

AMENDED IN ASSEMBLY JANUARY 4, 2010

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 594

Introduced by Assembly Member Harkey

February 25, 2009

An act to amend Section 65583.1 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 594, as amended, Harkey. Land use: housing element.

The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that analyzes existing and projected housing needs and includes a statement of goals, quantified objectives, policies, financial resources, and scheduled programs for the maintenance, preservation, improvement, and development of housing. The housing element is required to identify the existing and projected housing needs of all economic segments of the community. The Department of Housing and Community Development is authorized to allow a city, ~~county, or city and county~~ to substitute the provision of units for up to 25% of the community's obligation to identify adequate sites for any income category in its housing element, as specified, when the community includes in its housing element a program committing the local government to provide units in that income category within the city, county, or city and county that will be made available through the provision of committed assistance during the planning period covered by the housing element

to low- and very low income households at affordable housing costs or affordable rents, as defined.

This bill would authorize the department to allow a city, ~~county~~, or ~~city and county~~ to substitute the provision of units for up to 50% of its site identification obligation if it includes in its housing element a program to provide units within the city or county in any income category that will be made available to low- and very low income households through the provision of committed assistance, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583.1 of the Government Code is
2 amended to read:
3 65583.1. (a) The Department of Housing and Community
4 Development, in evaluating a proposed or adopted housing element
5 for substantial compliance with this article, may allow a city or
6 county to identify adequate sites, as required pursuant to Section
7 65583, by a variety of methods, including, but not limited to,
8 redesignation of property to a more intense land use category and
9 increasing the density allowed within one or more categories. The
10 department may also allow a city or county to identify sites for
11 second units based on the number of second units developed in
12 the prior housing element planning period whether or not the units
13 are permitted by right, the need for these units in the community,
14 the resources or incentives available for their development, and
15 any other relevant factors, as determined by the department.
16 Nothing in this section reduces the responsibility of a city or county
17 to identify, by income category, the total number of sites for
18 residential development as required by this article.
19 (b) Sites that contain permanent housing units located on a
20 military base undergoing closure or conversion as a result of action
21 pursuant to the Defense Authorization Amendments and Base
22 Closure and Realignment Act (Public Law 100-526), the Defense
23 Base Closure and Realignment Act of 1990 (Public Law 101-510),
24 or any subsequent act requiring the closure or conversion of a
25 military base may be identified as an adequate site if the housing
26 element demonstrates that the housing units will be available for
27 occupancy by households within the planning period of the

1 element. No sites containing housing units scheduled or planned
2 for demolition or conversion to nonresidential uses shall qualify
3 as an adequate site.

4 Any city, city and county, or county using this subdivision shall
5 address the progress in meeting this section in the reports provided
6 pursuant to paragraph (1) of subdivision (b) of Section 65400.

7 (c) (1) The Department of Housing and Community
8 Development may allow a city or county to substitute the provision
9 of units for up to ~~25~~ 50 percent of the community's obligation to
10 identify adequate sites for any income category in its housing
11 element pursuant to paragraph (1) of subdivision (c) of Section
12 65583 where the community includes in its housing element a
13 program committing the local government to provide units in that
14 income category within the city or county that will be made
15 available through the provision of committed assistance during
16 the planning period covered by the element to low- and very low
17 income households at affordable housing costs or affordable rents,
18 as defined in Sections 50052.5 and 50053 of the Health and Safety
19 Code, and which meet the requirements of paragraph (2). Except
20 as otherwise provided in this subdivision, the community may
21 substitute one dwelling unit for one dwelling unit site in the
22 applicable income category. The program shall do all of the
23 following:

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

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

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

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

36 (A) Units that are to be substantially rehabilitated with
37 committed assistance from the city or county and constitute a net
38 increase in the community's stock of housing affordable to low-
39 and very low income households. For purposes of this

1 subparagraph, a unit is not eligible to be “substantially
2 rehabilitated” unless all of the following requirements are met:

3 (i) At the time the unit is identified for substantial rehabilitation,
4 (I) the local government has determined that the unit is at imminent
5 risk of loss to the housing stock, (II) the local government has
6 committed to provide relocation assistance pursuant to Chapter 16
7 (commencing with Section 7260) of Division 7 of Title 1 to any
8 occupants temporarily or permanently displaced by the
9 rehabilitation or code enforcement activity, or the relocation is
10 otherwise provided prior to displacement either as a condition of
11 receivership, or provided by the property owner or the local
12 government pursuant to Article 2.5 (commencing with Section
13 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and
14 Safety Code, or as otherwise provided by local ordinance; provided
15 the assistance includes not less than the equivalent of four months’
16 rent and moving expenses and comparable replacement housing
17 consistent with the moving expenses and comparable replacement
18 housing required pursuant to Section 7260, (III) the local
19 government requires that any displaced occupants will have the
20 right to reoccupy the rehabilitated units, and (IV) the unit has been
21 found by the local government or a court to be unfit for human
22 habitation due to the existence of at least four violations of the
23 conditions listed in subdivisions (a) to (g), inclusive, of Section
24 17995.3 of the Health and Safety Code.

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

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

34 (B) Units that are located in a multifamily rental housing
35 complex of four or more units, are converted with committed
36 assistance from the city or county from nonaffordable to affordable
37 by acquisition of the unit or the purchase of affordability covenants
38 and restrictions for the unit, are not acquired by eminent domain,
39 and constitute a net increase in the community’s stock of housing
40 affordable to low- and very low income households. For purposes

1 of this subparagraph, a unit is not converted by acquisition or the
2 purchase of affordability covenants unless all of the following
3 occur:

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

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

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

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

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

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

26 (v) The unit has long-term affordability covenants and
27 restrictions that require the unit to be affordable to persons of low-
28 or very low income for not less than 55 years.

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

35 (i) The unit has long-term affordability covenants and
36 restrictions that require the unit to be affordable to and reserved
37 for occupancy by persons of the same or lower income group as
38 the current occupants for a period of at least 40 years.

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

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

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

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

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

20 (4) For purposes of this subdivision, “committed assistance”
21 means that the city or county enters into a legally enforceable
22 agreement during the period from the beginning of the projection
23 period until the end of the second year of the planning period that
24 obligates sufficient available funds to provide the assistance
25 necessary to make the identified units affordable and that requires
26 that the units be made available for occupancy within two years
27 of the execution of the agreement. “Committed assistance” does
28 not include tenant-based rental assistance.

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

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

(7) In the third 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 year of the planning period, the city or county 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 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.

~~SECTION 1. Section 65583.1 of the Government Code is amended to read:~~

~~65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may 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. The department may also allow a city or county to identify sites for~~

1 second units based on the number of second units developed in
2 the prior housing element planning period whether or not the units
3 are permitted by right, the need for these units in the community,
4 the resources or incentives available for their development, and
5 any other relevant factors, as determined by the department.
6 Nothing in this section reduces the responsibility of a city or county
7 to identify, by income category, the total number of sites for
8 residential development as required by this article.

9 (b) Sites that contain permanent housing units located on a
10 military base undergoing closure or conversion as a result of action
11 pursuant to the Defense Authorization Amendments and Base
12 Closure and Realignment Act (Public Law 100-526), the Defense
13 Base Closure and Realignment Act of 1990 (Public Law 101-510),
14 or any subsequent act requiring the closure or conversion of a
15 military base may be identified as an adequate site if the housing
16 element demonstrates that the housing units will be available for
17 occupancy by households within the planning period of the
18 element. No sites containing housing units scheduled or planned
19 for demolition or conversion to nonresidential uses shall qualify
20 as an adequate site.

21 Any city, city and county, or county using this subdivision shall
22 address the progress in meeting this section in the reports provided
23 pursuant to paragraph (1) of subdivision (b) of Section 65400.

24 (c) (1) The Department of Housing and Community
25 Development may allow a city or county to substitute the provision
26 of units for up to 50 percent of the community's obligation to
27 identify adequate sites for any income category in its housing
28 element pursuant to paragraph (1) of subdivision (c) of Section
29 65583 where the community includes in its housing element a
30 program committing the local government to provide units in that
31 income category within the city or county that will be made
32 available through the provision of committed assistance during
33 the planning period covered by the element to low- and very low
34 income households at affordable housing costs or affordable rents,
35 as defined in Sections 50052.5 and 50053 of the Health and Safety
36 Code, and which meet the requirements of paragraph (2). Except
37 as otherwise provided in this subdivision, the community may
38 substitute one dwelling unit for one dwelling unit site in the
39 applicable income category. The program shall do all of the
40 following:

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

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

8 ~~(C) Demonstrate that the units meet the requirements of~~
9 ~~paragraph (2).~~

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

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

19 ~~(i) At the time the unit is identified for substantial rehabilitation,~~
20 ~~(I) the local government has determined that the unit is at imminent~~
21 ~~risk of loss to the housing stock, (II) the local government has~~
22 ~~committed to provide relocation assistance pursuant to Chapter 16~~
23 ~~(commencing with Section 7260) of Division 7 of Title 1 to any~~
24 ~~occupants temporarily or permanently displaced by the~~
25 ~~rehabilitation or code enforcement activity, or the relocation is~~
26 ~~otherwise provided prior to displacement either as a condition of~~
27 ~~receivership, or provided by the property owner or the local~~
28 ~~government pursuant to Article 2.5 (commencing with Section~~
29 ~~17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and~~
30 ~~Safety Code, or as otherwise provided by local ordinance; provided~~
31 ~~the assistance includes not less than the equivalent of four months'~~
32 ~~rent and moving expenses and comparable replacement housing~~
33 ~~consistent with the moving expenses and comparable replacement~~
34 ~~housing required pursuant to Section 7260, (III) the local~~
35 ~~government requires that any displaced occupants will have the~~
36 ~~right to reoccupy the rehabilitated units, and (IV) the unit has been~~
37 ~~found by the local government or a court to be unfit for human~~
38 ~~habitation due to the existence of at least four violations of the~~
39 ~~conditions listed in subdivisions (a) to (g), inclusive, of Section~~
40 ~~17995.3 of the Health and Safety Code.~~

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

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

10 ~~(B) Units that are located in a multifamily rental housing~~
11 ~~complex of four or more units, are converted with committed~~
12 ~~assistance from the city or county from nonaffordable to affordable~~
13 ~~by acquisition of the unit or the purchase of affordability covenants~~
14 ~~and restrictions for the unit, are not acquired by eminent domain;~~
15 ~~and constitute a net increase in the community's stock of housing~~
16 ~~affordable to low- and very low income households. For purposes~~
17 ~~of this subparagraph, a unit is not converted by acquisition or the~~
18 ~~purchase of affordability covenants unless all of the following~~
19 ~~occur:~~

20 ~~(i) The unit is made available at a cost affordable to low- or~~
21 ~~very low income households.~~

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

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

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

29 ~~(iii) At the time the unit is identified for acquisition the unit is~~
30 ~~not occupied by low- or very low income households or if the~~
31 ~~acquired unit is occupied, the local government has committed to~~
32 ~~provide relocation assistance prior to displacement, if any, pursuant~~
33 ~~to Chapter 16 (commencing with Section 7260) of Division 7 of~~
34 ~~Title 1 to any occupants displaced by the conversion, or the~~
35 ~~relocation is otherwise provided prior to displacement; provided~~
36 ~~the assistance includes not less than the equivalent of four months'~~
37 ~~rent and moving expenses and comparable replacement housing~~
38 ~~consistent with the moving expenses and comparable replacement~~
39 ~~housing required pursuant to Section 7260.~~

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

3 ~~(v) The unit has long-term affordability covenants and~~
4 ~~restrictions that require the unit to be affordable to persons of low-~~
5 ~~or very low income for not less than 55 years.~~

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

12 ~~(i) The unit has long-term affordability covenants and~~
13 ~~restrictions that require the unit to be affordable to and reserved~~
14 ~~for occupancy by persons of the same or lower income group as~~
15 ~~the current occupants for a period of at least 40 years.~~

16 ~~(ii) The unit is within an “assisted housing development,” as~~
17 ~~defined in paragraph (3) of subdivision (a) of Section 65863.10.~~

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

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

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

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

37 ~~(4) For purposes of this subdivision, “committed assistance”~~
38 ~~means that the city or county enters into a legally enforceable~~
39 ~~agreement during the first two years of the housing element~~
40 ~~planning period that obligates sufficient available funds to provide~~

1 the assistance necessary to make the identified units affordable
2 and that requires that the units be made available for occupancy
3 within two years of the execution of the agreement. “Committed
4 assistance” does not include tenant-based rental assistance.

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

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

16 (7) On July 1 of the third year of the planning period, as defined
17 by Section 65588, in the report required pursuant to Section 65400,
18 each city or county that has included in its housing element a
19 program to provide units pursuant to subparagraph (A), (B), or (C)
20 of paragraph (2) shall report in writing to the legislative body, and
21 to the department within 30 days of making its report to the
22 legislative body, on its progress in providing units pursuant to this
23 subdivision. The report shall identify the specific units for which
24 committed assistance has been provided or which have been made
25 available to low- and very low-income households, and it shall
26 adequately document how each unit complies with this subdivision.
27 If, by July 1 of the third year of the planning period, the city or
28 county has not entered into an enforceable agreement of committed
29 assistance for all units specified in the programs adopted pursuant
30 to subparagraph (A), (B), or (C) of paragraph (2), the city or county
31 shall, not later than July 1 of the fourth year of the planning period,
32 adopt an amended housing element in accordance with Section
33 65585, identifying additional adequate sites pursuant to paragraph
34 (1) of subdivision (c) of Section 65583 sufficient to accommodate
35 the number of units for which committed assistance was not
36 provided. If a city or county does not amend its housing element
37 to identify adequate sites to address any shortfall, or fails to
38 complete the rehabilitation, acquisition, purchase of affordability
39 covenants, or the preservation of any housing unit within two years
40 after committed assistance was provided to that unit, it shall be

1 ~~prohibited from identifying units pursuant to subparagraph (A);~~
2 ~~(B), or (C) of paragraph (2) in the housing element that it adopts~~
3 ~~for the next planning period, as defined in Section 65588, above~~
4 ~~the number of units actually provided or preserved due to~~
5 ~~committed assistance.~~

O