Redevelopment 2.0: Existing Laws, Pending Legislation and Legal Theory

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The dissolution of redevelopment agencies in California eliminated an important source of funding for economic development projects and affordable housing.

This paper describes alternative funding sources for public infrastructure and affordable housing, efforts by the California Legislature to introduce new redevelopment tools ("Redevelopment 2.0"), and the legal basis for those alternatives.

As will be explained, Redevelopment 2.0 is notable mostly for its potential.

I. Introduction to Property Taxation in California

Property Tax in General

The California Constitution and other state laws define how real property is taxed in California. The most well-known of such laws is Proposition 13, which in 1978 added Article XIII A to the California Constitution. Among other things, Proposition 13 states that the maximum amount of any ad valorem tax (i.e., a tax based on value, as opposed to another metric such as square footage) on real property cannot exceed 1% of the assessed value of such property. Thus, in the absence of any additional voter-approved ad valorem taxes or other taxes, a parcel of real property that has an assessed value of $500,000 would generate $5,000 in tax revenues ($500,000 * 1%). However, under Article XIII A, additional ad valorem taxes can be levied on real property to pay debt service on bonded indebtedness, causing the total ad valorem tax rate to exceed 1% of assessed value, if approved by the requisite percentage of voters.

A property's assessed value often varies, sometimes significantly, from its market value. This variance is due largely to Proposition 13's other notable provision, a 2% cap on annual inflationary increases in assessed value. Generally, a property's assessed value is set at its market value when it is sold and can increase to reflect new construction. Annually thereafter, the assessed value may increase by an inflationary rate that may not exceed 2%. In times and places of high growth in the market value of real property, this 2% maximum annual inflationary increase in assessed value does not keep pace with market value, leading to differences between market and assessed values.

The California Supreme Court has described the impact of Proposition 13 on California property taxation and public finance:

> First, by capping local property tax revenue, it greatly enhanced the responsibility the state would bear in funding government services, especially education. [citation omitted] Second, by failing to specify a method of allocation, Proposition 13 largely transferred control over local government finances from the state's many political subdivisions to the state, converting the property tax from a nominally local tax to a de facto state-administered tax subject to a complex system of intergovernmental grants. [citations omitted] Third, by imposing a unified, shared property tax, Proposition 13 created a zero-sum game in which political subdivisions (cities, counties, special districts, and school districts) would have to compete against each other for their slices of a greatly shrunken pie. <u>California Redevelopment Assn. v. Matosantos</u> (2011) 53 Cal. 4th 231, 244-245.

Tax Allocation

The 1% property tax for an individual parcel of real property typically supports multiple taxing entities, such as the city and county the parcel is located in, the school and community college districts that serve the parcel and other special districts. Article XIII A empowers the State Legislature to allocate property taxes to public agencies: “The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.”[1]

Allocation of the revenues from the 1% rate is determined according to a statutory formula that is commonly referred to as “AB 8”. Since adoption of Proposition 13, California courts have consistently recognized the Legislature’s power to allocate property tax revenues.

It is unnecessary for this discussion to understand how the allocations are calculated under AB 8. The important point is that the allocation is determined by statutory formula and a given taxing entity’s AB 8 share usually remains relatively consistent from year to year, although changes in assessed value can affect allocations. Relative allocations among types of taxing entities differ from area to area.[2]

II. Introduction to Tax Increment Financing

The idea behind tax increment financing is that local government can provide financial support for specific activities, often new property development, and pay for it with increased tax revenues generated by the financed activity.

The following table shows an example of the tax increment generated when there are no changes in the subject property. It incorporates the following assumptions:

- The assessed value of parcels in the geographic area in the initial year (the “base year”) is $100,000,000.
- No development or property sales (which could result in increases in assessed value) take place.
- The growth in assessed values is capped at 2% even though market values may have increased at a faster rate.

In this example, $20,000 of tax increment is generated in the second year.

Example 1 – No Development or Property Sales

Base Year Assessed Value	$100,000,000
Tax Revenue Generated by 1% General Levy	$1,000,000
Inflationary Increase in Assessed Value	2%
Second Year Assessed Value	$102,000,000
Tax Revenue Generated by 1% General Levy	$1,020,000
Tax Increment (Difference between Second Year and Base Year Tax Revenues)	$20,000

[1] California Constitution, Article XIII A, Section 1(a).

[2] See California Legislative Analyst's Office, August 20, 1996, “Property Taxes: Why Some Local Governments Get More Than Others”.

Development in a given geographic area can lead to increases in assessed values as new improvements are built and as property is sold at now-higher prices as the area becomes more desirable. Example 2 below shows how this works. It incorporates the following assumptions:

- The assessed value of the parcels in the geographic area in the base year again is $100,000,000.
- In this example, however, investment in roads and parks makes the area more desirable for residents and businesses. This causes additional development on parcels in the area and sales of parcels at market prices higher than previously-assessed values.
- This example ignores inflationary increases for purposes of illustration.

Example 2 – Increased Development and Property Sales

Base Year Assessed Value	$100,000,000
Tax Revenue Generated by 1% General Levy	$1,000,000
Increase in Assessed Value due to Sales and other Development	$10,000,000
Second Year Assessed Value	$110,000,000
Tax Revenue Generated by 1% General Levy	$1,100,000
Tax Increment (Difference between Second Year and Base Year Tax Revenues)	$100,000

As a result of the development, assessed values in Example 2 increase by $10,000,000, which results in tax increment of $100,000, or $80,000 more than in Example 1, where there was no development.

The idea behind tax increment financing is that development can pay for itself by generating higher assessed values. The increased tax increment is then pledged to repay money borrowed to fund the initial development.

III. The End of Redevelopment 1.0

The Community Redevelopment Law (Health and Safety Code Division 24, §§ 33000 - 37964; "CRL") was for decades the primary vehicle for tax increment financing in California. The CRL depended upon authority in California Constitution Article XVI, Section 16. See Appendix A.

Redevelopment proved to be very popular with California cities and counties, in large part because the tax increment allocated to redevelopment agencies included the tax increment generated by other taxing agencies' AB 8 portion. Because 20% of the tax increment was committed to affordable housing, redevelopment was also a major source of affordable housing in the State.

However, the resulting popularity of the CRL with California cities and counties created stress in California's public finance system, which the California Supreme Court has described as follows:

> Tax increment financing remains a source of contention because of the financial advantage it provides redevelopment agencies and their community sponsors, primarily cities, over school districts and other local taxing agencies. Additionally,

> because of the state's obligations to equalize public school funding across districts [citation omitted] and to fund all public schools at minimum levels set by Proposition 98 (Cal. Const., art. XVI, § 8), the loss of property tax revenue by school and community college districts creates obligations for the state's General Fund. (See Los Angeles Unified School Dist. v. County of Los Angeles, supra, 181 Cal.App.4th at pp. 419–422; Lefcoe, Finding the Blight That's Right for Cal. Redevelopment Law (2001) 52 Hastings L.J. 991, 999 ["[W]here cities and counties shift property taxes from schools to redevelopment projects, the state must make up the difference … ."].) The effect of tax increment financing on school districts' property tax revenues has thus become a point of fiscal conflict between California's community redevelopment agencies and the state itself…. California Redevelopment Association v. Matosantos (2011) 53 Cal. 4th 231, 248.

This conflict manifested in a series of Legislative efforts to reduce the flow of property tax revenues to redevelopment agencies, most notably legislation funding a countywide Educational Revenue Augmentation Fund ("ERAF"):

> In response to these rising educational demands on the state treasury, the Legislature in 1992 created county educational revenue augmentation funds (ERAF's). (Stats. 1992, chs. 699, 700, pp. 3081–3125; Rev. & Tax. Code, §§ 97.2, 97.3; see Los Angeles Unified School Dist. v. County of Los Angeles, supra, 181 Cal.App.4th at pp. 420–421; City of El Monte v. Commission on State Mandates (2000) 83 Cal.App.4th 266, 272–274 [99 Cal. Rptr. 2d 333]; County of Los Angeles v. Sasaki, supra, 23 Cal.App.4th at p. 1447.) It reduced the portion of property taxes allocated to local governments, deposited the difference in the ERAF's, deemed the balances part of the state's General Fund for purposes of satisfying Proposition 98 obligations, and distributed these amounts to school districts. [citation omitted] Periodically thereafter, the Legislature through supplemental legislation required local government entities to further contribute to the ERAF's in order to defray the state's Proposition 98 school funding obligations. [citation omitted] Local governments had no vested right to property taxes [citation omitted]; accordingly, the Legislature could require ERAF payments as "an exercise of [its] authority to apportion property tax revenues" [citation omitted]. Matosantos, 53 Cal. 4th at p. 245.

Finally, the Legislature passed two bills – ABx1 26 and ABx1 27 – as part of the 2011 budget. ABx1 26 prohibited redevelopment agencies from engaging in new business and provided for their windup and dissolution. ABx1 27 offered an alternative whereby redevelopment agencies could continue to operate if the cities and counties that created them agreed to make payments to the state for the benefit of schools and special districts. In Matosantos, the California Supreme Court largely upheld ABx1 26's dissolution of redevelopment agencies but invalidated ABx1 27's alternative that would have allowed redevelopment agencies to continue operating.

As a result of ABx1 26, successor agencies to former redevelopment agencies may not undertake further redevelopment projects (unless they are obligated to do so under an "enforceable obligation") and have either wound down or are in the process of doing so.

The dissolution of redevelopment agencies also eliminated a reliable source of funding for affordable housing at a time when housing shortages are acute. It is estimated that when they were dissolved, redevelopment agencies were obligated to annually set aside at least $1 billion of tax increment for affordable housing.

IV. Is Redevelopment 2.0 Necessary?

Following the dissolution of redevelopment agencies, it is important to ask whether a new tax increment-based redevelopment system is necessary to advance local agencies' economic development projects, reduce blight or increase affordable housing.

Limited General Funds

One option for California cities is to leverage their general funds. Any such efforts must work within the limits imposed by the "Constitutional Debt Limit" in Article XVI, Section 18 of the California Constitution, which provides in relevant part:

> (a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose…[3]

The California Supreme Court has described the purpose of the Constitutional Debt Limit:

> To safeguard the general funds and property of a municipality from a situation whereby the holders of an issue of bonds could, at some time after the issuance thereof, force an unconsented-to increase in the taxes of, or foreclosure on the general assets and property of the issuing public corporation to obtain payment of the principal or interest thereon. To this end each general obligation bond issue is required to contain provision for a tax capable of insuring its repayment and that tax, together with the purpose for which the bonds were being issued, must secure the approval of two-thirds of the voter electors**.** Redondo Beach v. Taxpayers, Property Owners, Citizens & Electors (1960) 54 Cal. 2d 126, 131.

The California Supreme Court has broadly interpreted the Constitutional Debt Limit:

> When section 18 refers to "indebtedness," it includes within that term all the obligations of the local government during the relevant fiscal year. [citation omitted] Therefore, a city can violate the constitutional requirement by incurring even a very small debt if the city's other obligations during that year have already exhausted the city's total revenues for the year. (Ibid.) For this reason, section 18 is more accurately understood as mandating balanced budgets than merely as regulating the debt financing of public capital improvements. Rider v. City of San Diego (1998) 18 Cal.4th 1037, 1045.

However, the California Supreme Court has also recognized a number of exceptions to or limitations on the Constitutional Debt Limit.[4] The most common vehicle for general fund-based

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[3] Article XVI, Section 18 authorizes school districts to incur bonded indebtedness for specific financing purposes with a 55% voter approval.

[4] "Certain exceptions or limitations to the balanced budget requirement of section 18 are almost as old as the requirement itself. One commentator has suggested that the willingness of the courts to recognize and perpetuate these exceptions reflects 'a concern for economic development and a perception that the debt limit [i]s too rigid and restrictive for the needs of a modern, urbanized population.' (Kosel, Municipal

financings by cities – lease financing – relies on a "contingent" or "lease" exception to the Constitutional Debt Limit often referred to as the Offner-Dean rule.[5] With this vehicle, cities lease real property to a third party (often a joint powers authority whose governing body consists of members of the city council) that subleases it back to the city. The stream of lease payments to the third party can be securitized and sold to investors through certificates of participation or lease revenue bonds, and the financing proceeds can be used by the city for any municipal purpose, in reliance on Government Code Sections 37350 and 37351:

> 37350. A city may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of it for the common benefit.
>
> 37351. The legislative body may purchase, lease, exchange, or receive such personal property and real estate situated inside or outside the city limits as is necessary or proper for municipal purposes. It may control, dispose of, and convey such property for the benefit of the city….

Because each yearly lease payment obligation is dependent upon the local agency's access to the leased property, these lease transactions do not constitute debt within the meaning of the Constitutional Debt Limit.

General Obligation Bonds

General obligation bonds are another source of potential financing for municipal improvements. With two-thirds voter approval, California cities can issue general obligation bonds to finance acquisition or improvement of real property under Article XIIIA of the Constitution and Government Code Section 43600 et seq. General obligation bonds issued by California cities are payable only from ad valorem property taxes, which must be levied in an amount sufficient to pay interest and principal on the bonds.

Following the loss of the CRL, some California cities have employed general obligation bonds to finance public infrastructure projects that previously might have been financed with tax increment. In addition, some cities and counties have employed general obligation bonds to finance affordable housing.

Comparative Benefits of Tax Increment Financing

The utility of lease financing and general obligation bonds as alternatives to redevelopment is limited in a number of important ways:

(i) The ability to pursue lease financings relies on identifying and encumbering a city asset with a value that is approximately equal to the principal amount of the lease financing. Many cities have limited assets that can be leased in a financing, and may wish to preserve them for financings that achieve core municipal purposes. A

Debt Limitation in California (1977) 7 Golden Gate L.Rev. 641, 645.) That observation may be valid, or perhaps our decisions have simply recognized that section 18's restrictions were not so much designed to discourage public investment in capital improvements as to mandate fiscal responsibility. Regardless of what principles might have motivated our decisions, certain exceptions to section 18 are firmly rooted in our jurisprudence." Rider, 18 Cal.4th at p. 1046.

[5] City of Los Angeles v. Offner (1942) 19 Cal. 2d 483; Dean v. Kuchel (1950) 35 Cal. 2d 444.

shortage of available assets may be exacerbated if the principal amount to be financed is large.

(ii) The two-thirds vote required for issuance of general obligation bonds can be a prohibitive hurdle. In addition, under the Government Code, general obligation bonds issued by general law cities can only be issued to finance "municipal improvements," which is a narrower subset of improvements than those that could be financed under the CRL. Charter cities may finance a broader set of improvements. Assembly Constitutional Amendment 1, introduced by Assembly Member Aguiar-Curry in December 2018, would reduce the vote requirement to 55% for general obligation bonds issued to finance public infrastructure, affordable housing and permanent supportive housing. The future of ACA 1 is uncertain as of the date of this paper.

(iii) Lease financings do not easily incorporate the funds of other public agencies that wish to contribute to a project, particularly if the other public agencies have to comply with the Constitutional Debt Limit or a statutory equivalent.

V. Existing Tax Increment Financing Laws

Perhaps because public agencies doubt their ability to accomplish economic development and other "redevelopment purposes" using general fund lease financings or general obligation bonds, the Legislature has passed a number of "post-dissolution" laws that provide tax increment financing options to California cities. However, all of these vehicles share at least two features that reduce their economic value relative to the CRL:

Voluntary Participation. The biggest challenge, which is common to all existing post-dissolution tax increment financing laws, is that participation by taxing entities other than the sponsoring agency is completely voluntary. If a city wishes to engage in tax increment financing and cannot convince any other taxing entity to participate, it has not really unlocked any new source of revenues to pay for public improvements than already would be available from its general fund, and the resulting tax increment revenue is significantly less than it would have been under the CRL.

Relatedly, even if a local school district or successor agency wanted to participate in one of the new districts or agencies authorized to do tax increment financing, current law prohibits their participation. Given that schools' AB 8 share typically represents 45-50% of the ad valorem tax, a significant portion of potentially available tax revenues are precluded from participation in the new tax increment financing programs. This further limits the amount of revenues that can be raised for tax increment-financed redevelopment.

Subordination to Redevelopment Obligations. In communities that previously had redevelopment agencies, new tax increment financing must be subordinated to any remaining residual Redevelopment Property Tax Trust Fund obligations of the former redevelopment agencies. In those communities, this makes new tax increment financing more expensive and thus more difficult.

Infrastructure Financing Districts

Statute. Authority for Infrastructure Financing Districts ("IFDs") was added to the California Government Code in 1990 (Government Code Title 5, Division 2, Part 1, Chapter 2.8 (§§ 53395 - 53397.11) (the "IFD Law")) but it has been used infrequently. As will be detailed below, the failure of IFDs to catch on as a means to spur development is likely due to various challenges with the statute.

Requirements for financing improvements under the IFD Law include:

(i) Revenues of the district must be used for the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer.

(ii) The improvements must meet a "communitywide significance" test and provide significant benefits to an area larger than the area of the district.

(iii) Eligible public capital facilities include highways, interchanges, ramps and bridges, arterial streets, parking facilities, sewage treatment and water reclamation plants, flood control levees and dams, libraries, parks and recreational facilities, and facilities for the transfer and disposal of solid waste.

(iv) IFDs are limited to a 30-year life, which runs from the date of the ordinance forming the IFD, rather than being tied to the beginning of the flow of tax increment. This shortened window to collect and leverage tax increment may be the biggest problem with the IFD Law.

San Francisco Port IFD Law. The City and County of San Francisco ("San Francisco") is one of the few public agencies that has used the IFD Law, primarily for two reasons.

First, beginning in 2013, Assembly Bill 2259 added provisions to the IFD Law that are specific to property in the jurisdiction of the Port of San Francisco (Section 53395.8). Most importantly, AB 2259:

(i) extended the term of an IFD from 30 years from adoption of the formation ordinance to 45 years from the date the IFD has actually received $100,000 in incremental tax revenues;
(ii) authorized the creation of project areas within an IFD, which allows multiple 45-year time limits to be tied to project phasing; and
(iii) for IFDs in the 65-acre Pier 70 district, the IFD is entitled to receive up to 100% of the incremental ERAF tax revenues.

Second, as a city and county, San Francisco's AB 8 share is equal to approximately $0.65 of every property tax dollar, which means that the power of a San Francisco Port IFD is greater than an IFD established by any other California city unless the IFD also involves the voluntary allocation of tax increment by the county or other special districts.

Since the Legislature's adoption of AB 2259, the Board of Supervisors has established:

(i) an IFD that covers all of the property in the San Francisco Port's jurisdiction; and

(ii) one or more project areas in the Port-wide IFD for three projects: (A) the San Francisco Giants' Mission Rock Project, (B) the rehabilitation of 6 historical buildings in the historic core of Pier 70 and (C) the redevelopment of the waterfront parcels in Pier 70. The IFD is expected to receive 100% of the incremental ERAF tax revenues from the Pier 70 waterfront redevelopment project.

A summary of these projects and the involvement of the San Francisco Port IFD can be found at https://sfport.com/planning-development-projects.

San Francisco's Board of Supervisors adopted a set of policies that limit use of the San Francisco Port IFD to projects with the following characteristics:

(i) Rezoning is projected to result in a net fiscal benefit to the City's general fund.

(ii) The project will address infrastructure deficiencies in the general area of the IFD.

(iii) The financed infrastructure projects will be accompanied by a long-term maintenance commitment (typically in the form of ongoing services special taxes levied in a community facilities district established under the Mello-Roos Community Facilities Act of 1982).

Enhanced Infrastructure Financing Districts

Statute. Enhanced Infrastructure Financing Districts ("EIFDs") are another alternative to redevelopment financing, with enabling legislation added in 2014. In so doing, the Legislature noted that "with the dissolution of redevelopment agencies, public benefits will accrue if local agencies, excluding schools, are provided a means to finance the reuse and revitalization of former military bases, fund the creation of transit priority projects and the implementation of sustainable communities plans, construct and rehabilitate affordable housing units, and construct facilities to house providers of consumer goods and services in the communities served by these efforts."[6] The statutory scheme for EIFDs is found in Government Code Title 5, Division 2, Part 1, Chapter 2.8 (§§ 53398.50 - 53398.88) (the "EIFD Law").

Subsequent amendments to the EIFD Law have, among other things, focused on making the EIFD Law a tool for addressing the state's affordable housing challenges.[7] For instance, the Neighborhood Infill Finance and Transit Improvements Act (AB 1568 (2017)) amended the EIFD Law to allow cities and counties to allocate sales and use tax revenues to an EIFD if certain requirements were met, including that the area to be financed is an infill site and that at least 20% of the sales and use tax funds received by the district be used for the acquisition construction, or rehabilitation of low-income housing. Similarly, the Second Neighborhood Infill Finance and Transit Improvements Act (SB 1498 (2018)) allows cities and counties to allocate sales and use tax revenues to an EIFD to fund affordable housing within one-half mile of a major transit stop.

In addition to authorizing the allocation of cities' AB 8 property tax increment, the EIFD Law also authorizes the allocation of that portion of any ad valorem property tax revenue annually

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[6] Government Code Section 53398.50.

[7] Amendments to the EIFD law since its initial adoption include AB 313 (2015), SB 63 (2015), AB 733 (2017), AB 1568 (2017) (the "Neighborhood Infill Finance and Transit Improvements Act"), AB 1999 (2018), SB 961 (2018) (the "Second Neighborhood Infill Finance and Transit Improvements Act"), and SB 1498 (2018).

allocated to a city or county pursuant to Section 97.70 of the Revenue and Taxation Code that corresponds to the increase in the assessed valuation of taxable property ("Section 97.70 tax increment"). Revenue allocated to cities pursuant to Revenue & Taxation Code Section 97.70 is the motor vehicle fee in-lieu property tax allocation to cities and counties, which was created when the Legislature reduced the motor vehicle in-lieu fee ("MVLF") from 2% to 0.65%; the Legislature took property tax revenue from ERAF and allocated it to cities and counties based on their lost MVLF fees and annual increases in city-wide/county-wide assessed values.

West Sacramento EIFD. The City of West Sacramento has formed an EIFD that includes much of the area (4,125 acres) that comprised the former West Sacramento Redevelopment Project Area (5,416 acres). According to West Sacramento, the portions of the former RDA that were included in the EIFD are those that have a potential for new development and/or private investment that would lead to an increase assessed in valuation and therefore tax increment growth. One of the reasons that West Sacramento has used the EIFD Law is that its AB 8 allocation of property tax revenues is unusually high for California cities, approximately 50% according to the Legislative Analyst's Office.[8]

More information about West Sacramento's EIFD can be found at https://blob.cityofwestsacramento.org/city/depts/admin_services/finance/eifd_formation.asp.

EIFDs in Los Angeles County. On August 1, 2017, the Los Angeles County Board of Supervisors adopted a Board Policy for Evaluating Enhanced Infrastructure Financing District and Community Revitalization and Investment Authority Projects.

The policy establishes minimum requirements for County allocation of property tax increment to an EIFD proposed by a city within Los Angeles County, including the following:

(i) The city's share of property tax increment must at least equal 15 cents ($0.15) for every dollar captured in the EIFD project area.

(ii) The city's contribution of property tax increment must at least equal that contributed by the County general fund and its special districts.

(iii) The County must not be required to contribute 100% of its property tax increment.

(iv) A fiscal analysis conducted by the Chief Executive Officer of the County must demonstrate a positive net impact to the County general fund as a result of the tax revenue generated from the project area.

(v) In addition to supporting economic development, the proposed EIFD project must align with established Board priorities in one or more of the following areas: (a) affordable housing, (b) homeless prevention, (c) workforce development or (4) sustainability.

(vi) Any rental housing proposed for the EIFD must allocate a minimum of 20% of all units for affordable housing. In certain circumstances, this requirement may be satisfied through payment of an in-lieu fee, or through provision of an equivalent number of affordable housing units at a separate location in proximity to the economic development site.

[8] https://lao.ca.gov/2000/020300_ab8/020300_ab8.html.

More information about Los Angeles County's policy can be found at http://media.metro.net/projects_studies/tod/images/eifd_policy.pdf.

As of the date of this paper, we are not aware of the County participating in an EIFD.

Infrastructure and Revitalization Financing Districts

Statute. Infrastructure and Revitalization Financing Districts ("IRFDs") were added to the Government Code in 2014. The statutory scheme is found in Government Code Title 5, Division 2, Part 1, Chapter 2.6 (§§ 53369 - 53369.49) (the "IRFD Law"). Like IFDs, IRFDs can finance the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer and which meets a "communitywide significance" requirement.

The IRFD Law made a number of improvements to the IFD Law:

(i) the communitywide significance test for IRFDs does not require that the benefits extent to an area larger than the area of the district;

(ii) IRFDs normally must dissolve within 40 years of their formation but, if elected in the ordinance of formation, may exist for up to 40 years from the date on which the allocation of tax increment begins or a later date specified in the IRFD formation proceedings;

(iii) IRFDs may contain project areas, which facilitates multiple 40-year time limits within an IRFD;

(iv) Property may be annexed into the IRFD after its original formation (this flexibility is important for the IRFD established on Treasure Island described below, where property is gradually transferred from the Navy to the City and then to a project developer as part of the military base closure process).

(v) Unlike EIFDs, which are governed by a new public agency established as part of the EIFD formation process, IRFDs are governed by the legislative body of the city or county that established it. This is particularly useful where the IRFD is part of a financing plan that involves formation of a community facilities district for which the city council or board of supervisors will also act as governing body.

San Francisco IRFDs. San Francisco has established two IRFDs:

(i) In connection with the redevelopment of Treasure Island and Yerba Buena Island, the City formed an IRFD to provide financing for public infrastructure and affordable housing. The project will include 8,000 new residential units, 2,000 of which will be affordable, and the development agreement between the City and the developer commits 17.5% of IRFD revenues to affordable housing.

When the Board of Supervisors established the IRFD, it declared that amending the IRFD Law to permit the allocation of Section 97.70 tax increment to the IRFD was a legislative priority, and committed to use any Section 97.70 tax increment allocated to the IRFD for affordable housing.

(ii) In connection with the redevelopment of the waterfront parcels in Pier 70, San Francisco established an IRFD exclusively to fund the costs of building affordable housing on those parcels.

Community Revitalization and Investment Authority

Statute. Community revitalization and investment authorities ("CRIAs") were added to the Government Code in 2017. The statutory scheme for CRIAs is found in Government Code Title 6, Division 4, §§ 62000 - 62208. The CRIA law borrows heavily from the old Community Redevelopment Law but has additional restrictions and requirements designed to combat the perceived lack of accountability associated with redevelopment agencies. Formation of a CRIA does not normally require a vote, but if there is sufficient protest to its formation, a vote of the registered voters (or landowners if there are fewer than 12 registered voters) must be held. Additionally, once the CRIA has been allocated $1 million of tax increment, and every five years thereafter, it must cause an independent audit of its compliance with its affordable housing requirements. Annual reports and financial audits are also required. Additionally, every 10 years a CRIA is required to conduct a protest proceeding to determine if the plan should continue.

Use of CRIA. As of the date of this paper, we are not aware of a CRIA established by a California city.

Annexation Development Plans

Statute. Annexation development plans were added in 2014 by Senate Bill 614 and incorporated in most relevant part in Revenue and Taxation Code Section 99.3. This law makes tax increment financing available in the specific situation where a local agency proposes to annex a disadvantaged, unincorporated community and proposes to improve structures that serve that community.

Use of Annexation Development Plans. As of the date of this paper, we are not aware of an Annexation Development Plan being implemented by a California city.

Affordable Housing Authority

Statute. Assembly Bill 1598, which went into effect on January 1, 2018, authorizes tax increment financing for the specific purpose of financing low-and moderate-income housing within the boundaries of the cities and counties that create a housing authority (an "Affordable Housing Authority") under this law. Each Affordable Housing Authority must adopt an affordable housing investment plan that states the principal goals of the plan, estimates of the number of new, rehabilitated, or price-restricted residential units to be assisted during the next five years, estimates of the number of units, if any, to be developed by the Affordable Housing Authority for very low, low-, and moderate-income households in the next five years, and a five-year fiscal analysis, among other items. See Government Code Title 6, Division 5, §§ 62250 - 62262.

Use of Affordable Housing Authority. As of the date of this paper, we are not aware of a California city implementing an Affordable Housing Authority.

Seaport Infrastructure Financing Districts

Statute. Seaport infrastructure financing districts ("SIFDs") were added to the Harbors and Navigation Code in 2015 (Harbors and Navigation Code §§ 1710 - 1719) and largely piggy-back on the provisions of the EIFD Law. The main differences between an EIFD and an SIFD are that (1) in an SIFD, the financed improvements to the harbor agency's property to be financed must be solely for the support of port or harbor infrastructure and (2) whereas an EIFD has a 55% vote requirement for the issuance of bonds, an SIFD has a two-thirds vote requirement.

Use of SIFD. As of the date of this paper, we are not aware of a California city establishing an SIFD.

VI. The Legal Foundation for Redevelopment 2.0

Any city that wishes to commit general fund property tax revenues for an economic development or blight reduction project using a Redevelopment 2.0 vehicle must grapple with the limitations imposed by the Constitutional Debt Limit. Absent Constitutional authority, a 40-year allocation by a city of its general fund property tax revenues may violate the Constitutional Debt Limit.

Bond attorneys are required to give unqualified validity opinions when tax increment financing districts issue bonds, so legal certainty is important.

There are two primary legal foundations for Redevelopment 2.0, one relies on the Legislature's power under Article XIIIA and the other relies on Article XVI, Section 16.

Article XIIIA

As described above, Article XIIIA empowers the Legislature to allocate ad valorem property tax revenues among the districts in the county:

> §1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

Each of the IFD Law, IRFD Law and EIFD Law define the new tax increment district as a district within the meaning of Section 1 of Article XIIIA, e.g.:

> Government Code Section 53369.1(e)(2): An infrastructure and revitalization financing district is a "district" within the meaning of Section 1 of Article XIII A of the California Constitution.

Therefore, the legal theory under Article XIIIA is that the IFD/IRFD/EIFD laws represent the exercise by the Legislature of its authority to allocate property tax revenues and the delegation to cities or counties that form IFDs/IRFDs/EIFDs of the decision as to the amount, duration and use of the tax increment, subject to the limitations within the IFD/IRFD/EIFD law.

Any reliance on Article XIIIA as the legal foundation for Redevelopment 2.0 must take into account recent Constitutional initiatives that limited the Legislative power to allocate property tax revenues, most notably Proposition 1A (2004) and Proposition 22 (2010), which added and amended Article XIII, Section 25.5:

> SEC. 25.5. (a) On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:
>
> (1) (A) Except as otherwise provided in subparagraph (B), modify the manner in which ad valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004. For purposes of this subparagraph, "percentage" does not include any property tax revenues referenced in paragraph (2).
>
> ...
>
> (3) Except as otherwise provided in subparagraph (C) of paragraph (2), change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring. The Legislature shall not change the pro rata shares of ad valorem property tax pursuant to this paragraph, nor change the allocation of the revenues described in Section 15 of Article XI, to reimburse a local government when the Legislature or any state agency mandates a new program or higher level of service on that local government.

Under Section 25.5, any Legislative shift of property tax revenues among non-school districts, which is what the IFD Law, IRFD Law and EIFD Law do, generally must be accomplished by "a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring." Cal. Const. Article XIIIA, §25.5(a)(3). Each of the IFD Law, the IRFD Law and recent amendments to the EIFD Law were adopted in compliance with Section 25.5.

Article XVI, Section 16

The CRIA Law, the Affordable Housing Authority Law and some recent bills have relied on Constitutional authority in Article XVI, Section 16, which expressly grants the Legislature the power to enact enabling legislation. For example, Assembly Bill 11 proposed adding the "Community Redevelopment Law of 2019" to the California Government Code, including the following:

> 100602. (a) The Legislature declares that this title constitutes the Community Redevelopment Law within the meaning of Article XVI of Section 16 of the California Constitution, and that an affordable housing and infrastructure agency formed pursuant to this title shall have all powers granted to a redevelopment agency pursuant to that section.

It will be important for cities wishing to use a Redevelopment 2.0 law that relies on Article XVI, Section 16 to confirm compliance with its specific requirements.

Judicial Validation

San Francisco has utilized the judicial validation power granted by Code of Civil Procedure Section 860 et seq. in connection with its IFDs and IRFDs, asking the California Superior Court to rule that the allocation of property tax revenues to IFDs and IRFDs is legal, valid and binding and does not violate the Constitutional Debt Limit.

VII. Pending and Proposed Legislation

Bills have been introduced in both the Assembly and the Senate that would further expand tax increment financing options for redevelopment. Summaries of the most important provisions of these bills are presented below.

Many of the Legislature's Redevelopment 2.0 efforts focus on affordable housing and basic infrastructure projects.

The key question is whether Redevelopment 2.0 proposals can achieve the economic power of the CRL, which may depend upon their ability to leverage tax increment that would otherwise be allocated to other taxing entities or ERAF.

Assembly Bill 11 – Community Redevelopment Law of 2019

Assembly Bill 11 ("AB 11") would allow cities and counties to designate a redevelopment plan area within which, with state approval, tax increment could be redirected to the development of affordable housing and infrastructure. In May 2019, AB 11's main sponsor announced that he would hold the bill until the next session of the Assembly due to opposition of Governor Newsom and certain political groups. As with any proposed legislation, the exact terms of AB 11 remain in flux. As currently drafted, AB 11 would allow cities and counties to form an affordable housing and infrastructure agency ("AHIA") which would be allowed to finance the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or tangible property with an estimated useful life of at least 15 years that constitutes affordable housing or specified infrastructure projects. Only certain enumerated infrastructure projects are allowed to be financed, and include highways, ramps and bridges, sewage treatment plants, flood control levees and dams, child care facilities, libraries, parks, low-income housing, and transit priority projects. AHIAs would be required to dissolve within 45 years from the date they issue bonds or enter into a loan.

Senate Bill 5 – Affordable Housing and Community Development Investment Program

As discussed above, one of the main problems facing the existing tax increment financing laws is that participation by other local taxing entities is voluntary. Absent agreement by additional taxing entities, a city or county forming a tax increment district does not generate any revenue for the district that it would not already have access to through its general fund. Senate Bill 5 ("SB 5"), which as of the date of writing has passed the Assembly and Senate and is awaiting the Governor's signature, would change that. Specifically, SB 5 would allow EIFDs, AHAs, transit village development districts, and CRIAs access to ERAF money provided that the projects meet the bill's requirements, including that the projects support affordable housing. Such districts and agencies would have to apply to a newly established Affordable Housing and Community Development Investment Committee (the "AHCDIC"), which would be empowered to distribute a specified aggregate dollar amount of ERAF money for all projects across the state. The AHCDIC could allocate up to $200 million per year in ERAF money for fiscal years ending June 30, 2022 through June 30, 2026 and $250 million per year in ERAF money for fiscal years ending June 30, 2027 through June 30, 2030.

VIII. Conclusion

The loss of the CRL eliminated an important source of funding for economic development projects and affordable housing. Cities' general funds and voter-approved general obligation bonds have not been able to fill the void.

Legislative efforts to establish a vital alternative to the CRL have largely failed because they rely on voluntary allocation of tax increment from non-school taxing entities, and, with limited exceptions, the ERAF share of tax increment is unavailable. However, there is a strong legal basis for Redevelopment 2.0 if the political will to establish an effective replacement for the CRL can be found.

APPENDIX A

Relevant Statutory and Constitutional Provisions

For reference, this section includes relevant Constitutional and statutory references and text where feasible.

Constitutional Debt Limit

California Constitution, Article XVI, Section 18(a):

> "No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose..."

Ad Valorem Tax Limitation

California Constitution, Article XIII A, Section 1:

> "(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.
>
> (b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:
>
>> (1) Indebtedness approved by the voters prior to July 1, 1978.
>> (2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.
>> (3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph…"

Authorization of Allocation of Property Tax Revenue to Redevelopment Agencies

California Constitution, Article XVI, Section 16.

… The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of those taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for those taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after the ordinance's effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

(b) Except as provided in subdivision (c), that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the taxable property in the project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) That portion of the taxes identified in subdivision (b) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This paragraph shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes identified in subdivision (b), exclusive of that portion identified in subdivision (c), may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

The Legislature shall enact those laws as may be necessary to enforce the provisions of this section.

Community Redevelopment Law

Health and Safety Code, Division 24, Part 1, §§ 33000 - 33855.

Community Revitalization and Investment Authorities

Government Code, Title 6, Division 4, §§ 62000-62008.

Infrastructure Financing Districts

Government Code, Title 5, Division 2, Part 1, Chapter 2.8, §§ 53395 - 53395.9.

Infrastructure and Revitalization Financing Districts

Government Code, Title 5, Division 2, Part 1, Chapter 2.6, §§ 53369 - 53369.49.

Enhanced Infrastructure Financing Districts

Government Code, Title 5, Division 2, Part 1, Chapter 2.99, §§ 53398.50 - 53398.88.

Seaport Infrastructure Financing Districts

Harbors and Navigation Code, Division 6, Part 1, Chapter 3, §§ 1710 - 1719. See also Government Code, Title 5, Division 2, Part 1, Chapter 2.99, §§ 53398.50 - 53398.88.

Affordable Housing Authorities

Government Code, Title 6, Division 5, §§ 62250 - 62262.

Annexation Development Plans

Government Code, Title 5, Division 3, Part 3, Chapter 1, § 56653.