

## **Changes to Housing Element Law Under SB 375 (Steinberg, 2008)**

### **A Brief Summary**

SB 375 (Steinberg, 2008) made several important changes to housing element law. These changes not only extend the time period covered by housing elements but also strengthen existing obligations of local governments to zone land for affordable housing, and create new tools to get housing built where local governments do not comply.

- **Longer Planning Period** – SB 375 extended the housing element planning period from five years to five years, in order to better synchronize the Regional Transportation Plan (RTP) process with the Regional Housing Needs Allocation (RHNA) and housing element process. (Government Code Section 65588(b) and (f))
- **Consequences for Failing to Adopt an Element** – Any local government that does not adopt a housing element within 120 days of the statutory deadline, falls out of the 8-year cycle and must adopt an element every four years. (Government Code Section 65588(b))
- **Clearer Mandate on Sites for Housing** – Where rezonings are needed because the housing element does not identify enough existing land to accommodate the locality’s housing need, all necessary rezoning must be completed within three years of the housing element’s adoption, or 90 days after the locality receives its comments from HCD, whichever occurs first. A locality may get an additional year to complete the rezoning if it has completed 75% of the necessary rezonings and meets one of three factors. (Government Code Section 65583(c)(1)(A))
- **Program Implementation** – In addition to rezoning, SB 375 clarified that housing element programs (e.g. a program to establish a housing trust fund) must include a timeline for implementation. That timeline must be such that “there will be beneficial impacts of the program within the planning period.” (Government Code Section 65583(c))
- **Consequences for Failing to Rezone** – There are two new consequences for local governments that do not complete the rezoning within the specified period.
  - “Builder’s Remedy” – A developer of housing in which at least 49% of the units are affordable to very low, low and moderate income households can develop on any of the sites proposed for rezoning, as if the site had been rezoned. The local government can turn down the proposal only where it makes a finding the project would have a specific adverse impact on public health or safety that cannot be mitigated. (Government Code 65583(g))
  - Action to compel rezoning – Any interested party can bring an action to compel the city to complete the rezoning within 60 days, and seek sanctions for failure to do so. (Government Code Section 65587(d))
- **Annual Check-in** – Each year the local government must account for its progress in meeting the deadlines in the housing element, including program implementation and rezoning. It must hold a public meeting and take comment, and include a report on its progress in its annual report to HCD. (Government Code Section 65400)