

Positive Developments For Affordable Housing In California

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Law360, New York—In recent decades, California has built new housing at a slower rate than the rest of the country, and much of the new housing was built in the inland areas rather than the more desired and populated coastal areas of the state. Because California's supply of housing has not kept pace with demand, housing costs have grown faster than the rest of the country. As a result, cities throughout California are experiencing a severe shortage of housing that is "affordable," which is generally defined as housing that costs no more than 30 percent of household income. The lack of affordable housing has reached crisis levels, with more than 90 percent of the poorest families spending more than 30 percent of their income on housing. Moreover, as housing costs continue to rise, more than 53 percent of middle-income households are now spending more than 30 percent of their income on housing, up from 38 percent 10 years ago.

Despite this growing problem and as commercial real estate development is active in many parts of the state, funding continues to lag behind particularly since the California legislature dissolved the state's 400-plus redevelopment agencies in 2012 in response to the budget crisis, thereby eliminating a funding source for affordable housing from real estate tax increments. However, there is hope.

In response to the loss of redevelopment agencies real estate developers (and their attorneys) have developed other financing programs in order to facilitate affordable housing transactions including low-income housing tax credits, tax exempt bonds, federal HOME funds, impact fee deferrals, density bonuses and even private equity for transactions that preserve existing affordable housing. Many of these projects did not rely on any state or local governmental funds and have paved the way for a bright future of affordable housing finance.

More recent developments have painted an even brighter picture for affordable housing. In September 2015, the California Legislature enacted a law that once again allows for the creation of local revitalization authorities, similar to the predecessor redevelopment agencies, which will have the funding and authority to create and maintain affordable housing. These new revitalization authorities have similar powers to the former redevelopment agencies and are likewise funded by property tax increments.

At a local level, the Los Angeles County Board of Supervisors recently voted to set aside up to \$100 million-a-year in a dedicated affordable housing fund after seeing a 12 percent jump in homelessness in the prior two years. Meanwhile, Los Angeles Mayor Eric Garcetti has proposed new "linkage fees" on development that could raise more than \$100 million-a-year for affordable housing programs. Mr. Garcetti's proposal may potentially be undermined, however, by a local effort to put a moratorium on certain high-density development in the city. Finally, in San Francisco, there are two competing ballot measures scheduled for June that seek to increase the amount of affordable units that residential developers must be include in their market-rate projects.

California Community Revitalization and Investment Authority Law Once Again Allows for Redevelopment Authorities

Signed into law by Governor Jerry Brown on Sept. 22, 2015, the California Community Revitalization and Investment Authority Law once again allows communities to establish redevelopment authorities using property tax financing. The law allows a city, county, city and county or special district — or any combination of these entities — to establish a Community Revitalization and Investment Authority (CRIA) in specified "revitalization areas" to improve infrastructure, promote economic revitalization and create and preserve needed housing. Revitalization areas must include at least 80 percent of land that has an annual household income that is less than 80 percent of the statewide annual median income, as well as three of the following criteria: (1) unemployment rate at least 3 percent higher than the statewide median, (2) crime rates at least 5 percent higher than the statewide median, (3) deteriorated or inadequate infrastructure and (4) deteriorated commercial or residential structures. Additionally, a former military base that is principally characterized by deteriorated or inadequate infrastructure and structures can be deemed a revitalization area.

A CRIA finances its activities by the issuance of bonds serviced by property tax increment revenues, although it may borrow money and receive grants or accept other financial assistance or investment as well. While CRIA funds can be used on economic revitalization, infrastructure improvements and other programs, a minimum of 25 percent of all tax increments allocated to the CRIA must be deposited into a separate low- and moderate-income housing fund. These funds may be used to acquire real property, including through the power of eminent domain, improve and donate property, construct, acquire or rehabilitate buildings, provide subsidies to low-income households, pay principal and interest on bonds, loans, advances or other indebtedness, maintain the community's supply of mobile homes, preserve the availability of existing affordable housing units and other affordable housing-related activities. The law requires the California Department of Housing and Community Development to periodically review the calculation of surplus housing under these provisions. Rental units assisted by the CRIA must remain affordable for at least 55 years. Owner-occupied units must remain affordable for at least 45 years.

The new Community Redevelopment Law has stringent establishment requirements. However, if an area meets these requirements, a CRIA has broad authority to address affordable housing shortages and to otherwise undertake revitalization measures that is very similar to that of the former redevelopment agencies.

Los Angeles County Board of Supervisors Vote to Gradually Set Aside \$100 Million-a-Year for Affordable Housing Programs

To address the shortage of affordable housing and a growing homeless population, the Los Angeles County Board of Supervisors voted unanimously on Oct. 27, 2015, to gradually set aside up to \$100 million-a-year in a dedicated Affordable Housing Program budget unit to construct, maintain and subsidize affordable housing. The county will initially identify \$20 million in funds in fiscal year 2016–17, with a goal of reaching \$100 million-per-year by fiscal year 2020–21. A minimum of 75 percent of the funds will be dedicated for the preservation, rehabilitation and creation of affordable housing. The remaining funds will be used to cover administrative expenses and for rental and moving assistance. Supervisors Sheila Kuehl and Mark Ridley-Thomas proposed the fund as prior affordable housing programs in the county were severely curtailed by dissolution of redevelopment agencies and the county saw a subsequent jump of 12 percent in the county's homeless population over the prior two years.

City of Los Angeles Proposes Developer Linkage Fees to Meet Affordable Housing Needs While Residents Seek a Moratorium on Certain Large Developments

Large-scale development has been booming in Los Angeles in recent years. The city has been approving bigger and bigger projects through piecemeal amendments to existing zoning laws, which often have outdated density restrictions, and requiring developers to include a certain percentage of below-market-rate units as part of their projects. By approving high-density large developments, the city is working to achieve its goal of building 100,000 new housing units by 2021 and doubling the production of affordable housing during this period.

Seeking to take full advantage of the construction boom while addressing the need for affordable housing, Los Angeles Mayor Eric Garcetti proposed in October new fees on developers that could raise more than \$100 million-a-year to subsidize affordable housing. Speaking at a conference at UCLA hosted by the Los Angeles Business Council, Mayor Garcetti said his administration will lead an effort to levy "linkage fees" on developers based on the size of new projects. Such assessments are intended to offset upward pressure on housing costs from new commercial or residential development. According to the Mayor's staff, the details of the proposal — such as the amount, how the fees would be calculated and what types of projects would be assessed — have not yet been worked out and will be the subject of a study by the City Planning Department. Any new fees would be subject to approval by the city council. The proposal comes after a recent audit by City Controller Ron Galperin found the city could have taken in up to \$91 million for fiscal year 2013–14 through such fees. This is consistent with a 2011 study, which found that a linkage fee could generate up to \$100 million-a-year.

The city's efforts to increase affordable housing, however, may be undermined by a potential ballot measure that could hamper new construction. The Coalition to Preserve LA, a community group that opposes the "Manhattanization" of Los Angeles and is frustrated with lack of consistency in the city's zoning practices, has proposed a ballot initiative that would put a moratorium on "spot zoning." Specifically, the measure would stop all amendments to the city's General Plan, including piecemeal changes to density restrictions, increase oversight from planning officials and stop construction on all current projects not in compliance with the city's General Plan for up to two years. The Garcetti administration has expressed concerns that the proposed measure would prevent or curtail the development of needed housing, including the building of below-market-rate units, and increase rents on low- and middle-income families. Additionally, if construction of large-scale development is curtailed, the ballot measure potentially could undercut the mayor's proposal to raise funds through linkage fees. The mayor has expressed an interest in meeting with the coalition to work out a compromise. The measure, which has been endorsed by former two-term Mayor Richard Riordan, needs 61,486 valid signatures to be put on the November 2016 ballot.

Two Competing Affordable Housing Ballot Measures Seek to Increase Affordable Housing Requirements in San Francisco

In response to the dissolution of the redevelopment agencies, San Francisco voters in 2012 passed Proposition C (also known as the Affordable Housing Trust Fund). The measure created \$1.2 billion set-aside for affordable housing while also reducing to 12 percent San Francisco's "inclusionary housing" requirement, which obligates developers build a minimum percentage of below-market-rate units on the same site. As alternatives to on-site below-market-rate units, developers were also given the option of paying an "in-lieu" fee to the Affordable Housing Trust Fund or building at least 20 percent below-market-rate units at another location. Although Proposition C lowered the on-site affordable housing requirement, one-off negotiations with the city on a project-by-project basis remain common, with some projects including up to 40 percent affordable housing.

Now, just a few years after Proposition C was approved, the June ballot may include two competing measures seeking, once again, to increase the inclusionary housing requirements. In December, Mayor Ed Lee proposed a charter amendment that would require the city to conduct an economic feasibility housing analysis, to be completed by the end of 2016, and develop recommendations for any adjustments to the current onsite, offsite, and in-lieu fee options. This proposal also requires the city to consider available housing for middle class households. According to the Mayor's office, to assist with the study, he has reconvened a housing working group that includes the same diverse housing stakeholders that developed Proposition C. By avoiding specific requirements in the proposed measure, and by including stakeholders in the process, Mr. Lee clearly is seeking to avoid a clash with developers. Although this measure was previously tentatively scheduled for the November ballot, on Jan. 19, 2016, the mayor announced that his measure would be moved up to the June ballot.

Meanwhile, on Jan. 12, 2016, Supervisor Jane Kim proposed a competing charter amendment that would increase the on-site requirement to a minimum of 25 percent from 12 percent, and increase the off-site and fee options to a minimum of 33 percent each. Developments with 10-24 units would temporarily be exempt from these increases. Supervisor Kim's proposal also would remove the inclusionary housing requirements from the city charter, and place them instead under the legislative control of the board of supervisors so that necessary adjustments can be made in the future without taking the issue to the voters. Ms. Kim's measure is also scheduled for the June ballot.

The proposed measures in San Francisco come after the California Supreme Court in *California Building Industry Association v. City of San Jose*, 61 Cal. 4th 435 (2015) ruled last June that inclusionary housing laws are a valid exercise of a government's police power and not an unconstitutional taking of property. A request for certiorari in this case is currently pending before the United States Supreme Court.