

**Metropolitan Transportation Commission and Association of Bay Area Governments
Joint MTC ABAG Legislation Committee**

February 10, 2023

Agenda Item 3c

Assembly Bill 84 (Ward): Property Tax Welfare Exemption

Subject:

Provides upfront savings on affordable housing developments by revising the welfare tax exemption from a rebate to upfront savings.

Background and Bill Provisions:

The California Constitution exempts from local property taxes properties owned by nonprofits and used for specified “charitable” purposes. This is known as the “welfare tax exemption.” One of the specified charitable purposes is housing maintained as affordable to lower-income households through a deed restriction.

In practice, if a nonprofit housing developer’s application for a welfare exemption isn’t quickly approved by the Board of Equalization and the county assessor, it must pay the taxes upfront and seek reimbursement. As a result, some nonprofit developers float hundreds of thousands of dollars in tax payments for as many as three years to get the money back without interest once the application is approved. The developers either pay interest to borrow this money or seek additional subsidies from local or state programs, further increasing development costs.

Additionally, affordable housing developers often purchase land subject to recorded covenants restricting its use to affordable housing and then spend a few years piecing together necessary public funding before beginning construction. Based on a survey of a subset of Bay Area county assessors, the general practice is to backdate the welfare exemption only to the start of construction (vs. to the date of the property’s acquisition). This results in developers paying significant taxes that additional state and local housing subsidies must cover.

Finally, all state and federal laws related to affordable housing subsidies require that affordable housing residents must meet specified income limits when they move in, but residents are not required to move out following an income increase. That apartment continues to qualify as affordable for the purpose of being eligible for state and federal funding programs, deed restriction compliance, etc. However, that’s not the case for the welfare exemption. Specific apartments lose the exemption when a resident’s income increases above the limits set in the statute; this increases the property’s operating costs and creates an unstable budgeting environment for the affordable housing property owner. Other properties – those funded by the

Low Income Housing Tax Credit – are permitted to retain the welfare exemption until the resident’s income hits 140 percent of the area median income (AMI) (the “140 percent AMI rule”). This provision of law, however, sunsets in 2028, once again subjecting these properties to increased property tax bills.

Assembly Bill (AB) 84 updates and streamlines the process of applying for and maintaining the welfare exemption by:

- Expanding the 140 percent AMI rule to cover all deed restricted affordable housing and eliminating the sunset.
- Specifying that land restricted for use as affordable housing qualifies for the welfare exemption from the date the restrictions are placed on the property.
- Requiring the county assessor to conditionally grant a welfare exemption within 30 days of application without payment of taxes, subject to retroactive tax payments if the owner or any units are ultimately deemed ineligible.

Recommendation:

Support / ABAG Executive Board Approval

Support / MTC Commission Approval

Discussion:

The welfare tax exemption is a valuable resource for reducing the cost of developing new buildings and acquiring and preserving existing residential properties. One of the first pilots established by the Bay Area Housing Finance Authority – the Welfare Tax Exemption Preservation Program – provides the public subsidy that developers need to qualify for the welfare exemption when preserving existing affordable apartments. AB 84 will reduce the upfront amount of local, regional, or state subsidy required to build or preserve affordable housing by eliminating an inefficient and costly process of payments and refunds. Besides lowering development costs, this change will reduce assessors’ costs tied to processing refund requests and issuing checks. In the case where a developer fails to deliver the promised affordable housing, localities will retain all their current powers to pursue payment of back taxes. For these reasons and consistent with Item 5B in our 2023 Advocacy Program, staff recommends MTC and ABAG adopt a “support” position on AB 84.

Known Positions:

Support

California Housing Partnership Corporation (sponsor)

California Treasurer Malia Cohen (sponsor)

Opposition

No known opposition

Attachments:

None


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