

# Redevelopment 2.0:

Existing laws,  
pending legislation  
and legal theory

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# Presentation Agenda

- **Introduction to Tax Increment**
- **History of Redevelopment**
- **Affordable Housing and Redevelopment**
- **Non-Tax Increment Alternatives to Redevelopment 2.0**
- **Post-Dissolution Tax Increment Financing Vehicles**
- **Legal Theory of Redevelopment 2.0**
- **New Legislative Efforts**
- **Conclusions**

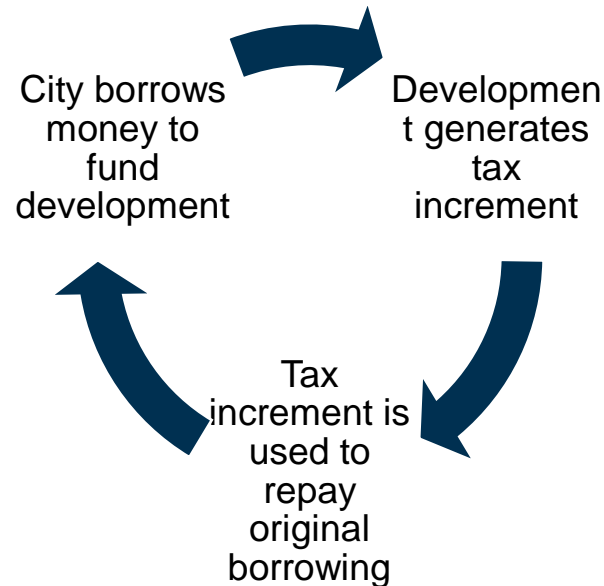
# Introduction to Tax Increment

# Tax Increment Explained

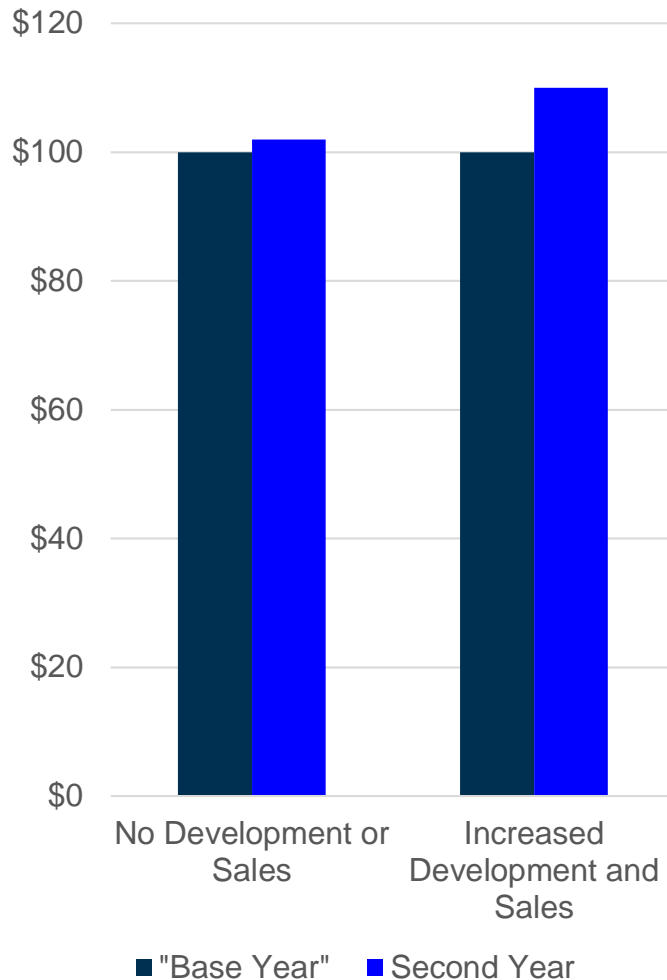
- **Tax increment is increased tax revenues in a year compared to “base year” revenues**
- **Example:**
  - In base year, city received \$100 of property tax revenue
  - Next year it received \$105
  - The additional \$5 is “tax increment”

# Tax Increment Financing (“TIF”)

- Idea behind TIF is that development can pay for itself by generating tax increment



# Tax Increment Financing Example



- Without development/sales, assessed value (“AV”) growth capped at 2% inflationary rate under Prop. 13, so increment is \$2
- With development and sales, AV increases 10%, so increment is \$10
- Increased amount of \$10 can be used to repay TIF debt that funded initial development

# History of Redevelopment

# Community Redevelopment Law (“CRL” or “Redevelopment 1.0”)

- **CRL was for decades the primary tax increment financing vehicle in California**
- **Many cities created redevelopment agencies per CRL**
- **Ability to capture other taxing entities’ tax increment key to popularity of CRL for sponsoring cities**



# Dissolution of Redevelopment Agencies

“[TIF] remains a source of contention because of the financial advantage it provides redevelopment agencies and their community sponsors, primarily cities, over...other local taxing agencies.”

Cal. Supreme Court in *Matosantos*

- **CRL diverted revenues from schools and other local taxing entities to redevelopment agencies**
- **Cal. Constitution requires State to fund all schools at certain minimum levels**
- **Persistent conflict between State’s education funding requirements and redevelopment’s share of property tax dollar**
- **In 2011, ABx1 26 remedied this conflict by dissolving redevelopment agencies**

# Affordable Housing and Redevelopment

# Affordable Housing and Redevelopment

- **Redevelopment law set aside 20% of increment for affordable housing, making housing a major beneficiary of Redevelopment 1.0**
- **Post-dissolution, no dedicated source of financing for affordable housing**
- **Statewide affordable housing crisis means cities now have significant needs for affordable housing financing**

# Non-Tax Increment Alternatives to Redevelopment 2.0

# The Need for Alternative Financing

“No...city...shall incur any indebtedness or liability...exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters”

Cal. Constitution,  
Article XVI, Section

18

- **Constitutional Debt Limit**
- **Limits cities’ ability to incur debt to finance projects, such as redevelopment and affordable housing**

# Lease Financing

“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.”

Gov. Code § 37351

- **Exception to Constitutional Debt Limit**
- **City leases real property to 3<sup>rd</sup> party (e.g., JPA) that subleases back to city**
- **Lease payments can be securitized and the proceeds used by the city for any municipal purpose**

# General Obligation (“GO”) Bonds

“The limitation [capping ad valorem tax at 1%] shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on...(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.”

Cal. Constitution, Article XIII A, Section 1(a)

- **Cities can issue GO bonds with 2/3 voter approval**
- **Payable from ad valorem taxes**
- **Post-dissolution, some cities have used GO bonds to finance infrastructure that previously might have been financed with tax increment**
- **Have also been used for affordable housing**

# Limitations of Non-Tax Increment Alternatives

- **Lease Financing**

- City must have assets equaling principal amount
- Encumbered assets unavailable for other projects

- **GO Bonds**

- Need 2/3 voter approval
- Use limited to financing acquisition or improvement of real property constituting “municipal improvements” under §43601 of Government Code



# Post-Dissolution Tax Increment Financing Vehicles

# Infrastructure Financing Districts (“IFDs”)

- **Limited to 30 years, running from date of ordinance forming IFD rather than beginning of tax increment**
- **Eligible public capital facilities must have “communitywide significance” and useful life of at least 15 years**

Citation: Government Code, Title 5, Division 2, Part 1, Chapter 2.8, §§ 53395 - 53397.11

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# San Francisco Port IFD



- **Government Code section specific to San Francisco makes IFD law more useful for the City (Gov. Code §53395.8)**

- Life of 45 years, running from receipt of \$100,000 of tax increment
- Multiple project areas authorized, which allows multiple 45-year periods
- IFDs in Pier 70 entitled to 100% of incremental ERAF

- **As City and County, San Francisco's AB 8 share**

# Enhanced Infrastructure Financing Districts (“EIFDs”)

- **Limited to 45 years, running from first bond or loan issuance**
- **Can access incremental motor vehicle in-lieu fee revenue**
- **Updates to law have advanced affordable housing:**
  - AB 1568 (2017) allows for allocation of sales tax revenues to EIFD if, among other things, 20% of sales tax received be used for low income housing
  - SB 1498 (2018) allows for allocation of sales tax revenues to EIFD to fund affordable housing within half-mile of a major

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

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# West Sacramento EIFD



- **City of West Sacramento formed EIFD covering much of former redevelopment area**
- **District includes areas the City thinks have potential for new development that would lead to an increase in AV and thus tax increment growth**
- **EIFD is useful for West Sacramento partly due to its relatively high AB 8 share of approximately \$0.50**

## Infrastructure and Revitalization Financing Districts (“IRFDs”)

- **Limited to 40 years, running from start of allocation of tax increment or later date specified in formation proceedings**
- **Eligible facilities must have “communitywide significance” and useful life of at least 15 years**
- **May contain multiple project areas, each with 40-year life**
- **Governed by legislative body of forming entity**

Citation: Government Code, Title 5, Division 2, Part 1, Chapter 2.6, §§ 53369 -

53369.49 - **Useful life of communitywide facilities**

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# San Francisco IRFDs



- **Treasure Island IRFD**

- Redevelopment of former Navy base
- Financing infrastructure and 8,000 housing units, including 2,000 affordable units
- Development agreement commits 17.5% of IRFD revenues to affordable housing

- **Pier 70**

- IRFD used exclusively to fund affordable housing

# Community Revitalization and Investment Authorities (“CRIAs”)

- **Modeled after CRL but contains restrictions to address perceived lack of accountability in CRL**
  - Once CRIA receives \$1 million of tax increment, regular audits required of compliance with affordable housing requirements
  - Subject to a protest proceeding every 10 years to determine if the plan should continue
- **25% of CRIA’s tax revenue must be used for low- and moderate-income housing**
- **Vote required for formation if there is sufficient protest**

Citation: Government Code, Title 6, Division 4, §§ 62000 - 62208



# Annexation Development Plans

- **Revenue and Taxation Code makes TIF available in certain annexations**
- **To use TIF, city must propose to:**
  - Annex disadvantaged, unincorporated community
  - Improve structures that serve that community

Citation: Revenue and Taxation Code, Division 1, part 0.5, Chapter 6, § 99.3

# Affordable Housing Authorities (“AHAs”)

- **AB 1598 effective January 1, 2018**
- **A city may form an AHA, which adopts an affordable housing investment plan**
- **AHA may employ tax increment financing to finance its affordable housing projects**

Citation: Government Code, Title 6, Division 5, §§ 62250 - 62262

# Seaport Infrastructure Financing Districts (“SIFDs”)

- **SIFDs added to Harbors and Navigation Code in 2015**
- **Similar to EIFDs, with two key differences:**
  - Financed improvements must be solely for support of port or harbor infrastructure
  - Unlike EIFD law’s 55% vote for issuance of bonds, SIFDs require a 2/3 vote

Citation: Harbors and Navigation Code, Division 6, Part 1, §§ 1710 - 1719

# Limitations of Existing Tax Increment Financing Vehicles

- **Voluntary participation**

- School districts cannot participate, eliminating a major source of potential tax increment

- **Subordination to redevelopment obligations**

- New TIF must be subordinated to redevelopment agency obligations, making new TIF more expensive in communities that had redevelopment agencies

# Legal Theory of Redevelopment 2.0

# Addressing the Constitutional Debt Limit

“No...city...shall incur any indebtedness or liability...exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters”

- **Redevelopment 2.0 involves allocation of city’s tax increment to specially formed districts for many years**
- **Does a city’s commitment of its general fund property tax revenue in the form of tax increment for a period of 30 years or more violate the debt limit?**

# Legislative Power Under Article XIII A

“The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.”

- **Article XIII A empowers the Legislature (“according to law”) to allocate ad valorem property tax revenues**
- **Such allocation is to be among the districts within the county**

# Legislative Power Under Article XIII A

- **IFD, IRFD, and EIFD laws address the Constitutional Debt Limit by defining such districts as “districts” for purposes of Article XIII A**
- **Thus, IFD/IRFD/EIFD laws represent:**
  - Exercise by Legislature of authority to allocate property tax revenues
  - Delegation to cities of decisions regarding amount, duration, and use of the tax increment (subject to limitations established by Legislature)



# Legislative Power Under Article XVI, Section 16

- **Article XVI, Section 16 of the Constitution expressly grants to the Legislature the power to enact enabling legislation**
- **CRIA law, AHA law, and other proposals rely on Article XVI, Section 16**
- **AB 11, a recent proposal, included the following:**
  - “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 [agency] formed pursuant to this title shall have all powers granted to a redevelopment agency pursuant to that section.”

# New Legislative Efforts

# AB 11 – Community Redevelopment Law of 2019

- **Would allow cities to form an Affordable Housing and Infrastructure Agency (“AHIA”)**
- **With State approval, tax increment could be used for affordable housing and infrastructure**
- **AHIAs would be limited to a 45-year life, running from first bond or loan issuance**
- **Status: As of May 2019, held until next legislative session**

# SB 5 – Affordable Housing and Community Development Investment Program

Program increment financing law

- Rather, addresses another problem with existing TIF laws—lack of access to ERAF money
- Allows cities, counties, EIFDs, AHAs, CRIAs, and transit development districts to apply for an allocation of certain ERAF money if their projects meet SB 5's requirements, including supporting affordable housing
- Provides for up to \$200 million per year for FY 2022-2026 and \$250 million per year for FY 2027-2030, for entire State
- **Status:** As of September 2019, sent to Governor for signature

# Conclusions

- **Redevelopment 2.0 has potential but use is currently limited**
- **In contrast to Redevelopment 1.0, present tax increment laws are limited by their voluntary nature and inability to include a school district's tax increment, among other limitations**
- **There appears to be legislative interest in Redevelopment 2.0 – stay tuned**

