



# Workforce Housing

## Legal, Tax, and Zoning Issues

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## OVERVIEW

- Teacher Housing Act of 2016
- Zoning
- Jurisdiction
- Taxes & Fees
- Selection and Acquisition
- Development and Project Delivery
- Property Management



## LEGISLATIVE SUPPORT

- **SB 1413 [Teacher Housing Act of 2016]**
- To facilitate the acquisition, construction, rehabilitation, and preservation of affordable rental housing for teachers and school district employees.
- Finds that students and community are benefitted by teachers living in the community. Finds that a lack of affordable housing creates barriers to effective teaching and retention.



# TEACHER HOUSING ACT

- Provides that a school district may establish and implement programs that, among other things, do the following:
  - Leverage federal, state, local public, and nonprofit program fiscal resources
  - Promote public and private partnerships
  - Foster innovative financing opportunities
  - Dedicate school district owned land to development of affordable rental housing and restrict occupancy to district employees



## TEACHER HOUSING ACT

- Permits school districts and developers in receipt of local or state funds designated for affordable rental housing to restrict occupancy to teachers and employees.
- Beware: Generally, receipt of federal, state, local funds for project will still come w/ requirements that those funds be used for low to moderate income. Before accepting, ensure that staff who need housing fall under those limits.



# Zoning

- Zoning is a means of grouping similar land uses together to minimize land use conflicts
- Residential neighborhoods are zoned for different densities (R-1, R-2, R-3)
  - This translates into the pattern of development in the vicinity: single-family detached residential, duplexes, apartment buildings
  - Cities want forms of development that fit existing patterns

# Zoning



- Conversion of school sites presents zoning issues
- Since most district-owned properties are in R-1 zones, the use “of right” would be SFR
- SFR is least feasible and sustainable form of district-owned affordable workforce housing
- Wait, what about Cal. Gov’t Code § 53094?
  - “[T]he governing board of a school district . . . by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district. The governing board of the school district may not take this action when the proposed use of the property by the school district is for **nonclassroom facilities, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings.**”

# Zoning

- Bottom line: Use of historical school sites for workforce housing probably must comply with the underlying zoning of the parcel



# Zoning

- Solution: Re-zoning to higher density residential
  - Opportunities: Medium-density residential
  - Requires cooperation with city
  - Requires addressing neighborhood impacts of proposed project

| Location  | Acreage           | Zoned | Area           | Notes  |
|---|-------------------|-------|----------------|--|
| Belle Haven<br>415 Ivy Drive, Menlo Park                | 8.20              | PF    | R1U            |  |
| Brentwood Academy<br>2086 Clarke Street, EPA            | 16.93<br>combined | R-1   | R-1,<br>PUD    | Near Mixed-Use, Multi-Fam.                   |
| McNair Middle School<br>2033 Pulgas Ave., EPA           |                   | R-1   | R-1,<br>PUD    | Large open space with multiple access points |
| Child Development Ctr.<br>951 O'Connor Street, EPA      | 1.0               | R-1   | R-1,<br>PUD    | Empty field available in 3 years             |
| Cesar Chavez/Los Robles<br>2450 Ralmar Ave., EPA        | 22.8              | R-1   | R-1            |  |
| Willow Oaks/Menlo Oaks<br>620 Willow Rd/475 Pope St, MP | 15.84             | PF    | PF, R3,<br>R1U | Near Mixed-Use, Multi-Fam.                   |
| Costano/49ers Academy<br>2695 Fordham Street, EPA       | 10.26             | R-1   | R-1, M2        |  |
| EPACS<br>1286 Runnymede Street, EPA                     | 8.0               | R-1   | R-1            |  |
| Flood School<br>320 Sheridan Dr., Menlo Park            | 2.496             | R1U   | R1U            | Limited access, Zoning;                      |
| District Office<br>2120 Euclid, EPA                     | 8.43              | COSC  | R-1, C-1       | Near Mixed-Use                               |



## DSA OR LOCAL JURISDICTION?

- Department of State Architect (DSA) has jurisdiction over **school building** construction.
  - Reviews plans, specifications, and construction for compliance w/ Title 24;
  - § 4-314 states that school building includes dwellings used by pupils, teachers, and school employees that are a part of campus where **primary use is for school purposes.**



## DSA OR LOCAL JURISDICTION?

- Primary use of most workforce housing is not school instruction or activities. Exclusive purpose is to house school staff.
- **Unless the particular staff housing project contemplates a mixed-use building – with school instruction rooms and staff dwelling units within the same structure – district owned staff housing buildings on school property are likely not subject to DSA’s general jurisdiction.**
- Specify in construction agreement and development documents that building will not be used for school instruction or activities.



# Taxes and Fees: Possessory

## Interest

- **Property Taxation**

- Generally, school district property is exempt from property taxation.
- But, a private interest in exempt property may create a taxable possessory interest.
- Must staff who live in below market units pay the possessory interest tax?



## POSSESSORY INTEREST TAX

- No. Staff are exempt from possessory interest tax if use of the property is reasonably necessary to the fulfillment of educational purpose. Rental to faculty is an education use and thus exempt from possessory interest tax.
  - Exemption applies only to staff of the public entity.
  - No exemption if there is a private interest or profit from use of property (e.g., privately owned residence on public land is subject to possessory interest tax)





# PERSONAL INCOME TAXES

- **Federal Personal Income Taxation**

- Generally, gross income includes everything received as compensation from services including fringe benefits.

**Exception 1.** The value of employer provided housing is not a taxable benefit if:

1. The housing is on the business premises of the employer;
2. The housing is furnished for the convenience of the employer;
3. The employee is required to accept such housing as condition of employment.

UNLIKELY DISTRICTS WILL SATISFY THE 3<sup>RD</sup> REQUIREMENT

- **Federal Personal Income Taxation**

**Exception 2.** All or a portion of the value of qualified campus lodging may be excluded if:

1. The housing is located on, in proximity of, a campus;
2. The housing is furnished to an employee or immediate family;
3. The employee pays adequate rent, which is defined as:
  - 5% of the appraised value of the lodging; or
  - The average of rental paid by non-students and faculty for lodging.

WORK WITH COUNSEL IN ADVANCE OF PROJECT DEVELOPMENT TO DEVELOP TAX FRIENDLY RENTAL MODEL.



# FEES

- **Fees**

- Staff housing projects must comply w/ local jurisdiction permit process.
- Process typically includes payment of fees for plan reviewing, engineering, fire safety, park in lieu, and myriad other fees.
- District may assert exemption from a number of fees.
  - Consider political consequences of asserting exemption.



## FEES

- Gov't Code prohibit one public agency from charging another for performance of official services.
  - However, may charge fees to defray the cost of inspection and plan check services
    - Consider requesting time and materials calculation



## FEES

- Gov't Code 54999 allows charge of fees to public entity for specifically enumerated items, including among other things:
  - Water
  - Light
  - Power
  - Flood control
  - Sewer collection, treatment, disposal



## FEES

- School District may assert exemption for:
  - School Impact
  - Park-in-Lieu
  - General Plan Maintenance
  - City Art
  - Technology
  - Capacity Charges



# Acquisition

- Certificate of participation
- Sale of surplus property
- General Obligation bond
- Pay as you go
- Lease-leaseback
- Developer partnership (Joint Use/Joint Occupancy)





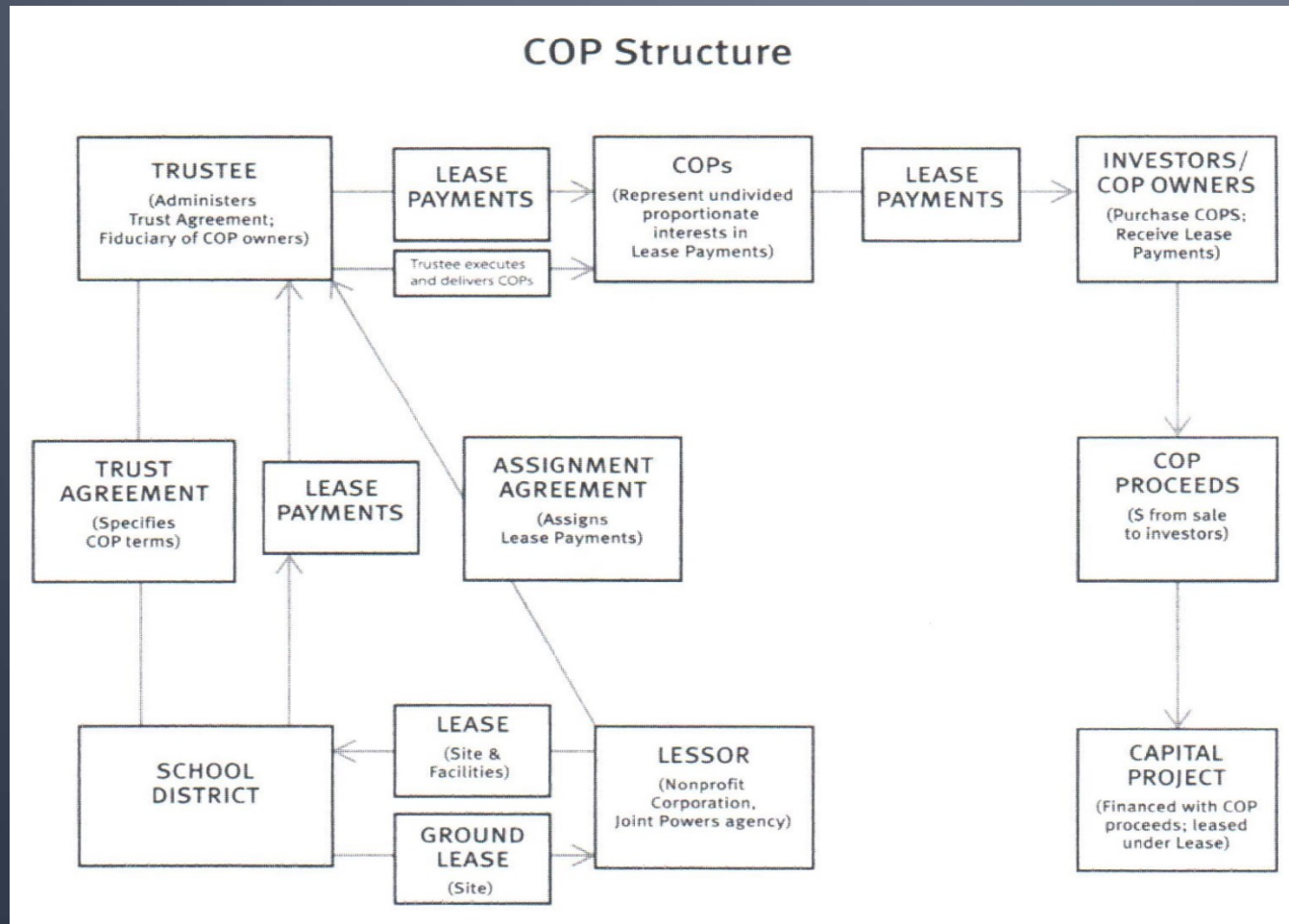
## Financing: COP

### Certificate of Participation

- Lease financing agreements in the form of tax exempt securities similar to bonds
- Property financed with expected rents as security.
- E.g., Community College District
  - Using this model the CCD offered essentially a 50% discount on rent and due to area rent increases is still slated to pay the COP early.



# Financing: Certificate of Participation





## Financing: Sale of Surplus Property

- Proceeds from sales of surplus site
- EC § 17462 Generally, funds derived from sale of surplus property **shall be used for capital outlay** or costs of maintenance of school district property that the governing board determines will not recur within 5 years.
- Workforce housing constitutes capital outlay.



## Financing: Developer Partnership

- A school district may enter into leases and agreements relating to school property to be used jointly by the school district and any private person, firm, or corporation.
- The joint occupancy agreement must require the private entity to construct or provide for the construction of a building on the property for joint use by the school district and private entity.
- A joint occupancy agreement allows school districts to maintain ownership of the property and to turn over all responsibility of on-going operations to the leaseholder.

# Legal Considerations

- CEQA
  - Initial Study (IS)
  - Mitigated Negative Declaration
  - Environmental Impact Report (DEIR)
- Study conducted by environmental consulting firm. Public Entity will be lead (and hence reviewing) agency.







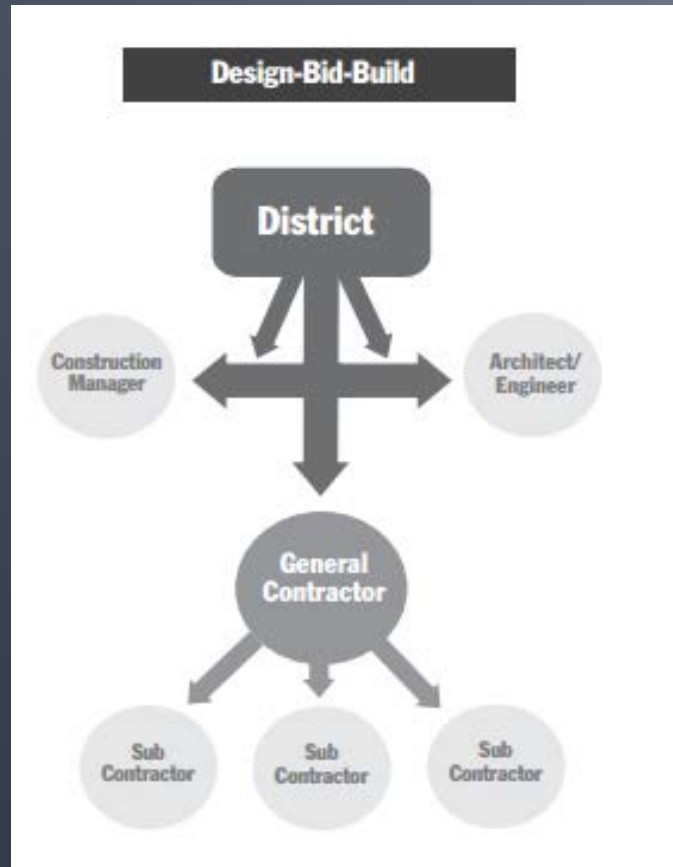
## Legal Considerations (After Site Selection)

### Selection of Construction Delivery Method

- **Design-Bid-Build** : Select architect to draft plans (RFQ) and then publicly bid construction awarding to lowest responsible
- **Design Build**: Select developer through RFP based on value or lowest responsible bid. Developer retains project architect, engineer, design team, and sub-contractors.
- **Lease-leaseback**: AB 2316 revision. Select developer based on best value to perform preconstruction and construction services and create construction agreement w/ Guaranteed Maximum Price.



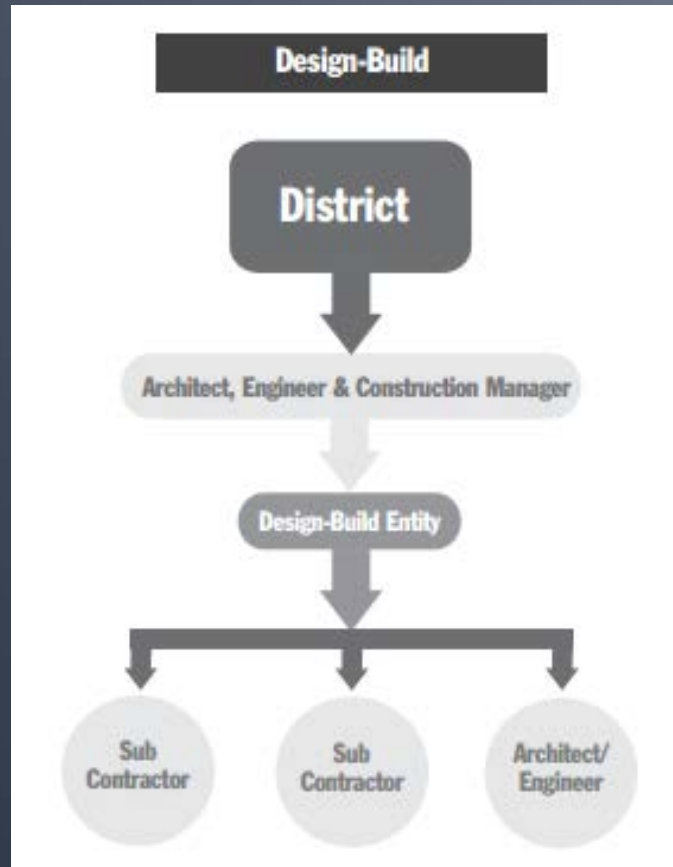
# DESIGN-BID-BUILD



- Select Architect and Construction Manager based on competence and Professional Qualifications.
- Architect Drafts Detailed Plans and Specifications.
- General Contractor selected based on Lowest Responsive Responsible Bid.



# Design-Build



- Select Architect & Engineer based on competence and professional competence to draft 30% design documents.
- Select Design-Build Entity based on best value; combination of qualitative factors and cost.
- Project must be over statutorily defined value.



## Lease-Leaseback

- Public Agency selects LLB entity for pre-construction and construction services through best value selection process.
- Agency leases property to LLB entity for nominal fee (\$1).
- LLB entity agrees to construct facilities for a GMP and back to Agency.
- Agency pays lease in amount of the cost of construction and takes ownership of the facility.
  - One CT has held that payment period should extend beyond construction period; originally financing method.



# MANAGEMENT OF PROPERTY

- Non-Profit Housing Management Entity
  - Allows public entity to avoid acting as employer and landlord. Allows for creation of fund for long-term maintenance.



## QUESTIONS?

- Superintendent Memoranda:
  - Does DSA have jurisdiction?
  - Possessory Interest Tax
  - Personal Income Tax
  - Collective Bargaining Implications
  - AB 2316 (Lease Leaseback Legislation)
  - Teacher Housing Act of 2016
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