

## Memorandum 2012-26

**Community Redevelopment Law Cleanup: List of Minor Issues  
for Possible Future Legislative Attention**

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Health and Safety Code Section 34189(b) requires the Law Revision Commission to “draft a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.”

At its February 2012 meeting, the Commission decided to maintain a list of issues that fall outside of the scope of the current study, but might be appropriate for future legislative attention. See Minutes (Feb. 2012), p. 6. The description of that list was modified slightly at the April 2012 meeting. It now reads:

If a provision of the community redevelopment statutes contains an apparent substantive defect or its meaning is unclear, the Commission may note the matter in an appendix for inclusion in the Commission’s final report. The appendix will state expressly that it has been prepared solely for informational purposes and that the Commission does not take any position on whether or how any of the issues noted in the appendix should be addressed. The appendix will also make clear that the omission of any issue from the appendix should not be construed to infer that the Commission evaluated the issue and concluded that it is unproblematic.

See Minutes (April 2012), p. 9.

At the April meeting, the Commission also approved a draft of the list, which was attached to Memorandum 2012-13. *Id.*

A new draft is attached to this memorandum. The first four items on that list were carried forward from the draft that was approved in April. Items (5) to (11) were drawn from issues discussed in the memoranda prepared for the June 2012 meeting. Item (12) has not been discussed in any other staff memorandum.

The Commission should review the new items and decide whether to approve them for inclusion in the cumulative list.

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

There is one other minor issue worth mentioning. To date, we have been referring to the list as a collection of “minor” issues. That may be unnecessarily limiting, and could invite line-drawing disputes about what should or should not be listed. **The staff recommends that, going forward, we drop the word “minor” from any description of the list.** That approach has been implemented in the attached draft.

Respectfully submitted,

Brian Hebert  
Executive Director

ISSUES FOR POSSIBLE FUTURE  
LEGISLATIVE ATTENTION (6/6/12)

**Staff Note.** In preparing proposed redevelopment clean-up legislation, the Commission is maintaining a list of “Issues for Possible Future Legislative Attention.” The Commission plans to include the list as an appendix to its report to the Governor and the Legislature. The appendix has been prepared solely for informational purposes.

The issues listed in this document were not addressed by the Commission, because they fall outside the scope of the Commission’s assigned clean-up work. The Commission does not take any position on whether or how any of the issues noted in the list should be addressed.

No inference should be drawn from the fact that an issue has been omitted from this list. The omission of an issue does not necessarily mean that the Commission evaluated the issue and concluded that it is unproblematic.

Except as otherwise indicated, all statutory references in this document are to the Health and Safety Code.

- (1) **Powers and Duties of Successor Agency.** Section 34173(b) provides that successor agencies are vested with the powers and duties of the former redevelopment agencies, “[e]xcept for those provisions of the Community Redevelopment that are repealed, restricted, or revised pursuant to the act adding this part....” Sections 34161-34166 appear to “restrict” the powers of the former redevelopment agencies. Does this mean that successor agencies are not vested with any of the powers restricted by those sections? For example, Section 34163(c) provides that the former redevelopment agencies were not permitted to modify existing contracts prior to their dissolution. Does this mean that successor agencies that are overseeing existing redevelopment work cannot make “change orders” or other routine contract modifications?
- (2) **Powers and Duties of Third Parties.** Existing law assigns a number of powers and duties to the former redevelopment agencies. It also assigns powers and duties to third parties, in connection with the activity of the former redevelopment agencies. If a successor agency is vested with a power or duty of a former redevelopment agency, do the related powers and duties of third parties apply as if the successor agency was a redevelopment agency? For example, existing Section 33080 requires a redevelopment agency to file an annual report with the State Controller. Section 33080.7 then assigns the Controller certain oversight duties relating to the annual report. If the duty to prepare an annual report vests with a successor agency, do the Controller’s oversight duties apply to a report filed by the successor agency?
- (3) **Status of Entity Granted Redevelopment Powers and Duties.** Government Code Section 6520 provides that “the Board of

Supervisors of San Diego County and the City Council of the City of San Diego may create by joint powers agreement, the San Diego Courthouse, Jail, and Related Facilities Development Agency, ... which shall have all the powers and duties of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code....” Is this entity a redevelopment agency? Did it receive tax increment revenue? Was it dissolved by Section 34172?

- (4) **References to Redevelopment Areas.** Some provisions of existing law contain references to redevelopment-related areas (i.e., the “survey area,” or “redevelopment project area”). Do these provisions refer to the designated areas in connection with their function in the redevelopment process, or do they refer to these areas as areas of space that just happen to be defined by their former redevelopment-related function? For example, Business and Professions Code Section 5498 provides special rules relating to advertising within a “redevelopment project area.” Do those special rules continue to apply to such an area, even after all redevelopment activity in the area has ceased?
- (5) **Dissolution of Successor Agency.** Section 34179(m) provides that an oversight board “for a given successor agency shall cease to exist when all of the indebtedness of the dissolved redevelopment agency has been repaid.” However, the law does not appear to address the dissolution of a successor agency when its work is completed. Nor does the law specify the treatment of a dissolved successor agency’s assets, obligations, records, or employees.
- (6) **Creation of Community Development Commission.** The first sentence of Section 34166 provides that no “legislative body or local government entity” shall “create or otherwise establish a new redevelopment agency or community development commission.” The second sentence of that section provides that a “charter city or county” shall not “create or otherwise establish a redevelopment agency,” but makes no mention of community development commissions. Does this mean that a charter city or county may create a new community development commission?
- (7) **Affordable Housing Requirements for Termination of a Project Area.** Under Section 33333.8, neither an RDA nor a legislative body may adopt an ordinance terminating a project area until the RDA has complied with all six types of affordable housing obligations listed in that section. Which affordable housing obligations must now be satisfied in order to terminate a project area? If the successor agency and the housing successor are different entities, what process applies in determining whether those affordable housing obligations are satisfied?

- (8) **Treatment of Funds Derived from Sale of Owner-Occupied Unit or Mutual Self-Help Housing Unit Pursuant to Section 33334.3(f)(1).** Under Section 33334.3(f)(1), an RDA must require an owner-occupied unit to remain available at affordable housing cost, and be occupied by persons of limited means, for at least 45 years. An RDA may permit an owner-occupied unit to be sold for an amount exceeding the applicable affordability requirement before the 45-year affordability period expires, so long as the sale is made pursuant to an “adopted program” that protects the RDA’s investment of moneys from the Low and Moderate Income Housing Fund. For example, the sale may be made pursuant to an equity sharing program, in which some of the excess sale proceeds are allocated to the owner based on length of occupancy, and the remaining proceeds are allocated to the Low and Moderate Income Housing Fund. See Section 33334.3(f)(1)(B). A similar rule applies with regard to sale of a mutual self-help housing unit that is subject to an affordability covenant or restriction. See Section 33334.3(f)(1)(C). What impact does ABx1 26 have on these rules? May a successor agency adopt an equity sharing program or other program for conducting such sales, or follow a program that was previously adopted by the RDA? If so, what restrictions apply? What happens to the proceeds that used to go to the Low and Moderate Income Housing Fund?
- (9) **Duties Relating to Affordable Housing Records.** Section 33334.3(f)(3)(A) requires an RDA to “obtain and maintain a copy of the recorded covenants or restrictions for *not less than the life of the covenant or restriction.*” (Emphasis added.) When a successor agency transfers housing responsibilities to the housing successor, is the successor agency also supposed to transfer the RDA’s housing-related records to the housing successor? Does the duty to maintain a copy of the recorded covenants or restrictions for “not less than the life of the covenant or restriction” become a duty of the housing successor?
- (10) **Status of Existing Transient Occupancy Tax.** Section 34165(b) provides that a redevelopment agency cannot “[i]mpose new assessments” pursuant to Revenue and Taxation Code Section 7280.5. If a former redevelopment agency had pledged transient occupancy tax revenue for the repayment of an enforceable obligation, what is the status of that revenue after the dissolution of the redevelopment agency? See Section 34175(a) (“It is intended that the cessation of any redevelopment agency shall not affect [a] pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge.”).
- (11) **Operation of Redevelopment Provisions that “Depend” on Tax Increment Allocation.** Section 34189(a) provides that all provisions of the Community Redevelopment Law that “depend on the allocation of tax increment to redevelopment agencies” are

now inoperative. The degree of “dependence” sufficient to trigger that rule is not entirely clear. For example:

- Section 33684(j) provides special rules for the repayment of outstanding passthrough payment liabilities, which accrued prior to the enactment of Section 34189. Does Section 34189 affect the operation of provisions that “depend” on an allocation of tax increment that occurred before the enactment of Section 34189?
- Sections 33800-33855 authorize certain redevelopment agencies to impose special assessments and use the resulting revenue to retire specified debt. Those provisions only apply where tax increment revenues are insufficient to repay the specified obligations. Is that connection to tax increment sufficient to make the special assessment provisions inoperative?

(12) **New Successor Agency Employees.** Section 34190 provides that a successor agency is the successor employer of all of the employees of a former redevelopment agency, on the dissolution of that agency. However, nothing in ABx1 26 directly addresses whether, and under what terms, a successor agency can hire new employees to participate in winding down the affairs of a former redevelopment agency.

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