



Recent Changes to Housing Elements Law

June 27, 2012

Planning Period

- **Housing Element cycle and planning period is now 8 years for most jurisdictions**– The housing element cycle is now eight years. Housing Elements are (likely) due Jan 2015. For jurisdictions that adopt their Housing Elements on time, they will not need to be revised again until December 2022. Specifically, the Jan 2015 deadline applies to adoption of the Housing Element, which means that jurisdictions must:
 - Complete their draft housing element,
 - Send it to HCD for review
 - Consider HCD’s comments, make revisions as appropriate
 - Adopt the Housing Elements
 - (Jurisdictions must then promptly to HCD and HCD may take up to 90 days after this to officially certify it, but both of these steps can happen after the Jan 2015 deadline.

There is a 120 day grace period so jurisdictions technically (likely) have until May 2015 before facing a penalty, which is summarized below.

SB 375 of 2008, § 65588(b) and (f) and see [Housing Advocates](#) or [Housing California](#) memo

- **Jurisdictions do not adopt their housing element (in accordance with Government Code Section 65585) by the Jan 2015 deadline (plus 120 day grace period) are required to update their housing element every four years** until two consecutive housing elements are adopted on time. For San Mateo County, this likely means an update in 2018 and another in 2022. If these are both done on time, the next housing element would be due 8 years later.

SB 375 of 2008, §65588 (b) and see [Housing Advocates](#) or [Housing California](#) memo

See the [FAQ](#) for more details about the new schedule.

Housing Need

- **The housing need section must now include an analysis of the special housing needs of people with developmental disabilities.** the analysis should include:
 - An estimate of the number of persons with developmental disabilities
 - An assessment of the housing need
 - A discussion of potential resources

Development disability is defined as a disability that originates before an individual turns 18 years of age, continues or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. This includes mental retardation, autism, epilepsy, etc. 21 Elements will attempt to supply this information.

SB 812 of 2010, §65583(a) and [see HCD summary](#)

Adequate Sites Default Density

- **Jurisdictions whose population increased from under 25,000 to over 25,000 now have a default density of 30 DUAs. In San Mateo County, only Belmont is affected.** In San Mateo County, cities with a population under 25,000 have a default density of 20 dwelling units per acre (DUA). (Default density refers to the zoning level where the available land inventory may assume - without additional analysis - that the zoning is appropriate for lower income housing.) Cities with a population over 25,000 have a default density of 30 DUA. Based on the 2010 Census, Belmont's default density moved from 20 DUAs to 30 DUAs. The default density of all other jurisdictions did not change. (This is not a new law, it just became relevant again because of the 2010 census, *AB 2348 of 2005, § 65583.2(c)(3)(B) and [see HCD summary](#)*)

Policies and Programs

- **Implementation programs must have timelines.** Programs must have deadlines for completion that are early enough in the planning period to provide "beneficial impacts" within the planning period. "Beneficial Impact" means the effects of the implementation of the program should be able to be quantified within the planning period. Programs that are ongoing may be labeled accordingly and do not need a specific timeline
SB 375 of 2008, § 65583(c) and see [Housing Advocates](#) or [Housing California](#) memo

Rezoning to Meet Sites

- **Rezoning to meet adequate sites must happen within specific timeframes. In many cases the timeframe is three years plus 90 days after receiving HCD comments, with a possible one year extension.** If a jurisdiction needs to rezone land to meet its RHNA/available land inventory, it must complete the rezoning within three years from adopting the housing element (or three years plus 90 days from receiving comments from HCD, if that is earlier.)

Conditions for one year extension:

Jurisdictions can receive a one year extension if they have successfully rezoned 75 percent of the sites to accommodate low/very low income need, have a plan and budget to complete the rezoning, and meet one of three criteria. These criteria are:

- The rezoning was not completed because of an action (or inaction) by the local, state or federal agencies, which were beyond the jurisdictions control.
- The rezoning could not be completed due to fiscal or regulatory constraints.
- The rezoning would require a major revision to the general plan.

If a jurisdiction is late adopting its housing element, it has three years to complete the rezoning from the time that the housing element was due (including the 120 grace period). No extensions can be granted.

SB 375 of 2008, §65583(c)(1)(A) and see [Housing Advocates](#) or [Housing California](#) memo

- **There are now two more two potential consequences for jurisdictions that committed to rezone but did not do so.**

- If a jurisdiction commits to the rezoning of a site and fails to do so within the specified period, a housing developer has the right to build an affordable project on the site as if it had been rezoned. In this case, affordable means at least 49 percent of the units must be low or moderate income housing. To turn down the application, local governments must make the following findings, there is a "specific, adverse impact," and the only "feasible method" to mitigate the impact would be to deny the project. The builder's remedy can be enforced by courts.
- Action to Compel – Any interested party may sue a jurisdiction to enforce compliance. Judges may compel jurisdictions to change their zoning and impose sanctions if it is not done.

SB 375 of 2008, §65583 (g), §65587(d) and see [Housing Advocates](#) or [Housing California](#) memo

Alternative Adequate Sites,

Three bills were passed between 2009 and 2011 which affect how cities can claim RHNA credit for homes that are rehabilitated, conserved or preserved. This is called the Alternative Adequate Sites provision (Government Code 65583.1 (c)), and may be used to meet up to 25 percent of the RHNA by income group, under certain circumstances. The Alternative Adequate Sites provisions are intended to provide flexibility in meeting the adequate sites requirements in jurisdictions that are meeting their entire housing need through the standard adequate sites analysis (vacant and underutilized sites, etc) are not necessarily required to comply with these provisions.

- **Jurisdictions now have more flexibility on the timing to commit assistance to an affordable housing project and count those units against the RHNA.**

This change in state law gives jurisdictions more time to enter into an agreement to provide funding for the rehabilitation, conservation or preservation of a unit. (The time period now starts with the beginning of the RHNA calculation period.) The effect that this has on San Mateo County will be that jurisdictions that want to use the adequate sites alternative (rehab, conservation, preservation) will need to enter the agreement between Jan 1, 2014 and January 2016. (The 2016 date may change, but will be two years after the housing elements are due.)

AB 720 of 2009, §65583.1 and see [HCD's AB 720/1867/1103 summary memo](#)

- **The minimum size for RHNA credit for converting rental units to affordable units dropped from four to three.** Previously, in order to get RHNA/adequate sites credit for converting housing units from market rate to affordable, the units had to be in *rental* apartment complexes with *four* or more units. This bill dropped the required number of units in the apartment complex from four to three.

AB 1867 of 2010, §65583.1 (c) and see [HCD's AB 720/1867/1103summary memo](#)

- **Jurisdictions can now receive credit if they convert market rate condominiums to affordable rental properties under some conditions.**

If a jurisdiction wants to convert an owner occupied, market rate condominium to an affordable rental unit, it is now possible to get RHNA alternative sites credit for this. (A jurisdiction can not get credit if it is converted from a market rate owner occupied complex to an affordable owner-occupied complex, it must be converted to a rental.)

The jurisdiction must meet all the standard checklist items that are required under the conversion provision. In addition the jurisdiction must also ensure that an equal number of affordable rental units are built somewhere else in the city. For example, if a jurisdiction wants to convert a ten-unit market rate condominium to a ten-unit affordable rental property, the jurisdiction would have to show that ten affordable rental homes are being built somewhere else in the city. (The city could claim credit for the 10 converted units and the 10 affordable rental units that were produced somewhere else in the city for a total of 20 units.) If your jurisdiction is planning on converting market rate condominiums to affordable rental housing you should call HCD to obtain more clarity. *AB 1867 of 2010, §65583.1 (c) and [see HCD's AB 720/1867/1103 summary memo](#).*

- **Converting foreclosed homes to affordable homes can now qualify for RHNA/alternative adequate sites credit, under some conditions.** Foreclosed homes that are converted to affordability through the purchase of the property (or through the addition of affordability covenants) can now count towards meeting RHNA, assuming they meet the checklist for converted rental units. Starting in 2015, the AB 1867 rental production requirements must be met as well. *AB 1103 of 2011, § 65583.1 and [see HCD's AB 720/1867/1103 summary memo](#)*

Energy Conservation

- **Cities are now officially encouraged to include weatherization and energy efficiency improvements as part of publicly subsidized housing rehabilitation projects.** *AB 720 of 2009, §65583.1 (c) and [see page three of HCD's AB 720/1867/1103 memo](#)*

Reporting Requirements

- **Cities are now allowed to report units that were rehabilitated, conserved or preserved (and met state requirements) as part of the annual report process.** Table A2 of the annual report form is the designated space for this. *AB 720 of 2009, §65400 and [see page three of HCD's AB 720/1867/1103 memo](#)*
- **Housing element progress must be considered by City Council (or comparable legislative body).** The annual housing element progress report must now be presented at a City Council meeting and the public must be given the opportunity to present oral or written comments. *SB 375 of 2008, §65400 and [see Housing Advocates](#) or [Housing California](#) memo*