

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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February 16, 2024

Heather Abrams, Town Manager  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 9930

Dear Heather Abrams:

**RE: Town of Fairfax's 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the Town of Fairfax (Town) housing element adopted December 13, 2023 and received for review on December 19, 2023, along with revisions received on February 16, 2024. Revisions were authorized pursuant to Resolution 23-60. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by conversations with you, Jeff Beiswenger, Planning and Building Services Director, and your consultant, Andrew Hill.

The revised draft element addresses most statutory requirements in HCD's August 11, 2023; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code) as follows:

- 1. An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

*Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09.*

Small Sites: The element did not address this requirement. The revised Appendix A identifies small sites under 0.5 acres to accommodate the Town's lower-income Regional Housing Needs Allocation (RHNA). These sites include APNs 001-183-10, 001-183-14, 001-183-15, 002-113-08, and 002-123-17 and 002-144-01 when consolidated. Please note while APNs 001-183-17 and 002-122-47 are over 0.5 acres, it does not meet the minimum capacity requirements of 16 units for sites that are rezoned to accommodate a shortfall for the lower-income RHNA. See below.

As stated in the prior review these sites are not eligible absent a demonstration that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless other evidence is provided. Please see prior review.

Program 2-A: HCD recognizes the Town adopted Ordinance 887 the Workforce Housing Overlay to implement Program 2-A to rezone to address a shortfall of sites to accommodate the RHNA pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A). This includes rezoning to accommodate a shortfall of sites to accommodate the lower-income RHNA pursuant to Government Code section 65583.2, subdivisions (h), and (i). However, based on a review of ordinance number 887, and the revised housing element, it is unclear if the rezones include all the requirements pursuant to Government Code section 65583.2, subdivisions (h), and (i). For example, as stated above, it appears from the revised sites inventory that several of the sites identified to accommodate the lower-income RHNA are smaller than 0.5 acres and have a capacity of less than 16. This is inconsistent with the requirement that rezone sites for lower-income accommodate a minimum of 16 units. In addition, it is unclear if the Workforce Housing Overlay permits owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a conditional use permit (CUP), planned unit development permit, or other discretionary review or approval. The element and ordinance must be revised to demonstrate consistency with these requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the Town failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), rezones to accommodate the regional housing needs allocation must be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i) including all the by-right requirements. If the Town fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to

accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) are completed.

Programs: As stated above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the Town may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the Town will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the Town to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the cooperation provided during the review. We are committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact me, at [Melinda.Coy@hcd.ca.gov](mailto:Melinda.Coy@hcd.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Melinda Coy', with a long horizontal stroke extending to the right.

Melinda Coy  
Proactive Housing Accountability Chief