

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

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April 17, 2023

Dina Tasini, Director of Community Development
Community Development Department
Town of Tiburon
1505 Tiburon Boulevard
Tiburon, CA 94920

Dear Dina Tasini:

RE: Town of Tiburon's 6th Cycle (2023-2031) Revised Draft Housing Element

Thank you for submitting the Town of Tiburon's draft housing element received for review on February 16, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from Kyle Doss, Jennifer Harmon, and the Campaign for Fair Housing Elements pursuant to Government Code section 65585, subdivision (c).

The draft element addresses many statutory requirements found in HCD's previous review; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code). The enclosed Appendix describes revisions needed to comply with State Housing Element Law.

As a reminder, the Town's 6th cycle housing element was due January 31, 2023. As of today, the Town has not completed the housing element process for the 6th cycle. The Town's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the Town to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the regional housing needs allocation shall be completed no later than one year from the statutory deadline pursuant to Government Code sections 65583, subdivision (c) and 65583.2, subdivision (c). Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i). Please be aware, if the Town fails to adopt a compliant housing

element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

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

HCD appreciates the hard work and diligence provided during the course of our review. We are committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Brandon Yung, of our staff, at brandon.yung@hcd.ca.gov.

Sincerely,

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

Melinda Coy
Proactive Housing Accountability Chief

Enclosure

APPENDIX TOWN OF TIBURON

The following changes are necessary to bring the Town's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <https://www.hcd.ca.gov/planning-and-community-development/hcd-memos>. Among other resources, the housing element section contains HCD's latest technical assistance tool, *Building Blocks for Effective Housing Elements (Building Blocks)*, available at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks> and includes the Government Code addressing State Housing Element Law and other resources.

A. Review and Revision

Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element. (Gov. Code, § 65588 (a) and (b).)

While the element now includes added descriptions of how past programs may have assist in needing the needs of special needs populations (programs H-a, H-ee), it did not provide an evaluation of the cumulative effectiveness of past goals, policies, and related actions in meeting the housing needs of special needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness) and revise programs as appropriate.

B. Housing Needs, Resources, and Constraints

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

Sites Inventory: The element did not address this finding. As stated in the previous review, the inventory of sites (Table 11) must also include a description of existing use with sufficient detail to facilitate an analysis of the potential for additional development on nonvacant sites.

Suitability of Nonvacant Sites: As previously noted, the description of existing uses should be sufficiently detailed to facilitate an analysis demonstrating the potential for additional development in the planning period. In response, the element now includes descriptions for sites A-H and adds additional description for sites 1-9. However, must still demonstrate the existing uses and circumstances do not impede additional development within the planning period as follows:

- the element should disclose whether any of the sites in downtown Tiburon including Site C at 1600 Tiburon Boulevard have recently undergone significant renovations approved for redevelopment and whether recent improvements may impede redevelopment.
- The element also mentions that Site G features structures listed on the register of historic places. The element should analyze the historic status, local preservation policies, and demonstrate that such status would not impede additional development.
- According to third party comments, the Chase Bank has a lease extending to 2030. The element should identify if any of the properties have known leases or covenants and evaluate the extent to which leases could impede new residential development.
- Site 5: The element indicates the owner's intent to redevelop the property while maintaining the preexisting grocery store on the site. While the element now commits to working with the property owner to develop the site in phases, the element can provide additional information on how the site can be developed with the grocery store in place. In addition, a portion of this site also is listed on the City of Belvedere's housing element site's inventory. The element should clarify if the site capacity listed is just for that portion of the site within Town boundaries and if coordination with Belvedere would be necessary to fully develop the site.
- Site 7: the element indicates that this site contains a post office. The element should clarify whether the Town includes other post offices, whether or not the post office may have a long-term lease that would preclude redevelopment, and how the Town could facilitate relocation.
- Site 8: While the element now includes program H-II (*Reed School Site*) to identify alternate sites if the school district does not choose to pursue housing on the site, it did not include the information requested in the previous review including a description of the timing for the facilities plan and any conversations with the school district to provide housing.

As you are aware, the element relies upon nonvacant sites to accommodate more than 50 percent of the Regional Housing Needs Allocation (RHNA) for lower-income households. The housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period (Gov. Code, § 65583.2, subd. (g)(2)). Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the RHNA.

Use of Senate Bill 9 (Statutes of 2021) Projections: As previously noted, the element is projecting development of four units on single-family lots based on the passage of SB 9 (Statutes of 2021) to accommodate a portion of its above-moderate income RHNA. In response, the element has adjusted its projection of such units from 174 to 36 units in total (pg. 90). This figure was developed from an owner interest response rate of 6 out of 29 vacant single-family lot owners. However, it is unclear how the assumption that

these lots will develop the maximum allowable intensity of four units per lot. If the Town continues to rely on SB 9 production projections without an established history of SB 9-unit production, the element should include policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development at the anticipated development levels.

Electronic Sites Inventory: For your information, pursuant to Government Code section 65583.3, the Town must submit an electronic sites inventory with its adopted housing element. The Town must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The Town can reach out to HCD at sitesinventory@hcd.ca.gov for technical assistance.

Environmental Constraints: The element now discusses extensive site location within the Wildland Urban Interface (WUI) and the Flood Hazard Area as well as some Town policies for those areas, including a ban on underground parking the Flood Hazard Area. As a result, the element should analyze minimum off-street parking requirements in the Flood Hazard Area, and whether buildout capacities in the future MU and MS zoning districts of 35 units per acre are possible with parking requirements, development standards, and Flood Hazard Area mitigation policies.

2. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Government Code section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). (Gov. Code, § 65583, subd. (a)(5).)*

Processing and Permit Procedures: While the element now has additional information as to how the Town complies with certain state laws (SB 35, CEQA, SB 330, pg. 111), it indicates that projects in the MU and MS zones will follow the current zoning requirement, requiring two discretionary permits for residential use but provides no analysis of this process as a potential constraint to development. In addition, the element should indicate how the permit procedure for processing by-right applications relating to sites rezoned pursuant to Government Code section 65583.2, subdivision (h) and (i). As stated in the previous review the analysis of permit processing procedures should describe permit requirements by type of housing, zone, and approval body. The analysis should address approval findings and impacts on housing cost, supply, timing, and approval certainty and add or modify programs as appropriate.

Fees and Exaction: The element should include analysis of the traffic mitigation fee, including clarification of how the anticipated number of peak PM commutes is calculated and whether this was included in the cumulative fee analysis.

Zoning, Development Standards and Fees: While the element includes a statement stating compliance with Government Code section 65940.1, a cursory review of the Town's website indicates that the information may not be complete. For example, the Town's website does not appear to include the current and five previous annual fee reports or the current pursuant to Government Code 65940.1(a)(1)(D). The element should add a program to address these requirements, if necessary.

Housing for Persons with Disabilities: While the element now describes the approval findings for reasonable accommodation, it did not analyze those finding as possible constraints. In particular, the Town should analyze findings 5 and 6 to ensure consistency with reasonable accommodation guidance. The element should also describe if there are different permitting requirements for in addition, the element must describe if the zoning code distinguishes between care facilities based on number of individuals occupying the home.

C. Housing Programs

1. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding B1, the element does not include a complete site analysis, therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the Town may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Program H-dd (Work with Non-Profits and Property Owners on Housing Opportunity Sites): The element was updated to clarify that distinct lots within sites are shared by the same owner. However, the element should still include specific commitments to facilitate lot consolidation of the sites in the inventory.

Accessory Dwelling Units: After a cursory review of the Town's ordinance, HCD discovered several areas which were not consistent with State ADU Law. HCD will provide a complete listing of ADU non-compliance issues under a separate cover. As a

result, the element should add a program to update the Town's ADU ordinance in order to comply with state law. For more information, please consult HCD's ADU Guidebook, which provides detailed information on new state requirements surrounding ADU development.

2. *The Housing Element shall contain programs which assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households. (Gov. Code, § 65583, subd. (c)(2).)*

The element did not address this finding. The element still must include a program(s) with specific actions and timelines to assist in the development of housing special needs populations including extremely low-income (ELI) households. While the element includes a commitment to utilize the Town's Low- and Moderate-Income Housing In-Lieu fund in Program H-n (Work with Non-Profits on Housing), the Town should include commitments to target lower-income affordability levels and additional commitments beyond committing in-lieu funds toward already earmarked purposes.

3. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding B2, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints.

4. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics protected by the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), Section 65008, and any other state and federal fair housing and planning law. (Gov. Code, § 65583, subd. (c)(5).)*

The element did not address this finding. As stated in the previous review, the element must be revised to include goals and actions that specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Programs must include metrics and timelines that target intended outcomes, particularly for those that assist the Town in facilitating fair housing choice and supporting mobility throughout the Town. Programs must have metrics (where applicable), should be targeting beneficial impacts for people, households, and neighborhoods (e.g., number of people or households assisted, number of housing units built, number of parks or infrastructure projects completed).

As previously noted, the element acknowledges that a racially concentrated areas of Affluence (RCAA) exists within the Town, and that the Town is predominantly in the high resource category according to TCAC/HCD Opportunity Maps and is predominantly higher income, the Town must include a significant and robust suite of actions (not limited to the RHNA) to promote housing mobility and improve new housing opportunities throughout the Town for existing residents and the broader region. While the element now refers to several programs to promote housing mobility and improve housing opportunities for existing residents and the broader region, the programs are limited to information distribution (H-b, H-f), commitments to communicate with other organizations or agencies (H-q), or continue ongoing standard practices (H-ff, H-x). While the element now includes Program H-kk (Identify Additional Housing Opportunity Sites) to be should include specific commitments to implement. Strong programs to promote housing mobility and increasing housing choices and affordability that would result in an equitable quality of life throughout the Town (beyond RHNA) is critical as the sites inventory continues to isolate the RHNA for lower-income households.

Program H-aa (Tenant Protection Strategies): As previously noted, the program needs firmer commitments beyond “explore.” The element was updated to study policies and coordinate with stakeholders, but the program should still include firm commitments.