



## SB 197

### SB 197 EXTENDS REZONING DEADLINES FOR HOUSING ELEMENTS DUE IN 2021

Senate Bill 197 ([SB 197](#)) was signed into law by the Governor as part of California's 2022-2023 budget package on June 30, 2022. It took effect immediately, with operative language chaptered as Government Code section 65583.4 [Stats. 2022, ch. 70, § 1].<sup>1</sup> The purpose of SB 197 is to extend the one-year rezoning deadline established by last year's Assembly Bill 1398 (SB 1398<sup>2</sup>) for a limited number of jurisdictions.

As described in more detail below, SB 197 offers additional time to complete required rezonings for certain jurisdictions in regions where 6th cycle housing elements were due in 2021.<sup>3</sup> Whereas previously, jurisdictions that failed to adopt within 120 days of the statutory deadline were required by AB 1398 to complete any required rezones within one year, SB 197 extends AB 1398's one-year rezone requirement if certain conditions are met. The time extension afforded by SB 197 is only available for jurisdictions (1) with housing elements due in 2021; (2) that failed to adopt an element found to be in compliance by the Department of Housing and Community Development (HCD) by the original statutory deadline; and (3) that actually adopt an HCD-approved housing element within one year of the applicable statutory deadline.

This brief legal alert seeks to explain which jurisdictions qualify for SB 197's re-zoning extensions, what the new deadlines are. We will also explain what advocates may now do to ensure inclusive and strong housing elements and rezones ultimately get adopted by the relevant deadlines.

### BACKGROUND

Housing element law has long been utilized to require jurisdictions to identify and make available through rezoning if necessary sufficient sites to meet their allocated share of the regional housing

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<sup>1</sup> Unless otherwise noted, all references are to the Government Code.

<sup>2</sup> AB 1398 did two things: 1) required a jurisdiction to adopt a legally compliant housing element within 120 days of the statutory deadline, and 2) imposed a one-year deadline to complete any required rezones if the jurisdiction missed the above-described deadline. Prior to the adoption of AB 1398, any jurisdiction that adopted an element more than 120 days after the statutory deadline had to adopt another housing element in four years instead of eight years. AB 1398 dispensed with this four-year planning period requirement, replacing it with a one-year deadline to complete any required rezones.

<sup>3</sup> Jurisdictions with 6th cycle housing elements due in 2021 include those in the Southern California Association of Governments (SCAG), San Diego Association of Governments (SANDAG), and Sacramento Area of Governments (SACOG) regions. However, SB 197 has little effect in SANDAG and SACOG jurisdictions because most of these jurisdictions either adopted a housing element before AB 1398 took effect or are very tardy and cannot meet the SB 197 criteria to adopt a legally compliant housing element within one year of its due date.

need (“RHNA”). Specifically, if the community lacks enough sites zoned at multifamily densities to accommodate the RHNA for low and very low income households, the housing element must include a program to rezone sufficient sites to multifamily densities to accommodate the shortfall. Recent amendments have significantly strengthened the law, including through stronger enforcement mechanisms and penalties for non-compliance. In particular, the 2017 California legislative session yielded a “housing package” that significantly increased the obligation of local governments to plan, zone and approve affordable housing developments. For example, [AB 1397](#) tightened and added long needed specificity to the obligation in Housing Element Law that housing elements identify and make available sites for the community’s RHNA for lower income households. There are now stricter requirements for the adequacy of sites, including non-vacant sites, and sites that were identified in previous elements, as well as requirements that sites have sufficient available infrastructure. See PILP’s memo on AB 1397 [here](#).

Then in 2021, AB 1398 added stiff penalties for jurisdictions submitting late housing elements. While generally, if a jurisdiction cannot identify adequate sites to meet its RHNA at the time of housing element adoption, it is allowed *three years* from the deadline for adoption to rezone (§ 65583(c)(1)(A)). AB 1398 provided a strong incentive for jurisdictions to adopt on time by requiring jurisdictions that fail to adopt a housing element approved by HCD within 120 days of the statutory deadline to complete any needed rezones within *one year* from the deadline for adoption of the housing element. (See §§ 65583(c)(1)(A) and 65583.2(c), as amended by AB 1398, [Stats. 2021, Ch. 358]). Under AB 1398, jurisdictions required to rezone within one year of the housing element due date and failing to do so could be subject to a revocation by HCD of any previous findings of compliance.<sup>4</sup> (§ 65585(i)(1)(B).)

AB 1398 took effect on January 1, 2022. As a result, a number of jurisdictions which had failed to adopt their housing elements on time found themselves with an unanticipated one-year rezone deadline. SB 197 is intended to allow that small subset of jurisdictions with housing elements due in 2021 that failed to adopt within 120 days of their adoption deadline an additional chance to avoid AB 1398’s one-year rezone penalty. Under SB 197, jurisdictions with 2021 housing element deadlines may maintain the three-year and 120-day rezoning deadline if their adopted housing element is found in compliance by HCD **within one year of the statutory due date** (compared to the previous 120 days under AB 1398).<sup>5</sup> And, as described below, certain jurisdictions may be entitled to a four-year rezoning deadline.

## FREQUENTLY ASKED QUESTIONS (FAQs)

### 1. What does SB 197 do?

For qualifying jurisdictions with a Housing Element due date in 2021, SB 197 extends the deadline for rezoning sites to accommodate a jurisdiction’s lower income RHNA (§ 65583(c)(1)(A)) from one

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<sup>4</sup> Before HCD revokes approval, it must issue inconsistency findings and give the jurisdiction an opportunity to respond. (§ 65585(i)(1)(A).)

<sup>5</sup> For this, HCD must have completed its review of the adopted element and have issued a review letter finding the element in compliance with Housing Element Law.

year to three years and 120 days from the statutory deadline. (See § 65583.4, as amended by SB 197, [Stats. 2022, Ch. 70, § 1].) To qualify for this extension, a jurisdiction must demonstrate **all** of the following:

1. Statutory adoption deadline for housing element in 2021;
2. Failed to adopt an HCD-approved housing element within 120 days of the applicable statutory deadline; and
3. Adopted a housing element HCD found in compliance within one year of applicable statutory deadline.

(§ 65583.4(a)(1)-(3)).

## **2. Can jurisdictions get longer than three years to rezone under SB 197?**

Yes. Even prior to the adoption of SB 197 a jurisdiction was permitted to receive an additional year to complete its rezoning if it completed required rezoning at a density level accommodating at least 75% of units for low- and very low-income households. (§ 65583(f).) **An equivalent one-year extension also applies to jurisdictions that qualify for the three-year extension provided by SB 197.** To obtain this additional extension, there must be a public hearing before a legislative body (e.g., Planning Commission, City Council) where, based on substantial evidence, the legislative body finds that any of the following circumstances exist:

- (a) Due to actions or inactions beyond the jurisdiction's control, they were unable to complete the rezoning.
- (b) The jurisdiction cannot complete the rezoning because fiscal or regulatory constraints caused infrastructure deficiencies.
- (c) The jurisdiction must revise its general plan to accommodate sustainable communities or an alternative planning housing-related policy strategy under Section 65080.

(See § 65583.4(b)(1)(A)-(C))

Further, within one year from the date the jurisdiction adopts the resolution, it must send HCD the resolution and findings with a budget and schedule that informs HCD when it will prepare and adopt the required rezoning. The jurisdiction must also include plans for citizen participation and the timing for the jurisdiction's interim action. (See § 65583.4(b)(2).)

## **3. To which jurisdictions does SB 197 apply?**

SB 197 only applies to jurisdictions with housing element due dates in 2021 and that meet certain conditions. (See § 65583.4(a) (1); *see also* [Housing Element update schedule](#).)

As of the date of this FAQ, the following jurisdictions appear to have met the criteria for the SB 197 extension (having a housing element due date in 2021, and having received a finding of approval from HCD within one year from the statutory deadline for adoption):

**Counties:** El Dorado, Imperial, Los Angeles, and Sacramento counties

**Cities:** Calabasas, Eastvale, El Centro, Elk Grove, Galt, Indio, Irvine, Jurupa Valley, Long Beach, Los Angeles, Marysville, Montebello, Rosemead, Sacramento, San Fernando, Sierra Madre, Yorba Linda, Yuba City, Yucca Valley.

As noted in FAQ No. 4 below, some additional SCAG jurisdictions may qualify for this extension if they get approval from HCD on their adopted housing element by October 15, 2022.

#### **4. How do I find out if my jurisdiction is eligible to extend its rezoning deadline under SB 197?**

HCD maintains a list of deadlines for adoption of the housing element.<sup>6</sup> Jurisdictions that are likely to be eligible for SB 197's extension are those with housing elements due in 2021, that were late in adopting, but still able to get an approval letter from HCD within a year of the applicable statutory deadline.

**Case Study:** Does the City of Los Angeles qualify for the SB 197 extension?

To find out whether a jurisdiction's housing element was due in 2021, visit HCD's website here:

<https://www.hcd.ca.gov/update-schedule> for the schedule of housing element due dates. To find out whether the jurisdiction was late in adopting, and/or whether the jurisdiction has a letter finding compliance from HCD, look up the particular jurisdiction on HCD's Housing Element Compliance Report found here: <https://www.hcd.ca.gov/compliance-report>.

For example, to find out whether the City of Los Angeles is eligible for the SB 197 exemption, we first look at HCD's [Housing Element update schedule](#). That schedule shows that SCAG jurisdictions, including the City of Los Angeles, have housing elements due October 15, 2021.

To find out whether City of Los Angeles was late in adopting, but adopted within one year of the statutory deadline and was approved by HCD, look at [HCD's compliance report](#). The report shows that the City of Los Angeles' element is "in compliance" and was received for review by HCD on June 14, 2022. You may also find HCD's findings letter for City of Los Angeles here: <https://www.hcd.ca.gov/housing-elements-hcd>. Because City of Los Angeles both adopted its element within one year of the statutory deadline and obtained a finding of compliance from HCD within one year of its due date, it likely meets the SB 197 extension criteria.

Some jurisdictions with housing elements due in 2021 may not yet have adopted a housing element, but may still adopt and get an approval letter from HCD within one year of the statutory deadline of October 15, 2021 – thereby becoming eligible for the SB 197 extension. These jurisdictions would be listed in HCD's database with status "in review" or "due".

As of August 26, 2022, these are the jurisdictions who currently have an adopted element in review and could be found in compliance by the one year anniversary of the housing element statutory due date: Cerritos, Culver City, Diamond Bar, Hawthorne, Hidden Hills, La Habra Heights, La Puente, Lakewood, Lomita, Paramount, Pasadena, Rancho Palos Verdes, Redondo Beach, Torrance, Whittier, Brea, Cypress, Laguna Woods, Lake Forest, Los Alamitos, San Juan Capistrano, Santa Ana,

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<sup>6</sup> To find a particular jurisdiction's update schedule, check HCD's website. For instance, here is the link to the deadlines for the 6th Cycle Housing Element due dates: [California Department of Housing and Community Development](#).

Stanton, Canyon Lake, Lake Elsinore, Moreno Valley, Perris, City of Riverside, Chino Hills, Ontario, and Rialto.

**5. If a jurisdiction with a housing element due in 2021 has not yet adopted and gained HCD approval for their housing element, what are the considerations and options?**

By statute, HCD is permitted 90 days to review an initial draft and 60 days to review subsequent drafts and adopted housing elements. Our understanding is that HCD will make its best effort to assist jurisdictions in meeting these deadlines but cannot guarantee that it will be able to expedite reviews for any jurisdictions that do not yet have a compliant adopted housing element. HCD recommends jurisdictions submit their adopted housing elements to HCD

via [HousingElements@hcd.ca.gov](mailto:HousingElements@hcd.ca.gov) at least 60 days before the one-year anniversary of the 2021 statutory deadline (preferably earlier). Accordingly, **SCAG jurisdictions should have submitted adopted housing elements to HCD** no later than August 15 in order for HCD to complete its review before October 15.

Both prior to and during the time that an element is in review with HCD, advocates should communicate their comments on the housing element directly to HCD. If a site is or should be considered for affordable housing, this is important information for HCD. For more information on advocacy with HCD for stronger housing elements, see PILP's [California Housing Element Manual](#).

**6. What if a jurisdiction does not meet the SB 197 criteria?**

If a jurisdiction with a housing element due in 2021 has not yet adopted an approved housing element, and is unable to do so within one year of the applicable statutory deadline, then it would be subject to the original AB 1398 rezoning deadline of one year and would be out of compliance until such rezoning is completed. (§ 65588(e)(4)(C)(iii).)

**7. For jurisdictions subject to the one-year rezoning deadline, are there any consequences for failure to complete the required rezoning?**

Yes. If a jurisdiction is required to rezone pursuant to the one-year deadline required by section 65583(c)(1)(A) and the jurisdiction fails to complete the required rezoning, HCD may revoke any prior findings of compliance. (§ 65585(i)(1)(B).)

**8. How do I know if a particular site would be subject to an obligation to rezone?**

If a jurisdiction has a completed housing element, look at the site inventory contained in the housing element for your jurisdiction, and look at the program section of the housing element. The site may already be listed in the inventory as a site that is zoned with sufficient density to accommodate multi-family housing. Or, the site may be listed in the inventory as a candidate for rezoning. Also, look at the program of actions section of the housing element, which should identify any programmatic requirements to rezone, including any deadlines to complete the required rezone.

If you discover that a jurisdiction has not completed a required rezone, contact HCD and/or your local legal services agency. HCD may be able to use its enforcement authority under AB 72<sup>7</sup> to ensure the rezone occurs. Noncompliant jurisdictions can face stiff penalties, including court orders to rezone and/or compel compliance with, or amendment to, the housing element, enjoin certain development approvals, inconsistent actions, or decisions, financial penalties, and attorneys' fees and costs.

**Contact PILP!** The Public Interest Law Project provides technical assistance and advocacy support to local legal services organizations engaging in housing element advocacy. Address: 449 15<sup>th</sup> Street, Suite 301, Oakland, CA 94612; Telephone: 510-891-9794; Email: [admin@pilpca.org](mailto:admin@pilpca.org); Website: [www.pilpca.org](http://www.pilpca.org).

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<sup>7</sup> For more information about HCD's enforcement authority under AB 72, [PILP-Memo-AB-72-Summary-Mid-Cycle-Housing-Element-Enforcement](#).