

February 16, 2021

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

CITYCOUNCIL Meeting for Tuesday, February 16, 2021
Agenda item 6.a. Housing Development Policies and Permitting

Public Comments: Opposition to proposed amendments to SRMC 14.12.040, Hillside Exceptions process

Honorable Mayor Kate Colin and City Council members:

Residents of the West End, Gerstle Park, Bret Harte, and Mont Marin neighborhoods strongly oppose the proposed downgrading of the Hillside Exception approval process from the City Council to the Planning Commission because it will weaken compliance with the Hillside Guidelines and create a barrier to public participation by replacing an approval process with an appeal process.

Requested Council Action:

We request that you direct staff to return with additional information on how the proposed changes to *Section 14.12.040 – Exceptions to property development standards (Hillside Overlay)* align with the current code for exceptions to site development standards, *SRMC 14.24 Exceptions*. Like SRMC 14.24, we suggest that staff prepare specific criteria for minor exceptions to the Hillside development standards and include our suggested amendments described in item #5 below.

Discussion Points:

1. Staff states their reason for proposing this change is to “Align the Hillside Exceptions process with similar requests for exceptions in other parts of the Code” but the proposed Exception process for Hillside development *DOES NOT* align with municipal code 14.24 for other Exceptions.

SRMC 14.24 Exceptions states “The purpose of this chapter is to provide flexibility in the application of selected site development regulations where minor adjustments are needed.” Exceptions can only be granted for minor adjustments specified in 14.24.020. For example, fence height can be increased no more than 2 feet and only where topography warrants in order to maintain a consistent level of privacy. Minor adjustments are allowed for setbacks, from 2-1/2 feet to 10% depending on the specific zoning of the site. Chapter 14.24 allows minor exceptions to site development standards but only those described in 14.24.020 where very detailed, specific criteria is provided.

In contrast, Planning staff is proposing to eliminate the City Council as the deciding body and give the Planning Commission full discretion to approve any and all Exceptions for hillside development without limit in the number or scope of the exceptions, effectively undermining the Hillside Residential

Design Guidelines and regulations. Exceptions will get buried in the overall review of the project by the Planning Commission whose role is to consider the project in its entirety, where the current process allows the City Council to only consider and approve the Exception. If staff intention was to align this process with the exception process described in SRMC 14.24, only minor adjustments would be allowed and very specific criteria for allowed exceptions would be provided.

During the City Council's public hearing for the newly created Hillside Design Guidelines, former Councilmember, Al Boro, had the foresight to suggest that "the Council needs to have specific criteria before they decide on exemptions so they can be consistent if they decide to approve any." His statement shows that none to few exceptions were expected to come before the Council for approval. His comments take on more significance now as you consider Planning staff's proposal to allow full discretion by the Planning Commission to approve any and all exceptions as part their review, without limit or guidelines and removing City Council oversight. Maybe now we see the relevance of Al Boro's recommendation to develop specific criteria for hillside exceptions, similar to criteria for other development exceptions (SRMC 14.24).

2. Staff suggests that the public can still have the City Council approve an Exception by filing an appeal.

The proposed change completely alters the process by replacing an approval process with an appeal process which requires a member of the public to file an appeal and pay a fee in order for the City Council to review the project. Where the current process only requires the City Council to review and approve the exception, an appeal does not limit what could be considered on appeal, raising the possibility of the appellant raising several objections to the project.

The burden shifts to the public to convince the Council to reverse a decision made by the Planning Commission, not just to disallow the exception. In addition, payment of an appeal fee can be a hardship for some and the decision and reasons for an appeal must be made within only a few days after project approval. The appeal process is expensive, intimidating and time consuming for most residents and can thwart public participation, not to mention the applicant's frustration for having to go through an appeal process and defend the entire project.

3. The City Council, not the Planning Commission, is the appropriate body to approve Exceptions to Hillside development.

Chapter 14.12 Hillside Development Overlay District is one of four overlay districts defined in the Municipal Code. The Hillside Overlay is the only overlay district that includes the protection of public health and safety as the primary reason for its adoption. The purpose of the Hillside development overlay district is provided in 14.12.10 – Specific Purposes, as follows:

- A. To protect public health and safety by minimizing hazards, including seismic and landslide risks, soil erosion and fire danger associated with development on steep and/or unstable slopes;
- B. To encourage preservation of natural hillside features;
- C. To ensure adequate emergency access by providing on-site parking;
- D. To implement the residential site design policies of the general plan and the Hillside Residential Design Guidelines Manual.

These are the reasons why the Hillside guidelines and regulations were adopted by the City Council and any deviation from the regulations could fail to protect public health and safety. The Planning Commission's role is to "make decisions or advise the Council on land use and property development issues" (source: Reviewing Bodies, city website). Protecting public health and safety are entrusted to the City Council.

We are concerned that downgrading approval of hillside exceptions from the City Council to the Planning Commission will result in more exceptions being allowed, increasing a precedent for greater departures from the Hillside Guidelines/standards, and compromising public health and safety. For these reasons, the City Council is the appropriate body to decide any exceptions or deviations from the adopted Hillside regulations.

4. The fact that few Hillside Exceptions are heard by the City Council should not be incorrectly interpreted. The procedure requiring City Council approval for Exceptions by itself is meant to limit requests for exception approval to only those projects with no other alternative. The fact that few projects come to the City Council for Exception approval means that the process is working, that projects are able to comply with Hillside regulations, as intended. Remember my previous reference to Al Boro's comment that he expected the Council may not approve any exceptions, emphasizing the expectation that the Hillside regulations, as adopted, would result in none to few exception approvals.

All attempts to comply with the Hillside guidelines and regulations should be made before going to the City Council for an exception approval, as Cyr Miller, a former Council Member that adopted the Hillside Guidelines said: "Exceptions should be limited to those which are absolutely legally necessary and limit approval to the City Council."

5. We ask you to consider the following suggested amendments to **14.12.040 – Exceptions to property development standards (Hillside Overlay)**, as follows:

Recommended changes to the first paragraph:

- We recommend maintaining the **City Council** as the authority to approve Exceptions.
- We recommend changing "Exceptions to the property development standards..." to "**Minor** exceptions to the property development standards...".
- We also recommend changing the wording "upon the recommendation of the design review board" to "upon the recommendation of the **full** design review board **after a noticed public hearing**".

We recommend adding additional criteria, C. through G. This additional criteria relates back to the specific purposes cited in 14.12.10. and D. is copied from SRMC 14.24.060. B.

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

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

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

F. Grading is limited to only what is necessary to allow reasonable development of the site and ensure preservation of the natural hillside; and

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

Additional comments re current status of approved housing projects (attachment 2 of staff report):

1. 1628 Fifth Avenue has been for sale for over a year (469 days) per Realtor.com
2. 104 Shaver is currently for sale for \$849,000; previously listed in 10/20 for \$1,200,000; sold in 2018 for \$800,000

Thank you for your consideration of our comments.

Sincerely,

Victoria DeWitt, Fremont Rd (West End)
Fred P. Cushing, Upper Fremont (West End)
Michael Smith, Upper Fremont (West End)
Davis Perkins, Upper Fremont (West End)
Toni McIntyre, Marquard (West End)
Mike Davis, Upper Fremont (West End)
Steve Thomson, Fremont Rd (West End)
Maren DeGraff, Fremont Rd (West End)
Dr. Zanette Johnson, Marquard (West End)
Crystal Wright, Upper Fremont (West End)
Tim Bowen, Fremont Rd (West End)
Anne Bowen, Fremont Rd (West End)

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)
Ron Freshman, Blossom Ct (Bret Harte)
John Rojas, Cedar Hill Dr (Mont Marin)
Adam DeGraff, Fremont Rd (West End)
Mark Abadi, Marquard (West End)
Rena Harel, Upper Fremont (West End)
Lori Davis, Upper Fremont (West End)
Jasmin Thomson, Fremont Rd (West End)

Downgrading of Hillside Exception Approval

Denise Van Horn [REDACTED]

Sun 2/14/2021 7:29 PM

To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>

To the City Council of San Rafael:

I am a resident of San Rafael and I am in full agreement with Victoria DeWitt, opposing the downgrading of Hillside Exception approval from the City Council to the Planning Commission (SRMC 14.12.040). This item is on the agenda 2/16/21.

Thank you for your attention,

Denise Van Horn

Hillside Exceptions

Emese Wood 

Mon 2/15/2021 11:59 AM

To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>

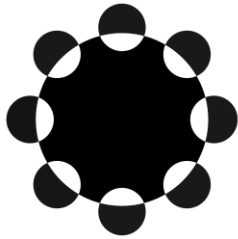
Dear Ms. Lindsay,

I would just like to be on record that I strongly oppose the downgrading of Hillside Exception approval from the City Council to the Planning Commission (SRMC 14.12.040) because it will weaken compliance with the Hillside Guidelines and create a barrier to public participation by replacing an approval process with an appeal process.

Sincerely,

Emese Wood

Gerstle Park



MARIN ORGANIZING COMMITTEE (MOC)

February 15, 2021

San Rafael City Council
1400 Fifth Avenue
San Rafael, CA 94901

Dear Mayor Colin and San Rafael City Council members:

The Marin Organizing Committee (MOC) is a broad-based member organization of 23 Marin County institutions that was founded in 2009. Our network includes faith-based institutions, and non-profits, such as Legal Aid of Marin, Marin Community Clinics, and civic organizations.

We are writing concerning the City of San Rafael's consideration of proposed changes to the San Rafael Municipal Code, specifically the proposed changes to the Inclusionary Housing Requirements and Density Bonus.

Inclusionary housing zoning programs were developed in the late 1960's and early 70's for two important purposes: (1) to provide affordable housing and (2) to exclude discrimination in market rate projects. In 2010 the City of San Rafael adopted an affordable housing requirement (inclusionary housing). **This ordinance states that affordable housing units are required in new housing developments.** Currently this ordinance reads: "for projects containing 2-10 housing units the inclusionary requirement is 10%. For projects containing 11-20 housing units, the requirement is 15%, and for projects with 21 or more units, the requirement is 20%." It is also important to note that these new affordable housing units must remain affordable for the longest feasible time or at least for 55 years.

We understand that requiring 20% inclusionary housing for projects with 21 or more units may have resulted in a hindrance for construction of multi-unit housing. Therefore, we would not oppose adoption of an inclusionary zoning formula that uses a 10% basis for smaller developments (2-15 units) and a 15% basis for larger developments. The math for construction of a 30-unit building, for example, would result in only 5 affordable units (low income or moderate income).

We recognize that San Rafael is failing to meet its housing goals and should maximize its effort to achieve its RHNA allocation but should as well still focus on creating lower-income, low-

income and moderate-income rental housing. The proposed inclusionary rate of 10% not only cuts the current formula in half, but it also eliminates the requirement to include any very low-income units, the category in which San Rafael has the least success and the need is greatest.

1. An earlier September 8, 2020 staff report concludes that a 15% inclusionary rate is financially feasible, yielding better than 15% profits and supporting very low-, low-, and moderate-income units in three out of four proposed options. Yet, in the current staff report and recommendation, it states that only the 10% scenario was feasible across all income levels.
2. The history of in-lieu fees is that they sit in the Affordable Housing Fund for extended periods – years in some cases – and lose value. In the meantime, San Rafael families and individuals could have been occupying the affordable units that did not get built. As the staff report mentions, using Affordable Housing Trust Funds to protect existing affordable housing may be a better use of the funds than attempting to build new affordable housing projects – but we would say getting new affordable housing built in our community is still the priority.

We understand the rationale behind modifying the various existing San Rafael regulations, so that the City of San Rafael can seek to meet its RHNA compliance, but in doing so the City should not allow project sponsors the option of reducing the inclusionary housing requirements from 20% down to 10%. Setting the inclusionary rates at 10% and 15% is the best option.

Sincerely,
Judith Bloomberg
Congregation Rodef Sholom

Linda Haumann
Unitarian Universalist Congregation of Marin



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February 14, 2020

San Rafael City Council
1400 Fifth Ave., Rm. 209
San Rafael, CA 94901

Mayor Colin and Council Members:

The Marin Environmental Housing Collaborative (MEHC) is a consortium of advocates building support for projects and policies that advance affordable housing as well as environmental integrity and social justice.

We are writing to urge that you adopt an inclusionary zoning formula that uses a 10% basis for smaller developments and a 15% basis for larger developments (see Table 1, next page.)

We understand and appreciate that the current inclusionary rate of 20% is one of the factors inhibiting housing development in San Rafael. Analysis in previous staff reports to the Planning Commission and City Council demonstrates that that in most scenarios, projects are feasible with a 15% inclusionary requirement (see especially the September 8, 2020 report to the City Council).

Inclusionary housing zoning programs were first developed in the late 60's and early 70's for two purposes: 1) to provide affordable housing and 2) to provide racial and economic integration in market rate projects. We strongly recommend that you do not allow payment of in-lieu fees. There is no legitimate reason for a project to exclude lower income households from a project when the inclusionary rate (at whatever rate the Council sets) allows the sponsor a reasonable profit. Allowing project sponsors to pay an in-lieu fee, rather than provide affordable housing onsite, reinforces the well-documented pattern of economic inequity and structural racism in Marin, the most segregated county in the Bay Area, by allowing developers to redirect those with lower incomes (who also tend to be persons of color) to other communities that may not be developed for years, if at all. For the same reasons, we urge that you do not permit meeting the inclusionary requirement with units offsite or by the dedication of land with "equivalent" value.

Sincerely,

Robert J. Pendoley
Chair

Table 1.

	Rental			For Sale		
	<i>2-15 units</i>	<i>16-29 base units</i>	<i>30+ base units</i>	<i>2-15 units</i>	<i>16-29 base units</i>	<i>30+ base units</i>
<i>Primary--all units</i>	10% low	10% low	5% low 5% very low	10% low	10% low	10% low
<i>Secondary</i>	<i>None required</i>	5% moderate	5% low or 10% moderate	<i>None required</i>	5% moderate	5% low or 10% moderate



February 11, 2021

San Rafael City Council
 1400 Fifth Avenue
 San Rafael, CA 94901

RE: Revised Inclusionary Housing Requirements

Honorable Mayor and Council Members:

Sustainable San Rafael appreciates the City’s exploration of a range of inclusionary housing alternatives, with the goal of optimizing both development feasibility and housing affordability. We ask that you adopt the following simplified scenario, which assures a minimum of 10% affordable units onsite while lowering the secondary onsite option to 5% moderate-income units to maintain reasonable levels of development feasibility and flexibility:

Simplified Affordable Housing Scenario

	Rental		For Sale	
	2-15 units	16+ units	2-15 units	16+ units
<i>Primary—required of all projects</i>	10% low	5% low 5% very low	10% low	10% low
<i>+ Option 1: onsite</i>	<i>None required</i>	5% moderate	<i>None required</i>	5% moderate
<i>Option 2: in-lieu \$</i>	Fractional units	\$ = 5% total units	Fractional units	\$ = 5% total units
<i>Option 3: offsite</i>	<i>None required</i>	Similar benefit	<i>None required</i>	Similar benefit
<i>Option 4: land</i>	<i>None required</i>	Similar benefit	<i>None required</i>	Similar benefit

We believe that this scenario approximates the feasibility of the original 15% scenario, which was established in earlier staff reports. While securing the basic floor of 10% affordable units in all projects, it also provides developers a flexible menu of additional options, including in-lieu payments to the City’s Housing Trust Fund. And it advances the City’s goals of more housing and greater affordability.

We would also support the original 15% Scenario, which achieves similar affordability and feasibility.

A number of points in the staff report bear further scrutiny. We ask that you consider:

- Earlier staff memos stated that the 15% Scenario was feasible except if the developer chose the low-income option. Our simplified scenario solves that by removing the low-income option and reducing to 5% the moderate-income option that yields near market-rate returns.
- The main challenge of RHNA is meeting its low and very low income housing goals, which are also essential to sustaining a diverse and equitable community and economy. The current staff proposal omits very-low-income units altogether. While we welcome new funding and staff resources becoming available for affordable housing, San Rafael should not be removing or drastically limiting proven existing tools like inclusionary housing. Old-fashioned reliance on ‘supply and demand’ is insufficient to fully address the current housing crisis.

- Some indicators suggest that the uncertainties related to the COVID pandemic may strengthen rather than diminish suburban housing markets like San Rafael.
- The use of Housing Trust funds to leverage new construction of affordable units is essential, whether in partnership with non-profit developers or by buying-down additional units in for-profit developments. We urge that at least half of Trust funds be dedicated to new units.
- Existing commitments to provide affordable housing in approved developments should be honored. We encourage case-by-case consultation with project teams to see what, if any, additional City assistance might help motivate timely construction.
- Although state density bonuses incentivize developers to meet local inclusionary requirements by allowing more market-rate units, they do not in themselves increase onsite affordability. Only maintaining a firm floor of inclusionary units accomplishes that critical goal.

Thank you for your diligent efforts to increase San Rafael's production of affordable housing, and thereby sustain and enhance the economic diversity of our community.

Sincerely,

William Carney,
President, Sustainable San Rafael

Hillside Exceptions issue

Tom Heinz 

Sun 2/14/2021 11:40 AM

To: Lindsay Lara <Lindsay.Lara@cityofsanrafael.org>

Dear City Council,

I want to give my full support to the letter and recommendations submitted by Victoria DeWitt. The issue is important to me and her reasoning is sound.

Sincerely,

Tom Heinz Gerstle Park and GPNA Board