

**ORDINANCE NUMBER 460-11**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHOWCHILLA, CALIFORNIA, DETERMINING THAT IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE CHOWCHILLA REDEVELOPMENT AGENCY**

**WHEREAS**, the City Council of the City of Chowchilla ("City") approved and adopted the Chowchilla Redevelopment Agency Redevelopment Plan ("Redevelopment Plan") covering certain properties within the City (the "Project Area"); and

**WHEREAS**, the Chowchilla Redevelopment Agency ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*); and

**WHEREAS**, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

**WHEREAS**, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

**WHEREAS**, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, companion bills Assembly Bill 1X 26 ("AB 1X 26") and Assembly Bill 1X 27 ("AB 1X 27"), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments into a Special District Allocation Fund and Educational Revenue Augmentation Fund established for each county and administered by the county auditor-controller; and

**WHEREAS**, specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

**WHEREAS**, once a redevelopment agency is dissolved, AB1X26 makes its existing assets and future property tax revenues available for use by third parties for their own benefit; and

**WHEREAS**, AB 1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

**WHEREAS**, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

**WHEREAS**, under the threat of dissolution under AB 1X 26, and upon the contingencies and reservations set forth herein, the City intends to make the Fiscal Year 2011-2012 community remittance to the Special District Allocation Fund and Educational Revenue Augmentation Fund in the amount of \$536,233, as well as the subsequent annual community remittances; and

**WHEREAS**, the City intends to reserve the right to appeal the California Director of Finance's final calculation of the amount of the Fiscal Year 2011-12 community remittance (and subsequent annual remittances), calculations; and

**WHEREAS**, on July 18, 2011, the League of California Cities and the California Redevelopment Association filed a petition on behalf of cities, counties and redevelopment agencies asking the California Supreme Court to overturn AB 1X 26 and AB 1X 27 on the following grounds:

1) AB 1X 27 violates the State Constitution because it requires redevelopment agencies to use their tax increment funds for the benefit of the state and other local jurisdictions;

2) AB 1X 26's attempt to restrict the use of redevelopment agencies' funds pending their dissolution violates the State Constitution;

3) AB 1X 26's attempt to dissolve the redevelopment agencies violates the State Constitution;

4) The payments violate the State Constitution to the extent they are made with property tax proceeds;

5) The payments violate the State Constitution to the extent they are made with proceeds of local taxes other than property taxes; and

6) Requiring local governments to shoulder part of the state responsibility to fund schools constitutes an unfunded state mandate; and

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

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

**WHEREAS**, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

**WHEREAS**, California Code Section 36937(b) provides that an urgency measure for the immediate preservation of the public peace, health or safety shall take effect immediately; and

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CHOWCHILLA DOES ORDAIN AS FOLLOWS:**

#### **RECITALS**

The above recitals are true and correct and are incorporated as though fully set forth herein.

#### **PARTICIPATION IN THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM**

In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City will submit, under protest and subject to the reservation of all legal and equitable rights, to the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

### **PAYMENT UNDER PROTEST**

Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances, under protest and subject to the reservation of all legal and equitable rights including but not limited to the right to appeal the California Director of Finance's final calculation of the amount of the Fiscal Year 2011-12 community remittance (and subsequent annual remittances), set forth in Health and Safety Code section 34194 *et seq.*

### **EFFECT OF STAY OR DETERMINATION OF INVALIDITY**

(a) The City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise illegal and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed.

(b) Any community remittance shall be made under protest and without prejudice to the City's or Agency's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional or otherwise illegal.

(c) If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed automatically null and void and of no further force or effect, without any further action by the City or its City Council.

### **IMPLEMENTATION**

The City Council hereby authorizes and directs the City Administrator or his designee to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Madera County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's submission to the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.

### **ADDITIONAL UNDERSTANDINGS AND INTENT**

(a) It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*), the City will enter into an agreement with the Agency as authorized pursuant to Health and Safety Code Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments.

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

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The City Council finds, under Title 14 of the California Code of Regulations, Section

15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program and therefore, directs staff to file a Notice of Exemption with the County Clerk of the County of Madera in accordance with the CEQA Guidelines.

#### **SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

#### **REPEAL OF CONFLICTING PROVISIONS**

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

#### **URGENCY FINDINGS**

The City Council finds that this Urgency Ordinance, and the provisions set forth herein, are necessary for the immediate preservation of public peace, health and safety in order to insure that the City with the assistance of the Redevelopment Agency can immediately continue to implement a variety of redevelopment projects and programs that eliminate and prevent blight, stimulate and expand economic growth throughout the City, create and develop local job opportunities and alleviate deficiencies in the City's public infrastructure.

#### **EFFECTIVE DATE**

This Urgency Ordinance shall take effect immediately upon adoption if adopted by at least four-fifths (4/5) vote of the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Chowchilla at a regular meeting held on the 8th day of August 2011 by the following vote to wit:

**AYES: 5 - JACKSON, HEBERT, ALEXANDER, KOPSHEVER, HAWORTH**

**NOES: 0**

**ABSTAINS: 0**

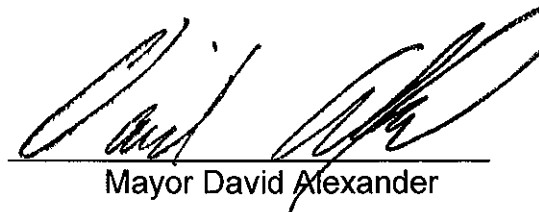
**ABSENT: 0**

ATTEST.



~~Cindy Black, Chief Deputy City Clerk~~

MARK LEWIS



Mayor David Alexander