

ORDINANCE NO. 886-2011U

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BARSTOW, CALIFORNIA, DETERMINING 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 REDEVELOPMENT AGENCY OF THE CITY OF BARSTOW

WHEREAS, the City Council of the City of Barstow (“City”) approved and adopted the Redevelopment Plan for the Barstow Redevelopment Project Area 1, as amended, and Project Area 2, as amended, (“Redevelopment Plan”) covering certain properties within the City (the “Project Area”); and

WHEREAS, the Redevelopment Agency of the City of Barstow (“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.) (“CRL”); 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 has recently enacted and the Governor has signed, companion bills AB 1X 26 and 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; 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, 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 pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be One Million Seven Hundred Thousand Dollars (\$1,700,000), as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-12 community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, City understands and believes that an action challenging the constitutionality of AB 1X 26 and AB 1X 27 will be filed on behalf of cities, counties and redevelopment agencies; and

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City'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; 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; 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, all other legal prerequisites to the adoption of this Ordinance have occurred.

THE CITY COUNCIL OF THE CITY OF BARSTOW, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. 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 shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

Section 3. Payment Under Protest. Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health and Safety Code section 34194 *et seq.*

Section 4. Effect of Stay or Determination of Invalidity. 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 and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City'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. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. Implementation. The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the San Bernardino 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 agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.

Section 6. 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 CRL, the City will enter into an agreement with the Agency as authorized pursuant to 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. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. 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 City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Cruz in accordance with CEQA Guidelines.

Section 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at 220 East Mountain View, Suite A, Barstow, CA. The custodian for these records is JoAnne Cousino.

Section 9. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 10. Certification; Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Barstow, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Section 11. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

OR

Section 12. Findings. The adoption of this Urgency Ordinance is necessary for the immediate protection of the public peace, health and safety. In accordance with California Government Code Section 36937 and in order to protect the public peace, health and safety, the City Council of the City of Barstow finds and determines as follows:

(a) AB 1X 26 prohibits agencies from taking numerous actions, until the City Council adopts an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, including but not limited to incurring any new monetary or legal obligations or expanding any existing monetary or legal obligations, entering into agreements with any person for any purpose or amending or modifying any existing agreements and taking any action with respect to a redevelopment plan;

(b) Prior to the enactment of an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code, the Agency will be unable to continue efforts to eliminate and prevent blight (including remediation of buildings and structures which are unhealthy or unsafe to occupy or properties with hazardous waste), stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure;

(c) Blighting conditions in the Project Area constitute substantial threats to public peace, health and safety, and are so prevalent they cannot be eliminated without Agency action, including but not limited to the use of Agency funds and authorization of redevelopment projects and programs;

(d) During the current economic crisis, the Agency must have the ability to act and continue the efforts set forth in (b) above. The Agency must have all tools available in order to eliminate and prevent blighting conditions, including implementation of the Agency's economic development programs, such as, but not limited to:

- Mortgage Assistance Program
- FACELIFT (Home improvement assistance for low-moderate income residents).
- Purchase and rehabilitation/demolition of residential homes.
- Clean-up of blighted properties.
- Graffiti removal and other code compliance efforts
- Capital improvements to a historical building.
- Installation of streets to open up new development opportunities.
- Development of low-moderate income housing
- Development of senior housing for low-moderate income seniors.
- Gateway Entry and Signage Project
- Property Purchase and Revitalization Program
- Marketing and Promotional Activities
- Infrastructure and Community Facilities Improvement program
- Support transitional housing efforts

(e) The Agency is actively engaged in efforts to rehabilitate housing units, to provide assistance for property improvements and to provide safe and affordable housing. Adoption of this Urgency Ordinance will permit the Agency to continue these efforts immediately.

Section 13. Effective Date. The City Council hereby declares, on the basis of the findings set forth above, that an emergency exists and that this Ordinance is necessary to preserve the public peace, health and safety. Accordingly, this Ordinance is adopted as an emergency ordinance and shall take effect and be in force immediately upon its adoption.

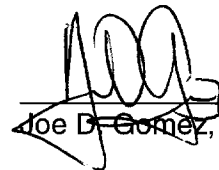
PASSED AND ADOPTED at a regular meeting of the City Council on the 1st day of August 2011, by the following vote:

AYES: Council Members Silva, Saenz and Hailey, Mayor Pro Tem
Hackbarth-McIntyre and Mayor Gomez

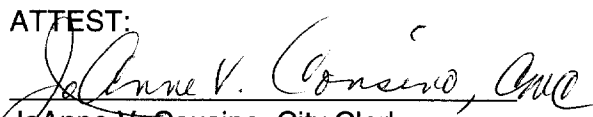
NOES: None

ABSENT: None

ABSTAIN: None

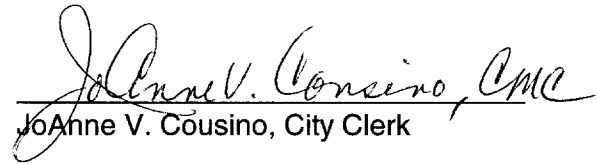


Joe D. Gomez, Mayor

ATTEST:

JoAnne V. Cousino, City Clerk



I, JoAnne V. Cousino, City Clerk of the City of Barstow and Ex Officio Clerk of the City Council, DO HEREBY CERTIFY UNDER THE PENALTY OF PERJURY that the foregoing Urgency Ordinance was introduced and adopted at a regular meeting of the City Council of the City of Barstow held on the 1st day of August, 2011


JoAnne V. Cousino, City Clerk



AGENDA MATTER:, Adoption of Urgency Ordinance and Introduction of Ordinance No 886-2011 U Determining the City of Barstow will comply with Voluntary Alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code (AB 1X 27) in order to permit the continued existence and operation of the Barstow Redevelopment Agency.

EXECUTIVE SUMMARY: As part of the approval of the FY2011-12 California State budget, the California Legislature has recently enacted, and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved as of October 1, 2011 under AB 1X 26, unless the community that created it enacts an ordinance under AB 1X 27 committing to making certain payments. This ordinance complies with the requirements of AB 1X 27.

DISCUSSION:

As a part of the 2011-12 State budget bill, the California Legislature has recently enacted and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved as of October 1, 2011 (AB 1X 26) unless the community that created it enacts an ordinance committing to making certain payments under the Voluntary Alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code (AB 1X 27).

The FY 2011-2012 required remittance for the City of Barstow is currently estimated at \$1,700,000.

During the current economic crisis, the Barstow Redevelopment Agency must have the ability to act to create new programs and continue the ongoing Economic Development and Housing programs. The Agency is actively engaged in efforts to rehabilitate housing units, to provide assistance for property improvements and to provide safe and affordable housing. The Agency must have all tools available in order to eliminate and prevent blighting conditions, including implementation of the Agency's programs, such as, but not limited to, Mortgage Assistance Program, FACELIFT (Home improvement assistance for low-moderate income residents), purchase and rehabilitation/demolition of residential homes, clean-up of blighted properties, capital improvements to a historical building, installation of streets to open up new development opportunities and Gateway Entry and Signage Project.

The California Redevelopment Association is leading the legal challenge of AB 1X 26 and AB 1X 27. Since a legal challenge will take time to resolve, adopting the Ordinance to comply with AB 1X 27 will allow Barstow's Redevelopment Agency to continue to operate. The proposed ordinance also contains language reserving the City's right to challenge the legality of the City of AB 1X 26 and AB 1X 27.

(CONTINUED ON PAGE 2)

RECOMMENDED ACTION: That Council approve the amendments to the Barstow Municipal Code by:

BA: Hailey Saenz 5-0 Approved

1. Adopt Urgency Ordinance No .886-2011-U, to take effect immediately, by title only
2. Approve 1st reading Introducing Ordinance Number 886-2011 by title only
3. Direct City Clerk to bring Ordinance back for 2nd reading and adoption
4. Direct City Clerk to publish pursuant to GC 36.933

PROPOSED BY	FUNDS BUDGETED	FUNDS AVAILABLE	MEETING DATE
Cindy Prothro, Interim Finance Dir	No	Yes	08/01/11
C.M. APPROVAL	AMOUNT REQUIRED	CATEGORY	ITEM NUMBER
Charles C. Mitchell	\$1,700,000 est.	City Manager	13



FISCAL IMPACT:

If adopted, the expense is estimated at \$1,700,000. These costs would be paid from the RDA reserves. The State of California will provide the breakdown of obligations by jurisdiction on August 1, 2011.

On August 15, 2011, the resolutions to appropriate these funds will be taken to the RDA and the City. AB 1X 27 requires the City to make the payment. Two resolutions will be submitted, one to appropriate the RDA funds from reserves to transfer to the City, and one for the City to appropriate the funds transferred from the RDA for the payment.

If not adopted, all activity would immediately be halted and the Redevelopment Agency will be dissolved and all assets would be transferred to a successor agency.

Attachments: Ordinance Number ____-2011-U, Voluntary Compliance with the Alternative Redevelopment Program pursuant to Part 1.9 of Division 24 of the California Health and Safety Code (AB 1X 27).