

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 832 (Bloom) – As Introduced February 17, 2021

SUBJECT: City of Los Angeles: transfer of former redevelopment agency land use plans and functions.

SUMMARY: Makes zoning and land use designations adopted in various underlying governing documents by the City of Los Angeles apply when in conflict with any provision of a redevelopment plan. Specifically, **this bill:**

- 1) Exempts from the California Environmental Quality Act (CEQA) the adoption of Los Angeles City Ordinance No. 186325 on September 27, 2019, and any action by the City of Los Angeles before or after the adoption of the ordinance to transfer all land use related plans and functions of the former redevelopment agency (RDA) [the Community Redevelopment Agency of the City of Los Angeles (CRA/CLA)], including, but not limited to, the adoption of an implementing ordinance or resolution.
- 2) Provides all of the following are effective November 11, 2019:
 - a) All land use related plans and functions of the former CRA/CLA are transferred to the City of Los Angeles. The amendment or repeal of a land use related plan or function from the CRA/CLA is exempt from Community Redevelopment Law (CRL);
 - b) Any land use or development project that is permitted by the City of Los Angeles General Plan, community plan, specific plan, Los Angeles Municipal Code, or other applicable land use plan or zoning ordinance adopted under the authority of the Los Angeles City Charter or the Los Angeles Municipal Code for a property in a redevelopment project area is an allowed land use or development project;
 - c) Any conflicting provision of any redevelopment plan is deferred and superseded by the applicable provision of the City of Los Angeles General Plan, community plan, specific plans, Los Angeles Municipal Code, and any other land use plans or zoning ordinances adopted under the authority of the Los Angeles City Charter or Los Angeles Municipal Code;
 - d) Any provision of any land use related plan or function of the former CRA/CLA that does any of the following has no force and effect:
 - i) Requires the City of Los Angeles to prepare or adopt policies, guidelines, or take any other legislative action;
 - ii) Requires the administration of or places a numerical cap or any other limitation on density, floor area ratio, total dwelling units or buildings, that could limit the development of housing; and,
 - iii) Imposes requirements that rely upon the allocation of tax increment to RDAs.

- 3) States that a special statute is necessary and that a general statute cannot be applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of Los Angeles.
- 4) Includes a severability clause.
- 5) Includes an urgency clause.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author's Statement.** According to the author, "Los Angeles voters approved of Measure JJ and the Transit Oriented Community (TOC) program to maximize the production of affordable and mixed-income housing around transit. AB 832 is a simple fix to sunset more restrictive land use regulations contained in redevelopment plans that conflict with the TOC Program. With a 1.5 million shortfall in housing production, we cannot allow for ambiguities in state law to further delay affordable housing production."
- 2) **Dissolution of Redevelopment.** RDAs were created in the post-World War II era to build communities and eradicate blight. RDAs had authority to create redevelopment project plan areas, freeze the property taxes in the plan area, and collect any tax increment generated in the plan area that resulted from redevelopment efforts. Over time, as a result of Proposition 13 and the resulting loss of property taxes as a source of local revenues, the role of RDAs grew. By 2011, 12 percent of property taxes statewide were redirected to RDAs. Because RDAs were able to capture the tax increment that would normally flow to schools, the state was forced to backfill schools to meet Proposition 98 guarantees, costing the General Fund \$1.3 billion in revenues in 2011. Facing a severe deficit resulting from the recession, in 2011 AB 26X and AB 27X abolished over 400 RDAs throughout the State. Following the resolution of legal challenges, the CRA/CLA and other RDAs dissolved on February 1, 2012.

The CRA/CLA was unique in the state due to size and scope, with over nineteen active redevelopment project areas. No city within the county agreed to take on the role of successor agency. As a result, Governor Brown appointed a Designated Local Authority (DLA) to wind down the operations of the former CRA/CLA. The DLA is required to make payments on debt services, perform activities related to the former CRA/CLA's enforceable obligations, and dispose of the former CRA/CLA assets so that revenues can be shared among taxing entities such as the County, cities, school districts, and other special districts.

- 3) **Transfer of RDA Land Use Authority.** Following the dissolution of RDAs, the Legislature passed subsequent legislation as a part of the 2012-13 budget act allowing the transfer of land-use related plans and functions of former RDAs to the jurisdiction that authorized the creation of the RDA [AB 1484 (Committee on Budget) Chapter 26, Statutes of 2012]. A jurisdiction executing a transfer of land use plans and functions from a former RDA is prohibited from creating new project areas, expanding the territory or boundaries of a project area, or taking any action that would increase the amount of obligated property tax (formerly tax increment) necessary to fulfill any existing enforceable obligation beyond what was authorized as of June 27, 2011. According to the City of Los Angeles, following the dissolution of CRA/CLA, the few remaining staff at the DLA continued to implement the redevelopment plans with limited capacity. The redevelopment plans still require projects to

obtain ministerial and discretionary land use approvals from the DLA and to comply with the City of Los Angeles Zoning Code.

- 4) **Los Angeles City Ordinance 186325.** In December 2018, pursuant to the authority provided to jurisdictions under AB 1484, the Los Angeles City Planning Commission proposed an ordinance and resolution to effectuate the transfer of land use authority from the DLA to the City of Los Angeles to allow the city to immediately begin administering the redevelopment plans. Consistent with existing law, any such local action must be limited to transferring the land use plans and functions. The Los Angeles City Council took final action in September 2019 to approve the transfer and establish administrative procedures for the city to implement the redevelopment plans, with the ordinance taking effect in November of 2019.
- 5) **Aids Healthcare Foundation (AHF) Litigation.** Throughout the city's ordinance adoption process, the AHF alleged that the city's proposed transfer failed to comply with CRL requirements to provide adequate housing. AHF pointed to the requirements in Section 33413 of the Health and Safety Code, which prescribe specific affordability levels for new projects within a project area. AHF also alleged that the action required a full environmental impact report (EIR) under CEQA. Following the adoption of the ordinance, AHF notified the city that it intended to litigate the ordinance. AHF has engaged in a series of lawsuits against the City of Los Angeles seeking to overturn housing development project approvals in redevelopment areas on similar grounds related to CRL and CEQA.
- 6) **Post Dissolution RDA Obligations.** The legislation dissolving RDAs specifically rendered all provisions of the CRL that depend on the allocation of tax increment to RDAs inoperative. This was subsequently litigated and the courts affirmed that cities do not have an enforceable obligation to approve continued payments of set-asides from tax increment to a fund for subsidized housing that was previously mandated under redevelopment law. "As the housing set-asides are premised on the receipt of tax increment, they are accordingly inoperative." *Covarrubias v. Cohen*, 3 Cal. App. 5th 1229. In recent litigation between AHF and the City of Los Angeles related to a project in a former redevelopment area, the trial court found, "The Project does not rely on tax exempt financing that sustained the redevelopment agencies created under the CRL, and, therefore, the 15 percent affordable housing requirement provided in H&S 33413, [subdivision] (b)(2)(A)(i) does not apply to the Project."

The provisions in CRL requiring that a percent of units in RDAs must be made affordable are inextricably linked to the provision of tax increment financing provisions, which have been ruled inoperative.

- 7) **Organizational Actions and CEQA.** CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. While exemptions in the CEQA Guidelines are qualified with certain exceptions (e.g. potential for cumulative impacts of successive projects), they generally exempt projects that are understood to not have an impact on the environment. Among the projects categorically exempt from CEQA are changes in organization of local agencies. Section 15320 of the CEQA Guidelines specifically exempts "changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are

exercised. Examples include but are not limited to... Merger with a city of a district lying entirely within the boundaries of the city.”

Under AB 1484, the action by the City of Los Angeles is effectively limited to the administrative and organizational act of transferring land use related plans and function from a former RDA. The action the statute authorized the city to take appears to be statutorily limited to an action that is already categorically exempt from CEQA. While the ordinance focused on the organizational transfer of administrative duties from the DLA to the City of Los Angeles, this bill will also render unenforceable CRA/CLA policies that placed a numerical cap or any other limitation on density, floor area ratios, total dwelling units or buildings that could limit the development of housing, including affordable housing. Once these provisions are made unenforceable, the land use policies of the former CRA/CLA area currently administered by the DLA would default to the land use policies that apply to the rest of the city.

- 8) **Transit Oriented Communities.** In 2016, the voters in the City of Los Angeles approved Measure JJJ to create a ministerial process for developments with a percentage of affordable housing near transit. This measure became the TOC program. TOC imposes zoning and density requirements on sites near transit. Because redevelopment dissolution did not abolish the redevelopment plans that contain requirements for density, floor area ratios, and limits on dwelling numbers and size, a conflict exists with TOC.

In mid-2018, the DLA released a memorandum articulating its position on the interplay between the land use provisions set forth in its redevelopment plans and the TOC Program. Because its authority over redevelopment plan areas is derived from state law, DLA has taken the position that its land use authority to administer redevelopment plans exceeds that of the City Planning Department. As a result, the land use requirements of the redevelopment plans—in particular, the density limits set by redevelopment plans—trump application of the TOC Program when the two conflict.

- 9) **Bill Summary.** This bill transfers all land use related plans and functions of DLA to the City of Los Angeles, and deems that the land use authority of the city’s general plan and any other adopted land use documents would apply instead of the redevelopment plan. In addition, the bill would exempt from CEQA the ordinance that the City of Los Angeles adopted in 2019, which transferred the land use authority from the DLA to the City of Los Angeles. This bill would make the City responsible for all land use functions of the former CRA/CLA

This bill is sponsored by the City of Los Angeles.

- 10) **Urgency Clause.** This bill contains an urgency clause and requires a 2/3 vote of each house.

- 11) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Permanent CEQA Exemption.** This bill would exempt from CEQA the Los Angeles City Ordinance 186325 and actions taken before or after the adoption of the ordinance in furtherance of implementing the transfer of land use related plans and functions from the DLA to the City. This action would effectively preclude CEQA litigation against the City of Los Angeles related to this organizational transfer. Given that organizational actions are generally exempt from CEQA under existing law, this action may be considered clarifying of existing law. However, the scope of actions considered in “furtherance of

the implementing the transfer” is not strictly defined. While some allowance may be warranted, the Committee may wish to consider if a permanent exemption is necessary.

- b) **Existing Settlement Agreements.** Several stakeholders raised concerns that the transfer of authority under this bill may compromise existing settlement agreements. The Committee may wish to consider clarifying language offered by the author to address some of these concerns.

12) **Committee Amendments.** To address the concerns raised above, the Committee may wish to consider the following amendments:

- a) Limit the CEQA exemption to actions related to the ordinance that are in furtherance of implementing the transfer of land use related plans and functions that are taken by the city prior to December 31, 2023.
- b) Amend the bill with the following language proposed by the author:
 - i) Add intent language to the bill stating, that the bill is not intended to affect any obligation of the City to comply with the Judgement After Appeal in County of Los Angeles v. Board of Directors of the CRA/LA and City of Los Angeles, consolidated with Wiggins v. Board of Directors of the CRA/LA and City of Los Angeles, Los Angeles County Superior Court, Consolidated Case Nos. BC 276472/BC 277539.
 - ii) Restructure Section 34173.5 (d)(4) into two subparagraphs to read as follows:

34173.5 (d):
(4) Imposes a requirement pursuant to a provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670.
(5) Imposes a requirement pursuant to Section 33413.”

13) **Double-Referral.** This bill was heard in the Housing and Community Development Committee, where it passed on an 8-0 vote on April 15, 2021.

14) **Arguments in Support.** According the City of Los Angeles, “AB 832 will streamline the production of affordable and mixed-income housing within redevelopment areas by resolving any and all discrepancies between City land use regulations and Redevelopment plans and providing clarification that our TOC Program incentives may be utilized in all areas of Los Angeles. To do so, AB 832 will exempt ordinances that transfer jurisdiction of Redevelopment plans from CEQA, clarify that jurisdiction over land use regulations of Redevelopment plans are transferred to the City, and clarify that any conflicting provision in any redevelopment plan is superseded by the City’s land use plans and regulations. Moreover, in order to maximize the production of housing, AB 832 will sunset any provision of any Redevelopment plan which places a numerical cap or any limitation on density, floor area ratios, total dwelling units or buildings, or which is dependent on tax increment financing. These measures will resolve any ongoing legal uncertainty that may be hampering housing production, allowing housing projects to move forward and fully employ all critical tools in confronting the ongoing housing crisis.”

15) **Arguments in Opposition.** According to Hollywood Heritage, “AB 832 asks you to allow only Los Angeles to erase its own Ordinance 186325, effective in November 2019. That ordinance followed State law. (LA had finally “transferred” the state-required obligations to continue some of the redevelopment “land use plans and functions” to the City. Nearly all of the other cities in the State accepted 7 years earlier.)”

REGISTERED SUPPORT / OPPOSITION:

Support

City of Los Angeles [SPONSOR]
Abundant Housing LA
California Apartment Association
Central City Association
Council of Infill Builders
Los Angeles City
The Hollywood Partnership

Support If Amended

Aids Healthcare Foundation
Housing Is a Human Right

Opposition

Hollywood Heritage

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958