

Appendix C

Housing Constraints

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Housing Constraints

C.1 Introduction

State law requires that Housing Elements include an analysis of governmental and nongovernmental constraints that impinge on the maintenance, improvement, or development of housing for all income levels. Governmental constraints include land use controls, building codes and their enforcement, fees and exactions, and permitting procedures. Nongovernmental constraints are primarily market-driven factors that include land costs, construction costs and the availability of financing.

C.2 Governmental Constraints

The Town of Fairfax regulates the use and development of land through the General Plan, Zoning Ordinance, Subdivision Ordinance, and a variety of building and site development standards. These requirements are intended to protect the health, safety, and general welfare of the community but such regulations, associated procedures and processing fees can, however, also reduce the City's ability to meet its housing objectives by decreasing the feasibility and increasing the cost of developing housing. This part of the Housing Element discusses existing governmental constraints as well as policies and programs the Town could adopt to overcome obstacles and promote needed housing development.

GENERAL PLAN LAND USE PLANS AND POLICIES

The *Town of Fairfax 2010-2030 General Plan*, which the Council adopted in April 2012, is the Town's primary land use control policy document. The Plan's Land Use Element identifies permitted land uses and development intensities for all land within town boundaries. The Plan's focus is on preserving historic development patterns by establishing policies that maintain and enhance the town center's traditional role as a walkable district with a mix of commercial and residential uses. The Plan promotes infill development to protect the distinctive aesthetic of residential neighborhoods and limits new construction in the steeply sloped and wooded areas surrounding the community.

The Land Use Element proposes several policies that would affect residential development including the development of design guidelines to ensure that new residential development or alterations to development preserve and enhance the existing aesthetic of the Town's neighborhoods in diversity, architectural qualities, size and mass." The Element also requires that Visually Significant Areas be designed to ensure projects are designed and located to minimize visual mass and exterior materials and colors "blend the exterior appearance of structures with the surrounding natural

landscape, allowing for architectural diversity.”¹ Even though the Zoning Code requires design review for almost all development projects, buildings, structures, and other facilities built or modified in Fairfax, the Town has not adopted design guidelines as the General Plan proposes and, as discussed below, the design review criteria in the Code are highly subjective. (Zoning Code Section 17.020.040, Design Review Criteria)

The Plan includes an optional Town Center Element establishing policies and strategies to enhance the sense of place and quality of life in the downtown area while strengthening the Town’s economic base. Projects proposed in the downtown must be consistent with the Town Center based on findings that include conformance with land use designations, residential density and building intensity standards and compliance with the Element’s development standards. Except for limiting building height in the Town Center to 28.5 feet and two stories as the Zoning Code requires in the Central Commercial (CC) district applying to most of the Town Center Planning Area, the Element does not include any standards for residential density or development intensity other than the standards for regulating development. The Element proposes that Fairfax prepare and adopt a Town Center Plan including Development Standards and Design Guidelines but the programs including these requirements have not been fully implemented. A community workshop was held in 2016 designed to discuss changing traffic flow in the Town Center; the majority of the community participants were not supportive of changing the traffic patterns (and having Bolinas Road be one-way) and the Plan was put on-hold by the Town Council.

Table C-1, General Plan Land Use Designations shows the General Plan land use categories that allow residential development in Fairfax and their maximum density.

Table C-1: General Plan Land Use Designations

<i>Designation</i>	<i>Maximum Density</i>
Medium Density Single-family Residential (RS-7.5)	1-6 du/acre
High Density Single-family Residential (RS-6)	1-6 du/acre
High Density Residential (RD 5.5-7)	7-12 du/acre
Multi-family Residential (RM)	7-12 du/acre
Multi-family Residential – Senior (RM-S)	7-12 du/acre
Limited Commercial (CL)	No maximum but requires CUP
Central Commercial (CC)	No maximum
Commercial Highway (CH)	No maximum but requires CUP
Planned Development District (PDD)	No maximum
Single-family Master Planned District (SF-RMP)	Determined during MP
Upland Residential (UR)	0.10-0.14 du/acre
Public Domain	Emergency shelter residential use only

Source: Town of Fairfax, 2010-2030 General Plan, Figure LU-1, Fairfax General Plan Map

¹ Town of Fairfax 2010-2030 General Plan, pp. LU-11, LU-16 to LU-19.

ZONING CODE

Single-family development is the most predominant land use in Fairfax and most of the 2.13 (2.2 mile?)square mile land area is zoned residential RS-6 and RD 5.5-7 for single-family residences allowing single-family residences and duplexes. (See Figure X: Town of Fairfax Zoning Map) Duplexes are allowed in both primary residential zones. Multi-family housing is permitted by right in the RM Zoning District at a maximum density of 10 dwelling units per acre and at 14.5 dwelling units per acre with a conditional use permit.

Table C-2 lists the housing types the Fairfax Zoning Code allows in each zoning district where residential uses are allowed with the required entitlement. Table C-3, Residential Development Standards, summarizes the standards applicable to residential projects in each district. The Planning Commission may allow other residential uses on a conditional basis based on a determination that they are of the same general aesthetics as other uses the Code allows in the district. (Section 17.080.030 *et al.*)

The Zoning Code does not define or include any specific provisions applicable to residential care facilities, supportive and transitional housing, single room occupancy facilities, mobile home parks, or live-work spaces but the Town identifies these housing types as residential uses in the Rent Stabilization regulations the Town enacted in in November 2022 (Fairfax Municipal Code Chapter 5.55, Rent Stabilization Program) and other local regulations. The Housing Action Plan includes programs to revise the Zoning Code to incorporate definitions and compliant regulations for these residential uses as discussed below.

As Table C-1 shows, the maximum density that current residential zoning districts allow is 12 units per acres; the only zones permitting higher density development are Limited Commercial (CL), Central Commercial (CC), CH² and Planned Development District (PDD). In all these zones, residential development requires a Use Permit except for the CC district where residential uses are permitted by right above the ground floor, but the Town's current development standards may preclude development at higher densities.

The 2010-2030 General Plan proposed to eliminate the CH (Highway Commercial) district² and rezone this area CC (Central Commercial) district, which would have allowed residential development by right on the second floor. The rezoning was intended to be adopted by the Town Council following certification of the 2010 Housing Element, but the proposal wasn't implemented after voters submitted a referendum opposing the change.³

² Ibid., Appendix LU-B, p. 5

³ Town of Fairfax 2010-2030 General Plan, Appendix p. H-22.

Table C 2: Permitted Residential Use Types by Zoning District

Use Type	RS 7.5	RS 6	RD 5.5-7	RM	RMS	CL	CH	CC	PD
Single-Family	P	P	P	X	X	U	X	X	X
Employee Housing	U	U	U	X	X	U	X	P ⁵	X
Accessory Dwelling Units	P	P	P	P	P	P	P	P ⁵	X
Duplex	X	X	P ¹	U	X	U	U	U	X
Multi-Family	X	X	X	P/U ²	P ³	U	U ⁵	P ⁵	X
Boarding House	X	X	P ⁴	X	X	X	X	X	X
Emergency Shelter	X	X	X	X	X	X	P	P	P
Residential Care-Limited	P	P	P	P	X	X	U ⁵	P ⁵	X
Residential Care - General ²	U	U	U	U	X	X	U ⁵	P ⁵	X
Single-Room Occupancy	X	X	X	X	X	U	U ⁵	P ⁵	X
Supportive Housing	P	P/U	P/U	P/U	P ³	P/U	P/U ⁵	P ⁵	X
Transitional Housing	P	X	P	X	P ³	P/U	P/U ⁵	P ⁵	X

Notes:

1. By right on lots 7,000 square feet in area.
2. By right at one unit per 4,356 sq. ft. of lot area/unit , use permit for densities up to one/3,000 sq. ft.
3. Multi-family for seniors as defined by Cal. Civil Code Section 51.3 (b)(1) at densities of no more than 10 units per acre.
4. Maximum of five guests.
5. Permitted on second floor at a density approved by Planning Commission.
6. Permitted on second floor by right, CUP required to allow on ground floor or in accessory structure.

Source: Town of Fairfax Zoning Code

Table C-3: Residential Development Standards

Zoning	Maximum Density (du/ac)	Minimum Lot Area (sq ft)	Setbacks			Maximum Height	Maximum Structural Lot Coverage
			Front	Side	Rear		
RS-7.5	5.8 du/ac	7,500	30	20	30	28.5	35%
RS-6	7.3 du/ac	6,000	25	15	25	28.5	35%
RD-5.5-7	7.9 du/ac	5,500	25	15	25	28.5	35%
RM	10.0 du/ac-14.5 du/ac (CUP)	7,500	10 minimum and street frontage of corner lots, 40 combined	10 minimum and street frontage of corner lots, 25 combined	10 minimum and street frontage of corner lots, 40 combined	28.5	35%
RM-S ¹	10.0 du/ac	87,120	40	25	40	28.5	35%
CL	None specified; (CUP)	20,000	0	0	0	28.5	No Maximum
CC	None specified; 2 nd Floor (Permitted) Ground Floor (CUP)	No building site requirements apply in the CC Zone	0	0	0	28.5	No Maximum
PDD ²	See Note 2	5 acres	See Note 2	See Note 2	See Note 2	See Note 2	See Note 2
SF-RMP	See Note 3	See Note 3	See Note 3	See Note 3	See Note 3	35	See Note 3
UR	SFD only 0.14 du/ac	7 acres	25	15	25	28.5	5,000 sq-ft
Public Domain ⁴	NA	NA	No requirements apply in the PD zone.	No requirements apply in the PD zone	No requirements apply in the PD zone	28.5	NA

Notes

1. Only senior housing
2. The Planning Commission and Town Council may approve higher densities. Standards for area, coverage, light and air orientation, site planning, density, yard requirements, open spaces, parking and screening are governed by standards of the residential, or commercial zoning district(s) most similar in nature and function to the proposed planned development district (PDD) use(s), or by standards that the Planning Commission adopts.
3. Determined during Master Plan
4. Emergency shelters only

Source: Town of Fairfax, Zoning Code

Fairfax’s parking requirements for residential units are generally based on the number of bedrooms. (See Table C-4: Off-Street Parking Requirements for Residential Uses). Studio units, without a separate bedroom, are required to have one parking space. Units with one or more bedrooms are required to have two parking spaces. One parking space for guests is required when a legal on-street parking space is not available. One of the required parking spaces must be covered in all cases except on lots with a slope greater than 15 percent where uncovered parking may be on a parking deck or in the front setback if not within a side yard. Guest parking spaces may be in tandem with required parking for a principal residence.

Table C-4: Off-Street Parking Requirements for Residential Uses

Use Type	Spaces per Unit Required	Additional Regulations
Studio w/o Separate Bedrooms	1.0	One guest parking space required when legal on-street space along property frontage not available. In RM, SF-RMP and PDD zones, one guest parking space shall be provided for each five dwelling units.
One or more bedrooms	2.0	
ADU/JADU	1.0	One guest parking space required with exceptions as mandated by State law.
Emergency Homeless Shelter	NA	Parking shall comply with requirements of district in which shelter is located.

Source: Town of Fairfax, Zoning Code, Chapter 17.052

The Town’s parking requirements are the same or less stringent than in other nearby communities with similar topographic characteristics. Mill Valley, for example, requires a minimum of two spaces for all single or multi-family units; Ross requires three to four spaces in low and very low-density residential districts, and San Anselmo requires three spaces for single family dwellings located above 150 mean sea level elevation but only one and a half spaces for two-bedroom multi-family.

The Fairfax Zoning Code will be amended to comply with AB 2097 (Friedman), signed into September 2022, which prohibits cities from imposing any minimum parking requirements on residential, commercial, or other development if the project is within one-half mile of a major transit stop unless it makes certain findings supported by evidence in the record. Major transit stop, as defined by Public Resources Code Section 21064.3, means an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and evening peak periods. As of this writing, Fairfax does not meet this definition, but could meet the definition with increased service from Marin Transit.⁴ The exceptions include an exemption of projects; however, because of the extent to which parking requirements affect the cost and feasibility of housing, in lieu of allowing exemptions, the Code should be revised to provide alternatives such as shared parking or participating in a shuttle program. AB 2097 is the most recent of several State laws that eliminate or limit minimum parking requirements including SB 35 (2017), AB 744 (2015) and AB 1763 (2019).

⁴ Marin Transit Services and Schedules, accessed December 15, 2022. Marintransit.org

Accessory Dwelling Units (ADUs)

The State first enacted regulations for Accessory Dwelling Units (ADUs) in 1982 with the addition of Government Code Section 65852.2, which authorized local agencies to approve second units through a conditional use permit process. The law has been amended several times since then, most recently with the adoption of SB 897 and AB 2221, which specify that design and development standards applicable to Accessory Dwelling Units (ADU) must be objective, increased the minimum heights limits, and made other changes to facilitate ADU development.

The Town of Fairfax adopted Ordinance 861 in January 2022 bringing the Fairfax Zoning Code into compliance with state law governing the development of accessory dwelling units (ADUs) and Junior Accessory Dwelling Units (JADUs) as of that date. The development and architectural requirements in Section 17.048: Residential Accessory Dwelling Units and Junior Accessory Dwelling Units were further amended on December 7, 2022, when the Town Council adopted Urgency Ordinance No. 876, related to ADUs and JADUs, which brought the regulations into compliance with further changes in State law regarding ADU height limits.

These revisions allow an ADU located within a half-mile of a major transit stop or high quality transit corridor (fixed route bus service with service intervals no longer than 15 minutes during peak commute hours on a lot with a single-family or multifamily dwelling to be up to 18 feet in height by right and up to two feet taller (for a maximum of 20 feet) if necessary to match the roof pitch of the ADU to that of the main house. An attached ADU may be up to 25 feet high or as high as a primary dwelling may be under the underlying zone, whichever is lower. Outside this radius the Code restricts the height of single-story attached or detached ADUs to 16 feet above grade measured to the peak of the structure and prohibits detached ADUs from exceeding one story.

The maximum permitted size of an attached or detached ADU is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. An attached ADU is limited to 50 percent of the floor area of the primary dwelling and no ADU may cause the total FAR of a lot to exceed 40 percent or the total lot coverage to exceed 35 percent unless such restrictions would preclude development of an ADU with a floor area of at least 800 square feet as stipulated by State law.

The Town adopted a Second Unit Amnesty Program allowing applicants proposing to legalize previously unpermitted ADUs to comply with the less restrictive State Housing Code requirements, rather than the Uniform Building Code (UBC). Rehabilitation is allowed using materials and methods as of the date of original construction, consistent with state housing law, unless a health or safety hazard would result to the extent allowed by the UBC. ADUs and JADUs eligible for the amnesty program pay 50 percent of the \$500 fee established by the Zoning Code. The Council has extended this incentive to January 1, 2032. This also applies to any ADU/JADU being built in the Town. In addition, the Town does not assess penalties for legalizing these units through January 1, 2032.

All fees are 50 percent through January 1, 2032 for ADUs/JADUs including the following: in addition to the \$500 ADU permit fee, property owners pay Building Permit and Plan Check fees ranging from \$1,786 for a minor kitchen permit to \$6,020 for a detached ADU.⁵

The Housing Action Plan includes several additional programs intended to promote the development of ADUs by modifying development standards and providing technical assistance to applicants.

Affordable Housing Density Bonus

Fairfax has not established any provisions to implement the State density bonus law (California Government Code Section 65915) but the law still applies to proposed residential projects that are eligible for density bonuses and other incentives or concessions. Victory Village, a project on Sir Francis Drake Boulevard with 53 one-bedroom units for low-income adults aged 62 and older, was granted a density bonus. The project was built by Resources for Community Development under the Low-Income Housing Tax Credit program and all units receive Section 8 rental subsidies from the Marin Housing Authority. The Town also deferred payment of road impact fees for a period, and a payment plan starts after that time.

The Housing Action Plan includes a program to amend the Code to address the State requirements including allowing an applicant seeking a density bonus to have the request for a density bonus considered concurrently with the review of the underlying development application.

Another Program proposes to make work force housing projects eligible for density bonuses. The Town has defined such housing as projects affordable to households with incomes up to 180 percent of area median income in Marin County, which exceeds the maximum the State density bonus law, allows. Pursuant to State law, the Town could enact provisions that would provide incentives for such projects.

Transitional and Supportive Housing

Supportive housing is generally defined as permanent, affordable housing with on-site or off-site services that help residents who fall within the “target population” under state law improve their health status, and maximize their ability to live and, when possible, work in the community. Services may include case management, medical and mental health care, substance abuse treatment, employment services, and benefits advocacy. Supportive housing is further defined as “housing with no limit on length of stay and that is occupied by a target population as defined in the Government Code and subdivision (d) of Section 53260 of the California Health and Safety Code, that provides, directly or indirectly, a significant level of on-site or off-site services to help residents retain housing, improve their health status, and maximize their ability to live and, when possible, work in the residents’ community. (California Health and Safety Code Section 50675.14 (b))

“Target population” means persons with low incomes who have one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health condition, or individuals eligible for services provided pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may

⁵ Town of Fairfax Master Fee Schedule, Exhibit B, Bldg. Plan Checks/Permits, FY22-23.

include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

Transitional housing units are “residential units operated under program requirements that call for (1) the termination of any assistance to an existing program recipient and (2) the subsequent recirculation of the assisted residential unit to another eligible program recipient at some predetermined future point in time, which point in time shall be no less than six months into the future.”

State law requires that transitional and supportive housing be treated as a residential use and be subject only to those restrictions that apply to other residential uses of the same development type in the same zone. This housing can take several forms, including group housing or multi-family units, and typically includes a supportive services component to allow individuals to gain necessary life skills in support of independent living. For example, if the transitional housing is a multi-family use proposed in a multi-family zone, then zoning should treat the transitional housing the same as other multifamily uses in the proposed zone.

The State has enacted additional requirements that jurisdictions must address in their regulation of supportive housing. These include:

- Allowing supportive housing as a use by-right in all zones where multi-family and mixed-uses are permitted, including non-residential zones permitting multi-family uses, if the proposed development meets specified criteria in State law;
- Approval of an application for supportive housing that meets these criteria within specified periods; and,
- Eliminating parking requirements for supportive housing located within ½ mile of public transit.
- “Transitional housing” (California Health and Safety Code Section 50675.2 (h)) means buildings configured as rental housing but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance.

SB 2, which amended the State housing law effective January 1, 2008, clarified that transitional and supportive housing types must be treated as residential uses and subject only to those restrictions that apply to other residential uses of the same type in the same zone. The Fairfax Zoning Code is inconsistent with State law because transitional and supportive housing are only allowed as a use "by right" in areas zoned as PD (Municipal Code Section 17.130) and CC (Municipal Code Section 17.100).

To bring the Zoning Code into compliance with State law regarding transitional and supportive housing, Fairfax will amend the zoning code to clarify that transitional and supportive housing is subject only to those restrictions that apply to other residential uses of the same development type in the same zone. The regulations for each district in which residential uses are allowed should be revised to specifically identify transitional and supportive housing among the uses permitted by right or subject to a conditional use permit based on the requirements applicable to other residential

projects configured in the same manner. The Zoning Code will also be revised to conform with the other recently enacted requirements mentioned above.

Residential Care Facilities and Group Homes

State law requires that local jurisdictions allow small residential care facilities and group homes by right and under the same standards as apply to a single-family home in the residential district. The current Zoning Code appears to exclude residential care facilities from the definition of Nursing Home, which is described as a “home for aged, chronically ill or incurable persons, in which three or more persons not of the immediate family are received, kept or provided with food and shelter or care for compensation” excluding hospitals, clinics and similar institutions and groups such facilities with multi-unit residences, and senior housing with respect to common areas. (Section 17.008.020, Definitions). The Housing Action Plan includes a program that will bring the Zoning Code into compliance with State law by establishing provisions that include a definition for residential care facility consistent with applicable State requirements. The program also commits the Town to allowing residential care facilities by right, subject to objective standards for parking and other requirements applicable to residential structures of the same type allowed in specified districts.

Emergency Shelters

State law requires the Town to analyze the housing needs of its homeless population, including the need for emergency shelter, transitional and supportive housing. The State Department of Housing and Community Development defines an emergency shelter as housing that offers minimal supportive services, limits occupancy to six months or less, and is provided at no cost to the family or individual. Emergency shelter standards are intended to allow temporary shelter (six months or less) to be provided to homeless persons or others in need of shelter while ensuring that the shelter(s) is operated in a manner that is compatible with surrounding areas, in accordance with Government Code Section 65583.

Homelessness in Marin County increased from 1,034 people in 2019, to 1,121 people as of February 17, 2022, when the County conducted its federally mandated homeless census. The number of homeless persons in Fairfax as of 2019 was five, down from 17 in 2015. All these persons were unsheltered (i.e., living on the streets, in abandoned buildings, vehicles, encampments, or places other than an emergency shelter or transitional housing. At the time of the 2019 County Homeless Count, 73 percent of the individuals experiencing homelessness in Marin County reported living in Marin at the time of their most recent housing loss.⁶

Fairfax amended its Zoning Code in 2015 to allow emergency shelters by right in the CC (Central Commercial) and PD (Public Domain) districts subject to requirements for emergency shelters codified in Chapter 17.138. These regulations generally conform to the State mandate that jurisdictions with an unmet need for emergency shelters for persons experiencing homelessness identify a zone(s) where emergency shelters will be allowed as a permitted use without a conditional use

⁶ Applied Survey Research, “Marin County Homeless Count & Survey Comprehensive Report 2019” Marin County

permit or other discretionary permit. The identified zone must have sufficient capacity to accommodate the shelter need, and at a minimum provide capacity for at least one year-round shelter.

The Code's requirements for emergency shelters are generally consistent with those the State authorizes in Government Code 65583 (a)(4)(A) but include some additional provisions that may conflict with State requirements. These include a requirement that new construction or alterations proposed to an existing site or building require design review by the Planning Commission for conformance with the town's design guidelines, some of which are not objective requirements. The Town also enacted a provision stating, "Once the town's local need for providing emergency homeless shelters is satisfied (based on the most current homeless census data), a conditional use permit is required for any additional beds or emergency homeless shelters in any district." As written, this provision does not comply with section 4(C) of the State requirements, which stipulate that a local jurisdiction must demonstrate to the State Department of Housing and Community Development that existing facilities can accommodate the need for emergency shelters before imposing a requirement for conditional approval of facilities.

As of this writing, there are no emergency shelters in Fairfax. The closest shelter is in San Rafael's Canal District, according to Marin County's homelessness policy analyst who spoke at a meeting the Town and Marin County held in August, 2022, in response to complaints about a two-person homeless encampment near Peri Park in Fairfax.⁷ Chapter 15.16 of the Fairfax Buildings and Construction Code prohibits the use or occupancy or any camp car or trailer for living or sleeping on any lot or parcel in the town. The Code also bars the lease of any property for this purpose. This regulation would prohibit the use of so-called "tiny homes" as the Counties of Marin and Sonoma and some other California jurisdictions now allow as way to provide affordable housing. The Town's Vehicles and Traffic Code prohibits overnight parking in the Town Center (Section 10.04.120 UTO Section 11.8) and nighttime use of parks is prohibited without the Town Clerk's permission. At present, these provisions limit options for unhoused persons in Fairfax.

Despite the concerns expressed by some Fairfax residents to the encampment near Peri Park, due to the decision by the Ninth Circuit Court of Appeals in *Martin et al. vs City of Boise* (2018), because Fairfax does not have any shelter beds for its small homeless population, the Town is likely precluded from enforcing a blanket prohibition on camping or sleeping on public properties.⁸ As of 2019, there were 88 unsheltered persons in San Anselmo, Corte Madera, Fairfax, Larkspur, Mill Valley and unincorporated Central Marin, none of which had emergency shelters at that time.⁹

Fairfax participates in the Marin Continuum of Care's Homeless Policy Steering Committee, which is working with EAH, the primary provider of Emergency Shelter in the County, to implement a safe, low-barrier, housing-focused shelter model.¹⁰ EAH partners with Homeward Bound of Marin

⁷ "Marin County Residents Speak Out Against Small Homeless Encampment of Two People", *San Francisco Chronicle*, August 1, 2022.

⁸ <https://law.justia.com/cases/federal/appellate-courts/ca9/15-35845/15-35845-2019-04-01.html>

⁹ Applied Survey Research, op. cit., p. 12.

¹⁰ Marin County Continuum of Care, "A Response to Homelessness I Marin County: Assessing the Need & Taking Action" https://www.marinhhs.org/sites/default/files/boards/general/marin_homelessness_plan.pdf

and other organizations providing programs for households experiencing homelessness.¹¹ This collaboration might offer a medium for devising an interim approach to accommodating Marin County's homeless until more permanent solution is available. In addition, two Councilmembers are assigned to the Marin County Council of Mayors and Councilmembers (MCCMC) Homeless Committee which may be another medium for an interim approach – in fact the Housing First model was developed by this Committee in partnership with others in the County.

In 2019, the State enacted Assembly Bill 101, which amended the Government Code Section 65660 to require municipalities to allow a Low Barrier Navigation Center (LBNC) to be permitted by right in mixed-use districts and nonresidential zones that permit multifamily development. LBNC means a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. If the Town receives applications for these uses, it must process them ministerially as required by State law. Fairfax has not amended the Municipal Code to include a definition or standards for the approval of LBNCs and no such facilities have been established to date in the town. A program has been included in the Housing Action Plan of this Housing Element to amend the Zoning Code to include procedures for processing low-barrier navigation centers including identification of the districts where they would be allowed.

Employee and Work Force Housing

The State Employee Housing Act (Health and Safety Code Section 17000 *et seq.*) and associated regulations govern the requirements for construction, maintenance, use, and occupancy of privately-operated housing for five or more employees including living quarters provided in connection with any work, whether rent is involved or not, and housing in rural areas provided for agricultural workers. State law generally requires employee housing for six or fewer persons to be treated as a single-family structure and residential use. This provision applies not only to farm-workers but also to non-agricultural household employees, including those working for religious, educational, and other establishments.

Even though there is no commercial agriculture in Fairfax, about 41 percent of Marin County's land area is in agricultural use including unincorporated areas just west of Fairfax. The American Communities Survey data for 2017-2021, reported that 1.1 percent of the Town's civilian employed population worked in agriculture, forestry and other resource-based industries compared with 0.6 percent countywide.¹² The majority of agricultural workers in West Marin live in housing provided on site by employers but some workers may seek housing in nearby towns like Fairfax, especially if their spouses work in non-agricultural jobs in those communities.

¹¹ EAH Housing, Supportive Housing, <https://www.eahhousing.org/real-estate/management-expertise/supportive-housing/>

¹² U.S. Census Bureau, 2017—2021 ACS 5-Year Narrative Profile, Fairfax town, California <https://www.census.gov/acs/www/data/data-tables-and-tools/narrative-profiles/2021/report.php?geo-type=place&state=06&place=23168>, https://data.census.gov/table?tid=ACSDP5Y2015.DP03&g=0400000US06_0500000US06041

The 2017 US Department of Agriculture Census reported that 1,274 persons were employed as farmworkers, accounting for about 0.9 percent of the Marin County workforce. According to the U.S. Department of Agriculture Census of Farmworkers, the number of permanent farm workers in Marin County increased between 2002 and 2017 to a total of 697 and the number of seasonal farm workers increased during the same period to 577.¹³ Having a mean annual salary of \$41,321, most of the agricultural workers in Marin County are considered low or very low-income. (The 2021 HCD income limits are \$38,400 and \$63,950 for a one-person household for extremely low and very low income households) even if their spouses are employed.¹⁴

A related issue is the serious shortage of workforce housing for those individuals and families earning too much to qualify for traditional affordable housing, but not enough to afford market rate rents in the communities where they work. Workforce housing (sometimes referred to as middle-income or moderate-income housing) is housing for individuals and families typically earning between 60 percent and 120 percent of the Areawide Median Income (AMI). Housing for those earning more than 80 percent of the AMI is not eligible for tax credits, private activity bonds or most other federal, state or local government subsidies.

The CSCDA Community Improvement Authority (CSCDA CIA), an affiliate joint powers authority that acquires public benefit oriented capital projects through the issuance of tax-exempt governmental purpose bonds, is taking steps to fill this gap.¹⁵ Through CSCDA CIA's Workforce Housing Program, government bonds are issued to acquire market-rate apartment buildings for conversion to income and rent-restricted units for moderate/middle income households. These units are targeted to households earning 80% to 120% of AMI. Annual rent increases are capped at no more than 4%, which is significantly less than the rent limits under AB 1482, the recently adopted State tenant protection legislation. CSCDA CIA now operates the largest workforce housing program in California and has acquired and converted more than 7,700 units for low- and middle-income tenants.

The Town has been exploring options for providing housing for employees who reside in Fairfax and those who commute in from outside the Town but are unable to find affordable units in Fairfax. Based on the state's 2022 income limits, a four-person household making between 60 and 180 percent of area median income (AMI) in Marin County would fall into the income range of \$99,600 and \$298,800. In most of the communities proposing workforce housing projects, those who would be eligible for this housing include teachers, health care workers and other essential workers.

The Housing Action Program commits the Town to amending the Zoning Code to include a definition for work-force housing and to a program that includes working with local religious, education, and other institutional employers in the community to explore potential sites and financing options for such projects. AB 2244 (Wicks), which the Governor signed in July, 2022, amended Government Code Section 65913.6 to make it easier for religious institutions to develop affordable housing on sites they own by expanding the provisions of AB 1851, enacted in 2020, to apply to housing on new or existing sites by allowing up to a 50 percent reduction in the parking required

¹³ ABAG/MTC Staff and Baird + Driskell Community Planning, Fairfax Housing Needs Data Report, pp. 59-60.

¹⁴ Marin Countywide Plan, 2023-2031 Housing Element, p. 76

¹⁵ California Statewide Communities Development Authority (CSCDA), <https://cscda.org/workforce-housing-program/>

for the religious use. The current law applies to projects that qualify for a density bonus but the Town could enact an ordinance to implement the legislation or similar provisions to facilitate housing for those earning between 60 and 180 percent of AMI.

Single Room Occupancy (SRO)

Single-room occupancy (SRO) units are small, one-room units occupied by a single individual or couple that may have either shared or private bathroom and kitchen facilities. This type of housing is an alternative housing that is affordable to extremely-low-income households. The Fairfax Zoning Code does not define or establish any requirements specific to SRO housing although, as mentioned above, other chapters of the Municipal Code recognize these establishments as a type of multi-unit rental housing. As such, SRO housing would be allowed in the CL (Limited Commercial), CH (Highway Commercial), and CC (Central Commercial) zones subject to approval of a use permit. In the CH and CC zones, residential uses are only allowed above the ground floor.

Because of the potential SROs offer as an accommodation for very low-income individuals or couples, this Housing Action Plan includes a program to amend the Zoning Code to include a definition and standards for developing SRO housing, especially to meet the Town's need to accommodate homeless and very low-income persons and households.

Manufactured and Mobile Homes

State law requires that mobile homes (or manufactured homes) on permanent foundations be permitted by right in residential zones, subject to the same development standards and processes as single-family homes but does not require municipalities to permit mobile home parks. The Town's Zoning Code includes definitions for Mobile Home Park and Mobile Home Lot but fails to include any reference to the State mandate allowing manufactured and mobile homes in all residential zones and doesn't identify Mobile Home Parks as a permitted use in any district. The Housing Action Plan includes a program to bring the Zoning Code into compliance with State law regarding the treatment of manufactured and mobile homes in the same manner as single-family dwellings. The Action Plan also proposes to amend the Code and other regulations to allow small residential structures on a mobile base ("tiny homes") to be treated as a type of ADU.

SB 35 Streamlining

Government Code section 65913.4 allows qualifying development projects with a specified proportion of affordable housing units to move more quickly through the local government review process and restricts the ability of local governments to reject these proposals. The bill creates a streamlined approval process for qualifying infill developments in localities that have failed to meet their RHNA, requiring a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for discretionary entitlements. The Town did not make sufficient progress toward its Above Moderate RHNA for the 5th cycle planning period (2015 – 2023) and is therefore subject to SB 35. The Action Plan proposes to amend the Zoning Code to establish regulations consistent with State law to review and make decisions on projects eligible for processing under SB 35 including applicable objective development standards. Associated programs include preparation of application forms that Staff can use to quickly determine whether projects are eligible for expedited processing.

SB9 California Housing Opportunity and More Efficiency (HOME) Act

SB9, also known as the California Housing Opportunity and More Efficiency (HOME) Act, requires cities to allow one additional residential unit onto parcels zoned for single-dwelling units. In December 2021, the Town adopted Ordinance 860, enacting regulations to permit duplexes in qualifying single family zoning districts (Chapter 17.049, Two-Unit Projects) and to allow subdivision of qualifying lots (Fairfax Municipal Code, Section 16.22.010, Urban Lot Splits) ministerially pursuant to SB9. Despite the number of relatively large lots in Fairfax, there is no information indicating that property owners have taken advantage of these new requirements. The Action Plan includes a program to provide information to familiarize owners with the SB 9 program and the Town's requirements for implementing the State law.

Constraints for People with Disabilities

The Town has adopted Title 24 of the 2019 California Building Code (Fairfax Municipal Code, Section 15.04.010, Adoption of Construction Codes), which includes comprehensive standards covering most important areas of accessibility for persons with physical and sensory disabilities. California's Building Standards Codes (Physical Access Regulations) are found in Title 24 of the California Code of Regulations (CCR) and are designed to comply with the requirements of the Americans with Disabilities Act (ADA) and State statutes. Fairfax has not, however, enacted regulations establishing procedures for persons with disabilities seeking "reasonable accommodation" involving changes, exceptions, or adjustments to regulations that are necessary to provide equal access to housing.

A program has been included in the Housing Action Plan to bring the Zoning Code into compliance with State law regarding reasonable accommodations by establishing procedures for processing request for reasonable accommodation pursuant to the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) and the California Fair Employment and Housing Act (California Government Code, Title 2, Division 3, Part 2.8). The revisions to the Zoning Code will authorize the Town Planning and Building Director to grant or deny requests for reasonable accommodation subject to appeal to the Planning Commission. The Director may impose conditions to ensure the accommodation would comply with the applicable laws and may condition the approval or conditional approval to provide for rescission or automatic expiration as appropriate due to a change in occupancy or similar circumstances.

Requests for a reasonable accommodation will require documentation of disability status, the specific accommodation request, and the necessity of the accommodation to ensure equal opportunity to use and enjoy the residence. The Director shall approve the reasonable accommodation if it is consistent with the federal and State laws based on the following:

1. The housing, which is the subject of the request, will be used by an individual who is disabled under the Acts.
2. The requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts.
3. The requested accommodation would not impose an undue financial or administrative burden on the Town.

4. The requested accommodation would not require a fundamental alteration in the nature of the Town's land use and zoning program.
5. The requested reasonable accommodation would not adversely impact surrounding properties or uses.
6. There are no reasonable alternatives that would provide an equivalent level of benefit without requiring a modification or exception to the Town's applicable rules, standards, and practices.
7. The accommodation would not alter the significance of a historic structure.

As noted above, the Town has also did not implement at least six programs the 5th Cycle Housing Element (2015-2023) included to bring Fairfax's zoning ordinance into compliance with State housing law and address certain governmental constraints regarding residential care facilities, supportive housing, and other provisions for persons with disabilities. A referendum was filed with the Town to block the Ordinance(s) implementing such at the time; the Council opted to repeal the Ordinance(s) at that time. The Housing Action Plan in this Housing Element includes a number of programs to amend the Zoning Code to correct these deficiencies, which are constraints for persons with disabilities.

PROCESSING AND PERMIT PROCEDURES

Like all local jurisdictions, the Town of Fairfax has established procedures and regulations applicable to all or some residential projects. Generally, the time taken to review and approve a proposal is directly proportional to the magnitude and complexity of the project, but the time needed for review is also determined by whether the zoning regulations provide clear and objective standards that reduce the need for discretionary review and whether decisions require a public hearing before decision-making bodies, including the Planning Commission.

Residential projects proposed in Fairfax typically require a combination of reviews including zoning compliance, conditional use permit, design review as well as building permit plan checks. Many projects also require review by the Planning Commission however to streamline reviews the Town Council eliminated its separate Design Review Board in 2012 and combined its functions with the Planning Commission. Some projects may also require approval or modification of a development plan, master plan, and/or subdivision map or parcel map. In addition to these procedures, which are common to most cities, Fairfax has established some additional review requirements that contribute to the time and cost required to develop residential projects. These include the requirements for traffic impact permits (Chapter 17.056), ridgeline scenic corridor permits (Section 17.060), flood plain development permit (Chapter 17.068) and hill area residential development permit (Chapter 17.072).

These requirements typically require applicants to hire special consultants and pay additional fees for review by Staff or an outside consultant (see Table C-7: Development and Planning Fees). Table C-5 lists typical residential project application types and the approximate length of time required to approve each type of application. Moreover, residential projects that the Zoning Code permits by right as shown in Table C-2 are subject to design review, a discretionary process based on highly subjective Design Review Criteria (Section 17.020.040) that requires a public hearing before the Planning Commission under the Town's Design Review Regulations (Fairfax Zoning Code Chapter

17.020). This review process, which this analysis discusses in greater detail below, creates a significant constraint to residential development.

Table C-5: Estimated Time for Processing Residential Projects

Item	Approximate Processing Timeline
Conditional Use Permit	3-4 months
Zoning Clearance	1-2 days
Minor Development Review	3-4 months
Major Development Review	6-12 months
Specific Plan	6-12 months
Tentative Tract Map/Parcel Map/Subdivision	6-12 months
Variance	3-4 months
Zone Change	3-6 months
General Plan Amendment	3-6 months
Environmental Review	6-12 months
Notes:	
1. Processing time is estimate of approximate length of time from submittal of complete application to public hearing.	

Source: *Town of Fairfax 2010-2030 General Plan*

On average, applications for single-family custom homes without any site constraints are found to be complete within 30 days of submission as required by State law. When proposed single-family development is not subject to special environmental constraints because of its location and the project meets all applicable zoning requirements, it is possible to process the required building permits in approximately three to four months. Multiple-family projects usually require environmental review, public hearings, and design review, which is clearly a constraint to affordable housing development. Environmental studies add 6 to 12 months to a project's approval. If an EIR is not required, Town permit processing could be accomplished in three to four months. Fairfax staff say that the Town's typical processing procedures and time frames do not pose undue constraints to the ability of project applicants to develop lower-income housing projects. The procedures, which are described in Table C-6, Typical Processing Procedures by Residential Project Type, do, at a minimum, increase the cost of obtaining planning approval and probably also increase the time required to secure approval.

Table C-6: Typical Processing Procedures by Residential Project Type

Project Type	Approval Requirement	Processing Time
Single-family Unit	Hill Area Residential Development (HRD) zone requirements. <ul style="list-style-type: none"> • Design Review • Excavation Permit • Encroachment Permit 	4 months
Multi-family (< 10 Units)	CEQA Initial Study; Neg. Dec. <ul style="list-style-type: none"> • Design Review • Trans. Impact Study/Permit • Misc. 	6-12 months
Multi-family (> 10 Units)	CEQA Initial Study; Neg. Dec. <ul style="list-style-type: none"> • Design Review • Trans. Impact Study/Permit • Misc. 	6-12 months

LENGTH OF TIME BETWEEN APPLICATION APPROVAL AND BUILDING PERMIT ISSUANCE

The Housing Element law was amended in September 2022 by the passage of AB 2234 (Rivas) to require examination of the length of time between receiving approval for a housing development and submittal of an application for building permits. The law amended the housing element requirements to add Section 65913.3 mandating that cities and counties compile a list of information needed to approve or deny a post-entitlement phase permit, post an example of a complete, approved application and an example of a complete set of post-entitlement phase permits for at least five types of housing development projects, as defined, and to make those items available to all applicants for these permits. Once the applicant submits the required plans and other information, the law will allow 15 business days to review the submittal and notify the applicant in writing whether it includes all of the required items. If the application is complete, the law gives the agency an additional 30 days to review the materials and either provide the applicant with a full set of comments with a request for revisions or issue the required approval. The law allows 60 days for review of applications for housing projects with 26 or more units.

The time between application approval and building permit issuance is influenced by several factors, some of which are not within a city's control. These include the time the applicant needs to produce required technical or engineering studies; complete construction drawings and detailed site and landscape design; secure construction and permanent financing; and retain of a building contractor and subcontractors. The new law requires that once those plans and studies have been submitted, cities must review them and notify the applicant of the results of that review without delay. The decision on completeness is subject to appeal.

As described above, the Action Plan proposes several revisions to the Zoning Code to make more projects allowed by right, which will reduce the time it takes to obtain an entitlement. Reducing the time needed to obtain all necessary construction permits may be more difficult. The Town employs an outside consulting service to provide plan check services, which augments Town staff capacity and helps to reduce the time required for permit issuance. In order to meet the new deadlines, the Town may need to hire more staff or engage additional consultants. All of these remedies may create a need to increase fees.

The Housing Action Plan contains several programs that will require amending the Zoning Code in ways that will reduce the time required to obtain a planning entitlement. The additional requirements imposed by AB 234 will make it necessary to include an additional program to generate the list of information needed to approve or deny a post-entitlement phase permit and complete sets of plans for five housing project types. The Plan also includes a program to project the anticipated effect of the requirements on the need for additional staff or consultant assistance, the cost of increasing staffing or consultants, and the impact of these changes on fees.

DESIGN GUIDELINES AND OBJECTIVE DESIGN STANDARDS

The Zoning Code requires design review approval of all projects, buildings, signs, and other facilities by the Planning Commission and provides a list of design review criteria that the Town uses to evaluate proposed projects. Fairfax Zoning Code, Chapter 17.020: Design Review Regulations) Section 17.020.040 establishes subjective design review criteria that currently apply to residential development including the following:

- The proposed development shall create a well-composed design, harmoniously related to other facilities in the immediate area and to the total setting as seen from hills and other key vantage points in the community;
- The proposed development shall be of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area;
- There shall exist sufficient variety in the design of the structures and grounds to avoid monotony in external appearance;
- The size and design of the structure shall be considered for the purpose of determining that the structure is in proportion to its building site and that it has a balance and unity among its external features so as to present a harmonious appearance;
- The extent to which the structure conforms to the general aesthetics of other structures in the vicinity insofar as the character can be ascertained and is found to be architecturally desirable;
- The extent to which ornamentation is to be used and the extent to which temporary and second-hand materials, or materials which are imitative of other materials, are to be used.
- The extent to which natural features, including trees, shrubs, creeks and rocks and the natural grade of the site are to be retained;
- The accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets.

Even though the Code states that design review is limited to” elements of design which have significant relationship to exterior appearance of structures and facilities....[including] height, arrangement on the site, texture, material, color, signs, landscaping and appurtenances” the absence of quantified standards is problematic and creates significant potential for violating State mandates for using objective standards as a basis for reviewing multi-unit residential projects.

The General Plan proposed the adoption of design guidelines, and the Zoning Code authorizes the Town to adopt guidelines to illustrate the design criteria. The Town began the process of preparing objective design standards in 2021 with a workshop to consider a set of design and development standards prepared under contract to the County and made available to local jurisdictions for their own use. In August 2022, the Planning Commission conducted a meeting to discuss how the County’s Objective Design and Development Standards Toolkit might be adapted for use by Fairfax. A revised version of the County’s Toolkit prepared by the Town’s consultants was reviewed and discussed by the Planning Commission in September 2022. The draft proposed several amendments to the Zoning Code to correct deficiencies; however, as of this writing, the Town has not adopted objective design standards that would meet the requirements of the State Housing Accountability Act, SB 35 or SB 9 (California Government Code Sections 65589.5, 65913.4, 65852.21, and 65913.4(a)(5)).

The Housing Action Plan includes a program committing the Town to revising the Zoning Code to include objective design and development standards based on the criteria in Section 17.020.040 or other General Plan policies. The program also proposes changes to design review procedures to reduce the time required to conduct review. This program will be assigned the highest priority.

SUBDIVISION ORDINANCE

The Subdivision Ordinance, Title 17 of the Fairfax Municipal Code, establishes the Town’s procedures for approving and amending subdivisions in compliance with the State Subdivision Map Act (California Government Code, Section 66410 *et seq.*). In addition to procedural requirements that are generally the same as those included in the State law, the Town has enacted some provisions to respond to local conditions, which contribute to the cost of new development.

Design and Development Requirements

The subdivision and zoning ordinances include requirements to preserve native, indigenous vegetation or planting additional trees based on a tree plan prepared by a licensed landscape architect or arborist and approved by the Planning and Building Director, preparation of a land capacity report including a detailed resource conservation analysis, and design subdivisions to protect ridgelines to implement Chapter 17.060 of the Zoning Ordinance and “assure adequate light, air, privacy and views on all parcels regardless of land use”. The regulations do not define or provide a measurable and objective basis for determining adequacy.

Fairfax has adopted standards increasing the required width for roads to serve new development that are necessary to ensure access for fire protection to homes in remote hillside locations but increase the cost of development in outlying areas. The Town has adopted the following on- and off-site street improvement standards, which are generally consistent with the requirements imposed by other Marin County jurisdictions:

- Sidewalks: 4-foot minimum, with maximum 2 percent slope;
- Curbs, gutters, and streets as required by Marin County standards and/or Uniform Fire Code;
- Limited residential roads 20 feet with shoulders, 24 feet with curbs;
- Minor residential roads 28 feet;
- Residential roads 36 feet;
- Collector roads 40 feet;
- Curbs and gutters required by Town;
- Driveways 12 feet wide /1 DU; 16 feet wide /2-6 DUs;
- Driveways 20 feet long; and
- Sidewalks on both sides of road for projects greater than four DUs.

Subdivision Fees

As a condition to approval of a tentative or parcel map, the Town requires fees or dedication of land for park or recreation facilities as State law allows. Condominium conversions of existing apartments more than five years old are exempt from this requirement.

The Town's subdivision fees are in line with or less than charged by nearby communities. The required deposit for subdivision maps is \$5,000 plus a 20 percent administrative fee for any outside professional services compared with \$9,000 in Larkspur and \$7,978 in San Anselmo. If the subdivision would require environmental review and preparation of an initial study, the Town requires an additional \$5,000 deposit plus 20 percent of the cost charged by a consultant to prepare the environmental documents. Larkspur requires a \$5,000 deposit and San Anselmo charges \$6,120 for the first 16 hours of staff time for subdivision maps. Mill Valley's fee for Tentative and Parcel Maps for four lots or less is \$4,174 plus \$203 per hour for staff time after the first hour. These fees will affect the economic feasibility of single-family lot splits under SB 9, discussed above, which might otherwise be a way to provide additional housing in Fairfax.

The Action Plan includes measures to reduce or mitigate the cost of subdivisions are included in the Housing Action Plan.

BUILDINGS AND CONSTRUCTION CODE

The Town has adopted Title 24 of the California Code of Regulations as the construction code for Fairfax subject to some modifications based on local conditions and concerns. These include provisions regarding exterior fire resistive construction, automatic fire sprinkler systems, fire extinguishers and smoke alarms applicable to buildings in the Wildland Urban Interface Fire Area and some other areas.

In September 2021, the Town enacted requirements for all-electric building design based on its location along the wildland-urban interface and susceptibility to seismic and flooding hazards. The requirements are also to implement the Fairfax Climate Action Plan and Climate Emergency Declaration (Resolution No. 1904). The requirements apply to building permit applications for all

newly constructed buildings located in whole or in part within the town. (Fairfax Municipal Code Chapter 15.05: All-Electric Construction in Newly Constructed Buildings). This regulation anticipates State mandates that will ban the sale of natural gas appliances in 2030. A change in the State Building Code that went into effect at the beginning of 2023 requires all new home to have electric supply panels and circuitry to support all-electric appliances and heating but allows the installation of gas appliances for cooking, heating, and cooling. The new energy code was approved by the California Energy Commission in August 2021 and the California Building Standards Commission in December 2021. The Town Council adopted updated Building Codes in December 2023 which are consistent with, and in some cases more stringent than, the State Building Code.

Although the cost difference between electric and gas appliances are not significant, the cost to operate electric appliances has historically been higher than the cost of gas, although this was not the case in 2022. According to the State Public Utilities Commission, the bill for typical residential customer using 500 kWh per month is about one and a half times the rate for a typical residential gas customer using 33 therms a month. A rate increase proposal now under consideration would raise PG&E's revenues by 32% and would boost average customers' monthly bills 18%, from \$217 to \$255.¹⁶ At PG&E's cheapest rate (\$.033 per kilowatt hour) it would cost about 3.8 times as much to use electric appliances.¹⁷¹⁸ Many in Fairfax are MCE customers for electricity – MCE's rates are slightly lower than PGE's.

As mentioned above in the discussion about homelessness, the Buildings and Construction Code also prohibits the use or occupancy or any camp car or trailer for living or sleeping on any lot or parcel in the town. The Code also bars the lease of any property for this purpose. This regulation may prohibit the use of so-called "tiny homes" (those on wheels) as the Counties of Marin and Sonoma and some other California jurisdictions now allow as way to provide affordable housing. The Housing Action Plan proposes several measures to make it easier to use small mobile dwelling units for residential use including amending the Town's Building Code.

FEES AND EXACTIONS

Housing development is subject to permit processing and impact fees. These fees help to compensate the public for any impact associated with the new development. These fees are collected by the Town as well as other agencies providing public services in Fairfax. Table C-7, Development and Planning Fees (July, 2022-2023) summarizes permit processing and impact fees for new development in the Town of Fairfax.

¹⁶ "Can Californians Afford All-Electric Zero Carbon Goals as Power Costs Skyrocket?" *GV Wire*, January 20, 2023 <https://gvwire.com/2023/01/20/can-californians-afford-all-electric-zero-carbon-goals-as-power-costs-skyrocket/>

¹⁷ See https://www.pge.com/pge_global/common/pdfs/your-account/your-bill/understand-your-bill/bill-in-serts/2022/0622-COC.pdf and https://www.pge.com/en_US/residential/rate-plans/how-rates-work/rate-changes/residential-rate-comparison.page?WT.mc_id=Vanity_ratemailer

¹⁸ PG&E, Residential Rate Plan Pricing, https://www.pge.com/pge_global/common/pdfs/rate-plans/how-rates-work/Residential-Rates-Plan-Pricing.pdf, Understanding Your Baseline Allowance https://www.pge.com/en_US/residential/rate-plans/rate-plan-options/tiered-base-plan/understanding-baseline-allowance.page

The Action Plan will require review of the current fee structure to ensure that it accurately reflects the time and effort required to process applications for planning and development approval. As mentioned above, the Action Plan is also proposing revisions to fees for ADUs/JADUs as well as changes to standards and procedures that could result in a reduction to fees for individual projects regardless of whether the fee structure is changed.

Table C-7: Development and Planning Fees (July 2022-2023)

Permit Processing Fees	Cost
Conditional Use Permit—Minor and Major	\$1,107
Variances	\$1,482
Design Review	
<i>Residential-Single Family</i>	\$1,107
<i>Multi-Family</i>	\$6500
Hill Area Residential Development	\$9,800
ADU/JADU Permit Processing Fee	\$500
Planned Development District	\$5,000 deposit plus 20 % administrative fee
Tentative Tract Map	\$5,000 deposit plus 20 % administrative fee
Traffic Impact Report	\$4,683 + outside consultant cost
Ridgeline Scenic Corridor	\$2,835
Environmental Review	\$5,000 deposit plus 20 % administrative fee
General Plan Text Amendment	\$5,000 deposit plus 20 % administrative fee
General Plan Map Amendment	\$5,000 deposit plus 20 % administrative fee
Rezoning and Pre-Zoning	\$5,000 deposit plus 20 % administrative fee
Impact Fees	Cost
General Plan Maintenance Fee	5% of Building Permit Fees
Technology Improvement Fee	5% of Building Permit Fees
Infrastructure Fee	5% of Building Permit Fees
Parks and Recreation	N/A
Building Plan Check/Permits	
New Home	\$6,020
Major Remodel	\$4,473
Major Kitchen Structural	\$3,332
Major Bath Structural	\$2,315
Minor Kitchen	\$1,786
Major Addition	\$3,332

Source: Town of Fairfax, Planning & Building Fees, Tables A and B; Zoning Code Section 17.048.010(D)(2)(b)

TRANSPARENCY IN DEVELOPMENT REGULATIONS

Under State Government Code Section 65940.1, the Town is obligated to provide transparency in publicizing land use controls and fees. The Town of Fairfax home page <https://www.town-offairfax.org/> provides links to the Town Code, which includes the zoning and subdivision codes, and to the Planning and Building Department <https://www.townoffairfax.org/departments/planning-building/>. The Department page includes links to Planning Commission and Town Council agendas and to some documents and forms including a two-page summary of zoning requirements in single family and duplex zones, the building and planning fee schedule, planning and building permit application forms, the planning process for single-family residential units, and a few other documents. There are also links to information about the short-term rental and parklet programs and the General Plan and the housing element, update but there is no information about the design review process except for a reference to the role of the Design Review Board (which is now combined with the Planning Commission) and there is no mention of Accessory Dwelling Units/Junior Accessory Dwelling Units or the requirements for their development. Contact information for the Planning and Building staff is provided on the Department's webpage with information on hours of operation. The website needs updating to include information about ADUS/JADUs, applying for development under SB 35 and SB 9, and more detail about the design review process and design policies the Town uses for that review.

C.3 Non-Governmental Constraints

Non-governmental constraints to residential development in Fairfax range from environmental factors such as hazards from flooding, wildfires, and seismic and geological conditions to those created or affected by human activities like noise and air quality. Although affected by governmental actions, economic conditions like the cost and availability of financing, labor supply, the cost of materials and, more recently, supply chain problems are a major constraint to residential development throughout California. The cost of land in Marin County will also continue to be a critical factor limiting the development of affordable housing in Fairfax. Land costs include the raw land purchase price and financing costs. The cost of land is also affected by factors such as location, slope, availability and quality of infrastructure and the size and configuration of lots.

Land costs per square foot increase as allowable densities increase. However, the increase in land costs is rarely proportional to the greater density permitted. For this reason, land costs per unit tend to be lower for multi-family residential construction than for single family homes.

LAND AND CONSTRUCTION COSTS

Land costs are often difficult to estimate, and there is no single publicly available database that records urban land prices. A study conducted by researchers from the Federal Housing Finance Agency (FHFA) has estimated the price of residential land based on appraisals of single-family parcels conducted between 2012 and 2019. From this assessment they have made available land prices for all census tracts and zip codes in the country. No data are shown for Fairfax specifically but the median value for a single-family parcel in Marin County was estimated at \$2,576,600 compared with \$2,047,500 for the entire Bay Area. Recent sales information for Marin County from Zillow

shows that the land costs for a large, relatively level site can be as much as \$2,700,000 per acre. On the other end, smaller lots run approximately \$700,000 per acre.

The median value of vacant land (lot) in Fairfax based on the price of four lots available for sale at this writing was \$677,649. The median price of single-family homes for sale was \$1,124,500 and the two condominium/townhouse units listed had an average price of \$832,000.¹⁹ The US Census Bureau estimate of the median value of owner-occupied units in Fairfax during 2017 to 2021 was \$903,500, which was 19 percent lower than the median value for all of Marin County during the same period.²⁰

Construction costs, including both hard costs (i.e., labor and materials) and soft costs (i.e., development fees, architectural and engineering services, and insurance) are high throughout the San Francisco Bay Area. According to a report published by the Turner Center at UC Berkeley, trends in the prices of both labor and materials have likely contributed to hard cost increases over the 2009 to 2018 period. Costs in the Bay Area hovered between \$150 per square foot to \$280 per square foot from 2009 to 2017, and then climbed to the highest point in 2018, closing in at \$380 per square foot. The Bay Area region was identified as the most expensive region in the state, where average hard costs were \$81 more expensive per square foot than in other parts of the state. The estimated “hard cost” of building the least expensive custom home in the Bay Area, including anything related to the physical building and labor costs, is currently estimated at \$500 to \$700 per square foot.

Construction costs have also risen over the course of the COVID-19 pandemic, due in part to supply chain disruptions. The lasting impacts of this trend are not yet known, but it is likely to increase the cost of housing in at least the short to medium term.

- Utility Connections and Improvements. Includes municipal fees, hookup charges, offsite street improvements, and bringing utilities to the site;
- On-Site Preparation. Includes site stabilization and special drainage control, grading, special landscaping or tree preservation considerations, and all pre-building construction requirements;
- Special Foundations. Includes unique footing solutions, special parking solutions such as underground or “tuck” under parking garages, retaining walls or stepped foundations for hillsides;
- Hard Construction Cost. Includes all labor and materials required over and above special foundation systems (i.e., decks, special roofing, heating, and electrical, but does not include “soft” costs);
- Consultant Fees. Includes architecture and engineering, civil and soils, land economics, environmental assessments and processing for special approvals or funding;

¹⁹ Realtor.com https://www.realtor.com/realestateandhomes-search/Fairfax_CA/type-single-family-home.condo.townhome

²⁰ United States Census Bureau, Quick Facts <https://www.census.gov/quickfacts/fact/table/marincountycalifornia,faixtowncalifornia/PST045221>

- Construction Overhead and Margin. Overhead can amount to about 5 percent and a contingency of at least 10 percent is also necessary for a private builder contractor, totaling 15 percent of total costs;
- Total Hard and Soft Construction Costs. Includes developer overhead and project contingency (15 percent), and consultants; and
- Builders Profit accounts for about 7 percent with an additional 5 percent overhead. This 12 percent cost can usually be reduced to between 7 percent and 10 percent total with a negotiated bid but can be as high as 20 percent for small projects.²¹

HOUSING COST

Housing costs in Fairfax are lower than nearby towns but, like the prices in other Marin County communities, are higher than many locations in the Bay Area. According to the National Association of Realtors, the median home price in Marin County in the first quarter of 2022 was \$1,278,850, which was slightly less than San Mateo, Santa Clara, and San Francisco. Even though all the counties of the Bay Area showed gains in home prices in 2022 as compared to last year, Marin County was at the top of the list with an increase of 28.7 percent, just ahead of Napa at 25.2 percent.²⁰ The median price of homes in Fairfax at the end of 2022 was \$1,329,029, which was up 6.6 percent from the previous year. By way of comparison, the median price was \$4,302,149 in Ross and \$2,162,052 in Larkspur.²² The median rent for all rental homes in Fairfax is \$2,798, which is also lower than most of the other central Marin cities.²³

A combination of factors, including rising labor and material prices because of inflation, supply-chain problems and worker shortages during the COVID-19, have pushed up the cost of building housing affordable to lower-income families, which now exceeds \$1 million per unit in many Bay Area jurisdictions. Although some of the higher costs for building affordable housing are due to constraints discussed above that may be within the control of local government, others are caused by external factors such as the costs of material and labor, labor shortages, and the higher cost of hiring general contractors.

AVAILABILITY OF FINANCING

One of the most significant factors related to the provision of adequate housing for all segments of the population is the availability of financing – both for real estate development and homeownership. The cost of securing financing to either construct or buy housing in the community is an obstacle to creating new housing and, especially, housing affordable to low- and moderate-income households. There are several programs that might help to provide more affordable housing in

²¹ Hayley Raetz et al., “The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California” and Carolina Reid, “The Costs of Affordable Housing Production: Insights from California’s 9% Low-Income Housing Tax Credit Program”, Turner Center for Housing Innovation, March 2020. Download at <https://turnercenter.berkeley.edu/research-and-policy/the-cost-of-building-housing-series/>

²² <https://www.zillow.com/home-values/24660/fairfax-ca/>, <https://www.zillow.com/home-values/6840/ross-ca/>, <https://www.zillow.com/home-values/25512/larkspur-ca/>

²³ Zillow Rental Manager <https://www.zillow.com/rental-manager/market-trends/fairfax-ca/>

Fairfax, but none of which developers or property owners appear to have used for projects in Fairfax.

The California Housing Finance Agency offers grants and loans for ADUs through a group of private lenders. Marin County homeowners with annual incomes less than \$300,000 are eligible to apply for up to \$40,000 in assistance for pre-development costs including architectural designs, permits, soil and engineering tests and other expenses. Grants may also be used to buy down the interest rate on financing.

Homeowners are often able to finance the construction of ADUs by refinancing their underlying mortgage or home-equity finance programs. This may not be feasible or desirable for many of the Fairfax homeowners who may be interested in building ADUs including those age 65 and older who comprise almost 24 percent of the population. Although many older residents own their homes, and in some cases have paid off their mortgages, many of these residents are spending more than 50 percent of their overall household income on housing and are not eager to take on additional debt.

The Bay Area Housing Finance Agency (BAHFA), established by the State under AB 1487 (2019, Chiu), is a new resource to support the production and preservation of affordable housing by placing new revenue options on the ballot. Although efforts to obtain the necessary approval of voters has been postponed due to the economic disruption caused by the COVID-19 pandemic, the decision was made not to place a revenue measure on the November 2020 ballot.) Any new BAHFA revenue source would require voter approval by a two-thirds vote. Possible future options include:

- General obligation bond backed by property tax receipts (also known as a GO bond);
- Parcel tax;
- Gross receipts tax;
- Per-employee corporate “head tax”;
- Commercial linkage fee (authorized after voter-approved GO bond or parcel tax).²⁴

The County’s Housing Choice Voucher Program (formerly Section 8, veterans and disabled persons vouchers) aids qualified renters seeking housing in Marin County. Eligibility for a housing voucher is determined by the Marin Housing Authority (MHA) based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status. In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. By law, MHA must provide 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income (Extremely Low Income).²⁵The “Extremely Low,” “Very Low Income” and “Low Income” schedules shown are shown below.

²⁴ BAHFA History <https://mtc.ca.gov/about-mtc/authorities/bay-area-housing-finance-authority-bahfa>

²⁵ Marin Housing Housing Choice Voucher Program <https://www.marinhousing.org/housing-choice-voucher>

Table C-8: FY2021 Marin County Income Limits for Housing Choice Voucher Program

Household Size	Extremely Low	Very-Low	Low
1	\$ 38,400	\$63,950	\$102,450
2	\$ 43,850	\$73,100	\$117,100
3	\$ 49,350	\$82,250	\$131,750
4	\$ 54,800	\$91,350	\$146,350
5	\$ 59,200	\$98,700	\$158,100
6	\$ 63,600	\$106,000	\$169,800
7	\$ 68,000	\$113,300	\$181,500
8	\$72,350	\$120,600	\$193,200

Note: Dept. of Housing and Urban Development (HUD), effective 4/1/2021. The “Median Income” schedule shown above is based on the FY2021 median family income for the San Francisco HMFA of \$149,600 for a four-person household, issued by HUD effective 4/1/2021, with adjustments for smaller and larger household sizes.

Table C-9: Marin County Voucher Program Standards (Eff. August 1, 2021)

Unit Size	Payment Standard
SRO	\$1,744
Studio	\$2,326
1 Bedroom	\$2,894
2 Bedroom	\$3,517
3 Bedroom	\$4,522
4 Bedroom	\$4,920
5 Bedroom	\$5,658

Marin Housing Authority, Housing Choice Voucher Program Payment Standards <https://irp.cdn-website.com/4e4dab0f/files/uploaded/Payment%20Standards%20Eff%208-1-2021%20-%20use%20for%20clients%20%28002%29.pdf>

The primary obstacle to finding in rental housing in Fairfax is simply the limited supply of housing available for rent. As of this writing, there were only two projects in Fairfax with units for rent within the income limits the voucher program allows (Table C-8).

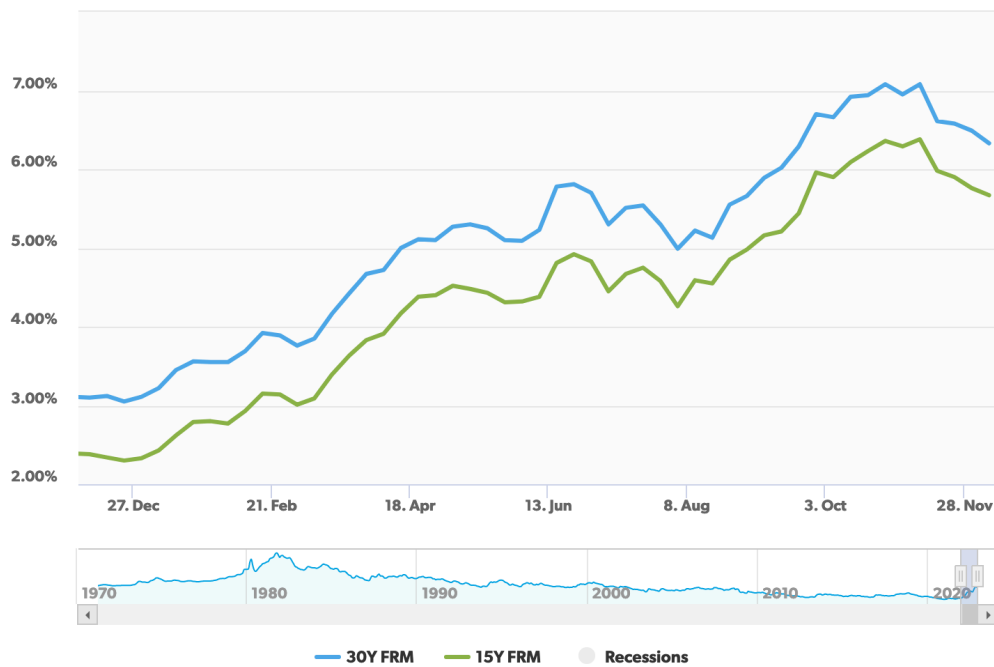
Since December 2021, mortgage rates have nearly doubled — rising to around 6 percent, the highest they’ve been since 2008 — in response to moves by the Federal Reserve to control inflation. In January 2022, a buyer would have paid around \$2,100 a month in principal and interest for a \$500,000 home loan. 12 months later, that same loan would cost about \$2,900 a month. (See Figure C-1 for the change in 30-year fixed rate mortgages from 2018 to 2022.)

The Marin Housing Authority operates several programs that provide financing for lower income home buyers and renters although funding is limited. The BMR Homeownership Program provides assistance to first-time home buyers whose income is at or below Moderate Income Household Limits based on the HUD Area Median Income (AMI), which is currently \$149,600 for a four-

person family. BMR purchasers are selected through a lottery of eligible applicants and the household size must be appropriate for the unit size (i.e., minimum of one person per bedroom). Financing is available through BMR Program Participating Lenders certified by Marin Housing. Each BMR unit requires a recorded resale and refinance agreement in perpetuity and units can only be resold at the restricted resale price that generally appreciates based on the lesser of the consumer price index or the AMI.

Marin Housing has offered financing to eligible first-time homebuyers through the Marin County Mortgage Credit Certificate Program. As of this writing, there were no funds available from this program for new applicants. A Mortgage Credit Certificate (MCC) provides a federal income tax credit that reduces the amount of federal income tax a homebuyer pays. This reduction in income taxes provides more available income to homebuyers to qualify for a mortgage loan and to make their monthly mortgage payments. The tax credit can be taken as long as the homebuyer lives in the home as his/her principal residence. Under the Marin MCC program, the tax credit is equal to 20 percent of the annual interest paid on the homebuyer’s first mortgage for selected below market-rate properties administered by Marin Housing.

Figure C-1: National 30-Year Fixed Rate Mortgages, 2018-2022



Source: Freddie Mac, Mortgage Rates <https://www.freddiemac.com/pmms>

REQUESTS TO DEVELOP AT DENSITIES BELOW THOSE PERMITTED

State Housing Element law now requires the non-governmental constraints analysis to evaluate developer requests to build at densities below the density identified in the Housing Element sites inventory.

To incentivize development that better implements densities planned in the Housing Element sites inventory, the Housing Element includes a program to ensure that there are adequate sites available throughout the planning period to accommodate the Town's RHNA. The Town has not received requests to develop at densities below those permitted.

ENVIRONMENTAL CONSTRAINTS

This section contains information on current risks due to natural and environmental hazards, which are among the non-government constraints to providing housing in Fairfax.

Wildfire

The California Department of Forestry and Fire Protection (CAL FIRE) has developed maps at the county level for both State Responsibility Areas (SRA) and Local Responsibility Areas (LRA). The Town of Fairfax, because it is incorporated and maintains its own fire service through the Ross Valley Fire Department, is mapped as an LRA. The surrounding unincorporated area is mapped as an SRA. CAL FIRE and the Office of the State Fire Marshal have responsibility to publish fire hazard severity zone maps for SRAs and LRAs. The state produced a draft fire hazard severity zone map for the LRA areas of Marin. The map included very high, high, and moderate fire hazard severity zones. The CAL FIRE maps indicate that the incorporated area of Fairfax lies in a high fire hazard severity zone, except for a portion of the most northern part of Fairfax, which is undeveloped and classified as a moderate fire hazard severity zone. Most of the unincorporated land adjacent to the Town of Fairfax is mapped as a moderate fire hazard severity zone. A notable exception is the southwestern area in the vicinity of the White Hill and Cascade Canyon Open Space Preserves.

State and federal fire risk mapping efforts may underestimate the true fire hazard for the Town of Fairfax because they do not consider the specific vegetation types present in Fairfax and the surrounding area in their fuel model calculations. The models are based on a 50-acre grid which does not allow for the level of detail necessary to assess the local hazard. The Town of Fairfax Emergency Operations Plan identifies steep hill neighborhoods, such as Cascade Canyon, Forrest/Hillside, Oak Manor, Manor/Scenic Hill, and Willow/Upper Ridgeway, as being at the greatest risk from wildland fire due to the dense vegetation, trees dead/dying of sudden oak death, and the narrow access roads.

The Marin Wildfire Prevention Authority was enacted by the voters in March 2020; Fairfax, along with 16 other jurisdictions in Marin County (except Tiburon and Belvedere) are part of MWPA. MWPA conducts extensive wildfire prevention and mitigation work, all local jurisdictions also receive local monies. With local and Core MWPA monies, chipper days, shaded fuels breaks and other vegetation management work has been conducted in and around Fairfax.

Seismic Activity

The Town of Fairfax does not contain any active faults as designated by the Alquist-Priolo Earthquake Fault Zoning Act; however, it is subject to moderate to high levels of ground shaking, which could cause significant damage and disruption to critical Town facilities, residences, businesses, and infrastructure. Aging infrastructure, such as bridges and pipelines, may suffer damage and result in local transportation, water, and sanitation disruptions.

Creekside and hillside areas, which comprise most of the built environment in the Town of Fairfax, are most vulnerable to damage caused by ground failure. Creekside development built on alluvial deposits can experience differential settlement caused by liquefaction. This vulnerability is increased during periods of intense or prolonged rainfall when soils become saturated. Most of downtown Fairfax falls within a high liquefaction zone.

Most vacant lots in the Town of Fairfax are on steep slopes that are susceptible to landslides. Risk to new development can be minimized by conducting thorough geotechnical investigations, incorporating findings into the design and construction, and strict compliance with current building codes.

Flood Hazards

The area subject to historic and future flooding lies in the floodplain adjacent to the confluence of Fairfax and San Anselmo Creeks. The Federal Emergency Management Agency (FEMA) produces maps of flood-prone areas to guide community floodplain management programs. These maps, known as Special Flood Hazard Areas (SFHA), report the area subject to a 1 percent per annum flood. Approximately 500 residential parcels are also located in the mapped SFHA. Modifications to existing structures can be made to reduce potential future damage, including elevating structures, installing flood gates, wet and dry proofing, and erosion control.

Historic records of flood events and their impacts on the community are not well documented. FEMA maps represent a projected probability of future events based on limited hydrologic studies. However, based on the general accounts of flooding over the past 100 years, the maps appear to under-represent the severity and extent of potential flooding for the Town of Fairfax. Further hydrologic studies of the complex upstream and downstream effects of development in the Ross Valley Watershed must be conducted to provide base data for land use planning.

There is an opportunity for new development and redevelopment of residential and commercial zoned vacant properties along Fairfax and San Anselmo Creeks. The potential for flooding and the desire to protect the scenic and biologic qualities of the creeks should be of paramount concern in reviewing all development and redevelopment proposals on these parcels. Fairfax Creek, San Anselmo Creek, Bothin Creek, Deer Park Creek, and Wood Lane drainage have also been identified as potential sources of flooding. Key Findings

This section summarizes the key findings of this appendix. It is not intended for inclusion in the final draft of the Housing Element, but rather to inform programs in the Housing Action Plan and narrative language in the body of the draft Housing Element to assist staff. Key takeaways related to governmental and non-governmental constraints are provided below.

Governmental Constraints

- **General Plan Land Use Policies.** The Land Use Element proposes several policies that would affect residential development including the development of design guidelines to ensure that new residential development or alterations to development “to preserve and enhance the existing character of the Town’s neighborhoods in diversity, architectural character, size and mass.” The Element also includes subjective criteria for designing projects in such areas. The Housing Action Plan of this Housing Element commits the Town to identifying all of the subjective policies, criteria, and standards now used to evaluate residential projects and revising or replacing them with objective design and development standards that will meet the requirements of State law.

The General Plan includes a Town Center Element that would require downtown projects to be consistent with the Element’s development standards. Except for limiting building height in the Town Center to 28.5 feet and two stories as the Zoning Code now requires in the Central Commercial (CC) district which applies to most of the Town Center Planning Area, the Land Use Element does not specify any standards for residential density or development intensity or other objective standards for regulating development. The Element proposes that Fairfax prepare and adopt a Town Center Plan including Development Standards and Design Guidelines but the programs including these requirements have not been fully implemented. The Housing Action Plan includes a program for the preparation and adoption of a Town Center Plan including Development Standards and Design Guidelines that would allow increased heights for residential projects and other standards to promote residential development in the Town Center.

- **Residential Development Subject to Use Permit.** The maximum density the existing zoning code allows for residential projects is 12 units per acre except for the CL, CC, CH? and PDD districts where higher densities are allowed subject to approval of a Use Permit. The CC regulations permit residential development by right above the ground floor, but this restriction and other regulations are a constraint to housing. The Housing Action Plan includes a program that would allow residential development, including free-standing residential buildings by right in the RM, CL, CC, CH? and PDD districts subject to compliance with objective design and development standards.
- **Parking Standards for Residential Uses.** The Zoning Code will be amended to comply with AB 2097 (Friedman) by eliminating minimum parking requirements on all projects within a half mile of a major transit stop, without findings supported by evidence in the record. The program in The Housing Action Plan will also include provisions for allowing shared parking, participating in shuttle programs and other programs for residential projects outside this radius in RM, CL, CC, and PDD districts.
- **Accessory Dwelling Units.** Fairfax has approved measures applicable to ADUs and JADUs to comply with State requirements including the most recent changes in State law allowing increased height for ADUs located within a half-mile of a major transit stop or high-quality transit corridor. The Town has also enacted other programs, such as the Second Unit Amnesty Program, to promote the development of ADUs/JADUs and legalize unpermitted ADUs/JADUs. The Housing Action Plan commits the Town several additional actions to promote the development of ADUs and JADUs including modifying development

standards, providing technical assistance to property owners, fee discounts and exemptions or waivers from locally-imposed taxes and impact fees.

- **Affordable Housing Density Bonus.** Fairfax has not established any provisions to implement the State density bonus law (California Government Code Section 65915). Even though the law applies to any proposed residential projects that are eligible for density bonuses and other incentives or concessions regardless of whether a city has codified the requirements. The Housing Action Plan includes a program to amend the Code to reference the State requirements. Such provisions could simply state that an applicant seeking a density bonus shall file an application with the Planning and Building Department for the Planning Commission to consider the request concurrently with its review of the underlying development application. The Town may also enact provisions providing incentives for work force housing projects in addition to any incentives to which a project may be entitled under State law for projects also including eligible units.
- **Transitional and Supportive Housing.** SB 2 amended the State housing law effective January 1, 2008 to clarify that transitional and supportive housing types must be treated as residential uses and subject only to those restrictions that apply to other residential uses of the same type in the same zone. The Fairfax Zoning Code is inconsistent with State law because transitional and supportive housing are only allowed as a use "by right" in areas zoned as PD (Municipal Code Section 17.130) and CC (Municipal Code Section 17.100). To bring the Zoning Code into compliance with State law regarding transitional and supportive housing, Fairfax will need to amend the zoning code to clarify that transitional and supportive housing are subject only to those restrictions that apply to other residential uses of the same development type in the same zone. The regulations for each district in which residential uses are allowed will be revised to specifically identify transitional and supportive housing among the uses permitted by right or subject to a conditional use permit based on the requirements applicable to other residential projects configured in the same manner. The Zoning Code will also be revised to conform with the other recently enacted requirements discussed above.
- **Residential Care Facilities and Group Homes.** State law requires that local jurisdictions allow small residential care facilities and group homes by right and under the same standards as apply to a single-family home in the district. The Code defines Nursing Home as a "home for aged, chronically ill or incurable persons, in which three or more persons not of the immediate family are received, kept or provided with food and shelter or care for compensation" excluding hospitals, clinics and similar institutions and groups such facilities with multi-unit residences, and senior housing with respect to common areas. (Section 17.008.020, Definitions). The Housing Action Plan includes a program that will bring the Zoning Code into compliance with State law by establishing provisions that define residential care facilities as defined by State law as a type of housing allowed by right subject to objective standards for parking and other requirements applicable to residential structures of the same type allowed in the same district.
- **Homelessness.** The Zoning Code's requirements for emergency shelters are generally consistent with those the State authorizes in Government Code 65583 (a)(4)(A) but include some additional requirements that may not comply with State law. These include requiring that new construction or alterations proposed to an existing site or building require design review by the Planning Commission for conformance with the town's design guidelines,

which are not all objective. The Town also enacted a provision stating, “Once the town’s local need for providing emergency homeless shelters is satisfied (based on the most current homeless census data), a conditional use permit is required for any additional beds or emergency homeless shelters in any district.” As written, this provision does not comply with section 4(C) of the State requirements, which stipulate that a local jurisdiction must demonstrate to the State Department of Housing and Community Development that existing facilities can accommodate the need for emergency shelters before imposing a requirement for conditional approval of facilities. As of this writing, there are no emergency shelters in Fairfax.

Also, the Town has enacted some additional regulations that create additional barriers for accommodating homeless persons in the community. Chapter 15.16 of the Fairfax Buildings and Construction Code prohibits the use or occupancy of any camp car or trailer for living or sleeping on any lot or parcel in the town. The Code also bars the lease of any property for this purpose. This regulation would prohibit the use of so-called “tiny homes” (those on wheels) as the Counties of Marin and Sonoma and some other California jurisdictions now allow as a way to provide affordable housing for formerly homeless people. The Town’s Vehicles and Traffic Code prohibits overnight parking in the Town Center (Section 10.04.120 UTO Section 11.8) but Fairfax has not provided any alternative for homeless persons living in vehicles. Moreover, Fairfax has not revised the Zoning Code to implement the mandate to allow a Low Barrier Navigation Center to be permitted by right in all mixed-use and non-residential zones permitting multi-family development (AB 101). A program in The Housing Action Plan commits Fairfax to revising its Zoning Code to eliminate the identified conflicts with State law and also to collaborate with nearby municipalities and the County to identify sites where overnight parking will be allowed and other measures to accommodate the needs of unsheltered persons in Fairfax and other Central Marin jurisdictions, none of which have emergency shelters.

- **Workforce, Employee and Agricultural Housing.** Even though there is no commercial agriculture in Fairfax, about 41 percent of Marin County’s land area is in agricultural use including unincorporated areas of just west of Fairfax. Census data for 2017-2021, reported that 1.1 percent of the Town’s civilian employed population worked in agriculture, forestry and other resource-based industries compared with 0.6 percent countywide. The majority of agricultural workers in West Marin live in housing provided on site by employers but some workers may seek housing in nearby towns like Fairfax, especially if their spouses work in non-agricultural jobs in those communities.

Workforce housing (sometimes referred to as middle-income or moderate-income housing) is housing for individuals and families typically earning between 60 percent and 120 percent of the Areawide Median Income (AMI). Housing for those in this income group is not eligible for tax credits, private activity bonds or most other federal, state, or local government subsidies.

The Housing Action Plan of this housing element includes a program for amending the Zoning Code to include a definition for work-force housing and work with local religious, education, and other institutional employers in the community to explore potential sites and financing options for such projects. AB 2244 (Wicks), which the Governor signed in July, 2022, amended Government Code Section 65913.6 to make it easier for religious institutions to develop affordable housing on sites they own to apply to housing on new or

existing sites by allowing up to a 50 percent reduction in parking required for the religious use. The Town could enact an ordinance that would expand the law's to apply to a wider range of institutional properties and to those earning between 60 and 180 percent of AMI. When developing programs to meet the needs of those who work in Fairfax but are unable to afford housing in the Town, Fairfax will take account of the needs of agricultural workers working in the adjacent unincorporated area and their families.

- **Single Room Occupancy Housing.** The Fairfax Zoning Code does not define or establish any requirements specific to SRO housing; these establishments could, however, be treated as a type of multi-unit housing. As such, SRO housing would be allowed in the CL (Limited Commercial), CH (Highway Commercial), and CC (Central Commercial) zones subject to approval of a use permit. In the CH and CC zones, residential uses are only allowed above the ground floor. This would appear to preclude the possibility of establishing an SRO in a building or buildings previously used as a motel or hotel. Because an SRO offers a potential accommodation for very low-income individuals or couples, The Housing Action Plan includes a program to establish provisions that would facilitate the establishment of SRO housing, especially to meet the Town's need to accommodate homeless and very low-income persons and households.
- **Manufactured Housing and Mobile Homes.** State law requires that mobile homes (or manufactured homes) on permanent foundations be permitted by right in residential zones, subject to the same development standards and processes as single-family homes but does not require municipalities to permit mobile home parks. The Town's Zoning Code includes definitions for Mobile Home Park and Mobile Home Lot but fails to include any reference to the State mandate allowing manufactured and mobile homes in all residential zones and doesn't identify Mobile Home Parks as a permitted use in any district. The Housing Action Plan includes a program to bring the Zoning Code into compliance with State law regarding the treatment of manufactured and mobile homes in the same manner as single-family dwellings.
- **SB 35 Streamlining.** Government Code section 65913.4 allows qualifying development projects with a specified proportion of affordable housing units to move more quickly through the local government review process and restricts the ability of local governments to reject these proposals. The bill creates a streamlined approval process for qualifying infill developments in localities that have failed to meet their RHNA, requiring a ministerial approval process, removing the requirement for CEQA analysis, and removing the requirement for discretionary entitlements. Fairfax is one of 285 California communities subject to SB 35 streamlining provisions that offer an expedited approval process for residential and mixed use projects in urbanized areas proposing to provide at least 10 percent of their units as affordable housing. The Housing Action Plan includes a program to codify the requirements for SB 35 projects with applicable objective design and development standards.
- **Constraints for People with Disabilities.** The Town has adopted Title 24 of the 2019 California Building Code (Fairfax Municipal Code, Section 15.04.010, Adoption of Construction Codes), which includes comprehensive standards covering most of the important areas of accessibility for persons with physical and sensory disabilities. California's Building Standards Codes (Physical Access Regulations) are found in Title 24 of the California Code of Regulations (CCR) and are designed to comply with the requirements of the Americans

with Disabilities Act (ADA) and State statutes. Fairfax has not, however, enacted regulations establishing procedures for persons with disabilities seeking “reasonable accommodation” involving changes, exceptions, or adjustments to regulations that are necessary to provide equal access to housing. The Housing Action Plan includes a program to bring the Zoning Code into compliance with State law regarding reasonable accommodations by establishing procedures for processing request for reasonable accommodation pursuant to the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619) and the California Fair Employment and Housing Act (California Government Code, Title 2, Division 3, Part 2.8).

- **Procedural Requirements.** Residential projects proposed in Fairfax typically require a combination of reviews including zoning compliance, conditional use permit, design review as well as building permit plan checks. Some projects may also require approval or modification of a development plan, master plan, and subdivision map or parcel map. In addition to these procedures, which are common to most cities, Fairfax has established some additional review requirements that contribute to the time and cost required to develop residential projects. These include the requirements for traffic impact permits (Chapter 17.056), ridgeline scenic corridor permits (Section 17.060), flood plain development permit (Chapter 17.068) and hill area residential development permit (Chapter 17.072). These requirements typically require applicants to hire special consultants and pay additional fees for review by staff or an outside consultant, which increase the time and cost of producing housing.

The Fee Schedule identifies Minor Use Permit as a type of planning approval but Chapter 17.032, Use Permits does not include any provisions referring to this planning entitlement. The Housing Action Plan includes a program for revising the Zoning Code to establish requirements for Minor Use Permits approved by the Planning and Building Director and to identify the uses that could be approved with such permits. The Action Plan also commits the Town to revising the Code to allow multi-family projects with up to four units to be developed by right subject to compliance with new objective standards. Such projects located within a half mile of public transit will also be exempt from the requirement for a transportation impact study and permit. The adoption of objective standards based on the design review criteria in Section 17.020.040, will facilitate this change in procedures and reduce the time and cost of processing residential projects. Because the four-unit projects will be allowed by right (i.e. ministerial approval), they would also not require environmental review.

- **Objective Design and Development Standards.** The Zoning Code requires design review of all construction projects other than minor additions based on a series of subjective design review criteria. Although the Code authorizes the Town to adopt design guidelines, it has not yet done so, creating significant potential for violating State mandates for using objective design and development standards as a basis for reviewing residential projects. The Town prepared a draft proposing several amendments to the Zoning Code to correct deficiencies; however, as of this writing, it has not adopted objective design and development standards that would meet the requirements of the State Housing Accountability Act, SB 35 or SB 9 (California Government Code Sections 65589.5, 65913.4, 65852.21, and 65913.4(a)(5)). The Housing Action Plan includes a program committing the Town to revising the Zoning Code to include objective design and development standards based on

the criteria in Section 17.020.040 or other General Plan policies. This project will be assigned the highest priority.

- **Subdivision Requirements.** The Town’s subdivision fees are in line with or less than those charged by nearby communities but include requirements for some studies and impact fees as a condition to approval of a tentative or parcel map that add to permit costs. The Housing Action Plan identifies actions the Town will take to reduce or mitigate the cost of subdivisions including developing specific standards, requirements, and checklists for preparing the required resource conservation analysis. The Action Plan also commits the Town evaluating the feasibility and effect of eliminating or reducing locally-imposed impact fees for residential projects proposing permanently affordable housing.
- **Buildings and Construction Code Requirements.** In September 2021, the Town enacted requirements for all-electric building design based on its location along the wildland-urban interface and susceptibility to seismic and flooding hazards. The requirements are also to implement the Fairfax Climate Action Plan and Climate Emergency Declaration (Resolution No. 1904). This regulation anticipates State mandates that will ban the sale of natural gas appliances in 2030 and a change in the State Building Code that went into effect at the beginning of 2023. Although the cost difference between electric and gas appliances is not significant, the cost to operate electric appliances has historically been higher than the cost of gas, although that was not the case in 2022. The Housing Action Plan includes a program to monitor the effect of this requirement on the housing expenses of low- and moderate-income households and evaluate options for minimizing this impact.

The Building and Construction Code prohibits the use or occupancy or any camp car or trailer for living or sleeping on any lot or parcel in the town. The Code also bars the lease of any property for this purpose. This regulation would prohibit the use of so-called “tiny homes” (those on wheels) as the Counties of Marin and Sonoma and some other California jurisdictions now allow as way to provide affordable housing. The Housing Action Plan includes actions needed to allow the use of “tiny homes” as a type of ADU subject to conditions regarding the design and siting of such units.

- **Fees and Exactions.** Even though the fees Fairfax charges for reviewing housing development applications are comparable to or less than those charged by some nearby municipalities, the additional studies that the Town requires increase the time and cost of obtaining project approval. The Housing Action Plan includes programs that will require revisions to the existing Zoning Code and other municipal regulations to incorporate standards tied to measurable and objective standards. Such standards need to be based on technical studies the Town undertakes that should reduce the time and cost of preparing and evaluating studies on a case-by-case basis. The Town will also evaluate the feasibility and impact of deferring the payment of all or part of the fee for projects that include affordable housing.

Non-Governmental Constraints

- **Limited vacant land.** The Town is essentially built out with almost all the remaining vacant land in steeply sloped hillside areas with limited development potential and few vacant lots in the flatter portions of the Town. Fairfax has adopted regulations to implement SB 9, which could make it easier to divide lots and create lots that could be developed with

additional housing would maximize the use of developable land with fewer environmental constraints.

- **Environmental constraints.** Major environmental constraints to development include flooding, topographic problems, liquefaction susceptibility, and wildfire concerns. Some of these constraints can be mitigated, while others provide a barrier to development. The Action Plan proposes that the Town undertake a focused geologic study in the Town Center areas to identify a range of measures that developers could incorporate in projects proposed in areas where these potential hazards exist to reduce project costs. Codifying specific standards for projects on sites subject to environmental constraints could reduce the time and cost of development in such areas by reducing the need for applicants to apply for additional permits, hire their own consultants and pay for any outside consultants the Town needs to assist staff with project review.
- **Market constraints.** The cost of land in Fairfax is higher than many other Bay Area jurisdictions because of the Town's desirability but lower than other municipalities in Central Marin. Fairfax suffers from the same high construction costs as other Bay Area jurisdictions. The availability of financing is affected by factors that local government cannot control, including capital levels of banks and investors, credit worthiness of borrowers, and the willingness of investors to supply capital for real estate. Jurisdictions like Fairfax can, however, take advantage of the few federal and State programs that are available to subsidize the cost of financing development and assist lower-income first-time home buyers. The Housing Action Plan includes several programs that would allow the Town to take better advantage of programs that do exist and make sure that residents and property owners are aware of such programs.