

**WEST HOLLYWOOD
COMMUNITY DEVELOPMENT
COMMISSION**

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

June 2015



BETTY T. YEE
California State Controller

June 30, 2015

Paul Arevalo, City Manager
City of West Hollywood
8300 Santa Monica Boulevard
West Hollywood, CA 90069

Dear Mr. Arevalo:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the West Hollywood Community Development Commission (RDA) to the City of West Hollywood (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 \$91,766,770 in assets after January 1, 2011, including unallowable transfers to the City totaling \$43,783,465, or 47.71% of transferred assets. These assets must be turned over to the Successor Agency.

However, on June 30, 2011, and January 31, 2012, the City turned over \$25,000 and \$32,239,747, respectively, in cash, to the Successor Agency. Also, in July 2011, the City turned over \$1,738,214 in property to the Successor Agency. The remaining \$9,780,504 in unallowable transfers will be held in abeyance pending the outcome of the appeal in *City of Coronado v. Michael Cohen, et al.*

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau by telephone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/as

Attachment

cc: David Wilson, Director of Finance
City of West Hollywood
Martin Zimmerman, Chair
Oversight Board to the Successor Agency of the
West Hollywood Community Development Commission
John Naimo, Auditor-Controller
Los Angeles County
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
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Nicole Baker, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the West Hollywood Community Development Commission (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 \$91,766,770 in assets after January 1, 2011, including unallowable transfers to the City of West Hollywood (City) totaling \$43,783,465, or 47.71% of transferred assets. These assets must be turned over to the Successor Agency.

However, on June 30, 2011, and January 31, 2012, the City turned over \$25,000 and \$32,239,747, respectively, in cash, to the Successor Agency. Also, in July 2011, the City turned over \$1,738,214 in property to the Successor Agency. The remaining \$9,780,504 in unallowable transfers will be held in abeyance pending the outcome of the appeal in *City of Coronado v. Michael Cohen, et al.*

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 West Hollywood Community Development Commission transferred \$91,766,770 in assets after January 1, 2011, including unallowable transfers to the City of West Hollywood (City) totaling \$43,783,465, or 47.71% of transferred assets. These assets must be turned over to the Successor Agency.

However, on June 30, 2011, and January 31, 2012, the City turned over \$25,000 and \$32,239,747, respectively, in cash, to the Successor Agency. Also, in July 2011, the City turned over \$1,738,214 in property to the Successor Agency. The remaining \$9,780,504 in unallowable transfers will be held in abeyance pending the outcome of the appeal in *City of Coronado v. Michael Cohen, et al.*

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 February 2, 2015. Paul Arevalo, City Manager and West Hollywood Successor Agency Executive Director, responded by letter dated February 19, 2015, 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 of West Hollywood, 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

June 30, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City

The West Hollywood Community Development Commission (RDA) made unallowable asset transfers of \$43,783,465 to the City of West Hollywood (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On February 28, 2011, the RDA made an unallowable transfer of \$9,805,504 in cash to the City to repay a loan.
- On June 30, 2011, the RDA made an unallowable transfer of \$32,239,747 in cash to the City for the Plumber Park project.
- On June 30, 2011, the RDA made an unallowable transfer of \$1,738,214 in property to the City.

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) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$43,783,465, and turn over the assets to the Successor Agency. However, on June 30, 2011, and January 31, 2012, the City turned over \$25,000 and \$32,239,747, respectively, in cash, to the Successor Agency. Also, in July 2011, the City turned over \$1,738,214 in property to the Successor Agency. Therefore, the remaining \$9,780,504 in unallowable transfers must be turned over to the Successor Agency.

City's Response

The City and Successor Agency disagree with the SCO and believe that \$9,805,504 consists of redevelopment revolving funds to which the City is entitled by law. They believe that the Sacramento Superior Court case *City of Coronado v. Michael Cohen et al* should apply to the City of West Hollywood.

See the Attachment for the City's complete response.

SCO's Comment

This finding will be held in abeyance pending the outcome of the appeal in *City of Coronado v. Michael Cohen, et al*.

**Schedule 1—
Unallowable Asset Transfers to
the City of West Hollywood
January 1, 2011, through January 31, 2012**

Current assets

Cash transferred to the City on February 28, 2011 (loan payment)	\$ 9,805,504
Cash transferred to the City on June 30, 2011 (Plumber Park project)	32,239,747

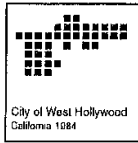
Capital assets

Property transferred on June 30, 2011 (Spaulding parking lot land and improvements)	<u>1,738,214</u>
Total unallowable asset transfers to the City	<u>43,783,465</u>
Cash turned over to the Successor Agency as of June 30, 2011	(25,000)
Cash turned over to the Successor Agency as of January 31, 2012	(32,239,747)
Land and improvements turned over to the Successor Agency in July 2011	<u>(1,738,214)</u>
Total amount subject to Health and Safety Code section 34167.5	<u><u>\$ 9,780,504</u></u>

**Attachment—
City’s Response to
Draft Review Report**

In addition to the attached letter, the city provided two additional documents. Due to their size we are not including them as an attachment to this report. Please contact the City of West Hollywood for copies of the following documents:

- Attachment 1 – Resolution No. CDC 97
- Attachment 2 – Sacramento Superior Court Ruling – City of Coronado v Michael Cohen



CITY OF WEST HOLLYWOOD

CITY HALL
8300 SANTA MONICA BLVD.
WEST HOLLYWOOD, CA
90069-4314
TEL: (323) 848-6460
FAX: (323) 848-6562
email: parevalo@weho.org

OFFICE OF THE CITY MANAGER

PAUL AREVALO
CITY MANAGER

February 19, 2015

Certified Return Receipt

Mr. Jeffrey V. Brownfield, CPA
Chief, Division of Audits
Office of the California State Controller
3301 C Street, Suite 700
Sacramento, CA 95816

**Re: West Hollywood Redevelopment Agency Asset
Transfer Review Report ("Report")**

Dear Mr. Brownfield:

The Successor Agency of the West Hollywood Community Development Commission ("Successor Agency") and the City of West Hollywood ("City") have reviewed the draft Report and appreciate and thank you for the opportunity to comment and respond. The Report found that the West Hollywood Community Development Commission ("CDC") made unallowable asset transfers totaling \$43,783,465 to the City after January 1, 2011, that \$34,002,961 had since been turned over from the City to the Successor Agency, and that a balance of \$9,780,504 in unallowable transfers remains. We are currently arranging a meeting with State Controller Betty Yee, the State Controller's Legal Counsel and your office to discuss these findings. In the meantime, this is the Successor Agency's and the City's response to the Report.

As an initial matter, the Report refers to the former redevelopment agency as the "West Hollywood Redevelopment Agency;" it is the "West Hollywood Community Development Commission" ("CDC").

Second, the Successor Agency and the City object to the characterization of payments totaling \$9,805,504 as unallowable transfers of redevelopment assets to the City. The Report states that on "February 28, 2011, the RDA made an unallowable transfer of \$9,805,504 in cash to the City to repay a loan." (Report at page 4) However, the Successor Agency and the City maintain that the \$9,805,504 consists of redevelopment revolving funds to which the City is entitled by law.



CITY OF WEST HOLLYWOOD

On November 17, 1997, approximately one year after the CDC was formed; the City and the CDC established a Redevelopment Revolving Fund ("revolving fund") pursuant to California Health and Safety Code¹ Section 33620 et seq. by Resolution No. CDC 97-012 (Attachment 1).

When Resolution No. CDC 97-012 was adopted, Section 33620 authorized the legislative body of a community (here, "City Council") to establish a revolving fund to be kept in the treasury of the community at any time after adopting a resolution. City Council was authorized to appropriate money for deposit in the revolving fund (Section 33621). By resolution of City Council adopted by a two-thirds vote, "any money" in the revolving fund could be paid to the agency, upon such terms and conditions as City Council prescribed, for any of the following purposes: (a) deposit in a trust fund to be expended for the acquisition of real property in any project area; (b) clearance of any project area for redevelopment; and (c) "any expenses necessary or incidental to the carrying out of a redevelopment plan which has been adopted by the legislative body" (Section 33623).

Resolution No. CDC 97-012 provides in relevant part:

"WHEREAS, the Community Redevelopment Law (California Health and Safety Code Section 33000, et seq.) provides, pursuant to California Health and Safety Code 33620 et seq., for the establishment of a special fund to be kept in the treasury of City known as the redevelopment revolving fund; and

WHEREAS, for purposes of convenience, and with the intention of compliance with applicable provisions of the Community Redevelopment Law, the City Council of the City of West Hollywood has authorized and directed the establishment of the 'Redevelopment Revolving Fund.' To the extent moneys are paid by the City to or on behalf of the [CDC] for the purposes described in California Health and Safety Code Section 33620 et seq., such funds shall be regarded as being contributed to the Redevelopment Revolving Fund."

Section 33624 requires deposit of excess revenues received by the CDC from the sale, lease, or encumbering of property acquired with money from the revolving fund to be redeposited into the fund. Section 33626 authorizes the City

¹ All statutory references herein are to the California Health & Safety Code.





CITY OF WEST HOLLYWOOD

to withdraw funds from the revolving fund and place those funds in the City's general fund. Section 33626 provides:

“The legislative body of any community may abolish the redevelopment revolving fund whenever it finds that the purposes for which it was established have been accomplished.

The legislative body of any community may, with the consent of the agency, withdraw money from the redevelopment revolving fund whenever and to the extent that it finds that the amount of money therein exceeds the amount necessary to finance existing or planned purposes for which its expenditure is authorized by the provisions of this article. *All money withdrawn from the fund by reason of its being reduced in size, or its abolition, and all money which, after abolition, would have been required to be deposited or redeposited in the fund, shall be transferred to the general obligation bond redemption fund of the community or to the general fund of the community, as directed by the legislative body.*” (Italics added).

Because the City was legally entitled to recover deposits it made into the redevelopment revolving fund, the City and Successor Agency referred to the deposits as “loans.” See Resolution 97-012, Section 2 (“moneys paid by the City to or on behalf of the Commission from the Redevelopment Revolving Fund shall constitute a loan of such moneys by the City to the Commission and shall bear interest...”).

State statute clearly provides that the Redevelopment Revolving Fund is a City asset, as recently confirmed by the Sacramento Superior Court in *City of Coronado v. Cohen et al.* :

“Thus, money in a redevelopment revolving fund, which is kept in the treasury of the city and not drawn by the RDA, is an asset of the city, and the city legitimately may take it back when the revolving fund is abolished, which may occur when the purposes of the fund have been accomplished... Furthermore, the dissolution of the RDA and the end of redevelopment meant that the purposes for which the revolving fund had been established had been accomplished. Given these facts, the challenged transfer of \$5,865,000 to the City in fact represented the abolition of the revolving fund and the release of the funds that had been committed to it but not drawn on by the RDA. The Court therefore concludes that the transfer did not violate the redevelopment dissolution laws, and that DOF erred by disallowing it.”



CITY OF WEST HOLLYWOOD

The Successor Agency and City disagree with the order to transfer \$9,805,504 to the Successor Agency. The Report fails to consider that the \$9,805,504 consists of withdrawals from the revolving fund expressly authorized by Section 33626. Deposits made into the revolving fund pursuant to Section 33620 were not CDC assets. Withdrawal of such funds by the City pursuant to Section 33626 is expressly permitted by statute and does not constitute a transfer of redevelopment agency assets. Therefore, the City objects to the proposed order to the extent that it would require the City to transfer funds properly withdrawn from the revolving fund as exceeding the authority of the State Controller.

Sincerely,

Paul Arevalo
West Hollywood City Manager and
West Hollywood Successor Agency Executive Director

cc: Betty T. Yee, California State Controller
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Mike Jenkins, West Hollywood City Attorney and
West Hollywood Successor Agency Legal Counsel

Attachments:

Attachment 1- Resolution No. CDC 97-012
Attachment 2- Sacramento Superior Court Ruling - City of Coronado v Cohen

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

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