



# SAN RAFAEL

THE CITY WITH A MISSION

Community Development Department – Planning Division  
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**Meeting Date:** November 17, 2020  
**Agenda Item:** 1  
**Case Numbers:** P18-010/ZA20-002  
**Project Planner:** Ali Giudice 415-485-3092  
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## REPORT TO PLANNING COMMISSION

**SUBJECT:** Amendments to the San Rafael Municipal Code related to a) affordable housing; b) small lot development; c) hillside exceptions and d) appeals process.

### EXECUTIVE SUMMARY

Staff is proposing amendments to the San Rafael Municipal Code (SRMC) intended to streamline the and provide clarity in the planning development review process. These changes reflect direction from 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 is focused on the following:

- A. Affordable Housing including changes to inclusionary housing and density bonus provisions
- C. Hillside Exceptions process
- D. Height bonus
- E. Small Lot development
- F. Appeals process

The full text of the Code Amendments are included in Exhibit 1.A – 1E. In addition, staff is proposing two City Council Resolutions as follows:

- a) City Council Resolution related to Affordable Housing Requirements(Exhibit 1E.i)
- b) City Council Resolution related to Density Bonus and Incentives Regulations (Exhibit 1E.ii)

Staff is asking the Planning Commission to weigh in on and provide a recommendation to the City Council for final action.

### RECOMMENDATION

It is recommended that the Planning Commission adopt Resolution recommending City Council approval of the proposed Amendments to the San Rafael Municipal Code and adoption of a City Council Resolution related Density Bonus Tables

### BACKGROUND

Over the past two years the City Council has received informational reports related to housing and the challenges to housing development as follows. 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 identified 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 of on the proposed policy actions. The City hosted two housing workshops, (which were attended by the Mayor, City Council, and the public. These workshops exposed the public to issues surrounding the housing crisis and obtained feedback from both the public and 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 streamline approvals.

On August 11th, 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 21<sup>st</sup> 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 C related to Design Review Board Advisory Committee structure and process. This report is focused on Items A-C. More details on the background of the proposed amendments can be located by clicking on the City Council reports for of the dates listed above by clicking on the individual links.

## PROJECT DESCRIPTION & ANALYSIS

### ***San Rafael Municipal Code Amendments***

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

- A. Section 14.16.031 - Affordable Housing related to Inclusionary Housing and Density Bonus regulations
- B. Section 14.12.040 - Exceptions to property development standards (Hillside Overlay)
- C. Section 14.16.190 - Height bonus
- D. Sections 14.16.300 – Property Development Standards (Residential); 14.04.030 Property Development Standards (Commercial Districts), & 14.04.040 - Small Lots
- E. DRAFT SRMC Amendments 14.28.040- Appeals

## F. DRAFT City Council Resolution -Density Bonus and Concessions Tables

For detailed description of the proposed amendments refer to City Council Agenda Reports of [September 8, 2020](#) and [September 21, 2020](#).

**City Council Resolution Documents**

Density Bonus regulations - 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 we stay aligned with State legislation. The separate resolution is included in this report as Exhibit 1E.ii.

Affordable Housing Requirements – This policy resolution would establish the affordable housing obligation required of new housing development and would provide expanded options allowing the affordable housing obligation to 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. Adoption of separate Resolution document allows for a program review and reporting after 18 months and regular updates to the City Council thereafter. The separate resolution is included in this report as Exhibit 1E.i.

**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.

**NEIGHBORHOOD MEETING / CORRESPONDENCE**

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. Comments received prior to the distribution of this meeting are attached to this report. All public comments received to date on the topics outlined in this report are included as Exhibit 2. Comments received subsequent to distribution of this staff report will be forwarded to the City Council by separate cover. 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.

**OPTIONS**

The Planning Commission has the following options:

1. Adopt Resolution recommending approval of the proposed amendments as presented.
2. Adopt Resolution recommending approval with some modifications to the proposed amendments.
3. Continue the hearing to allow staff to address the Commission's comments or concerns.
4. Continue the hearing to allow staff to prepare resolutions for denial of the proposed amendments.

**EXHIBITS**

1. Resolution recommending Amendments to the San Rafael Municipal Code and recommending adoption of City council Resolutions related to Inclusionary Housing and Density Bonus Regulations
  - A. DRAFT SRMC Amendments to 14.12.040 - Exceptions to property development standards
  - B. DRAFT SRMC Amendments to 14.16.190 - Height bonus
  - C. DRAFT SRMC Amendments to 14.16.300, 14.04.030, & 14.04.040- Small Lots
  - D. DRAFT SRMC Amendments 14.28.040- Appeals
  - E. DRAFT SRMC Amendments Section 14.16.030 Affordable Housing
    - i. City Council Resolution related to Affordable Housing Requirements
    - ii. City Council Resolution related to Density Bonus and Incentives Regulations
  
2. Public Comments

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION  
RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE OF  
THE CITY OF SAN RAFAEL AMENDING TITLE 14 (ZONING ORDINANCE),  
INCLUDING: A) REVISIONS TO THE AFFORDABLE HOUSING REQUIREMENT  
FOR RESIDENTIAL DEVELOPMENT PROJECTS; B) REVISIONS TO THE DENSITY  
BONUS AND HEIGHT BONUS PROVISIONS; C) REVISIONS TO LIMITATIONS  
PLACED ON RESIDENTIAL DEVELOPMENT OF SMALL LOTS; D) REVISIONS TO  
SCHEDULING PROCESS FOR APPEALS; E) REVISIONS TO THE REVIEW  
REQUIREMENTS FOR EXCEPTIONS TO HILLSIDE DEVELOPMENTS  
(P18-010/ ZO20-002)**

**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 a duly-noticed public hearings on the proposed amendments to the SRMC Title 14, 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 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

**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

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission recommends to the City Council adoption of the amendments to the San Rafael Municipal Code as outlined in Attachment A of this resolution, based on the following findings as required under Zoning Code Section 14.27.060:

1. The amendments to San Rafael Municipal Code Title 14 – Zoning Ordinance are consistent with the policies and programs of the San Rafael General Plan 2020 in that:
  - a. The proposed amendments related to Inclusionary Housing is consistent with General Plan Policy H-6. Funding for Affordable Housing and H-18. Inclusionary Housing Requirements identifies the intent to provide for and allow flexibility in providing affordable units as long as the intent of the inclusionary housing policy are being met. The proposed amendments provides for alternatives that include in-lieu fees, construction of units off-site, donation of property for affordable housing development;
  - b. The proposed amendments related to density bonus and height bonus regulations is consistent with General Plan Policy H-17. Regulatory Processes and Incentives for Affordable Housing which emphasized the City’s intent to comply with State Density Bonus Law; and with General Plan policy H-15-Infill Near Transit, which encourage higher densities on sites adjacent to a transit hub, because the proposed amendments would align the city’s regulations with State Density Bonus law, which encourages affordable housing near transit by allowing incentives that include height bonuses;
  - c. The proposed amendments related to small lot development is consistent with General Plan Policy H-14b. Efficient Use of Multifamily Housing Sites because the effected lots within the city would be able to develop at the designated densities;
  - d. The proposed amendments to the appeals process and hillside exceptions process is consistent with General Plan Policy H-17d. Efficient Project Review as these amendments are intended to provide a more efficient review process without compromising public participation.
2. The public health, safety and general welfare are served by adoption of the proposed Zoning Ordinance amendments, in that the amendments are intended to remove barriers to housing production by providing alternatives for meeting the affordable housing obligations; aligning the City’s density bonus regulations with State Density Bonus Law; allowing development of small lots at their designated density as established in the General Plan; provide for streamlined review of hillside exceptions; and provide for streamlined appeals process.

The foregoing Resolution was adopted at the regular City of San Rafael Planning Commission meeting held on the 17<sup>th</sup> day of November, 2020.

Moved by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

SAN RAFAEL PLANNING COMMISSION

ATTEST: \_\_\_\_\_  
Paul A. Jensen, Secretary

ATTACHMENTS:

- A. Amendments to San Rafael Municipal Code Title 14 Zoning Ordinance

**Attachment A**  
**Planning Commission Resolution \_\_\_\_\_**  
**Amendments to the San Rafael Municipal Code**

14.12.040 - Exceptions to property development standards.

~~City Council Exception Required.~~ Exceptions to the property development standards of this chapter may be approved by the ~~planning commission city council~~, upon the recommendation of the design review board ~~and the planning commission~~, 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.



#### 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.
1. In the Fourth Street retail core, a twelve-foot (12') height bonus for any of the following:
    - a. Affordable housing, consistent with ~~14.16.030 (Affordable housing)~~. 14.16.031. (Density Bonus and Incentives);
    - 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)~~. 14.16.031. (Density Bonus and Incentives);
    - 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)~~. 14.16.031. (Density Bonus and Incentives);
    - 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)~~. 14.16.031. (Density Bonus and Incentives).

- C. Marine 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)~~. 14.16.031. (Density Bonus and Incentives).
- 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 ~~14.16.030 (Affordable housing)~~. 14.16.031. (Density Bonus and Incentives).
- 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 projects with 100% of the total units available to lower income households, and such development project is 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.

14.04.040 - Property development standards (DR, MR, 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**

	<b>DR</b>	<b>MR5</b>	<b>MR3</b>	<b>MR2.5</b>	<b>MR2</b>	<b>HR1.8</b>	<b>HR1.5</b>	<b>HR1</b>	<b>Additional Standards</b>
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	(A), (B), (C)
Minimum lot width (ft.)	50/60 (corner lot)	60	60	60	60	60	60	60	
Minimum yards									
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	NA	15	15	15	15	12	12	12	(F), (N)

(ft.)										
Rear (ft.)	10	5	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	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 side yards	50% front and street side yards	50% front and street side yards	50% front and street side yards	50% front and street side yards	50% front and street side yards	50% front and street side yards	50% front and street side yards	(M)
Parking	*	*	*	*	*	*	*	*	*	* Based on use. See Section 14.18.040.

- (A) ~~Outside of downtown, only one unit is permitted, and no additional units are permitted, on lots less than five thousand (5,000) square feet, per Section 14.16.300 (Small lots).~~
- (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.

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), (N), (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)
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) ~~Outside of downtown, only one unit is permitted, and no additional units are permitted, on lots less than five thousand (5,000) square feet, per Section 14.16.300 (Small lots).~~
- (O) A density bonus may be granted, as provided for in Section 14.16.090.

- (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.



#### 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. ~~Vacant small lots less than five thousand (5,000) square feet in size shall be developed with only one unit in accordance with all the requirements of the district, and no additional units shall be added to developed small lots less than five thousand (5,000) square feet in size. Small downtown lots are exempt from this section; they shall be developed in accordance with all the requirements of the district.~~
- B. No small lot shall be further reduced in area or width, except as required for public improvements.
- C. Small lots which are contiguously owned are subject to the merger provisions of the State Subdivision Map Act.
- D. This section does not apply to the PD district.

**14.28.040 - ~~Public notice and hearing~~ Scheduling and noticing for a 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, said 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.

C. Public hearing N~~notice~~. Notice of a public hearings shall be given in the manner required for the decision being appealed, as set forth in SRMC Section 14.29.020.

**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 subsection E of this section, 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;
    - b. Projects where a building permit application has been accepted as complete by the city prior to the effective date of the city council 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 four (4) or fewer units in a single structure;
    - e. Any residential development project of four (4) or fewer units where the square footage of the floor area of each unit, exclusive of garage, is less than one thousand eight hundred (1,800) square feet; and
    - f. Second units approved by the city of San Rafael pursuant to Section 14.16.285 of the San Rafael Municipal Code.
  - 2. 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 "policies and procedures for the administration of the 'affordable housing requirement program', as adopted and amended from time to time by city council resolution, and any new residential development project shall comply with such policy. follows:

Project Size	Percentage of Affordable Housing Units
2—10 Housing Units*	10%

Project Size	Percentage of Affordable Housing Units
11—20 Housing Units	15%
21 or more Housing Units	20%

\* See exemptions listed in subsection (B)(1) of this section.

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; or
  - c. Perform an "alternative equivalent action" subject to review and approval by the city council in accordance with subsection G of this section.
3. ~~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:
    - a. The same or substantially similar mix of unit size (e.g., number of bedrooms, square footage);
    - b. Compatibility with the design, materials, amenities, and appearance of the other developed units.
  4. ~~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.
- C. ~~Requirements for Residential Ownership Housing Developments.~~ A minimum of fifty percent (50%) of all affordable housing units developed pursuant to subsection B of this section, and that are a part of or are included in a residential development project in which the developed dwelling units are intended for sale, shall be affordable to low-income households, at an affordable sales price, as defined in this title and as, from time to time, may be amended by resolution of the city council. The remaining affordable housing units shall be affordable to moderate-income households at an affordable sales price. In the event that an odd number of units are required, the additional unit shall be affordable to low-income households.
- D. ~~Requirements for Residential Rental Housing Developments.~~ A minimum of fifty percent (50%) of all affordable housing units developed pursuant to subsection B of this section, and that are part of or included in a residential development project in which the developed units

are intended to be used as rental housing, shall have rents that do not exceed the affordable monthly rent of very low income households, as those terms are defined in this title and as, from time to time, may be amended by resolution of the city council. The remaining affordable housing units shall have rents that do not exceed the affordable monthly rent of low income households, as defined in this title. In the event that an odd number of units are required, the additional unit shall be affordable to very low income households.

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 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. ~~In-Lieu Fees for Residential Development. At the discretion of the city council, a developer may comply with this section by paying an in-lieu fee provided that the applicant establishes financial need or infeasibility, and that the city council makes a determination that payment by the developer of the in-lieu fee will further the affordable housing goals of the city in a manner and/or in an amount at least equivalent to the requirements of subsection B of this section. Where the application of the affordable housing requirement in subsection B of this section results in less than one unit or one or more affordable housing units and a fractional unit, the developer may choose to pay an in-lieu fee for the fractional unit without the required findings noted above.~~

~~In-lieu fees for residential projects 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.~~

~~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.~~

- G. ~~Alternative Equivalent Action. The developer of a residential project may propose to meet the requirement of subsection B of this section by an "alternative equivalent action," which shall be subject to review and approval by the city council. A proposal for an alternative equivalent action may include, but is not limited to, dedication of vacant land, the construction of affordable housing units on another site, or other actions that the city council, in its sole discretion, determines may further the affordable housing goals of the city in a manner and/or in an amount at least equivalent to the requirements of subsection B of this section.~~
- H. ~~Density Bonus and Incentives-Concessions or Incentives for Residential Development Projects.~~

- ~~1. Density Bonus. 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 as a component of the development a housing for transitional foster youth, qualified student housing, land donation, or construction of a child care facility, or for a qualified senior citizen housing development, or a qualified commercial projects that partner with a qualified affordable housing project. ~~as defined in California Civil Code Section 51.3,~~ the city shall grant 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 City Council Resolution XXX. The applicant may request a lesser density bonus than that which is available to the project under Section 65915; however, the city shall not be required to similarly reduce the number of units required to be dedicated pursuant to Section 65915(b). In calculating the density bonus for a project, each project shall be entitled to only one density bonus,~~

to be selected based on the percentage of units dedicated pursuant to Section 65915(b). Density bonuses from more than one income category may not be combined.

- ~~2. The city may, at its sole discretion, grant a density bonus exceeding the state minimum requirements where the applicant agrees to construct a greater number of affordable housing units than required pursuant to subsection (B)(2) of this section and necessary to qualify for the density bonus under this section. If such additional density bonus is granted by the city and accepted by the applicant, the additional density bonus shall be considered an additional concession or incentive for purposes of Section 65915.~~
- ~~3. For purposes of this section, a 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 Section 65915(d)(3) or 65915(e) to facilitate the construction of the residential development project at the densities provided for in Section 65915. Concessions or incentives shall also include, but not be limited to, the following categories:
  - ~~a. Concessions Not Requiring Financial Pro Forma from Applicant. The following concessions and incentives shall be available to the applicant without any requirement that the applicant demonstrates to the city that the requested concession or incentive results in identifiable, financially sufficient, and actual cost reductions to the project pursuant to California Government Code Section 65915(l):
    - ~~i. Parking Concessions. The following maximum parking standards, inclusive of handicapped and guest parking, shall apply to the entire project:~~~~~~

<del>0—1 bedroom dwelling unit</del>	<del>1 on-site parking space</del>
<del>2—3 bedroom dwelling units</del>	<del>2 on-site parking spaces</del>
<del>4 or more bedroom dwelling units</del>	<del>2.5 parking spaces</del>

~~Except that, for residential development projects in the downtown parking assessment district or in downtown areas outside the assessment district, the parking requirements set forth in Sections 14.18.040 and 14.04.060 of this title shall apply. For purposes of this section, on-site parking may be provided through tandem parking or uncovered parking;~~

- ~~ii. Waiver of planning and building fees subject to city council Resolution 11025;~~
- ~~iii. Height bonuses, as identified and listed in Exhibit 10 of the General Plan 2020 Land Use Element;~~

- ~~iv. Up to a twenty percent (20%) deviation from yard setback requirements, with each deviation counting as one concession or incentive;~~
- ~~v. Up to a twenty percent (20%) deviation for lot coverage requirements;~~
- ~~vi. Up to a twenty percent (20%) reduction in landscape requirements.~~

~~b. Concessions Requiring Financial Pro Forma from Applicant. The following concessions and incentives, when requested by the applicant, shall require the applicant to demonstrate to the city council that the requested concession or incentive results in identifiable, financially sufficient, and actual cost reductions to the project pursuant to California Government Code Section 65915(l):~~

- ~~i. Reduction in the minimum requirements of any of the following: lot area; lot width; setbacks; distance between residential structures; usable outdoor space; private yard area; landscape requirements, including for parking lots; and architectural design requirements that exceed the minimum building standards established by local or state building code standards;~~
- ~~ii. Increases in the maximum requirements, above the levels identified in subsection (H)(3)(a) of this section, for any of the following: lot coverage; building height; percentage of compact parking spaces; floor area ratio for nonresidential development; fence height; and sign area or maximum dimensions;~~
- ~~iii. Reduced parking space dimensions, driveway width, parking aisle width, garage and carport dimensions; location of parking spaces within setback areas; and reduced bicycle parking requirements;~~
- ~~iv. For hillside parcels: increase in maximum gross building size on hillside parcels; decrease in proportion of required natural state; and exception for development within one hundred (100) vertical feet of a visually significant ridgeline for hillside parcels;~~
- ~~v. Any other reduction or waiver in site development standards or modification of zoning or architectural design requirements necessary pursuant to California Government Code Section 65915(d)(3) or 65915(e), or any other proposed concession or incentive not identified in subsection (H)(3)(a) of this section.~~

~~Each of the concessions or incentives identified in subsection (H)(3)(b) of this section shall require the approval of the city council.~~

- ~~4. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this section shall be submitted in conjunction with the project application and shall be processed concurrently with all other applications required for the project in the manner provided for in Division 5 of Title 14 of the city's code. The cost of reviewing any required pro forma 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 pro forma, shall be borne by the applicant. The application shall be submitted on a form provided by the city and shall include, at a minimum, the following information:~~



- a. ~~A site plan showing the total number of units, the number and location of the units dedicated pursuant to California Government Code Section 65915(b), and the number and location of the proposed density bonus units;~~
- b. ~~The level of affordability of the dedicated units;~~
- c. ~~A description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards. If the applicant is requesting concessions or incentives identified in subsection (H)(3)(b) of this section, the application shall also include pro forma information demonstrating to the city that the requested concession or incentive results in an identifiable, financially sufficient, and actual cost reduction. Where the applicant is requesting the modification or waiver of a development standard or a zoning or architectural design requirement, the applicant shall submit evidence demonstrating that the application of the subject standard or requirement would preclude construction of the project at the densities provided for in California Government Code Section 65915 and that the waiver or modification is necessary to make development of the project financially feasible;~~
- d. ~~If a density bonus is requested for a land donation pursuant to California Government Code Section 65915(h), the application shall show the location of the land to be dedicated and provide evidence that the requirements of Section 65915(h) have been met, thus entitling the project to the requested density bonus;~~
- e. ~~If a density bonus is requested for construction of a child care facility pursuant to California Government Code Section 65915(i), the application shall show the location and square footage of the proposed facility and provide evidence that the requirements of Section 65915(i) have been met, thus entitling the project to the requested density bonus.~~

**Table 14.16.030-1**  
**Summary of State Density Bonus Requirements**

The state density bonus law is codified at California Government Code Section 65915. In general, it requires the city to grant a density bonus, as well as certain concessions and incentives, to qualifying residential development projects. The following chart provides a general overview of the requirements:

Type of Units*	% of Dedicated Units	Density Bonus**	Concessions or Incentives
Lower Income	10%	20%	1
(1.5% increase in density bonus for every 1% of dedicated units over 10% threshold) (max 35% density bonus)			

Type of Units*	% of Dedicated Units	Density Bonus**	Concessions or Incentives
	20%	35%	2
	30% or above	35%	3
Very Low Income	5%	20%	4
(2.5% increase in density bonus for every 1% increase in dedicated units over 5% threshold) (max 35% density bonus)			
	10%	33%	2
	15% or above	35%	3
Moderate (condominium*** or planned development only)****	10%	5%	4
(1% increase in density bonus for each 1% increase in dedicated units over 10% threshold) (max 25% density bonus)			
	20%	15%	2
	30% or above	25%	3

\* Section 65915 applies only to proposed developments of five (5) or more units.

\*\* Section 65915(g) defines a "density bonus" as "a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of the application by the applicant to the local government."

\*\*\* Pursuant to California Civil Code Section 1351, a "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in

common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land, except by easements for access and, if necessary, support. The description of the unit may refer to: (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real properties, except for the separate interests, or may include a particular three (3) dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land, except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

~~\*\*\*\*Pursuant to 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 Section 1367 or 1367.1.~~

In addition, a developer/applicant can also qualify for a mandated density bonus in the following situations:

**Table 14.16.030-2  
Summary of State Density Bonus Requirements**

~~EXPAND~~

Project	Threshold	Density Bonus	Conc Ince
Senior Housing	35 units dedicated to senior housing as defined in Civil Code Sections 51.3 and 51.12	20%	4

I. 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;

- 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 <sup>1</sup> )
Office <sup>2</sup> or Research and Development uses	0.03
Retail, Restaurant or Personal Service uses	0.0225

Development Type	Number of New Very low, Low and Moderate Income Units (per 1,000 square feet of gross floor area <sup>1</sup> )
Manufacturing or Light Industrial uses	0.01625
Warehouse uses	0.00875
Hotel or motel uses <sup>3</sup>	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.

1. 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 ~~Section 14.16.030.I.2~~ 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 ~~Sections 14.16.030.C, D, H 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.
2. Calculation and Payment of In-lieu Fee. The amounts and calculation of the housing in-lieu fee shall be based on the formula set forth in Section 14.16.030.F and 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.

- J. 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.
- K. 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.

**RESOLUTION No. \_\_\_\_\_**

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

**WHEREAS**, Section 14.03.030 of the San Rafael Municipal Code 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 a duly-noticed public hearings on the proposed amendments to the SRMC Title 14, 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 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

**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**, 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 Chapter 14.03.030.
- B. Affordable Housing Requirements. Residential development projects between two (2) and fifteen (15) units shall meet only the Primary Requirement. Residential development project greater than fifteen (15) units shall meet both the Primary Requirement and Secondary Requirement. 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 units must be affordable to and occupied by a low-income household
15 or more Housing Units*	5% of the units must be affordable to and occupied by a low-income household

\* See exemptions listed in subsection (B)(1) of this section.

- 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 units, in addition to units provided through Section B.1, must affordable to and occupied by a low-income household;
    - ii. 10% of the units, in addition to units provided through Section B.1, must 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 percentage (5%) of the total project 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 Community Development Director and meet all of the following criteria<sup>1</sup>:
    - 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 A.2.a;
    - 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-lieu fees contribution as described in Section A.2.b until there is a construction financing closing on the off-site units.
  - d. Donation of Land to the City. The Community Development Director 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, it is determined 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. 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. 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;

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<sup>1</sup> The Community Development Director may, under extraordinary circumstances, recommend an off-site project outside these defined parameters.

- 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 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 Resolution 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, hereby certify that the forgoing resolution was adopted as a regular meeting of the City Council on the \_\_\_\_\_ day of December 2020.

AYES:

NOES:

ABSENT:

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LINDSAY LARA, City Clerk

RESOLUTION No. \_\_\_\_\_

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL 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**

**WHEREAS**, the City's Density Bonus regulations, set forth in San Rafael Municipal Code Section 14.16.030 Affordable housing establishing 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 Affordable housing said section was last amended in 2010; and

**WHEREAS**, over the past 10 years there have been a number of changes to State Density Bonus Law (SDBL) as set forth in Government Code Section 65915 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 no longer align with Government Code Section 65915 in that the percentage of density bonus and number of concession and incentives have been modified by the State; and

**WHEREAS**, the City Council has adopted Amendments to Section 14.16.030 which sets forth the City's intent to comply with State Density Bonus Law and references this resolutions document setting forth the City's Density Bonus Regulations; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby adopts the following Density Bonus and Incentives Regulations

- A. **Purpose:** In accordance with, Government Code Section 65915 ( also known as State Density Bonus Law) 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 and other concession, incentives and/or waivers and reductions of development standards, if eligible, in accordance with the following:
- 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 City Council Resolution. The amount of density bonus shall 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 City Council 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 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 City Council 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 - qualified student housing development shall be one that meets the following criteria
  - i. At least 20% units are for lower income students as follows:
    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 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 mobilehome 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 child care facility meeting the criteria in section (i)
  - i. Eligible child care facility
    - 1. 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. “Child care 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 child care facility.
    - 2. An additional concession or incentive designated by the City that contributes significantly to the economic feasibility of the construction of the child care facility.
- g. Land Donations
  - 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 in below. Housing shall be constructed on the site of the commercial development or on a site that meets 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.
    - 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. Located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.
  - ii. Development Bonus
    - 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 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. In-Eligible 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 City Council resolution (see Exhibit 1). 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 bonus to be selected from the categories in Table 3 of this City Council Resolution. 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 Section 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 Section C above shall be allowed the number of concessions set forth in Table 4 of this Resolution (see Exhibit 2). 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 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 11025.

**I. Parking Concessions.** The maximum parking standards, inclusive of handicapped and guest parking, shall apply to the entire project as follows:

<p>TABLE 1 MAXIMUM PARKING RATIOS* FOR AFFORDABLE HOUSING PROJECTS</p>
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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.

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 done 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 Application

- 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 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 Section C.g. 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 Section 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:

- 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:

- 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 City Council 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, or
- d. The grant of a waiver or reduction would be conflict with state or federal law.
- 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”* Pursuant to California Civil Code Section 1351, a "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land, except by easements for access and, if necessary, support. The description of the unit may refer to: (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real properties, except for the separate interests, or may include a particular three (3) dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land, except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

*“planned development”* Pursuant to 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 Section 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.

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 this Resolution 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, hereby certify that the forgoing resolution was adopted as a regular meeting of the City Council on the \_\_\_\_ day of December 2020.

AYES:

NOES:

ABSENT:

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LINDSAY LARA, City Clerk

**EXHIBITS**

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

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

<b>PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS</b>	<b>1. EXTREMELY LOW OR VERY LOW INCOME UNITS</b>	<b>2. LOWER INCOME UNITS</b>	<b>3. MODERATE INCOME<sup>2</sup> UNITS</b>	<b>4. QUALIFIED LAND DONATION</b>	<b>5. QUALIFIED SUPPORTIVE HOUSING</b>	<b>6. QUALIFIED COLLEGE STUDENT HOUSING</b>	<b>7. DENISTY BONUS FOR ALL SENIOR HOUSING<sup>3</sup></b>
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**

<b>PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS</b>	<b>1. EXTREMELY LOW OR VERY LOW INCOME UNITS</b>	<b>2. LOWER INCOME UNITS</b>	<b>3. MODERATE INCOME<sup>2</sup> UNITS</b>	<b>4. QUALIFIED LAND DONATION</b>	<b>5. QUALIFIED SUPPORTIVE HOUSING</b>	<b>6. QUALIFIED COLLEGE STUDENT HOUSING</b>	<b>7. DENISTY BONUS FOR ALL SENIOR HOUSING<sup>3</sup></b>
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**

<b>PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS</b>	<b>1. EXTREMELY LOW OR VERY LOW INCOME UNITS</b>	<b>2. LOWER INCOME UNITS</b>	<b>3. MODERATE INCOME<sup>2</sup> UNITS</b>	<b>4. QUALIFIED LAND DONATION</b>	<b>5. QUALIFIED SUPPORTIVE HOUSING</b>	<b>6. QUALIFIED COLLEGE STUDENT HOUSING</b>	<b>7. DENISTY BONUS FOR ALL SENIOR HOUSING<sup>3</sup></b>
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**

<b>PERCENT OF UNITS DEDICATED AS AFFORDABLE UNITS</b>	<b>1. EXTREMELY LOW OR VERY LOW INCOME UNITS</b>	<b>2. LOWER INCOME UNITS</b>	<b>3. MODERATE INCOME<sup>2</sup> UNITS</b>	<b>4. QUALIFIED LAND DONATION</b>	<b>5. QUALIFIED SUPPORTIVE HOUSING</b>	<b>6. QUALIFIED COLLEGE STUDENT HOUSING</b>	<b>7. DENISTY BONUS FOR ALL SENIOR HOUSING<sup>3</sup></b>
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% <sup>1</sup>	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

September 4, 2020

Honorable Mayor Phillips and City Council members  
City of San Rafael  
1400 Fifth Ave. Room 203  
San Rafael, CA. 94901

**CITY COUNCIL Hearing for Tuesday, Sept 8**

**Agenda Item 5.a: Measures to Facilitate Housing Development & Streamline Approvals -  
Comments on proposed changes to the Design Review Board and Hillside Exception Approval**

Honorable Mayor Phillips and City Council members:

We are a group of civically engaged residents that live on a hillside in San Rafael that includes Fremont Rd, Upper Fremont Drive, and Marquard Ave (aka Moore Hill) in the West End neighborhood. We are concerned about changes proposed by the Community Development Department that, if adopted, will directly impact future development on our hillsides. We think our surrounding hillsides present significant challenges for the development of remaining infill lots, including 1 acre on Upper Fremont Drive and 5.5 acres on Dunand Court, as well as much smaller lots with slopes exceeding 80%. Your decision to reduce (aka “streamline”) the review of development on our hillsides in our community will have a major impact on the safety, liveability and enjoyment of our neighborhoods.

Parcels in this area were created over 100 years ago, in 1913, when the roads were dirt and San Francisco residents built summer cabins in the area. Over the years, many of the original lots have been combined to create reasonably sized parcels more amenable to hillside development. The streets are city-maintained, very narrow and steep with hair-pin turns; in fact, a portion of Upper Fremont Drive remains as a dirt road.

Fremont and Upper Fremont are both 2-way dead-end streets with an average width of 12 feet, but in places only 9 feet wide! City code requires a minimum width of 25’ for a public street (15.07.030). When 2 cars going opposite directions meet, someone must back-up onto private property in order for the cars to pass, sometimes perilously backing uphill. There are no Fire Truck turn-arounds on either road and Fed-Ex has refused to deliver packages to portions of the hill due to the inability to turn their trucks around. Residents’ property has been damaged from vehicles backing into railings, fences, garages, and other cars, parked on private property.

We appreciate the City having the foresight to adopt the Hillside Design Guidelines (HDG) which protect our hillsides and provide a template for sensible development. We think the current process has been successful and question whether any streamlining or shortening of the public process will serve the City’s goal of providing a safe, healthy, and liveable environment in partnership with the community (Mission Statement, FY 2019-20).

Summary of our positions:

**1. Design Review Board (DRB) – We strongly SUPPORT public hearings by the full board for all hillside development**

**2. Downgrade the review and action on Hillside Exception requests from the City Council to the Planning Commission – We strongly OPPOSE the transfer of authority from the City Council to the Planning Commission to decide any Exceptions to Hillside development guidelines or standards.**

Discussion:

1. We **SUPPORT** maintaining the full Design Review Board hearings for hillside development.

The Design Review Board:

- Provides a valuable service to the city.
- Has extensive experience and expertise that is difficult to replicate or replace if disbanded.
- Provides expertise with design on sites that are difficult to develop because of shape, size or topography.
- Has extensive experience resolving design challenges for hillside development.
- Improves compliance with the Hillside Design Guidelines and limits the need for Exceptions.
- Public hearings should be required for projects requesting Exceptions to the HDG.
- Promotes excellence in project design.
- Provides support and oversight to “fill in the gaps” for reduced staffing or inexperienced staff in the Planning Department.
- Provides interested residents and those directly impacted an opportunity to comment on the design.
- Proposed changes would not allow the public to submit comments about the design or in any way participate in the design review process.
- Design issues not adequately addressed by the DRB will be moved to the Planning Commission which holds less design expertise.
- Instead of saving time, it may increase time at the Planning Commission to resolve issues that were previously heard before the DRB.
- The City, as a whole, benefits from well designed buildings that, once built, will be there for the enjoyment and harmony of the community for many years to come.

The Council may want to differentiate between process changes for large commercial/residential projects in the downtown or Costco at Northgate that generate a large public response versus hillside development which usually involves smaller projects but needs extra attention to the design because of the City’s intention and adoption of additional design criteria to protect our hillsides.

We see significant value in maintaining the Design Review Board hearings for hillside development. In a recent application for a 3-story home on this hillside, the planning department chose to forgo the DRB hearing for a less formal review. The plans only showed one exterior door and code requires at least two means of egress; the limited design review did not discover this. We included this deficiency

in our comments but we didn't see the plans until after the design review. The Planning Commission will now need to address this design flaw. The planner suggested that the building department could swap a window out for a door but we feel all design issues should be addressed in the early stages of review, not after the project has been approved, sparing all parties wasted time, costs and frustration.

In another instance, a member of the Design Review Board discovered that the square footage of the lot was overstated by more than 1,000 sq feet on the plans. This is critical on hillside lots because both the lot square footage and slope are used to determine the natural state requirement (ie: amount of square footage to be left in a "natural state") which ultimately determines the size of the home that can be built. An overstatement of the lot size can result in a larger house than would otherwise be allowed.

2. We strongly **OPPOSE** the downgrading of Exception approval from the City Council to the Planning Commission for all projects subject to the Hillside Development standards for the following reasons:

- The current process has been in effect for almost 30 years and has been very effective at improving design quality in our hillside residential neighborhoods, as intended.
- The City Council further clarified their intention of requiring Exception approval by the City Council in 2010 by inserting the phrase "City Council Exception Required" in 14.12.040 (Ord. No. 1882).
- The proposed change undermines the Hillside Design Guidelines' original intent to require oversight by the City Council for any deviation from the objectives of Hillside Development standards.
- The proposed change would allow the Planning Commission "carte blanche" to approve any and all Exceptions without limitation on the number or extent of deviation from the standard.
- The Planning Commission doesn't have the gravitas to evaluate Exceptions that carry the potential to threaten public health and safety, e.g: an Exception to the parking requirement that results in road blockages and lack of access for fire and emergency vehicles.
- Reverses successful practices of the past, changing the character of hillside neighborhoods, and creating ill-intended negative impacts on residents.
- Shifts the burden from the developer justifying the Exception to an appellant proving why an Exception approved by the Planning Commission should be reversed.
- Creates a barrier to public participation by requiring payment of a \$350 filing fee to appeal a Planning Commission decision to the City Council for an Exception.
- Possible increase in the number of appeals filed before the City Council.
- What appears as a minor change could prove disastrous over time as developers pursue approval of hillside Exceptions more aggressively and with more frequency and acceptance, resulting in "process creep" where Exceptions become the "norm" and Hillside Development Standards are no longer relevant.
- With the paring down of the Design Review Board input and proposed downgrading of City Council's authority for approving Exceptions, the review and approval process of a hillside development is reduced to the Planning Commission, as the sole hearing body, or in some cases, the Zoning Administrator, reversing years of past practice involving a careful and thorough review and resulting in what we believe is an incomplete process.
- Decisions about Exceptions that impact Public Health and Safety are best made by the City Council, NOT the Planning Commission.

The original development of the Hillside Design Guidelines, in 1992, went through a rigorous development and review process. It received outstanding national recognition for protecting environmental resources and providing architectural guidelines to prevent massive, out-of-scale hillside development. The City received several outstanding planning awards from the American Planning Association and the Guidelines have served as a model for other communities across the country!

It was the intention of the City Council at the time of adoption of the Hillside Guidelines that City Council approval was required for all Exceptions. As Council member Joan Thayer said, “how could we carry out the objectives of the standards if all of the criteria is waivable.” Council member Cyr Miller said that “exceptions should be limited to those which are absolutely legally necessary and limit approval to the City Council.” Sheila Delimont, the assistant Planning Director at the time, said that “if it is approved by the City Council, it has to be superior to what the Guidelines require” and that exceptions would not be granted wholesale, but only after careful consideration by the Design Review Board and City Council.

The decision to require the City Council to hear exceptions was intentional. There was careful deliberation about what this meant and why it was important to require City Council approval of Exceptions. With enough flexibility in the guidelines, any exception to the guidelines should be based on a superior application of the guidelines, not a dismissal of them. That is reflected in the current municipal code, 14.12.040. B. which states the criteria for granting an exception:

***“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.”***

In fact, the City Council strengthened the wording for Exceptions to Hillside development standards in 2010 (Ord. 1882) by adding the words “City Council Exception Required”.

Now is not the time to reverse course. Thorough Design Review and Exception approval by the City Council are critical to maintain the continued success of hillside development in San Rafael. A temporary economic slump is not a reason to loosen the standards. Once changed, it would be very difficult to reinstate after the economy recovers and the negative impacts on our neighborhoods are permanent.

The Planning Commission’s role is to make decisions on development and land use applications, not Public Safety. Many of the Exceptions to the Hillside development standards have a direct impact on Public Health and Safety and are best decided by the City Council. For example:

a. Exceptions to the natural state requirement or parking requirements can compromise Public Health and Safety by impacting emergency access or facilitating the spread of fire to neighboring structures.

On January 4, 2016, a house on Upper Fremont Drive caught fire and resulted in a total loss. To avoid the first hair-pin turn on Fremont Rd, a large Fire truck stopped on Fremont, just past Marquard, where fire fighters decided to physically carry heavy equipment 800 feet up the steep hill and down a dirt road to the burning house. According to the Fire log, at 1:42 am, it says “E54 and B52 are stuck unable to get out at this time.” The Chief officer car and a Suppression Engine were stuck and could not get off the hill. There is no fire truck turn-around on Upper Fremont, as required by the International Fire

Code which requires a turn-around on access roads in excess of 150 feet (Section D 103.4). Lack of a fire truck turn-around makes it impossible to maneuver emergency vehicles.

Fortunately, this disaster occurred during a cold rainstorm, in the dead of night. If not for the rain, it could have been much worse. Imagine if it had happened on a dry, windy, hot summer day during a rolling PG&E blackout. The burning house was far enough from other homes that flying embers were less likely to land on neighboring rooftops. Development that complies with the natural state requirement creates enough distance between hillside homes to prevent the quick spread of fire. If hillside parking standards are relaxed, illegally parked cars could block access for fire and emergency vehicles or block evacuation and trap residents during an emergency.

The Fire Marshall recently commented on access issues for a vacant lot on Upper Fremont:

**“The Fire Department is unable to provide emergency fire or EMS services that meets NFPA Standard 1710 response time criteria because the existing public roadway does not accommodate fire apparatus vehicles and does not meet CFC provisions for Fire Apparatus Access Roads. San Rafael Fire vehicles are unable to maneuver to this property due to unusual topographical conditions, substandard roadway width, and hairpin type curves that do not meet CFC turning radius provisions. Additionally, there is no existing provision on Upper Fremont Drive to accommodate the turning around of fire apparatus as required by CFC Appendix D.”**

There is no firetruck turnaround on Upper Fremont Drive or at the end of Fremont Road. These are both dead-end streets with only one way in, and one way out.

b. Comprehensive geotechnical and hydrological assessment is important to avoid building on unstable slopes and underground aquifers, causing damage to nearby properties or city streets.

This hillside has a history of landslides caused by unstable slopes and excessive runoff during the rainy season. Areas subject to slides or instability are a threat to public safety. Slippage and collapse, drainage and erosion can threaten neighboring properties.

Exceptions to Hillside development standards should remain the exception and not the norm. The City Council is the appropriate body to make the final determination whether an Exception will compromise public safety or subject the City to potential litigation in the future.

In closing, we request that you ask yourselves the following:

- What is the outcome you envision as a result of these "streamlining" proposals? Do you expect the outcome, in this case the approved development, to be the same?
- We understand the need to create an efficient system that works for everyone. However, by eliminating steps in the review process (taking short-cuts), are you really "improving" the process, or is the quality of the process being compromised?
- Whose interests are best served by eliminating public hearings in front of the Design Review Board and City Council (re Exceptions) for hillside developments)?
- Have you considered that eliminating these public hearings may be perceived as a lack of transparency, especially during COVID-19 restrictions.
- Finally, please explain how eliminating public hearings fulfills your Mission Statement (FY 2019-20) to work in partnership with the community to create safe, healthy and liveable environments.

We are pleased to receive support from our hillside neighbors in Gerstle Park, as noted below. We trust our comments will be taken seriously, and we appreciate your careful consideration.

Sincerely,

Victoria DeWitt, Fremont Rd  
Fred P. Cushing, Upper Fremont  
Michael Smith, Upper Fremont  
Davis Perkins, Upper Fremont  
Toni McIntyre, Marquard  
Mikei Davis, Upper Fremont  
Steve Thomson, Fremont Rd  
Maren DeGraff, Fremont Rd  
Zanette Johnson, PhD, Marquard  
Crystal Wright, Upper Fremont  
Tim Bowen, Fremont Rd

Amy and Joe Likover, Reservoir (Gerstle Park)  
Tom Heinz, Clorinda (Gerstle Park)  
Denise Van Horn, Clorinda (Gerstle Park)  
Emese Wood, Gloria Dr (Gerstle Park)  
Dolores Manuel, Estates Court (Gerstle Park)  
Lori Davis, Upper Fremont  
Jasmin Thomson, Fremont Rd  
Adam DeGraff, Fremont Rd  
Mark Abadi, Marquard  
Rena Harel, Upper Fremont  
Anne Bowen, Fremont Rd

cc: Paul Jensen, Community Development Director

September 21, 2020

Honorable Mayor Phillips and City Council members  
City of San Rafael  
1400 Fifth Ave. Room 203  
San Rafael, CA. 94901

**CITY COUNCIL Hearing for Monday, Sept 21 -**  
**Agenda item 5.a. Measures to Facilitate Housing Development and Streamline**  
**Approvals**

Honorable Mayor Phillips and City Council members:

We are pleased with the new policy direction proposed by staff to include public noticing and public comment and participation in the Design Review meetings. We have the following comments/questions regarding this proposal:

1. Will noticing procedures be similar to current noticing procedures for the DRB?
2. Will the public be able to submit written comments after having an opportunity to review the plans?
3. Will the meeting occur in the evening, rather than in the daytime, to accommodate residents that work during the day?
4. For hillside development projects, isn't it generally preferable to hold the Design Review meeting BEFORE the Planning Commission hearing since compliance with the Hillside Guidelines is a major part of the review?

We continue to OPPOSE the downgrading of Hillside Exception approval from the City Council to the Planning Commission. However, in light of staff's current recommendation to adopt this change and recognizing that even with the best intentions of the current staff and City Council to discourage Exception requests, this intention may diminish over time as turnover in staff and City Council occurs.

As such, we recognize the importance of providing clear guidance to the Planning Commission to assist in their decision making process when reviewing requests for Exceptions to the Hillside Design Guidelines and Development standards.

We are proposing the following changes to municipal code 14.12.040 in order to provide clear guidelines to the Planning Commission and provide standards for hillside projects seeking an Exception:



## **Proposed SRMC Amendments to 14.12.040 -Exceptions to property development standards.**

Deletions are shown as ~~strikethroughs~~

Additions are shown underlined

### **14.12.040 -Exceptions to property development standards.**

~~City Council~~ Planning Commission Exception Required. Minor Exceptions to the property development standards of this chapter may be approved by the ~~city council~~ planning commission, upon the recommendation of the design review board ~~after a noticed public hearing and the planning commission~~, when the applicant has demonstrated that alternative design concepts carry out the objectives of this chapter and are consistent with the general plan and other provisions of the municipal code, ~~based on~~ including 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 and minimize grading, 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 and natural drainage ways result in a demonstrably superior project with greater sensitivity to the natural setting and compatibility with and sensitivity to nearby structures; ~~;~~ and

C. That granting the exception will not be detrimental or injurious to persons, property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and

D. Grading is limited to only what is necessary to allow reasonable development of the site. Exceptions for excessive grading shall include a geotechnical report required by the Geotechnical Review Matrix (Exhibit F) with recommendations from the City Engineer as to the Safety and Feasibility of the proposed development prior to the Design Review Board public meeting; and

E. The burden of proof shall be on the applicant to show that there are compelling reasons for granting the exception; and

F. Adequate fire safety measures have been incorporated into the design of the project including necessary improvements for fire and emergency vehicle access; and

G. The proposed exception will not result in degradation of the Hillside Design Guidelines by introducing an undesirable precedent.

In addition, I think it would be helpful to define when the grading and excavation required by a project exceeds the amount allowed or intended by the Hillside Guidelines and needs an Exception.

We appreciate your careful consideration of our comments.

Respectfully submitted,

Victoria DeWitt, Fremont  
Davis Perkins, Upper Fremont  
Crystal Wright, Upper Fremont  
Steve Thomson, Fremont  
Tim Bowen, Fremont  
Mark Abadi, Marquard  
Toni McIntyre, Marquard  
Adam DeGraff, Fremont  
Jasmin Thomson, Fremont  
Lori Davis, Upper Fremont  
Michael Davis, Upper Fremont

Amy and Joe Likover, Reservoir (Gerstle Park)  
Dolores Manuel, Estate Court (Gerstle Park)  
Emese Wood, Gloria Dr (Gerstle Park)  
Ron Freshman, Blossom Ct (Bret Harte)  
Anne Bowen, Fremont  
Zanette Johnson, PhD, Marquard  
Rena Harel, Upper Fremont  
Maren DeGraff, Fremont  
Davis Perkins, Upper Fremont  
Crystal Wright, Upper Fremont