

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1398 (Bloom) – As Amended April 6, 2021

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

**SUMMARY:** Requires expedited rezoning for local jurisdictions that fail to adopt a legally compliant housing element within 120 days of the statutory deadline, and adds expedited rezoning to the list of pro-housing policies. Specifically, **this bill:**

- 1) Provides, starting with the sixth revision of the housing element, that if a local jurisdiction has not adopted a housing element within 120 days of the applicable statutory deadline that the Department of Housing Community Development (HCD) has found to be in substantial compliance with state law, then:
  - a) The time-period for the jurisdiction to complete its rezoning program is shortened from three years and 120 days from the applicable statutory deadline to one year from the applicable statutory deadline;
  - b) Failure to complete the required rezoning within one year of the statutory deadline will make the jurisdiction's housing element subject to specified enforcement provisions, including potential action by the Attorney General; and,
  - c) HCD must not find the jurisdiction's housing element to be in substantial compliance until all required rezoning is complete.
- 2) Removes the existing requirement on local jurisdictions that fail to adopt a compliant housing element within 120 days of the statutory deadline, such that they no longer need to revise their housing element every four years until they have adopted at least two consecutive revisions by the statutory deadline. The removal of this existing requirement would occur upon the jurisdiction's adoption of a sixth revision housing element that HCD finds to be in substantial compliance with state law.
- 3) Adds, to the list of policies that HCD may consider to be a pro-housing policy, having identified adequate sites for housing within one year of the statutory deadline for adoption of the housing element.
- 4) Provides that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

**EXISTING LAW:**

- 1) Establishes Housing Element law, which among other provisions:
  - a) Provides that each community's fair share of housing to be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and HCD develop regional housing needs

estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements; and,

- b) Requires that cities and counties produce, and HCD certify, a housing element to help fulfill the state's housing goals. In metropolitan areas, these housing elements are required every eight years.
- 2) 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. Where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, requires rezoning of additional sites to meet housing needs. Such rezoning must be completed no later than three years and 120 days after the statutory deadline to adopt the housing element.
  - 3) Requires a local government that does not adopt a housing element within 120 days of the statutory deadline to 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 as follows:
    - a) 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:
      - i) Local financial incentives for housing, including, but not limited to, establishing a local housing trust fund;
      - ii) Reduced parking requirements for sites that are zoned for residential development;
      - iii) Adoption of zoning allowing for use by right for residential and mixed-use development;
      - iv) 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;
      - v) 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;
      - vi) Reduction of permit processing time;
      - vii) Creation of objective development standards;
      - viii) Reduction of development impact fees; and,
      - ix) Establishment of a Workforce Housing Opportunity Zone or a housing sustainability district, as defined.

- b) Requires HCD to adopt emergency regulations to implement these provisions by July 1, 2021.
- c) Requires HCD to designate jurisdictions as pro-housing pursuant to these emergency regulations.
- d) 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 for applications for award cycles commenced after July 1, 2021, for programs identified in the regulations, including but not limited to the Affordable Housing and Sustainable Communities Program, the Transformative Climate Communities Program, and the Infill Incentive Grant Program of 2007.

5) **FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "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) **California's Housing Crisis.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to CEQA review as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.
- 3) **Timely Adoption and Implementation of Housing Elements.** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Currently cities must adopt a housing element within 120 days of the statutory deadline for adoption. Failure to do so results in certain penalties, including a requirement to complete multiple subsequent housing elements on a four-year cycle.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. Cities and counties are allowed three years and 120 days from their housing element due date to complete this rezoning.

- 4) **Pro-housing Local Policies.** In 2019, the Legislature enacted legislation (AB 101, Committee on the Budget) that required HCD to 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 Affordable Housing and Sustainable Communities Program, Transformative Climate Communities Program, and the Infill Incentive Grant Program. HCD is required to adopt emergency regulations by July 1, 2021 to implement this requirement. AB 101 provides examples of pro-housing local policies, but ultimately enables HCD to determine what they are.
- 5) **Bill Summary.** This bill would revise the penalty for failure to adopt a housing element in a timely way. It removes the existing requirement that non-compliant local governments update their housing element approximately every four years. In place of the existing requirement, this bill would require that any local government that fails to adopt its housing element within 120 days of the statutory deadline would only have one year from the housing element's statutory deadline to complete any required rezoning, instead of the current allotment of three years and 120 days. This change could substantially expedite the timeframe by which new production could occur in these jurisdictions. Failure to complete the required rezoning within one year of the statutory deadline will make the jurisdiction's housing element subject to specified enforcement provisions, including potential action by the Attorney General.  
  
This bill would also 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.
- 6) **Clarifying Amendments.** The existing requirements in Housing Element Law that trigger a 4-year review cycle for cities and counties that do not adopt a timely housing element are reflected in both Government Code 65583 and 65588. This bill replaces the 4-year review cycle with a requirement for cities and counties to complete any rezoning within one year if they do not adopt a timely or substantially compliant housing element. The Committee may wish to consider an amendment adding to Government Code 65588 a cross-reference to the new one year rezoning requirement in 65583.
- 7) **Double-Referral.** This bill was heard in the Housing and Community Development Committee, where it passed on a 5-0 vote on April 15, 2021.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

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

**Opposition**

New Livable California

**Analysis Prepared by:** Hank Brady / L. GOV. / (916) 319-3958