
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No:	AB 1398	Hearing Date:	7/1/2021
Author:	Bloom		
Version:	5/3/2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: Planning and zoning: housing element: rezoning of sites:
prohousing local policies

DIGEST: This bill requires cities and counties that fail to adopt a legally compliant housing element within 120 days of the statutory deadline, to complete a rezone program within one year instead of the current three-year requirement.

ANALYSIS:

Existing law:

- 1) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. Requires the housing element to contain an inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level.
- 2) Requires a city or county, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, to complete rezoning of those sites, including adoption of minimum density and development standards, no later than three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from the state department of Housing and Community Development (HCD), whichever is earlier, unless the deadline is extended, as specified.
- 3) Requires that a local government that does not adopt a housing element within 120 days of the statutory deadline shall revise its housing element not less than every four years until the local government has adopted at least two consecutive revisions by the statutory deadline.

- 4) Requires HCD to establish a pro-housing designation for local jurisdictions. Defines “pro-housing local policies” to mean policies that facilitate the planning, approval, or construction of housing. These policies may include, but are not limited to, the following:
 - a) Local financial incentives for housing, including, but not limited to, establishing a local housing trust fund;
 - b) Reduced parking requirements for sites that are zoned for residential development;
 - c) Adoption of zoning allowing for use by right for residential and mixed-use development;
 - d) Zoning more sites for residential development or zoning sites at higher densities than is required to accommodate the minimum existing regional housing need allocation for the current housing element cycle;
 - e) Adoption of accessory dwelling unit ordinances or other mechanisms that reduce barriers for property owners to create accessory dwelling units beyond the requirements of current law;
 - f) Reduction of permit processing time;
 - g) Creation of objective development standards;
 - h) Reduction of development impact fees; and
 - i) Establishment of a Workforce Housing Opportunity Zone or a housing sustainability district, as defined.
- 5) Requires HCD to adopt emergency regulations to implement this section by July 1, 2021 and to designate jurisdictions as pro-housing pursuant to these emergency regulations.
- 6) Requires that jurisdictions that have been designated pro-housing by HCD, and that have an adopted housing element that has been found by HCD to be in substantial compliance, must be awarded additional points or preference in the scoring of program applications, as follows:
 - a) The additional points must be awarded for award cycles commenced after July 1, 2021;

- b) The additional points must be awarded for the Affordable Housing and Sustainable Communities (AHSC) Program, the Transformative Climate Communities (TCC) Program, and the Infill Incentive Grant (IIG) Program of 2007.
- c) Additional points and preferences may be awarded to other state programs when already allowable under state law.

This bill:

- 1) Provides that, beginning with the sixth housing element cycle, if a local government has not adopted a housing element that HCD deems substantially compliant with state law within 120 days of the applicable statutory deadline, it shall be required to complete its rezoning program within one year, instead of three.
- 2) Removes the existing requirement that local governments that fail to adopt a compliant housing element within 120 days of the statutory deadline must revise their housing element not less than every four years until they have adopted at least two consecutive revisions by the statutory deadline.
- 3) Provides that if a jurisdiction adopts a housing element more than one year after the statutory deadline, HCD shall not find its housing element to be in substantial compliance until all required rezoning is complete.
- 4) Provides that if a jurisdiction fails to complete the required rezoning within one year, HCD must notify the jurisdiction and may provide notice to the Attorney General.
- 5) Adds to the list of policies that HCD may consider a pro-housing policy, having identified adequate sites for housing within one year of the statutory deadline for adoption of the housing element.

COMMENTS:

- 1) *Author's statement.* "The housing element planning process is a key building block in the state's policies to foster the production of affordable housing, address homelessness, and overcome historic patterns of exclusion in land use and housing policy. As the housing crisis grows in California, it is critical that every local government adopt a plan that meets the requirements of state law, that they do it on time, and that they carry out necessary rezones to make land available for the production of housing, particularly higher-density zoned land

that can accommodate housing affordable to lower-income households. This bill sets the right incentives to do that critical planning.”

- 2) *Timely approval of compliant housing elements.* Housing element law requires a locality to adopt a housing element within 120 days of the statutory deadline; if it fails to do so, it must revise its housing element every four years (rather than eight) until the jurisdiction has adopted at least two consecutive revisions. It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will not be built. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

Some jurisdictions, however, do not meet the existing deadline to adopt a legally compliant housing element, or instead adopt a draft housing element (rather than one that is legally compliant) in order to avoid having to revise within four years. This bill clarifies that moving forward (starting with the sixth housing element cycle), jurisdictions must adopt a legally compliant housing element within 120 days of the statutory deadline. Failure to do so will result in a need to complete a rezone program within one year instead of the current three-year requirement; however, the bill also removes the penalty of having to revise the housing element every four years. The goal is to clarify existing requirements and provide both a stick and a carrot to incentivize locals to meet them.

- 3) *Pro-housing local policies.* In 2019, the Legislature enacted legislation (AB 101, Committee on the Budget) requiring HCD designate cities and counties as pro-housing if their local policies facilitate the planning, approval, or construction of housing. “Pro-housing” jurisdictions will receive a competitive advantage in applying for certain state programs, including but not limited to the AHSC, TCC, and IIG programs. HCD is required to adopt emergency regulations by July 1, 2021 to implement this requirement.

Although AB 101 provided examples of pro-housing local policies, HCD has discretion over the final policies. This bill would add, to the list of examples of

pro-housing policies, having identified adequate sites for housing within one year of the statutory deadline for adoption of the housing element.

HCD released the text of the emergency regulations for the Prohousing Designation Program on June 7, 2021. Over the next year, a formal rulemaking process, including a public comment period, will take place to adopt permanent regulations. If signed, this bill would likely be enacted after the adoption of HCD's emergency regulations, and the policies would need to be updated, as necessary, to reflect this legislation in the final adopted regulations.

- 4) *Opposition concerns.* California Cities for Local Control states that this bill imposes shortened deadlines on local governments already overburdened to keep up with revised state housing mandates and that the state should work with, not against, city governments to address state housing needs.
- 5) *Committee amendments.* This bill will be amended to remove the provision adding the identification of adequate sites for housing within one year of the statutory deadline for housing element adoption, to the list of policies that HCD may consider a pro-housing policy. Due to timing, the author will accept these as committee amendments.

RELATED LEGISLATION:

AB 215 (Chiu, 2021) — establishes a process for a mid-cycle housing element consultation between HCD and any jurisdiction it deems to have not made sufficient progress toward its regional housing needs allocation, including a requirement for the jurisdiction to obtain a pro-housing designation. *This bill will be heard in the Senate Housing Committee on July 1st.*

AB 1029 (Mullin, 2021) — adds preservation of affordable housing units as a pro-housing, local policy that HCD can consider in developing a pro-housing designation. *This bill will be heard in the Senate Housing Committee on July 1st.*

SB 1138 (Wiener, 2020) — would have made changes to housing element law regarding where shelters may be zoned and would have required localities that fail to adopt a legally compliant housing element within 120 days of the statutory deadline, to complete a rezone program within one year instead of the current three-year requirement. *This bill died on the Senate Floor on Unfinished Business.*

AB 101 (Committee on the Budget, Chapter 159, Statutes of 2019) — among other provisions, required HCD to designate cities and counties as pro-housing if

their local policies facilitate the planning, approval, or construction of housing, and enabled HCD to implement these through emergency regulations.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Friday, June 25, 2021.)

SUPPORT:

California Rural Legal Assistance Foundation
Public Interest Law Project
Western Center on Law & Poverty

OPPOSITION:

California Cities for Local Control

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