



# Town of Fairfax: Changes to Housing and Land Use Law 2020 Legislative Update

*Presented by*

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# Overview

1. **Changes to Housing Accountability Act**
2. **Changes to SB 35 (Streamlined Processing);**
3. **COVID-Related Extensions;**
4. **Other Incentives & Penalties;**
5. **Density Bonus Refresher, AB 2345**
6. **State Mandates for General Plan Updates**
7. **RHNA Options**



# Housing Accountability Act ~ prior changes

- **Housing Accountability Act (Gov't C. § 65589.5):**
  - Limits local discretion to deny, condition or delay certain housing projects;
  - In 2019, SB 330 amended HAA to allow applicants to vest their right to proceed under a municipality's then-existing land use regulations upon submission of a "preliminary application."



# Housing Accountability Act ~ SB 1030

## A Couple of Tweaks

- Allows developer to skip submission of a preliminary application to have “complete application” deemed complete with full application;
- Excludes a density bonus increase in units from triggering resubmittal of application.



# Streamlined Processing (SB 35)

- **Government Code § 65913.4 (Eff. 1/1/2018)**
  - Applies in cities/towns that are not meeting their Regional Housing Need Allocation (RHNA) goal for construction of above-moderate income housing and/or housing for households below 80% area median income (AMI) via issued building permits/submitted report.
  - Amends Government Code Section 65913.4 to require local entities to streamline the approval of certain housing projects by providing a ministerial approval process.



# Amending SB 35 ~ Tribal Consultations (AB 168)

- Developers must submit a notice of intent to local agencies via a preliminary application before proceeding under SB 35;
- Local agencies, within 30 days of receiving preliminary application, must invite California Native American Tribes to consult with them regarding a proposed development's potential effects on any tribal cultural resources;
- No agreement with Tribes on resource impact of development → No submission of SB 35 application.



# Amending SB 35 ~ Clarifying Limits on Local Discretion (AB 831)

- Local agency discretion limited re: review and approval of public improvements necessary to complete an SB 35 project;
- SB 35 projects may be modified following SB 35 approval and local agency's discretion in reviewing such modification requests is limited;
- Two-thirds of qualifying mixed-use project must be dedicated to residential uses. *Clarified.*



# COVID-Related Extensions ~ Residential Development Entitlements (AB 1561)

“Housing entitlements” issued and in effect prior to **March 4, 2020** and set to expire prior to **December 31, 2021** → extension of 18 months

- “Housing entitlements” broadly defined but explicitly excludes
  - development agreements,
  - SB 330 preliminary applications, and
  - SB 35-approved development applications
- Applicable to “housing development projects,” which includes mixed-use developments in which at least 2/3 of square footage of the development is designated for residential use
- Local governments are not precluded from further granting extensions to existing entitlements



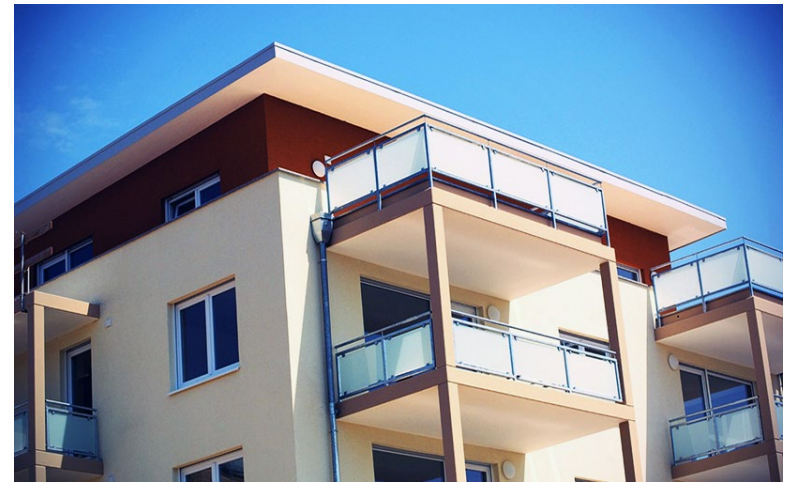
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# COVID-Related Extensions ~ Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088)

- March 1, 2020, and January 31, 2021 (“Covered Period”);
- Renters have until March 2022 to repay any deferred rent accruing during the Covered Period as a result of “COVID-19-related financial distress”;
- Statutory notices available on California Department of Real Estate website.



# More Sticks and Carrots to Build Affordable Housing ~ Higher Density for Mod / Above-Mod Income (AB 725)

- Begins in January 2022
- Medium- to high-density housing for moderate and above moderate-income households;
- Increase housing density for higher income earners;
- 25 percent of sites for moderate income and 25 percent of sites for above moderate income → at least four units of housing, instead of single-family housing;



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# Density Bonus Refresher

- California state law: Government Code § 65915, et seq.
- Enacted 1979 to incentivize production of affordable housing.
  - Mission creep: seniors; foster youth; the unhoused; disabled veterans.
- Lack of local ordinance ≠ inapplicable



# Density Bonus Refresher

- “***Density Bonus***” means “density increase over the ***otherwise maximum allowable gross residential density*** as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.”
- Duration of the affordability requirements: 55 years for very-low or low-income rental units, could be longer if required by project financing or rental subsidy.



# Density Bonus Refresher

- Developers agree to produce qualifying project in exchange for:
  - Density bonus
  - Concessions/incentives
  - Waivers of development standards
  - Parking reductions (if conditions met)
- In exchange, town gets affordable housing (or other qualifying project) that is guaranteed to remain so for specified durations



# More Sticks and Carrots to Build Affordable Housing ~ Density Bonus Increase (AB 2345)

- Effective as of January 1, 2021;
- Increases maximum density bonus from thirty-five percent (35%) to fifty percent (50%).
  - To be eligible for maximum bonus, project must set aside at least
    - (i) fifteen percent (15%) [up from 11%] of total units for very low income households,
    - (ii) twenty-four percent (24%) [up from 20%] of total units for low income households, or
    - (iii) forty-four percent (44%) [up from 40%] of for-sale units for moderate income households.
- Local inclusionary zoning ordinance units → OK for state Density Bonus Law;
- State-mandated parking ratios;
- Local discretion to grant more waivers or reductions in development standards (major transit stop).



# Updates to General Plan Housing & Safety Elements, Environmental Justice

## *Housing Element (“HE”):*

- AB 1561 (2020):
  - Analyze constraints on housing for persons with protected characteristics.
  - Housing Element (HE): emergency shelters as permitted use.
- Penalty: Instead of 8-yr cycle, at least two 4-yr
  - RISK: Can’t disapprove affordable housing development that is inconsistent w/ ZC or GP
  - HCD referral to AG



# Updates to General Plan Housing & Safety Elements, Environmental Justice

## *Safety Element (“SE”):*

- SB 1241 (2012): Address the risks in very high fire hazard severity zones
- SB 379 (2015): Beginning 1/22 the SE must address climate adaptation and resiliency strategies, identifying vulnerabilities to climate change.
- SB 1035 (2018): The SE should be reviewed and revised concurrent with each revision to the Housing Element.





# Updates to General Plan Housing & Safety Elements, Environmental Justice

## *Environmental Justice (SB 244, 2011):*

- “Disadvantaged Unincorporated Communities” (“DUCs”) as identified in **Land Use Element**
  - Definition: “a fringe, island or legal community in which the median household income is 80 percent or less than the statewide median household income.” [Govt. C. 65302.10(a)(2)]
- For any DUCs within agency’s sphere of influence, must include a map and written analysis of the service needs and deficiencies for the identified DUC.



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# Regional Housing Needs Allocation & Appeal

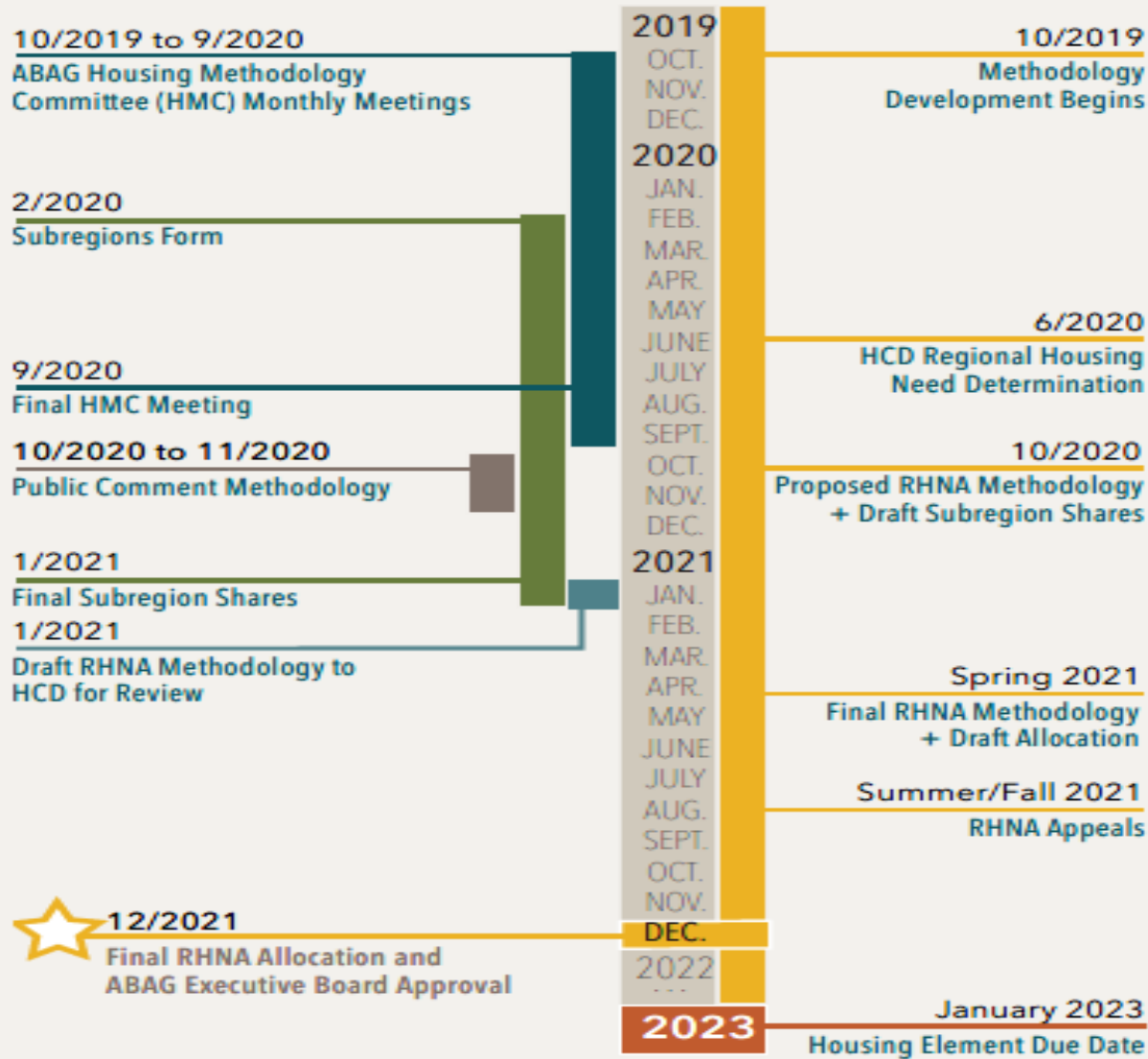
- RHNA = projection of current and future housing needs
  - across all income levels
  - during a specified eight-year planning period
  - determined by Council of Governments with HCD input.
- ABAG currently developing 6th RHNA cycle
  - Planning period: 2023 - 2031.
- Methodology and Distribution.



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# 2023 - 2031 RHNA Development Timeline



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# Regional Housing Needs Allocation & Appeal

- **Appeal** [Gov. Code 65585.04]:
  - Within 45 days of a receiving draft RHNA, appeal to ABAG.
  - Limited to specific circumstances
  - Statement for why revision furthers RHNA objectives under State Planning and Zoning Law
    - Increasing affordable housing;
    - Promoting socioeconomic equity;
    - Better connectivity between jobs and housing; etc.



# Regional Housing Needs Allocation & Appeal

- Permissible grounds for appeal:
  1. ABAG “failed to adequately consider the information submitted” by local agency to create allocation methodology;
  2. ABAG “failed to determine the share of the regional housing need in accordance with the information described in, and the methodology established pursuant to [State law], and in a manner that furthers, and does not undermine, the intent of the objectives listed in subdivision (d) of Section 65584.”
  3. “A significant and unforeseen change in circumstances has occurred ....”



# RHNA, the Housing Element & Penalties

- RHNA carryover to next cycle
- SB 35 streamlining
- AG or interested party may file writ of mandate.
- Court may grant injunction, order fines (\$10k - \$100k), appoint receiver, and order payment of costs and attorneys' fees.



Fin!

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