



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Paul Jensen (EG)
Director

City Manager Approval: _____ 

TOPIC: OPPORTUNITY ZONE RENTER RELOCATION ASSISTANCE INFORMATIONAL REPORT

SUBJECT: INFORMATIONAL REPORT ON RENTER RELOCATION ASSISTANCE IN THE OPPORTUNITY ZONE LOCATED IN THE CANAL NEIGHBORHOOD OF SAN RAFAEL

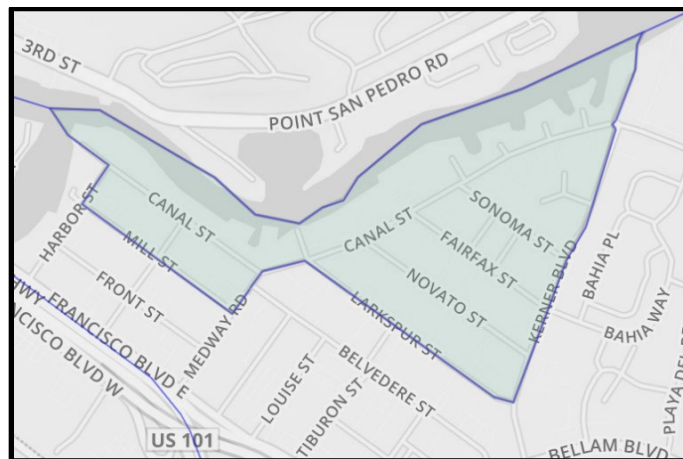
RECOMMENDATION:

Accept Report and Provide Staff Direction.

BACKGROUND:

As part of the U.S. Investing in Opportunities Act, tax incentives for long-term investment were created in designated census tracts called Opportunity Zones (“OZs”). Investors can access these tax incentives by investing capital gains through Opportunity Funds. Opportunity Funds are required to hold 90% of their assets in qualified OZ properties. The longer an investor keeps their money in the Opportunity Fund investment, the larger the tax break they will receive.

Map 1. San Rafael Opportunity Zone- Census Tract 1122.01



San Rafael currently has one OZ (Census Tract 1122.01, Map 1) located in the Canal neighborhood. OZ projects must conform to all zoning and entitlement designations and processes. For San Rafael’s OZ,

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

this includes properties zoned for: CCI/O (Core Canal Industrial/ Office), HRI (Multifamily Residential and High Density), GC (General Commercial), and NC (Neighborhood Commercial).

On October 5, 2020, the City Council conducted a [Study Session regarding Opportunity Zones and Eviction Assistance](#). During this Study Session, City Council directed staff to prioritize work on potential renter relocation assistance for renters within the Opportunity Zone. Staff has prepared this informational report to further discuss the potential impacts of increases to renter relocation assistance for the OZ.

ANALYSIS:

There are currently 140 properties and 1,679 total housing units within the OZ boundary. [According to the latest Census data](#), 33.5% of households in the Census Tract fall below the federal poverty line. Of the 1,679 housing units in the OZ, 139 units, or eight percent (8%), currently have below market rate deed restrictions. In most cases, these restrictions would carry over to any new owner or development of the property. For any new construction projects, these developments would be required to comply with the City’s Inclusionary Housing requirements.

Table 1. Properties within San Rafael OZ Boundaries

	Properties	Units	Average Units/ Property
Single Family Homes	35	35	1
Condominiums	10	254	25
Apartment Buildings	82	1,387*	17
Non-Residential	13	-	-
Total	140	1,679	

*139 Units have deed restricted below market rate protections

Removal of Opportunity Zone Designation

[Chapter Z of the Tax Cuts and Jobs Act](#) (Opportunity Zones) establishes a process for designation of qualified opportunity zones. The process provides that the chief executive officer of a State must nominate the tract for designation and notify the Government of such nomination. The Government may then certify the nomination and designate the tract as an opportunity zone. Opportunity zones maintain their designation for ten years from the date of designation. (1400Z-1(f).)

The Treasury and IRS issued final regulations on Opportunity Zones. These regulations provide: “Section 1400Z-1 provides the statutory authority for one round of nominations and designations. Thus, there are no current or proposed plans to reopen consideration of additional census tracts to be designated as QOZs.” (See subsection D)

Chapter Z contains no provisions for “un-designating” a qualified opportunity zone. Once an opportunity zone nomination is certified, the tract is designated for ten years and it does not appear there is any vehicle in the law to alter or change such designation.

Proposed Increase to Renter Relocation Assistance

Since 2005, [the City has required citywide relocation assistance as a condition to certain development projects](#). San Rafael Municipal Code (SRMC) section 14.16.279 requires that the City condition planning, building and/or demolition permits on the payment of relocation assistance where the underlying development will result in displacement of low-income household tenants. These relocation payments

are only required for households that qualify as “low-income household tenants of record.” Pursuant to SRMC section 14.16.279 and Health and Safety Code section 50079.5, this means the relocation assistance would apply to tenants who earn less than eighty percent (80%) of county median income and who appear on a valid lease or rental agreement.¹

As discussed in the October 5th Study Session, staff has prepared potential changes to renter relocation payments for households displaced as a result of a no-fault eviction in the Opportunity Zone. These proposed changes would increase the relocation assistance for qualifying households within the Opportunity Zone census tract area (Table 2). Staff has based the proposed increase in payment levels upon similar renter relocation assistance programs adopted by other California jurisdictions, including [Los Angeles](#), [San Francisco](#), [Oakland](#), and [Berkeley](#).

Table 2. Proposed Renter Relocation Assistance for Opportunity Zone

Payments to Renters (per unit)					
	Studio	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
Base Relocation Payment (All Renters) *					
First Month Rent (2020 Fair Market Rent)	\$ 2,197	\$ 2,720	\$ 3,339	\$ 4,365	\$ 4,657
Security Deposit (2x Fair Market Rent)	\$ 4,394	\$ 5,440	\$ 6,678	\$ 8,730	\$ 9,314
Estimated Moving Expenses	\$ 500	\$ 500	\$ 750	\$ 1,000	\$ 1,500
Minimum Total Renter Relocation Payment	\$ 7,091	\$ 8,660	\$ 10,767	\$ 14,095	\$ 15,471
Supplemental Relocation Payments (paid in addition to Base Relocation Payments)					
<i>Temporary Housing</i>					
\$150 per diem, prorated by night until 1st of next month	\$ -	\$ -	\$ -	\$ -	\$ -
<i>Household Characteristics</i>					
Provided if household meets one of the below criteria:	\$ 2,197	\$ 2,720	\$ 3,339	\$ 4,365	\$ 4,657
1) Household with children					
2) Household with individual 65 years or older					
3) Household with individuals with disability					
Estimated Total Renter Relocation Payment	\$ 9,288	\$ 11,380	\$ 14,106	\$ 18,460	\$ 20,128
Payments to City of San Rafael (per unit)**					
	Studio	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
Administrative Fee					
1-10 Units- 10%	\$ 709	\$ 866	\$ 1,077	\$ 1,410	\$ 1,547
11-20 Units- 15%	\$ 1,064	\$ 1,299	\$ 1,615	\$ 2,114	\$ 2,321
21+ Units- 20%	\$ 1,418	\$ 1,732	\$ 2,153	\$ 2,819	\$ 3,094

* Base Relocation will be calculated using the higher amount between current Fair Market Rent or Leased Rent.

**Note: Current payment to the City of San Rafael are based on base payment amount for illustration. Actual payments to the City of San Rafael would be based on actual Renter Relocation Payment.

These changes include the following four payments for which a displaced household may qualify:

1. Base Payment: ~\$7,000 to \$15,400 for all households covered by the ordinance. Specific payment amount would be based upon on unit size and include payments for the first month rent, the security deposit (equal to two months’ rent), and moving expenses;
2. Temporary Housing: \$150 per diem to households who are displaced before the end of the month. This payment would be intended to cover temporary housing costs related to a partial month move;
3. Supplemental Payment: ~\$2,100 to \$4,600 payment if the household meets certain characteristics including: a household with children, a household with an individual over 65 years old, a housing with an individual with a disability; and

¹ Note: during the October 5th, 2020 Study Session this income requirement was not explicitly stated in the background materials provided to City Council.

4. Administrative Fee: ~\$709 to \$3,094 per unit fee depending on unit and property size, paid to the City. These funds would be used to cover costs associated with implementation of the program including hiring a third-party to provide administration services on behalf of the City.

As discussed in the Study Session, the financial burden created for the property owner by these increases to renter relocation assistance payments in the OZ would be partially offset by the tax incentives to the property owner for development in the OZ.

Next Steps

Staff has developed a draft ordinance reflecting the proposed renter relocation assistance payment changes. Staff does not believe the proposed ordinance would be invalidated or preempted by Federal law. Interfering with the methods by which a Federal statute was designed to reach its goal may constitute obstacle preemption. But the Federal Court of Appeals for the Ninth Circuit (of which California is a part) has held that a high threshold must be met if a State or local law is to be preempted for interfering or conflicting with the purposes of a Federal statute. Here, the Tax Cuts and Jobs Act of 2017 is intended to provide an investor with federal tax credits, thereby providing tax relief, and is also intended to “spur economic development” through this tax credit. The law does not direct local governments to take, or not take, any specific action in order to aid in the Federal government’s implementation of the Act. The proposed relocation assistance ordinance would not interfere with the methods designed to reach the goals of the Act because the ordinance would prevent neither development nor receipt of tax credits pursuant to the Act.

Staff is seeking additional direction from the City Council regarding whether to move forward with the proposed changes to the City’s requirements for renter relocation assistance payments. If directed to move forward with changes, Staff would be able to update this draft ordinance to reflect City Council direction in time for the Planning Commission to make a recommendation at their November 17, 2020 meeting. At this meeting, the Planning Commission will also be considering the housing-related amendments discussed at the [September 21, 2020 City Council meeting](#).

FISCAL IMPACT:

As this is an informational report, there is no fiscal impact.

OPTIONS:

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

1. Accept Report
2. Direct staff to return with more information
3. Take no action

RECOMMENDED ACTION:

Accept Report and Provide Staff Direction

ATTACHMENTS:

- 1) Draft Ordinance

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING
CHAPTER 10.110 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED
“RELOCATION ASSISTANCE IN OPPORTUNITY ZONES”**

Section 1. Findings.

WHEREAS, the Marin Housing Authority estimates there is a shortage of 9,465 affordable rental homes to accommodate low-income renters in Marin County;

WHEREAS, the Marin Housing Authority estimates that rents in Marin County have been steadily increasing since 2009;

WHEREAS, increasing rents combined with a housing shortage places substantial pressure on residents of the City of San Rafael who rent housing;

WHEREAS, there are 23,929ⁱ residential units in San Rafael. Of those, approximately forty-eight percent (48%) are owner occupied and 48 (50) % are renter occupied.

WHEREAS, a portion of San Rafael is located in U.S. Census Tract 1122.01, which is the sole U.S. Census Tract designated a “Qualified Opportunity Zone” by the 2017 Tax Cuts and Jobs Act (the “Act”), within Marin County;

WHEREAS, in San Rafael’s Qualified Opportunity Zone, there are approximately 1,813ⁱⁱ residential units. Of those, eight percent (8%) are owner occupied and ninety-two percent (92%) are tenant occupied;

WHEREAS, the estimated median gross monthly income of residents living in Census Tract 1121.01 is \$3,533ⁱⁱⁱ;

WHEREAS, Qualified Opportunity Zones are designed to spur economic development in distressed communities throughout the country and U.S. possessions by providing tax benefits to investors who invest eligible capital into opportunity zones;

WHEREAS, in order for taxpayers to defer tax on eligible capital gains under the Act, taxpayers must own and substantially improve property in a Qualified Opportunity Zone;

WHEREAS, sale of residential properties in San Rafael’s Qualified Opportunity Zone and substantial improvements to said properties are likely to result in displacement of residential tenants in the Canal neighborhood due to no fault terminations;

WHEREAS, the residents living in San Rafael's Qualified Opportunity Zone therefore face a high risk of displacement which displacement could have severe health, safety and economic impacts on these residents;

WHEREAS, tenants who do not have adequate funds to move and who are forced to move pursuant to no-fault eviction notice face displacement and great hardship;

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, lost work time seeking housing, and increased rent;

WHEREAS, tenants who find acceptable new housing commonly find themselves required to pay substantial move-in costs of first and last month's rent plus a security deposit equal to one month's rent; and

WHEREAS, tenants evicted in San Rafael are forced to incur substantial costs related to new housing including, but not limited to, move-in costs to a new home, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing;

WHEREAS, mothers who are evicted experience higher levels of material hardship and parenting stress and are more likely to suffer from depression and to report their health and that of their children as being poor and the impacts of eviction can endure for years with research showing in some families at least two years after their eviction mothers experienced significantly higher rates of material hardship and depression than their peers^{iv};

WHEREAS, evictions of long-term residents can lead to significant decreases credit scores for individuals ages 65 years or older compared than their counterparts who are able to stay, with an average credit score 14.6 points lower^v;

WHEREAS, by 2035, the number of older households with a disability nationwide will increase by 76 percent to reach 31.2 million, placing tremendous pressure on the supply of ADA-compliant rental housing, making it increasingly difficult for renters with disabilities to find suitable housing after a no-fault eviction^{vi};

WHEREAS, numerous California jurisdictions have recognized the impacts of these no-fault evictions are particularly significant on elderly, disabled, and low-income tenants and tenants with minor children, justifying additional payments for households with these tenants;

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: §15378 (regulatory actions), § 15061 (b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning);

WHEREAS, Ordinance No. _____ is expressly authorized by State law because the Ordinance is more protective than the provisions of section 1946.2 of the California Civil Code, which was adopted pursuant to the Tenant Protection Act of 2019, because this ordinance provides tenant protections that are neither prohibited by nor established by other provisions of applicable law;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

Section 2: Addition of Chapter 10.110 to the San Rafael Municipal Code.

Title 10 of the San Rafael Municipal Code, entitled “Businesses, Professions, Occupations, Industries and Trades” is hereby amended by adding a new Chapter, 10.110 entitled “Relocation Assistance in Opportunity Zones” to read in its entirety as follows:

10.110.010 Purpose and Intent

It is the purpose and intent of this chapter to help mitigate the adverse health, safety and economic impacts experienced by residents of rental housing who are displaced from their residences due to no fault terminations of their tenancies. This chapter requires a property owner to mitigate the impact on these residents by providing relocation assistance benefits to residents located within U.S. Census Tract 1122.01, which has been designated a “Qualified Opportunity Zone” by the 2017 Tax Cuts and Jobs Act.

10.110.020. Definitions

For purposes of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section and set forth in section 10.105.030 of the SRMC shall have the meanings given to them:

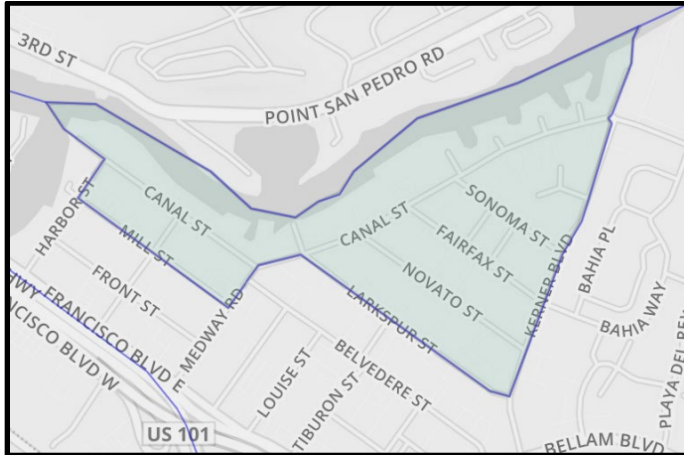
- A. “Disabled” means a person with a disability, as defined in Section 12955.3 of the Government Code.
- B. “Elderly” means a person sixty-two (62) years or older.
- C. “Lease” means any contract between a tenant household and a landlord or property owner for a specified time, in return for a periodic payment.
- D. “Minor child(ren)” means a person(s) who is eighteen (18) years or younger at the time the Notice of Relocation Assistance is provided to the tenant household.
- E. “Tenancy” means the use or occupancy of a dwelling unit by a tenant.

10.110.030 Eligibility for Relocation Assistance

- A. Tenant households who have continually occupied a dwelling unit for a period of thirty (30) days or more are eligible for relocation assistance pursuant to this chapter.

B. Only those tenant households who occupy a dwelling unit located within the shaded areas shown on Map 10.110.030 shall be eligible for relocation assistance pursuant to this chapter.

Map 10.110.030



C. Any property not described in subsection (A) of section 10.110.030 of this Chapter and and/or any property not otherwise subject to this Chapter, shall be subject to all applicable local and State requirements regarding relocation assistance including but not limited to those requirements set forth in Civil Code section 1946.2 and section 14.16.279 of the SRMC, as those sections may be amended.

D. A tenant household shall not be eligible to receive relocation assistance pursuant to this Chapter if the tenant household is subject to a “for cause termination” pursuant to subsection (B) of section 10.105.040 of this Code.

E. A tenant household that is eligible to receive relocation assistance pursuant to this Chapter shall not be eligible to receive relocation assistance pursuant to the provisions of section 14.16.279 of this Code.

10.110.040 Requirement to Provide Relocation Assistance

If the termination of a tenancy subject to this Chapter qualifies as a “no fault termination” pursuant to subsection (C) of section 10.105.040 of this Code, the landlord of the dwelling unit subject to the no fault termination shall, regardless of the tenant household’s income, provide relocation assistance in accordance with the provisions of this Chapter.

10.110.050 Relocation Assistance Procedures

Relocation assistance shall be subject to the following procedures:

A. Calculation of Relocation Assistance

A tenant household that is eligible to receive relocation assistance pursuant to this Chapter shall be entitled to a relocation payment equal to the sum of the following:

(1) First and Last Months' Rent. Payment for first and last month's rent shall be equal to two times the greater of (1) the rent established by a lease between the landlord and the tenant household, or (2) the current Fair Market Rent published annually by the U.S. Department of Housing and Urban Development for the San Francisco, CA HUD Metro FMR Area, corresponding to the number of bedrooms in the subject dwelling unit; and

(2) Security Deposit. Payment for a security deposit shall be established by City Council Resolution and based upon the number of bedrooms in the property; and

(3) Moving Expenses. Payment for moving expenses shall be established by City Council Resolution and based on the number of bedrooms in the property; and

(4) Per Diem. A per diem payment for each day remaining in the calendar month in which the tenancy is terminated. The per diem amount shall be established by City Council Resolution, compensate for costs such as short term rental accommodations, meals, and other related costs, and based upon tenant household size.

(5) Supplemental Payments. Tenant households that qualify for the categories set forth in this subsection shall receive one supplemental payment in an amount established by City Council Resolution per each applicable category. Supplemental payments shall be the greater of (1) the rent established by a lease between the landlord and the tenant household, or (2) the current Fair Market Rent published annually by the U.S. Department of Housing and Urban Development for the San Francisco, CA HUD Metro FMR Area, corresponding to the number of bedrooms in the subject dwelling unit.

a. Tenant households with Minor Child(ren). Households with at least one minor child(ren).

b. Tenant households with Elderly Individual. Households with at least one elderly individual.

c. Tenant households with Disabled Individual. Households with at least one disabled individual.

B. Notice of Relocation Assistance

(1) Not less than sixty (60) days before a tenancy is terminated pursuant to subsection (C) of section 10.105.040, the landlord shall provide a Notice of Relocation Assistance to the tenant household whose tenancy will be terminated.

(2) The Notice of Relocation Assistance may be provided along with or incorporated within the Notice of Termination required pursuant to section 10.105.050.

(3) The Notice of Relocation Assistance shall be in the same language as the rental agreement was negotiated.

(4) The Notice of Relocation Assistance shall contain the following:

- a. the amount of the relocation assistance payment itemized in the manner set forth in subsection (A) of section 10.110.050 regarding calculation of relocation assistance;
- b. the date by which the relocation assistance payment will be delivered to the tenant household; and
- c. a copy of San Rafael Municipal Code Chapter 10.110.

D. Certification of Relocation Assistance and Administrative Fee

Within ten (10) days of issuance of a Notice of Relocation Assistance pursuant to subsection (B) of section 10.110.050 of this Chapter, the landlord shall submit to the City's Community Development Department, a completed Certification of Relocation Assistance on a form acceptable to the City along with an administrative fee in an amount set forth by separate resolution of the City Council, which fee shall offset the costs in administering this Chapter.

The Certification of Relocation Assistance shall include the following information:

- (1) The address of each dwelling unit in the rental property that is subject to the no-fault termination;
- (2) The monthly rent for each of those dwelling units; and
- (3) The name of every person the landlord considers to be a resident under an oral lease, written lease, or other rental agreement.

E. Payment of Relocation Assistance

- (1) Not less than thirty (30) days before the final date of the terminated tenancy, the landlord shall deliver, via certified mail or personal service, to the address of the terminated tenancy, the relocation assistance required by this Chapter.
- (2) Relocation assistance shall be paid per tenant household, not per tenant.
- (3) Relocation assistance shall be paid via check or cashier's check made out to the person(s) who are named on the lease for the terminated tenancy.

F. Verification of Payment of Relocation Assistance.

Before issuance of demolition permits, building permits or other City permits and/or entitlements that would result in No Fault Termination subject to Chapter 10.105 of the SRMC, the City must receive verification from the landlord of the property seeking said permits and/or entitlements that all relocation assistance required pursuant to this Chapter has been paid. This verification shall be submitted in a form acceptable to the Community Development Department.

10.110.060 Notices.

Whenever any notice or other communication is required by this Chapter to be served on, provided, given or delivered to, or filed with, any person, that notice or communication

may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication.

10.110.070 Administrative Regulations

The City Manager may, from time to time, promulgate regulations implementing the provisions of this Chapter, violations of which shall be considered a violation of this Chapter.

10.110.080 Failure to Comply – Private Right of Action.

Any attempt to recover possession of a rental unit in violation of this Chapter shall render a landlord liable to the tenant for damages permitted by law in a civil action for wrongful eviction. A tenant may also seek injunctive relief and money damages for wrongful eviction and/or failure to pay relocation assistance. The prevailing party in an action for wrongful eviction shall recover costs and reasonable attorneys' fees.

Section 3. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 4. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment and pursuant to CEQA Guidelines section 15060, subd. (c)(2), because the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Section 5. Publication; Effective Date. A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

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

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

Mayor

ATTEST:

LINDSAY LARA, City Clerk

The foregoing Ordinance No. _____ was read and introduced at a regular meeting of the City Council of the City of San Rafael on _____, the ____ day of _____ 2020, and was ordered passed to print by the following vote, to wit:

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 Council to be held on the ____ day of _____, 2020.

LINDSAY LARA, City Clerk

ⁱ Total Housing Units (+/-235 Margin of Error)(Occupied - +/-542 Margin of Error)

ⁱⁱ Total Housing Units (+/-117 Margin of Error)

ⁱⁱⁱ ACS 2018 5-year

^{iv} Desmond, Matthew & Kimbro, Rachel. (2015). Eviction's Fallout: Housing, Hardship, and Health. *Social Forces*. 94. 10.1093/sf/sov044.

^v Ding, L., & Hwang, J. (2016). The Consequences of Gentrification: A Focus on Residents' Financial Health in Philadelphia. *Cityscape*, 18(3), 27-56.

^{vi} Joint Center for Housing Studies of Harvard University. (2016). Projections and Implications for Housing a Growing Population: Older Households 2015-2035. <https://www.jchs.harvard.edu/research-areas/reports/projections-and-implications-housing-growing-population-older-households-2015>