



Appendix D: SB 375 Frequently Asked Questions

Housing Element Adoption and Due Date

1. Q: Are all jurisdictions subject to the SB 375 consequence to update the housing element for at least two consecutive 4-year intervals, if the element is not adopted within 120 days of the statutory adoption due date?

A: No. Only jurisdictions on an 8-year planning period are subject to the SB 375 4-year update consequence when failing to adopt the element within 120 days from the statutory adoption due date that also is the start of the planning period. [GC 65588(e)(4)]

2. Q. Does the SB 375 provision to adopt the housing element within 120 days from the statutory due date [18 months from the adoption date of the Regional Transportation Plan (RTP)] represent an extension to the statutory adoption due date?

A. No. The provision of SB 375 to adopt the element within 120 days does not represent an extension to the statutory due date or to the 8-year planning period. The provision specifies the timeframe to adopt the element before triggering the SB 375 consequence of being required to update the element at 4-year intervals until at least two consecutive 4-year updates have been adopted on time. [GC 65588(e)]

3. Q: Can a jurisdiction receive an extension of time from HCD to adopt the housing element?

A: No. Element adoption due dates are specified in statute. There is no provision for an extension. [GC 65588(e)(2)] The Department updates its element due date schedule at: http://www.hcd.ca.gov/hpd/hrc/plan/he/web_he_duedate.pdf.

4. Q: Can a jurisdiction meet housing element adoption requirements by adopting an element by the statutory due date without submitting a draft element to HCD for review?

A: No. The statute requires jurisdictions to: (1) submit a draft element to HCD for review, (2) consider HCD's findings prior to adopting the element, and (3) submit the adopted element to HCD. HCD has 60 days to review a draft element and 90 days to review an adopted element. [GC 65585]



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5. Q: What happens if a jurisdiction subject to the SB 375 4-year update consequence does not adopt the housing element by the next 4-year due date?

A: The jurisdiction would have to continue updating the element at 4-year intervals until adopting at least two consecutive revised elements by the applicable due dates. [GC 65588(e)(4)]

Example: A jurisdiction subject to an 8-year planning period and adoption due date of December 31, 2013 that (1) does not adopt the housing element by April 30, 2014 (120 days from the statutory due date) and (2) does not adopt an updated housing element by the 4-year interval due date of December 31, 2017 would be required to at least update and adopt the housing element by December 31, 2021 and December 31, 2025 before returning to an 8-year update cycle.

6. Q: Are there potential consequences applicable to all jurisdictions for failing to adopt an element by the statutory due date?

A: Yes. Potential consequences exist for any jurisdiction that does not have an adopted housing element in compliance with State housing law. Consequences can include, but are not limited to, ineligibility to participate in specific funding programs and action(s) a court may impose on a jurisdiction when ruling on a lawsuit challenging the validity of the Housing Element of the General Plan.

7. Q: Are there incentives for meeting the due date to adopt a housing element in compliance with State housing law?

A: Yes. A jurisdiction with a compliant housing element is eligible for several housing, community development and infrastructure funding programs that include housing element compliance as a rating and ranking or threshold requirement. See HCD's memo: Incentives for Housing Element Compliance http://www.hcd.ca.gov/hpd/hrc/plan/he/loan_grant_hecompl011708.pdf.



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SB 375 Consequence of Changing From 8-Year to 4-Year Housing Element Update Interval

8. Q: Can a jurisdiction subject to the SB 375 4-year update consequence revise the element to address and identify sites for only half of the Regional Housing Need Allocation (RHNA) assigned for the 8-year planning period?

A: No. RHNA is determined for a specific “projection” period that differs from the element “planning” period. [GC 65588(f)] The consequence of having to update the element at a 4-year interval does not change the RHNA projection period or housing element planning period. The element must address the full RHNA in all updates. With each update of the element, RHNA credit, by income category, may be taken for applicable income category housing units approved, built or under construction since the beginning of the RHNA projection period.

9. Q. For the next 4-year update covering the second half of the 8-year planning period, does the adequate site alternative requirement apply to projects proposed to be rehabilitated, conserved, or preserved?

A. No. To utilize the adequate site alternative provisions of GC Section 65583.1(c), the element must include a program and implementation action with committed assistance early in the planning period to provide affordable rental units. Committed assistance is defined as an enforceable agreement from the beginning of the RHNA projection period until the end of the 2nd year of the element planning period. These timeframes preclude use of the adequate site alternative requirement to meet any unmet need in the second half of an 8-year planning period.

10.Q: What happens if housing element programs at the end of a SB 375 4-year interval are not implemented or not effective?

A: When updating the element, GC sections 65583(c) and 65588(a) require the element be reviewed and revised for appropriateness of goals, objectives, policies, and programs to achieve a beneficial impact. When programs have not been implemented or not been effective, they must be revised to achieve a beneficial impact over the remaining years of the planning period.

In addition, some programs must be implemented by timeframes specified pursuant to statutory amendments, e.g. programs to address the need for



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emergency shelters pursuant to SB 2 (Statutes of 2007) and rezoning required to accommodate a shortfall of sites to meet the RHNA pursuant to AB 1233 (Statutes of 2005). Until the jurisdiction implements programs required to have been previously implemented by the statutory due date, the Department cannot find an updated element in compliance with State housing law.

11.Q: How early before the due date of the 4-year update can a jurisdiction revise and adopt the housing element?

A: The earliest the jurisdiction should begin the revision process, including public participation, is within 12 months of the update deadline. This allows sufficient time to effectively evaluate program objectives and progress. This timeframe is consistent with the 12-month timeframe allowed all jurisdictions when updating the housing element for a new RHNA and planning period. [GC 65584(b)]

SB 375 Rezone Requirement Applicable to Jurisdictions with an 8-Year Planning Period

12.Q: What are SB 375 requirements for a jurisdiction to qualify for a 1-year extension to the 3-year deadline to complete required rezoning?

A: GC 65583(f)) allows a 1-year extension to the deadline to complete required rezoning, if a local government has completed rezoning at sufficient densities to accommodate at least 75 percent of the units for very-low and low-income households. The jurisdiction must also determine after a public meeting that substantial evidence supports findings and adoption of a resolution that the rezone deadline was not met due to one of the following reasons:

- (1) Rezoning was not completed due to an action or inaction of a state, federal, or local agency beyond the control of the local government,
- (2) Infrastructure deficiencies due to fiscal or regulatory constraints prevented meeting the rezone deadline, or
- (3) Major revisions to the General Plan have not been completed to accommodate the housing-related policies of the Sustainable Communities Strategy or Alternative Planning Strategy.

Also, the jurisdiction must provide HCD a copy of the resolution and findings together with the following (1) a detailed budget and schedule for preparation and adoption of required rezones within one year of the adoption of the resolution, (2) plans for citizen participation, and (3) expected interim action.



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Note that if a jurisdiction becomes subject to the SB 375 4-year update consequence, the 3-year deadline to complete rezoning does not change and the 1-year extension does not apply.

13.Q: What happens if a jurisdiction receives the 1-year extension to rezone but doesn't complete all the rezones by the extended due date?

A: Pursuant to Government Code Section 65583(g), the jurisdiction is restricted from all of the following: (1) disapproving a housing project that complies with zoning standards proposed on a site required to be rezoned; (2) requiring any discretionary permit; including a CUP or PUD; or (3) imposing any condition that would render the project infeasible.

Exceptions may apply if the development project would have specific, adverse impacts upon the public's health or safety and there is no feasible method to satisfactorily mitigate or avoid the identified impacts other than project denial or rezoning to lower the density. [GC 65583(g)(2)(A)]

14.Q: If a jurisdiction on an 8-year planning period completes multiple drafts of the housing element prior to the 120 day deadline, does the SB 375 3-year timeframe to complete rezones apply to the first or last draft submitted?

A: The time frame for completing rezones would apply to the last draft submitted.

For jurisdictions that adopt the element within 120 days of the statutory due date, the 3-year rezone timing requirement begins on the earliest of the following two dates: (1) three years and 90 days after HCD comments on the last draft submittal prior to element adoption or (2) three years from the adoption date of the housing element. [GC 65583(c)(1)(A)]

For jurisdictions that (1) fail to comply with element adoption steps (refer to question 4) and/or (2) do not adopt the element within 120 days from the start of the planning period, rezoning must be completed no later than three years and 120 days from the statutory adoption due date and start of the planning period. [GC 65583(c)(1)(A)]

15.Q: If a jurisdiction on an 8-year update cycle adopts an element just before the due date and six months later adopts an amended element, which adopted element determines when the rezone timing provisions apply?

A: If a jurisdiction submits a revised or adopted element after 120 days from the start date of the planning period, the element first adopted determines the start date for the rezone timing.



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Housing Element Program Requirements

16.Q: Did SB 375 include other amendments impacting housing element program requirements?

A: Yes. GC 65583(c) was amended to require element program actions to “each have a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be ‘beneficial impacts’ of the programs within the planning period....” In addition, new rezone timing requirements were included for jurisdictions on an 8-year planning period.

HCD Annual Progress Report (APR)

17.Q: Did SB 375 include amendments impacting the requirement to provide HCD the housing element Annual Progress Report (APR) by April 1 of each calendar year?

A: Yes. GC 65400(a)(2)(B) was amended to include a public meeting and participation requirement when finalizing and submitting the APR. The amendment requires that the jurisdiction’s APR “shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.” The public meeting allowing public comments on the APR should occur prior to the submission of the APR by the due date of April 1.

18.Q: Where can I find HCD’s APR form and instructions?

A: The APR form, instructions, and regulations governing local government annual progress report requirements are on the Department’s website: http://www.hcd.ca.gov/hpd/housing_element2/OR_apr.php

19.Q: Can the solicitation of public comments and the presentation of the APR to the local legislative body occur at the same time?

A: Yes. Nothing in statute precludes these two activities from occurring simultaneously.

20.Q: Must the APR be adopted by the legislative body prior to submittal to HCD and OPR?

A: No. Adoption of the APR by the legislative body is not required by statute.