

# **MONTEREY PARK COMMUNITY REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

*January 1, 2011, through January 31, 2012*



**JOHN CHIANG**  
California State Controller

December 2014



**JOHN CHIANG**  
**California State Controller**

December 22, 2014

Paul L. Talbot, City Manager/Oversight Board Chair  
Monterey Park Community Redevelopment Agency  
320 West Newmark Avenue  
Monterey Park, CA 91751

Dear Mr. Talbot:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Monterey Park Community Redevelopment Agency (RDA) to the City of Monterey Park (City) or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether the asset should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers to the City or any other public agency have been reversed.

Our review found that the RDA transferred \$59,838,928 in assets after January 1, 2011, including unallowable transfers to the City totaling \$7,842,427, or 13.11% of transferred assets. These assets must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622 or by email at [egonzalez@sco.ca.gov](mailto:egonzalez@sco.ca.gov).

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/mh

Attachment

cc: Annie Yaung, CPFO, Controller  
Monterey Park Community Redevelopment/Successor Agency  
John Naimo, Auditor-Controller  
Los Angeles County Auditor-Controller  
David Botelho, Program Budget Manager  
California Department of Finance  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Elizabeth González, Bureau Chief  
Division of Audits, State Controller's Office  
Betty Moya, Audit Manager  
Division of Audits, State Controller's Office  
Wan Ting Lo, Auditor-in-Charge  
Division of Audits, State Controller's Office  
Kevin Kanemasu, Auditor  
Division of Audits, State Controller's Office

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## Attachment—City of Monterey Park’s Response to Draft Review Report

# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Monterey Park Community Redevelopment Agency (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payments of any kind from any source.

Our review found that the RDA transferred \$59,838,928 in assets after January 1, 2011, including unallowable transfers to the City of Monterey Park (City) totaling \$7,842,427, or 13.11% of transferred assets. These assets must be turned over to the Successor Agency.

## Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA successor agencies and oversight boards to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal action to ensure compliance with this order.

## **Objective, Scope, and Methodology**

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

## **Conclusion**

Our review found that the Monterey Park Community Redevelopment Agency transferred \$59,838,928 in assets after January 1, 2011, including unallowable transfers to the City of Monterey Park totaling \$7,842,427, or 13.11% of transferred assets. These assets must be turned over to the Successor Agency.

Details of our finding are described in the Finding and Order of the Controller section of this report.

## **Views of Responsible Officials**

We issued a draft review report on September 25, 2014. Paul L. Talbot, City Manager, responded by letter dated October 16, 2014, disagreeing with the review results. The City's response is included in this final review report as an attachment.

## **Restricted Use**

This report is solely for the information and use of the City, the Successor Agency, the Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

December 22, 2014

# Finding and Order of the Controller

## **FINDING— Unallowable asset transfer to the City of Monterey Park**

The Monterey Park Community Redevelopment Agency (RDA) made an unallowable asset transfer totaling \$7,842,427 to the City of Monterey Park (City). The transfer occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On March 14, 2011, the RDA and City adopted Resolution No. 11395/RDA-677, authorizing the RDA to repay the City all debt evidenced by the voter-approved initiatives passed in 1946 and 1952. The voter approved initiatives allowed the City “to levy and collect taxes sufficient to pay all costs and expenses. . . to be paid by the City” to the state retirement system. On June 29, 2011, the RDA transferred \$7,842,427 in cash to the City for the recapture of the RDA’s portion of the pension override amounts covering periods from fiscal years 1982-83 to 2007-08.

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d).

### Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer totaling \$7,842,427 and turn over the assets to the Successor Agency.

### City’s Response

The City disagrees with the finding.

See Attachment for the City’s complete response.

### SCO’s Comment

On March 29, 2013, the Successor Agency received a Department of Finance Finding of Completion. The Successor Agency may place the loan generated for Voter Mandated Tax between the RDA and the City on the Recognized Obligation Payment Schedule, as an enforceable obligation, provided that the Oversight Board finds that the loan was for legitimate redevelopment purposes.

The City requested that the SCO stay the Order of the Controller until the resolution of the City’s pending lawsuit. However, the SCO does not have the authority to do so.

The Finding and Order of the Controller remain as stated.

**Attachment—  
City of Monterey Park’s Response to  
Draft Review Report**

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# CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896  
[www.ci.monterey-park.ca.us](http://www.ci.monterey-park.ca.us)



**City Council**  
Peter Chan  
Mitchell Ing  
Hans Liang  
Teresa Real Sebastian  
Anthony Wong

**City Clerk**  
Vincent D. Chang

**City Treasurer**  
Joseph Leon

October 16, 2014

Mr. Jeffrey V. Brownfield  
Chief, Audit Division  
California State Controller's Office  
3301 C Street, Suite 700  
Sacramento, CA 95816

[VIA CERTIFIED MAIL]

Dear Mr. Brownfield:

The City of Monterey Park received the draft State Controller Review Report for the Monterey Park Community Redevelopment Agency Asset Transfer Review, via certified mail on October 2, 2014 ("Draft Review Report"). The City's response to the Draft Review Report is enclosed.

The City appreciates the opportunity to respond to the findings of the Draft Review Report and respectfully requests the State Controller carefully consider the City's response before issuing the final Review Report. For the reasons set forth in the enclosed response, the City requests the State Controller's Office either (1) reverse the draft finding and order or (2) stay the order until the resolution of the City's pending lawsuit on this issue (*City of Monterey Park et al. v. Wendy L. Watanabe et al.*, Sac. Sup. Court Case No. 34-2014-80001777).

The City looks forward to the receipt of the final Review Report reflecting the information provided in our response. Should you require any further information from the City, please do not hesitate to contact City Controller Annie Yaung at (626) 307-1349.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul L. Talbot", is written over a faint, larger version of the same signature.

Paul L. Talbot  
City Manager

Enclosure

cc: Mark D. Hensley, City Attorney  
Annie Yaung, Controller

**CITY OF MONTEREY PARK'S RESPONSE TO DRAFT REVIEW REPORT,  
ASSET TRANSFER REVIEW  
(January 1, 2011, through January 31, 2012)**

**Finding: Unallowable asset transfer to the City of Monterey Park**

**City Response:**

The City disputes the State Controller's finding for three reasons. First, the \$7,842,427 in funds previously held by the Monterey Park Redevelopment Agency ("Former Agency") were not an "asset," but instead were revenues that were rightfully owed to the City for payment of employee pension costs. Second, even if the funds were arguably an "asset" for purposes of Health and Safety Code § 34167.5 (which they are not as a matter of law), the City was committed to pay the funds to PERS for employee pensions, so that § 34167.5 does not apply. Third, because the City and the Successor Agency filed a pending lawsuit on this very issue, the State Controller's finding is premature until the lawsuit is resolved. Each of these reasons are explained in more detail below. For these reasons, the City respectfully requests that the State Controller's Office (SCO) incorporate this response into its draft review report and either (1) reverse the draft finding and order or (2) stay its issuance of the order until the resolution of the lawsuit.

**Background.** In 1946 and again in 1952, voters in the City of Monterey Park approved ballot measures authorizing the levy of a special property tax to provide a source of funds to the City to pay for employee retirement benefits under a plan of the State Employees Retirement System (now called the California Public Employees Retirement System or "PERS"). This special tax is referred to as the "Voter Mandated Tax."

The Voter Mandated Tax was the City voters' exercise of the power of initiative protected by the California Constitution (CAL. CONST. art. II, § 8). In the Voter Mandated Tax, the City's voters made clear that they intended that "the Council of the City of Monterey Park, California, shall levy and collect taxes sufficient to pay all costs and expenses" to PERS (Ord. No. 616 1/2; Monterey Park Muni. Code ("MPMC") § 2.40.060). As the taxing agency, the City has the mandatory duty to fulfill the voters' intent. This duty was established in 1946 (when the Voter Mandated Tax was first approved), was confirmed in 1952, and will continue unless the tax is repealed by City voters or struck down by a court (*Rossi v. Brown* (1995) 9 Cal.4th 688, 696 n. 2, 715; *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 674).

Importantly, the Voter Mandated Tax existed 26 years before the Former Agency was activated in 1972. Once the Former Agency was activated, the Voter Mandated

Tax applied to property within the Former Agency project areas. Otherwise, the Voter Mandated Tax is a City obligation to City employees and has nothing to do with the Former Agency.

In or about 2008 (before the Dissolution Law became effective), the City determined that it had not received its share of the Voter Mandated Tax that was collected in the Former Agency's project areas. Since the Former Agency's activation in 1972 until 2008, the City's share of the Voter Mandated Tax (used to pay for the City's pension costs) was never "passed through" by the Former Agency to the City. In other words, between 1972 and 2008, the Former Agency did not make regular payments of its share of the Voter Mandated Tax to assist the City in its payments made to PERS. All of the Voter Mandated Tax funds had been deposited into the Former Agency cash account.

To correct this accounting error, to ensure that the voters' intent was fully implemented, and pursuant to direction given to City staff by the Los Angeles County Auditor Controller's office, the City Council adopted Resolution No. 11322 on February 17, 2010 (before the Dissolution Law became effective). That resolution acknowledged that the Former Agency owed certain amounts to the City in accordance to voter mandates. In particular, the City Council authorized the City Manager to transfer tax revenue from the Former Agency to the City to pay for the City's pension costs as required by the Voter Mandated Tax (the "Voter Mandated Tax Transfer"). Resolution No. 11322 was adopted only by the City Council for the City of Monterey Park and affects only the monies collected pursuant to the Voter Mandated Tax. A copy of Resolution No. 11322 is attached for your reference.

Pursuant to the resolution, \$7,842,427 in funds were transferred from the Former Agency cash account on June 29, 2011. This amount conservatively represented the Voter Mandate Tax revenues owed by the Former Agency to the City for fiscal years 1983-84 through 2007-08.

In compliance with the Dissolution Law, the resolution reflecting the Voter Mandated Tax Transfer was duly listed on the Successor Agency's ROPS as an enforceable obligation. The full amount of tax revenue owed by the Former Agency to the City was calculated to be \$31,574,607. The Department of Finance, however, erroneously found that the resolution and the Voter Mandated Tax Transfer did not constitute an enforceable obligation. In March 2014, the City and Successor Agency filed a lawsuit against the Department of Finance, seeking a court determination that the Voter Mandated Tax Transfer is an enforceable obligation. The SCO is a named party in that lawsuit which is currently pending.

***The funds are a pledge of revenues.*** The Voter Mandated Tax Transfer is not an "asset transfer," as that term is used in Health and Safety Code § 34167.5. Instead, the Former Agency transferred *tax revenues* that were owed by the Former Agency to the City for employee pensions. Accordingly, § 34167.5 does not apply to the Voter Mandated Tax Transfer.

In the Dissolution Law, assets are distinguishable from pledges of revenues (see H&S § 34175). While "assets ... of the former redevelopment agency" were to be transferred to the successor agency on February 1, 2012, the Dissolution Law intended to honor "pledges of revenues associated with enforceable obligations of the former redevelopment agencies" (*Id.*, subd. (a)). A common definition of "asset" is "an item of value *owned*" (Merriam Webster Dictionary). Here, the \$7,842,427 in Voter Mandated Taxes were not owned by the Former Agency and were not tax increment funds. Rather, the Voter Mandated Taxes were tax revenues rightfully owed to the City for payment of City employee pensions. As noted above, in 2010, the City determined that it had not received its share of the Voter Mandated Tax that was collected in the Former Agency's project areas. These funds are simply not – and never were – an "asset" of the Former Agency.

Indeed, the legislative intent of Health and Safety Code § 34167.5 supports the City's position that the funds are not an asset. During the legislative debate over redevelopment, many former redevelopment agencies throughout the state took actions to transfer or encumber assets and future tax increment revenues (Legislative Analyst's Office, *The 2012-2013 Budget: Unwinding Redevelopment* (February 17, 2012)). Many former Redevelopment Agencies ("RDAs") transferred redevelopment assets – such as land, buildings, and parking facilities – to other local agencies, typically the city that created the RDA (*Id.*). The Legislature adopted ABx1 – 26, which took effect on June 28, 2011, but retroactively declared that assets transfers from an RDA to its creator were unauthorized. Thus, the legislative intent of § 34167.5 was to nullify and reverse such last minute activities.

The Voter Mandated Tax Transfer that is reflected in the City's resolution was not a last minute attempt by the City to pillage the Former Agency's coffers. Rather, the transfer was intended to correct an accounting error in which tax revenues that were collected and pledged to the City for employee pensions were never paid. The City and Former Agency dutifully documented the accounting error and made the necessary findings in the resolution adopted in February 2010, more than one year before the Dissolution Law was introduced. For these reasons, the Voter Mandated Tax Transfer falls outside of the scope of § 34167.5.

**The funds are committed to PERS for pension costs.** The finding states that "the assets were not contractually committed to a third party prior to June 28, 2011." The finding is based on Health and Safety Code § 34167.5, which states in part:

"If such an asset transfer did occur during that period and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned ... to the successor agency...."

Even if the funds could, despite all legal authority to the contrary, constitute an asset, the Voter Mandated Tax Transfer reflects funds that were received by a government agency (the City) and were committed to a third party (PERS) for the expenditure of the funds (payment of employee pension costs). Because the Voter Mandated Tax constitutes a tax "to pay ... [i]ndebtedness approved by the voters," the City has a right to levy the tax to fund its obligation to PERS and the City's power of taxation cannot be revoked until the indebtedness is fulfilled or paid (CAL. CONST. art XIII A, §1(b); *Carman v. Alvord* (1982) 31 Cal.3d 318, 325-27, 322). This means that the City is committed to using the tax revenues for payment to a third party (PERS) for employee pension costs.

Moreover, as a voter approved mandate, the City and future city councils are legally bound to "collect taxes sufficient to pay all costs and expenses" to PERS; the tax can only be "undone" by either the voters or the courts (*Rossi, supra*, 9 Cal.4th at 696 n. 2, 715-16; *Citizens for Planning Responsibly v. Co. of San Luis Obispo* (2009) 176 Cal.App.4th 357, 378; Ord. No. 616 1/2; MPMC § 2.40.060). Neither the Department of Finance nor the SCO have any legal authority to interfere with the voters' intent. Failure to pay this amount subjects the City and the Successor Agency to legal liability concerning their failure to meet the requirements of the Voter Mandated Tax. Because the City is legally committed to paying PERS the Voter Mandated Tax Transfer, the funds do not fall within the scope of § 34167.5.

**The finding is premature.** Lastly, as the SCO is aware, the Voter Mandated Tax Transfer is currently the subject of a pending lawsuit filed by the City and Successor Agency in March 2014 (*City of Monterey Park et al. v. Wendy L. Watanabe et al.*, Sac. Sup. Court Case No. 34-2014-80001777). Because this issue will likely be decided by the court, the City respectfully suggests the SCO stay the issuance of its final finding and order until the resolution of the lawsuit. Otherwise, the City will seek immediate relief from the court to stay the implementation of the final order. Until the resolution of this issue, the City agrees to maintain the funds in a separate account.

**Based on the foregoing, the City respectfully requests that the SCO incorporate this response into its final review report and either (1) reverse the draft finding and order or (2) stay its issuance of the order until the resolution of the lawsuit.**

RESOLUTION NO. 11322

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO UTILIZE VOTER APPROVED TAX MONIES FOR PENSION PAYMENTS IN ACCORDANCE WITH ARTICLE 16, § 6, OF THE CALIFORNIA CONSTITUTION AND HEALTH AND SAFETY CODE § 33670.

The City Council of the city of Monterey Park does resolve as follows:

SECTION 1: The City Council finds and declares as follows:

- A. On August 20, 1946, the City's voters approved a ballot measure which authorized the City to participate in the "State Employee Retirement System" (now the California Public Employee Retirement System) and also authorized the City Council "to levy and collect, annually ... a special tax sufficient to raise the amount estimated by [the City] Council to be required to provide sufficient revenue to meet the obligations of said City" to the retirement system;
- B. On April 8, 1952, the City's voters approved a ballot measure which extended the City's authorization to participate in the retirement system to include fire and police personnel. That ballot measure affirmed the City Council's authority "to levy and collect taxes sufficient to pay all costs and expenses ... to be paid by the City" to the retirement system;
- C. In 1978, California voters amended the California Constitution through Proposition 13. That Proposition generally limits the property tax rate to 1% except for indebtedness approved by the voters before July 1, 1978 or bonded indebtedness approved by the voters after July 1, 1978;
- D. In 1982, the California Supreme Court determined that a pre-1978 voter-approved pension program was an indebtedness that local officials could finance with a property tax rate outside the usual 1% limit (*Carman v. Alvord* (1982) 31 Cal.3d 318);
- E. In 1985, the Legislature capped existing tax rates at the 1982-83 or 1983-84 level, except for rates supporting general obligation bonds, water contracts, and lease purchases (AB 13, Roos, 1985);
- F. For 2009-2010, the City's projected retirement cost is \$6.6 million. The voter approved pension programs from 1946 and 1952 (before the adoption of Proposition 13) allows the City to levy a property tax rate to pay its employee retirement costs;
- G. Article 16, § 6, of the California Constitution and Health & Safety Code § 33670 provide that the City will continue to receive the same amount of tax it did before a redevelopment area was established; and

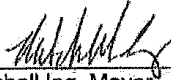
- H. It is unclear whether the City has paid for its employee retirement costs with tax monies levied from real property located within various redevelopment plan areas. To fulfill the voters' intent, and avoid any ambiguity, the City Council believes it is in the public interest to adopt this Resolution.

**SECTION 2: AUTHORIZATION.** The City Manager, or designee, is authorized to pay for Public Safety Personnel retirement costs in accordance with Article 16, § 6, of the California Constitution; Health & Safety Code § 33670; the 1946 and 1952 voter approved initiatives; and any other applicable law. The City Council intends that such authority be both retroactive and proactive.

**SECTION 3:** The City Clerk is directed to certify the adoption of this Resolution; record this Resolution in the book of the City's original resolutions; and make a minute of the adoption of the Resolution in the City Council's records and the minutes of this meeting.

**SECTION 4:** This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.


PASSED AND ADOPTED 17<sup>th</sup> day of February, 2010.

  
\_\_\_\_\_  
Mitchell Ing, Mayor

ATTEST:

  
\_\_\_\_\_  
David M. Barron, CMC, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mark D. Hensley, City Attorney



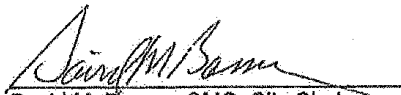
Resolution No. 11322  
Page 3 of 3

State of California )  
County of Los Angeles) ss.  
City of Monterey Park )

I, David M. Barron, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 11322 was duly and regularly adopted by the City Council of the City of Monterey Park at a meeting held on the 16<sup>th</sup> day of February, 2010, by the following vote:

Ayes: Council Members: Venti, Lau, Chu, Wong, Ing  
Nays: Council Members: None  
Absent: Council Members: None  
Abstain: Council Members: None

Dated this 17<sup>th</sup> day of February, 2010.

  
David M. Barron, CMC, City Clerk  
City of Monterey Park, California

**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**