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# Affirmatively Furthering Fair Housing (AFFH) - State and Federal Law

Presented by:

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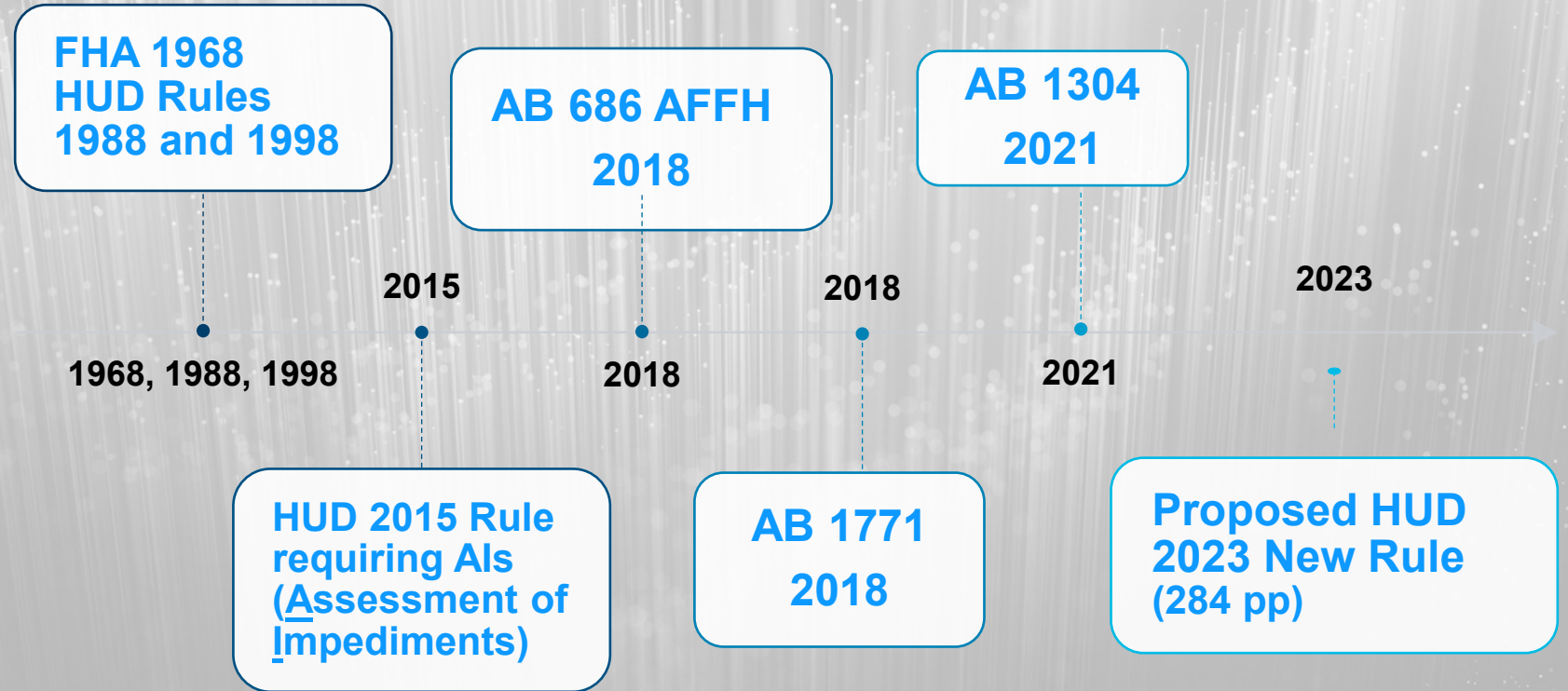
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# CONTEXT AND BACKGROUND RE AFFH FURTHERING FAIR HOUSING

## **AFFH Rooted in Federal Fair Housing Act (FHA) (42 U.S.C. §3601, *et seq.*)**

- HUD found that the FHA alone was not adequate to address longstanding patterns of residential segregation in U.S., thus, Congress added AFFH to the FHA, then AFFH was implemented by HUD Rules in 1988, 1998, 2015, and, 2023 (proposed), each Rule implementing FHA mandate to AFFH.

# AFFH CHRONOLOGY – Federal and State



# AFFH Adopted by CA: AB 686 (2018)

- **Primary Framework** established by **FEHA** (1980), California Fair Employment and Housing Act that followed the federal Fair Housing Act.
- **AFFH added to State Law by AB 686 (2018):**
  - Definition in Gov. Code § 8899.50.
  - Housing Element provisions in Gov. Code §§ 65583, 65583.2.
- Codified federal AFFH at the state level and went further than HUD.

# City Implementation of AFFH Mandate Applies

Planners: Planning,  
Zoning and  
Development  
Project Approvals

Public Works:  
constructing  
roads, sidewalks,  
ramps

Recreation:  
Administering  
parks and  
recreational  
programs

Finance Dept:  
Funding  
Programs

Elected Officials Approving  
Housing Element Updates  
and Housing Development  
Projects

## Legislative Objective AB 686 (2018)

The California Legislature's objective in enacting a State AFFH mandate in 2018's AB 686 is “to have more potential to ‘*replace segregated living patterns with truly integrated and balanced living patterns*’ than the federal rule because *states have the unique authority* to directly intervene in local planning and zoning, rather than just withholding funding.”

# AFFH - Federal and State

**Affirmatively Furthering Fair Housing** under both Federal and State laws means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity. AFFH is a noun and a verb!

- State HCD issued AFFH Guidance Book (April 2021): [https://www.hcd.ca.gov/community-development/affh/docs/AFFH\\_Document\\_Final\\_4-27-2021.pdf#page=23](https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf#page=23)).

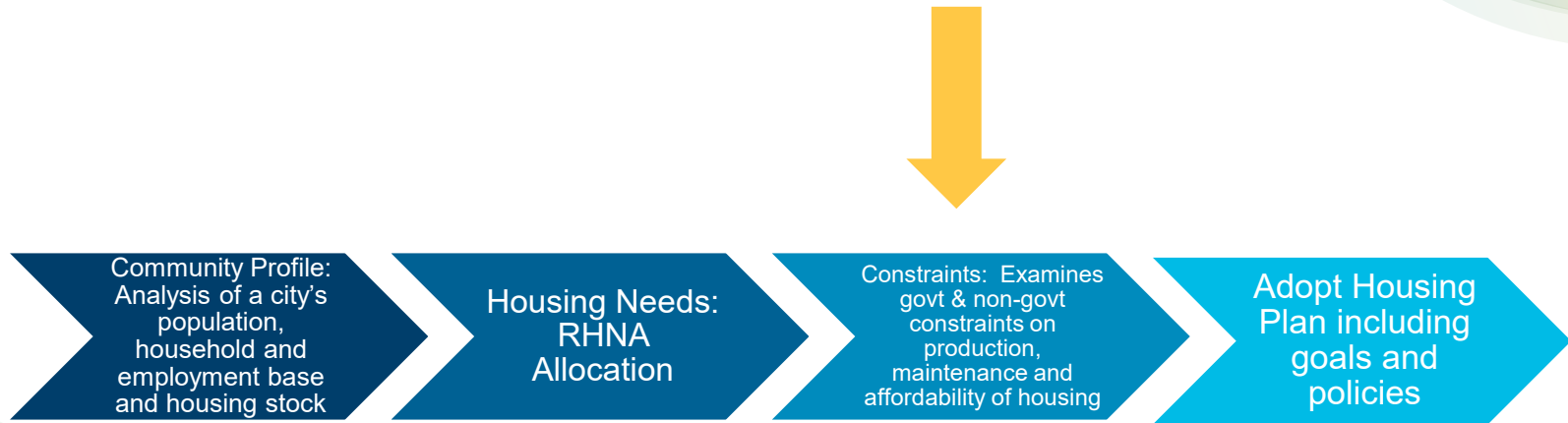


## State Law Definition AFFH Gov. Code § 8899.50(a)

“Affirmatively furthering fair housing” is defined in Gov. Code § 8899.50(a) and HUD Fact Sheet (hyperlink in slide 18).

- “The duty to affirmatively further fair housing extends to all of a *public agency’s activities and programs relating to housing and community development.*”

# Housing Element Update & AFFH



# CA Housing Element Law AFFH Component

## Gov. Code § 65583(c)(9)(A)(i)-(v)

- Housing Element must include components described in Gov. Code Section 65583(c)(9)A:
  - (i) summary of fair housing issues and assessment of enforcement and outreach capacity;
  - (ii) analysis of federal, state, regional, local data;
  - (iii) assessment of contributing factors;
  - (iv) fair housing priorities and goals;
  - (v) strategies and actions to implement goals.

# AFFH Inclusion in RHNA: AB 1771 (2018)

- **AB 1771**- AFFH shall be addressed in RHNA plans and thereby Housing Elements.
  - objective to increase access to “areas of high opportunity for lower-income residents”, while avoiding displacement and AFFH.

# Amendment to AB 686 by AB 1304 (2021)

- **AB 1304** clarified Housing Element component must include analysis of:
  - *Racially Concentrated Areas of Affluence* and the *Assessment of Fair Housing* sections must include analysis of patterns and trends at local and regional levels.

# Summation of CA AFFH Legislation

- AB 686, 1771, 1304 added or amended Gov. Code §§ 8899.50, 65008, 65583, 65583.2, 65584, 65584.01, 65584.04, 65584.05, 65584.06 clarifying AFFH under California law.
- Requires the AFFH obligation be interpreted consistently with HUD regulations and rules, even though CA AFFH now more stringent than federal.

# Housing Element Timeline Penalties

- **AB 1398 (2021)** - Cities have/had one year to complete required rezonings.
  - City could receive one-year extension if rezoning accommodates at least 75 percent of units for low and very low income households and AFFH,
- **SB 197 (2022)** - extended that timeline to complete rezonings from one year to three years for cities with housing elements due in 2021 - objective to AFFH.

# State HCD AFFH Data Viewer

- HCD statewide *AFFH Data Viewer* that assembles various data sources and provides options for addressing components of fair housing.

<https://affh-data-and-mapping-resources-v-2-0-cahcd.hub.arcgis.com/>.

- Utilized to address data components of AFFH; used in combination with locally and regionally available data; educational, economic, environmental data indicators.



# State HCD and TCAC “opportunity map”

➤ **State HCD and TCAC issued an AFFH “opportunity map”** designed toward rebalancing State’s portfolio of housing to align with AFFH goals.  
<https://belonging.berkeley.edu/2023-ctcac-hcd-opportunity-map>.

- Used by TCAC, CDLAC, HCD funding awards.

➤ HCD AFFH Survey (ended July 2023; report due)  
[AFFHGuidance@HCD.ca.gov](mailto:AFFHGuidance@HCD.ca.gov).

# CRD – Civil Rights Complaints and Enforcement

- **California Civil Rights Department (CRD)** of the *Business, Consumer Services, and Housing Agency* enforces California civil rights laws.
- CRD vested with powers to receive, investigate, and conciliate complaints and enforce laws, including:
  - AFFH; FEHA; Unruh Civil Rights Act; Ralph Civil Rights Act; and Disabled Persons Act.

# HCD and California Attorney General - Housing Law Violations and Enforcement

- **AB 72 (2017)** *HCD Obligation to Report Violations to California Attorney General's Office.*
  - AFFH, as well as No Net Loss Law, HAA, State Density Bonus Law when/if HCD makes certain findings of noncompliance or alleges violation.
  - Gov. Code § 65583(h): “An action to enforce the program actions of the housing element shall be brought pursuant to [CCP § 1085].”

# HUD Proposed 2023 Rule re AFFH (88 FR 8516) (HUD comment period ended 4/24/23)

## ➤ HUD AFFH Background in First Slide:

- Assessment of Fair Housing and Analysis of Impediments mandated by 2015 HUD AFFH Rule 80 CFR 5.150-5.180; PJs & PHAs prepare “AIs” as a condition of receiving funds (CDBG, HOME, etc.)

### 2023 Fact Sheet:

<https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH%20Fact%20Sheet.pdf>

# HUD Proposed 2023 New Rule – Equity Plan

- **Proposed 2023 New Rule** (284 pp) implements AFFH to promote fair housing choice, eliminate disparities in housing, and foster more inclusive communities.
- **Equity Plan** must address discrimination issues, including disabilities, aging, not just race focus; use as a tool of accountability; goals need to be responsive to community issues.

# Strategies and Impediments to AFFH

- **Strategy** to implement AFFH through legislation esp. land use reform, “by right” development, streamlined review and approval process to promote integration and investment in low income neighborhoods.
- **Impediments** include: expensive land; high costs of construction, labor, materials, fees; NIMBY including in high-opportunity neighborhoods; other opposition and legal challenge.

# HUD Objectives for Federal Programs and Funding

- HUD 2023 Rule will reinstate process to provide technical support to PJs re fair housing planning and to support funding certifications.
- Administer programs in a manner to affirmatively further the aims of civil rights laws.
- Address racially segregated neighborhoods, lack of housing choice, and unequal access to housing-related opportunities.

# Examples of Solutions to Effect AFFA

- City departments receive little training in AFFH, so need to integrate training, collaborate re solutions.
- Increase Section 8 housing voucher payment in resource-rich neighborhoods (FMR rent studies).
- HUD Secretary Fudge says the 2023 Rule is a major step toward fulfilling the promise to advance HUD's legal, ethical, and moral charge to provide equitable access to opportunity for all.



# Leading USSC Opinion re AFFH in 2015

*Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*,  
135 S.Ct. 2507 (2015).

- Disparate-impact claims are cognizable under the Fair Housing Act.
  - FHA role to move nation toward a more integrated society; the policies that segregate minorities, even if unintentional, violate FHA.

# *Martinez v. City of Clovis*, (2023) 90 Cal. App. 5th 193

- First California precedent that applies the 2018 State AFFH mandate.
  - Clovis' overlay zoning permitting development at lower densities than required by minimum density requirements in Gov. Code § 65583.2(h) violated Housing Element Law and City's duty to AFFH.
  - AFFH is judicially enforceable; writ action under Code of Civil Procedure §1085.

# Conclusion and Mission Statement

Non-partisan objective: Up to voters (and us as appointed or elected counsel) to ensure that our clients, the elected and appointed public officials, take AFFH and housing issues, esp. affordable housing, seriously by holding them accountable at the ballot box, raising attention around housing issues, and engaging in relevant legislative and administrative actions.

# Presenters' Bio

Celeste Brady is an equity shareholder at Stradling Yocca Carlson & Rauth and an AV-rated attorney. She helps California public and private entities revitalize, plan for, and develop affordable housing, commercial spaces, and infrastructure projects to spur economic growth and achieve community goals. Celeste has dedicated her entire career to public law, first in-house with San Diego in 1980, then Costa Mesa in 1983, and since 1986 with Stradling. If you know her, Celeste and Bob are most proud of their children - two sons and one daughter (all attorneys in other specialties) and, as she would say, esp. their perfectly precious grandsons.

Yolanda Summerhill is the Assistant City Attorney to the City of Newport Beach. She focuses her practice primarily on land use planning. Prior to joining Newport Beach, Yolanda worked as a contract city attorney and assistant city attorney representing cities throughout Southern California including Costa Mesa, Fullerton, Placentia, Upland, Santa Fe Springs, and Westminster in virtually all areas of municipal law. She too is most proud of her two sons, one off to college and the other not far behind.