Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 2553 (Friedman) – As Amended April 17, 2018

SUBJECT: Vertical housing districts

SUMMARY: Allows a city or county to create a vertical housing project zone and allows a developer builds a multi-family housing development in the zone to receive tax increment for up to 35 years after a development receives its finding of completion. Specifically, **this bill**:

1) Includes the following definitions:

    a) "County" means a city and county;

    b) "Excess property tax" means the portion of property tax that accrues on a taxable property in a vertical housing zone project to a participating taxing entity;

    c) "High transit area" means an area located within one-half mile of a major transit stop or a high quality transit corridor;

    d) "Legislative body" means a city council, board of supervisors, or governing body of a taxing entity;

    e) "Landowner" means any person shown as the owner of the land on the last equalized assessment roll or otherwise known as the owner of the land by the legislative body. Provides that a legislative body has no obligation to obtain other information as to the ownership of land and its determination of ownership is final and conclusive. A public agency is not a landowner or owner of land for purposes of a vertical housing zone, unless it owns all the land in the proposed zone;

    f) "Multi-family housing project" means a project in a vertical housing zone where 70% of the gross floor area is developed as residential housing;

    g) "Parcel" means that unit of land identified on a recorded subdivision map or assigned an assessor's parcel number by the county assessor in which the land is located;

    h) "Taxing entity" means any governmental taxing agency, excluding schools, that levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed vertical housing zone in the fiscal year before the designation of the vertical housing zone;

    i) "Vertical housing project fund" means a fund established for each vertical housing zone project to provide excess property taxes;

    j) "Vertical housing zone" means an area in a high-transit area that a city or county has designated as such to make available excess property tax for vertical housing zone projects if at least 51% of the area of a parcel is within the high-transit area designated by the city or county by resolution; and

   k) "Vertical housing zone project" means a multifamily housing project in a vertical housing zone that has applied for and received excess property tax.

2) Allows a legislative body to designate, by majority vote, a high-transit area located within the jurisdictional boundaries of the city or county as a vertical housing zone.

3) Requires the city council, board of supervisors, or governing body of a taxing entity to include the following in the resolution establishing a vertical housing zone:

   a) A statement that a vertical housing zone is proposed to be established that includes a description of the boundaries of the proposed zone, which may be accomplished by reference to a map on file in the office of the clerk of the city or in the office of the recorder of the county;

   b) State those portions of the vertical housing district within the high-transit area;

   c) A map identifying high-transit areas in the established district;

   d) A provision that provides excess property tax from the city, county, and participating taxing entities within the vertical housing zone to finance multifamily housing projects within the vertical housing zone;

   e) A statement of the needs and goals of the vertical housing zone; and

   f) A statement that the vertical housing zone will incentivize the development of denser and taller housing projects in the high-transit area designated by the city or county.

4) Provides that the city council, board or supervisors, or governing body of a taxing entity shall direct the city clerk or county recorder to mail a copy of the resolution creating the zone to each landowner within the zone.

5) Allows a taxing entity to agree to participate in a vertical housing zone by adopting a resolution by majority vote of the taxing entity's legislative body.

6) Requires a taxing entity that agrees to participate in a vertical housing zone in the resolution to agree to provide excess property tax to a vertical housing zone project.

7) Requires the receipt of property tax revenue by a city, county or participating taxing entity to be divided as follows:

   a) Distribute to each taxing entity the portion of property tax it would have received prior to the creation of the vertical housing project zone;

   b) Distribute the portion or property tax in excess of the portion of taxes specified in a) to the respective vertical housing zone project fund for each taxing entity;

   c) Distribute any portion of excess taxes from the taxing entities that agreed to participate in the vertical housing zone to the vertical housing project fund of the city, county, or participating taxing entities.

8) Provides that a multifamily housing project that submits an application for excess property tax shall receive funding if all of the following requirements are met:

   a) The land of the proposed multifamily housing project is within the vertical housing zone;

   b) The multifamily housing project is entitled by the proper land use authority, legislative body or otherwise to develop the fully allowable residential density, including, but not limited to, any heights, floor area ratio, and unit limit consistent with any applicable building code;

   c) The developer complies with an inclusionary housing program if one is in place at the time of the application; and

   d) The multifamily housing project complies with specified anti-demolition provisions;

9) Provides that a vertical housing zone project shall receive excess property taxes collected on the project for 30 years on the year it is deemed complete, except that the project may receive excess property taxes for 35 years if it complies with the following:

   a) Offers affordable housing units pursuant to a local inclusionary housing program, through a density bonus, or other state laws or local ordinances;

   b) If no inclusionary housing units are required by a local inclusionary housing program and inclusionary housing units are not being provided pursuant to density bonus law, or other state laws or local ordinances, the developer provides either:

      a. 11% of the total housing units of a vertical housing zone project for very low income households;

      b. 20% of the total housing units for low-income households.

10) Provides that a project is deemed complete when a certificate of occupancy has been issued by a building official for the city or county in which the project is located.

11) Allows a developer seeking a vertical housing zone project designation for a multifamily housing project to request a waiver from the project permitting fees and impact fees.

12) Provides that a vertical housing zone project may not be located on a site that would require demotion of one of the following types of housing:

   a) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low or very low income;

   b) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; and

   c) Housing that has been occupied by tenants with the past 10 years.

13) Prohibits a vertical housing zone project on the following sites:

a)   A site previously used for housing that was occupied by tenants that was demolished within the last 10 years before the developer submits a vertical housing zone project application;

b)   A site that would require demolition of a historic structure that was placed on a national, state, or local historic register; and

c)   A site with property containing housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

14) Provides that a developer of a multifamily housing project may apply for a vertical housing zone project designation by filing an application with the city or county that includes all of the following:

a)   A project description packet that includes proposed construction, current state of the site, the number of units at both affordable and market rates, and nonresidential uses proposed for the site;

b)   All applicable and necessary entitlements demonstrating that the project is entitled to build at the fully allowable height and density; and

c)   A statement that any affordable units on site will remain affordable for 55 years by recordation of a covenant.

15) Requires a city or county to approve applications for designation of a multifamily housing project as a vertical housing zone project upon a completed application.

16) Provides that upon approval of a completed application the developer and the city or county shall execute a binding agreement that includes both of the following:

a)   A commitment by the city or county to provide excess property tax to the vertical housing zone project upon completion, for a period of 30 or 35 years; and

b)   A commitment by the developer to develop the project fully as entitled, comply with anti-demolition requirements, and provide affordable housing units as required by an inclusionary housing ordinance.

EXISTING LAW:

1)   Defines "major transit stop" to mean a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

2)   Defines "high quality transit corridor" to mean a corridor with fixed bus route service with service intervals no longer than 15 minutes during peak commute hours.

3)   Allows a legislative body of a city or county to designate one or more proposed enhanced infrastructure financing districts (EIFDs) pursuant to EIFD law, and requires the

establishment of a district to be instituted by the adoption of a resolution of intention to establish the proposed district, and include the following:

a) State that an EIFD is proposed and describe the boundaries of the proposed district, as specified;

b) State the type of public facilities and development proposed to be financed or assisted by the EIFD in accordance with existing EIFD law;

c) State the need for the EIFD and the goals the district proposes to achieve;

d) State the incremental property tax revenue from the city or county and some or all affected taxing entities within the EIFD, if approved by resolution of the affected agencies, may be used to finance these activities; and,

e) Fix a time and place for a public hearing on the proposal.

2) Requires, after the resolution of intention to establish a district, the designated official to prepare a proposed infrastructure financing plan, which shall be consistent with the general plan of the city or county within which the district is located. Requires the plan to include a financing section, containing the following information:

a) A specification of the maximum portion of the incremental tax revenue of the city or county and of each affected taxing entity proposed to be committed to the district for each year during which the district will receive incremental tax revenue, as specified;

b) A projection of the amount of tax revenues expected to be received by the district for each year during which the district will receive incremental tax revenues, including an estimate of the amount of tax revenues attributable to each affected taxing entity for each year;

c) A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt;

d) A limit on the total number of tax dollars that may be allocated in the district pursuant to the plan; and,

e) A date on which the district will cease to exist, by which time all tax allocation to the district will end. Requires the date to not be more than 45 years from the date on which the issuance of bonds is approved or the issuance of a loan is approved by the governing board of a local agency.

3) Requires the plan to be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by CEQA.

4) Allows the legislative body of the city or county forming the district to choose to dedicate any portion of its net available revenue to the district through the financing plan.

5) Allows an EIFD to finance only public capital facilities or other specified projects of communitywide significance that provide significant benefits to the EIFD or the surrounding community, including, but not limited to, all of the following:

a) Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities;

b) Sewage treatment and water reclamation plants and interceptor pipes;

c) Facilities for the collection and treatment of water for urban uses;

d) Flood control levees and dams, retention basins, and drainage channels;

e) Child care facilities;

f) Libraries;

g) Parks, recreation facilities, and open space;

h) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles;

i) Brownfield restoration and other environmental mitigation;

j) The development of projects on a former military base, provided that the projects are consistent with the military base authority reuse plan and are approved by the military base reuse authority, if applicable;

k) The repayment of the transfer of funds to a military base reuse authority pursuant to existing law that occurred on or after the creation of the RHIA;

l) The acquisition, construction, or repair of industrial structures for private use;

m) Transit priority projects, as defined in existing law, that are located with a transit priority project area. For purposes of the bill, a transit priority project area may include a military base reuse plan that meets the definition of a transit priority project area and it may include a contaminated site within a transit priority project area; and,

n) Projects that implement a sustainable communities strategy, when the State Air Resources Board has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

FISCAL EFFECT: None

COMMENTS:

Background: Following the dissolution of redevelopment agencies in 2011, the Legislature has created several tools to fund infrastructure and affordable housing using tax increment. Enhanced Infrastructure Financing Districts (EIFDs) authorize cities, counties, and special districts to voluntarily fund a variety of infrastructure activities for capital improvement projects, as well as, transit-oriented development, and projects that implement a sustainable community strategy. An EIFD can finance a mixed-income housing development, but can only finance units that are

restricted to low- and moderate-income households, and those onsite facilities for child care, after-school care, and social services that are integrally linked to the tenants of the restricted units. A city or county that forms an EIFD is authorized to collect any tax increment or increase in property tax, of the participating tax entities, that accrues in a project area after a district is formed. The EIFD can bond against that tax increment to pay for infrastructure activities and continues to receive the tax increment for up to 45 years from the date that a bond is issued.

In 2017, AB 1568 (Bloom), Chapter 562, allowed EIFDs to receive sales and use tax to provide for affordable housing. To qualify, an EIFD must be an infill site and is required to use 20% of the funds for deed-restricted affordable housing for low-income families.

This bill would allow a city or county to create a vertical housing zone and capture any tax increment that accrues in the zone. Unlike EIFDs, the tax increment would be provided directly to a developer, after a project is complete. The bill does not require the funding to go toward the affordable housing units in the development nor does it specify how the developer would use the funds. The city or county would be required to enter into a contract for 30-35 years, depending on the number of affordable housing units in the development, to pay the developer the tax increment that accrues. The committee may wish to consider that subsidizing a developer directly through tax increment is a significant shift in policy.

Affordable housing requirements: To qualify for 30 years of tax increment a developer would be required to comply with a local inclusionary housing ordinance in place at the time of the application. If the local government had no inclusionary requirement, the developer would not be required to include any affordable housing units. The committee may wish to consider that this approach is a significant shift from existing policy which requires a developer to include affordable units in order to receive the benefit of local incentives, either through increased density or public subsidy.

To qualify for 35 years of tax increment, the developer would be required to comply with a choice of one of the following: a local inclusionary housing ordinance, state Density Bonus Law, or other state laws or ordinances. If no inclusionary housing ordinance exists, or the developer does not provide affordable housing units as a result of a density bonus, the developer can provide either 11% of total units for very low income households or 20% of the units for low income households.

Ongoing subsidy for market rate units: The purpose of the bill is to incentivize more housing near transit by providing an ongoing subsidy for the entire development – market rate and affordable units. According to the sponsors, high-rise construction costs 30% more per square foot than mid-rise construction and in some markets the rents that developers can charge are not sufficient to build high-rise even if the zoning provides for it. The ongoing tax increment is intended to serve as a source of capital to offset the 30% gap. California has an extremely low rental vacancy rate of 4.3%. A developer would receive tax increment for 30-35 years under this bill; it does not take into consideration the potential that the 30% gap may be filled as the debt on the property is paid down or as the rate of the rents increases.

Policy considerations:

➢ The committee may wish to consider that existing tools, including EIFDs, are available to cities that wish to support housing around transit by funding the infrastructure needed for a mixed-income development.

- ➤ Existing tools, including both EIFDs and Community Revitalization Infrastructure Authorities (CRIAs), authorize the use of tax increment to fund affordable housing units. This bill would be a departure from that approach by allowing the use of tax increment to subsidize market rate units.

- ➤ This bill proposes to provide ongoing funding to market rate units that a developer has already constructed. The bill does not specify how those funds should be used or what the city is receiving in return for that ongoing funding.

- ➤ This bill does not restrict the rents of market rate units that would receive subsidy for up to 35 years. Over time the owner of the property will likely be able to increase rents as the market changes, but this bill does not place any limitations or controls for that likely outcome.

Double-Referred: If AB 2553 passes out of this committee, the bill will be referred to the Committee on Local Government

REGISTERED SUPPORT / OPPOSITION:

Support

Up for Growth California (sponsor)
Los Angeles Business Council
BRIDGE Housing
California Apartment Association
California YIMBY
Calthorpe Associates
TechNet

Opposition

Howard Jarvis Taxpayers Association

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