

**CITY COUNCIL RESOLUTION NO. 139-09**

**REDEVELOPMENT AGENCY RESOLUTION NO. 09-41**

**A CONCURRENT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND AND THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY RELATED TO EXISTING INDEBTEDNESS OF THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY PURSUANT TO HEALTH AND SAFETY CODE SECTION 33691**

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**RESOLVED**, by the City Council (the "City Council") of the City of Richmond (the "City") and the Richmond Community Redevelopment Agency (the "Agency"), that:

**WHEREAS**, the City Council has adopted and amended, from time to time, redevelopment project areas in the City (the "Project Areas"); and

**WHEREAS**, the Agency is engaged in various activities in its efforts to remove the blighting conditions that still remain in the Project Areas; and

**WHEREAS**, in keeping with the goals of the Agency to eliminate and reduce blight in accordance with the Agency's redevelopment plans and implementation plan, the Agency has incurred obligations to fund projects to eliminate the blighting conditions in the Project Areas; and

**WHEREAS**, Assembly Bill X4 26 (the "Bill"), effective October 22, 2009, requires all redevelopment agencies in the State of California to make payments of tax increment revenues totaling \$1,700,000,000 to county Supplemental Educational Revenue Augmentation Funds ("SERAF") during the 2009-2010 fiscal year; and

**WHEREAS**, pursuant to the Bill, the State Director of Finance has notified the Agency that the Agency's SERAF contribution for the 2009-2010 fiscal year is Ten Million One Hundred and Eighteen Thousand Eight Hundred and Twenty Six Dollars (\$10,118,826) (the "Agency's SERAF Contribution"), which the Agency is obligated to pay to the Contra Costa County Auditor for deposit in the County's SERAF fund prior to May 10, 2010; and

**WHEREAS**, tax increment revenues to the Agency for the 2009-2010 fiscal year will be significantly reduced as a result of decreased property tax assessments to the extent that the Agency has insufficient funds to make the Agency's SERAF Contribution; and

**WHEREAS**, pursuant to the Bill, an agency that, after a duly noticed public hearing, adopts a resolution containing specified findings is permitted to allocate to the county auditor less than the SERAF contribution required under the Bill; and

**WHEREAS**, agencies that intend to make less than the required SERAF payment must find any of the following to be true:

- the difference between the amount of tax increment allocated to the agency and the agency's SERAF contribution is necessary to make payments on existing indebtedness that are due or required to be committed, set aside, or reserved by the agency during the 2009-10 fiscal year, and that are used by the agency for that purpose, and the agency has no other funds that can be used to pay this existing indebtedness and no other feasible method to reduce or avoid this indebtedness
- the agency has no other funds to make the SERAF allocation required by the Bill; and

**WHEREAS**, as required by the Bill, the attached Exhibit A incorporated herein by this reference, lists:

- the existing indebtedness of the Agency incurred prior to October 22, 2009, the effective date of the Bill
- the indebtedness on which a payment is required to be made during the 2009-2010 fiscal year
- the amount of each payment, the time when each payment is required to be paid, and the total of the payments required to be made during the 2009-2010 fiscal year, including, as applicable, estimated payments for indebtedness that bears interest at a variable rate, or for short-term indebtedness that is maturing during the fiscal year and that is expected to be refinanced; and

**WHEREAS**, for the purposes of compiling the information contained in this Resolution and the attached Exhibit A, staff used the definition of "existing indebtedness" contained in the Bill; and

**WHEREAS**, as required by the Bill, James Goins, the City Finance Director and the chief fiscal officer of the Agency, has reviewed for accuracy the information contained in this Resolution and in the attached Exhibit A; and

**WHEREAS**, the City Council and the Agency held a duly noticed public hearing on this Resolution; and

**WHEREAS**, the Bill allows the Agency and the City to enter into an agreement to allow the City to fund the payment of the difference between the Agency's SERAF Contribution and the amount available for the Agency to make the Agency's SERAF Contribution; and

**WHEREAS**, the City is undergoing its own financial difficulties and lacks general fund or other revenues to fund the payment of the difference between the Agency's SERAF Contribution and the amount available for the Agency to make the Agency's SERAF Contribution; and

**WHEREAS**, the Bill and recently enacted SB 68 (effective November 12, 2009) permit the Agency to borrow from both the Agency's Low and Moderate Income Housing Fund ("Housing Fund") revenues on hand and monies to be allocated to the Housing Fund during fiscal year 200910 to make the Agency's SERAF Contribution; and

**WHEREAS**, tax increment revenues deposited into the Housing Fund have been significantly reduced as a result of decreased property tax assessments to the extent that all available amounts in the Housing Fund are necessary for debt service payments and to fund encumbered affordable housing activities; and

**WHEREAS**, as required under the Bill, agencies that fail to make their full SERAF contribution by May 10, 2010, or fail to arrange for full payment to be provided on the agency's behalf, shall thereafter be prohibited from:

- adding new project areas or expanding existing project areas
- issuing new bonds, notes, interim certificates, debentures, or other obligations (whether funded, refunded, assumed, or otherwise pursuant to Article 5 (commencing with Section 33640))
- encumbering any funds or expending any moneys derived from any source, except that the agency may encumber funds and expend funds to pay any of the following:
  - bonds, notes, interim certificates, debentures, or other obligations issued by an agency before the imposition of these prohibitions (whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Health and Safety Code Section 33460))
  - loans or moneys advanced to the agency, including, but not limited to loans from federal, state, local agencies, or private entities
  - contractual obligations that, if breached, could subject the agency to damages or other liabilities or remedies
  - obligations incurred pursuant to Section Health and Safety Code Section 33445 to fund public improvements
  - indebtedness incurred pursuant to Health and Safety Code Section 33334.2 or 33334.6 for the purpose of increasing, improving, and preserving the community's supply of low- and moderate-income housing
  - obligations incurred pursuant to Health and Safety Code Section 33401 for payments in lieu of taxes for agency owned property
  - an amount, to be expended for the monthly operation and administration of the agency, that may not exceed 75 percent of the average monthly amount spent for those purposes in the fiscal year preceding the fiscal year in which the agency failed to make the payment required SERAF allocation (collectively, the "Death Penalty"); and

**WHEREAS**, the Staff Report accompanying this Resolution provides additional information upon which the findings and actions set forth in this Resolution are based.

**NOW, THEREFORE BE IT RESOLVED** that all the recitals above are true and correct and incorporated herein.

**BE IT FURTHER RESOLVED** that in compliance with Section 33691 of the California Community Redevelopment Law, the Agency hereby finds that:

- (a) the difference between the amount of tax increment allocated to the Agency and the

Agency's SERAF contribution is necessary to make payments on existing indebtedness that are due or required to be committed, set aside, or reserved by the Agency during the 2009-10 fiscal year, and that are used by the agency for that purpose, and the Agency has no other funds that can be used to pay this existing indebtedness and no other feasible method to reduce or avoid this indebtedness;

(b) the Agency has no other funds to make the Agency's SERAF Contribution;

(c) the Agency has entered into executed agreements that that would be impaired if the Agency reduced the amount allocated to the Housing Fund or the monies in the Housing Fund or both to make the Agency's SERAF Contribution; and

(d) the Agency's chief fiscal officer has reviewed the contents of this Resolution and the attached Exhibit A for accuracy.

These findings are based on the facts and analysis in the Staff Report and Exhibit A incorporated in this Resolution.

**BE IT FURTHER RESOLVED** that due to financial difficulties and lack of general fund or other revenues, the City of Richmond is unable to enter into an agreement with the Agency to fund the payment of the difference between the Agency's SERAF Contribution and the amount available for the Agency to make the Agency's SERAF Contribution.

**BE IT FURTHER RESOLVED** that the Agency shall make less than the Agency's SERAF Contribution and will thereby be subject to the provisions of the Death Penalty. Nothing in this Resolution should be read to restrict the Agency's ability to continue to make payments under existing indebtedness as permitted under the Bill.

**BE IT FURTHER RESOLVED** that the City Manager/Agency Executive Director is hereby authorized to take such further actions as may be necessary or appropriate to carry out the City's/Agency's obligations pursuant to this Resolution.

**BE IT FURTHER RESOLVED** that the City Clerk/Agency Secretary shall certify to the adoption of this Resolution.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon adoption.

I certify that the foregoing Resolution was passed and adopted by the Richmond Community Redevelopment Agency Board and the Richmond City Council at a regular meeting thereof held on December 15, 2009, by the following vote:

AYES: Boardmembers/Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, Vice Chairperson/Vice Mayor Lopez, and Chairperson/Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES  
Clerk of the Richmond Community  
Redevelopment Agency/City of Richmond

(SEAL)

Approved:

GAYLE McLAUGHLIN  
Agency Chairperson/Mayor

Approved as to form:

RANDY RIDDLE  
Agency Attorney/City Attorney

State of California        }  
County of Contra Costa        :ss  
City of Richmond        }

I certify that the foregoing is a true copy of **Resolution No. 09-41 and 139-09**, finally passed and adopted by the Richmond Community Redevelopment Agency and City Council at a regular meeting held on December 15, 2009.