

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

215 North D Street, Suite 204, San Bernardino, CA 92415-0490
(909) 383-9900 • Fax (909) 383-9901
E-MAIL: lafco@lafco.sbccounty.gov
www.sbclafco.org

DATE: OCTOBER 9, 2012



FROM: KATHLEEN ROLLINGS-MCDONALD, Executive Officer
MICHAEL TUERPE, Project Manager

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item 5: Consideration of Request to County Auditor-Controller/Treasurer/Tax Collector to Collect Outstanding City and/or District Apportionment Amounts from First Proceeds of Property Tax Revenues for Fiscal Year 2012-13

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Request the County Auditor-Controller/Treasurer/Tax Collector to collect the outstanding city and district apportionment amounts due to LAFCO for Fiscal Year 2012-13, including the amount apportioned to the City of San Bernardino unless it is precluded from doing so by federal bankruptcy law.
2. Determine the method for collection of the outstanding apportionments pursuant to Government Code Section 56381 is collection from the first proceeds of property tax owed to the agency, which shall include recovery of expenses incurred by the Commission and the County Auditor-Controller/Treasurer/Tax Collector in collection of the outstanding payments.
3. Direct the Executive Officer to submit the collection request to the County Auditor-Controller/Treasurer/Tax Collector.

BACKGROUND:

At the May hearing, the Commission adopted the FY 2012-13 budget and directed the Executive Officer to request the County Auditor-Controller/Treasurer/Tax Collector (“County Auditor”) to apportion the Commission’s net operating costs to the county, cities, and independent special districts pursuant to Government Code Section 56381(b). The County Auditor invoiced the agencies on July 1 with payment due by September 1. To date, the County Auditor has not received payment from two agencies for \$38,526.

Section 56381(c) states that if an agency does not remit its payment by the September 1 due date, the Commission may determine an appropriate method of collecting the required payment, including a request to the county auditor to collect an equivalent amount from the property tax, or any fee or eligible revenue owed to the county, city, or district. Additionally, the section reads that any expenses incurred by the Commission or auditor in collection of the outstanding payments shall be added to the payment owed.

The agreement between LAFCO, the County of San Bernardino, and County Auditor approved by the Commission in November 2009, outlines obligations of each party in the collection process. For the Commission, it is required to annually provide written evidence of Commission action/approval of the request and selection of the method for collecting payment. LAFCO staff is recommending that the Commission direct the Auditor Controller to collect the equivalent amount from the first proceeds of property taxes for the following agencies apportionment:

Baker Community Services District	\$ 260
City of San Bernardino	<u>\$38,266</u>
Total Outstanding	\$38,526

City of San Bernardino:

In reference to the amount owed by the City of San Bernardino, as the Commission is well aware, the City has declared bankruptcy and proceedings have begun in federal bankruptcy court. Staff understands that federal bankruptcy law in essence trumps state law; therefore, the County Auditor may not be able to collect the City's outstanding apportionment due to LAFCO. Further, staff has asked the City if it has included this payment and LAFCO as a creditor in the process. To date staff has not received notice that it is a creditor in the bankruptcy court filing nor a further reply from the City on the status of the payment. At this time, staff believes there is a strong likelihood that the Commission will not receive the City's share of the apportionment and will need to take steps to address the shortfall. There remain many unanswered questions on this issue which will be addressed in detail during the first quarter financial report scheduled for consideration at the November hearing.

In conclusion, staff is recommending that the Commission take the actions identified on page 1 of this report to collect the apportionments due as required by law.

KRM/MT