

ORDINANCE NO. 2011-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALBANY ENACTED PURSUANT TO HEALTH AND SAFETY CODE SECTION 34193 TO ELECT AND IMPLEMENT PARTICIPATION BY THE CITY OF ALBANY AND THE ALBANY COMMUNITY REINVESTMENT AGENCY IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW

THE CITY COUNCIL OF THE CITY OF ALBANY DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS AND BACKGROUND INFORMATION

a. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Albany (the "City") adopted in accordance with the Redevelopment Law, Ordinance No. 98-04 on June 15, 1998 adopting the Redevelopment Plan for the Albany Reinvestment Project Area (the "Redevelopment Plan"), as amended from time to time.

b. The Albany Community Reinvestment Agency ("Agency") is responsible for implementing the Redevelopment Plan pursuant to the Redevelopment Law.

c. ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; and together with the Dissolution Act, the "Redevelopment Restructuring Acts") have been enacted to significantly modify the Redevelopment Law generally as follows:

1. The Dissolution Act first immediately suspends all new redevelopment activities and incurrence of indebtedness, and dissolves redevelopment agencies effective October 1, 2011; and

2. The Voluntary Program Act, through the addition of Part 1.9 to the Redevelopment Law (the "Alternative Voluntary Redevelopment Program"), then allows a redevelopment agency to avoid dissolution under the Dissolution Act by opting into an alternative voluntary redevelopment program requiring specified annual contributions to local school and special districts.

d. Specifically, Section 34193(a) of the Redevelopment Law (as added to the Redevelopment Law by the Voluntary Program Act) authorizes the City Council to enact an ordinance to comply with Part 1.9 of the Redevelopment Law, thereby exempting the Agency from the provisions of the Dissolution Act, and enabling the Agency to continue to exist and function under the Redevelopment Law, so long as the City and the Agency comply with the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law.

e. Through the adoption and enactment of this Ordinance, it is the intent of the City Council to enact the ordinance described in Section 34193(a) of the Redevelopment Law and to

participate for itself and on behalf of the Agency in the Alternative Voluntary Redevelopment Program set forth in Part 1.9 of the Redevelopment Law.

f. Pursuant to Section 34193.2(b) of the Redevelopment Law, the City Council understands that participation in the Alternative Voluntary Redevelopment Program requires remittance of certain payments as set forth in the Voluntary Program Act (as further described below), and also constitutes an agreement on the part of the City, in the event the City fails to make such remittance payments, to assign its rights to any payments owed by the Agency, including, but not limited to, payments from loan agreements, to the State of California.

g. The City Council does not intend, by enactment of this Ordinance, to waive any rights of appeal regarding the amount of any remittance payments established by the California Department of Finance, as provided in the Voluntary Program Act.

h. On August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts and issued an order granting a partial stay on specified portions of the Redevelopment Restructuring Acts, as modified on August 17, 2011 (the "Stay"), including a stay of the provisions of the Voluntary Program Act.

i. Accordingly, the City Council intends to adopt this Ordinance understanding that it will be effective only upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

## SECTION 2. ENACTMENT OF ORDINANCE PURSUANT TO REDEVELOPMENT LAW SECTION 34193(a)

To the extent required by law to maintain the existence and powers of the Agency under the Redevelopment Law (including the Redevelopment Restructuring Acts), the City Council hereby enacts the ordinance authorized by Section 34193(a) of the Redevelopment Law, whereby the City, on behalf of itself and the Agency, elects to and will comply with the provisions of Part 1.9 of the Redevelopment Law, including the making of the community remittance payments called for in Section 34194 of the Redevelopment Law (the "Remittance Payments"), and whereby the Agency will no longer be subject to dissolution or the other prohibitions and limitations of Parts 1.8 and 1.85 of the Redevelopment Law as added by the Dissolution Act.

## SECTION 3. ADDITIONAL UNDERSTANDINGS AND INTENT

It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the Redevelopment Law, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2 of the Redevelopment Law, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual Remittance Payments (the "Agency Transfer Payments") to enable the City, directly or indirectly, to make the annual Remittance Payments. Unless otherwise specified by resolution of the City Council, it is the City Council's intent that the City's annual Remittance Payments shall be made exclusively from the Agency Transfer Payments or from other funds that become

available as a result of the City's receipt of the Agency Transfer Payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or other assets to make the Remittance Payments, it being understood by the City Council that any Remittance Payments will be funded solely from the Agency Transfer Payments and/or other assets transferred to the City in accordance with the Voluntary Program Act.

#### SECTION 4. AUTHORIZATION OF IMPLEMENTING ACTIONS

The City Manager or the City Manager's designee is hereby authorized, on behalf of the City, to take any actions necessary to implement this Ordinance and comply with the Voluntary Program Act, including, without limitation, providing required notices to the County Auditor-Controller, the State Controller, and the Department of Finance, entering into any agreements with the Agency to obtain the Agency Transfer Payments, and making the Remittance Payments.

#### SECTION 5. CEQA

The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project, but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The appropriate environmental review shall be completed in accordance with CEQA prior to the commencement of any future Agency-supported project or program. The City Council therefore directs that a Notice of Exemption be filed with the County Clerk of the County of Alameda in accordance with the CEQA guidelines.

#### SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared unconstitutional or invalid.

#### SECTION 7. ENACTMENT AND EFFECTIVE DATES

This Ordinance is deemed enacted as of \_\_\_\_\_, 2011 for purposes of Section 34193(a) of the Redevelopment Law, and shall take effect and will be enforced thirty (30) days after its adoption, conditioned upon the lifting of the Stay and the Court's determination that the Voluntary Program Act is constitutional.

#### SECTION 8. PUBLICATION AND POSTING

The City Clerk is directed to post and/or publish this Ordinance (or summary thereof) as required by law.

The foregoing Ordinance was duly introduced before the City Council of the City of Albany, County of Alameda, at a regular meeting of the City Council held on the 6<sup>th</sup> day of September, 2011, and finally adopted at a regular meeting of the City Council held on the 19th day of September, 2011, by the following votes to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Mayor

ATTEST:

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City Clerk