GARDEN GROVE

# CITY OF GARDEN GROVE



February 27, 2020

Honorable Assemblyman Tyler Diep
PO Box 12121
Westminster, CA 92685

Re: Legislative Changes Request

Dear Assemblyman Diep:

Due to the recent changes to the methodology passed by the Southern California Association of Government (SCAG), the City of Garden Grove Regional Housing Needs Assessment (RHNA) draft allocation numbers have increased from 747 units in the 5th Cycle to 19,124 units for the upcoming 6th Cycle. This is an unprecedented 2,560% increase in the number of housing units that the City is obligated to accommodate with adequate sites in the next housing element cycle. Garden Grove, in addition to almost all cities in Orange County and coastal cities in the SCAG region, are set to receive RHNA allocations that are significantly increased compared to prior planning periods.

To plan for this extraordinary increase in assigned housing units, all cities in the SCAG region must submit an adopted Housing Element to the California Department of Housing and Community Development (HCD) by October 15, 2021. This deadline is challenging for cities such as Garden Grove and other highly urbanized cities that do not have many available and/or viable vacant or underutilized sites that meet State criteria. The level of effort that must be completed to evaluate sites, determine feasibility and define future amendments to the City's General Plan and Zoning Code by the due date is enormous. Due to the profound changes, the RHNA allocation will have on current and future land use decisions in the City, community engagement must take place, consultants selected, documents drafted, and environmental review completed. In addition, recent changes to State housing element law (e.g., AB1397, Chapter 2017) requiring substantial evidence criteria will make the viability and use of sites to accommodate RHNA more onerous and difficult for vacant, non-vacant and underutilized sites. The combination of a significantly larger RHNA allocation, together with new substantial evidence requirements for underutilized sites, results in an extraordinary level of uncertainty in the ability to obtain a legally compliant Housing Element.

The City of Garden Grove is proud to have obtained Housing Element Certification in the 4th and 5th Cycle Housing Element Update. To this end, the City is committed to updating its 6th Cycle Housing Element Update for compliance with State law. However, the regulatory standards required by recent statutes used to determine the adequacy of sites and other provisions in current law have substantially increased the inability of Garden Grove to

provisions in current law have substantially increased the inability of Garden Grove to accommodate the RHNA and achieve a state certified Housing Element. Therefore, the City of Garden Grove is requesting your support for new legislation to assist all cities and counties achieve Housing Element compliance. Below are five proposed legislative amendments to current housing law that would significantly reduce the barriers to achieving local government compliance, while still supporting the Legislature's objective of increased housing production:

1. **Introduction of a state bill that grants a two-year extension to submitting the Housing Element to the state Housing and Community Development Department.**

   As discussed above, in order for cities in built-out or highly urbanized areas with little vacant and developable land to accommodate the significant increase in 6th Cycle RHNA allocations, an enormous amount of community outreach and planning is advisable and diligent when amending a community's Housing, Land Use and Circulation Elements of the General Plan to accommodate potentially significant increases in density or traffic. Furthermore, these amendments will need to be prepared and adopted in compliance with the California Environmental Quality Act (CEQA). Preparation of the required programmatic CEQA documents alone will take approximately nine to twelve months to complete at an approximate cost of $350,000. The community outreach and planning efforts needed to increased density and housing capacity are anticipated to take an additional 12 months. Therefore, the City of Garden Grove is requesting that Government Code Section 65588(e)(3) be amended as follows:

   *(3) Subsequent revisions of the housing element shall be due as follows:*

   *(A) (i) For local governments described in subparagraphs (A), (B), and (C) of paragraph (2), 18 months after adoption of every second regional transportation plan update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element, or as otherwise provided in law.*

   *(ii) For local governments within the regional jurisdiction of the Southern California Association of Governments, the sixth revision of the housing element shall be due October 21, 2023.*

2. **Introduction of a state bill that will grant waivers to the California Environmental Quality Act for meeting the state housing needs due to the housing crisis.**

   As discussed above, the added time to prepare and adopt required programmatic CEQA documentation to support substantially increased densities and associated traffic level of service impacts with the significant increase in RHNA allocations adds significant time and cost for obtaining Housing Element compliance. Given the Governor has declared a housing crisis and the legislature has enacted numerous unprecedented reforms to housing law, the State should consider creating a statutory CEQA exemption that exempts mandatory updates to housing elements for the sixth cycle. Statutory

exemptions have been enacted for a number of planning efforts not subject to a declared housing crisis by the Governor, such as for sport stadiums. Opponents of new housing development have abused CEQA as a "NIMBYism" tool to slow and prevent new housing development efforts. Given the anticipated significant increases in density that cities and counties will need to accommodate in this RHNA cycle, the need for CEQA reform is of great importance.

3. **Introduction of a state bill amending Government Code Section 65583.2)(g) to establish objective standards for what constitutes "substantial evidence" providing cities and counties more certainty of a site's eligibility for Housing Element compliance.**

The Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant with current statutes. One of the most important aspects of Housing Element law is the requirement to demonstrate "adequate sites" with realistic development potential that could accommodate the jurisdiction's RHNA allocation at each income level (very low, low, moderate and above moderate). Recent amendments to Housing Element law establishes additional criteria for underutilized sites to be considered suitable for "RHNA credit." Under Sec. 65583.2(g)(2) if a city or county relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed an impediment to additional residential development, absent findings based on "substantial evidence" that the use is likely to be discontinued during the planning period (emphasis added). Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA growth estimates, the substantial evidence requirement that development is "likely" to occur on all of the underutilized sites in the Housing Element inventory results in the inability to demonstrate adequate sites. Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

Demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. It is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market-friendly State guidance for implementing reasonable local policies that facilitate housing development. This bill would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development.

***Attachment A*** *includes a more detailed analysis and justification for this bill with proposed revisions to state law.*

4. **Introduction of a state bill amending Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.**

   In light of recent changes in state law related to accessory dwelling units that require jurisdictions to now allow up to three units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number of units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially subsequent to the passing of recent statutes. Furthermore, the waiver of parking and owner occupancy requirements has eliminated additional barriers to the development of ADUs and increased development capacity in every jurisdiction with single-family zoning. Therefore, it is essential that jurisdictions be allowed to utilize the development potential of ADUs towards accommodating their RHNA. It should be noted that the current law establishes past performance as the standard of measure for the ability to count the potential future ADUs in the 6th Cycle Housing Element. This standard of measure does not consider the development potential introduced by the new statute and may result in cities not being able to count the true development potential that new housing laws allow.

   Currently Government Code Section 65583.1 provides HCD full discretion to determine how ADUs count towards RHNA and includes criteria based on past production. In most cities and counties, regulations for ADUs were much more restrictive before recent changes in law were adopted. Therefore, past production should not be utilized as a major factor in estimating future ADU development. Revisions to the law are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements and to establish reasonable assumptions for determining the percentage of ADUs that count towards lower-income requirements.

   ***Attachment B*** *includes a more detailed analysis and justification for this bill with proposed revisions to state law.*

5. **Introduction of a state bill amending Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites.**

   Generally, RHNA credit is obtained for new construction units, except Government Code 65583.1(c) currently allows local governments to meet up to 25 percent of sites requirements for RHNA by providing affordable units through either: *rehabilitation*; *conversion*; and/or *preservation*. However, this statute is seldom used by jurisdictions because it includes a number of prohibitive prerequisites making qualification of sites extremely difficult. In fact, the City of Garden Grove recently committed $1.2 million to an acquisition/rehabilitation project that converted 79 at-risk-to-convert-to-market-rate housing units to affordable housing for households at or below 50% of the Area Median Income. However, due to a requirement that the City must have committed

funds within the first two years of the planning period, the project was not eligible for RHNA credit.

Use of the "alternate sites" option could prove to be a feasible option to provide a net increase in affordable units in highly urbanized communities. Affordable housing developers must compete with market rate housing developers for housing opportunity sites, resulting in the need for substantial land acquisition subsidies to create feasible projects. Given significantly higher land costs, it is more feasible to rehabilitate and convert existing market-rate units for affordable housing than constructing new affordable housing units. Whether the units are new or rehabilitated, providing a net increase of affordable housing units should be encouraged and supported by expanding cities' and counties' ability to utilize these more flexible compliance options.

***Attachment C*** *includes a more detailed analysis and justification for this bill with proposed revisions to state law.*

The City remains committed to contributing to its obligations to provide housing for a wide variety of incomes. The City is also committed to addressing the state defined housing crisis in compliance with Housing Element law; however, the combination of substantially higher RHNA allocations, particularly for cities in highly urbanized areas with little vacant developable land, together with restrictive criteria for project and site suitability analysis, will likely result in many jurisdictions' inability to comply with current housing law. Most jurisdictions will be faced with the likelihood of non-compliant Housing Elements by the prescribed due date without the amendments to state housing law described herein.

If you have any questions or would like to meet discuss in more detail, please let me know. Your assistance is greatly appreciated.

Steve Jones

Steven R. Jones
Mayor

CC. City Council Members
Scott Stiles, City Manager
Lisa Kim, Community Development Director
Department of Housing and Community Development
League of California Cities

Attachments:

A- Proposed amendments to Government Code Section 65583.2)(g) to provide objective standards for what constitutes "substantial evidence."

B- Proposed amendments to Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.

C- Proposed amendments Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements.

**ATTACHMENT A**

**Proposed amendments to Government Code Section 65583.2(g) to provide objective standards for what constitutes "substantial evidence."**

**Proposed amendments to Government Code Section 65583.2(g) to provide objective standards for what constitutes "substantial evidence."**

Justification

State law requires cities and counties to submit draft and adopted Housing Elements to HCD for review, and HCD is required to review Housing Elements and issue written findings regarding whether the Housing Element substantially complies with the requirements of State law. A finding of substantial compliance by HCD is referred to as "certification" of the Housing Element.

Housing Element certification is important for two major reasons: 1) eligibility for some grant funds (e.g., SB 2) is contingent upon certification; and 2) in the event of a legal challenge to a Housing Element there is a rebuttable presumption of the validity of the Housing Element if HCD has found that the element substantially complies with State law (Government Code 65589.3).

For these reasons, Housing Element certification has very high financial consequences for cities and counties, and the Legislature has granted HCD sole and final authority to determine whether a Housing Element is compliant.

One of the most important aspects of Housing Element law is the requirement to demonstrate "adequate sites" with realistic development potential that could accommodate the jurisdiction's RHNA allocation at each income level (very-low, low, moderate and above-moderate). Recent changes to State law have resulted in much higher RHNA allocations than in past cycles due to the addition of "existing need" to the allocation. For example, HCD's 6th cycle RHNA allocation to the SCAG region is more than three times the 5th cycle and nearly double the 4th cycle. As a result, many highly urbanized cities will have RHNA allocations that far exceed their capacity for housing development on vacant land, and redevelopment of existing uses on non-vacant (or "underutilized") sites would be required in order to accommodate their RHNA allocations.

Recent amendments to Housing Element law establishes additional criteria for underutilized sites to be considered suitable for "RHNA credit." Under Sec. 65583.2(g)(2) if a city relies upon underutilized sites to provide 50 percent or more of its capacity for lower-income housing, then an existing use shall be presumed to an impediment to additional residential development, absent findings based on "substantial evidence" that the use is likely to be discontinued during the planning period (emphasis added). Existing statute and HCD guidance have not provided clear, objective criteria regarding what such substantial evidence must include. Further, given that actual, market-driven housing production in recent years has been significantly lower than RHNA growth estimates, the substantial evidence requirement that development is "likely" to occur on all of the underutilized sites in the Housing Element inventory results the inability to demonstrate adequate sites. Essentially, current law provides the standards of measure that cannot be met by most jurisdictions, due to the onerous and non-objective criteria.

The combination of much higher RHNA allocations, particularly for cities in highly urbanized areas with little vacant developable land, together with new substantial evidence criteria for underutilized sites, results in a very high level of uncertainty and potential financial risk for many cities.

One of the important legislative initiatives for increasing housing production has been to limit local government discretion in the review and approval of housing developments. SB 330, the Housing Crisis Act of 2019, describes the Legislature's intent to "Suspend certain restrictions on the development of new housing during the period of the statewide emergency" and "Work with local governments to expedite the permitting of housing…" In adopting SB 330 and other recent housing bills, the Legislature has recognized the importance of establishing clear, objective criteria for housing developments to reduce processing time and cost, and increase the certainty of housing approvals.

By the same token, demonstration of adequate sites and future housing production would be enhanced with clear, objective criteria for the review and certification of Housing Elements by providing guidance to local governments in the selection of appropriate sites to encourage housing development while minimizing local governments' administrative time and cost. This approach would be similar to existing law regarding "default density" for lower-income housing. In metropolitan areas, zoning densities of either 20 or 30 units/acre (depending on population) are deemed suitable for lower-income housing, but jurisdictions may use alternative densities in their sites analysis subject to HCD approval (Government Code 65583.2(c)).

In short, it is appropriate for cities and counties to have a clear path to achieving a certified Housing Element if they are following objective, simple and market friendly State guidance for implementing reasonable local policies that facilitate housing development.

This bill would contribute substantially to the effectiveness of Housing Elements by providing clear, objective standards to assist cities and counties when identifying underutilized sites to accommodate RHNA goals and facilitate future housing development. Several of the proposed standards build upon on the analysis and recommendations of leading housing experts in California, including University of California researchers and the Tax Credit Allocation Committee of the California Treasurer's office.

References

Landis, Hood, Li, Rodgers & Warren (2006) "The Future of Infill Housing in California: Opportunities, Potential, and Feasibility" in *Housing Policy Debate*, Volume 17, Issue 4, p. 687 (https://repository.upenn.edu/cgi/viewcontent.cgi?article=1038&context=cplan_papers)

(This landmark study by University of California, Berkeley researchers identified the metric of "improvement-to-land-value (I/L) as a means of identifying infill development potential of underutilized sites.)

California Fair Housing Task Force (2018) "Opportunity Mapping Methodology" (https://www.treasurer.ca.gov/ctcac/opportunity/final-opportunity-mapping-methodology.pdf)

(This study, initiated by HCD and the California Tax Credit Allocation Committee (TCAC), was conducted by a group of independent organizations and research centers that would become the California Fair Housing Task Force. The purpose of the study was to provide research, evidence-based policy recommendations, and other strategic recommendations to HCD and other related state agencies/departments to further fair housing goals. TCAC and HCD asked the Task Force to create a statewide opportunity mapping tool that could be adopted into TCAC regulations to accompany regulations to incentivize development of large-family, new construction developments with 9 percent LIHTCs in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families.)

**Proposed Government Code Amendment to Section 65583.2(g)** (Amend to provide objective standards for substantial evidence determination)

*65583.2(g)(2) In addition to the analysis required in paragraph (1), when a city or county is relying on nonvacant sites described in paragraph (3) of subdivision (b) to accommodate 50 percent or more of its housing need for lower income households, the methodology used to determine additional development potential shall demonstrate that the existing use identified pursuant to paragraph (3) of subdivision (b) does not constitute an impediment to additional residential development during the period covered by the housing element. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period.*

*(4) Pursuant to paragraph (2), any of the following conditions shall be deemed to satisfy the requirement for substantial evidence that the existing use is likely to be discontinued during the planning period:*

*(A) The existing improvement-to-land-value (I/L) ratio is less than 1.0 for commercial and multi-family properties or less than 0.5 for single-family properties according to the most recent available property assessment roll; or*

*(B) The site is designated a Moderate, High or Highest Resource area in the most recent Tax Credit Allocation Committee of the California Treasurer's office (TCAC) Opportunity Map; or*

*(C) Zoning for the site allows residential development of at least 100 percent additional floor area than existing structures on the site and housing developments in which at least 20 percent of the units are affordable to lower-income households are permitted by-right; or*

*(D) The use of non-vacant sites are accompanied by programs and policies that encourage or incentivize the redevelopment to residential use.*

**ATTACHMENT B**

Proposed amendments to Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.

**Proposed amendments to Government Code Section 65583.1 to provide objective standards for counting accessory dwelling units (ADUs) towards RHNA requirements.**

Justification

In light of recent changes in state law related to accessory dwelling units that require jurisdictions to now allow up three units per single-family lot (principal unit, accessory dwelling unit, and a junior accessory dwelling unit) or additional ADUs for multi-family development equal to 25 percent of the total number units in the development, the market potential and zoning capacity for development of ADUs has increased exponentially subsequent to the passing of recent statutes. Furthermore, the waiver of parking and owner occupancy requirements has eliminated the most significant barriers to the development of ADUs and increased the realistic development capacity of every jurisdiction. Therefore, it is essential that jurisdictions be allowed to utilize the development potential of ADUs towards accommodating their RHNA.

Currently Government Code Section 65583.1 provides HCD full discretion in determining how ADUs count towards RHNA and includes criteria based on past production. In most cities and counties, regulations for ADUs were much more restrictive prior to recent changes in law were adopted. Therefore, past production should not be utilized as the primary factor in estimating future ADU development potential. Revisions to the law are necessary to provide objective standards for HCD to utilize when determining the extent to which future ADUs count towards RHNA site requirements.

ADU capacity should be based on the existing site capacities when applying development standards required pursuant to state law. Because the current methodologies used to determine ADU yields do not reflect the considerable increase in ADU potential and the new limitations cities and counties have in restricting new ADU development, a new methodology is justified.

In the absence of affordability information, it is recommended that the statute establish reasonable assumptions for determining the percentage of ADUs that count towards a jurisdiction's lower-income requirements. The suggested method is currently required under SB330 (Government Code Section 66300(d)(2)) and Density Bonus Law (Government Code Section 65915) when reviewing the replacement housing requirements for housing development projects regulated by these laws. The laws state that when any existing dwelling units are occupied by lower-income households, a proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.

Given that this methodology for determining the affordability of households is currently utilized in both Density Bonus Law and SB330, it is recommended that this same methodology be utilized for determining the likely occupancy of ADUs. For example, if a jurisdiction's realistic capacity for ADUs is determined to be 1,000 new ADUs in the eight-year planning period, for the purposes of determining how many of these units may count towards accommodating the low and very-low income housing needs, a jurisdiction would utilize the percentage of existing very low- and low-income households compared to the jurisdiction's total renter households based on the HUD database. In the example below, a jurisdiction could count the capacity of up to 260 units towards the very low-income RHNA need and up to 146 units towards the low-income RHNA need.

The HUD database can be accessed at the following link: https://www.huduser.gov/portal/datasets/cp.html

**Example Breakdown of a Jurisdiction's Renter Household Income Distribution**

| Income Level | Renter Households | Percentage of Total Renter Households |
|---|---|---|
| **Very Low Income** | **4,400** | **26%** |
| **Low Income** | **2,400** | **14.6%** |
| **Moderate Income** | **1,100** | **6.7%** |
| **Above Moderate Income** | **8,500** | **52%** |
| **Total** | **16,400** | **100%** |

| Total Determined ADU Capacity | ADU Capacity Assumed to Accommodate Very Low-Income Housing Need | ADU Capacity Assumed to Accommodate Low-Income Housing Need |
|---|---|---|
| | | |
| **1,000** | **260 (26%)** | **146 (14.6%)** |

**Proposed Government Code Amendment to Section 65583.1** (Amend to provide objective standards for counting ADUs in sites analysis)

*(a)(1) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, ~~may~~ shall allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories.*

*(2) The department ~~may~~ shall also allow a city or county to identify adequate sites for accessory dwelling units based on ~~the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department.~~ existing zoning standards and the demonstrated potential capacity to accommodate accessory dwelling units and junior accessory dwelling units, as determined by the city or county. When ADUs are utilized to meet greater than 50 percent of a jurisdiction's lower-income need, the*

*Housing Element shall provide supplementary policies, programs and actions that further encourage or incentivize ADU development for lower-income households. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.*

*(3) For the purposes of determining the affordability level of potential accessory dwelling units and/or junior accessory dwelling units that can accommodate a jurisdiction's RHNA need affordable to lower-income households, the department shall take into account the jurisdiction's need for these units in the community, the resources or incentives available for their development, and any other relevant factors, justified by a local jurisdiction. At minimum, it shall be presumed that very low- and low-income renter households would occupy accessory units in the same proportion of very low- and low-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database.*

**ATTACHMENT C**

Proposed amendments Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements.

**Proposed amendments Government Code Section 65583.1(c) to expand and remove the eligibility barriers for use of the existing Alternative Adequate Sites towards RHNA requirements**

Justification

Generally, RHNA credit is obtained for new construction units, except Government Code 65583.1(c) currently does allow local governments to meet up to 25 percent of sites requirements for RHNA by providing affordable units through either: *rehabilitation*; *conversion*; and/or *preservation*. However, this statute is seldom used by jurisdictions because it includes a number of prohibitive prerequisites making qualification of sites extremely difficult. In fact, the City of Garden Grove recently committed $1.2 million to an acquisition/rehabilitation project that converted 79 at-risk-to-convert-to-market-rate housing units to affordable housing for households at or below 50% of the Area Median Income. However, due to a requirement that the City must have committed funds within the first two years of the planning period, the project was not eligible for RHNA credit.

Identified problems and reforms suggested include:

1. Requires "committed assistance" from a local government during the first two years of the planning period. This is defined as a legally enforceable agreement which obligates the preemptive identification of sufficient available funds to the availability of financial assistance necessary to make the identified units affordable and available for occupancy within two years of the execution of the agreement.

   This has proven problematic, in that, committing assistance in the first two years is a difficult standard to achieve because housing element planning periods in metropolitan areas were extended from five years to eight years under SB 375 of 2008. For example, if a project is committed assistance in the third year of a planning period, those units would not be eligible. The statute should be amended to clarify that committed assistance must be demonstrated early enough in the planning period such that the housing units would be completed and available before the end of the planning period.

2. Required affordability terms for units vary as follows: 55 years for converted units; 40 years for preserved units; and 20 years for rehabilitated units. For a new housing development, terms of 40 or 55 years is reasonable; however, these terms are particularly long and have the potential to make the conversion or preservation of older, existing developments infeasible due to cost. The minimum terms of affordability should be reduced to 20 years unless a longer term is required by another supplementary funding sources.

3. Qualifications for Preservation of Units only allow credit if the existing affordable units are set to expire within the next five years. This should be revised to 10 years to allow for the additional time to negotiate typically complicated transactional details, particularly since committed assistance is currently required within the first two years of the planning period (see comment 1 above).

4. 25 percent limitation- The statute permits a maximum 25 percent of a jurisdiction's adequate sites requirement to be met through this requirement. This is very limiting and discourages jurisdictions from implementing this statute. Given the high land costs and significant increase in RHNA allocations to these jurisdiction's based on proximity to jobs and transit, this statute should encourage and promote rehabilitation, conversion and preservation as a realistic option for meeting RHNA requirements. By increasing the 25 percent limitation to 50 percent and removing onerous and unobtainable prerequisites for qualification, affordable units have a greater likelihood of being constructed in these high cost markets through conversion and preservation of existing housing stock.

**Proposed Amendment to Government Code Section 65583.1 (c)**

*(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to ~~25~~ 50 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:*

*(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.*

*(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.*

*(C) Demonstrate that the units meet the requirements of paragraph (2).*

*(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:*

*(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:*

*(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, or the relocation is otherwise provided prior to displacement either as a condition of receivership, or provided by the*

*property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.*

*(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation.*

*(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.*

*(B) Units that are located either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units, are converted with committed assistance from the city or county, or from a private entity satisfying a city or county's housing requirement, from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:*

*(i) The unit is made available for rent at a cost affordable to low- or very low income households.*

*(ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:*

*(I) Low-income households, if the unit will be made affordable to low-income households.*

*(II) Very low income households, if the unit will be made affordable to very low income households.*

*(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government or private entity has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the*

*moving expenses and comparable replacement housing required pursuant to Section 7260.*

*(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.*

*(v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than ~~55~~ 20 years unless a longer period is required by other supplementary financial assistance programs.*

*(vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.*

*(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:*

*(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least ~~40~~ 20 additional years unless a longer period is required by other supplementary financial assistance programs.*

*(ii) The unit is within an "assisted housing development," as defined in paragraph (3) of subdivision (a) of Section 65863.10.*

*(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next ~~five~~ ten years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.*

*(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.*

*(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.*

*(3) ~~This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households.~~ A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.*

*(4) For purposes of this subdivision, "committed assistance" means that the city or county, or a private entity satisfying a city or county's housing requirements, enters into a legally enforceable agreement ~~during the period from the beginning of the projection period until the end of the second year of the planning period~~ that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for*

*occupancy during the planning period ~~within two years of the execution of the agreement~~. "Committed assistance" does not include tenant-based rental assistance.*

*(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.*

*(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.*

*(7) In the ~~third~~ fifth year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the ~~third~~ fifth year of the planning period, the city or county, or private entity satisfying a city or county's housing requirement, has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the ~~fourth~~ sixth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.*

*(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.*