



REVISED

June 30, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager  
City of Oakland  
250 Frank H. Ogawa Plaza, Suite 3315  
Oakland, CA 94612

Dear Mr. Schlenk:

Subject: Approval of Oversight Board Action

This letter supersedes the California Department of Finance's (Finance) Oversight Board (OB) Resolution No. 2016-02 determination letter dated April 29, 2016. After review of additional information, a revision is necessary. The City of Oakland Successor Agency (Agency) notified Finance of its March 14, 2016 OB resolution on March 15, 2016. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency's OB Resolution 2016-02, approving the assignment of the former Redevelopment Agency's (RDA) rights and obligations under the City Center Disposition and Development Agreement (DDA) to the City of Oakland (City), is approved.

This is our determination with respect to the OB action taken.

Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Lead Analyst, at (916) 445-1546.

Sincerely,



JUSTYN HOWARD  
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland  
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County



August 11, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager  
City of Oakland  
250 Frank H. Ogawa Plaza, Suite 3315  
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: Approval of Oversight Board Action

The City of City of Oakland Successor Agency (Agency) notified the California Department of Finance (Finance) of its June 27, 2016 Oversight Board (OB) resolution on June 28, 2016. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, OB Resolution 2016-4, approving assignment of an Amended and Restated Owner Participation Agreement (OPA) with SKS Broadway, LLC to the City of Oakland (City), is approved.

It is our understanding that the City is assuming and agreeing to perform all of the duties and obligations of the Agency under the OPA. However, any future fees collected for extension of development deadlines under the OPA and possible liquidated damages in the event of default shall be payable to the Agency.

This is our determination with respect to the OB action taken.

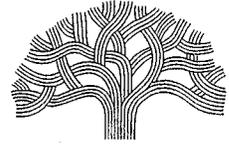
Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Analyst, at (916) 445-1546.

Sincerely,

JUSTYN HOWARD  
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland  
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County

# CITY OF OAKLAND



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Office of the Mayor  
Honorable Libby Schaaf

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June 30, 2016

California Department of Finance  
Attn: Mr. Michael Cohen  
915 L Street  
Sacramento, CA 95814-3706

*Transmitted Via Email*

Dear Mr. Cohen:

Subject: 2016-17 Annual Recognized Obligation Payment Schedule

The purpose of this letter is to provide additional information regarding two items listed on the Oakland Redevelopment Successor Agency (ORSA) 2016-17 Annual Recognized Obligation Payment Schedule and request additional dialogue with the Department of Finance (Finance), prior to submitting an Amended ROPS for the ROPS 16-17B period in September. There were two denied ROPS items that ORSA plans to resubmit: 1) ROPS line #207: 9451 MacArthur Blvd. -- Evelyn Rose Project totaling \$517,500; and 2) ROPS line #426: West Oakland Loan Indebtedness totaling \$2,717,524 with a ROPS 16-17 RPTTF request of \$1,813,238. ORSA is requesting that Finance reconsider these items with the following additional information and considerations.

**ROPS line #207: 9451 MacArthur Blvd. -- Evelyn Rose Project totaling \$517,500.**

ORSA seeks repayment of \$517,500 in funds owed to the Low and Moderate Income Housing Asset Fund (LMIHAF) due to the fact that property acquired with Low and Moderate Income Housing Funds (LMIHF) was later permitted to be developed as market rate housing. State law requires the restoration of funds to the LMIHF (now LMIHAF) when a site acquired with affordable housing funds is no longer used for that purpose. See, e.g., Health & Safety Code Section 33334.16 requiring sites acquired with LMIHF funds that are not developed for affordable housing within a specified time period to be sold, with the proceeds deposited into the LMIHF. Thus, the obligation to repay these funds qualifies as an amount owed to the LMIHAF and is an enforceable obligation under HSC Section 34171(d)(1)(G).

Finance originally denied this item claiming that ORSA had provided insufficient documentation of the obligation to repay the LMIHAF. ORSA subsequently provided the requested documentation. Finance now

denies this item based on its assertion that the amount owed to the LMIHF as a result of the conversion of the proposed project from affordable housing to market rate housing is not an amount borrowed from or a payment owing to the LMIHF that has been deferred within the meaning of HSC Section 34171(d)(1)(G), without explaining why Finance believes the funds are not owed to the LMIHF.

Finance's conclusion is directly at odds with the plain language of the statute. Clearly, the funds owed to the LMIHAF due to the conversion of the site to a use other than affordable housing is a "payment owing to" the LMIHF, because California Redevelopment Law (CRL) requires these funds to be paid back to the LMIHF. Pursuant to the CRL, these funds were owed to the LMIHF as of the date the property was sold for market-rate development in 2002; therefore, as of the effective date of AB 26, the payment was "deferred."

DOF's position is also directly at odds with the court's decision in *Fairfield Successor Agency v. Cohen* (April 28, 2015, Case No. 34-2014-8000193). The *Fairfield* court found that Section 34171(d)(1)(G) requires that **all** amounts owing to the LMIHF are enforceable obligations and must be paid to the LMIHAF:

"...subdivision (d)(1)(G) of section 34171 defines "amounts borrowed from" a former RDA's LMIHF as an enforceable obligation **without specifying a requirement that the amounts were borrowed for a permitted statutory purpose or any other particular purpose**. The **only** requirement specified in subdivision (d)(1)(G) for borrowed LMIHF amounts to qualify as an enforceable obligation is the approval of a repayment schedule by an oversight board....Following such approval, repayments of the borrowed funds or loans **must** be transferred to the Low and Moderate Income Housing Asset Fund administered by the housing successor to the former RDA. ...As is apparent from the plain language of subdivision (d)(1)(G) of section 34171 and subdivisions (d) and (e)(6)(A) of section 34176, the Legislature, in enacting AB IX 26, gave priority to the repayment of loans **of any kind** by the former RDA from its LMIHF and the use of those repayments by the housing successor to the former RDA to meet the affordable housing requirements of the Community Redevelopment Law." [emphasis added]

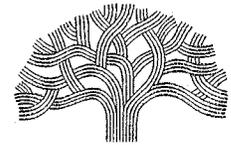
We should point out that an early version of SB 107 proposed by Finance would have limited the scope of permitted LMIHF repayments in response to the *Fairfield* decision. The Legislature chose not to include this limiting language in SB 107, clearly underscoring the Legislature's intent that repayments of all amounts owing to the LMIHF of any kind qualify as enforceable obligations and must be repaid.

**ROPS line #426: West Oakland Loan Indebtedness totaling \$2,717,524 with a ROPS 16-17B RPTTF request of \$906,618.**

ORSA seeks repayment of a City loan under HSC Section 34191.4(b) for funds advanced by the City for redevelopment work performed in the West Oakland redevelopment project area. On July 29, 2013, the Oakland Oversight Board approved Resolution No. 2013-016, which found that the West Oakland loan was an enforceable obligation, found that the loan proceeds were used for legitimate redevelopment purposes, and approved a loan repayment schedule. Finance declined review of this action. The Oversight Board resolution is therefore effective, and the City is entitled to repayment of its loan.

During the 16-17 ROPS review, Finance originally denied this item on the basis that ORSA had provided insufficient documentation of the principal loan balance. ORSA subsequently provided the requested documentation verifying amounts expended on the work performed in West Oakland. Then, in its final

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determination following a meet and confer, Finance denied this item for a completely different reason, i.e., the assertion that the contracts that the City executed with third parties for performance of the work in West Oakland, were entered into after the enactment of AB 26 and are thus not enforceable obligations, and therefore the "outstanding loan balance as of June 27, 2011, was \$0."

We disagree with Finance's conclusion for the following reasons. First, under the court's decision in *City of Glendale v. California Department of Finance* (July 28, 2015, Case No. 34-2015-80002145), aka *Glendale II*, Finance may not deny repayment of any portion of a reinstated loan after the loan has been approved by the oversight board without objection from Finance within the statutory review period. Specifically, *Glendale II* held that Finance may not, in connection with a subsequent ROPS review, deny repayment of a loan that had been previously approved by the oversight board without objection by Finance. The court observed that, since Finance had the opportunity to raise any objections when it reviewed the oversight board loan approval resolution, "DOF's objection to the Loan Agreements themselves could have and should have been made when DOF reviewed the earlier Oversight Board resolutions." (*Id.* at 8.) This includes Finance's implicit approval of a loan by declining to review the validity of the loan during the oversight board resolution review period, not just express approvals. (*Id.* at 7, 11.)

Please note that the Oakland Oversight Board staff report on the West Oakland loan, which was forwarded to Finance in 2013 along with the Oversight Board resolution approving reinstatement of the loan, cited to an outstanding loan balance of \$2,689,534.51, and listed each of the City's third party contracts and each contract date. Finance had a full opportunity to question the loan balance amount and the City contract dates at that time; however, Finance declined to review the loan, the loan balance, or the contract dates within the statutory review period when it was presented with the Oversight Board's action in 2013. It is only now, more than three years later, that Finance questions the loan balance as approved. In accordance with *Glendale II*, this objection is untimely as the loan reinstatement has already been approved without objection.

Furthermore, SB 107 included specific language that grandfathered in previously approved loans, such as the West Oakland loan. "The amendment of this section...shall not result in the denial of a loan under subdivision (b) that has been previously approved by the department prior the effective date of the act adding this subdivision." The *Glendale II* court found that the language in SB 107 underscored its conclusion that Finance is estopped from denying previously approved loan repayments:

"Thus, the Legislature's choice not to make statutory amendments regarding reinstated loan agreement retroactive, and its decision to uphold this Court's judgment in prior litigation shows its intent to guarantee that Petitioners would receive payment on the Loan Agreements..."

Second, DOF's rationale that the loan is not repayable because the City contracts are dated after enactment of AB 26 is erroneous. Section 34191.4(b) provides that "...upon application by the successor agency and approval by the oversight board, **loan agreements** entered into **between the redevelopment agency and the city... shall be deemed to be enforceable obligations** provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes." [emphasis added.] The "enforceable obligation" referred to in Section 34191.4(b) is the loan from the City to the RDA, not the third-party contracts entered into by the City under which the City spent the loan funds. The relevant enforceable obligation to repay the loan was entered into in 2008, long before the dissolution law was enacted.

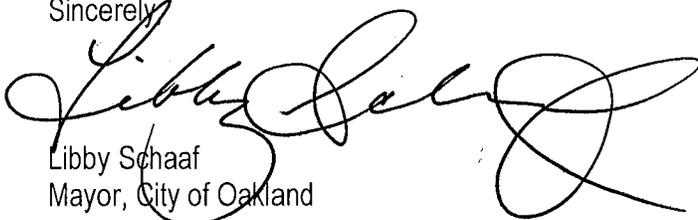
Contrary to Finance's assertions, the RDA did not create any new obligations nor did it transfer any powers after enactment of AB 26. There is nothing in the statute -- either in AB 1484 which is the authority under which the West Oakland loan was reinstated, or in SB 107, which more particularly describes requirements for third-party reimbursement agreements -- that addresses when a city must spend City-RDA loan proceeds or enter into third-party contracts to be funded with the proceeds. The relevant facts are that the City provided the loan, and the Oakland Redevelopment Agency agreed to repay the loan prior to dissolution. Although the Redevelopment Agency and ORSA were barred from entering into new contracts after such date, the City was not. (Furthermore, SB 107's new requirements regarding third-party contracts, even if relevant, do not apply to this loan since this loan was approved prior to the date that SB 107 was enacted, and is subject to the "grandfathering" provision described above.)

In short, Finance's position that the West Oakland loan proceeds cannot have been spent after June 2011, and cannot be repaid, eviscerates its deemed approval of the loan reinstatement and makes that approval and the grandfathering language in SB 107's Section 34191.4(d) meaningless.

In each of the disallowed items discussed above, the reasons for Finance's denial in the final determination letter dated May 19, 2016 was different from the original reasons given in the April 4, 2016 ROPS review letter. Since ORSA has not been given a chance to respond to the new reasons for denial through a meet and confer process, we are requesting additional dialogue with Finance now.

Staff will follow-up with you and your staff to determine next steps. Thank you for your consideration of the additional information presented in this letter.

Sincerely,



Libby Schaaf  
Mayor, City of Oakland

cc: Mr. Justyn Howard  
Mr. Todd Vermillion  
Ms. Sarah T. Schlenk  
Mr. Patrick Lane

**From:** [Vermillion, Todd](#)  
**To:** [Schlenk, Sarah](#)  
**Cc:** [Lor, Cindie](#); [Stacy, Zachary](#)  
**Subject:** Letter regarding 2016-17 Annual Recognized Obligation Payment Schedule  
**Date:** Friday, August 12, 2016 1:17:53 PM

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Sarah,

As we discussed earlier, we have read your letter dated June 30, 2016 regarding the 2016-17 Annual Recognized Obligation Payment Schedule (ROPS 16-17). It is our understanding the Oakland Redevelopment Successor Agency (Agency) will be submitting an Amended ROPS 16-17 to request the Department of Finance (Finance) reconsider two items denied in Finance's ROPS 16-17 determination letter dated April 4, 2016 and the letter dated May 19, 2016, which was in response to the Meet and Confer held on April 21, 2016. The disputed items are Item No. 207 – 9451 MacArthur Blvd totaling \$517,500 and Item No. 426 – West Oakland Loan Indebtedness totaling \$2,717,524.

Finance, including my Manager Zach Stacy, my Supervisor, Cindie Lor, and myself have read your letter and considered the arguments. However, pursuant to Health and Safety Code 34177 (o) (1) (E), an Agency may only amend the amount requested for payment of approved enforceable obligations. Finance's determinations related to the items remain unchanged; therefore, the items cannot be reconsidered through the Amended ROPS process.

Please refer to the ROPS 16-17 determination letter dated May 19, 2016 for details of our determination.

Sincerely,

Todd Vermillion  
Financial and Performance Evaluator  
Office of State Audits and Evaluations  
Department of Finance  
Phone: (916) 445-1546 Ext. 3761