Affordable Housing: What City Attorneys (and Cities) Need to Know

Presentation By

Gabrielle B. Janssens, Goldfarb & Lipman, LLP

Andrew Shen, Renne Public Law Group

Matthew T. Summers, Colantuono, Highsmith, & Whatley, PC

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What is Affordable Housing?

- "Affordable housing"
  - Housing that receives some form of subsidy and where rent is kept below market-rate by some form of deed restriction or law, and where tenants are income screened or subsidized with vouchers

What is Affordable Housing?

- **Income Restricted**
  - Income: Extremely Low (approx. 30% AMI), Very Low (approx. 50% AMI), Low (approx. 60-80% AMI), Moderate (approx. 120% AMI)
- **Rent/Price Restriction**
  - Percentage of income
- **Special Populations**
  - E.g. supportive housing
- **Rental and Homeownership**
- **Public Agency Oversight** – up to 55 years

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How is affordable housing financed?

- Mix of loans, grants, subsidies, and tax credits
- Frequently financed with multiple sources
- **Hard Debt**
  - Typically bears interest and requires fixed payments
- **Soft Debt**
  - Bears interest ranging from 0% to market rate
  - Payments often not required until maturity
  - Payable from cash flow

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How is affordable housing financed?

- **Private Financial Institution** (e.g. Bank)
  - Conventional; "hard" debt
- **Other Private Sources**
  - Foundations and nonprofit intermediaries
- **Government** (Public Agency)
  - Federal, state, local
  - "soft debt"

How is affordable housing financed?

- **Equity** (Tax Credits)
  - Investors, Banks
- (Deferred Developer Fees)
- (Property Tax/Welfare Exemptions)

Sources of Public Funding

- **Federal** (Development Funding)
  - HOME (Home Investment Partnership Act) – HUD
  - CDBG (Community Development Block Grants) – HUD
  - USDA (farmworker)
- **Federal Section 8 Vouchers** (Rental Subsidies) – HUD
  - Project Based vs Tenant
  - RAD & Section 18

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Sources of Public Funding

- **State Department of Housing and Community Development** (HCD)
  - AHSC (Affordable Housing and Sustainable Communities), NPLH (No Place Like Home), IIG (Infill Infrastructure Grant Program), Homekey, Serna, Trust Fund, Etc.
- **CTCAC** (California Tax Credit Allocation Committee) and **CDLAC** (California Debt Limit Allocation Committee)
  - tax credits and tax exempt bond allocation agencies
- **Local Agency Funds** (City, County, Housing Authority, etc.)
  - Pass through or own funds

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Tax Credit (Equity) Financing

- Low-Income Housing Tax Credits (LIHTC)
  - Regulated by IRS; administered by TCAC
  - Dollar for dollar credit in the amount of taxes owed by the Investor

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What is tax credit equity?

- LIHTCs are tax credits similar to what you see on individual tax returns - for every dollar of tax credit received, the purchaser of the credit can reduce a dollar's worth of their federal income tax owed.
- In exchange for the federal tax credits, the investor contributes equity (cash) and receives an ownership interest in the entity (limited partnership) that owns the project
- **Unlike debt, it does not have to be paid back**

Los Income Housing Tax Credits

- Low Income Housing Tax Credit:
  - Developers apply and secure tax credits from state housing finance agencies to allocate to investors for a 10-year compliance period in exchange for a capital contribution (equity). Property will stay affordable for at least 15 years:
    - 4% LIHTC: 30% subsidy financed by tax exempt bonds
      - Typically requires additional "soft resources" which are competitive
    - 9% LIHTC: 70% subsidy
      - Very competitive!

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Structure and Operation of a LIHTC Deal

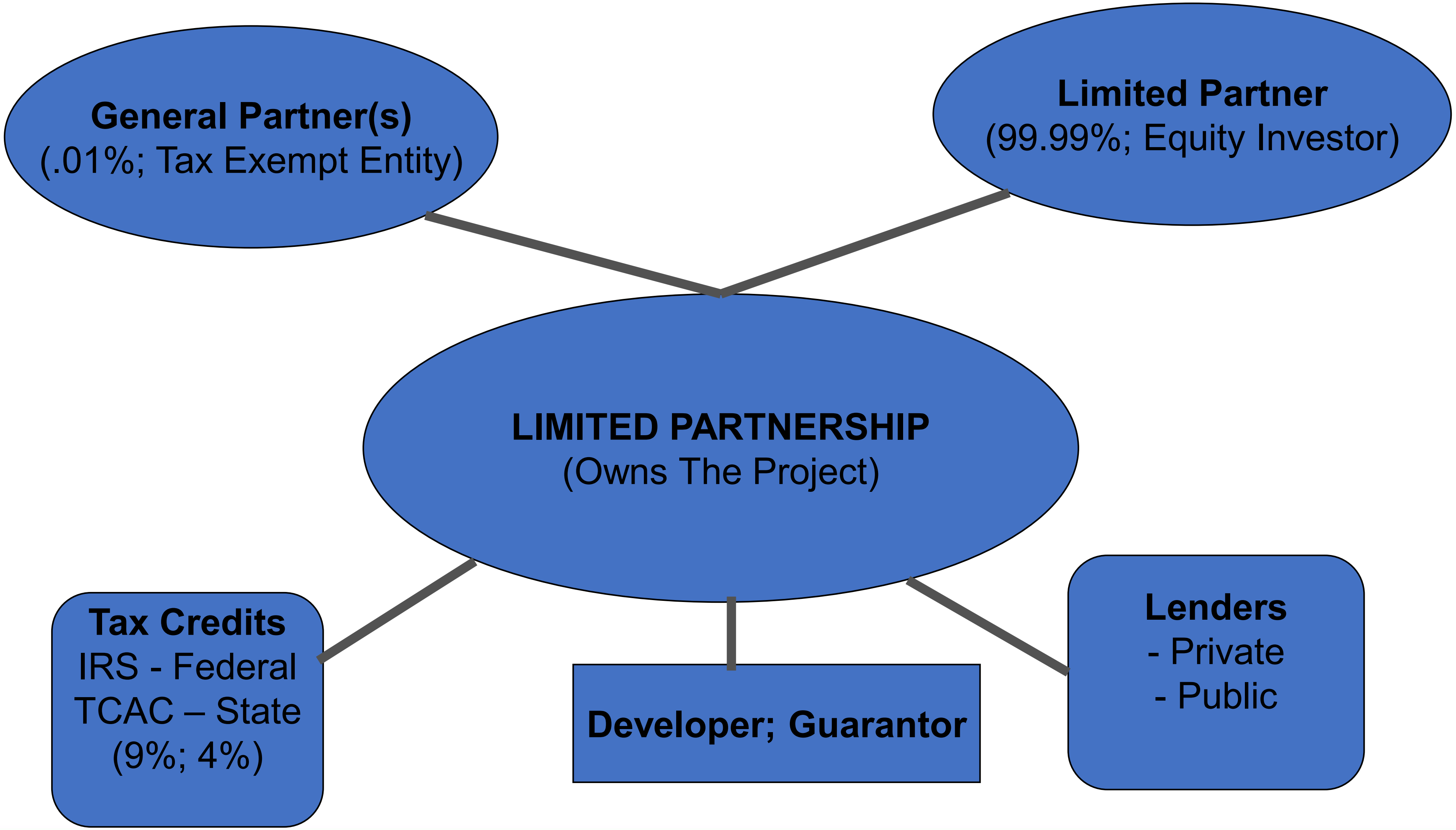
- **Ownership Entity** – LIHTC projects are owned by a limited partnership (LP)
  - Entity of choice because of pass-through treatment of the tax credits
  - Builds, owns and manages the housing project and claims the tax credit
- **Investor**
  - Acts as the limited partner - contributes equity and claims credits for amount invested (i.e., 99.99% owned by the Limited Partner; .01% owned by the General Partner)
- **Developer**
  - Acts as the general partner of the partnership
  - Uses the LIHTC to attract equity to build housing through the Limited Partnership
  - Earns developer fee and partnership management fee for development services and partnership management services

Calculation of Equity

- **Tax Credits** = qualified costs x applicable percentage (either "4%" or "9%" credits)
  - 9% credits = more equity
  - 4% credits = less equity and financed with tax-exempt bonds

- **Equity** = amount of tax credits x the price for each credit (i.e. $0.89 of equity per $1 of credit – the price varies based on negotiations with the investor)

Tax Credit Ownership



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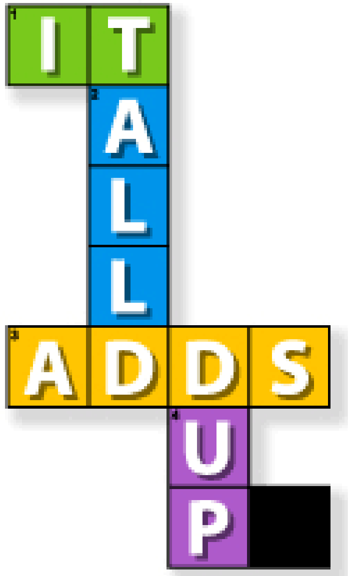
Amount of Equity

- ❑ **Limited Partnership** owner gets allocation of LIHTC from TCAC
- ❑ **Investor Limited Partner** contributes **$** into **Limited Partnership** for LIHTC
- ❑ **Investor Limited Partner** gets tax credits over 10 years + losses from depreciation + % of cash flow
- ❑ **Qualified basis**
  - (Eligible basis x applicable fraction) x credit percentage (4% or 9%) = annual credits
- ❑ Total Credits x 99.99% x price = **Equity**



Closing Issues Specific To Affordable Housing

- Closing an affordable housing project involves multiple parties and unique financing sources
- Many structures require complex tax issues
- Balancing lender and investor requirements can be challenging

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Closing Constraints

- Real Deadlines
  - TCAC Readiness
  - CDLAC (Bond) Readiness
- Self-imposed Deadlines
  - Purchase/Sale Agreements
  - Construction Season

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Compliance Timelines

- **Credit Period** - 10 (or 11) year period after the project receives tax credits
- **Compliance Period** - 15-year period during which the project must meet compliance requirements to avoid recapture of tax credits
- **Extended Use Period** - Occupancy and rent restrictions must remain in place for 55 years (federal government requires 30 years, but CA adds 25 years)

Year 15 Option/ROFR

- **Option:** right to elect to purchase the property or the limited partner's interest in the partnership at a given price for a certain time
  - Greater of: FMV or Debt + Taxes

- **Right of First Refusal:** right to elect to purchase the property at a given price after a third-party offer has been made to purchase the property
  - Section 42(i)(7) price

- **Or a Negotiated Purchase of the Limited Partner Interest**

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Benefits of LIHTC Transaction

- Sale price – price for the property will go to the owner for use in future affordable housing projects or other uses to support the mission of the organization
- Potential for long-term ownership of the affordable project (option to purchase and/or right of first refusal)
- Long-term affordability for the project in line with the mission of the organization

City Attorney Punch List

- Key Tips for Advising Cities on Affordable Housing Applications
- Practical guidance for timely, defensible processing
- Focus on consistency, deadlines, and proactive problem-solving
- Tools to support staff and applicants while protecting City interests

Pre-Application Assessment

- Confirm project description, affordability levels, and unit types
- Identify requests for City financial assistance (land, infrastructure, financing)
- Determine project pathway: SB 35, Density Bonus, Special Housing Overlay, AB 2011/SB 6, or other

Critical Calendar Deadlines

- Permit Streamlining Act: 30-day completeness review for application or resubmittal
- Housing Accountability Act: 30–60 days for code consistency determination
- SB 330: 180 days for applicant to submit full application after pre-application
- CEQA timelines: 180 days for EIR, 60 days for Negative Declaration or exemption

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Build the Project Team

- Assign key staff: planner, city attorney, public works, finance
- Engage consultants early: CEQA, traffic, financial, or specialized experts
- Create internal tracking system to monitor deadlines and deliverables

Policy Direction & Risk Awareness

- Seek early City Council input when appropriate
  (Within Housing Accountability Act limits)
- Identify potential litigation risk and options for resolution
- Establish legal strategy for likely high-profile or controversial projects

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Identify Issues Early

- Flag unique project concerns at the outset
- Share issues with internal team and applicant to avoid surprises
- Recognize affordable developers' financial constraints—address deal-breakers early

Coordinate & Communicate

- Schedule standing meetings for complex projects
- Provide clear guidance on housing laws, CEQA, and local standards
- Document key decisions to reduce disputes and maintain timeline control

Map the Project Path

- Engage developers early to chart likely review steps and approvals
- Identify commissions and potential appeals (e.g., Historic Preservation, Planning)
- Share processing plan with applicant to provide timeline certainty

Case Study – Ojai Cabrillo Economic Development Corporation

- 50 Units – All Low and Very Low Income Affordable
- Eight Month Land Use Entitlement Process: SB 330 Pre-Application to SB 35 Application to Final Council Approval
- Unanimous City Council Approval

Site Overview

- Two-acre vacant lot
- Base zoning: Light Manufacturing (M-1) with Special Housing Overlay
- Near Ojai Valley Trail and Soule Park

- Modern Farmhouse Design;
- Light Industrial Area, Adjacent to Self-Storage & County Affordable Housing Complex

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Project Challenges

- Community Opposition
- Zoning & Development Standards (Industrial base zone, height limits, parking ratios)
- Siting Concerns – adjacency to Whispering Oaks community
- Application Timing & Tribal Consultation – Required before SB 35 Application Submittal
- Negotiation of Conditions (e.g. stormwater compliance, sidewalks, affordable unit mix)

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Solutions

- Developer & Supporters showed 100% Affordable Project Meets Community Needs
- Zoning & Standards Met via Special Housing Overlay, Density Bonus & SB 35 Streamlining
- Iterative Design Adjustments addressed siting concerns
- SB 35 Tribal Consultation completed – no comments received
- Conditions resolved through negotiation to ensure feasibility and consistency with Ojai precedents

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Project Rendering- Approved

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Recommendations

- Engage Early & Regularly with Community Development, City Attorney, and Developer
- Conduct Community Consultations & Stakeholder Discussions
- Drive Site/Design & Condition Adjustments by Project Needs & Community Input
- Example: Council adjusted default affordable unit mix to enhance tax credit compliance
- Example: Developer lowered ground floor plate to reduce visual impact while fitting 3 stories for 50 units

Common Issues

- Need for flexibility (future council approvals, delegation to staff)
- Sharing perspectives of city/community/council
- What is the city's process?
- Setting expectations

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Common Issues

- Impact Fees
- Cost recovery provisions
- If city-owned land, how is land provided to developer? For how long?
- If city-owned land, what if project runs into problems?
- Financial expectations: potential ground lease payments, or return on investment
- Structure and terms of any loan agreement
- Affordability restrictions – and subordination

Local Programs

- Why go local?
- Familiarity with community
- Space for innovation
- May provide developer with better, speedier alternative to state affordable housing programs

Local Programs

- Inclusionary housing fees
- Type of impact fee
- On-site, off-site vs. payment of fee
- Litigation
  - *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435
  - *Yu v. City of East Palo Alto* (2025), N.D. Cal., filed July 31, 2025

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Local Programs

- Density Bonus Laws
- What are density bonus laws?
- State law: floor but not a ceiling
- Alternatives:
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    - Los Angeles

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Local Programs

- Local transit-oriented development
- Encourage density and use of public transit (sustainability)
- Examples:
  - El Cerrito
  - Oakland (Fruitvale)

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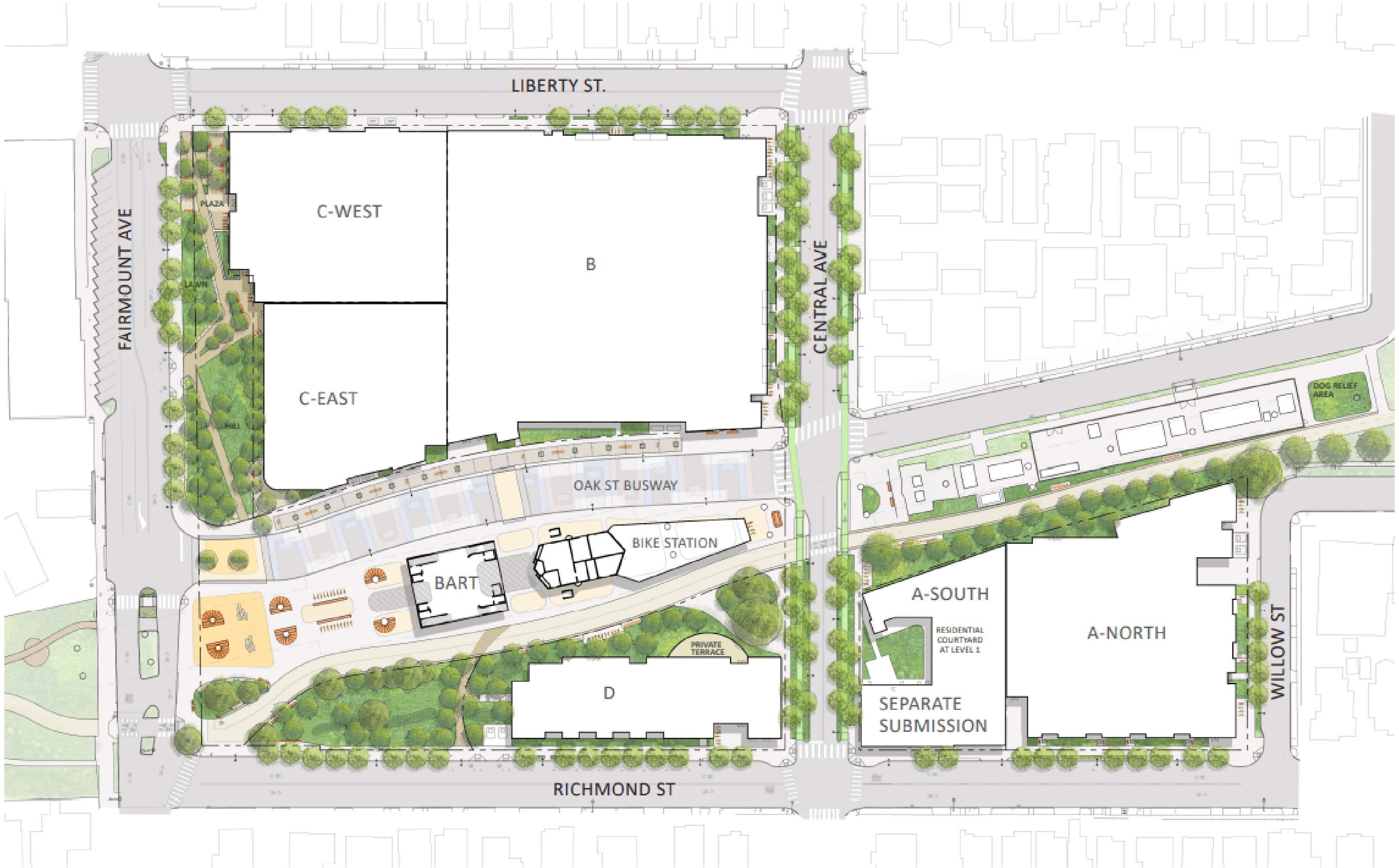
Local Programs (El Cerrito)



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Local Programs

- Educator housing: including teachers, paraeducators and early childhood education providers
- Decrease turnover and commute time
- Projects:
  - San Francisco (Shirley Chisholm Village)
  - Daly City (705 Serramonte)

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Local Programs (San Francisco)

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“Small” Steps

- Utility hook-ups
- Flexibility with zoning changes
- Support for federal earmarks
- Assistance with funding applications
- Outreach to local affordable housing developers
- Engagement with communities and residents

Questions?
Concerns?
Discussion