



# Regional Housing Technical Assistance:

# Impact of New Housing Legislation

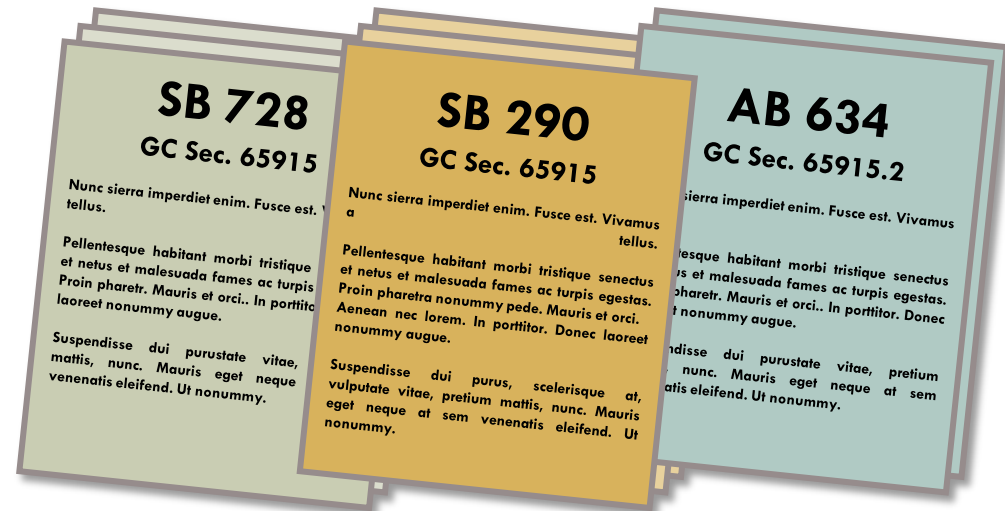
November 30, 2021

# IMPACT OF NEW HOUSING LEGISLATION

November 30, 2021

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# OVERVIEW

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- General Plan and Housing Element Updates
- Housing Development Approvals
- Density Bonus Changes
- Impact Fees
- Other Legislation Impacting Localities

# **GENERAL PLAN & HOUSING ELEMENT**

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# HOUSING ELEMENTS: TIMING

AB 215: CODIFIED AT GOVERNMENT CODE SECTION 65585(B)

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- Due date (January 31, 2023) has not changed, but **more review time is now needed:**
  - ▣ Public review of first draft = 30 days
  - ▣ Incorporation of comments = at least 10 business days
    - This must be done before submitting to HCD.
  - ▣ Subsequent drafts = noticed at least 7 days before submitting to HCD
  - ▣ HCD review = 90 days for first draft; 60 days subsequent drafts

# HOUSING ELEMENTS: AFFH

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- **In practice, nothing has changed, but now is in statute**
  - ▣ HCD AFFH Guidelines already incorporate these requirements
  
- AB 1304 (Gov. Code Sec. 8899.50): Must administer housing programs and activities to affirmatively further fair housing
  
- AB 1398 (changes Gov. Code Sec. 65583)
  - ▣ Site inventory and analysis must include AFFH analysis; regional historical origins and current policies/practices



# HOUSING ELEMENTS: REZONING

AB 1398: CODIFIED AT GOVERNMENT CODE SECTION 65583(C)(1)(A)

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- If housing element found conforming by HCD is not adopted within 120 days of due date, then must rezone within **one year** of due date (by 1/31/24)
  - (rather than 3 years and 120 days)
  - **No more four-year elements, regardless of when adopted**
  
- HCD has stated that rezoning occurring after the housing element due date (1/31/23) must provide for by-right approval

# HOUSING ELEMENTS: REZONING

AB 1398: CODIFIED AT GOVERNMENT CODE SECTION 65588(E)(4)(C)

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- For 6<sup>th</sup> cycle update and going forward:
  - ▣ If rezoning not done by deadline, HCD may revoke any previous findings that housing element is in compliance
  - ▣ If housing element adopted more than one year after the due date, will not be found in compliance until rezoning is completed



# ANNUAL PROGRESS REPORTS

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- **SB 290 (Government Code Section 65400):** report density bonus lower income student housing development
- **SB 9 (Government Code Sections 65852.21; 66411.7):** report SB 9 units and urban lot splits
- **AB 787 (Government Code Section 65400.2):** may report converted deed restricted moderate income units

# QUESTIONS?

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# HOUSING DEVELOPMENT APPROVALS

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# SB 8: HOUSING DEVELOPMENT APPROVALS

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- **New definition of “housing development project”**  
includes projects with:
  - *no* discretionary approvals
  - one-unit projects.
- This definition **does not impact** the HAA.
- **Does impact** Permit Streamlining Act and Housing Crisis Act.

# SB 8: HOUSING DEVELOPMENT APPROVALS

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- **30-day completeness deadline** will apply to:
  - SB 35 projects
  - ADUs
  - SB 9 projects
  - Single-family homes
- New definition also applies to the **five-meeting rule** and **replacement housing requirements**.

# SB 8: REPLACEMENT HOUSING PROVISIONS

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- **Existing provisions:** “replace” “protected” units that are demolished
- “Protected” units include:
  - ▣ Rented by lower income households
  - ▣ Subject to any form of rent control (note state rent control)
  - ▣ Deed restricted
  - ▣ “Ellis’ed” in last 10 years
- “Replace” = same # of units, same # bedrooms, same # lower income units

# SB 8: REPLACEMENT HOUSING CHANGES

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- Extended to **projects with one or more units**
  - ▣ Example: proposal to remove duplex and replace with s-f home
  - ▣ Two units must be built
- **Protected single-family homes** replaced by 2+ units
  - ▣ Unit can be smaller with no more than 3 bedrooms
- Special rules for **new affordable projects**
  - ▣ Non-qualifying residents don't have right to return to comparable unit



# SB 8: REPLACEMENT HOUSING CHANGES

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- Relocation benefits and right to return to comparable unit **limited to lower income households**
  - Right of first return excludes replacement of one unit with one single-family home

# SB 478: FLOOR AREA RATIOS

CODIFIED AT GOVERNMENT CODE SECTION 65913.11

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- 3-10 units in a **multifamily or mixed-use zone**
- Floor Area Ratio:
  - ▣ FAR minimum of 1.0 for 3-7 units,
  - ▣ FAR minimum of 1.25 for 8-10 units
- Other zoning standards apply (lot coverage exception)
- Not a historic site
- Cannot deny project up to 10 units because substandard lot size

# SB 10: UPZONING

CODIFIED AT GOVERNMENT CODE SECTION 65913.5

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- Gives the **OPTION** of zoning a residential/mixed-use parcel for up to 10 units on infill sites and in transit-rich areas.
- Must find that increased density is consistent with AFFH
- Advantages:
  - ▣ May override local initiative by a 2/3 vote unless an open space initiative
  - ▣ Ordinance is exempt from CEQA (but projects are not)
- Disadvantages:
  - ▣ **Can never downzone site**
  - ▣ Sites subject to 1.25 FAR

# DENSITY BONUS

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# SB 728: PURCHASE OF DENSITY BONUS UNITS

CODIFIED AT GOV. CODE SECTION 65915(C)(2)

20

- “Qualified nonprofit housing corporations” may purchase for-sale affordable units
  - ▣ Nonprofit must have 501(c)(3) exemption, have welfare exemption, and sell to low-income families with no-interest loan
  - ▣ Must record contract meeting specified conditions

# SB 290: DENSITY BONUS LAW

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- **Moderate-income units may be located in any for-sale project, not just “common interest” developments**
- **Cannot deny incentive/concession or waiver because of “specific adverse impact on the **physical environment;**” only for health or safety impact**

# AB 634: LOCAL AFFORDABILITY RESTRICTIONS

CODIFIED AT GOV. CODE SECTION 65915.2

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- Local inclusionary ordinance can require an affordability period that is **longer than 55 years**



# QUESTIONS?

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# IMPACT FEES

# AB 602: IMPACT FEE NEXUS STUDY REQUIREMENTS

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- 1) Prior to adoption of fee
- 2) Justification for proposed public facility service level
- 3) Existing Mitigation Fee Act requirements
- 4) If supporting fee increase, review support for original fee amount

# AB 602: IMPACT FEE CALCULATION

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- 5) Two Fee Calculation Methods after July 1, 2022**
  - i. Proportionately to square footage** of the proposed units
  - ii. Alternative basis if:**
    - square footage is not appropriate;
    - Basis bears reasonable relationship between fee and burden; AND
    - No disproportionate harm to smaller developments
- Note: different fees OK for different types of developments

# AB 602: IMPACT FEE NEXUS STUDY REQUIREMENTS

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- 6) If large jurisdiction, **study needs capital improvement plan** (applies to all ABAG counties except Napa)
- 7) Study adopted at public hearing with at least 30 days' notice
- 8) Updated at least every 8 years, starting January 1, 2022

# AB 602: IMPACT FEE NEXUS STUDY REQUIREMENTS

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## □ Additional Notes:

- May use Study Template developed by HCD
  - Available by January 1, 2023.
  - Includes method for calculating the feasibility of housing being built within a given fee level
- **Not applicable to water and sewer fees**
- Mitigation Fee Act still applies

# AB 602: FEE REQUEST & REPORTING

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- In General:
  - ▣ written fee schedule or a link directly to the written fee schedule **on internet website**
- Project-Specific:
  - ▣ ***request* the total fees upon issuance of a certificate of occupancy or final inspection**, whichever occurs last
  - ▣ post information online
  - ▣ update *at least twice per year*
  - ▣ Disclaimers permitted



# AB 571: IMPACT FEES & AFFORDABLE HOUSING UNITS

CODIFIED AT GOV. CODE SECTION 65915.1

30

- **Cannot charge affordable housing fee to affordable units.**
  - ▣ For Density Bonus Law purposes, affordable housing impact fees (including inclusionary zoning fees and in-lieu fees) may not be imposed on affordable units

# QUESTIONS?

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# OTHER LEGISLATIVE CHANGES

# AB 491: MIXED-INCOME STRUCTURES

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- In a mixed-income multifamily structure, **affordable housing residents must have same access** (as market-rate unit occupants) to:
  - ▣ The common entrances of the structure
  - ▣ The common areas and amenities of the structure
- Cannot isolate all affordable units on **specific floor or area of floor**
- “Affordable housing unit” = both **low- or moderate-income** units
- Ensure developer compliance when enforcing onsite inclusionary housing requirements

# AB 345: CONVEYANCE OF ADU'S

CODIFIED AT GOVERNMENT CODE SECTION 65852.26

34

- **Must allow separate conveyance or sale of ADUs developed by qualified nonprofit corporations**
  - ▣ Mandates previously optional provision
- Same definition of “qualified nonprofit corporation”
- Requires complicated tenancy in common provisions

# AB 838: ENFORCEMENT RESPONSE TO COMPLAINTS

CODIFIED AT GOVERNMENT CODE SECTION 17970.5

35

- **Imposes rules for enforcement of substandard building complaints**
  1. Inspect as promptly as request for final inspection
    - May not be subject to any “unreasonable conditions”
  2. Document any violations and substandard conditions
  3. Inform owner of violations and corrective actions and schedule reinspection
- **May not collect a fee from property owner for inspections or reports**

# AB 803: STARTER HOME REVITALIZATION ACT

CODIFIED AT GOVERNMENT CODE SECTION 66499.40

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- Eliminates minimum lot sizes to encourage zero lot line detached homes
- Proposed development must meet numerous criteria, including –
  - ▣ Multifamily residential zone
  - ▣ Maximum five acres
  - ▣ Single-family homes only
  - ▣ Site complies with existing density and setbacks to other sites
- May impose conditions not in conflict with the Act
- Utility likely to be limited by onerous requirements

# QUESTIONS?

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# KEY TAKEAWAYS

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- **Add time for public review of draft housing element**
- 30 more days for HCD review of first draft
- NO four-year element; **BUT one year to complete rezoning if late; “by right” approval if upzone past due date**
- **30-day completeness** required for SB 35, ADUs, SB 9 projects, single-family homes
- **SB 478 FAR increases** for 3-10 units

# KEY TAKEAWAYS

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- **Specific requirements for nexus study after July 1, 2022**
  - ▣ Charge by sq. ft. or justify
  - ▣ Must ask developers for total fees at final inspection
  
- **In mixed-income building**, units cannot all be on one floor or one area of one floor; must have common entrance and access to common areas
  
- **Required response time** to habitability complaints






# Thank You.

For more information

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 Association of Bay Area Governments

Technical Assistance  
for Local Planning  
**HOUSING**