




TOWN OF FAIRFAX

STAFF REPORT

January 14, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 
Jim Moore, Director of Planning and Building Services

SUBJECT: Discussion and consideration of report on status of update to the Housing Element.

RECOMMENDATION

Accept report on status of update to the Housing Element and direct staff as appropriate.

BACKGROUND

On September 24, 2014 staff convened an Affordable Housing Committee (AHC) meeting to discuss strategies to meet the next Cycle #5 Regional Housing Needs Allocation (RHNA) – Housing Element update. Topics discussed included a new Second Unit Amnesty Ordinance, revisions to the existing second unit section of the Zoning Ordinance – with provisions for ‘junior’ second units (e.g., utilizing living space in existing homes) and new opportunity sites for infill housing. There was a general consensus to (1) move forward with the improved use of second units, (2) further vet any opportunity sites for infill housing, and (3) move forward with the update process.

On October 9, 2014, at a regular meeting of the General Plan Implementation Committee (GPIC), staff reported on the Housing Element update discussion and direction given at the September 24, 2014, AHC meeting. There was general consensus to move forward with the update process. GPIC also suggested that the Town Council should consider holding a “Traffic Forum” as part of the Council’s ongoing series of forums being held in order to provide for greater public participation in – and understanding of – housing policies for the Town.

At its November 5, 2014, meeting, the Council directed staff to commence drafting the 5th Regional Housing Needs Allocation (RHNA) – Housing Element (HE) update.

On November 25, 2014, a joint Planning Commission (PC) and Affordable Housing Committee (AHC) meeting was held to review the goals and timelines for completing the Housing Element update. The Town’s planning consultant, Larry Kennings of LAK and Associates, and his housing specialist sub-consultant, Amy Sinsheimer of PMC World, participated in this meeting in order to clarify important points with regard to timelines, goals, and requirements, to answer questions, and to receive direction on the drafting of the Housing Element update.

DISCUSSION

The Housing Element is one of the seven required elements of the Town’s General Plan. Unlike other General Plan elements, amendments to it are tied to regional transportation planning (SB 375) and relevant deadlines are established by state law. As mentioned in the

November 5, 2014, staff report to Council, the State Department of Housing and Community Development (HCD) deadline for completing a Housing Element update covering the next Cycle #5 RHNA is January 1, 2015, though there is a 120-day grace period that functionally extends the deadline to May 31, 2015. In order for a municipality to take advantage of an eight (8) year update cycle instead of a four (4) year update cycle, the Town must adopt its updated HE by May 31, 2015. It would save the Town considerable resources in both time and money to only have to update the HE 8 years from now.

While the updated HE will include new demographic data and analysis, staff is pursuing a strategy which will “rollover” or incorporate the same Opportunity Sites from the current HE into the updated version, as permitted by HCD. In essence, the strategy to meet the Fifth Cycle RHNA obligations will be almost identical to the existing HE.

Below is an analysis of the required timelines, RHNA obligations, and strategy for meeting the RHNA numbers, discussion of second units and affordability, and the next steps.

Timeline

Prior to Council adoption of a Housing Element update or amendment (the terms are used interchangeably in this report), the draft document must first be submitted to HCD for its review and determination that the document complies with the requirements of applicable state law. By statute, HCD generally has 60 days to conduct their review. However, a streamlined review process, whereby HCD has 30-45 days to complete their analysis, is available in some instances. Initially, staff thought the draft HE might qualify for such expedited review. This ultimately proved unavailable because certain criteria could not be met. Specifically, the Town did not make the zoning changes that are called for in the current Housing Element by the end of the 4th Cycle RHNA (Regional Housing Needs Assessment) planning period, January 31, 2015.

Despite this, staff believes that HCD’s review of a draft Housing Element update should proceed relatively quickly since HCD just reviewed and certified the Town’s most recent Housing Element in November 2013. As a result, HCD is very familiar with the housing strategies and specific Opportunity Sites contained therein – which is being recommended to remain as part of the new draft document.

The Town’s planning sub-consultant staff, Amy Sinsheimer of PMC World (who works very closely with HCD staff on numerous municipal Housing Element updates) indicates that there is a provision that allows for a jurisdiction to qualify for the eight (8) year review cycle going forward if a municipality has an adopted Housing Element by May 31, 2015 – with State certification following that date. Therefore, the relevant action in terms of meeting the May 31, 2015, deadline is Town adoption, not state certification, of the Housing Element update.

RHNA Obligation: Cycles #4 and #5

At the November 5, 2014, Town Council meeting, during the public comment period on the Housing Element update process, a resident asserted that the Town could simply “rollover” its existing Opportunity Sites contained in the last Housing Element to address the new Cycle #5 RHNA, as opposed to Cycles #4 and #5.

Based on those comments, staff researched this matter and reported at the joint PC/AHC meeting that according to HCD, the Town must accommodate the immediate past Cycle #4 RHNA as well as the new Cycle #5 obligation, but can use existing Opportunity Sites (i.e., rollover) to meet the RHNA numbers. The reason the Town must plan for both the RHNA Cycle #4 and #5 is because the Town has not yet completed the rezoning of properties contemplated in the Cycle #4 HE to accommodate the Cycle #4 RHNA numbers, and those units must still be planned for. At the joint PC/AHC meeting on November 20, 2014, members of the PC and AHC requested the Town Attorney confirm this interpretation. This determination was based on the HCD's application of Government Code Section 65584.09 (see attached HCD memo):

Government Code Section 65584.09, states as follows:

(a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

The underlined section is the issue of concern. The Town Attorney, PMC World, and HCD have confirmed that "failed to identify or make available adequate sites to accommodate..." means that the Town was not able to identify sites that were already zoned such that they could provide the by right development of housing for the various household income levels called out in state law, nor did the Town rezone the Opportunity sites as proposed in the HE in order to achieve such accommodation. In essence, the term "identify" has the same meaning as "make available," both of which apply to the "adequate sites" requirement (i.e., properties allowing housing by right). Since the Town has not rezoned the Opportunity Sites needed to meet the "adequate sites available" requirement, the Town will be required to meet both the RHNA requirements for Cycles #4 and #5.

Strategy for Meeting RHNA

The good news is that staff believes that in all likelihood the Town can accommodate both RHNA Cycles #4 & #5 with basically the same approach and number of Opportunity Sites that were contained in the last Housing Element – with the addition of approximately sixteen (16) second units allotted in the equations (see Table A). In other words, the Town would still be able to rollover the existing Opportunity Sites to cover both RHNA Cycles #4 & #5 going forward (i.e., no new rezoning or Opportunity Sites other than those already identified in the current Housing Element should be needed). HCD confirms that the Town no longer needs to plan for Cycle #3 RHNA numbers.

Table A, (on the following page), shows the quotas for the current RHNA Cycle #5 and the last two RHNA Cycles (#3 & #4) that were accommodated in the existing Housing Element. Per Government Code Section 65584.09, the Town must now zone to accommodate not only the new RHNA (61 units) but also the last RHNA Cycle #4 (108 units). As a result, the Town must zone to accommodate 169 units for both RHNA Cycles #4 and #5.

TABLE A
REGIONAL HOUSING NEEDS ALLOCATIONS (RHNA) CYCLES # 3, 4 & 5
APPLICABLE TO THE TOWN OF FAIRFAX 2015 – 2023 HOUSING ELEMENT UPDATE

RHNA Cycles #3, 4 and 5	Extremely Low <30%	Very Low 30%–50%	Low <80%	Mod <120%	Above Mod	Number Of Units
1999–2006*	6	6	7	19	26	64
2007–2014**	11	12	12	19	54	108
2015–2023***		16	11	11	23	61
					Grand Total	169

*Source: ABAG, 2006 / no longer applicable in 5th Cycle RHNA Housing Element Update (per AB 1233)

**Source: ABAG, 2009 / required in 5th Cycle RHNA Housing Element Update due to non-compliance

***Source ABAG, 2012

Table B (attached) shows how the current Housing Element's accommodation of RHNA Cycles #3 & #4 can be applied toward the Housing Element update for RHNA Cycles #4 & #5. Table B also shows the Opportunity Sites and credits that were used in the Town's existing (certified) Housing Element to accommodate RHNA Cycles #3 & #4 and compares that total (172) with the required new RHNA (169) in the Housing Element update for Cycle #5.

Table C shows the preliminary strategy for meeting Cycle #4 & #5 RHNA. This table shows how the Town should be able to meet its current and new RHNA requirement (169 total) by identifying a) previously zoned sites, b) deducting the number of built units, c) the previous Opportunity Sites and d) sixteen (16) second units. In other words, the only change envisioned in the Housing Element update this time around compared to the last update is to add sixteen second units (new or "informal") into our mix of Opportunity Sites.

Second Units

In the last Housing Element update, the Town sought to include twenty-five (25) second units (new and/or informal ones legalized) as part of the strategy to meet the required RHNA for Cycles #3 & #4. However, HCD rejected this approach and only allowed the Town a credit of three (3) second units since the track-record for permitting second units in Fairfax had been very low over the last planning period and since there was only approximately one year left in the planning period (which will end on January 31, 2015). Now however, the Town has approved two (2) new second units within the last twelve months and there will be an eight-year planning period (assuming Town adoption of the Housing Element update by May 31, 2015). Therefore, staff believes that sixteen (16) second units can be reasonably anticipated in the next RHNA eight year planning period between now and 2023 (i.e., assuming that there will be an average of two (2) units per year for eight (8) years totaling sixteen (16)).

The intended use of second units in the previous Housing Element update - to the maximum amount possible, as well as the discussion of their use during the first series of meetings during this Housing Element update, has been universally accepted and promoted enthusiastically by members of the Fairfax community at large. Preliminary investigations into the number of existing “informal” second units in Town indicate that there are approximately thirty (30) units identifiable through county tax records and at least fifty (50) more that are suspect through rental advertisements or other means. The Town’s policy, as reflected in its General Plan and Zoning Ordinance, is to help property owners bring their existing “informal” second unit conditions into compliance with the governing land use requirements of the Town. This policy direction complements and is consistent with the housing goals of the Town’s existing adopted and state-certified Housing Element.

In addition, staff has received positive feedback on relaxing certain development standards and parking requirements for second units, where appropriate. For example, in the non-Wildlife Urban Interface (WUI) zone going up to a 30% topographical slope along the Sir Francis Drake transit corridor). Staff will be preparing draft language in the update to address these issues and any others that inhibit the production and use of small second units where appropriate. Likewise, the concept of “junior” second units will be included in the draft update for review, with recommendations to include revisions in the Zoning Ordinance to promote more cost effective - and environmentally sensitive – junior second units that are created within already constructed and under-utilized residential structures.

Please note: Subsequent to the joint PC/AHC meeting on November 20, 2014, PMC informally submitted to HCD the Town’s preliminary strategy for meeting RHNA Cycles #4 & #5 by using the existing Opportunity Sites (yet to be rezoned) along with a credit of sixteen (16) second units – and staff is happy to report that last week we received positive feedback from HCD on this approach - with the recommendation that the Town’s housing element consultants look closely at how other jurisdictions qualified the projected increased use of second units in their Housing Element updates.

Affordability

There continues to be concern from members of the Town Council and Planning Commissioners, as well as committee members and the Fairfax public at large - that the proposed strategy in the Housing Element update accomplish as much as possible to create units that are more affordable. There have also been suggestions that the Town consider limiting the size of homes to a smaller square footage than is currently allowed (with the goal of keeping the existing housing stock at more affordable levels than larger homes would command) and the creation of a “community development corporation” and/or a “community land trust” (similar to the Bolinas Community Land Trust) to further the Town’s goals of creating more affordable housing. It should be noted that the current Housing Element calls for the creation of a Housing Trust Fund to facilitate the production of affordable units.

Per the current HE, the Council will need to discuss guidelines and incentives to ensure the affordability of second units and second floor units in residential areas and the downtown, respectively. Staff would suggest that the Council expand those future discussions to include approaches for creating more affordable housing opportunities for residents and people that work in Town.

Next Steps

Work has been underway since the joint PC/AHC meeting November 20, 2014 on the labor-intensive demographic research and analysis required in this Housing Element update - using the new 2010 census material. This will result in a more intensive understanding of housing needs specific to the Town of Fairfax.

Staff anticipates a Housing Element update draft document in February 2015. Below is a tentative schedule:

- January 22 HE Community Workshop 5-7pm (HCD encourages a workshop before the draft is completed)
- February 19 Special Joint PC/AHC meeting 5-7pm to consider draft HE
- March 4 Town Council to consider draft HE for submittal to HCD (Note: 60 day review period for HCD commences upon submission of materials to HCD, but we are hopeful that we will have comments back from HCD within 4 to 6 weeks).
- April 16 Planning Commission hearing to consider recommendation to Town Council on adoption of HE update (Note: The PC may need to hold a special meeting in late April or early May depending on when HCD's comments are received)
- May 6 Town Council to consider final adoption of HE with any remaining issues with HCD being worked out later. (Note: The Council may need to hold a special meeting in mid to late May depending on when the PC is able to review HCD's comments)

FISCAL IMPACT

Already part of FY 2014-15 budget

ATTACHMENTS

Table B
Table C
HCD Memo

TABLE B

FAIRFAX 2013 HOUSING ELEMENT ACCOMODATION of RHNA CYCLES #3 & 4

Opportunity Sites and/or credits	Targeted Population	Affordability Ranges	Base Density (if any)	Number of Units
Lutheran Church (PDD)	Seniors	100% @ 30% to 50% AMI	20 units / acre*	40
10 Olema Road (PDD)	Workforce	50% @ 30% to 50% AMI	20 units / acre*	22
School Street Plaza (PDD)	Misc.	Moderate to above	None	9
Westside Commercial (CC)	Misc.	Moderate to above	None	17
Fair Anselm Area (CC)	Misc.	Moderate to above	None	22
Eastside Commercial (CC)	Misc.	Moderate to above	None	14
Sub Total				124
Previously zoned, or built from 1999 - 2014	Misc.	Misc.	None	21 27**
(Cycle #3 & #4 RHNA) Previous Total 172 (Cycle #4 & #5 RHNA) New Total Required 169***				

Note: The opportunity sites, previously zoned properties, and the built units from 2006-2014 can be applied toward the Housing Element update for RHNA Cycles #4 & #5

* Maintaining the minimum base density of 20 units / acre at these two sites (only) – as in the existing State certified Housing Element for RHNA Cycle #4 should satisfies the state required low income or below affordability ranges: however, nothing precludes the Town from imposing additional affordability requirements on a project by project basis in each of the opportunity sites identified in the Housing Element.

**This number will be adjusted upwardly for any units built since adoption of the Amended Housing Element on October 22, 2013; and downwardly to eliminate units built during Cycle #3 RHNA from (approximately total allocable is 8 units)

*** Please Note: Alternative sites identified during, or subsequent to, the 2015-2023 5th Cycle RHNA Housing Element update may be substituted for existing Opportunity Sites. (Optional site)

This table shows the Opportunity Sites and credits used that were used in the Town’s existing (certified) Housing Element to accommodate RHNA Cycles #3 & #4: and compares that total (172) with the required new RHNA (169) in the Housing Element update for Cycle #5, which per Government Code must also include Cycle #4 requirements since the Town is technically not in “compliance” since it has not yet rezoned the Opportunity Sites.

TABLE C
PRELIMINARY STRATEGY FOR MEETING RHNA CYCLES #4 & 5

Description	Number of Units
Total RHNA Cycles 4 & 5	169
Previously Zoned (allowed by right)	<21>
Permitted Est. (2006 – 2014)	<8>
Subtotal RHNA Units	140
Proposed Second Units (informal)	<16>
Subtotal RHNA Units	124
Previous Opportunity Sites	<124>
Total Unmet RHNA Need	0

This table shows how the Town should be able to meet its new RHNA requirement for Cycles #5 which includes Cycle #4 (e.g., 169 total) by using a) previously zoned sites, b) deducting the number of built units, c) the previous Opportunity Sites and d) sixteen (16) second units. In other words, the only change envisioned in the Housing Element update this time around compared to the last update is to add sixteen second units (new or “informal”) into our mix of Opportunity Sites.

Please note: Staff has received preliminary, positive, feedback from HCD on this approach.

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

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Updated: June 3, 2010

June 20, 2007

MEMORANDUM FOR: Planning Directors
Interested Parties

Cathy E. Creswell

FROM: Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Application of Government Code Section 65584.09
(Chapter 614, Statutes of 2005 [AB 1233])**

Chapter 614, Statutes of 2005 (AB 1233), amended State housing element law to promote effective and timely implementation of local housing elements. This bill requires sites to be rezoned by prescribed deadlines when a jurisdiction fails to adopt a housing element that identifies adequate sites or fails to timely implement programs in its housing element to identify adequate sites pursuant to Government Code Section 65583(c)(1). Government Code Section 65584.09, took effect on January 1, 2006, requires local governments to zone or rezone adequate sites, within the first year of the new planning period, to address any portion of the Regional Housing Needs Allocation (RHNA) for which the jurisdiction failed to identify or make available sites in the prior planning period. This memorandum is provided to assist local government in addressing the new requirement.

Government Code Section 65584.09 generally will not apply to local governments where the current element was found in compliance by the Department and either:

- the inventory of sites required by Section 65583(a)(3) identified adequate sites; or
- the program actions in the element to rezone or provide adequate sites were fully implemented and made available adequate sites.

Government Code Section 65584.09 will apply to local governments that:

- failed to adopt an updated housing element for the prior planning period;
- adopted a housing element found out of compliance by the Department due to failure to substantially comply with the adequate sites requirement;
- failed to implement the adequate sites programs to make sites available within the planning period; or
- failed to identify or make available adequate sites to accommodate a portion of the regional housing need.

Key Provisions of Government Code Section 65584.09:

- Where a local government failed to identify or make adequate sites available in the prior planning period, the jurisdiction must zone or rezone adequate sites to address the unaccommodated housing need within the first year of the new planning period. In addition to demonstrating adequate sites for the new planning period, the updated housing element must identify the unaccommodated housing need by income level. To determine the unaccommodated need, jurisdictions could take the following steps:
 - Subtract the number of units approved or constructed (by income) since the beginning of the previous planning period's RHNA baseline date.
 - Subtract the number of units that could be accommodated on any appropriately zoned sites specifically identified in the element adopted for the previous planning period (not counted above).
 - Subtract the number of units accommodated on sites that have been rezoned for residential development pursuant to the site identification programs in the element adopted for the prior planning period.
 - Subtract the number of units accommodated on sites rezoned for residential development independent of the sites rezoned in conjunction with the element's site identification programs as described above.

Equals (=) the "unaccommodated housing need"

Example:

City "A" had a RHNA of 1,000 housing units. While the element demonstrated it had sufficient sites to accommodate 850 units, it contained a rezone program to accommodate the 150 unit remaining need for lower-income households. By the time of the next housing element update, the City had not completed the rezoning as described in the housing element program action. Over the previous 5 years, 1,025 units were constructed (including 175 units affordable to lower-income households). Although the rezoning program was not completed using sites described in the element, the City was able to rezone a smaller 2-acre parcel to high density residential, which could accommodate 40 lower-income units.

	<i>Very Low</i>	<i>Low</i>	<i>Moderate</i>	<i>Above Moderate</i>
<i>RHNA</i>	<i>150</i>	<i>250</i>	<i>200</i>	<i>400</i>
<i>1) Units constructed</i>	<i>50</i>	<i>125</i>	<i>100</i>	<i>750</i>
<i>2) Previously identified sites currently available (Capacity)</i>	<i>25</i>	<i>50</i>	<i>100</i>	<i>N/A</i>
<i>3) Sites rezoned pursuant to Housing Element Program</i>	<i>0</i>	<i>0</i>	<i>N/A</i>	<i>N/A</i>
<i>4) Sites rezoned (other)</i>	<i>20</i>	<i>20</i>	<i>0</i>	<i>N/A</i>
<i>Remaining Need</i>	<i>55</i>	<i>55</i>	<i>0</i>	<i>N/A</i>
<i>Total Remaining Need = 110</i>				

As a result, City "A" has an unaccommodated need of 110 units for lower-income households and must identify or rezone sufficient sites to address this need within the first year of the new planning period.

- Once a determination has been made that an unaccommodated housing need exists, cities and counties must identify sites that are appropriately zoned or adopt and complete program to zone and/or rezone sites within the first year of the new planning period, to meet the unaccommodated housing need pursuant to Government Code 65584.09 and 65583(c)(1). For example, for local governments within the Southern California Association of Governments (SCAG) region, whose housing element updates were due June 30, 2008, rezones must be complete by June 30, 2009. **Please note, once this timeframe has lapsed, the Department cannot find a jurisdiction's element in compliance until the required zoning or rezoning is complete and the element is amended to reflect conformance with the requirement.**
- The sites "made available" as part of the rezone program must comply with the site suitability requirements set forth in Government Code Section 65583.2 (Chapter 724, Statutes of 2004 [AB 2348]). Specifically, the sites must permit owner-occupied and rental multifamily uses by-right during the planning period and be zoned with minimum density and development standards that permit at least 16 units per site at the specified minimum density. Also, at least 50 percent of the remaining need must be planned on sites that exclusively allow residential uses. Refer to the Department's AB 2348 technical assistance publication (dated June 9, 2005).
<http://www.hcd.ca.gov/hpd/hrc/plan/he/ab2348stat04ch724.pdf>
- The requirement to address the unaccommodated housing need for the previous planning period is **in addition** to the requirement to identify other specific sites to accommodate the RHNA for the new planning period. To address this requirement, the jurisdiction may not count capacity on the same sites for both planning periods. This requirement is set forth in Government Code Section 65584.09(b) which states, *"the requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period"*.
- The jurisdiction should report on the completion of the program to zone and/or rezone sites through the Housing Element Annual Progress Report, required pursuant to Government Code Section 65400.

The Department hopes this information is helpful. For your assistance, the specific language of Government Code Section 65584.09 is attached. If you have any questions or would like additional information or technical assistance, please contact Melinda Benson or Paul McDougall, of our staff, at (916) 445-4728.

Government Code Section 65584.09

- (a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.
- (b) The requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.
- (c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need.