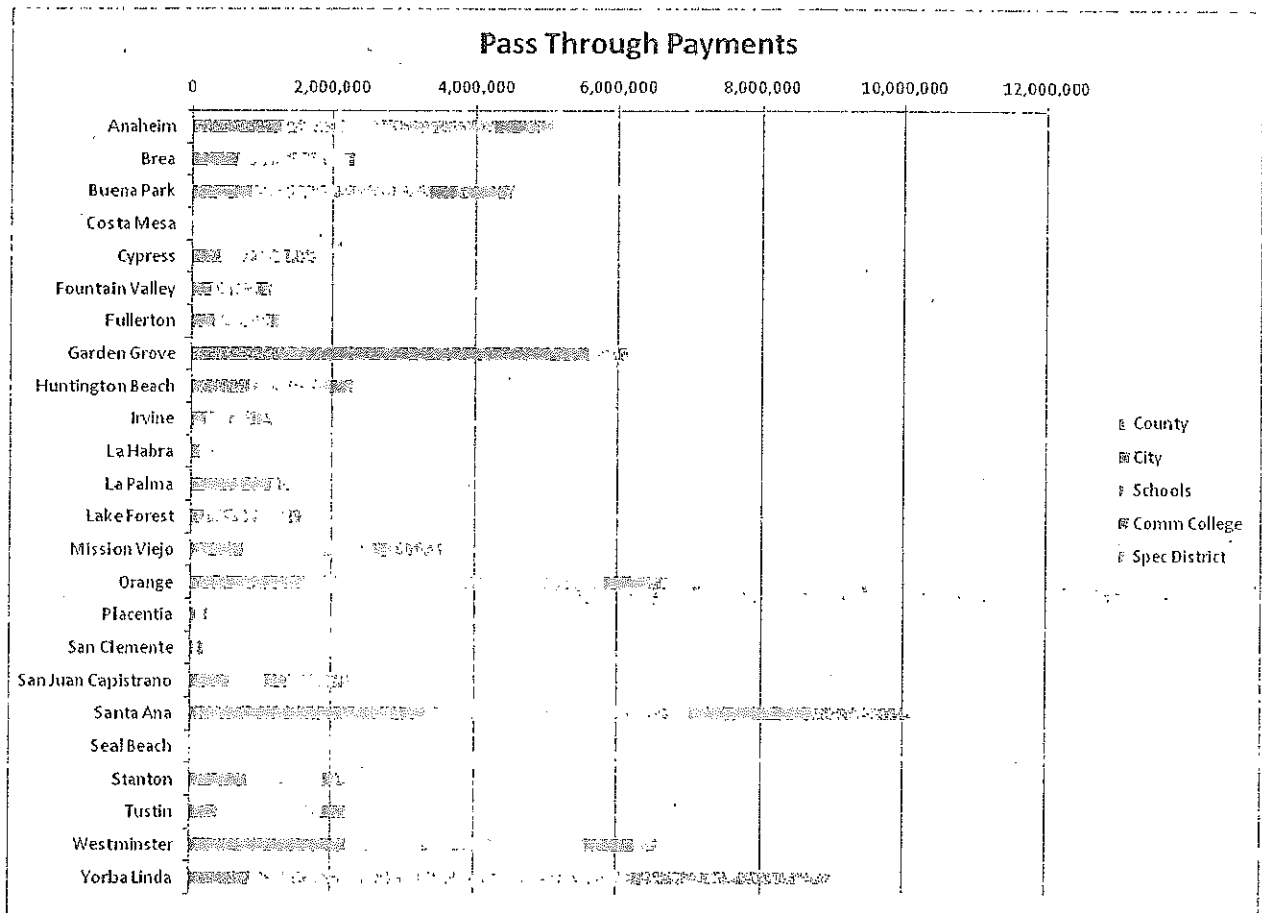
The Dissolution of Redevelopment in Orange County

over contested legality of a proposed project area. These negotiated pass-through payments sometimes provided the County and special districts 100 percent of the tax revenue they would have received without redevelopment. In these cases, the only tax-increment revenue retained by the RDA was the school districts' and cities' share. Since the state backfilled any schools shortfall, no pressure was exerted from that source to check the growth of redevelopment.

In 1993, the legislature passed AB 1290 (Isenberg). This bill eliminated the RDA authority to negotiate pass-through payments, replacing it with a statutory formula to establish the amounts. The bill added school districts and community college districts as recipients of the distribution. The amount each agency receives is based on its proportionate share of the 1 percent property tax rate in the project area.

Figure 4 (below) shows the total pass-through payment for each agency and the proportion paid to each of the receiving agencies.

Figure 4 – Pass-Through Payments¹⁵



¹⁵ Supra, Chiang

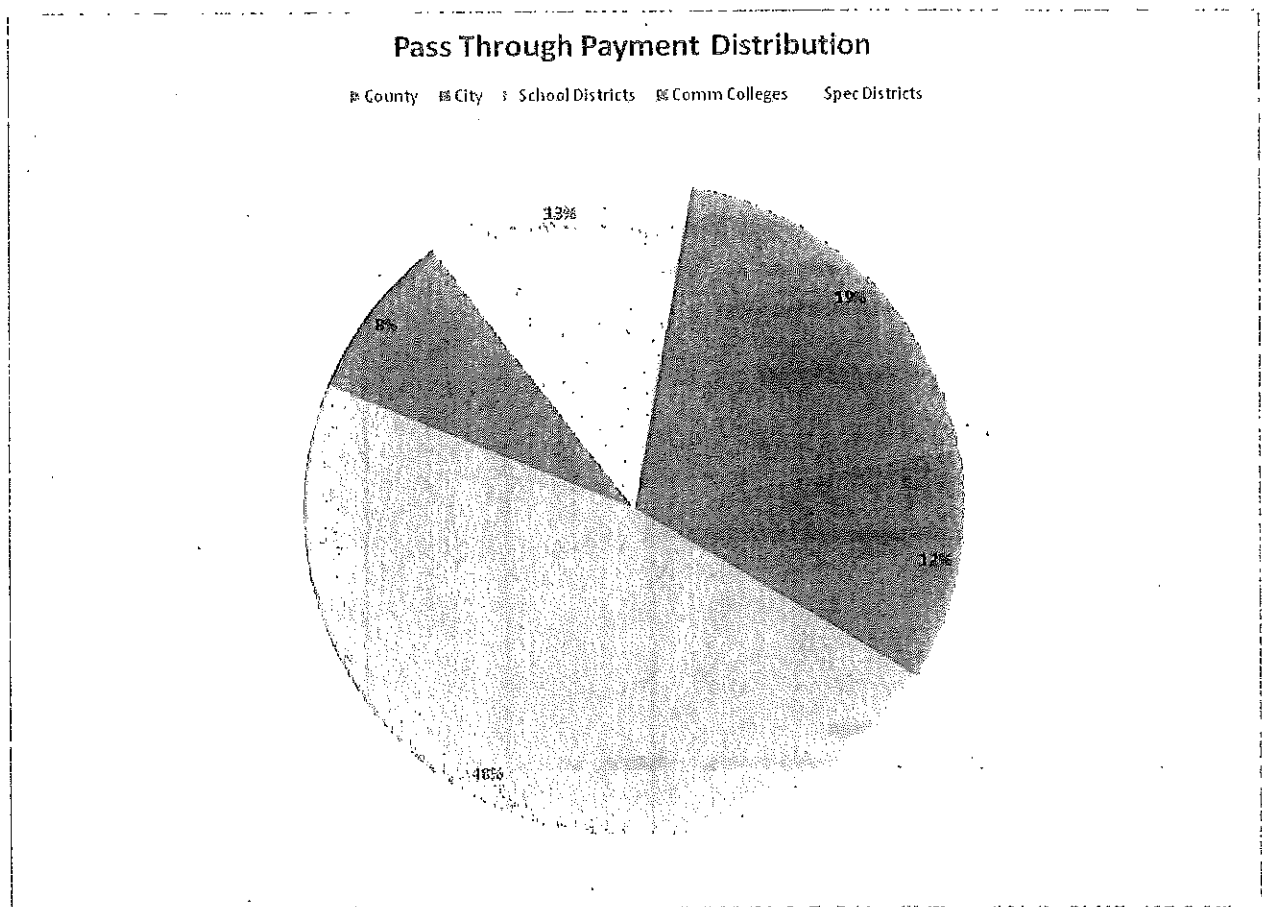
The Dissolution of Redevelopment in Orange County

The 24 city operated redevelopment agencies paid a total of \$72,969,397 to the County of Orange, school districts, community college Districts and special districts. Figure 4 shows the distribution of the various pass-through payments made.

The total amount represents a little over 18% of the total tax increment. The major portion of these payments, 48%, was to local school districts.

Figure 5 (below) shows the distribution of pass-through payments excluding those made to the Educational Revenue Augmentation Fund.

Figure 5 – Distribution of Pass-Through Payments¹⁶



Distribution of Pass-Through Funds:

Figure 5 shows the distribution of the total pass-through amount paid by city operated RDAs to the various tax supported entities. The distribution of the \$72,969,397 in payments is as follows:

¹⁶ Supra, Chiang

The Dissolution of Redevelopment in Orange County

- Local School Districts 48% or \$35,025,311
- Orange County 19% or \$13,864,185
- Special Districts 13% or \$ 9,486,022
- Host City 12% or \$ 8,756,328
- Community College Districts 08% or \$ 5,837,552

Figure 6 (below) shows the pass through payments as a percent of the tax increment revenue.

Figure 6 – Pass-through Payments as a Percent of the Tax Increment¹⁷

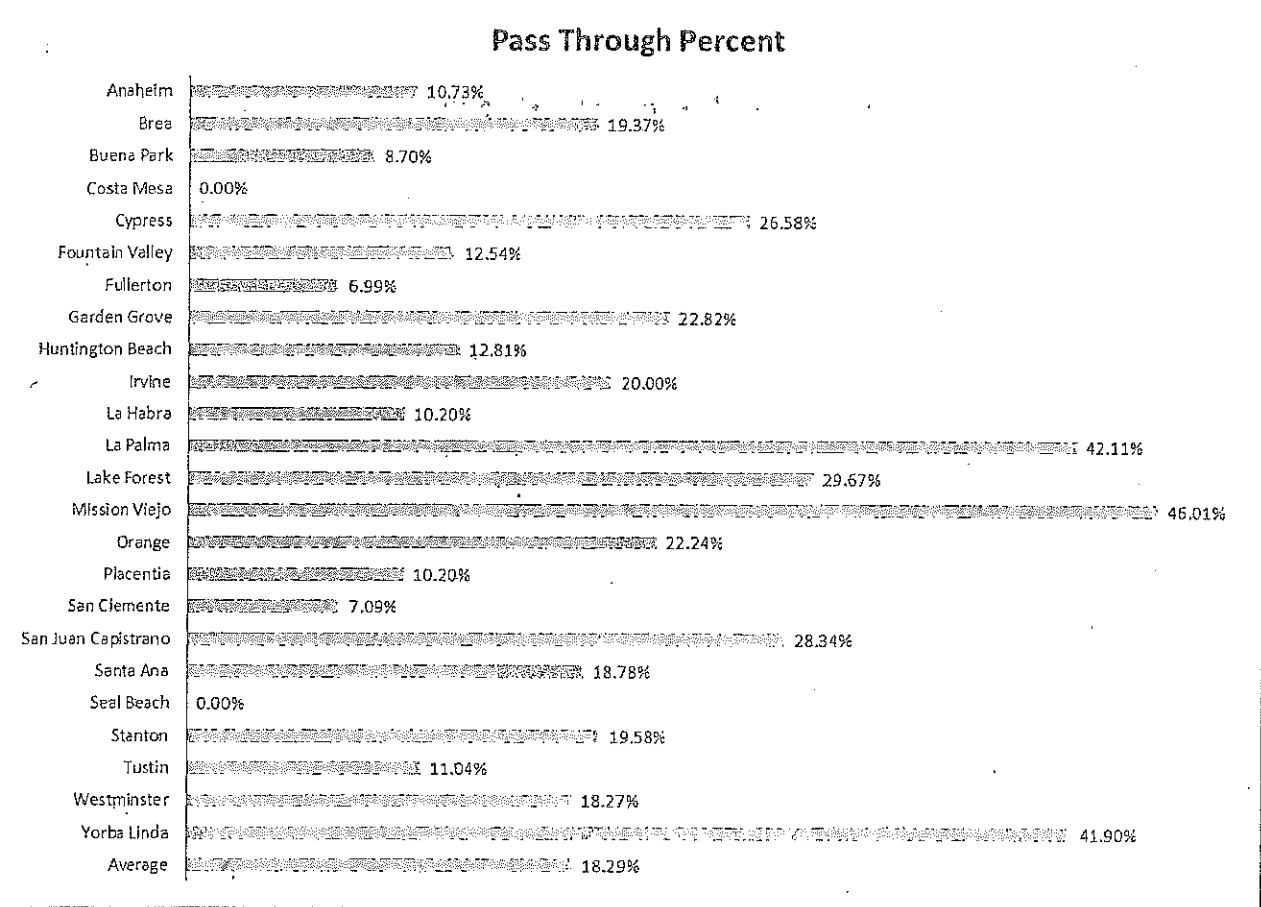


Figure 6 shows pass-through payments, by city, as a percent of the tax increment. Mission Viejo has the highest ratio at 46.01% followed by La Palma at 42.11% and Yorba Linda at 41.9%. Two cities (Costa Mesa and Seal Beach) have no pass-through payments.

While some pass-through amounts are negotiated, most are statutorily mandated. The average pass-through amount percentage of tax increment for all 24 cities is 18.29%

¹⁷ Supra, Chiang

The Dissolution of Redevelopment in Orange County

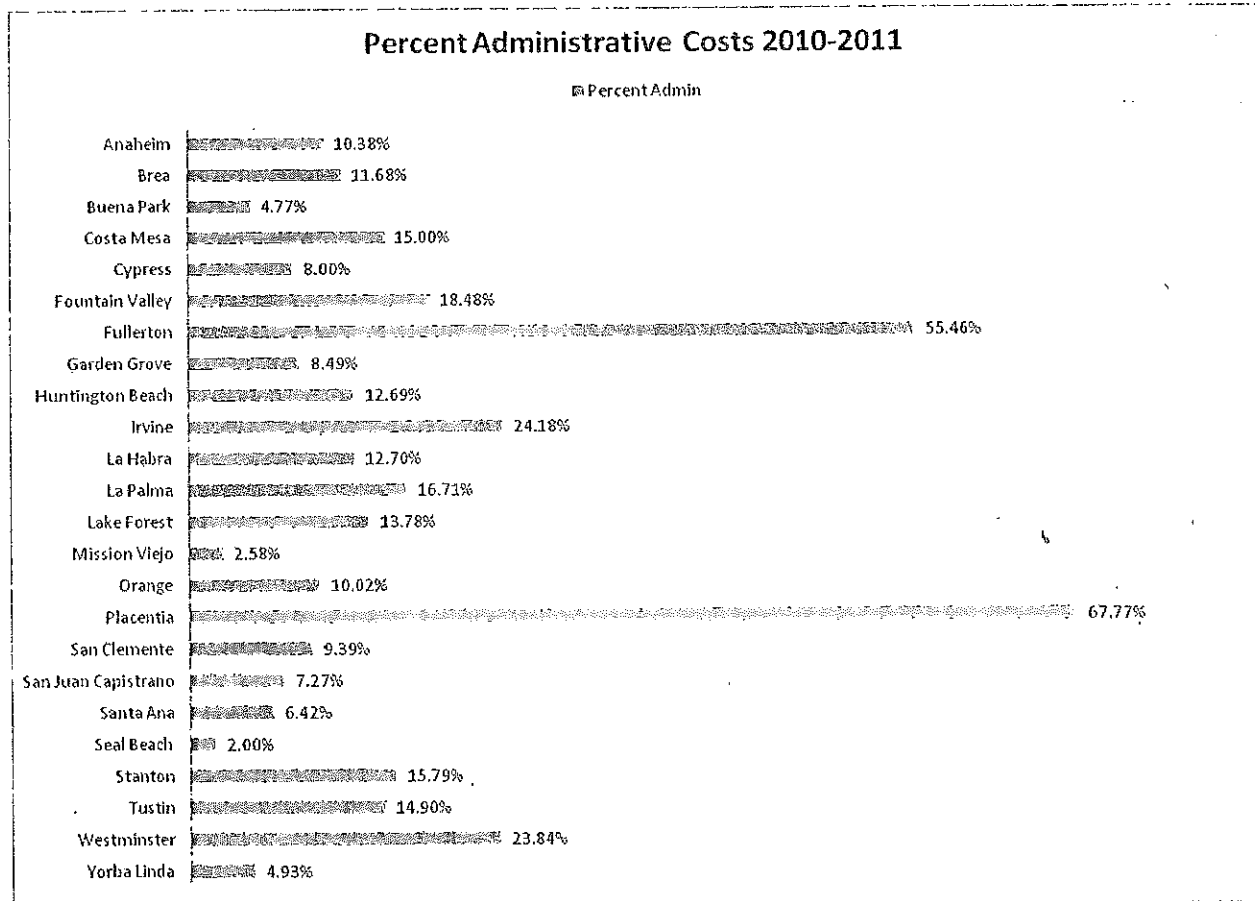
Administrative Costs

Another common criticism of redevelopment agencies is the high administrative cost. Orange County has a wide variance among RDA's. As illustrated in the graph shown in Figure 7 (below), the costs, expressed as a percentage of the tax increment revenue, range from a low of two percent for Mission Viejo to a high of over 67 percent for Placentia followed by Fullerton at approximately 55 percent.

While certain agencies had a problem with extremely high administrative costs, most agencies were under 30%, and the overall average for all agencies was under 14% for FY 2010-2011.

The dissolution legislation (ABX1 26) introduced, for the first time, a limit on the amount of administrative costs. During the remainder of 2012, such cost is not to exceed five percent of the tax-increment distributed related to the approved ROPS, but not less than \$250,000. The limit for next year and beyond is three percent of ROPS approved tax increment but not less than \$250,000.

Figure 7 – Administrative Costs¹⁸



¹⁸ Supra, Survey Number Two and Chiang

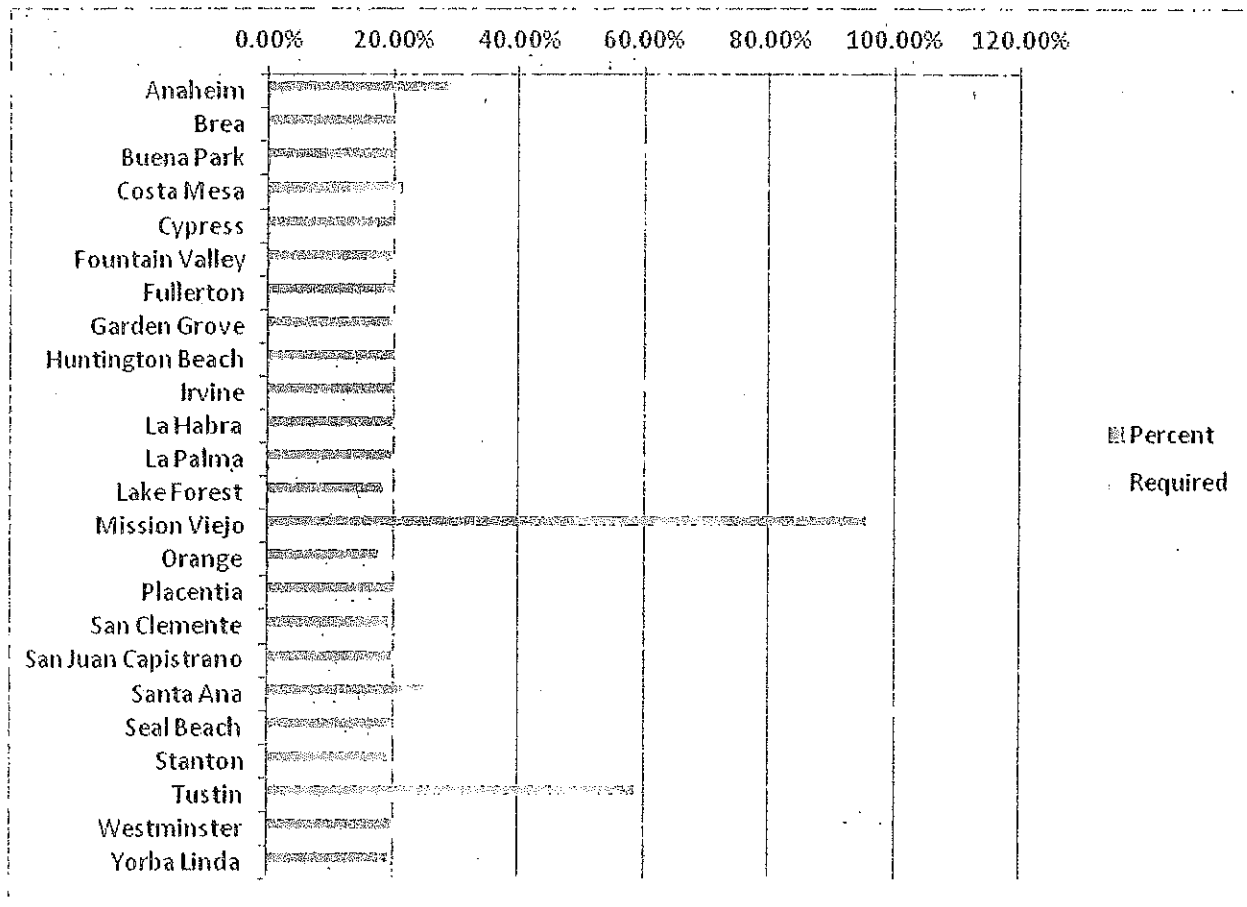
The Dissolution of Redevelopment in Orange County

Housing Set-Aside

Redevelopment law requires that at least 20 percent of the tax increment revenue be set aside for the purpose of funding housing programs, primarily for low income families. Some agencies were required to set aside higher amounts. The Anaheim Redevelopment Agency, for example, extended some of the project areas and was required to set aside 30 percent of the tax increment.

Figure 8 (below) shows the percent of the tax increment set aside for each city operated agency.

Figure 8 – Housing Set-Aside



Most cities are at or very near the 20% requirement for housing set-aside. Mission Viejo and Tustin are substantially over the requirement. All others are over, at, or within a percentage point of the requirement which may be due to minor reporting differences.

Citizen Involvement and Review

One of the grand jury survey questions was to determine if the responding agency had a formal mechanism or process for citizen involvement in redevelopment planning. Of the twenty-four agencies surveyed, only Costa Mesa and Santa Ana indicated they had such a process. Most of the remaining agencies described the usual city council approach of posting agendas of meetings

The Dissolution of Redevelopment in Orange County

on the internet and allowing public comments (usually three minutes) pertinent to the agenda item.

CASE STUDIES

Case Study I – A Successful Redevelopment Project

The city of Garden Grove, through their former Redevelopment Agency, has completed several successful projects. The most significant of these are those included in the development of Harbor Boulevard, just South of Disneyland. For many years, this corridor had a reputation as the “seedy side” of the tourist district south of Disneyland. Because of the redevelopment projects, according to city officials, drugs and prostitution are less of a problem. In place of the previously existing blight, there are 11 world-class hotels that generate nearly \$12 million in annual hotel tax revenues for the City and that have created approximately 2,000 jobs. The hotels included in these project areas include:

- Hilton Hotel
- Embassy Suites
- Hampton Inn
- Marriott Suites
- Hyatt Hotel
- Sheraton Hotel
- Crown Plaza Hotel
- Candlewood Hotel
- Holiday Inn Express
- Homewood Suites
- Residence Inn

All Garden Grove projects combined produce approximately \$27 million in tax increment revenue. Bond debt payments are approximately \$6 million with another \$6 million shared with schools and other local tax supported entities by way of pass-through payments.

In spite of the fact that Redevelopment Agencies have been dissolved, these projects and the pass-through payments will continue as “enforceable obligations” under management of the Garden Grove Successor Agency and Oversight Board. Payments will be allocated from the Redevelopment Trust Fund by the County Auditor-Controller. Under the dissolution law (ABX1 26) any remaining tax increment funds will be allocated to local schools and other tax supported entities under the general distribution formula.

The Dissolution of Redevelopment in Orange County

Case Study II – A Not-So-Successful Redevelopment Project

The Grove Street Project in Garden Grove however, is another story. The redevelopment plan was to sell a large parcel of property, used as a parking lot for the Main Street businesses, to a private developer for construction and sale of market-value condominiums. On January 22, 2007, the Main Street Business Association filed a petition for a Writ of Mandate in the Orange County Superior Court in an attempt to block the sale. The court judgment denied the writ, and the case was appealed. Although the city won the case on appeal, the entire process lasted about two years. By that time, the real estate market had changed to the point that the developer has thus far not chosen to exercise the option to purchase the property.

The central issue in this matter was a question of the city's right to convey the property to a third-party. Originally, in 1953, the downtown business and property owners formed a Special Benefits District under the State's Streets and Highways Law. It was for the express purpose of acquiring and improving parking lots for the use and benefit of local merchants. Since Garden Grove was not yet an incorporated city, the district was created by the County of Orange and, as the legislative body, title to the property was held by the County. A parking commission was established at the same time to act on behalf of the business and property owners. By mutual consent, the property owners taxed themselves by the highest amount allowable by law to create a Property Acquisition Fund. This was done to finance the purchase of additional parcels of land. Eventually the group acquired and improved six lots to provide parking for downtown businesses.

In 1956, Garden Grove incorporated and title to the parking lots passed from the County to the City.

After the litigation, on July 28, 2009, the city dissolved the parking district including the Parking Commission. It took possession of the remaining parking lots and diverted the parking district property tax assessments directly into the city's general fund.

Recently, the City sold the parking lot parcels to their redevelopment agency for \$2.3 million but the developer has not exercised the option to purchase, so the property remains with the successor agency. This is an example of the type of transaction that will be audited by the CPA firms under contract to the County under the direction of the County Auditor-Controller. If supported by the audit information, the obligation can be included by the Successor Agency in the Recognized Enforceable Obligation Schedule (ROPS) and transmitted to the Department of Finance for approval.

While the courts have ruled that the city owns and can dispose of the property as it chooses, an ethical question remains. The parcels were purchased by property and business owners in downtown Garden Grove. Since the creation of the Special Parking District, these owners, by mutual consent, have paid a property tax assessment on the parking lots for the express purpose of acquiring, improving and maintaining adequate parking for the downtown merchants. Their

The Dissolution of Redevelopment in Orange County

financial investment in this property would seem to have given them a significant voice in the future use or disposition of the property.

Analysis of the Garden Grove Case Studies

The Harbor Boulevard hotel development projects provide a good example as to how redevelopment can work to the benefit of the community without diverting property tax money from other tax supported agencies.

The Grove Street Condominium Project may be a case of overreaching on the part of the City. Early in the planning there is evidence to support the notion that the Downtown Business Association was supportive of the concept of a market-value housing project located next-door to the Main Street business district. In the early plan there were fewer homes and more space dedicated to public parking. Then the project was expanded, and the number of public parking spaces reduced in number causing the Association to withdraw support.

Once the lines were drawn and the lawsuit filed the issue became, and continues to be, highly contentious. Had there been some sort of citizen involvement committee to provide an element of oversight to the Redevelopment Agency, it is possible that some accommodation could have been made among the parties. Failing that, there would have at least been an effort at mediation perhaps avoiding the need for a costly and time-consuming court action. As events unfolded neither party gained. The Association lost the lawsuit but delayed the project. The City won the lawsuit but the delay may have accomplished what the litigation could not.

This project is still in play. Depending on the results of the audit to be performed by July 1, 2012, and the decision of the developer to exercise the purchase option, the project may yet go forward.

How Redevelopment Ended

The Governor's budget for 2011-2012 proposed dissolving the redevelopment agencies in the state and using the property tax increment in the following order of priority:

1. Pay existing redevelopment debt and obligations (such as bonds sold to finance development projects);
2. Continue the pass-through payments to schools and other local tax supported agencies; and
3. Offset \$1.7 billion of state General Fund costs.

Any remaining RDA funds would be allocated to school districts, community college districts and special districts that serve the former project area.

In subsequent years, after debt, obligations and pass-through payments, redevelopment funds would be allocated to local agencies based on their normal property tax shares.

The Dissolution of Redevelopment in Orange County

The Governor's proposal introduced as SB 77, changed the distribution of property tax revenues, and therefore required approval by a two-thirds vote of the Legislature. In March 2011 the bill failed by one vote in the Assembly. The debate now focused on ways to allow RDAs to continue, albeit with modifications and with ongoing funding provided to schools. The bill followed existing statutory formulas related to tax allocations and thereby avoided the need for a two-thirds vote for approval.

In June 2011 the Legislature approved, and the governor signed two bills:

- ABX1 26 placed a freeze on all RDA authority to incur new debt, making loans or grants, entering into new contracts or amending existing contracts, acquiring or disposing of assets, or altering redevelopment plans. The bill also dissolved Redevelopment Agencies and created a process for winding down their financial affairs.
- ABX1 27 allowed Redevelopment Agencies to opt into a voluntary alternative program to avoid the dissolution included in ABX1 26. The bill included annual payments to school districts: \$1.7 billion in 2011-12 and about \$400 million in future years, to offset the fiscal effect of redevelopment.

Shortly thereafter, the California Redevelopment Association (CRA) and the League of California Cities filed petitions with the California Supreme Court challenging both bills on constitutional grounds.

On December 29, 2011, the court upheld ABX1 26 saying that the Legislature had authority to dissolve entities that it created. However, the court found ABX1 27 unconstitutional because it required redevelopment agencies to make payments to schools as a condition of continuing to operate. They found specifically that this violated Proposition 22's prohibition against the state requiring an RDA to transfer funds to schools or to any other agency.

The Transition Process

As of February 1, 2012, redevelopment in California, as it was known in the past, is dead as far as new projects are concerned. Now in place is a plan included in the legislation to wind down the redevelopment projects using tax increment revenue only to pay down the debt obligations, continue pass-through payments and cover limited administrative costs. The agencies have been dissolved, and no new projects will be initiated. A last-ditch effort to delay the dissolution failed in the Senate, and the agencies are now in the phase-out mode detailed by the legislature. Successor agencies (usually the city council) will continue to administer existing projects until completed and all indebtedness (bond and contractual) is paid.

Many of the property transfers that occurred after the legislation passed the bill will be reviewed by the State Controller and could be reversed or at least tied up in litigation.

The Dissolution of Redevelopment in Orange County

Housing Successor Agency or elect the Orange County Housing Authority (OCHA) as the Housing Successor Agency.

Role of the County Auditor-Controller under ABX1 26

In the phasing out of the RDAs, the County Auditor-Controller has been assigned new oversight responsibilities. A partial list of those responsibilities is presented here to illustrate the type of oversight to the transition process that will be provided by the County through the remainder of the current fiscal year.

The Auditor-Controller is required to audit each dissolved redevelopment agency's assets, liabilities, and tax-sharing obligations and determine the amount and terms of indebtedness by July 1, 2012. The Auditor-Controller also certifies the initial Recognized Payment Obligation Schedule (ROPS).

Upon the effective date of the legislation, the Auditor-Controller is required to determine the amount of tax increment that would have been allocated to each redevelopment agency which are deemed property taxes by ABX1 26, and must deposit the amount in the Redevelopment Property Tax Trust Fund. The Auditor-Controller administers the Trust Fund for the benefit of the holders of Enforceable Obligations and taxing agencies that receive pass-through payments. From February 1, 2012 to July 1, 2012, after deducting administrative costs and after making tax sharing (pass-through) payments, the Auditor-Controller allocates moneys from the Redevelopment Property Tax Trust Fund to the Successor Agencies.

The Audits

On March 27, 2012, the Orange County Board of Supervisors approved contracts with two CPA firms to conduct audits of all 25 former Redevelopment Agencies in the County. These audits, conducted under the direction of the Auditor-Controller, are required to be completed by July 1, 2012.

As set forth in state law, the purpose of the audits shall be:

"to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's pass-through payment obligations to other taxing agencies, and to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency and certify the initial Recognized Obligation Payment Schedule" [Health & Safety Code section 34182(a) (3)].

Following is the timeline for the audits:

- Board approval of contract - March 27, 2012
- Entrance Conference - To be determined
- Status Report - April 30, 2012
- Status Report - May 31, 2012
- Status Report - June 15, 2012
- Exit Conference - To be determined
- Final Reports - July 1, 2012

The Dissolution of Redevelopment in Orange County

Upon receipt of the final reports, the Auditor-Controller will prepare and issue the Agreed-Upon-Procedures Report and distribute to the State Controller by July 15, 2012.

What Does the Future Hold?

Termination of redevelopment in California was not intended or wanted by the State Legislature. While dissolution of redevelopment was part of the governor's budget, the legislature did not agree and passed ABX1 27. This was companion legislation to ABX1 26 and allowed city and county agencies to continue redevelopment programs by paying an annual assessment to the state.

Given the above, it stands to reason that there may be an effort to pass new legislation to bring back some form of tax-increment financing.

While many examples of successful redevelopment projects exist in the county, there are also examples of abuse and poor performance. The major problem identified by this study is three-fold:

- Lack of effective oversight;
- Lack of local citizen input; and
- Lack of a non-judicial means to settle disputes between the city or agency and the citizens.

Primary Reason for Dissolution

The primary reason for the dissolution of redevelopment is the underfunding of school districts at the local level. With the poor economy, it became increasingly difficult for the state to backfill local school funding as required by SB 90 (the Dill's Bill). This gave the state little choice. Either the RDAs had to contribute more to local school funding (which would have occurred under ABX1 27) or be dissolved.¹⁹

Current Redevelopment Agency Oversight

Although there was no formal system of review or approval of redevelopment plans beyond the agency and city (or county) that created it, the law provided for several oversight mechanisms. Challenges can be brought against redevelopment agencies through litigation or through a referendum process. In addition, the law required redevelopment agencies to report certain activities to the California Department of Finance, the Department of Housing and Community Development and the State Controller's Office.

A 1994 report by the Legislative Analyst's Office found that oversight of redevelopment agency activities comes primarily through legal challenges or referenda initiated by three parties:²⁰

¹⁹ Supra, Legislative Analyst Office, February 2012

²⁰ O'Malley, Marianne, "Redevelopment after Reform: A Preliminary Look", California Legislative Analyst's Office, December, 1994

The Dissolution of Redevelopment in Orange County

- Local taxing agencies including the counties, special districts, and school and community college districts serving the redevelopment project area.
- The state, primarily the state Department of Finance.
- The public, which includes local residents and businesses.

Other than litigation (an expensive option for the general public) the only meaningful oversight agencies have been the State Controller and Department of Finance. The State Controller receives annual financial and operational data and has responsibility of enforcing the Redevelopment Law (a seemingly impossible task given the breadth and scope of redevelopment activities in the state.) For example, redevelopment agencies were required to file an annual financial report with the State Controller and with the Department of Housing and Community Development.²¹ Based on the RDAs' financial audit reports, the State Controller was required to compile a list of agencies that appear to have major violations of the Community Development Law. The law establishes a procedure for consultation between the State Controller's Office and RDA, referral of the violation to the Attorney General, a court hearing, and the issuance of court orders and fines designed to remedy violations.

Out of the 422 redevelopment agencies that existed during the 2004/2005 fiscal year, the State Controller's Office found 86 major violations based on the annual reports filed by the agencies. Within the 86 violations, 51 (60 percent) were for failing to adopt an implementation plan, thirteen (15 percent) were for failing to file an audit report and another eight (9 percent) were for "administrative expenditures from the Low and Moderate Income Housing Fund."

The Department of Finance and the State Controller will have an equal role in reviewing and approving the ROPS (Recognized Obligation Payment Schedule) submitted. The following statement appears on the Department of Finance web-site:

"We encourage redevelopment agencies and their successors to immediately begin work on Recognized Obligation Payment Schedules (ROPS) and in organizing the oversight board. Please forward the names and contact information (as required by Sec. 34179 (h) for the oversight board and the successor agency to the above e-mail address as soon as possible. Please forward the ROPS and any supporting documents to the e-mail address above. If documents are very voluminous, please call and we will discuss other delivery options."

"Department of Finance and the State Controller have some overlapping responsibilities and authorities under this statute. We intend to exercise them jointly to the extent possible. Both Controller and Finance staff will be reviewing enforceable obligation schedules and jointly determining which items to review in more detail and make objections to. To the extent we are able to agree, we will provide joint determinations. But both agencies reserve the right to take independent actions."

"Agencies should expect to be contacted by phone and e-mail for more information and to answer questions from Finance and Controller employees. We expect that field audits may be necessary in some cases."

²¹ California Health and Safety Code Section 33378(b)(2)

The Dissolution of Redevelopment in Orange County

“The State Controller is authorized to recover its costs for activities under this statute from redevelopment property tax. It is our intent to fund their work from this source.”

The Grand Jury believes this means that effective oversight of over 400 agencies from Sacramento is not a viable concept. Effective oversight needs to be objective, transparent and locally administered.

What about the newly designed oversight boards currently in the selection process? They are certainly at the local level. Perhaps too much so - it has been reported that some mayoral appointments to their oversight board are serving city council members who are also on the Successor Agency Board. Does this mean they will be overseeing themselves? In this regard, the future looks better. In 2016, there will be a single oversight board at the county level.

Project Area Committees

California redevelopment law provided for formation of project area committees to oversee plan adoptions and a limited range of redevelopment activities.²² This law was primarily to protect low or moderate income persons living within a project area from being displaced through eminent domain actions. However, the committees could also serve as advisory bodies to redevelopment agencies to review plans and make recommendations. If a redevelopment agency did not form a project action committee, it had to adopt a resolution making a finding that formation of such a group is not required. A statement of the specific reasons why the project will not displace a significant number of low-and/or moderate-income persons should support the finding. If a project action committee was to be formed, the law contains a number of provisions that required the agency to adopt procedures to publicize the opportunity to serve on the committee and to assist with its formation.

The Next Phase of Redevelopment

Although Redevelopment Agencies have been dissolved, they have been replaced by “Successor Agencies” and “Oversight Boards” with responsibility for managing existing redevelopment projects until all debt obligations are paid.

A Proposed Model for a Replacement System

Despite the generally poor reputation of redevelopment, Tax Increment Financing remains a powerful tool for funding community improvements. In the event the Legislature passes a bill to resume redevelopment in some form, a model is needed that ensures fair sharing of the tax increment, provides effective oversight to the agencies selected to administer these funds, includes a formal structure for citizen participation and a non-court method of conflict resolution.

The 2011-2012 Orange County Grand Jury believes that it is likely that an offspring of redevelopment is in the making and that it will soon be introduced in the foreseeable future. It seems important, therefore, that local governments begin planning for such a program and develop recommendations to the legislature as to the best possible elements for such a program.

²² California Health and Safety Code §33385 et. seq.

The Dissolution of Redevelopment in Orange County

Through the Grand Jury's research of the subject and interviews with members of the redevelopment community, some ideas have surfaced that include the following:

- Eliminate "blight reduction" as a requirement for redevelopment or require compliance with the legal definitions contained in the Health and Safety Code.
- Require a formal process for citizen participation and review through Project Area Committees as authorized by §33385 Health and Safety Code.
- Plan for a single oversight agency or body at the County level and give that body authority to require compliance with the law, policies and procedures.
- Use Project Area Committees as a first step to mediate citizen complaints and disputes between agencies and property owners.
- Introduce arbitration as the next tier for settling citizen complaints and property owner claims.
- Suspend use of eminent domain unless all reasonable alternatives, including arbitration, have been exhausted and then, only with the concurrence of the county oversight board.
- Prohibit conveyance to a private party in those instances that justify the use of eminent domain for public purposes.
- Develop formulas for revenue sharing that will ensure school districts, community college districts, special districts and the county, share in the property tax revenue because of a redevelopment project.
- Require a comprehensive performance audit on a bi-annual basis in addition to annual financial audits.

Pending Legislation

There are currently several bills making their way through the legislative process. Following is a summary of three of those bills providing examples of the nature of discussions taking place in the State Assembly and Senate:

AB 1585 was introduced March 21, 2012, by Speaker Perez. This bill proposes some clean-up language to the dissolution bill, ABX1 26, and proposes changes to the process of dissolving redevelopment agencies. Included is a requirement that funds on deposit in the Low-and-Moderate-Income Housing Funds remain with the entity that assumes the housing functions rather than being distributed as property tax revenue. The bill proposes a total of 50 items intended to correct or clarify a variety of issues related to the management of the dissolution.

SB 986 was introduced on January 31, 2012, by Senator Dutton. The bill allows successor agencies to keep former redevelopment agencies' bond proceeds and enter into new enforceable obligations funded by the bond proceeds. By letting successor agencies enter into new enforcement obligations through 2014, SB 986 allows bond proceeds to finance former RDA projects that would not otherwise be completed.

SB 654 was introduced January 31, 2012 by Senator Steinberg. This bill allows the host city or county of a dissolving redevelopment agency to retain the funds on deposit in the agency's housing fund and expands the types of agency loans from the host city or county considered enforceable obligations.

The Dissolution of Redevelopment in Orange County

In addition to clarifying the language in the dissolution legislation (ABX1 26) bills recently introduced appear to represent an effort to continue with at least the low-income housing side of redevelopment. It seems likely therefore that this part of redevelopment will continue to operate not only in completing projects under way but also to fund new low-income housing projects.

FINDINGS/CONCLUSIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the Findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court, with a copy to the Grand Jury.

Because redevelopment agencies no longer exist, findings and recommendations in this report will be limited to matters related to winding down the programs, oversight issues and otherwise promoting the concept of local planning for the next, yet unknown, phase of redevelopment.

The 2011-2012 Grand Jury submits the following ten findings:

F1. As of the date of dissolution of redevelopment (February 1, 2012), all city operated redevelopment agencies, except Mission Viejo and Seal Beach, were exceeding the administrative costs limit of 5% of the tax increment distributed related to the ROPS as authorized by ABX1 26.

F2. Of the agencies surveyed, only Costa Mesa and Santa Ana reported having a citizen involvement committee along the line of a Project Area Committee as authorized by Section 33385 of the Health and Safety Code.

F3. Historically, external oversight over redevelopment has been missing or ineffective in monitoring redevelopment agency compliance and performance. The newly formed oversight boards offer a potential to improve on that record by providing critical evaluation of existing projects and management of the successor agency debt.

F4. The Orange County Auditor Controller has an expanded role in managing the tax-increment revenue. The implementation of ABX1 26 includes a requirement that all former redevelopment agencies in the county be audited to determine the accuracy of the information supporting agency claimed enforceable obligations. It has been determined that the County will contract with external auditors to accomplish this task under the direction of the Auditor-Controller.

F5. The Orange County Board of Supervisors has an expanded role in the management of the transition of redevelopment. They have a responsibility to make appointments to all oversight boards in the County. Ultimately, in 2016, there will be a single oversight board over all successor agencies in the County. The Board is also responsible to approve and oversee the external audit contracts to be managed by the Auditor-Controller.

The Dissolution of Redevelopment in Orange County

F6. It is highly likely that new legislation will pass expanding the scope of the low to moderate income housing programs and ultimately a replacement program for redevelopment itself. Local governments should take a proactive approach in planning and shaping its return.

F7. Ending redevelopment changes the distribution of property tax revenues among local agencies, but not the amount of tax revenues raised.

F8. Prior to the dissolution of redevelopment, some agencies encumbered debt to their cities, thereby creating questionable enforceable obligations.

F9. Some former RDAs (such as Brea and Buena Park) have incentive payments to commercial entities as enforceable obligations.

F10. The city of Garden Grove failed to adequately address citizen concerns in the pursuit of development of the parking area on Grove Street, west of historic Main Street.

RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the Recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court, with a copy to the Grand Jury.

Based on its investigation of City Redevelopment Agencies in Orange County, the 2011-2012 Orange County Grand Jury makes the following six recommendations:

R1. All successor agencies should review administrative costs to ensure compliance with the limit of five percent of the tax-increment or less as required by ABX1 26 and develop a plan to reduce these costs to three percent of the tax increment received or less in 2012-2013. If these percentages fall below \$250,000, the agencies are allowed to claim the higher amount. (See F1)

R2. Successor agencies and oversight boards should review the Recognized Obligations Payment Schedule with a view toward limiting the range of projects and obligations thereby retiring the enforceable obligation debt as quickly as possible. (See F3)

R3. The Orange County Board of Supervisors should appoint a committee to study possible replacement programs for redevelopment and use legislative influence to help shape the next generation of redevelopment in the likely event such a program is passed by the Legislature. (See F6)

R4. Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for debt owed to the city. (See F8)

R5. Successor agencies and oversight boards should critically review the Recognized Obligations Payment Schedule (ROPS) to evaluate the need for incentive payments to commercial entities. (See F9)

The Dissolution of Redevelopment in Orange County

R6. The city of Garden Grove should resume negotiations with the Downtown Business Association to come to an agreement on the scope of the Grove Street Condominium Project including the availability of a suitable number of convenient public parking spaces to meet the needs of the downtown merchants. (See F10)

REQUIREMENTS AND INSTRUCTIONS:

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors. Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.
- (b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not warranted or is not reasonable, with an explanation therefore.

The Dissolution of Redevelopment in Orange County

- (c.) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

The City Councils of the cities listed on pages 31 and 32, as well as the Board of Supervisors and Auditor-Controller, are required to respond to the findings and recommendations in this report, as listed in the response matrices on pages 31 and 32.

The Dissolution of Redevelopment in Orange County

FINDINGS – RESPONSE MATRIX

Respondent	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
Anaheim	X	X	X							
Brea	X	X	X						X	
Buena Park	X	X	X						X	
Costa Mesa	X	X	X							
Cypress	X	X	X							
Ft Valley	X	X	X							
Fullerton	X	X	X							
Garden Grove	X	X	X							X
Hunt Beach	X	X	X							
Irvine	X	X	X							
La Habra	X	X	X							
Lake Forest	X	X	X							
La Palma	X	X	X							
Mission Viejo	X	X	X							
Orange	X	X	X							
Placentia	X	X	X							
S. Clemente	X	X	X							
SJ Capistrano	X	X	X							
Santa Ana	X	X	X							
Seal Beach	X	X	X							
Stanton	X	X	X							
Tustin	X	X	X							
Westminster	X	X	X							
Yorba Linda	X	X	X							
Auditor-Controller				X			X	X	X	
Board of Supervisors					X	X				

The Dissolution of Redevelopment in Orange County

RECOMMENDATIONS RESPONSE MATRIX

Respondent	R1	R2	R3	R4	R5	R6
Anaheim	X	X		X	X	
Brea	X	X		X	X	
Buena Park	X	X		X	X	
Costa Mesa	X	X		X	X	
Cypress	X	X		X	X	
Ft Valley	X	X		X	X	
Fullerton	X	X		X	X	
Garden Grove	X	X		X	X	X
Hunt Beach	X	X		X	X	
Irvine	X	X		X	X	
La Habra	X	X		X	X	
Lake Forest	X	X		X	X	
La Palma	X	X		X	X	
Mission Viejo	X	X		X	X	
Orange	X	X		X	X	
Placentia	X	X		X	X	
S. Clemente	X	X		X	X	
SJ Capistrano	X	X		X	X	
Santa Ana	X	X		X	X	
Seal Beach	X	X		X	X	
Stanton	X	X		X	X	
Tustin	X	X		X	X	
Westminster	X	X		X	X	
Yorba Linda	X	X		X	X	
Auditor-Controller				X		
Board of Supervisors			X		X	

The Dissolution of Redevelopment in Orange County

APPENDIX – GLOSSARY OF TERMS

AB1X 26	-	Legislation Dissolving Redevelopment in California Upheld by California Supreme Court on 12/28/2011
AB1X 27	-	Bill Intended to Allow Redevelopment to Continue on a “Pay to Play” basis Struck down by California Supreme Court on 12/28/2011
CRA	-	California Redevelopment Association
EOPS	-	Enforceable Obligations Payment Schedule
ERAF	-	Educational Revenue Augmentation Fund
MORR	-	Municipal Officials for Redevelopment Reform
Pass-Through	-	Payment from Tax Increment Revenue to other agency
RDA	-	Redevelopment Agency
ROPS	-	Recognized Obligations Payment Schedule
SERAF	-	Supplemental Educational Revenue Augmentation Fund
Tax Increment	-	Difference between property tax before and after redevelopment

California Penal Code Sections §933 and §933.05

[Note: to reduce grand jury requests for additional response information, the grand jury has **bolded** those words in §933.05 which should be appropriately included in a response]

- §933 (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.
- (b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.
- (c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.
- (d) As used in this section "agency" includes a department.

- §933.05 (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent **agrees** with the finding.
 - (2) The respondent **disagrees wholly or partially** with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation **has been implemented**, with a summary regarding the implemented action.
 - (2) The recommendation **has not yet been implemented, but will be implemented** in the future, with a **timeframe** for implementation.
 - (3) The recommendation **requires further analysis**, with an explanation and the scope and parameters of an analysis or study, and a **timeframe** for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation **will not be implemented** because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.