



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Paul A. Jensen

**Prepared by: Paul Jensen (AG, EG)
Community Development Director**

City Manager Approval: _____ *AS*

TOPIC: HOUSING DEVELOPMENT POLICIES AND PERMITTING

SUBJECT: AMENDMENTS TO THE SAN RAFAEL MUNICIPAL CODE AND POLICIES TO FACILITATE AND STREAMLINE HOUSING DEVELOPMENT:

- 1. INTRODUCTION OF AN ORDINANCE AMENDING TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE (ZONING) TO AMEND SECTION 14.04.040 (PROPERTY DEVELOPMENT STANDARDS (DR, MR, HR)), SECTION 14.05.030 (PROPERTY DEVELOPMENT STANDARDS (GC, NC, O, C/O, R/O, FBWC)), SECTION 14.12.040 (EXCEPTIONS TO PROPERTY DEVELOPMENT STANDARDS), SECTION 14.16.030 (AFFORDABLE HOUSING), SECTION 14.16.190 (HEIGHT BONUS), SECTION 14.16.300 (SMALL LOTS), AND SECTION 14.28.040 (PUBLIC NOTICE AND HEARING)**
- 2. RESOLUTION ADOPTING “GUIDELINES FOR THE ADMINISTRATION OF THE AFFORDABLE HOUSING REQUIREMENT PROGRAM”**
- 3. RESOLUTION ADOPTING DENSITY BONUS AND INCENTIVE REGULATIONS APPLICABLE TO HOUSING DEVELOPMENT PROJECTS THAT QUALIFY FOR A DENSITY BONUS AS SET FORTH IN SAN RAFAEL MUNICIPAL CODE SECTION 14.16.030**

EXECUTIVE SUMMARY:

Staff is proposing amendments to Title 14 (Zoning) of the San Rafael Municipal Code (SRMC) intended to update housing policies, as well as streamline and provide better clarity in the planning development review process for housing projects. These changes reflect previous direction from the City Council through a number of meetings that have occurred over the past two years where staff presented challenges to housing production and our current housing crisis.

This report recommends adoption of an Ordinance making the following proposed amendments to SRMC Title 14, the City’s Zoning Ordinance:

- A. Reduce the current inclusionary housing requirement to a 10% Below Market Rate Onsite Equivalent as presented by staff (SRMC §14.16.030);

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

- B. Simplify and align the City's density bonus provisions with the state density bonus law (SDBL) (SRMC §14.16.030);
- C. Align the Hillside Exceptions process with similar requests for exceptions in other parts of the Code (SRMC §14.12.040);
- D. Align the City's Height bonus with state law (SRMC §14.16.190);
- E. Reduce restrictions on development of small lots (SRMC §§14.04.040, 14.05.030, and 14.16.300);
- F. Create procedures for scheduling of Appeals (SRMC §14.28.040).

In addition, staff is recommending that the City Council adopt policy resolutions setting forth detailed provisions for administration of the City's affordable housing requirements program and for the grant of density bonuses incentives for housing development projects.

RECOMMENDATION:

- 1. Pass to print the attached Ordinance amending San Rafael Municipal Code Title 14.
- 2. Adopt the Resolution adopting guidelines for the administration of the affordable housing requirement program.
- 3. Adopt the Resolution adopting density bonus and incentives regulations for housing development projects.

BACKGROUND:

Over the past two years, the City Council has received informational reports related to housing and the challenges to housing development. The City Council directed staff to explore the issues related to the challenges to the approval and development of housing in San Rafael and to identify changes that could be made to facilitate housing development. Staff presented follow-up reports, met with community members and stakeholder groups, and prepared a list of recommended measures that if implemented, could address challenges to housing production by providing clarity in and simplifying the review process, providing options for development of affordable units, and exploring other opportunities to increase housing. The following is a timeline of presentations that occurred over the past year.

August 20, 2018, the City Council was presented a comprehensive, [informational report](#) on challenges to housing development and the approval process. In response to the housing report information, the City Council directed staff to follow-up on four specific housing topics and issues. One of these four topics/issues was the challenges to the approval and development of housing in San Rafael.

September 3, 2019, City staff presented an updated [informational report](#) on challenges to housing development. The report presented 11 key challenges pertaining to the approval and development of housing in San Rafael and identified 13 recommended measures to address these challenges. Staff was directed to host several public housing workshops to solicit the public's view on the housing crisis, as well as to get feedback on the prioritization on the proposed policy actions. The City hosted two housing workshops, which were attended by the Mayor, City Council, staff, and the public. These workshops exposed the public to issues surrounding the housing crisis and obtained feedback from both the public and the City Council.

On January 21, 2020, City staff presented an updated [informational report](#) on staff recommendations for prioritization, timing, and future City Council actions on proposed policy actions to address challenges to approving and developing housing. At this meeting the City Council directed staff to return with a report on potential amendments to the SRMC aimed at encouraging development and streamlining approvals.

On [August 11, 2020](#), staff presented to the San Rafael Planning Commission a report analyzing potential amendments to the SRMC resulting from this City Council direction. At this meeting the Planning Commission provided feedback on the potential amendments and generally supported the amendments proposed by staff.

On [September 8, 2020](#) and [September 21, 2020](#), the City Council received an updated report on the status of measures to facilitate housing development & streamline approvals and focused on four main areas of the SRMC:

- A. Inclusionary Housing Requirement
- B. Density Bonus
- C. SRMC amendments to encourage development and streamline approvals, including amendments related to small lot development, hillside exceptions process and appeals process.
- D. Formalize Design Review Board Subcommittee

At the September 21st meeting, the City Council directed staff to proceed with Code Amendments related to Items A-C above and to explore a pilot program for Item D related to the Design Review Board Advisory Committee structure and process.

On [November 17, 2020](#), the Planning Commission considered a resolution focused on Items A-C. With a vote of six in favor and one abstention, the Planning Commission adopted a resolution recommending approval to the City Council of the amendments to the SRMC as presented in this report.

In the past three months, two major housing-related actions have occurred at the regional level, which are important to mention in the City’s current discussion of housing policy. These regional actions are critical in facilitating housing development and fostering the planning for housing.

First, following a year of study, Association of Bay Area Governments/Metropolitan Transportation Commission (ABAG/MTC) finalized the draft Regional Housing Needs Methodology (RHNA) for the Bay Area. City staff has been tracking the progress of this effort with particular interest in monitoring the City’s share of the region’s allocation. The City’s share of the RHNA is critical as it is the number of new households/housing units that must be accommodated/planned for in our next Housing Element update (2023), Until December 2020, a draft RHNA share of 2,785 households/units had been identified for San Rafael. While this amount is a substantial increase from the City’s RHNA share that is planned for in our current Housing Element (1,007 units), an increase was anticipated. With this expectation, much of this increase has been planned for in the Draft Downtown San Rafael Precise Plan (approximate growth of 2,000-2,200 units). In December 2020, the final subregion shares were published and the City’s RHNA share was further increased by an additional 16%, and then adjusted again in late January (totals in Table 1). Our RHNA share will triple for the next Housing Element update.

Table 1. December 2020 RHNA

	Very Low Income	Low Income	Moderate Income	Above Moderate Income	Total
San Rafael	857	492	521	1,350	3,220
Marin County (total)	4,172	2,398	2,182	5,653	14,405

The second major regional action is related to Priority Development Area (PDA) planning. The City has three (3) PDAs, Downtown, North San Rafael/Northgate, and Southeast San Rafael/Canal. The PDA designation makes these areas eligible for grants and funding. The Downtown Precise Plan was funded by a One Bay Area Grant (OBAG). In December 2020, ABAG/MTC released a call for applications (letter of interest) for the Regional Early Action Program (REAP) and PDA Planning Grant Program. The REAP

grants (both non-competitive and competitive) provide funding assistance for the next Housing Element. The PDA Planning Grant Program offers a grant of up to \$800,000 per PDA for planning (e.g., developing a Specific/Precise Plan). City staff will be filing a letter of interest by the February 12, 2021 deadline to pursue all available grant opportunities.

ANALYSIS:

At the [December 7th, 2020](#) City Council meeting, Staff was directed to provide the following information as part of this report:

- a) Updates on the status of below market rate requirements in comparable jurisdictions (Attachment 1); and
- b) Status of entitled projects that have not begun construction (Attachment 2).

Proposed San Rafael Municipal Code Amendments

Staff is proposing the following amendments to the San Rafael Municipal Code:

Section 14.16.030 - Affordable Housing related to Inclusionary Housing and Density Bonus regulations

The proposed amendments to [SRMC Section 14.16.030](#) remove the policies and procedures for implementing the Affordable Housing Requirement Program (currently set forth at length in Section 14.16.030(B)(2)) and the Density Bonus Program (currently set forth at length in Section 14.16.030(D)) from the SRMC into separate policy resolutions (Attachments 4 & 5). These policy resolutions are described in further detail below. Since it is procedurally simpler to adopt a resolution than an ordinance, by removing these policies and procedures from the SRMC, the City is able to make updates to these programs more efficiently in order to continue to align the City's policies with frequently changing state law. Additionally, the proposed amendments allow projects that have received final City approval but not yet commenced construction, the ability to apply for a modification of their affordable housing requirement which would be consistent with the policy resolution.

Section 14.12.040 - Exceptions to property development standards (Hillside Overlay)

The proposed amendment to [SRMC Section 14.12.040](#) would downgrade the review and action on Hillside Exception requests to the Planning Commission. Currently, Hillside Exception requests are reviewed and acted upon by the City Council (Attachment 3).

While the proposed amendment to the Hillside Overlay District Exception process would promote streamlined review, there are other practical and logical benefits to this amendment. First, granting an Exception is a "quasi-judicial" zoning action which, by City charter, should be held with the Planning Commission. Second, an Exception is always linked to the Environmental and Design Review Permit that is required for all hillside development. The Planning Commission holds decision making authority on such applications when they are deemed to be major. Lastly, while this amendment would afford the Planning Commission the decision-making authority on all Exception requests, this action coupled with the action on the Environmental and Design Review Permit would be appealable to the City Council.

Section 14.16.190 - Height bonus

The SDBL currently provides that developments that commit 100% of the units as units affordable

to very low-, low-, and moderate-income households are eligible to a by-right height bonus of 33 feet. The proposed amendment to [SRMC section 14.16.190](#) -Height Bonus (Attachment 3) would add new subsection F adding this category of height bonus:

F. Residential development Height Bonus. A residential development project with 100% of the total units available to lower income households, and located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, shall be eligible for a height increase of up to 33 feet. This bonus shall not be combined with any other height bonus listed above.

Sections 14.16.300 – Property Development Standards (Residential); 14.04.030 Property Development Standards (Commercial Districts), & 14.04.040 - Small Lots

[SRMC section 14.16.300.A](#), adopted in 1992, establishes limits on development for lots under 5,000 square feet in area. The following proposed amendments to SRMC (Attachment 3) would remove barriers to housing production on these lots:

- [14.16.300.A](#) would be deleted, thus increasing possible development on small lots.
- [14.04.040](#) - Property development standards (DR, MR, HR). This section includes Table 14.04.040 which outlines the required development standards and special provisions identified as footnotes. Footnote 'A' makes reference to development limitations for small lots. This footnote would be deleted.
- [14.05.030](#) - Property development standards (GC, NC, O, C/O, R/O, FBWC). This section includes Table 14.05.030 which outlines the required development standards and special provisions identified as footnotes. Footnote 'N' makes reference to development limitations for small lots. This footnote would be deleted.

Section 14.28.040- Appeals

The proposed amendments to [SRMC Chapter 14.28 \(Appeals\)](#) would streamline the scheduling and action on an appeal (Attachment 3) by establishing scheduling procedures and clarifying public noticing requirements.

The proposed amendment to the Appeal process has several benefits. First, it would streamline the time frame for the process. Scheduling an appeal and holding a public hearing can add two to four months to the Planning review process, as the scheduling of the appeal for a hearing is open to coordinating and negotiating date availability with numerous stakeholders. Second, the proposed amendment would provide the stakeholders, the decision-making body, and the public with a level of certainty as to the appeal hearing date when the appeal is filed.

Proposed City Council Housing Policy Resolutions

- 1) *Affordable Housing Requirements* – This policy resolution establishes “*Guidelines for the Administration of the Affordable Housing Requirement Program*”. The *Guidelines* establish the affordable housing obligation required of new housing development and would provide expanded options, as described in Table 2 below, allowing the affordable housing obligation through on-site development of units, off-site development of units, land donations, payment of an affordable housing in-lieu fee or a combination of the aforementioned.

The *Guidelines* outline affordable housing obligation as a percentage of total proposed units, which does not include any additional density bonus units the applicant may request. The reason for this is as follows:

- The density bonus units are intended to be an incentive for providing affordable housing;
- Adding affordable units beyond what is required in the resolution will allow applicants to take advantage of density bonuses, thus, there is a greater incentive for applicants to propose a higher percentage of affordable housing units to take advantage of density bonuses and associated incentives.
- This approach is consistent with State Density Bonus law which allows density bonuses that are tied to a percentage of proposed units and excludes any units permitted as a density bonus from that percentage.

The *Guidelines* also include provisions for annual reporting of effectiveness metrics which may include: housing units in the development pipeline, number of built low- and moderate- income units, in-lieu fees collected, and units funded through the Affordable Housing Trust Fund. Additionally, the *Guidelines* establish that a comprehensive review will be provided within eighteen (18) months of the effective date of this resolution and every 3-5 years thereafter.

Table 2. Proposed Affordable Housing Requirement Obligations

	<u>Rental</u>		<u>For Sale</u>	
	2-15 Units	16+ Units	2-15 Units	16+ Units
Primary Requirement (All Projects)	10% Low-Income	5%- Low Income	10% Low-Income	5%-Low Income
Secondary Requirement (Must choose one option below in addition to the Primary Requirement)				
		5%- Low Income		5%- Low Income
Option 1) Onsite	No Requirement	or	No Requirement	or
		10%- Moderate Income		10%- Moderate Income
Option 2) In-Lieu Payment	Allowed for Fractional Units	Payment equal to 5% of total proposed units	Allowed for Fractional Units	Payment equal to 5% of total proposed units
Option 3) Offsite	No Requirement	* Within 1/2 mile of project * Similar economic benefit * Requires City approval	No Requirement	* Within 1/2 mile of project * Similar economic benefit * Requires City approval
Option 4) Land Conveyance	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval

* In-lieu fees allowed for fractional unit up to 0.5 Units, after 0.5 units project must provide one on-site unit

**Very Low Income- 50% AMI or lower, Low Income- 80% AMI or lower, Moderate Income- 120% AMI or Lower

- 2) **Density Bonus regulations** – This policy resolution would establish “*Guidelines for the Administration of the Affordable Housing Requirement Program.*” Due to the number of changes to State Density Bonus Law that have occurred over the past few years, staff is recommending an amendment to the Density Bonus Regulations referencing a separate City Council resolution where details of the City density bonus regulations, including density bonus percentages, allowable concessions, allowable parking ratios and review procedures, would be set forth.

Adoption of the density bonus regulation by separate City Council resolution allows the City to incorporate changes that occur to SDBL in an expedited process assuring that it stays aligned with State legislation.

The State Density Bonus Law applies citywide, including Downtown San Rafael. The City recently completed and released the Draft Downtown San Rafael Precise Plan (DTPP), which proposes affording building height bonuses for projects providing affordable housing. The height bonus is intended to be an equivalent to a density bonus, as the DTPP proposes a form-based zoning code for Downtown that does not include residential densities. The draft DTPP provisions for a building height bonus are currently being reviewed and assessed in tandem with the State Density Bonus Law. The outcome of this review may result in changes to the recommended bonus provisions for Downtown San Rafael, which are unknown at this time. When the DTPP provisions are finalized and adopted, it is anticipated that this density bonus policy resolution will be amended to incorporate the final DTPP bonus provisions.

Staff Discussion on Affordable Housing Requirement

The streamlining amendments in this report represent the culmination of an effort that began in 2018 and represents extensive community outreach, stakeholder discussions, and financial analysis. The purpose of this effort was to identify the most effective policies that the City of San Rafael could implement to address the housing crisis. Based upon this effort, Staff strongly recommends the City Council adopt an inclusionary housing requirement described in Table 2 for the following reasons:

- 1) A 10% Inclusionary Housing requirement provides the best opportunity to create affordable housing.** Lowering inclusionary requirements reduces the cost to build housing making more housing projects feasible. While a 10% inclusionary requirement may mean fewer affordable housing units per new construction project, more overall housing units will likely be built under this scenario, increasing the net affordable housing stock.

As described in the September 8, 2020 information report, staff analyzed the feasibility of hypothetical low-rise and mid-rise developments for an inclusionary requirement levels at 20%, 15%, and 10% below market rate equivalents.¹ Only the 10% scenario was financially feasible across all income levels and project sizes. Requirements of 15% or 20% would mean fewer housing projects are financially feasibility, limiting the amount of housing that would be built and minimizing the potential impact on overall housing costs.

Another important factor to consider is the culmination of: a) the next RHNA cycle and upcoming update of the Housing Element; b) the strict State housing laws that have gone into effect in past three-four years; and c) the City's efforts and actions to approve housing projects (over 300 housing units), yet most of these projects have not been constructed (see Attachment 2 for list of approved housing projects). As discussed above, the City's RHNA share will triple for this next cycle. Until recently, local jurisdictions merely had to zone property for housing to comply with and meet the RHNA share. The State housing laws raised this bar so that now, RHNA compliance is not achieved until a housing project is built and occupied. While the City does not control how, when or if an approved housing project gets built and occupied, the conditions and requirements that are imposed by the City on housing project approvals have an influence on the ultimate feasibility of the project. As previously reported by staff, builders/developers have consistently stated that the current 20% inclusionary housing requirement presents a substantial challenge in getting a project financed and built. The draft ordinance proposes a new provision that would permit the developer of an approved, unbuilt housing project to request an amendment to the previously approved inclusionary housing requirement (Attachment 3, Section 14.16.030B.2).

¹ A project was considered feasible if profit is greater than 15% of cost.

- 2) **The 10% Inclusionary Housing requirement provides flexibility in addressing past and future housing location/type segregation.** As has been described in past staff reports, the segregation created by past housing policies is being fueled by the current housing crisis and exacerbated by disproportionate displacement of our communities of color. The way to combat the current housing crisis is to build more housing. Unless more housing is built, housing costs will rise, displacement will grow, and housing location/type segregation will continue. The recommended 10% Scenario is the best option to reduce development cost and incentivize housing construction.

Onsite affordable housing requirements are an important tool for cities to prevent further housing segregation of neighborhoods. However, these onsite requirements do little to reverse historical housing segregation. Trying to address housing segregation solely through onsite development provides too few protected units too late given the cost of development and the time it takes to build housing in California.

The recommended policy design provides the City flexibility to respond to historic housing segregation. The design includes primary and secondary onsite requirements to ensure future developments remain inclusive. As described later, these onsite requirements also align with the SDBL for an added incentive for providing protected units onsite.

The policy design also includes Offsite and Land Conveyance options, which require ½ mile proximity to the original development and a similar economic benefit. These requirements ensure that any project selecting these options provide the same access to high resource neighborhoods and housing quality as the market rate component.

Finally, the policy design allows in-lieu fees, which will significantly expand funding for the Affordable Housing Trust Fund. As described next, a well-funded Trust Fund would allow the City a source of funding for a broad array of programs designed to act quickly to prevent displacement and create inclusive communities.

- 3) **Affordable Housing Trust Funds are a powerful mechanism to expand the affordable housing stock.** As described in the September 8, 2020 informational report, Affordable Housing Trust Funds are proven to be more effective at producing affordable housing than onsite affordable requirements. This effectiveness comes from the ability to direct funding collected through in-lieu fees to new construction and acquisition/protection affordable housing programs (Attachment 6). These Trust Fund funded affordable housing programs operate with three main goals:

1. Increase the supply of long-term affordable housing;
2. Preserve the physical and financial viability of the affordable housing;
3. Act quickly on affordable housing opportunities in the pipeline.

New Construction programs are generally focused on making unbuilt affordable housing projects financially feasible. While funding for new construction is vital to expand the housing stock, these programs often take significantly longer to produce a housing unit versus acquisition/protection programs.

Acquisition and Protection programs are aimed at preventing displacement by protecting existing affordable housing and expanding affordable housing through acquiring market rate units. Due to lengthy development process, acquisition programs can provide affordable housing quicker than new construction. While these units would not be new, the benefit of providing the affordable housing sooner may outweigh the opportunity cost of new units.

By expanding the types of development projects that pay in-lieu fees, the City can create a funding stream to support the most effective tools at creating more affordable housing.

- 4) **COVID-19 has increased the risk of housing development.** While the Bay Area has seen an increase in home sale prices over the past year, rental prices have seen significant decreases. This volatility impacts the metrics developers and lenders use to estimate project feasibility.

Overall, market rate rents have gone down since the start of the pandemic. While bigger cities have seen the biggest drop, developers nationwide are reporting the need to drop their asking rent in order to find tenants. However, during this same period the cost of building materials, labor, and land have all remained the same or have increased. This dynamic means that the projected profit of a development will be lower and may no longer be financially feasible to the developer to build.

Given factors like vaccine rollout delays, eviction moratoriums, and rent freezes, what the housing market will be 6-12 months from now is also very uncertain. This uncertainty increases the risk for lenders financing all housing projects. This increased risk manifests in more stringent requirements or higher required returns. The only ways the developer can meet requirements is by increasing prices—which the market current cannot support, adding more units into the project—which may not be allowed under existing land use or entitlements, or reducing the revenue the developer receives—which reduces the developers incentive to build.

Reducing the inclusionary housing requirement allows the City an additional lever to offset some of this risk and counter the economic effects of the COVID-19 until the market stabilizes.

- 5) **Amendments require that policy be regularly revisited.** The proposed amendments require that the City revisit the policy design within 18 months of the effective date and then every 3-5 years thereafter. These amendments allow the City to set an affordable housing requirement that accounts for current market conditions. Each time the policy is revisited these requirements can be adjusted to ensure that they continue to effectively meet the City's affordable housing goals.
- 6) **Additional onsite affordability is required for projects using SDBL.** As described earlier, the SDBL allows developers to increase the density of a project in exchange for added onsite affordability. In effect, the SDBL is doing the heavy lifting to incentivize affordable housing. The recommended 10% inclusionary housing requirement would set the minimum affordable housing required for a housing project. Any project utilizing the SDBL would have higher percentages of onsite affordable housing and deeper affordability levels than what is required as part of the recommended inclusionary housing requirement. This provides both flexibility and clarity to developers to choose the appropriate mix of affordability and density to ensure a project is feasible.

ENVIRONMENTAL DETERMINATION:

This project qualifies for exemption from the provisions of the California Environmental Quality Act Guidelines pursuant to Sections 15183(a) because it entails a project that can be found consistent with the General Plan policies and pursuant to 15061(b)(3), which states that as a 'general rule' the California Environmental Quality Act (CEQA) applies only to projects which have the potential to cause a significant, physical environmental effects.

COMMUNITY OUTREACH:

Notice of hearing for the project was conducted in accordance with noticing requirements contained in Chapter 29 of the Zoning Ordinance. A Notice of Public Hearing was mailed to neighborhood associations and neighborhood advocates, housing advocates, local developers and other stakeholders at least 15 days prior to meeting. In addition, notice of the meeting was posted in the *Marin IJ*.

Additional community outreach that has been conducted on the general housing topic and topic areas in this report is outlined in the September 8 [informational report](#) to the City Council.

Following the November 17, 2020 Planning Commission meeting, Staff received community feedback to analyze several hybrid policy designs that combined elements of the 10% and 15% Scenarios proposed in the September 8th information report (Attachment 7). Staff conducted a series of stakeholder meetings to discuss these hybrid options and to better understand their concerns with expanding the use of in-lieu fee payments. The main concern was focused on the frequency with which these funds were spent. Having had these discussions, staff does not recommend consideration of these hybrid scenarios for the following reasons:

- The design of a hybrid policy created to maintain project feasibility would be overly complex and be counter to a key best practice of maintaining policy simplicity.
- The feasibility thresholds for higher requirements are only reached when a development reaches a large unit size (approximately 58 base units). San Rafael has only seen four projects of this size within the last 15 years.
- Requiring a higher inclusionary requirement for these larger developments would disincentivize the types of housing development necessary to combat the housing crisis.

FISCAL IMPACT:

Approval of these amendments would expand the City's acceptance of affordable housing in-lieu fees. These in-lieu fees are currently set at \$343,969 per unit. The combination of a reduction in the affordable housing requirement and the expansion of acceptance of in-lieu fees is expected to increase the receipt of in-lieu fees.

All funds received through these in-lieu fees are placed into a citywide Affordable Housing Trust Fund (Fund #243), along with the fees collected from non-residential developments. Any increases in in-lieu fee payment would increase the balance of the Affordable Housing Trust Fund. These funds are used to expand the supply of affordable housing for lower and moderate-income households through a variety of activities including new construction and the acquisition of existing housing.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Pass the ordinance to print and adopt the two policy resolutions.
2. Act on the ordinance and resolutions with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

1. Pass the Ordinance to print.
2. Adopt the Resolution adopting Guidelines for the administration of the affordable housing program.
3. Adopt the Resolution adopting density bonus and incentives for housing development projects.

ATTACHMENTS:

1. Updates on the status of below market rate requirements in comparable jurisdictions
2. Status of approved housing projects
3. An Ordinance of the City of San Rafael Amending Title 14 of the San Rafael Municipal Code (Zoning) to Amend Section 14.04.040 (Property Development Standards (DR, MR, HR)), Section 14.05.030 (Property Development Standards (GC, NC, O, C/O, R/O, FBWC)), Section 14.12.040 (Exceptions to Property Development Standards), Section 14.16.030 (Affordable Housing), Section 14.16.190 (Height Bonus), Section 14.16.300 (Small Lots), and Section 14.28.040 (Public Notice and Hearing)
4. Resolution Adopting "Guidelines for the Administration of the Affordable Housing Requirement Program"
5. Resolution Adopting Density Bonus and Incentives Applicable to Housing Development Projects that Qualify for a Density Bonus as Set Forth in San Rafael Municipal Code Section 14.16.030
6. Brief Descriptions of Potential In-Lieu Fee Funded Programs
7. Draft Inclusionary Housing Hybrid Scenarios

Attachment 1: Updates on the status of below market rate requirements in comparable jurisdictions

City	Owner	Renter	Fees Allowed?	Alternative Means of Compliance	Last Update & Notes
City of Novato	20% (Half Low-Income, Half Moderate Income)	20% (Half Low-Income, Half Very-Low Income)	Yes, Developers allowed to fee out of entire onsite requirement with City Council approval	Yes	2012
City of Palo Alto	15% < 5 Acres 20% > 5 Acres	15% < 5 Acres 20% > 5 Acres	Yes, Developer allowed to Fee out at a rate equivalent to 20% onsite (\$20/SF for apartments, \$50/SF for SFH-attached and condos, \$75/SF SFH-detached)	Yes	2017, Update to Impact Fee Nexus Study
City of Redwood City	15%- Moderate	20% (10%- Moderate, 5%-Low, 5%- Very Low)	Yes, Only projects less than 20 units pay an Impact Fee.	Yes	2015, Created Affordable Housing Impact Fee
City of Petaluma	15% (Half Low-Income, Half Moderate Income)	15% (Half Low-Income, Half Moderate Income)	Yes, Developer allowed to Fee out at a rate equivalent to 20% onsite (\$10.12/SF)	Yes	2018, Expanded acceptance of in-lieu fees
City of San Mateo	15%- Moderate or 10% Low Income	15%- Moderate or 10% Low Income	No	Yes	2020, Measure Y certified with 50.05% of vote extends program for 10 years and allows development of alternative measure not including in-lieu fees. Measure R which would have allowed in-lieu fees failed (46.12%- Yes, 53.88%- No)
City of Walnut Creek	10% - Moderate, or 7%- Low, or 6% Very Low	Fee	Yes, Developer allowed to fee out of entire onsite requirement (\$18.68/SF)	Yes	2017, Created Affordable Housing Impact Fee
City of Napa*	Fee	Fee	Yes, (\$3.55-\$6/SF)	Yes	2012, Converted to Impact fees

*Note: an earlier version of this table incorrectly cited the inclusionary requirement for the County of Napa as the requirement for the City of Napa.
 Sources: Inclusionary housing requirement data from: City of San Rafael Municipal Code 14.16.030; City of Novato Municipal Code 19.24; City of Redwood City Ordinance 1130-375; City of Napa Municipal Code 15.94; City of Petaluma Implementing Zoning Ordinance 3.040; City of Palo Alto Municipal Code 16.65; City of San Mateo Municipal Code 27.16.050; City of Walnut Creek Municipal Code §10-2.3.902.

Analysis

Staff review of the below market rate requirements in comparable jurisdictions indicates the proposed SRMC Inclusionary Housing amendments contains elements of all the jurisdictions analyzed. All jurisdictions allow for alternative means of compliance including offsite development and land conveyance.

Except for the City of San Mateo, all jurisdictions reviewed allow developers to pay an in-lieu fee or impact fee for their entire requirement. The proposed SRMC amendments only allow in-lieu fees for half the requirement. Additionally, the fees charged by these jurisdictions are generally lower than the current in-lieu fees set by San Rafael.

The percent of onsite units required by all jurisdictions is comparable to the proposed SRMC Inclusionary Housing amendments. San Mateo has an onsite requirement which is lower than the other jurisdictions. San Mateo's onsite requirement is comparable to the limits set under the proposed SRMC.

ATTACHMENT 2

Status of Entitled/Approved Housing Projects

1628 5th Avenue. A 9-unit condominium project which includes 1 BMR unit and 2 Density Bonus Units (11% inclusionary).

Approved in 2019

Status: A building permit application was submitted in mid-2020. The applicants received timely comments/request for clarifications. The City is waiting for the applicant to respond to those comments. The applicant is having a difficult time getting responses from their consultants during this time. An extension request is forthcoming.

104 Shaver Street. A 7-unit apartment building which includes 1 BMR unit (14% inclusionary).

Approved in 2020

Status: The applicant is exploring options including the possibility of selling the property.

21 G Street. An 8-unit condominium project which includes 1 Below Market Rate Unit (13% inclusionary)

Approved in 2014; extensions approved in 2016 and 2018

Status: Building permits were issued in 2019; project is currently under construction and near completion

350 Merrydale Road. A 45-unit condominium project with 9 below market rate units of which 5 units are for low-income and 4 of the units are for moderate-income (20% inclusionary).

Approved in 2020

Status: The applicant is currently in the process of preparing building permit plans and working with Marin Housing Authority to prepare the required below market rate housing agreement

1005 & 1010 Northgate Drive (also known as Northgate Walk). A 136-unit condominium project, which includes 30 senior housing units and 28 below market rate units of which 14 units are for moderate-income and 14 units are for low-income (20% inclusionary).

Approved in 2019

Status: Following City approvals, the applicant was sued for potential violation of CC&Rs by the neighboring San Rafael Commons community. In December 2020, a ruling was reached in favor of the applicant. The property representatives have reported that their project team is regrouping to determine next steps, including evaluating whether the project will pencil out given the inclusionary requirement coupled with the reduction of units; and waiting to see what happens with the outcome of the inclusionary housing review by the City Council.

703 3rd Street. A 120-unit apartment project which includes 9 below market rate units of which 5 units are for very-low income and 4 units are for low-income (8% inclusionary) plus 4 additional units at moderate-income (for 10 years). 75 of the approved units authorized by density bonus.

Approved in 2019

Status: The applicant reported that they have been working with potential financial partners during most of 2020, but a partnership has not yet materialized. The developer also acknowledged that the COVID-19 pandemic has quelled a lot of the construction loan activity for multiple-family residential projects.

819 B Street. A 41-unit apartment project with 6 below market rate units or which 4 units are for very-low income and 2 units are for low-income (15% inclusionary). 11 of the approved units authorized by density bonus.

Approved in 2016

ATTACHMENT 2

Status: Building Permit was issued in 2020; project is under construction.

999 3rd Street (Whistlestop/Eden Housing). A 67-unit 100% affordable senior housing project that was part of a mixed use development in collaboration with Bio Marin project. The senior housing project includes a density bonus of 42 units.

Approved in 2020

Status: The applicant recently completed negotiations with BioMarin regarding the sale of the property for the housing development. A parcel map is close to recordation. The project design team is working on construction drawings in anticipation of filing a building permit in early 2021. A Building Permit application has been filed.

190 Mill Street. A 32-unit supportive housing project with emergency shelter. The project is a 100% affordable housing project that received General Plan and Zoning Amendments and “by-right” approval of the affordable units.

Approved mid 2020

Status: The applicants applied for a building permit in fall 2020 and adequately responded to comments in December of 2020. The building permit was ready to be issued by December 2020 and the applicants have now pulled building permits (as of January 2021).

3773 Redwood Drive (aka Oakmont). An 89-unit senior/assisted care project. Only 23 units are considered residential units as they are completely independent with private sanitary facilities, sleeping facilities, and kitchens (28 memory care units and 38 addition assisted care units).

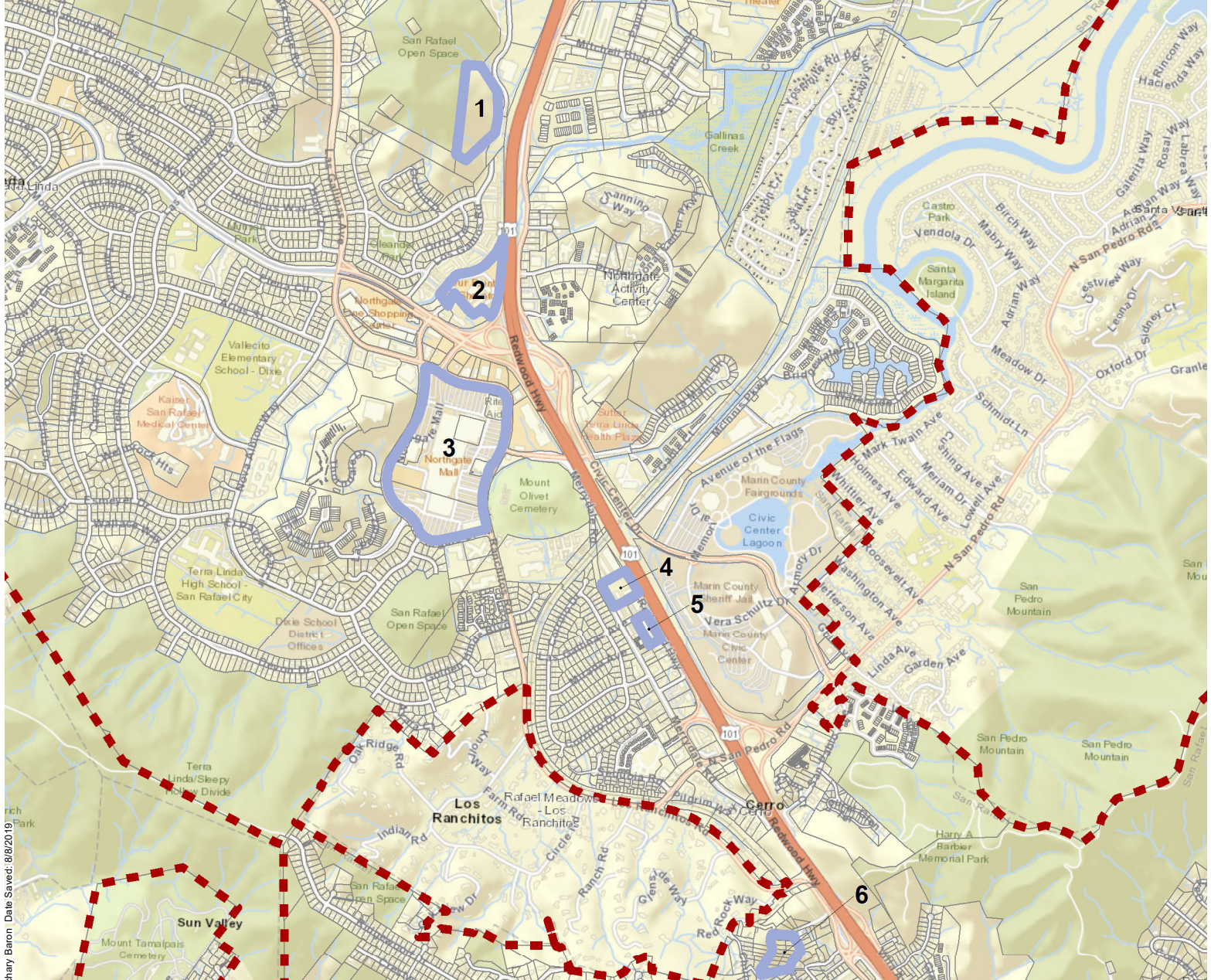
Approved: in 2019

Status: Building permit was issued in 2019 and the project is currently under construction

800 Mission Avenue (aka Aegis). 77 unit assisted living facility. These units are not considered residential units but fill a senior care gap within the city.

Approved 2019

Status: Building Permit application submitted in late 2019. Permit for foundation work was issued in 2019. Applicant is working with San Rafael Sanitation District on final comments; in early 2021 applicants reached out to planning staff about possible changes to the design of the building. Staff will be working with the applicant to determine whether additional review will be required based on the extent of changes.



Housing Development Projects: North San Rafael

December 2020

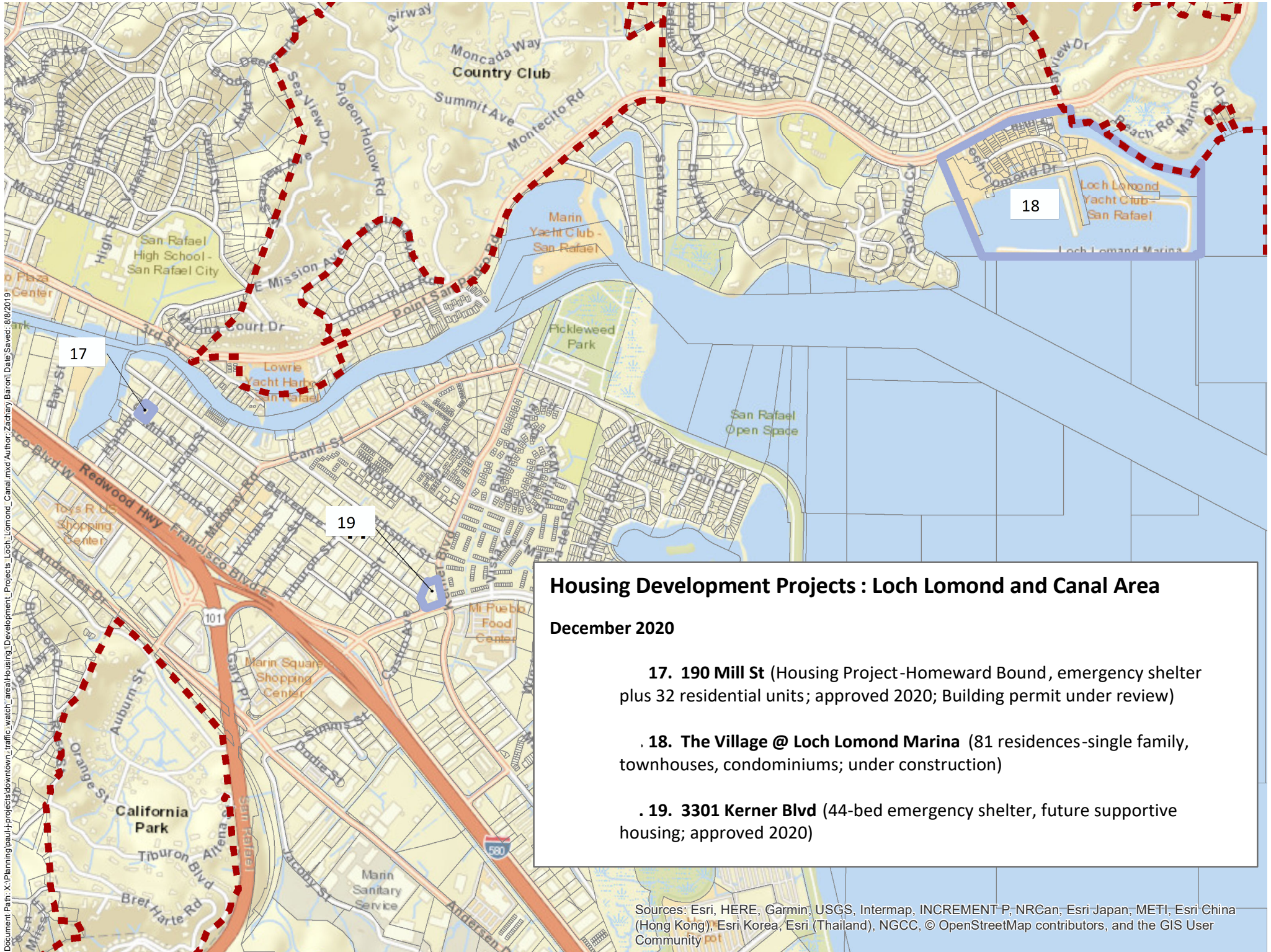
1. Los Gamos Rd. 193-unit apartment project; application submitted 12/2020; under review)
2. 1005/1010 Northgate Drive -Northgate Walk @ Four Points Sheraton. 136 unit condominium project; approved 2019;)
3. Northgate Mall (potential housing project; no application)
4. 350 Merrydale Rd. 44-unit condominium project; approved 2020)
5. 3773 Redwood Hwy 89-unit senior/assisted care project; approved 2019 under construction)
6. Fair Dr./Coleman Dr. (25 single family residences-recorded lots; under review-application is incomplete)

Document Path: X:\Planning\paul-projects\downtown_traffic_watch_area\Housing_Development_Projects_North.mxd Author: Zachary Baron Date Saved: 8/8/2019

Housing Development Projects: Central San Rafael

December 2020

7. 1368 Lincoln Ave (potential housing project)
8. 1628 5th Ave (A 9-unit condominium project; Approved in 2019; building permit application is being reviewed)
9. 900 Mission Ave (assisted living-seniors (Aegis), 88 residences + memory care; approved 2019)
10. 21 G St. (8 residential townhomes; approved 2014 (extensions in 2018); under construction)
11. 819 B St. (41 residential apartments; approved in 2016; under construction)
12. 1001 4th St. (potential housing project)
13. 999 3rd St. (67 senior apartments-low income; approved 2020)
14. 703-723 3rd St. (120-unit apartment project; approved 2019)
15. 104 Shaver St. (A 7-unit apartment building which includes 1 BMR unit. Approved in 2020)
16. 1135 4th St. (10 residential units remodel, former Wilkens Hotel; under construction)



Document Path: X:\Planning\paul+projects\downtown_traffic_watch_area\Housing_Development_Projects\Loch_Lomond_Canal.mxd Author: Zachary Baron Date Saved: 8/8/2019

Housing Development Projects : Loch Lomond and Canal Area

December 2020

- **17. 190 Mill St** (Housing Project-Homeward Bound, emergency shelter plus 32 residential units; approved 2020; Building permit under review)
- **18. The Village @ Loch Lomond Marina** (81 residences-single family, townhouses, condominiums; under construction)
- **19. 3301 Kerner Blvd** (44-bed emergency shelter, future supportive housing; approved 2020)

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT-P, NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

ATTACHMENT 3

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE (ZONING) TO AMEND SECTION 14.04.040 (PROPERTY DEVELOPMENT STANDARDS (DR, MR, HR)), SECTION 14.05.030 (PROPERTY DEVELOPMENT STANDARDS (GC, NC, O, C/O, R/O, FBWC)), SECTION 14.12.040 (EXCEPTIONS TO PROPERTY DEVELOPMENT STANDARDS), SECTION 14.16.030 (AFFORDABLE HOUSING), SECTION 14.16.190 (HEIGHT BONUS), SECTION 14.16.300 (SMALL LOTS), AND SECTION 14.28.040 (PUBLIC NOTICE AND HEARING)

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1. AMENDMENTS TO MUNICIPAL CODE.

1) Section 14.04.040 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

14.04.040 - Property development standards -Duplex Residential (DR), Medium Density Residential (MR), High Density Residential (HR).

NA: Not applicable.

Note: See Chapter 14.16, Site and Use Regulations, for additional regulations pertaining to other site development standards, Chapter 14.23, Variances, Chapter 14.24, Exceptions, for allowable adjustments to these standards, and Chapter 14.25, Environmental and Design Review Permits, for a listing of improvements subject to review (including addition of new units or additions of floor area to existing units) and design guidelines and criteria for development.

Table 14.04.040

	DR	MR5	MR3	MR2.5	MR2	HR1.8	HR1.5	HR1	Additional Standards
Minimum lot area (sq. ft.)	5,000/6,000 (corner)	6,000	6,000	6,000	6,000	6,000	6,000	6,000	
Minimum lot area/dwelling unit (sq. ft.) (Max. residential intensity)	2,500	5,000	3,000	2,500	2,000	1,800	1,500	1,000	(B), (C)
Minimum lot width (ft.)	50/60 (corner lot)	60	60	60	60	60	60	60	
Minimum yards									

ATTACHMENT 3

Front (ft.)	15	15	15	15	15	15	15	15	(D), (E)
Side (ft.)	10% of lot width, min. 3', max. 5'	10	10	10	10	10% of lot width, min. 3', max. 5'	10% of lot width, min. 3', max. 5'	10% of lot width, min. 3', max. 5'	
Street side (ft.)	10	10	10	10	10	10	10	10	(E), (F), (G)
Side providing pedestrian access (ft.)	NA	15	15	15	15	12	12	12	(F), (N)
Rear (ft.)	10	5	5	5	5	5	5	5	(F), (H), (I)
Distance between res. structures									
No primary pedestrian access to structures (ft.)	NA	15	15	15	15	8	8	8	(N)
Primary pedestrian access to structures (ft.)	NA	20	20	20	20	20	20	20	
Maximum height of structure (ft.)	30	36	36	36	36	36	36	36	(J), (K)
Maximum lot coverage	40%	40%	50%	50%	50%	60%	60%	60%	
Minimum usable outdoor area (common and/or private)/ Dwelling unit (sq. ft.)	200	200	200	200	200	150	150	100	(L)
Landscaping	50% front and street side yards	50% front and street	50% front and street	50% front and street	50% front and street	50% front and street	50% front and street	50% front and street	(M)

ATTACHMENT 3

		side yards	side yards	side yards	side yards	side yards	side yards	side yards	
Parking	*	*	*	*	*	*	*	*	* Based on use. See Section 14.18.040.

- (A) *Intentionally not used.*
 - (B) The minimum lot area for a boarding house is five hundred (500) square feet per guest room.
 - (C) A density bonus may be granted, as provided for in Section 14.16.030 (Density bonus).
 - (D) Where two (2) or more lots in a block have been improved with buildings, the minimum required shall be standard, or the average of improved lots on both sides of the street for the length of the block, whichever is less.
 - (E) Where there is a driveway perpendicular to the street, any garage built after January 1, 1991, shall be set back twenty feet (20').
 - (F) Parking and maneuvering areas, excluding access driveways, shall be prohibited in all required yards, per Section 14.18.200 (Location of parking and maneuvering areas) of this title.
 - (G) In the DR and MR district, on a reverse corner lot, the rear twenty feet (20') of the street side shall have a fifteen-foot setback.
 - (H) In the MR or HR districts, where development is adjacent to a single-family district, the rear yard setback shall be ten feet (10').
 - (I) In order to provide adequate privacy and sunlight, additional separation may be required through design review.
 - (J) The height limit in the Latham Street neighborhood ranges from thirty feet (30') to thirty-six feet (36'). See the downtown height map for lot-specific information.
 - (K) A height bonus may be granted, as provided for in Section 14.16.190 (Height bonus).
 - (L) Private yard areas shall have a minimum dimension of six feet (6'). In the HR districts, common indoor area suitable for recreational uses may be counted toward the usable outdoor area requirement.
 - (M) Where a driveway is located in a side yard, a minimum of three feet (3') of buffer landscaping shall be provided between the driveway and side property line. The required rear yard shall be landscaped to provide a buffer.
 - (N) Setback distances apply to areas that provide a primary pedestrian access only.
- 2) Section 14.05.030 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

ATTACHMENT 3

14.05.030 - Property development standards (GC, NC, O, C/O, R/O, FBWC).

NR: Not required unless otherwise noted in Additional Standards. NA: Not applicable.

Note: See Chapter 14.16, Site and Use Regulations, for additional regulations pertaining to floor area ratio, and site development standards. See Chapter 14.23, Variances, and Chapter 14.24, Exceptions, for allowable adjustments to these standards, and Chapter 14.25, Environmental and Design Review Permits, for a listing of improvements subject to review and design guidelines and criteria for development.

Table 14.05.030

	GC	NC	O	C/O	R/O	FBWC	Additional Standards
Minimum lot area (sq. ft.)	6,000	6,000	7,500	2,000/ building	6,000	6,000	
Minimum lot area/dwelling unit (sf) (Max. residential intensity)	1,000	1,800	1,000	1,000	1,000	1,000	(A), (O)
Floor area ratio (Max. nonresidential intensity)	*	*	*	*	*	*	* See Section 14.16.150
Minimum lot width (ft.)	60	60	60	NR	60	60	
Minimum yards:							
Front (ft.)	NR	NR	20	NR	NR	NR	(B)
Side (ft.)	NR	NR	6	NR	NR	NR	(B)
Street side (ft.)	NR	NR	10	NR	NR	NR	(B)
Rear (ft.)	NR	NR	20	NR	NR	NR	(B)
Maximum height of structure (ft.)	36	36 feet; 30 feet for a residential-only building	36	36	36	36	(C), (D), (E), (F), (G), (H)
Maximum lot coverage	NR	NR	40%	NR	NR	NR	(P)
Minimum landscaping	15%	10%	25%	NR	10%	15%	(I), (J), (K), (L)
Usable outdoor area	NR	NR	NR	NR	NR	NR	(M)

ATTACHMENT 3

Parking	*	*	*	*	*	*	* Based on use. See Section 14.18.040
---------	---	---	---	---	---	---	---------------------------------------

- (A) There is no minimum lot area requirement for a boarding house.
- (B) Where the frontage of a block is partially in an R district, the front yard shall be the same as required for that R district, and when the side and/or rear of the lot(s) abuts an R district, the respective side and/or rear yard shall be ten feet (10'). Parking or maneuvering shall be permitted within the required side and rear yards provided that a minimum six-foot (6') wide landscape buffer area, excluding curbs, is provided adjacent to the side and rear property lines.
- (C) Exceptions may be granted for a height above thirty-six feet (36'), subject to the provisions of Chapter 14.24, Exceptions.
- (D) Hotels have a four (4) story fifty-four-foot (54') height limit. A one-story twelve-foot (12') height bonus may be approved as part of a design review permit by the planning commission if it finds that the hotel will provide a significant community benefit, and the design is consistent with this title.
- (E) Repealed 3/18/96.
- (F) Buildings existing or approved as of January 1, 1987 which are more than three (3) stories in height shall not be considered nonconforming, and are listed in Section 14.16.040, Buildings over three (3) stories.
- (G) See general plan downtown height map for lot-specific height limits.
- (H) A height bonus may be permitted in residential development as provided for in Section 14.16.190, Height bonus.
- (I) Where the frontage of the lot(s) is adjacent to or across from an R district, fifty percent (50%) of the front yard shall be landscaped. Where the side yard abuts an R district, a minimum three feet (3') of buffer landscaping must be provided. Where the rear of the lot abuts an R district, ten feet (10') of buffer landscaping must be provided.
- (J) In the GC district, a minimum fifteen feet (15') of the front setback must be landscaped. Landscaped portions of the public right-of-way may be included, subject to approval by the hearing body.
- (K) For parking lot landscaping, see Section 14.18.160, Parking lot screening and landscaping.
- (L) A landscaped amenity area for employees and the public is encouraged in office and commercial projects.
- (M) Provision of usable outdoor area is encouraged in residential development as part of a mixed-use project.
- (N) *Intentionally not used.*
- (O) A density bonus may be granted, as provided for in Section 14.16.030.

ATTACHMENT 3

(P) The maximum lot coverage restriction established for the office (O) district shall not apply to solar panels installed over existing paved parking spaces; consistent with Section 14.16.307.

3) Section 14.12.040 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

14.12.040 - Exceptions to property development standards.

Exceptions to the property development standards of this chapter may be approved by the planning commission, upon the recommendation of the design review board, when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan based on the following criteria:

- A. The project design alternative meets the stated objectives of the hillside design guidelines to preserve the inherent characteristics of hillside sites, display sensitivity to the natural hillside setting and compatibility with nearby hillside neighborhoods, and maintain a strong relationship to the natural setting; and
- B. Alternative design solutions which minimize grading, retain more of the project site in its natural state, minimize visual impacts, protect significant trees, or protect natural resources result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures.

4) Section 14.16.030 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

14.16.030 - Affordable housing requirement.

- A. Purpose & Intent. The purpose of this section is to enhance the public welfare and ensure that further residential and nonresidential development projects within the city contribute to the attainment of affordable housing goals and requirements by promoting and increasing, through actual construction and/or alternative equivalent actions as provided for in this section, the development of rental and ownership housing units for very low, low and moderate income households.
- B. General Requirements—Residential Development Projects. Any new residential development project with dwelling units intended or designed for permanent occupancy shall be developed to provide affordable housing units to very low, low and moderate income households in perpetuity unless, in its sole discretion and upon a finding of need pursuant to the Guidelines for the Administration of the Affordable Housing Trust Fund, as adopted and amended from time to time by the City Council, the City Council reduces the time frame to not less than forty (40) years.
 - 1. Exemptions. This provision shall be imposed on all residential development projects except that the following shall be exempt from the provisions of this section:
 - a. Projects that are the subject of development agreements in effect with the city and approved prior to the effective date of the city council ordinance;

ATTACHMENT 3

- b. Projects where a building permit application has been accepted as complete by the city prior to the effective date of this Ordinance; however, any extension or modification of such approval or permit after such date shall not be exempt;
 - c. Any building that is damaged or destroyed by fire or other natural catastrophe if the rebuilt square footage of the residential portion of the building does not increase upon reconstruction;
 - d. Any residential development project of one (1) single family structure; and
 - e. Second units approved by the city of San Rafael pursuant to Section 14.16.285 of the San Rafael Municipal Code.
 2. Modification of Certain Approved Projects—Notwithstanding anything to the contrary in this Ordinance, for any project that, as of the effective date of this Ordinance, has received final City approval but has not yet commenced construction, the project applicant may apply to the City for a modification of the affordable housing requirements of the approved project where the modified affordable housing components of the project would be consistent with the requirements of this Ordinance and with the Guidelines for the Administration of the Affordable Housing Trust Fund, as adopted and amended from time to time by City Council resolution. The request for modification shall be approved the decision-making body that approved the project.
 3. Affordable Housing Units—Percentage Required. Residential development projects shall provide affordable housing units as described in the policies and procedures specified in the San Rafael City Council's Guidelines for the Administration of the Affordable Housing Trust Fund, as adopted, and amended from time to time by City Council resolution, and any new residential development project shall comply with such policy.
- C. Density Bonus and Incentives. Upon a separate application by an applicant for a residential development project of five (5) or more units that includes an eligible affordable housing project, including such residential development projects that include housing for transitional foster youth, qualified student housing, land donation, construction of a child care facility, or a qualified senior citizen housing development, shall be eligible for a density bonus, as well as an additional concession or incentive or waiver/reductions of development standards, consistent with the requirements of California Government Code Section 65915 and as set forth by resolution adopted by the City Council from time to time.
- D. General Requirements—Nonresidential Development Projects.
 1. Application. An affordable housing requirement is hereby imposed on all developers of nonresidential development projects, including all construction of additional square footage to existing nonresidential developments and conversion of residential square footage to nonresidential use, subject to the following exceptions:
 - a. Any project involving new construction under five thousand (5,000) square feet;

ATTACHMENT 3

- b. Residential components of a mixed-use project, which shall be subject to the requirements of subsection B of this section;
 - c. A mixed-use project where the number of affordable units equals or exceeds the housing required by subsection (1)(2) of this section for the gross square footage of nonresidential uses;
 - d. Projects where a building permit application has been accepted as complete by the city prior to January 5, 2005; however, any extension or modification of such approval or permit after such date shall not be exempt;
 - e. Projects that are the subject of development agreements in effect prior to January 5, 2005 where such agreements specifically preclude the city from requiring compliance with this type of affordable housing program;
 - f. Any nonresidential building that is damaged or destroyed by fire or other natural catastrophe if the rebuilt square footage of the nonresidential portion of the building does not increase upon reconstruction;
 - g. Project for which no nexus can be established between the proposed nonresidential development and an increase in the demand for affordable housing.
2. Number of Affordable Units Required. Proposed nonresidential development projects shall provide twenty percent (20%) of the total number of residential units needed to provide housing for project employees in very low-, low- and moderate-income households, as set forth in Table 14.16.030-3 of this section. Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit. For uses not listed in Table 14.16.030-3 of this section, the community development director shall determine the number of affordable units required based on comparable employment densities to uses listed. In making such a determination, the decision of the community development director shall be based on data concerning anticipated employee density for the proposed project submitted by the applicant, employment surveys or other research on similar uses submitted by the applicant or independent research, and/or such other data the director determines relevant.

Table 14.16.030-3
 Number of New Very low, Low and Moderate
 Income Units Required for New
Nonresidential Development

Development Type	Number of New Very low-, Low- and Moderate-Income Units (per 1,000 square feet of gross floor area ¹)
Office ² or Research and Development uses	0.03

ATTACHMENT 3

Development Type	Number of New Very low-, Low- and Moderate-Income Units (per 1,000 square feet of gross floor area ¹⁾
Retail, Restaurant or Personal Service uses	0.0225
Manufacturing or Light Industrial uses	0.01625
Warehouse uses	0.00875
Hotel or motel uses ³	0.0075

1 Floor area excludes all areas permanently used for vehicle parking.

2 Includes professional, business and medical offices.

3 Accessory uses to a hotel or motel, such as restaurant, retail and meeting facilities shall be subject to requirements for a retail use.

3. Provision of Units or In-lieu Fee. Required affordable housing units shall be provided on the same site as the proposed nonresidential development, at an off-site location within the city, through dedication of suitable real property for the required housing to the city, or through payment of an in-lieu fee, at the discretion of the planning commission or the city council. The planning commission or city council may accept off-site units or an in-lieu fee if it is determined that inclusion of the required housing units within the proposed nonresidential development is not reasonable or appropriate, taking into consideration factors including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments; or where the nature of the surrounding land uses is incompatible with residential uses in terms of noise or other nuisances, health or safety hazards or concerns. Where the application of the affordable housing requirement in Section 14.16.030.B results in less than one (1) unit or one (1) or more affordable housing unit and a fractional unit, the applicant may choose to pay an in-lieu fee for the fractional unit without the required findings noted above. Affordable housing units provided as part of the proposed nonresidential development or at an off-site location shall meet the requirements of Section 14.16.030.B and I and shall be completed prior to or concurrent with the completion of construction of the proposed nonresidential development, as the conditions of project approval shall specify.
4. Calculation and Payment of In-lieu Fee. The amounts and calculation of the housing in-lieu fee shall be based on the following:

ATTACHMENT 3

In-lieu fees shall be calculated as a percentage of the projected construction costs of the units. Construction costs of the units shall mean the estimated cost per square foot of construction, site development and land costs and permits and fees, as established by standard construction cost indices and/or surveys of local development projects such fees shall be established by resolution of the city council, as amended from time to time. Unless otherwise preempted by law, or otherwise approved by the planning commission or city council, the in-lieu fee shall be paid prior to the issuance of a building permit for the proposed project.

- E. Housing In-Lieu Fee Fund. The housing in-lieu fees shall be placed in a segregated citywide housing in-lieu fee account. The funds in the housing in-lieu fee account, along with any interest earnings accumulated thereon, shall be used solely to increase and expand the supply of housing affordable to very low-, low- and moderate-income households, including, but not limited to, the following:
1. Design and construction of housing affordable to households of very low, low- and moderate-income households, including costs associated with planning, administration and design;
 2. Acquisition of property and property rights, including acquisition of existing housing units and the provision of long-term affordability covenants on those units;
 3. Other actions that would increase the supply of housing affordable to very low, low- and moderate-income households;
 4. Costs of program development and ongoing administration of the housing fund program;
 5. Expenditures from the housing in-lieu fee fund shall be authorized solely by the city council and controlled and paid in accordance with general city budgetary policies.
- F. Enforcement. The city attorney is authorized to abate violations and to enforce the provisions of this section and all implementing regulatory agreements and resale controls placed on affordable housing units, by civil action, injunctive relief, and/or other proceeding or method permitted by law. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from other remedy or relief to which it otherwise would be entitled under law or equity.

5) Section 14.16.190 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

14.16.190 - Height bonus.

- A. Downtown Height Bonuses. A height bonus may be granted by a use permit approved by the planning commission in the following downtown zoning districts. No more than one height bonus may be granted for a project.

ATTACHMENT 3

1. In the Fourth Street retail core, a twelve-foot (12') height bonus for any of the following:
 - a. Affordable housing, consistent with Section 14.16.030 (Affordable housing).;
 - b. Public courtyards, plazas and/or passageways, with the recommendation of the design review board that the public improvements are consistent with downtown design guidelines;
 - c. Public parking, providing it is not facing Fourth Street and it is consistent with the downtown design guidelines.
 2. In the Lindaro district, on lots south of Second Street and fronting Lindaro Street, a twenty-four-foot (24') height bonus for any of the following:
 - a. Park area adjacent to Mahon Creek, accessible to the public and maintained by the property owner;
 - b. Community facility, ten thousand (10,000) square feet or more in size. The facility must be available to the public for cultural and community events and maintained and operated by the property owner.
 3. In the Second/Third mixed use east district, a twelve-foot (12') height bonus for any of the following:
 - a. Affordable housing, consistent with Section 14.16.030 (Affordable housing).;
 - b. Public parking, providing it is consistent with the downtown design guidelines;
 - c. Skywalks over Second or Third Streets, with the approval of the traffic engineer, and the recommendation of the design review board;
 - d. Mid-block passageways between Fourth Street and parking lots on Third Street, with the recommendation of the design review board that the design is attractive and safe.
 4. In the West End Village, a six-foot (6') height bonus for any of the following:
 - a. Affordable housing, consistent with Section 14.16.030 (Affordable housing);
 - b. Public parking, providing it is consistent with the downtown design guidelines;
 - c. Public passageways, with the recommendation of the design review board that the public passageway serves an important public purpose and is attractive and safe.
 5. In the Second/Third mixed use west district, on lots located on the north side of Third Street and east of C Street, an eighteen-foot (18') height bonus for the following:
 - a. Public parking, providing it is consistent with the downtown design guidelines.
- B. Lincoln Avenue Height Bonus. A twelve-foot (12') height bonus may be granted for affordable housing on Lincoln Avenue between Mission Avenue and Hammondale Ct., on lots greater than one hundred fifty (150') in width and twenty thousand (20,000) square feet in size, consistent with Section 14.16.030 (Affordable housing).

ATTACHMENT 3

- C. Marin Square Height Bonus. A twenty-four-foot (24') height bonus may be granted for affordable housing at the Marin Square and Gary Place properties, consistent with Section 14.16.030 (Affordable housing).
- D. North San Rafael Town Center Height Bonus. A twenty-four-foot (24') height bonus may be granted for affordable housing in the North San Rafael Town Center, consistent with Section.
- E. Hotel Height Bonus. A height bonus of twelve feet (12') may be granted for a hotel provided the planning commission finds that the hotel will be a significant community benefit and the design is consistent with design review board recommendations.
- F. Residential Development Height Bonus. A residential development project with 100% of the total units available to lower income households, and located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, shall be eligible for a height increase of up to 33 feet. This bonus shall not be combined with any other height bonus listed above.

6) Section 14.16.300 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

14.16.300 - Small lots.

Development of small lots shall be permitted in accordance with all the requirements of the district. Such development shall be considered conforming with the following additional limits in residential districts:

- A. No small lot shall be further reduced in area or width, except as required for public improvements.
- B. Small lots which are contiguously owned are subject to the merger provisions of the State Subdivision Map Act.
- C. This section does not apply to the PD district.

7) Section 14.28.040 of the San Rafael Municipal Code is hereby amended to read in its entirety as follows:

14.28.040 - Scheduling and notice for public hearing.

- A. Public Hearing Required. The planning commission or city council, as the case may be, shall hold a public hearing on an appeal. At the public hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant and any other interested party.
- B. Public hearing scheduled. Following the timely filing of an appeal, the appeal shall be scheduled for the next available planning commission or city council meeting, as the case may be, and allowing sufficient time for giving notice pursuant to subsection (C) of this section and State law.

ATTACHMENT 3

- C. Public hearing notice. Notice of public hearings shall be given in the manner required for the decision being appealed as set forth in Section 14.29.020 of this Code.

DIVISION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance or its implementation would have a significant effect on the environment (14 Cal. Code Regs. Section 15061(b)(3)).

DIVISION 3. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 4. PUBLICATION; EFFECTIVE DATE.

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

KATE COLIN, Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of San Rafael on Tuesday the 16th day of February 2021, and was ordered passed to print by the following vote, to wit:

ATTACHMENT 3

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a regular meeting of the City Council to be held on the _____ day of _____, 2021.

LINDSAY LARA, City Clerk

ATTACHMENT 4

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING “GUIDELINES FOR THE ADMINISTRATION OF THE AFFORDABLE HOUSING REQUIREMENT PROGRAM”

WHEREAS, Section 14.16.030 of the San Rafael Municipal Code (SRMC) requires residential development projects to enhance the public welfare and ensure that further residential development projects within the city contribute to the attainment of affordable housing goals and requirements by promoting and increasing, through actual construction and/or alternative equivalent actions; and

WHEREAS, on August 20, 2018, the City Council held a duly noticed public meeting and was presented a comprehensive information report on housing topics and issues, accepting all public testimony and the written report of the Community Development Department; and

WHEREAS, on September 3, 2019, the City Council held a duly noticed public meeting and was presented a comprehensive information report challenges to housing development, accepting all public testimony and the written report of the Community Development Department. Staff was directed to conduct public housing workshops on proposed policies to address challenges to approving and developing housing to gain a better understanding of the public’s view on the housing crisis, as well as to get feedback on the prioritization of the proposed policy actions; and

WHEREAS, on January 21, 2020, the City Council held a duly noticed public meeting and was presented a comprehensive information report outlining the findings of the public housing workshops and recommendations for prioritization, timing, and future City Council actions on proposed policy actions to address challenges to approving and developing housing, accepting all public testimony and the written report of the Community Development Department. Staff was directed to return with an updated informational report on potential amendments to the SRMC aimed at encouraging housing development and streamlining approvals; and

WHEREAS, on August 11, 2020, the Planning Commission held a duly noticed public meeting and was presented a comprehensive information report analyzing potential amendments to the SRMC resulting from the January 21, 2020 City Council direction, accepting all public testimony and the written report of the Community Development Department and providing feedback for City Council consideration of potential amendments to the SRMC aimed at encouraging housing development and streamlining approvals; and

WHEREAS, on September 8, 2020 and September 21, 2020, the City Council held duly noticed public hearings on the proposed amendments to the SRMC Title 14 (“Zoning”), accepting all public testimony and the written report of the Community Development Department, and directing staff to prepare amendments to SRMC Title 14 for the Planning Commission to provide a recommendation; and

WHEREAS, on November 17, 2020, the Planning Commission, reviewed and recommended for adoption the proposed amendments to SRMC Title 14, including revisions to the affordable housing requirement, density bonus and height bonus provisions, limitations for residential development of small lots, appeal scheduling process, and review requirements for hillside development exceptions; and

ATTACHMENT 4

WHEREAS, the amendments to the San Rafael Municipal Code Title 14 do not propose any changes to City policies or regulations that would result in a direct or indirect physical, environmental impact; therefore it has been determined that this ordinance amendment qualifies for exemption pursuant to Sections 15183(a) because it entails a project that can be found consistent with the General Plan policies and pursuant to 15061(b)(3), which states that as a 'general rule' the California Environmental Quality Act (CEQA) applies only to projects which have the potential to cause a significant, physical environmental; and

WHEREAS, on February 16, 2021, the City Council held a public hearing to consider an ordinance making the proposed amendments to SRMC Title 14 and voted to introduce the ordinance and pass it to print and that ordinance will come up for adoption at the City Council meeting of March 1, 2021; and

WHEREAS, in connection with the amendment to SRMC Title 14, the San Rafael City Council finds it necessary to establish guidelines which establish priorities, criteria, and administrative processes for administration of the Affordable Housing Requirement program;

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of San Rafael hereby adopts the following "Guidelines for the Administration of the Affordable Housing Trust Fund":

The purpose of these Guidelines is to enhance the public welfare and ensure that further residential development projects within the city contribute to the attainment of affordable housing goals and requirements by promoting and increasing, through actual construction and/or alternative equivalent actions as provided for in this section, the development of rental and ownership housing units for very low, low and moderate income households.

- A. Definitions. Please refer to SRMC Section 14.03.030.
- B. Affordable Housing Requirements. Residential development projects between two (2) and fifteen (15) units shall meet only the Primary Requirement as set forth in this section. Residential development project greater than fifteen (15) units shall meet both the Primary Requirement and Secondary Requirement as set forth in this section. Primary and Secondary Requirements are described below:

- 1. Primary Requirement. All Residential development projects shall provide affordable housing units as follows:

Project Size	Percentage of Affordable Housing Units
2—15 Housing Units*	10% of the proposed units (excluding density bonus units) must be affordable to and occupied by a low-income household

ATTACHMENT 4

Project Size	Percentage of Affordable Housing Units
15 or more Housing Units*	5% of the proposed unit (excluding density bonus units) s must be affordable to and occupied by a low-income household

* See exemptions listed in SRMC 14.16.030 subsection (B)(1).

2. Secondary Requirement. Residential development projects greater than fifteen (15) units shall satisfy the Secondary Requirement through any of the following alternate means:
 - a. Additional On-Site Affordable Units. A developer may comply with this section through one of the follow alternate means:
 - i. 5% of the proposed units (not including density bonus units), in addition to units provided through Section B.1 of this document, must be affordable to and occupied by a low-income household;
 - ii. 10% of the proposed units (not including density bonus units), in addition to units provided through Section B.1 of this document, must be affordable to and occupied by a moderate-income household.
 - b. In-Lieu Fees for Residential Development. A developer may comply with this section by paying an in-lieu fee equivalent to five percent (5%) of the total proposed units (not including density bonus units).

The amounts and calculation of the housing in-lieu fee shall be established by resolution of the city council as amended from time to time. Unless otherwise preempted by law or as otherwise approved by the planning commission or city council, the in-lieu fee shall be paid prior to the issuance of a building permit for the proposed project.

- c. Off-Site Affordable Units. Provision of affordable units off-site must be approved by the decision-making body reviewing and taking action on the project, and shall meet all of the following criteria:
 - i. Off-site affordable units must be provided within ½ mile of the market-rate project.
 - ii. Partnership with an experienced affordable housing developer.
 - iii. The off-site affordable units must provide at least the level of public benefit (number of affordable units (rounded up to the next whole unit); comparable or larger unit bedroom sizes; income levels served; term of affordability) as would have been provided through on-site compliance described in Section B.2.a of this document;
 - iv. The developer must make a meaningful contribution to the offsite affordable units.
 - v. The developer provides the City with a cash deposit or equivalent guarantee of the amount the project would be required to contribute through a cash in-

ATTACHMENT 4

lieu fees contribution as described in Section B.2.b of this document until there is a construction financing closing on the off-site units.

- d. Donation of Land to the City. The City may choose to accept the donation of land to the City as a means of alternative compliance with this policy if, after appropriate due diligence, the City determines that the land is desirable for the production of affordable housing and all of the following criteria as determined by the Community Development Director are met:
 - i. The land is appraised by the City at a value equal to or greater than the in-lieu fee parameters in effect at the date of land use application. If the appraised value is less than the in-lieu fee, developers may contribute the remaining requirement in a cash fee.
 - ii. The land is located in an area where there is high need for sites for affordable housing. (i.e., areas where the City does not control sufficient development sites)
 - iii. The land is reasonably developable for affordable housing (including zoned for residential development).
3. Fractional Units. Where the required percentage of affordable housing units results in a fractional unit, or a combination of affordable housing units and fractional units, the developer shall provide the following:
 - a. Pay an in-lieu fee for the fractional unit below 0.5 unit;
 - b. Construct the next higher whole number of affordable housing units for a fractional unit 0.5 and above;
- C. Location and Type of Affordable Housing Units. Affordable housing units shall be dispersed throughout the residential development project. Units may be clustered within the residential project when the city determines that such clustering furthers affordable housing opportunities. The affordable housing units shall be of a similar mix and type to that of the residential development project as a whole, including, but not limited to:
 1. The same or substantially similar mix of unit size (e.g., number of bedrooms, square footage);
 2. Compatibility with the design, materials, amenities, and appearance of the other developed units.
- D. Timing of Construction. All affordable housing units shall be constructed prior to or concurrent with the construction of market rate housing units unless the city council, in its sole discretion, determines an alternative construction schedule will further the goal of affordable housing in the city.
- E. Initial Occupancy, Control of Resale and Continued Affordability of Affordable Housing Units in Residential Development Projects. Prior to the issuance of certificates of occupancy or the final inspection for any units in a qualifying project, all regulatory agreements and, if the affordable housing units are owner-occupied, resale restrictions, deeds of trust, and/or other documents as may be required and approved by the city council, shall be recorded by the city, or its agent, against all parcels having such affordable housing units and shall be effective in

ATTACHMENT 4

perpetuity; except that, in its sole discretion and upon a finding of financial need or infeasibility, the city council may reduce the affordability time frame to not less than forty (40) years.

1. Ownership Units. Notwithstanding any other provision of this section, the following conditions and/or restrictions shall apply to housing units developed for ownership:
 - a. The maximum sales price permitted for resale of an affordable housing unit intended for owner-occupancy shall be limited to the amount provided in the resale restrictions and option to purchase agreement between the owner of the affordable unit and the city or its designee, entered into prior to issuance of any building permits for the project.
 - b. The city shall have first right to purchase, or assign its right to purchase, such affordable unit(s) at the maximum price that could be charged to an eligible household, as set forth in the resale restrictions and option to purchase agreement between the owner and the city or its designee.

No purchase and/or sale transaction(s) for owner occupied affordable housing units shall be permitted without express approval by the city or its designee of the purchasing household's eligibility. Nothing in this section shall prohibit the sale and/or purchase of an owner-occupied affordable housing unit if the city fails to make a determination of household eligibility within the time or other limits provided by the regulatory agreements or resale restrictions.

2. Rental Units. The owner of a property developed for rental occupancy under the provisions of this section ("the property owner"), or the property owner's designee, shall be responsible for selecting qualified tenants pursuant to the regulatory agreement entered into by and between the property owner and the city. The property owner or the designee shall provide annual reports to the city or its designee containing information on the rent charged for the affordable unit and the tenant eligibility as set forth in the regulatory agreement.

F. Administration.

1. Annual Reporting. The Community Development Department shall make available to the City Council an annual report on the Affordable Housing Requirements which measures the effectiveness of the program. These effectiveness metrics may include, but are not limited to:
 - a. Units in the housing developing pipeline and project status;
 - b. Number of units built for low-income and moderate-income households;
 - c. In-lieu fees revenues collected into housing trust fund;
 - d. Units funded through housing trust fund.
2. Program Review: The Director will provide the City Council with a comprehensive review of the Affordable Housing Requirements and whether any changes should be considered within 18 months of its effective date and every 3-5 years thereafter.

BE IT FURTHER RESOLVED that any and all amendments to this the Guidelines herein as deemed necessary from time-to-time shall be adopted by resolution of the City Council.

ATTACHMENT 4

I, **LINDSAY LARA**, Clerk of the City of San Rafael, California, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of the City of San Rafael held on the 16th day of February 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

ATTACHMENT 5

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL ADOPTING DENSITY BONUS AND INCENTIVES REGULATIONS APPLICABLE TO HOUSING DEVELOPMENT PROJECTS THAT QUALIFY FOR A DENSITY BONUS AS SET FORTH IN SAN RAFAEL MUNICIPAL CODE SECTION 14.16.030

WHEREAS, the City's Density Bonus regulations, set forth in San Rafael Municipal Code ("SRMC") Section 14.16.030(D) ("Affordable housing") establish eligibility criteria, review procedures and allowable density bonuses, concessions/incentives, and waivers/reductions of development standards; and

WHEREAS, San Rafael Municipal Code Section 14.16.030(D) was last amended in 2010; and

WHEREAS, over the past 10 years there have been a number of changes set forth in Government Code Section 65915, commonly referred to as the State Density Bonus Law, that are meant to encourage development of affordable housing and/or remove barriers to housing in general; and

WHEREAS, some of the provisions outlined in SRMC section 14.16.030(D) no longer align with Government Code Section 65915 in that the allowed percentage of density bonus and number of concessions and incentives have been modified by the State; and

WHEREAS, the City Council has adopted amendments to SRMC Section 14.16.030 setting forth the City's intent to comply with State Density Bonus Law and providing in new subsection 14.16.030(C) for the City's Density Bonus regulations to be established by City Council resolution; and

WHEREAS, the City desires to provide clarity in the applicability of State Density Bonus Law and flexibility in amending the density bonus regulations as may be required from time to time due to changes by the State Legislature; and

WHEREAS, the State Density Bonus Law applies citywide, including Downtown San Rafael. The City recently completed and released the Downtown San Rafael Precise Plan (DTPP), which proposes affording building height bonuses for projects providing affordable housing. The draft DTPP provisions for a building height bonus are currently being reviewed and assessed in tandem with the State Density Bonus Law. The outcome of this review may result in changes to the recommended bonus provisions for Downtown San Rafael, which are unknown at this time. When the DTPP provisions are finalized and adopted, it is anticipated that this policy resolution will be amended to incorporate the final DTPP bonus provisions;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby adopts the following Density Bonus and Incentives Regulations to implement the provisions of SRMC Section 14.16.030(C):

- A. **Purpose:** In accordance with, Government Code Section 65915 and to avoid any undue economic burden or cost to the applicant providing affordable units required by the city, residential development projects of five (5) or more units are eligible for a state density bonus

ATTACHMENT 5

and other applicable concessions, incentives and/or waivers and reductions of development standards, as set forth in this resolution.

- B. Density Bonus.** A density bonus means a density increase over the otherwise maximum allowable gross residential density as of the date of application. A density bonus may also be a lesser percentage of density increase, including, but not limited to, no increase in density. When calculating a density bonus any calculation resulting in a fractional unit shall be rounded to the next larger whole number. This rounding shall apply to the base density, required affordable unit, and any density bonus unit. Eligible projects defined in Section C below shall be allowed a Density Bonus equal to the allowable percentages set forth in Table 3 of this Resolution.
- C. Eligible Projects** – unless a project is otherwise ineligible for a density bonus as specified in Section D below, the following projects are eligible for a density bonus:
- a. Projects that provide at affordable housing units at the minimum levels of affordability as listed in Government Code Section 65915 and as set forth in Table 3 of this Resolution. The amount of density bonus shall be as specified in that table.
 - i. An applicant shall agree to continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for at least 55 years.
 - b. One hundred percent (100%) affordable housing projects that meet the criteria listed under Government Code Section 65915(b)(1)(G) and as described below shall be eligible for a density bonus listed under 2. below:
 - i. All units must be for lower income households except:
 1. Does not apply to managers unit
 2. Up to 20 percent may be for moderate-income households,
 - ii. An applicant shall agree to continued affordability for at least 55 years
 - iii. If the 100% affordable housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall choose one of the following density bonuses:
 1. Waivers or Concessions as specified in Table 4 of this Resolution;
OR
 2. No maximum controls on density.
 - c. Projects that provide housing for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in California Government Code Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The amount of Density bonus shall be as specified in Table 3 of this Resolution and shall apply to projects that also meet the following criteria:
 - i. shall be subject to a recorded affordability restriction of 55 years
 - ii. shall be provided at the same affordability level as very low income units.
 - d. Qualified Student Housing. A qualified student housing development shall be one that meets all of the following criteria
 - i. At least 20% units are for lower income students as follows:

ATTACHMENT 5

1. The rent available to lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.
 - ii. The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. Verification of such shall be made by a local homeless service provider, or institution of higher education that has knowledge of a person's homeless status.
 - iii. All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges.
 - iv. Units shall be subject to a recorded affordability restriction of 55 years.
 - v. Prior to certificate of occupancy, the applicant/project proponent shall provide evidence that the applicant/project proponent has entered into an operating agreement or master lease with one or more qualifying institution to occupy all units of the student housing development with students from that institution(s).
 - vi. For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities.
- e. Senior Housing. A qualified senior housing development shall be a senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
- f. Child Care Facilities. for projects that include a childcare facility, an applicant shall be eligible for density bonus if an applicant proposes to construct a childcare facility meeting the criteria in section (i) below.
- i. An eligible childcare facility shall meet all of the following requirements:
 1. It will be located on the premises of, as part of, or adjacent to a proposed housing development.
 2. The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.
 3. Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income.
 4. "Childcare facility" as used in this section, means a child daycare facility (other than a family daycare home) including, but not limited to, infant centers, preschools, extended daycare facilities, and school-age childcare centers.
 - ii. Amount of Density Bonus. An allowable density bonus shall be one the following:
 1. An additional density bonus that is in an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

ATTACHMENT 5

2. An additional concession or incentive designated by the City that contributes significantly to the economic feasibility of the construction of the childcare facility.
- g. Land Donations meeting all of the following requirements:
- i. The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
 - ii. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low-income households in an amount not less than 10 percent of the number of residential units of the proposed development.
 - iii. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.
 - iv. The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application.
 - v. The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units for a at least 55 years from the time of development of the transferred property.
 - vi. The land shall be transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.
 - vii. The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.
 - viii. A proposed source of funding for the very low-income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.
- h. Commercial Projects that partner with a qualified affordable housing project. When an applicant for approval of a commercial development has entered into an agreement for partnered housing as described below to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the city, shall grant the commercial developer a development bonus listed as described below. Housing shall be constructed on the site of the commercial development or on a site that meets all of the following criteria:
- i. Eligible site:
 1. Is located within the city limits.
 2. The commercial developer may directly build the units; may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing; or may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.

ATTACHMENT 5

3. At least 30 percent of the affordable housing units shall be for low-income households or at least 15 percent of the total units for very low-income households.
 4. Is located in close proximity to public amenities including schools and employment centers.
 5. Is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.
- ii. Permitted Development Bonus. One or more of the of the following as deemed appropriate by the City:
1. Up to a 20-percent increase in maximum allowable intensity in the General Plan.
 2. Up to a 20-percent increase in maximum allowable floor area ratio.
 3. Up to a 20-percent increase in maximum height requirements.
 4. Up to a 20-percent reduction in minimum parking requirements.
 5. Use of a limited-use/limited-application elevator for upper floor accessibility.
 6. An exception to a zoning ordinance or other land use regulation.
 7. Nothing in this section shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under allowed under Government Code Section 65915.
 8. A development bonus pursuant to this section shall not include a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.

D. Ineligible Projects The following projects shall not be eligible for a Density Bonus:

An applicant shall be ineligible for a density bonus, development bonus, or any other incentives or concessions if the project is proposed on any property that includes a parcel or parcels on which rental dwelling units are, or (if the dwelling units have been vacated or demolished in the five-year period preceding the application) have been, subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

- i. The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at minimum percentages set forth in subdivision C.a.
- ii. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

E. Amount of Density Bonus. The amount of density bonus shall be as specified in Table 3 of this resolution. The applicant may request a lesser density bonus, however, the city shall not be required to similarly reduce the number of units required to be dedicated for affordable housing. In calculating the density bonus for a project, each project shall be entitled to only one density

ATTACHMENT 5

bonus to be selected from the categories in Table 3. Density bonuses from more than one income category may not be combined.

- F. **Concession or Incentives.** Concession or incentive shall mean any reduction in site development standards or any modification of zoning or architectural design requirements necessary pursuant to California Government Code Sections 65915(d)(3) or 65915(e) that would result in identifiable and actual cost reductions, and facilitate the construction of the residential development project at the densities provided for in Section 65915. Eligible projects as defined in subsection C above shall be allowed the number of concessions set forth in Table 4 of this Resolution. The following concessions/incentives are not required to demonstrate identifiable and actual cost reductions:
 - a. Parking concessions shown in Tables 1 and 2.
 - b. Waiver of planning and building fees subject to City Council Resolution No. 11025.
 - c. Height bonuses, as identified and listed in Exhibit 10 of the General Plan 2020 Land Use Element.
 - d. Twenty percent (20%) reduction in the require yard setback, lot coverage, or landscape requirement. Each reduction shall count as one concession.
- G. **Waivers or Reduction of Development Standards.** A housing development is eligible for a waiver or reduction of any development standard that physically precludes the construction of an affordable housing development at the densities or with the concessions or incentives permitted by this section. The applicant shall submit the documents outlined in section J. as well as any additional documents needed to demonstrate how the development standards would impede development of the project. There is no limit to the number of waivers or reductions requested. A waiver or reduction shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled.
- H. **Waiver of planning and building fees.** An applicant for an affordable housing development may request a waiver of planning fees pursuant to City Council Resolution No. 11025.
- I. **Parking Concessions.** The maximum parking standards, inclusive of handicapped and guest parking, shall apply to the entire project as follows:

TABLE 1 MAXIMUM PARKING RATIOS* FOR AFFORDABLE HOUSING PROJECTS	
UNIT TYPE	# OF SPACES PER UNIT**
Studio	1
1 Bedroom	1
2 bedrooms	2
3 + bedrooms	2

*Exception: Residential development projects in the downtown zoning districts which do not qualify for parking ratios in Table 2 below shall comply with the parking requirements set forth in Sections 14.18.040 and 14.04.060 of this title.

** fractional units shall be rounded up.

ATTACHMENT 5

TABLE 2 MAXIMUM PARKING RATIOS FOR SPECIAL PROJECTS NEAR TRANSIT		
WITH PARATRANSIT SERVICE OR ACCESSIBLE BUS ROUTE *	WITHIN 1/2 MILE OF MAJOR TRANSIT STOP**	# OF SPACES REQUIRED
	Rental/for sale projects with at least 11% very low income or 20% lower income units	0.5 spaces per bedroom
Rental senior projects 100% affordable to lower income	Rental projects 100% affordable to lower income	0.5 spaces per unit
Rental senior projects 100% affordable to lower income		0.5 spaces per unit
Rental special needs projects 100% affordable to lower income households	Rental supportive housing developments 100% affordable to lower income households	0 spaces per unit
* Bus routes operating at least 8 routes per day **Major Transit Stop as defined herein		

J. Application for a Density Bonus and/or Concessions or Incentives for Residential Development Projects. Application for a Density Bonus shall be made in the following manner:

- a. Request for a Density Bonus and/or request for concessions or incentives for a residential project shall be made by filing a separate application along with the following information:
 - i. Density Bonus size requested;
 - ii. Density Bonus submittal checklist: This checklist shall include, but not be limited to the following information: Property location; lot size, zoning allowable residential density, and allowable number of base units;
 - iii. Density Bonus eligibility table: This table shall include: the Number of market rate units in the project; the number of affordable housing units proposed & level of affordability for each of the designated affordable units; the number of other eligible units (senior housing, supportive housing, etc); number of density bonus

ATTACHMENT 5

units requested; total allowable density bonus (see Table 3 of this City Council Resolution);

- iv. Project plans showing the total number of units, the number and location of the affordable units and the number and location of the proposed density bonus units;
 - v. Parking Ratios Table: this table shall include the total number of proposed parking and the total number of required parking spaces for affordable housing units or for special projects as shown in Tables 1 and 2 above;
 - vi. List of requested Concessions/Incentives: The application shall include the total number of concessions or incentives being requested; the total number of concessions or incentives for which the project is eligible for by this City Council Resolution Table 4; a list of the requested concessions or Incentives; written financial documentation that demonstrates how the requested concessions/incentives result in identifiable and actual cost reductions. The written statement shall include the actual cost reduction achieved through the concession/incentive and evidence that the concession/incentive allows the applicant to develop affordable housing at the specified affordable rents/sales price; The cost of reviewing any required financial data submitted as part of the application in support of a request for a concession or incentive, including, but not limited to, the cost to the city of hiring a consultant to review said data, shall be borne by the applicant;
 - vii. A list of requested waivers or reduction of development standards. Any request for waivers or reduction of development standards shall be accompanied with evidence that the development standards for which a waiver is requested would have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by Government Code Section 65915;
 - viii. If a density bonus is requested for a qualified land donation, the application shall show the location of the land to be dedicated and provide evidence that the requirements of Subsection C.g. of this Section have been met, thus entitling the project to the requested density bonus;
 - ix. If a density bonus is requested for construction of a child care facility the application shall show the location and square footage of the proposed facility and provide evidence that the requirements of Subsection C.f. above have been met, thus entitling the project to the requested density bonus.
- b. Completeness Review. Within 30 days of submitting a density bonus application, the City shall notify the applicant of their maximum allowable density bonus and the maximum number of concessions/incentives. In addition, the applicant shall be notified of any additional information needed to justify the requested density bonus, concessions/incentives and any requested waiver or reduction of development standards.
 - c. Procedures and timelines for processing. The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.

K. Findings for Denial of Concessions or Incentives. The decision-making body shall not approve a concession or incentive if it makes any of the following findings, in writing and supported by substantial evidence:

ATTACHMENT 5

- a. The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable rents or affordable ownership costs;
- b. The waiver or reduction would have a specific, adverse impact, on upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
- c. Would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- d. The grant of a waiver or reduction would be conflict with state or federal law.

L. Findings for Denial of a Waiver or Reduction of Development Standards. The decision-making body shall not approve a waiver or reduction of development standards if any of the following findings are made:

- a. The development standard for which a waiver is requested would not physically preclude the construction of the housing development with the density bonus and incentives permitted by this Resolution.
- b. The waiver or reduction would have a specific, adverse impact, on upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- c. The waiver or reduction of development standards would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- d. The grant of a waiver or reduction would be conflict with state or federal law.or
- e. The applicant has requested and will receive a waiver from maximum controls on density as provide in Section C.b. above.

M. Definitions

“Condominium Project” means a development consisting of condominiums as defined in California Civil Code Section 1351

“Planned development” shall be as defined in California Civil Code Section 1351, a "planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features: (1) the common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area; (2) a power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Civil Code Sections 1367 or 1367.1.

“Major Transit Stop” means a site containing any of the following:

- (a) An existing rail or bus rapid transit station.
- (b) A ferry terminal served by either a bus or rail transit service.
- (c) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

ATTACHMENT 5

A project shall be considered to be within one-half mile of a major transit stop if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

BE IT FURTHER RESOLVED that any and all amendments to regulations herein as deemed necessary from time-to-time shall be adopted by resolution of the City Council.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, California, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of the City of San Rafael held on the 16th day of February 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

EXHIBITS

1. TABLE 3 -Percent allowable Density Bonus by Type of Project
2. TABLE 4- Allowable Concessions and Waivers

**TABLE 3
PERCENT ALLOWABLE DENSITY BONUS BY TYPE OF PROJECT**

PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS	1. EXTREMELY LOW OR VERY LOW INCOME UNITS	2. LOWER INCOME UNITS	3. MODERATE INCOME² UNITS	4. QUALIFIED LAND DONATION	5. QUALIFIED SUPPORTIVE HOUSING	6. QUALIFIED COLLEGE STUDENT HOUSING	7. DENISTY BONUS FOR ALL SENIOR HOUSING³
0	0	0	0	0	0	0	20%
5%	20%	0	0	0	0	0	20%
6%	22.50%	0	0	0	0	0	20%
7%	25%	0	0	0	0	0	20%
8%	27.50%	0	0	0	0	0	20%
9%	30%	0	0	0	0	0	20%
10%	32.50%	20%	5%	15%	20%	0	20%
11%	35%	21.50%	6%	16%	20%	0	20%
12%	38.75%	23%	7%	17%	20%	0	20%
13%	42.50%	24.50%	8%	18%	20%	0	20%
14%	46.25%	26%	9%	19%	20%	0	20%
15%	50%	27.50%	10%	20%	20%	0	20%

**TABLE 3
PERCENT ALLOWABLE DENSITY BONUS BY TYPE OF PROJECT**

PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS	1. EXTREMELY LOW OR VERY LOW INCOME UNITS	2. LOWER INCOME UNITS	3. MODERATE INCOME² UNITS	4. QUALIFIED LAND DONATION	5. QUALIFIED SUPPORTIVE HOUSING	6. QUALIFIED COLLEGE STUDENT HOUSING	7. DENISTY BONUS FOR ALL SENIOR HOUSING³
16%	50%	29.00%	11%	21%	20%	0	20%
17%	50%	30.50%	12%	22%	20%	0	20%
18%	50%	32%	13%	23%	20%	0	20%
19%	50%	33.50%	14%	24%	20%	0	20%
20%	50%	35%	15%	25%	20%	35%	20%
21%	50%	38%	16%	26%	20%	35%	20%
22%	50%	42%	17%	27%	20%	35%	20%
23%	50%	46%	18%	28%	20%	35%	20%
24%	50%	50%	19%	29%	20%	35%	20%
25%	50%	50%	20%	30%	20%	35%	20%
26%	50%	50%	21%	31%	20%	35%	20%
27%	50%	50%	22%	32%	20%	35%	20%

**TABLE 3
PERCENT ALLOWABLE DENSITY BONUS BY TYPE OF PROJECT**

PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS	1. EXTREMELY LOW OR VERY LOW INCOME UNITS	2. LOWER INCOME UNITS	3. MODERATE INCOME² UNITS	4. QUALIFIED LAND DONATION	5. QUALIFIED SUPPORTIVE HOUSING	6. QUALIFIED COLLEGE STUDENT HOUSING	7. DENISTY BONUS FOR ALL SENIOR HOUSING³
28%	50%	50%	23%	33%	20%	35%	20%
29%	50%	50%	24%	34%	20%	35%	20%
30%	50%	50%	25%	35%	20%	35%	20%
31%	50%	50%	26%	35%	20%	35%	20%
32%	50%	50%	27%	35%	20%	35%	20%
33%	50%	50%	28%	35%	20%	35%	20%
34%	50%	50%	29%	35%	20%	35%	20%
35%	50%	50%	30%	35%	20%	35%	20%
36%	50%	50%	31%	35%	20%	35%	20%
37%	50%	50%	32%	35%	20%	35%	20%
38%	50%	50%	33%	35%	20%	35%	20%
39%	50%	50%	34%	35%	20%	35%	20%

**TABLE 3
PERCENT ALLOWABLE DENSITY BONUS BY TYPE OF PROJECT**

PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS	1. EXTREMELY LOW OR VERY LOW INCOME UNITS	2. LOWER INCOME UNITS	3. MODERATE INCOME² UNITS	4. QUALIFIED LAND DONATION	5. QUALIFIED SUPPORTIVE HOUSING	6. QUALIFIED COLLEGE STUDENT HOUSING	7. DENISTY BONUS FOR ALL SENIOR HOUSING³
40%	50%	50%	35%	35%	20%	35%	20%
41%	50%	50%	38.75%	35%	20%	35%	20%
42%	50%	50%	42.50%	35%	20%	35%	20%
43%	50%	50%	46.25%	35%	20%	35%	20%
44% or greater	50%	50%	50%	35%	20%	35%	20%
100% ¹	80%	80%	80%	35%	20%	35%	20%

1. Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate). Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

2. Moderate income density bonus applies to for sale units, not to rental units.

3. senior housing developments are not obligated to the affordability requirements. Affordable senior units would be offered an additional density bonus in line with this table

An applicant who requests a density bonus shall elect the basis of the bonus based on one of the categories (1-6) in this table.

The Density Bonus for Senior housing (7) may be aggregated with a density bonus for categories 1-6 based on level of affordability

**TABLE 4
ALLOWABLE CONCESSIONS/INCENTIVES
OR WAIVERS/REDUCTIONS IN DEVELOPMENT STANDARDS
BY LEVEL OF AFFORDABILITY**

AFFORDABILITY RATE			NUMBER OF ALLOWABLE INCENTIVES/ CONCESSIONS	ADDITIONAL INCENTIVES IF WITHIN 1/2 MILE OF TRANSIT STOP	ALLOWABLE WAIVERS OR REDUCTIONS IN DEVELOPMENT STANDARDS
Extremely low/Very Low	Lower Income	Moderate Income (if part of a common interest property)		-	NO MAXIMUM
5%	10%	10%	1	-	NO MAXIMUM
10%	20%	20%	2	-	NO MAXIMUM
15%	30%	30%	3	-	NO MAXIMUM
100%	100%	100% **	4*	height bonus of up to 33 feet.	NO MAXIMUM

* only applies to project when no more than the 20% affordable units are at moderate income rates

** includes rental or for sale

Brief Descriptions of Potential In-Lieu Fee Funded Programs

The following is a brief list of proven effective housing programs funded by in-lieu fees through Affordable Housing Trust Funds. In high demand area, which San Rafael and the Bay Area has been for decades, these programs are proven to be more effective at producing affordable housing than onsite affordable requirements. These programs have three main goals:

1. Increase the supply of long-term affordable housing;
2. Preserve the physical and financial viability of the affordable housing;
3. Act quickly on affordable housing opportunities in the pipeline.

An in-depth analysis of these programs can be found here:

- [Inclusionary Housing: Creating and Maintaining Equitable Communities](#)
- [Preservation of Affordable Homeownership: A Continuum of Strategies](#)
- [Ensuring Continued Affordability In Homeownership Programs](#)
- [Achieving Lasting Affordability through Inclusionary Housing](#)

New Construction Programs: These programs are focused on where housing is being built or available on the market. While funding for new construction is vital to expand the housing stock, these programs often take significant longer to produce a housing unit versus acquisition programs. Generally, the subsidy is around \$45,000-\$150,000 per unit.

- Traditional Gap Financing for Affordable Housing Projects- Gap financing refers to the funded needed to cover the difference between the costs of a development and the fund available for the development. Generally, this gap financing is provided by a government agency after all other funding opportunities have been exhausted. Recent San Rafael examples include 190 Mill Street, Whistlestop.
- Affordability Buy-down Programs- These programs are almost the reverse of inclusionary housing requirements. Essentially, a developer who is having trouble selling/renting a property can approach the City to buy-down the affordability of the unit (usually at a rate less than the in-lieu fee). Sometimes the City is proactive and reaches out to the developer with a combination of incentives (i.e. streamlining , property tax deferrals, etc.) other times the developer approaches the City who may provide a combination of incentives. The most recent example of these types of programs are the recent acquisition of 3301 Kerner and America's Best Value in Corte Madera through Project Homekey.
- First-Time Homebuyer programs - This program is a combination of new construction and acquisition. These programs provide no-cost loans to pre-qualified first-time homebuyers (and usually first responders and teachers) to cover a portion of a down-payment. The loan is usually requires no payment until the property is sold. At the time of payment, the equity in the property is shared between the property owner and the City to help fund loans for other first-time homebuyers. There are usually incentives attached to the loan. For instance, if the property owner sells the home to an income-qualified when they eventually move, their loan payoff amount is reduced. Generally, these programs provide down-payment loans up to \$150,000. A recent example of this type of program is [AC Boost operated by Alameda County](#).

Acquisition/Protection Programs: These programs are intended to prevent displacement that may make segregation worse. They also provide ways to quickly create affordable housing in established neighborhoods that would not be possible through new construction. While the subsidy is higher than new construction, between \$50,000-\$200,000 per unit, the ability to provide an immediate protected housing unit is a significant benefit.

- Traditional Acquisition Gap Financing- This program is the same as the New Construction version. The City works with a Non-profit to acquire a market rate property to turn into long term affordable housing and provides funding for any gap. An example of this type of program is Centertown, which started as a market rate development, but was purchased by the City's Redevelopment Agency to turn into complete affordable housing.
- Community Land Trusts (CLT)- A City-supported or a third party CLT acquire market rate properties (often "Naturally Occurring Affordable Housing") and make them affordable in perpetuity. When a CLT is first getting started, projects are acquired using traditional financing with City provided gap financing. Eventually, the shared equity of the properties is then enough to be redirected into purchasing more properties without the need for City assistance. Depending on rehab needs generally between \$50,000-\$200,000 per unit, becoming less as more properties are acquired and shared equity increases.
- Rehabilitation Loans- Similar to former Redevelopment agency loans, the City provides a low- to no- interest loan with low- to no- required payments to cover rehabilitation (often from properties identified through code enforcement). In return the property owner agrees to BMR restrictions for the lifetime of the loan. At the end of the loan term, any remaining balance is forgiven. Depending upon the extent of the rehabilitation, loans can be as low as \$10,000 per unit.
- First Right of Refusal (COPA/TOPA)- These programs are often implemented in conjunction with other acquisition programs. In essence, before a property can be sold the property owners need to give either non-profits or tenants (usually in partnership with a non-profit) the option to make a purchase offer. If the offer is accepted, depending on how it is financed (i.e. Gap Financing or CLT) the property is acquired and operated given that programs requirements.

DRAFT- POTENTIAL INCLUSIONARY HOUSING HYBRID SCENARIOS

Inclusionary Housing Requirements: 10%/15% Hybrid Scenario A

	Rental			For Sale		
	2-15 Base Units	16-59 Base Units	60+ Base Units	2-15 Base Units	16-59 Base Units	60+ Base Units
Primary Requirement (All Projects)	10% Low-Income	5%- Low Income	5%- Low Income 5%- Very Low Income	10% Low-Income	5%-Low Income	5%- Moderate Income 5%- Low Income
Secondary Requirement (Must choose one option below in addition to the Primary Requirement)						
Option 1) Onsite	No Requirement	5%- Low Income or 10%- Moderate Income	5%- Low Income or 10%- Moderate Income	No Requirement	5%- Low Income or 10%- Moderate Income	5%- Low Income or 10%- Moderate Income
Option 2) Offsite	No Requirement	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	No Requirement	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval
Option 3) Land Conveyance	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	* Must be developable * Similar economic benefit * Requires Director approval	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	* Must be developable * Similar economic benefit * Requires Director approval
In-Lieu Fee*	Payment equal to 10% of Total units	Payment equal to 10% of Total units	Payment equal to 15% of Total units	Payment equal to 10% of Total units	Payment equal to 10% of Total units	Payment equal to 15% of Total units

* Payment of In-Lieu fee would replace any primary or secondary requirement

**Very Low Income- 50% AMI or lower, Low Income- 80% AMI or lower, Moderate Income- 120% AMI or Lower

Inclusionary Housing Requirements: 10%/15% Hybrid Scenario B

	Rental			For Sale		
	2-15 Base Units	16-49 Base Units	50+ Base Units	2-15 Base Units	16-49 Base Units	50+ Base Units
Primary Requirement (All Projects)	10% Low-Income	5%- Low Income	5%- Low Income 5%- Very Low Income	10% Low-Income	5%-Low Income	5%- Moderate Income 5%- Low Income
Secondary Requirement (Must choose one option below in addition to the Primary Requirement)						
Option 1) Onsite	No Requirement	5%- Low Income or 10%- Moderate Income	5%- Low Income or 10%- Moderate Income	No Requirement	5%- Low Income or 10%- Moderate Income	5%- Low Income or 10%- Moderate Income
Option 2) In-Lieu Fee	Allowed for Fractional Units	Payment equal to 5% of Total units	Payment equal to 5% of Total units	Allowed for Fractional Units	Payment equal to 5% of Total units	Payment equal to 5% of Total units
Option 3) Offsite	No Requirement	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	No Requirement	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval
Option 4) Land Conveyance	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	* Must be developable * Similar economic benefit * Requires Director approval	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	* Must be developable * Similar economic benefit * Requires Director approval

**Very Low Income- 50% AMI or lower, Low Income- 80% AMI or lower, Moderate Income- 120% AMI or Lower

Inclusionary Housing Requirements: 10%/15% Hybrid Scenario C

	Rental			For Sale		
	2-15 Base Units	16-49 Base Units	50+ Base Units	2-15 Base Units	16-49 Base Units	50+ Base Units
Primary Requirement (All Projects)	10% Low-Income	5%- Low Income	5%- Low Income	10% Low-Income	5%-Low Income	5%- Moderate Income
Secondary Requirement (Must choose one option below in addition to the Primary Requirement)						
Option 1) Onsite	No Requirement	5%- Low Income or 10%- Moderate Income	5%- Very Low Income or 10%- Low Income or 15%- Moderate Income	No Requirement	5%- Low Income or 10%- Moderate Income	10%- Low Income or 15%- Moderate Income
Option 2) In-Lieu Fee	Allowed for Fractional Units	Payment equal to 5% of Total units	Payment equal to 10% of Total units	Allowed for Fractional Units	Payment equal to 5% of Total units	Payment equal to 10% of Total units
Option 3) Offsite	No Requirement	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	No Requirement	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval	* Within 1/2 mile of project * Similiar economic benefit * Requires Director approval
Option 4) Land Conveyance	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	* Must be developable * Similar economic benefit * Requires Director approval	No Requirement	* Must be developable * Similar economic benefit * Requires Director approval	* Must be developable * Similar economic benefit * Requires Director approval

**Very Low Income- 50% AMI or lower, Low Income- 80% AMI or lower, Moderate Income- 120% AMI or Lower