



## AGENDA

### SAN RAFAEL CITY COUNCIL – TUESDAY, FEBRUARY 16, 2021

#### **CORONAVIRUS (COVID-19) ADVISORY NOTICE**

In response to Executive Order N-29-20, the City of San Rafael will no longer offer an in-person meeting location for the public to attend. This meeting will be streamed through YouTube Live at [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael). Comments submitted via YouTube Live must be submitted according to the directions located on the YouTube video description. The City is not responsible for any interrupted service. To ensure the City Council receives your comments, submit written comments to the City Clerk prior to the meeting. For more information regarding real-time public comments, please visit our Live Commenting Pilot page at <https://www.cityofsanrafael.org/live-commenting-pilot/>.

Want to listen to the meeting and comment in real-time over the phone? Call the telephone number listed on this agenda and dial the Meeting ID when prompted. Feel free to contact the City Clerk's office at 415-485-3066 or by email to [lindsay.lara@cityofsanrafael.org](mailto:lindsay.lara@cityofsanrafael.org) if you have any questions.

Any member of the public who needs accommodations should contact the City Clerk (email [lindsay.lara@cityofsanrafael.org](mailto:lindsay.lara@cityofsanrafael.org) or phone at 415-485-3066) who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

#### **CLOSED SESSION AT 5:30 P.M.**

**Watch on Webinar:** <https://tinyurl.com/SPCC-2021-02-16>

**Listen by phone: (669) 900-9128,**

**ID: 831-3623-3485#**

#### **OPEN SESSION**

1. Mayor Kate to announce Closed Session item.

#### **CLOSED SESSION**

2. Closed Session:
  - a. Conference with Labor Negotiators - Government Code Section 54957.6  
Lead Negotiators: Timothy L. Davis and Stephanie Vollmer (Burke, Williams & Sorensen)  
Agency Designated Representatives: Jim Schutz, Cristine Alilovich, Nadine Hade, Thomas Wong, Carmen Valdez and Sylvia Gonzalez  
Employee Organization: SEIU - Childcare; San Rafael Police Mid-Management Association; Public Employee Union, Local 1; San Rafael Firefighters' Association; San Rafael Police Association; SEIU Local 1021; Western Council of Engineers; San Rafael Fire Chief Officers' Association; San Rafael Police Mid-Management Association; San Rafael Fire Chief Officers' Association; Unrepresented Mid-Management; Unrepresented Executive Management

**REGULAR MEETING AT 7:00 P.M.**

**Watch on Webinar:** <https://tinyurl.com/CC-2021-02-16>

**Watch on YouTube:** [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael)

**Listen by phone: (669) 900-9128,**

**ID: 899-2635-9885#**

**OPEN TIME FOR PUBLIC EXPRESSION**

The public is welcome to address the City Council at this time on matters not on the agenda that are within its jurisdiction. Please be advised that pursuant to Government Code Section 54954.2, the City Council is not permitted to discuss or take action on any matter not on the agenda unless it determines that an emergency exists, or that there is a need to take immediate action which arose following posting of the agenda. Comments may be no longer than two minutes and should be respectful to the community.

**CITY MANAGER'S REPORT:**

3. City Manager's Report:

**COUNCILMEMBER REPORTS:**

**(including AB 1234 Reports on Meetings and Conferences Attended at City Expense)**

4. Councilmember Reports:

**CONSENT CALENDAR:**

The opportunity for public comment on consent calendar items will occur prior to the City Council's vote on the Consent Calendar. The City Council may approve the entire consent calendar with one action. In the alternative, items on the Consent Calendar may be removed by any City Council or staff member, for separate discussion and vote.

5. Consent Calendar Items:

a. **Approval of Minutes**

Approve Minutes of City Council / Successor Agency Regular and Special Meetings of Monday, February 1, 2021 and Special Meeting of Tuesday, January 26, 2021 (CC)

*Recommended Action – Approve minutes as submitted*

b. **Chief of Police Employment Agreement**

Resolution Authorizing the Mayor and City Manager to Execute An Employment Agreement with David Spiller to Serve As the City of San Rafael Chief of Police (CM)

*Recommended Action – Adopt Resolution*

c. **Amendment of the Current Vegetation Management Ordinance**

Second Reading and Final Adoption of Ordinance 1988: An Ordinance Amending Sections 4.12.010 and 4.12.030 of the San Rafael Municipal Code to Establish Citywide Vegetation Management and Wildfire Mitigation Standards to Help Reduce the Risk of a Catastrophic Wildfire (FD)

*Recommended Action – Final Adoption of Ordinance 1988*

d. **Regulation of On-Street Parking on Narrow Streets**

Second Reading and Final Adoption of Ordinance 1989: An Ordinance Amending San Rafael Municipal Code Section 5.40.080 Regulating Parking on Narrow, Hilly City Streets (FD)

*Recommended Action – Final Adoption of Ordinance 1989*

**PUBLIC HEARINGS:**

6. Public Hearings:

a. **Housing Development Policies and Permitting**

- i. First Introduction of An Ordinance: Consideration of An Ordinance Amending Title 14 of the San Rafael Municipal Code (Zoning) to Amend Section 14.04.040 (Property Development Standards (DR, MR, HR)), Section 14.05.030 (Property Development Standards (GC, NC, O, C/O, R/O, FBWC)), Section 14.12.040 (Exceptions to Property Development Standards), Section 14.16.030 (Affordable Housing), Section 14.16.190 (Height Bonus), Section 14.16.300 (Small Lots), and Section 14.28.040 (Public Notice And Hearing) (CD)

*Recommended Action – Pass Ordinance to print*

- ii. Resolution Adopting "Guidelines for the Administration of the Affordable Housing Requirement Program"

*Recommended Action – Adopt Resolution*

- iii. Resolution Adopting Density Bonus and Incentives Regulations Applicable to Housing Development Projects that Qualify for a Density Bonus as Set Forth in San Rafael Municipal Code Section 14.16.030

*Recommended Action – Adopt Resolution*

b. **Public Art Projects**

- i. Informational Report Providing an Update Regarding Public Art Projects in Terra Linda and Canal Neighborhoods (CD)

*Recommended Action – Accept report*

- ii. First Introduction of An Ordinance: Consideration of An Ordinance of the City Council of the City of San Rafael Amending San Rafael Municipal Code (SRMC) Section 14.25.040 Exempting from Environmental and Design Review Any Public Art Projects that Undergo Review Through a Separate Review Process Established by the City for that Purpose

*Recommended Action – Pass Ordinance to print*

**OTHER AGENDA ITEMS:**

7. Other Agenda Items:

a. **Grand Jury Report on Roadblocks to Safe Evacuations in Marin**

Resolution Approving and Authorizing the Mayor to Execute the Response to the 2019-2020 Marin County Civil Grand Jury Report Entitled "Roadblocks to Safer Evacuation In Marin" (FD)

*Recommended Action – Adopt Resolution*

**SAN RAFAEL SUCCESSOR AGENCY:**

1. Consent Calendar: - None

**ADJOURNMENT:**

*Any records relating to an agenda item, received by a majority or more of the Council less than 72 hours before the meeting, shall be available for inspection online. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing [Lindsay.lara@cityofsanrafael.org](mailto:Lindsay.lara@cityofsanrafael.org) or using the California Telecommunications Relay Service by dialing "711", at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request.*



## MINUTES

**SAN RAFAEL CITY COUNCIL – MONDAY, FEBRUARY 1, 2021**

### **CORONAVIRUS (COVID-19) ADVISORY NOTICE**

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Present: Mayor Kate  
Vice Mayor Bushey  
Councilmember Hill  
Councilmember Kertz  
Councilmember Llorens Gulati

Absent: None

Also Present: City Manager Jim Schutz  
City Attorney Rob Epstein  
City Clerk Lindsay Lara

### **REGULAR MEETING AT 7:00 P.M.**

**Watch on Webinar: <https://tinyurl.com/cc-2021-02-01>**

**Watch on YouTube: [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael)**

**Listen by phone: (669) 900-9128,  
ID: 817-3692-0337#**

### **OPEN SESSION**

1. None.

### **CLOSED SESSION**

2. Closed Session: - None.

Mayor Kate called the meeting to order at 7:00 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

Mayor Kate provided opening remarks, which included welcoming newly appointed Councilmember Hill and announcing two upcoming community surveys regarding neighborhood engagement and local businesses. In addition, she included a land acknowledgement.

City Clerk Lindsay Lara informed the community that the meeting would be streamed live to YouTube and members of the public would provide public comment either on the telephone or through Zoom or YouTube live chat. She explained the process for community participation on the telephone, Zoom and YouTube.

**OPEN TIME FOR PUBLIC EXPRESSION**

Mayor Kate invited public comment.

Correspondence in real-time through YouTube, Zoom or telephone

- Tom Obletz addressed the City Council regarding the traditional Pledge of Allegiance before council meetings

**CITY MANAGER’S REPORT:**

3. City Manager’s Report:

City Manager Jim Schutz announced:

- COVID-19 and the City’s response updates
- Homeless encampment updates

**COUNCILMEMBER REPORTS:**

**(Including AB 1234 Reports on Meetings and Conferences Attended at City Expense)**

4. Councilmember Reports:

- Councilmember Bushey announced an upcoming meeting as part of the City’s new library process, which includes a new library and combined community center option.
- Councilmember Kertz provided an update on the homeless count for this year and reported on meetings with Marin County Council of Mayors & Councilmembers (MCCMC) and Marin Wildfire Prevention Authority (MWPA).
- Councilmember Llorens Gulati reported on meetings with MCCMC and Marin Clean Energy.
- Mayor Kate reported on meetings with Transportation Authority of Marin (TAM), SMART and Marin Transit.

**CONSENT CALENDAR:**

Mayor Kate invited public comment; however, there was none.

Councilmember Kertz moved and Councilmember Llorens Gulati seconded to approve the Consent Calendar

5. Consent Calendar Items:

a. **Approval of Minutes**

**Approve Minutes of City Council / Successor Agency Regular Meeting of Tuesday, January 19, 2021 (CC)**

*Approved minutes as submitted*

b. **Annual Measure G Oversight Committee Report**

**Measure G Cannabis Business Tax Oversight Committee Report for Fiscal Year 2019-2020 (ED)**

*Accepted report*

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: None

**SPECIAL PRESENTATIONS:**

6. Special Presentations:

a. Presentation of Proclamation Supporting Black History Month (CM)

Sylvia Gonzalez-Shelton, HR Operations Manager presented the Proclamation.

b. Presentation of Proclamations to Tom Oblatz and Jeff Jones for Their Service on the Park and Recreation Commission (LR)

Mayor Kate presented the Proclamations.

**PUBLIC HEARINGS:**

7. Public Hearings:

a. **Amendment of the Current Vegetation Management Ordinance**

**Introduction of an Ordinance Amending Sections 4.12.010 and 4.12.030 of the San Rafael Municipal Code to Establish Citywide Vegetation Management and Wildfire Mitigation Standards to Help Reduce the Risk of a Catastrophic Wildfire (FD)**

Darin White, Fire Chief introduced Quinn Gardner, Emergency Management Officer who presented the staff report

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment.

**Speakers:** Tom Oblatz, Kate Powers, Victoria DeWitt, Pamela Reaves, Grace G, Regina Kretschmer, Bill Carney, Sustainable San Rafael, Belle Cole, Organizing for Action

Staff responded to public comment.

Staff responded to questions from Councilmembers.

Councilmembers and staff discussed how to add the additional language to the Ordinance.

Councilmember Bushey moved and Councilmember Kertz moved to pass the Ordinance to print, with the addition of two new whereases regarding ecologically sound practices and appropriate defensible space as discussed tonight

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

*Passed Ordinance No. 1988 to print*

b. **Regulation of On-Street Parking on Narrow Streets**  
**Consideration of An Ordinance Amending San Rafael Municipal Code Section 5.40.080 Regulating Parking on Narrow, Hilly City Streets (FD)**

Darin White, Fire Chief introduced Quinn Gardner, Emergency Management Officer who presented the staff report

Staff responded to questions from Councilmembers.

Mayor Kate invited public comment; however, there was none.

Councilmembers provided comments.

Councilmember Bushey moved and Councilmember Kertz moved to pass the Ordinance to print

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

*Passed Ordinance No. 1989 to print*

**SAN RAFAEL SUCCESSOR AGENCY:**

1. Consent Calendar: - None



**ADJOURNMENT:**

Mayor Kate adjourned the meeting in honor of Maynard Willms at 9:20 p.m.

\_\_\_\_\_  
LINDSAY LARA, City Clerk

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021

\_\_\_\_\_  
KATE COLIN, Mayor

DRAFT

**MINUTES**

**SAN RAFAEL CITY COUNCIL SPECIAL STUDY SESSION**

**Monday, February 1, 2021 at 5:30 P.M.**



**Watch on Webinar: <https://tinyurl.com/SPCC-2021-02-01>**

**Watch on YouTube: [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael)**

**Listen by phone: (669) 900-9128,**

**ID: 914-3103-6664#**

Present: Mayor Kate  
Vice Mayor Bushey  
Councilmember Hill  
Councilmember Kertz  
Councilmember Llorens Gulati

Absent: None

Also Present: City Manager Jim Schutz  
City Attorney Rob Epstein  
City Clerk Lindsay Lara

Mayor Kate called the session to order at 5:30 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

1. Presentation of Financial Statement Information (Fin)

**ADJOURNMENT:**

Mayor Kate adjourned the meeting at 6:45 p.m.

\_\_\_\_\_  
LINDSAY LARA, City Clerk

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021

\_\_\_\_\_  
Kate Colin, Mayor



## MINUTES

### SAN RAFAEL CITY COUNCIL SPECIAL MEETING

**Tuesday, January 26, 2021 at 5:00 P.M.**

**Watch Webinar: <https://tinyurl.com/cc-2021-01-26>**

**Listen by phone: (669) 900-9128,  
ID: 933-3455-1637#**

Present: Mayor Kate  
Vice Mayor Bushey  
Councilmember Kertz  
Councilmember Llorens Gulati

Absent: None

Also Present: City Manager Jim Schutz  
City Attorney Rob Epstein  
City Clerk Lindsay Lara

Mayor Kate called the meeting to order at 5:02 p.m. and invited City Clerk Lindsay Lara to call the roll. All members of the City Council were present.

City Clerk Lindsay Lara informed the community the meeting would be uploaded to YouTube after the meeting and members of the public would provide public comment either on the telephone or through Zoom. She explained the process for community participation through the telephone and Zoom.

a. **City Councilmember Interviews**  
**Interview Applicants and Make an Appointment to Fill a Vacancy on the City Council to Expire November 2022 (CC)**

Mayor Kate called the agenda item and the following thirteen applicants provided two-minute introductory comments.

Denis Avdic, Diana Lopez, Eli Hill, Eric Holm, Esme Octavia Lazare, Gary Bender, John Kakinuki, Joshua Sizemore, Judi Cooper, Kenneth Ghiringhelli, Matthew Siroka, Max Goodberg and Nancy Palacios

Mayor Kate invited public comment.

**Speakers:** Lucia Martel-Dow, name withheld

Mayor Kate expressed gratitude to the applicants for their willingness to get involved and spoke on policymaking in San Rafael.

Councilmembers each indicated their top two choices.

Mayor Kate selected Eli Hill and Eric Holm.

Councilmember Bushey selected Eli Hill and Eric Holm.

Councilmember Kertz selected Eli Hill and Nancy Palacios.

Councilmember Llorens Gulati selected Eric Holm and Eli Hill.

**Three Finalists Selected:**

Eli Hill

Eric Holm

Nancy Palacios

Each applicant answered four questions from the City Councilmembers.

Councilmembers each indicated their top choice was Eli Hill to be appointed as member of the City Council.

Councilmember Bushey moved and Councilmember Llorens Gulati seconded to appoint Elias David Hill as the at-large term representative to the San Rafael City Council

AYES: Councilmembers: Bushey, Kertz, Llorens Gulati & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: None

*Appointed Eli Hill to the Office of City Councilmember*

**b. Swear-in Ceremony**

**Administration of Oath of Office to Successful Candidate (CC)**

City Clerk Lindsay Lara administered the Oath of Office to newly appointed Councilmember, Eli Hill.

**ADJOURNMENT:**

Mayor Kate adjourned the meeting at approximately 6:40 p.m.

\_\_\_\_\_  
LINDSAY LARA, City Clerk

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021

\_\_\_\_\_  
Kate Colin, Mayor

DRAFT



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: City Manager**

**Prepared by: Cristine Allovich,  
Assistant City Manager**

**City Manager Approval:** \_\_\_\_\_

A handwritten signature in blue ink, appearing to be the initials 'AS', written over a horizontal line.

**TOPIC: CHIEF OF POLICE EMPLOYMENT AGREEMENT**

**SUBJECT: RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN EMPLOYMENT AGREEMENT WITH DAVID SPILLER TO SERVE AS THE CITY OF SAN RAFAEL CHIEF OF POLICE**

**RECOMMENDATION:**

Adopt Resolution to Execute an Employment Agreement with David Spiller to serve as the City's Chief of Police.

**BACKGROUND:**

On December 31, 2020, Police Chief Diana Bishop retired after nine years of service with the City of San Rafael. At that time, Captain David Starnes assumed the role of Interim Police Chief, and the City continued its formal recruitment in partnership with executive search firm Bob Murray & Associates which started in September 2020. Twenty-five applications were received from well qualified candidates across the United States.

**ANALYSIS:**

Following this nationwide search, the City of San Rafael is pleased to announce the selection of David Spiller to serve as San Rafael's next Chief of Police. The final decision-making body was the San Rafael City Council along with the City Manager. The process included multiple rounds and involved members of the San Rafael Police Department, other City Departments, community organizations, and other stakeholders.

Chief Spiller comes to San Rafael having served as the Police Chief of the City of Pleasanton for over eight years, overseeing a community with a population of 82,000 and 65,000 annual calls for service. A 30 plus year veteran of the police service, Chief Spiller's most recent role was with the City of Menlo Park as the Interim Police Chief.

Chief Spiller began his career in the late 1980's with the San Diego Police Department, where he worked as a patrol officer for a short time before joining the Mountain View Police Department. With

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

well over a decade of service in various department operations with the Mountain View Police Department, Chief Spiller earned a strong reputation as an effective problem solver and collaborator.

Chief Spiller holds an associate degree in Administration of Justice from De Anza College in Cupertino, a bachelor's degree in Organizational Behavior from the University of San Francisco, as well as a master's degree from Saint Mary's College in Public Sector Leadership. Chief Spiller is also a graduate of the Senior Management Institute for Police through the Police Executive Research Forum and he is a graduate of the California POST Command College.

The City of San Rafael has a history of employment agreements for its Fire Chiefs and Police Chiefs. Attached to this report is an employment agreement between David Spiller and the City of San Rafael. If approved, Chief Spiller's appointment would take effect March 16, 2021. Interim Chief Starnes will continue to lead and support the department in the interim. The City would like to thank Captain Starnes for his exemplary service in the Interim Chief role and welcome Chief Spiller.

**FISCAL IMPACT:**

The proposed employment agreement establishes an annual salary set at Police Chief "Step E" of the Executive Management Salary Resolution, which is currently of \$16,152 per month. Chief Spiller will also receive the benefits provided to all department directors per the Executive Management Salary Resolution, which includes health and dental insurance, leave accruals, plus life and long-term disability insurance. The compensation package does not require any new appropriations from the General Fund for the current fiscal year.

**OPTIONS:**

- Approve the Resolution to execute the employment agreement as presented.
- Modify the agreement and make that a part of approving the Resolution.
- Don't approve the Resolution.

**RECOMMENDATION:**

Adopt Resolution as presented.

**ATTACHMENTS:**

1. Resolution
2. Employment Agreement between City of San Rafael and David Spiller

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN EMPLOYMENT AGREEMENT WITH DAVID SPILLER TO SERVE AS THE CITY OF SAN RAFAEL CHIEF OF POLICE**

**WHEREAS**, following the announcement by Police Chief Diana Bishop of her intention to retire on December 31, 2020, the City of San Rafael entered an executive search partnership with Bob Murray and Associates to initiate a nationwide recruitment search for the City's next Police Chief; and

**WHEREAS**, the Human Resources department, in collaboration with the City Manager's office created an end-to-end recruitment approach and process; and

**WHEREAS**, an official recruitment brochure was shared with over 900 potential candidates in the recruitment database made available to the City of San Rafael. The City received 25 qualified applications for consideration; and

**WHEREAS**, on December 15, 2020, the City of San Rafael held two group panel interviews consisting of internal and external leaders to assess the knowledge, skills, abilities and culture fit of the six (6) final candidates; and

**WHEREAS**, a final offer of employment was extended and accepted by David Spiller, to be the next Chief of Police of San Rafael;

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of San Rafael that the Mayor and City Manager are authorized to execute, on behalf of the City of San Rafael, an agreement with David Spiller to serve as the Chief of Police for the City of San Rafael, a copy of which is included with the staff report supporting this resolution.

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

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

\_\_\_\_\_  
**LINDSAY LARA, City Clerk**



POLICE CHIEF EMPLOYMENT AGREEMENT  
Between the City of San Rafael and  
David Spiller

Dated \_\_\_\_\_

TABLE OF CONTENTS

RECITALS .....	1
1) EMPLOYMENT .....	1
2) TERM .....	1
3) COMMITMENTS AND UNDERSTANDINGS.....	1
A) POLICE CHIEF COMMITMENTS.....	1
B) CITY COMMITMENTS .....	3
C) MUTUAL COMMITMENTS.....	3
4) COMPENSATION .....	3
A) COMPENSATION & REQUIRED EMPLOYER COSTS .....	3
B) BENEFITS .....	4
5) OTHER EMPLOYMENT BENEFITS .....	5
A) PENSION - (MCERA).....	5
B) INSURANCE .....	6
6) SEPARATION .....	6
A) RESIGNATION RETIREMENT.....	6
B) TERMINATION & REMOVAL.....	6
C) SEVERANCE PAY .....	7
D) INVOLUNTARY RESIGNATION .....	7
E) SEPARATION FOR CAUSE.....	7

F) PAYMENT FOR UNUSED LEAVE BALANCES .....	8
7) MISCELLANEOUS PROVISIONS .....	8
A) AMENDMENTS .....	8
B) CONFLICT OF INTEREST .....	8
C) INDEMNIFICATION.....	8
D) SEVERABILITY .....	9
E) JURISDICTION AND VENUE.....	9
F) ENTIRE AGREEMENT.....	9
G) NOTICE .....	9
EXECUTION .....	10

**POLICE CHIEF EMPLOYMENT AGREEMENT  
BETWEEN THE CITY OF SAN RAFAEL AND DAVID SPILLER**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of San Rafael, a municipal corporation ("City"), and David Spiller ("Spiller" or "Police Chief"). In this Agreement, the City and Spiller may each be referred to individually as a "Party", and collectively as the "Parties."

**RECITALS**

- A) The City desires to employ Spiller as its Police Chief and has conferred with him and performed all necessary pre-employment background and reference checks required for appointment to this highly sensitive and important City position.
- B) Spiller possesses the necessary education, experience, skills and judgment to serve as the City's Police Chief.
- C) The Parties desire to enter into and execute this Agreement pursuant to the authority of and subject to the provisions contained Article VI, Section 11 of the City's Charter, the City's Municipal Code, California Government Code Section 53260 et seq., and all other applicable law.

**NOW THEREFORE**, the Parties agree as follows:

**AGREEMENT**

- 1) EMPLOYMENT - The City hereby offers to employ Spiller as its Police Chief, and Spiller accepts such employment on the terms and conditions set forth hereafter.
  
- 2) TERM - The Agreement shall become effective on March 16, 2021 and continue until such time as thereafter terminated pursuant to the terms and provisions set forth hereafter. Although Article VI, Section 11 of the City's Charter provides that the appointment of the Police Chief shall be for a four-year term, for convenience and certainty in City's operations the City Council hereby approves automatic renewal of the four-year term until such time as the Police Chief separates from City employment, as otherwise provided in this Agreement.
  
- 3) COMMITMENTS AND UNDERSTANDINGS
  - A) Police Chief's Commitments
    - (1) Duties & Authority
      - (a) The Police Chief shall serve under the sole direction and

supervision of the City Manager during the full term of the Police Chief's employment with the City.

(b) Throughout the duration of the Police Chief's employment with City and the term of this Agreement, the Police Chief shall perform all the duties and functions specified and set forth in Article VIII, Section 6 of the City's Charter and Section 2.08.170 of the San Rafael Municipal Code, pertinent provisions of the California Government Code, and all applicable City policies and procedures, adopted and/or approved by the City Council and/or City Manager. The Police Chief shall administer and enforce Police Department policies established by the City Council and/or City Manager and promulgate rules and regulations as necessary to implement such policies.

(2) Hours of Work

(a) The Police Chief is an exempt employee in City government; however, it is expressly agreed to and understood by Spiller that he is expected to engage in all hours of work necessary to fulfill the obligations of the position. The position does not have set hours of work and the Police Chief is expected to be available at all times throughout his term of employment, weekdays and weekends included.

(b) It is recognized that the Police Chief must devote a substantial amount of time to the business of the City outside of the City's customary business hours. Therefore, the Police Chief's schedule of work each day and week shall vary in accordance with the work required to be performed by him. The Police Chief shall spend sufficient hours on site to perform all of his assigned duties, all of the time.

(c) The Police Chief shall not spend more than 12 hours per month teaching, consulting, speaking, or involved in any other non-City connected business or venture without the express prior written consent of the City Manager.

(3) Disability or Inability to Perform

(a) In the event the Police Chief becomes mentally and/or physically incapable of performing his functions and duties, taking into account reasonable accommodation, and the City Manager reasonably determines that such incapacity will continue for more than six (6) months after the date of his determination, the City Council may, upon recommendation of the City Manager, terminate the Police Chief. Any such determination by the City Manager shall be provided to the Police Chief in writing prior to or concurrently with the City Manager's recommendation to the City Council. If the City

Council does elect to terminate the Police Chief due to such determined incapacity, the Police Chief shall be entitled to receive all severance benefits provided in Section 6.C below.

B) City Commitments

(1) The City shall provide the Police Chief with the compensation, incentives and benefits specified in this Agreement, as may be from time to time amended.

(2) The City shall directly pay or provide the Police Chief reimbursement for, all actual documented business expenses incurred in connection with all official City business conducted by the Police Chief.

(3) The City agrees to directly pay, on behalf of the Police Chief, or reimburse the Police Chief for the professional dues, subscriptions, travel and subsistence expenses which may be necessary for the Police Chief's full participation in national, regional, state, and/or local associations, and/or organizations necessary and/or desirable for the Police Chief's continued professional growth and advancement, including, but not limited to, governmental groups and committees upon which the Police Chief serves or may serve as a member. The City will also provide direct City payment or expense reimbursement for instructional courses, institutes and/or seminars that are necessary for career professional development of the Police Chief. All such fees/expenses shall be required to be documented to the reasonable satisfaction of City prior to payment or reimbursement hereunder.

C) Mutual Commitments

(1) Performance Evaluation

(a) Annual performance evaluations constitute an important method for the City Manager and Police Chief to ensure effective communication between them relating to City Manager job expectations and Police Chief performance. The City Council and City Manager recognize that for the Police Chief to respond to their needs and expectations, and for the Police Chief to grow in performance on the job, he needs to be advised concerning evaluation of his performance at regular intervals. To assure that he receives this information, the City Manager shall conduct an evaluation of the Police Chief's performance *at least* once each year.

4) COMPENSATION - The City agrees to provide the following initial compensation to the Police Chief during the term of the Agreement:

A) Compensation & Required Employer Costs

(1) Base Salary

(a) The annual salary for the position of Police Chief shall be established by Resolution of the City Council. The annual salary, on appointment, is hereby set at \$193,824. This salary may be adjusted via adoption of a separate Salary Resolution, commencing on or before each fiscal year, and shall be reflected in the salary range identified in said Salary Resolution, from time to time amended and adopted throughout the term of this Agreement.

(2) Required Employer Costs - the following costs shall be paid by City on behalf of the Police Chief:

(a) Federal Insurance Contributions Act (FICA) (if applicable).

(b) Medicare.

(c) Unemployment Compensation.

(d) The cost of any fidelity or other bonds required by law for the Police Chief.

(e) The cost to defend and indemnify the Police Chief as provided in Section 7.C below.

(f) Workers Compensation.

B) Benefits

(1) Holidays - The Police Chief shall be entitled to paid holidays in accordance with the Council approved provisions of the Salary and Benefit Plan for the Unrepresented Executive Management Group of City.

(2) Leave Allowance

(a) The Police Chief shall receive the same vacation accrual and benefits as provided to the Unrepresented Executive Management class of City employees. The Police Chief will accrue 15 (fifteen) days of vacation per year, which accrual shall increase in accordance with the City of San Rafael's policy for the Unrepresented Executive Management class of City employees. The Police Chief shall be credited with 30 days of vacation leave as of the effective date of this Agreement. The Police Chief shall be paid for any unused accrued vacation upon either voluntary or involuntary termination of his employment.

(b) The Police Chief shall receive the same sick leave accrual and benefits as provided to the Unrepresented Executive Management class of City employees. Spiller shall be credited with 270 hours of "Credited Sick Leave" as of the effective date of this Agreement. Any unused Credited Sick Leave shall be

applied toward service credit at the time of Spiller's retirement, subject to pertinent and related retirement provisions, specified by the Marin County Employee Retirement Association (MCERA). Spiller shall not have the right to receive cash compensation for unused Credited Sick Leave. Before using Credited Sick Leave during his employment with the City, Spiller shall be required to exhaust any and all accrued City Sick Leave benefits he may then have.

(c) The Police Chief shall be entitled to administrative leave each year consistent with the then in effect leave provided to the Unrepresented Executive Management class of City employees.

(3) Automobile - The Police Chief shall be provided an automobile for his use in connection with City-related business and/or City-related or approved functions during, before, and/or after normal work hours. The automobile shall be of a type and model consistent with policies established by the City's Fleet Advisory Board and shall also be subject to advance approval of the City Manager. The City shall maintain such automobile for the Chief in such manner and to such standards that it is always in a safe and reliable condition for the Police Chief's use and shall pay all fuel and associated maintenance costs of that vehicle.

(4) Uniform Allowance - The Police Chief will receive a uniform allowance for each six (6) months of service ending June 30 and December 31. The uniform allowance shall be the sum of \$885 (\$1,770 per year). A pro-rated portion of the allowance may be given for the first and last six (6) months of service based upon the approval of the City Manager or designee. The Uniform Allowance amounts shall be adjusted during the term of this Agreement to coincide with the Uniform Allowance amounts defined in the San Rafael Police Mid-Management Association Memorandum of Understanding.

(5) Benefits that Accrue to Other Employees - The Police Chief shall be entitled to all benefits, rights, and privileges accorded to safety City Department Directors, including, but not limited to, group health and dental insurance, except as otherwise provided in this Agreement. To the extent the benefits contained herein exceed the benefits provided to the Unrepresented Executive Management Group employees of the City, this Agreement shall control.

## 5) OTHER EMPLOYMENT BENEFITS

### A) Pension - Marin County Employee Retirement Association (MCERA)

(1) The Police Chief shall be considered a safety employee as the position relates to the Marin County Employee Retirement Association (MCERA). The Police Chief will be responsible for paying the full cost of the employee contribution rate as established by MCERA. In addition, as provided in the Salary Resolution for the Unrepresented Executive

Management class of City employees, the Police Chief will pay an additional contribution of one percent (1%) of pensionable compensation toward the normal cost of pension provided by MCERA. The City shall pay the remainder of the City's share for participation in the Marin County Employee Retirement Association.

(2) Internal Revenue Code Compliance - All provisions of Section 5.A shall be subject to all applicable provisions and limitations of the Internal Revenue Code and its related adopted regulations, as the same may be amended from time to time. No requirement of any provision of Sections 5.A and 5.B shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirements for such reasons shall not constitute a breach of this Agreement.

B) Insurance

(1) Disability Insurance. Long-Term Disability insurance shall be provided in such amount as is consistent with that provided to other City Department Directors as identified in the Unrepresented Executive Management Group controlling documents

(2) Life Insurance. Term life insurance shall be provided at the Department Director level as identified in the Unrepresented Executive Management Group controlling documents

(3) Retiree Health Insurance. The City shall provide retiree health insurance for the Police Chief, so long as the Police Chief retires from the Marin County Employees Retirement Association (MCERA) within 120 days following termination of his employment with City and further that the Police Chief complies with all then applicable MCERA retirement laws and regulations. The Police Chief shall receive the same retiree health insurances as provided to the Unrepresented Management class of City employees as defined in the Unrepresented Executive Management Salary Resolution.

6) SEPARATION

A) Resignation/Retirement - The Police Chief agrees to provide the City at least 60 days advance written notice of his determination to resign, including the effective date of such resignation, unless the Parties hereto otherwise agree in writing to a different notice provision. If the Police Chief retires from full time public service with the City of San Rafael, then he may provide six (6) months' advance notice if he chooses. The Police Chief's actual retirement date shall be mutually agreed to and established.

B) Termination & Removal

(1) It is expressly understood, the entry into this Agreement notwithstanding, that the Police Chief is an at-will employee of the City, serving at all times throughout his tenure with City at the pleasure of the



City Council, as provided in Article VI, Section 11 of the City's Charter and Government Code Section 36506.

(2) The City Council may remove the Police Chief at any time, with or without cause, by a majority vote of its members. Notice of such termination shall be provided to the Police Chief in writing.

(3) Given the at-will nature of the position of Police Chief, an important element of this Agreement pertains to the subject of termination. It is in the interest of both the City and the Police Chief that any separation of the Police Chief from City be accomplished in a dignified and businesslike manner.

C) Severance Pay

(1) In the event the Police Chief is terminated not for cause by the City Council during a time when the Police Chief continues to be willing and able to perform his duties under this Agreement, then, and in that event, the City agrees to pay the Police Chief a lump sum cash payment in an amount equal to six (6) months' base salary.

(2) All payments required under Sections 6.C (1), are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

D) Involuntary Resignation

(1) In the event that the City Council requests that the Police Chief resign, then he shall resign, and he shall be entitled to receive the severance benefits provided in Section 6.C above.

E) Separation for Cause

(1) Notwithstanding the provisions of Section 6.C, the Police Chief may be terminated for cause. As used in this Section, "cause" shall mean one or more the following:

- (a) Conviction of a felony;
- (b) Conviction of a misdemeanor;
- (c) A plea of nolo contendere to any felony or misdemeanor;
- (d) Any act constituting a knowing and intentional violation of Section 7.B below, or conflict of interest codes adopted by or followed by City;
- (e) Abuse of drugs or alcohol that materially affects the performance of the Police Chiefs duties; or
- (f) Repeated and protracted unexcused absences from the Police Chief's duties

(2) In the event the City terminates the Police Chief for cause, then the City may terminate this Agreement immediately, and the Police Chief

shall be entitled to only the compensation accrued up to the date of such termination, payments required by Section 6.F below, and such other termination benefits and payments as may be required by law. The Police Chief shall not be entitled to any severance benefits provided by Section 6.C in these circumstances.

F) Payment for Unused Leave Balance

(1) On separation from City employment, the Police Chief shall be paid for all unused accrued vacation and administrative leave allowances provided in Section 4.B (2) above. Accumulated leave balances shall be paid at the Police Chief's monthly salary rate on the effective date of separation.

7) MISCELLANEOUS PROVISIONS

A) Amendments - This Agreement may be amended at any time but only by mutual written agreement of the City and the Police Chief.

B) Conflict of Interest

(1) The Police Chief shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of his official duties or which would tend to impair independence in the performance of his official duties.

(2) The Police Chief shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Police Chief's employment with the City.

(3) The Police Chief is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

C) Indemnification

(1) The City shall defend, hold harmless and indemnify the Police Chief from any claim, demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the course and scope of the Police Chief's performance of his duties as Police Chief, pursuant to and in accordance with Government Code sections 995 through 996.6 and Government Code section 825.

Should the Police Chief be sued for damages in an action in which it is alleged that the complained of act(s) arise out of the performance of his duties, the City shall provide a legal defense for the Police Chief in such suit and indemnify the Police Chief from any judgment rendered against him; provided however that such indemnity shall not extend to any judgment for damages arising out of any proved willful wrongdoing on his part. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement, to provide

protection for any such acts undertaken or committed in the Police Chief's capacity as Police Chief while in the employment of City, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Police Chief may have under the law.

(2) The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Police Chief, for all matters while he is acting within the scope of the Police Chief's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by him, or by him on behalf of the City, or any party affiliated with or otherwise claiming under or through him, regardless of any prior, concurrent, or subsequent active or passive negligence by the Police Chief.

D) Severability - If any clause, sentence, part, section, or portion of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

E) Jurisdiction and Venue - This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Marin County, California.

F) Entire Agreement - This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as expressly set forth herein. This Contract may be amended or modified only by a written, fully executed agreement executed by the Parties.

G) Notice - Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the Police Chief or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first-class mail or hand delivered to the respective Parties as follows:

If to the City:

City Manager  
City of San Rafael  
1400 Fifth Avenue  
San Rafael, CA 94901

With a copy to the City Attorney

If to the Police Chief:

Police Chief

City of San Rafael  
1375 Fifth Avenue  
San Rafael, CA 94901

**EXECUTION:**

**IN WITNESS WHEREOF**, the City of San Rafael has caused this Agreement to be duly executed by its Mayor, its City Manager, and the Police Chief, and duly attested by its City Clerk, the day and year first written above.

EMPLOYER - CITY OF SAN RAFAEL

POLICE CHIEF

By: \_\_\_\_\_  
Kate Colin, Mayor

\_\_\_\_\_ David Spiller, Police Chief

By: \_\_\_\_\_  
Jim Schutz, City Manager

ATTEST:

\_\_\_\_\_  
Lindsay Lara, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert F. Epstein, City Attorney

## ORDINANCE NO. 1988

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING SECTIONS 4.12.010 AND 4.12.030 OF THE SAN RAFAEL MUNICIPAL CODE TO ESTABLISH CITYWIDE VEGETATION MANAGEMENT AND WILDFIRE MITIGATION STANDARDS TO HELP REDUCE THE RISK OF A CATASTROPHIC WILDFIRE

**WHEREAS**, intensifying climate change and extensive fuel build-up are contributing to the increasing threat of wildfire throughout Marin County and the risk of wildfires should be mitigated while also considering ecologically sound practices including habitat protection, carbon resource management, and defensible space for ecological benefit; and

**WHEREAS** hazardous vegetation and/or combustible materials pose a significant danger to the health, safety, and welfare of the public by fueling and propelling wildfires, thereby increasing the danger to lives, property, and the environment; and

**WHEREAS** lack of proper vegetation management has the potential to create fire hazards that can have potentially devastating consequences for the entire community; and

**WHEREAS** California Government Code section 51182(a)(1) specifies that by local ordinance, rule, or regulation, a local agency may require a defensible space of more than 100 feet; and

**WHEREAS** research conducted by the Institute for Business and Home Safety has demonstrated that the first 0-5' around a structure (the immediate zone) poses the greatest risk to exposure to flying embers and direct flame contact; and

**WHEREAS** the spread and severity of fires occurring in San Rafael is of particular concern, given that the City is a predominantly hillside community where a significant number of structures are single family dwellings built on sloping terrain and are in close proximity to one another; and

**WHEREAS** San Rafael property owners are increasingly faced with managing hazardous fuel conditions on their property, and management and control of fire-prone vegetation is essential to the safety of life and property; and

**WHEREAS** as proven by the most recent devastating fire seasons of 2017, 2018, and 2020, wildfires do not respect human established boundaries such as the wildland urban interface (WUI); and

**WHEREAS** uniform application of all vegetation management and fire prevention related codes and ordinances has been shown to improve wildfire resilience throughout the community; and

**WHEREAS** Items 1, 2, and 3 of the San Rafael Wildfire Prevention and Protection Action Plan, adopted August 2020 calls for the application of more stringent vegetation management, defensible space and fire mitigation standards citywide; and

**WHEREAS** appropriate defensible space does not require or advocate the clear cutting of trees and brush, but rather horizontal and vertical spacing and maintenance;

**WHEREAS** it is the intent of the City Council to adopt amendments to the existing vegetation management ordinance which reduce San Rafael's wildfire vulnerability as it relates to fire-prone vegetation and remove barriers, when appropriate, for private property owners to achieve responsible management of fire-prone plant species; and

**WHEREAS** the City Council finds that this project is not subject to the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15304(b) and 15304(i) because the proposed Municipal Code amendments seek to allow minor alterations to land to facilitate replacement of conventional landscaping with fire resistant landscaping, and to facilitate fire fuel management activities on public and private property; and

**WHEREAS** notice of the San Rafael City Council public hearing on the proposed Municipal Code amendments was sent by email to all those who subscribe and on the City website as well as presented during homeowner and neighborhood association meetings, online feedback forms and social media platforms such as Nextdoor, and extensive community input was received and incorporated; and

**WHEREAS**, on February 1, 2021, the City Council of the San Rafael conducted a public hearing on the item and considered all oral and written comments submitted to the City regarding the item prior to taking its actions on the item;

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

**DIVISION 1: AMENDMENTS.**

1) Section 4.12.010 of the San Rafael Municipal Code, entitled "Purpose and intent" is hereby amended to read in its entirety as follows:

This chapter establishes a Wildland-Urban Interface (WUI) in the city, as described in the city of San Rafael Wildland-Urban Interface (WUI) map, dated July 2, 2007, on file with the city clerk, as it may be amended hereafter from time to time by city council resolution, which is a designation of a very high severity zone as provided in Government

Code Section 51179, and establishes citywide specific vegetation management standards which will be required for all properties in the WUI on or before August 1, 2021 and for properties outside the WUI by April 1, 2022 in order to create defensible space around structures that will minimize the spread of fires from wildlands to structures, from structures to wildlands, and from structures to structures.

2) Section 4.12.030 of the San Rafael Municipal Code, entitled "Vegetation Management Standards" is hereby amended to read in its entirety as follows:

A. Any person owning, leasing, controlling, operating or maintaining a property containing a structure in the City of San Rafael, and any person owning, leasing, controlling, operating or maintaining a property that is adjacent to another property containing such a structure, shall at all times maintain defensible space within one hundred (100') feet of the structure as follows:

1.) Raise the crown of all trees by removing growth less than three inches (3") in diameter, from the ground up to a maximum height of 5 feet (5'), as identified by the National Fire Protection Association, provided that no crown shall be raised to a point so as to remove branches from more than the lower one-third of the tree's total height;

2.) Cut and remove all dry grasses (by means other than discing, tilling or other soil manipulation) so that their height does not exceed three inches (3").

3.) Remove or chip the wood of all dead trees and other dead vegetation from the ground that is less than three inches (3") in diameter, provided that the stump of a dead tree does not need to be removed. Chipping materials left upon the surface of the ground shall not exceed a depth of three inches (3").

4.) Remove all Combustible Vegetation, provided that single specimens of Combustible Vegetation are permitted if separated by a distance equal to two (2) times the height of the next adjacent combustible or noncombustible bush on slopes 0 to twenty percent (20%), four (4) times the height of the next adjacent combustible or noncombustible bush on slopes twenty-one (21) to forty percent (40%), and six (6) times the height of the next adjacent combustible or noncombustible bush on slopes exceeding forty percent (40%) as measured from the most outer edge of both bushes.

5.) Remove any portion of trees or brush on the property that overhang any roadway and reach within thirteen feet six inches (13'6") vertically above the roadway surface, regardless of proximity to structure.

6.) Remove Combustible Vegetation on the ground of the property within ten feet (10') of any highways, city streets, or private streets used for vehicle traffic or egress from the property, regardless of proximity to structure.

B. In addition, any person owning, leasing, controlling, operating, or maintaining property in the City of San Rafael shall, at all times, within the Intermediate zone (5-30ft from any structure):

1.) Maintain an effective firebreak (a strip of land in which vegetation has been modified rather than completely removed) by thinning and clearing away flammable vegetation and combustible growth from areas within thirty feet (30') of any structures.

2.) Remove all vegetation within ten feet (10') of a chimney or stovepipe outlet.

3.) Maintain woodpiles a minimum of ten feet (10') and two (2) times the height of the woodpile away from any component of the structure on the property.

4.) Mulch and other combustible ground coverings are only permitted when no contact is made with combustible exterior walls or plants. Rocks, pavers, and similar are encouraged.

5.) Remove all Junipers (genus *Juniperus*), Bamboo (genus *Bambusa*), Acacia (genus *Acacia*), and Italian Cypress (genus *Cupressus sempervirens*).

C. In addition, the following shall apply to the Immediate zone (0-5ft from any structure) on all properties owned, leased, controlled, operated, or maintained within the City of San Rafael

1.) Maintain the roof, gutters, decks, porches, and stairways of any structure on the property free of accumulated leaves, needles, or dead vegetative growth.

2.) All vegetation within five feet (5') of structure shall be well-irrigated and maintained to eliminate any dead or dying material build-up and trimmed to prevent contact with the structure.

3.) Vines and ivy shall be well-irrigated and maintained to eliminate any dead or dying material build-up.

4.) Single specimen trees shall be permitted when well-irrigated, limbed over five feet (5') or one third of the tree height and have 5' between other tree canopies. Dead and dying branches shall not overhang any structure.

5.) Remove any Combustible Vegetation under the eaves, decks, or other components of the structure on the property.

6.) Ensure that vegetation is not continuous or able to serve as a fire bridge or ladder between other vegetation and the structure.

7.) Vegetation directly under windows or encroaching within two feet of windows, may not include fire hazardous species as identified by FIRESafe Marin, National Fire Protection Association or local fire officials.

8.) No vegetation shall make direct contact with combustible elements of a structure. Well maintained vegetation may contact Class A and non-combustible materials such as, but not limited to concrete, brick, and stucco.



D. Single specimen exemptions to these regulations, including for erosion control, may be granted at the discretion of the Fire Chief or their designee.

E. To the extent there is any conflict, the vegetation management standards in this section shall supersede the property development standards for protecting the natural state of property as contained in Sections 14.12.030(C) and 14.12.040 of this code.

**DIVISION 2: SEVERABILITY.**

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

**DIVISION 3: PUBLICATION; EFFECTIVE DATE.**

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

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

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

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Kate Colin, Mayor

ATTEST:

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LINDSAY LARA, City Clerk

The foregoing Ordinance No. 1988 was introduced at a regular meeting of the City Council of the City of San Rafael on February 1, 2021 and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the February 16, 2021.

---

LINDSAY LARA, City Clerk

# Marin Independent Journal

4000 Civic Center Drive, Suite 301  
San Rafael, CA 94903  
415-382-7335  
legals@marinij.com  
2070419

CITY OF SAN RAFAEL  
1400 FIFTH AVENUE  
CITY CLERK, ROOM 209  
SAN RAFAEL, CA 94901

## PROOF OF PUBLICATION (2015.5 C.C.P.)

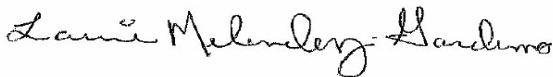
### STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

**02/05/2021**

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 5th day of February, 2021.



Signature

## PROOF OF PUBLICATION

Legal No. **0006551432**

#### SUMMARY OF ORDINANCE NO. 1988

#### AN ORDINANCE OF THE SAN RAFAEL CITY COUNCIL AMENDING SECTIONS 4.12.010 AND 4.12.030 OF THE SAN RAFAEL MUNICIPAL CODE TO ESTABLISH CITYWIDE VEGETATION MANAGEMENT AND WILDFIRE MITIGATION STANDARDS TO HELP REDUCE THE RISK OF A CATASTROPHIC WILDFIRE

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 1988, which will amend San Rafael Municipal Code Sections 4.12.010 and 4.12.030 to establish citywide vegetation management standards to reduce wildfire risk. Ordinance No. 1988 is scheduled for adoption by the San Rafael City Council at its regular meeting of February 16, 2021. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

#### SUMMARY OF AMENDMENT TO MUNICIPAL CODE

San Rafael Municipal Code Section 4.12.030 contains regulations for vegetation management in areas designated by the City as "Wildland-Urban Interface", defined as a geographical area that presents a significant risk of wildfire transfer to and from structures. The City Council has found that hazardous vegetation and/or combustible materials pose a significant danger to the health, safety, and welfare of the public throughout the City, not just in the Wildland-Urban Interface, by fueling and propelling wildfires, thereby increasing the danger to lives, property, and the environment. Ordinance No. 1988 would adopt amendments that would modify existing vegetation management standards and extend them citywide to reduce wildfire risk, primarily from ember ignitions. The ordinance establishes specific standards for the 0-5 feet, 5-30, and 30-100 foot zones surrounding a structure and 10 feet from roadways. They focus on maintenance, appropriate irrigation, and adequate vertical and horizontal spacing. The changes do not require the complete removal of all types of vegetation. The implementation of these standards will begin in August 2021 for properties in the Wildland Urban Interface and April 1, 2022 for properties outside the Wildland Urban interface.

Copies of Ordinance No. 1988 will be available for public review as of Friday, February 5, 2021 by emailing the City Clerk's office at city.clerk@cityofsanrafael.org You may also contact Quinn Gardner, Emergency Manager, at (415) 485-5336 or quinn.gardner@cityofsanrafael.org for information.

LINDSAY LARA  
San Rafael City Clerk  
Dated: 02/05/2021

**ORDINANCE NO. 1989**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN RAFAEL AMENDING SAN RAFAEL MUNICIPAL CODE SECTION 5.40.080 REGULATING PARKING ON NARROW, HILLY CITY STREETS**

**WHEREAS**, the City Council wishes to preserve the safety and attractiveness of the City's streets and the functionality for residents and businesses using those streets; and

**WHEREAS**, areas in the City of San Rafael with narrow and hilly roads or in territory where access is otherwise difficult are particularly vulnerable to wildfire; and

**WHEREAS**, the regular parking of vehicles on streets with narrow widths or in territory difficult to access often creates hazards to vehicular and pedestrian travel; and

**WHEREAS**, the width of said roads cannot always safely accommodate the passage of City fire or emergency medical apparatus when vehicles are parked on roadsides; and

**WHEREAS**, San Rafael Municipal Code Section 5.48.010 authorizes the City Traffic Engineer to regulate, restrict, or prohibit parking upon specified streets and during specified hours; and

**WHEREAS**, the amendments to the San Rafael Municipal Code adopted herein will allow the City Traffic Engineer to place signs or markings to designate limited areas where parking on narrow streets may be allowed without obstructing safe passage of vehicles and pedestrians, and will facilitate the City's ability to effectively enforce its parking restrictions on narrow hilly roadways, thus facilitating emergency access and evacuation, and protecting the public health, safety and welfare; and

**WHEREAS**, the City Council finds that adoption of this ordinance would provide limitations on the use of public streets for parking, and is therefore categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15301 concerning the operation or minor alteration of existing public facilities involving negligible or no expansion of use;

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

**DIVISION 1: AMENDMENT.**

Section 5.40.080 of the San Rafael Municipal Code, entitled "Parking prohibited on narrow streets" is hereby amended to read in its entirety as follows:

- (a) The city traffic engineer is authorized to place signs or markings indicating no parking upon any street when the width of the roadway does not exceed twenty feet (20'), or upon one side of a street as indicated by such signs or markings when the width of the roadway does not exceed thirty feet (30');
- (b) When official signs or markings prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any such street in violation of any such sign or marking;
- (c) Parking of vehicles upon any city street is prohibited unless an unobstructed distance of not less than six feet (6') is maintained to the centerline or to the center of the improved or main traveled portion of the street;
- (d) Notwithstanding any other provision of this Code, when the stopping or parking of vehicles on a narrow hilly street constitutes a hazard to traffic, life or property, or an obstruction to the adequate access by fire, police, health, sanitation and public utility vehicles, the traffic engineer may install signs or markings, including parking boxes, upon the street or portions thereof giving notice that no person shall stop or park or leave standing any vehicle, except as designated by such signs or markings, and that vehicles parked in violation of such signs or markings may be cited and immediately removed.

**DIVISION 2: SEVERABILITY.**

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

**DIVISION 3: PUBLICATION; EFFECTIVE DATE.**

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

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

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

\_\_\_\_\_  
KATE COLIN, Mayor

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

The foregoing Ordinance No. 1989 was introduced at a regular meeting of the City Council of the City of San Rafael on February 1, 2021 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Hill, Kertz, Llorens Gulati & Mayor Kate

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the February 16, 2021.

\_\_\_\_\_  
LINDSAY LARA, City Clerk

# Marin Independent Journal

4000 Civic Center Drive, Suite 301  
San Rafael, CA 94903  
415-382-7335  
legals@marinij.com  
2070419

CITY OF SAN RAFAEL  
1400 FIFTH AVENUE  
CITY CLERK, ROOM 209  
SAN RAFAEL, CA 94901

## PROOF OF PUBLICATION (2015.5 C.C.P.)

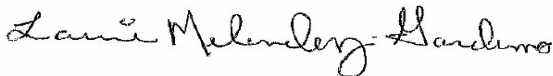
### STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

**02/05/2021**

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 5th day of February, 2021.



Signature

## PROOF OF PUBLICATION

Legal No. **0006551433**

### SUMMARY OF ORDINANCE NO. 1989

#### AN ORDINANCE OF THE SAN RAFAEL CITY COUNCIL AMENDING SAN RAFAEL MUNICIPAL CODE SECTION 5.40.080 REGULATING PARKING ON NARROW, HILLY CITY STREETS

This Summary concerns a proposed ordinance of the City Council of the City of San Rafael, designated as Ordinance No. 1989, which will amend San Rafael Municipal Code Section 5.40.080 to regulate parking on narrow, hilly streets within the City of San Rafael. Ordinance No. 1989 is scheduled for adoption by the San Rafael City Council at its regular meeting of February 16, 2021. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

### SUMMARY OF AMENDMENT TO MUNICIPAL CODE

San Rafael Municipal Code Section 5.40.080 contains regulations limiting or prohibiting parking on narrow streets within the City. Ordinance No. 1989 would add a new subsection (d) to this section, authorizing the City's Traffic Engineer to install additional signs and markings to clearly indicate where vehicles may park on narrow, hilly streets where the unrestricted stopping or parking of vehicles on the street constitutes a threat to the public health and safety by obstructing or hindering emergency evacuations and/or access by fire trucks and other emergency response vehicles. These markings, known as "parking boxes" will focus on narrow streets, primarily in hillside neighborhoods.

Copies of Ordinance No. 1989 will be available for public review as of Friday, February 5, 2021 by emailing the City Clerk's office at city.clerk@cityofsanrafael.org You may also contact Quinn Gardner, Emergency Manager, at (415) 485-5336 or quinn.gardner@cityofsanrafael.org for information.

LINDSAY LARA  
San Rafael City Clerk  
Dated: 02/05/2021



**Agenda Item No: 6.a**  
**Meeting Date: February 16, 2021**

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Community Development**

*Paul A. Jensen*

**Prepared by: Paul Jensen (AG, EG)**                      **City Manager Approval:** \_\_\_\_\_

**Community Development Director**

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

**EXECUTIVE SUMMARY:**

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

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

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

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**FOR CITY CLERK ONLY**

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_



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

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

**RECOMMENDATION:**

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

**BACKGROUND:**

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

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

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

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

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

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

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

At the September 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 D related to the Design Review Board Advisory Committee structure and process.

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

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

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

**Table 1. December 2020 RHNA**

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

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

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

**ANALYSIS:**

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

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

**Proposed San Rafael Municipal Code Amendments**

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

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

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

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

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

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

***Section 14.16.190 - Height bonus***

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

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

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

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

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

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

**Section 14.28.040- Appeals**

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

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

**Proposed City Council Housing Policy Resolutions**

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

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

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

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

**Table 2. Proposed Affordable Housing Requirement Obligations**

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

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

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

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

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

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

**Staff Discussion on Affordable Housing Requirement**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ENVIRONMENTAL DETERMINATION:**

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



**COMMUNITY OUTREACH:**

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

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

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

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

**FISCAL IMPACT:**

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

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

**OPTIONS:**

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

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

**RECOMMENDED ACTION:**

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

**ATTACHMENTS:**

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

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

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

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

### Analysis

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

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

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

## ATTACHMENT 2

### Status of Entitled/Approved Housing Projects

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

*Approved in 2019*

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

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

*Approved in 2020*

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

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

*Approved in 2014; extensions approved in 2016 and 2018*

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

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

*Approved in 2020*

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

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

*Approved in 2019*

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

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

*Approved in 2019*

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

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

*Approved in 2016*

## ATTACHMENT 2

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

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

*Approved in 2020*

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

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

*Approved mid 2020*

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

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

*Approved: in 2019*

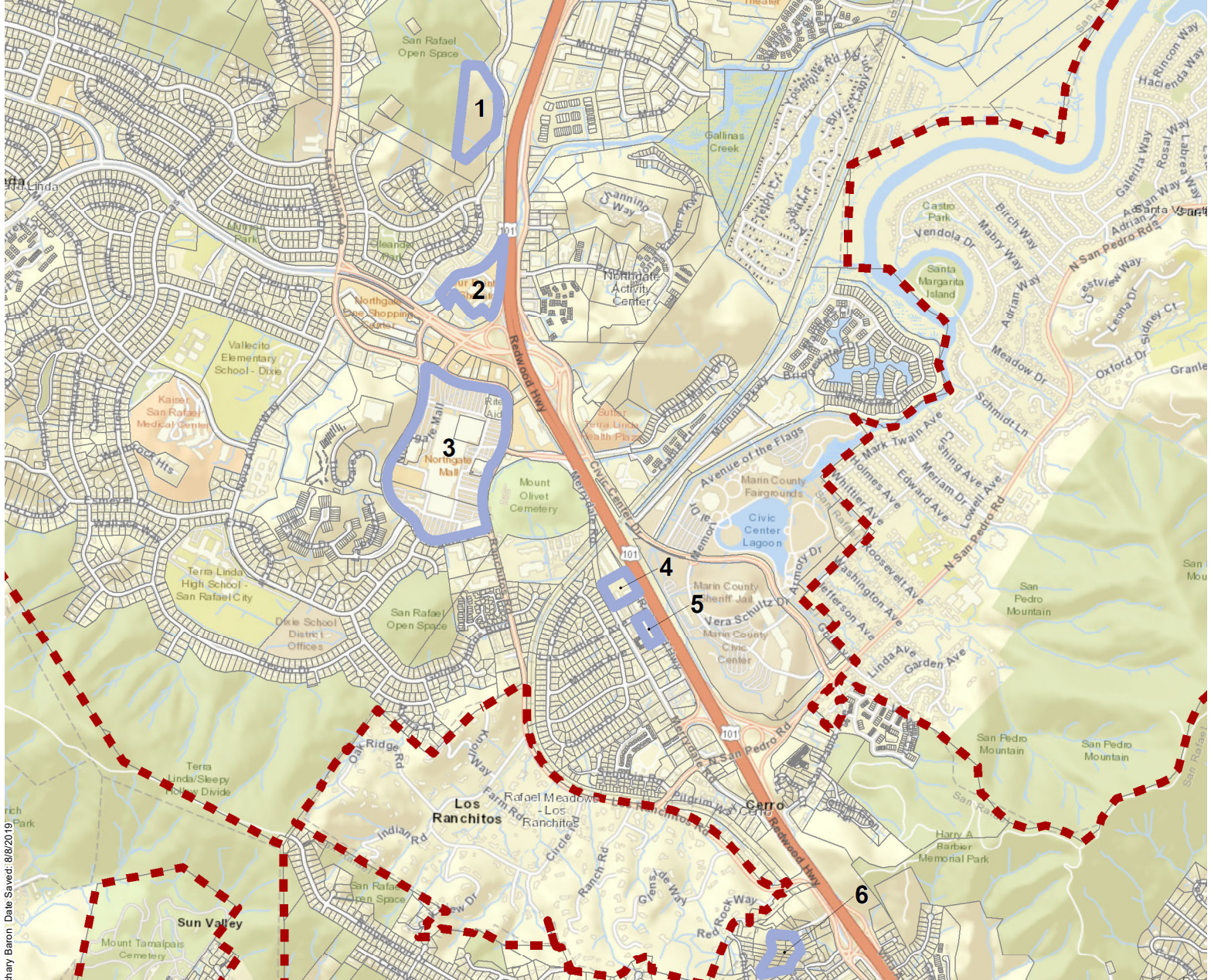
Status: Building permit was issued in 2019 and the project is currently under construction

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

*Approved 2019*

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

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## Housing Development Projects: North San Rafael

December 2020

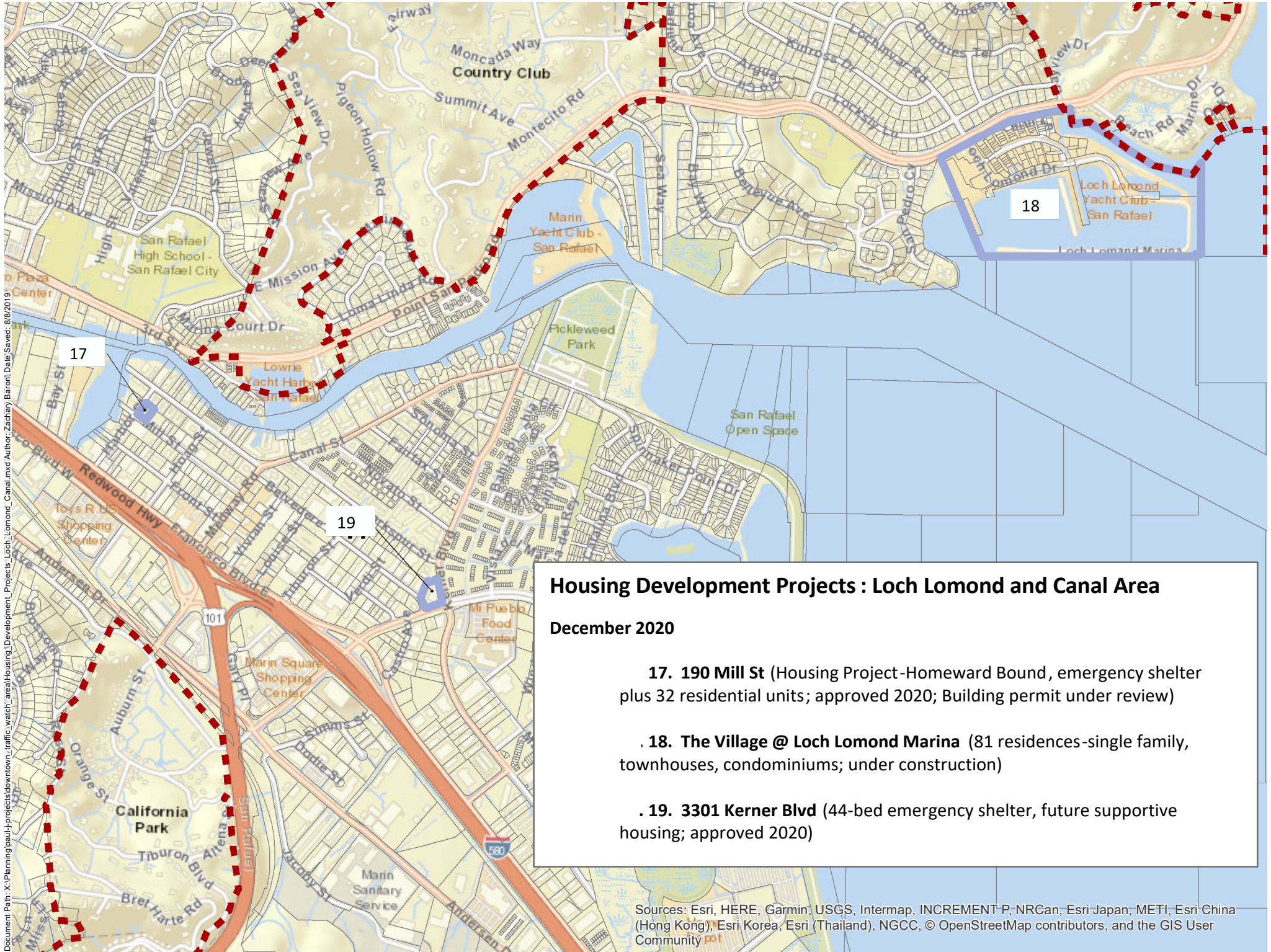
1. Los Gamos Rd. 193-unit apartment project; application submitted 12/2020; under review)
2. 1005/1010 Northgate Drive -Northgate Walk @ Four Points Sheraton. 136 unit condominium project; approved 2019;)
3. Northgate Mall (potential housing project; no application)
4. 350 Merrydale Rd. 44-unit condominium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

## Housing Development Projects: Central San Rafael

December 2020

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





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### Housing Development Projects : Loch Lomond and Canal Area

December 2020

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

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

**ATTACHMENT 3**

**ORDINANCE NO.**

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

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

**DIVISION 1. AMENDMENTS TO MUNICIPAL CODE.**

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

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

NA: Not applicable.

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

**Table 14.04.040**

	<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	(B), (C)
Minimum lot width (ft.)	50/60 (corner lot)	60	60	60	60	60	60	60	
Minimum yards									

**ATTACHMENT 3**

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

**ATTACHMENT 3**

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

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

### ATTACHMENT 3

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

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

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

**Table 14.05.030**

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

**ATTACHMENT 3**

Parking	*	*	*	*	*	*	* Based on use. See Section 14.18.040
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- (A) There is no minimum lot area requirement for a boarding house.
- (B) Where the frontage of a block is partially in an R district, the front yard shall be the same as required for that R district, and when the side and/or rear of the lot(s) abuts an R district, the respective side and/or rear yard shall be ten feet (10'). Parking or maneuvering shall be permitted within the required side and rear yards provided that a minimum six-foot (6') wide landscape buffer area, excluding curbs, is provided adjacent to the side and rear property lines.
- (C) Exceptions may be granted for a height above thirty-six feet (36'), subject to the provisions of Chapter 14.24, Exceptions.
- (D) Hotels have a four (4) story fifty-four-foot (54') height limit. A one-story twelve-foot (12') height bonus may be approved as part of a design review permit by the planning commission if it finds that the hotel will provide a significant community benefit, and the design is consistent with this title.
- (E) Repealed 3/18/96.
- (F) Buildings existing or approved as of January 1, 1987 which are more than three (3) stories in height shall not be considered nonconforming, and are listed in Section 14.16.040, Buildings over three (3) stories.
- (G) See general plan downtown height map for lot-specific height limits.
- (H) A height bonus may be permitted in residential development as provided for in Section 14.16.190, Height bonus.
- (I) Where the frontage of the lot(s) is adjacent to or across from an R district, fifty percent (50%) of the front yard shall be landscaped. Where the side yard abuts an R district, a minimum three feet (3') of buffer landscaping must be provided. Where the rear of the lot abuts an R district, ten feet (10') of buffer landscaping must be provided.
- (J) In the GC district, a minimum fifteen feet (15') of the front setback must be landscaped. Landscaped portions of the public right-of-way may be included, subject to approval by the hearing body.
- (K) For parking lot landscaping, see Section 14.18.160, Parking lot screening and landscaping.
- (L) A landscaped amenity area for employees and the public is encouraged in office and commercial projects.
- (M) Provision of usable outdoor area is encouraged in residential development as part of a mixed-use project.
- (N) *Intentionally not used.*
- (O) A density bonus may be granted, as provided for in Section 14.16.030.

### ATTACHMENT 3

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

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

14.12.040 - Exceptions to property development standards.

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

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

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

14.16.030 - Affordable housing requirement.

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

### ATTACHMENT 3

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



**ATTACHMENT 3**

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

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

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

**ATTACHMENT 3**

Development Type	Number of New Very low-, Low- and Moderate-Income Units (per 1,000 square feet of gross floor area <sup>1)</sup>
Retail, Restaurant or Personal Service uses	0.0225
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.

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

### ATTACHMENT 3

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

E. Housing In-Lieu Fee Fund. The housing in-lieu fees shall be placed in a segregated citywide housing in-lieu fee account. The funds in the housing in-lieu fee account, along with any interest earnings accumulated thereon, shall be used solely to increase and expand the supply of housing affordable to very low-, low- and moderate-income households, including, but not limited to, the following:

1. Design and construction of housing affordable to households of very low, low- and moderate-income households, including costs associated with planning, administration and design;
2. Acquisition of property and property rights, including acquisition of existing housing units and the provision of long-term affordability covenants on those units;
3. Other actions that would increase the supply of housing affordable to very low, low- and moderate-income households;
4. Costs of program development and ongoing administration of the housing fund program;
5. Expenditures from the housing in-lieu fee fund shall be authorized solely by the city council and controlled and paid in accordance with general city budgetary policies.

F. Enforcement. The city attorney is authorized to abate violations and to enforce the provisions of this section and all implementing regulatory agreements and resale controls placed on affordable housing units, by civil action, injunctive relief, and/or other proceeding or method permitted by law. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from other remedy or relief to which it otherwise would be entitled under law or equity.

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

14.16.190 - Height bonus.

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

### ATTACHMENT 3

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

### ATTACHMENT 3

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

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

14.16.300 - Small lots.

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

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

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

14.28.040 - Scheduling and notice for public hearing.

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

### ATTACHMENT 3

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

#### **DIVISION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

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

#### **DIVISION 3. SEVERABILITY.**

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

#### **DIVISION 4. PUBLICATION; EFFECTIVE DATE.**

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

\_\_\_\_\_  
KATE COLIN, Mayor

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

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

**ATTACHMENT 3**

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

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

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LINDSAY LARA, City Clerk

## ATTACHMENT 4

### RESOLUTION NO.

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

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

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

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

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

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

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

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



**ATTACHMENT 4**

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

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

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

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

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

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

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

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

**ATTACHMENT 4**

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

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

2. Secondary Requirement. Residential development projects greater than fifteen (15) units shall satisfy the Secondary Requirement through any of the following alternate means:

a. Additional On-Site Affordable Units. A developer may comply with this section through one of the follow alternate means:

- i. 5% of the proposed units (not including density bonus units), in addition to units provided through Section B.1 of this document, must be affordable to and occupied by a low-income household;
- ii. 10% of the proposed units (not including density bonus units), in addition to units provided through Section B.1 of this document, must be affordable to and occupied by a moderate-income household.

b. In-Lieu Fees for Residential Development. A developer may comply with this section by paying an in-lieu fee equivalent to five percent (5%) of the total proposed units (not including density bonus units).

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

c. Off-Site Affordable Units. Provision of affordable units off-site must be approved by the decision-making body reviewing and taking action on the project, and shall meet all of the following criteria:

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

## ATTACHMENT 4

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

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

## ATTACHMENT 4

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

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

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

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

### F. Administration.

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

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

**ATTACHMENT 4**

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

**AYES: COUNCILMEMBERS:**

**NOES: COUNCILMEMBERS:**

**ABSENT: COUNCILMEMBERS:**

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**LINDSAY LARA, City Clerk**

**ATTACHMENT 5**

**RESOLUTION NO.**

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

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

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

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

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

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

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

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

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

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

## ATTACHMENT 5

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

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

## ATTACHMENT 5

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



## ATTACHMENT 5

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

## ATTACHMENT 5

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

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

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

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

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

**ATTACHMENT 5**

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

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

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

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

\*\* fractional units shall be rounded up.

**ATTACHMENT 5**

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

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

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

## ATTACHMENT 5

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

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

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

## ATTACHMENT 5

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

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

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

**M. Definitions**

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

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

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

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

**ATTACHMENT 5**

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

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

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

**AYES:            COUNCILMEMBERS:**

**NOES:            COUNCILMEMBERS:**

**ABSENT:        COUNCILMEMBERS:**

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**LINDSAY LARA, City Clerk**

**EXHIBITS**

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

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

<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

## **Brief Descriptions of Potential In-Lieu Fee Funded Programs**

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

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

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

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

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

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

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

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

**DRAFT- POTENTIAL INCLUSIONARY HOUSING HYBRID SCENARIOS**

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

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

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

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

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

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

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

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

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

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



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Community Development

*Alicia M. Giudice*

Prepared by: Alicia Giudice (TS, TW)  
Planning Manager

City Manager Approval: \_\_\_\_\_

*AS*

TOPIC: PUBLIC ART PROJECTS

SUBJECT: 1. INFORMATIONAL REPORT PROVIDING AN UPDATE REGARDING PUBLIC ART PROJECTS IN TERRA LINDA AND CANAL NEIGHBORHOODS

2. INTRODUCTION OF ORDINANCE AMENDING SAN RAFAEL MUNICIPAL CODE (SRMC) SECTION 14.25.040 EXEMPTING FROM ENVIRONMENTAL AND DESIGN REVIEW ANY PUBLIC ART PROJECTS THAT UNDERGO REVIEW THROUGH A SEPARATE REVIEW PROCESS ESTABLISHED BY THE CITY FOR THAT PURPOSE; FILE NO. ZO21-002

**BACKGROUND:**

**Informational report on proposed public art projects**

Two local community groups have come together this past year to work on proposing public art projects in the city. The City has since received two requests for public art projects in San Rafael. These projects are shown in Table 1 and described below:

Proposed Project	Group proposal was brought by	Who is involved in the group	Proposed location
Terra Linda Public Art	San Rafael Social Justice Community Art Group	<a href="#">Youth in Arts</a> , San Rafael community members	Arbor Park (Freitas & Las Gallinas)
Canal Mural	Canal Arts Initiative	<a href="#">Canal Alliance</a> , <a href="#">SR Chamber of Commerce</a> , <a href="#">Artworks Downtown</a> , <a href="#">Marin Society of Artists</a> , <a href="#">Storek Studio/Architecture</a>	3301 Kerner Blvd

Table 1 - Proposed Public Arts Projects

**Terra Linda Public Art:** The San Rafael Social Justice Community Art Group came together in fall 2020 in response to the chalk art mural created at the intersection of Manuel T. Freitas Parkway and Las Gallinas Avenue over the summer of 2020. The chalk mural, honoring the life of Breonna Taylor, was

**FOR CITY CLERK ONLY**

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_



removed per City policy to keep public property clear of markings. The group is comprised of 11 arts and community members who live and work in San Rafael. In addition, the group partnered with [Youth in Arts](#), a San Rafael based non-profit to provide expertise, fundraising, and a youth component to the project. The project's focus is on creating art that includes a positive message to celebrate the core themes of JEDI – Justice, Equity, Diversity, and Inclusion through the lens of a Marin-based black, Indigenous and people of color (BIPOC) perspective.

In addition, the group aims to demonstrate that art is a representation of the collective community, and that the community can come together to heal, learn, and feel hope and unity. To that end, the creation of the art piece itself proposes to have an educational and awareness building experience “baked in” for the community.

The group identified Arbor Park, a small parkette at the southwest corner of the intersection of Manuel T. Freitas Parkway and Las Gallinas Avenue as a potential location for the artwork. This location is close in proximity to the chalk art mural and is owned by the City of San Rafael.

A [Call for Artists](#) (Attachment 2) was issued by the group on January 15, 2021 with applications due on March 1, 2021. The type and medium of the art were deliberately left open in the Call for Artists so as to allow for a wide range of artistic expressions.

**Canal Mural:** The Canal Arts Initiative is a group of local volunteers and both arts organizations and community-based organizations that serve the Canal neighborhood. The goal of the Initiative centers around a three-pronged mission:

1. First, with City support, an alliance of businesses and building owners, community organizations, citizens and artists bring visible transformation to the Canal, expressing its colorful mix of cultures.
2. Promote the use of color on buildings. A wall or an entire building, simply repainted with a lively palette, can make an engaging difference at little cost.
3. A public art program for the Canal would include participatory education elements throughout its conception and creation, with an emphasis on history and meaning, and reflection on its impact.

The group has secured a grant from the [California Arts Council](#) to achieve the first major installation of color and art in Canal: the installation of a large, colorful mural in the Canal neighborhood.

The group identified the office building at 3301 Kerner as a perfect location for the mural, as the visible entryway into the neighborhood. The group has been working extensively with the Canal community, including collaborating with Canal Alliance, as well as local arts organizations listed above to ensure the artistic concept for the mural is a community-driven process.

Currently, the Canal Arts Initiative has selected artists that will work on the mural at 3301 Kerner Blvd. and engaged with County staff that manage the facility. The building was purchased by the County in fall 2020 as a part of the State-funded [Project Homekey](#) program.

### **Review Process – Pilot Public Arts Program**

To facilitate a path for reviewing public arts projects such as the ones described above, the City has created a pilot public arts program. The goal of the pilot public art program is to explore an alternative process for public art and to create an advisory group to review and provide feedback to the City Council on proposed public art projects in San Rafael. The Pilot Public Art Advisory Group will include local community arts representatives, a member each of the Planning Commission and the Design Review Board, and a representative who has diversity, equity & inclusion expertise.

Depending on the location (public or private property) of the proposed art, ad-hoc members may be added to the Pilot Public Art Advisory Group at the discretion and direction of City management. For example, if the project is proposed to be installed in a City park, a member of the Parks & Recreation Commission will join for the review of that project as an ad-hoc member. All Pilot Public Art Advisory Group meetings will be open to the members of the public to attend and provide feedback.

The Pilot Public Art Advisory Group is an advisory body only, not an approving authority. After review by the Advisory Group, any proposed public art projects will then be presented to the City Council for approval. The Pilot Public Art programs will run through 2021 and staff will evaluate the process and return to the City Council in early 2022 with an update and recommendations for potential modifications to the process and possibly adopting a formal public arts program.

In spring 2021, the Pilot Public Arts Advisory group will convene to review both of the proposed public art projects.

**Proposed Amendments to the San Rafael Municipal Code Section 14.25.040**

Currently the San Rafael Municipal Code classifies murals and mural signs on private property as “major physical improvements” that require Environmental and Design Review. This type of review requires a recommendation by the Design Review Board and a consideration and approval by the Planning Commission. This process can take up to six months and would require extensive staff and applicant time in coordination and preparation of reports. The current process is burdensome for arts groups who may lack the time and resources and has likely discouraged prospective public mural art projects from happening in San Rafael.

The above described pilot program is meant to minimize barriers to such projects and to provide a unified process for review of public art projects on both public and private property within the City. To achieve this goal, an amendment to the San Rafael Municipal Code, (SRMC) Section 14.25.040 is needed, to exempt from Environmental and Design Review any public art installations on private property approved through a City-established public art program. That same section would define “public art” as: “all forms of art including, but not limited to: sculptures, murals, mosaics, and fountains, which are located on the exterior of a publicly owned facility or on a privately-owned property when such artwork is placed in a location intended to be visible to the general public.”

The proposed ordinance amending portions of SRMC section 14.25.040 is attached to this report (Attachment 1).

**ANALYSIS:**

As discussed in the background section, the proposed amendments would exempt certain public art projects from going through an expensive and lengthy major environmental design review process. The amendments would also provide an alternate pilot process that applicants would go through for project requests involving installation of public art.

The proposed amendments to the San Rafael Municipal Code, as well as the alternative pilot review process, have been evaluated for consistency with General Plan 2020 and Draft General Plan 2040. Both contain specific policies that support art in public places. General Plan Policy CA-3-Cultural and Arts Programs and Activities encourages opportunities for both public and private cultural arts programs and activities addressing the needs and interests of the whole community. In addition, the proposed amendment is consistent with policy CA-6 - Community Art which states:

“Encourage community art projects that create a greater understanding and appreciation of art and artists through community involvement.”

While General Plan 2040 (GP2040) has not yet been adopted, a draft has been released for public review and has received Planning Commission consideration. The proposed amendments are consistent with a number of proposed policies in Draft GP2040:

*Policy AC-1.2: Arts Programming*

Encourage and support an array of cultural arts programs and activities addressing the needs and interests of the whole community.

*Policy AC-1.4: Inclusive Activities*

Encourage activities, entertainment and events that reflect San Rafael's diverse cultural heritage and population. Programming should be inclusive of all ages, ethnicities, genders, abilities, and socio-economic groups. Participation in the arts should be supported as a way to promote intercultural understanding, and to bridge differences and forge unity. All residents should have access to arts and cultural activities.

*Policy AC-1.5: Public Art*

Promote a stimulating and engaging environment through the greater display of public art, including both temporary and permanent works. Locations throughout the city should be considered.

*Program AC-1.5A: Art in Public Places.* Evaluate the feasibility of an Art in Public Places Ordinance (or "percent for art" program) that would establish a funding source and/or mechanism for increasing public art. Strive for solutions that maximize flexibility in the way funds are collected and used.

*Program AC-1.5B: Community-Based Outdoor Art Installations.* Support participatory public art projects that engage the community, such as murals, 3D art, and street painting. Such projects should foster a greater understanding of local cultures, arts, and history and provide an opportunity to express neighborhood identity.

*Policy AC-1.8: Arts and the Local Economy*

Recognize the value of the arts to the economy of the city, and the role of the arts in community revitalization.

*Policy AC-1.9: Arts-Supportive Environment*

Create an environment that is supportive to arts professionals

Many of the policies mentioned above are focused on supporting public art events and programs in San Rafael. The proposed amendments to the San Rafael Municipal Code emphasize the City's commitment and celebration of the arts in our community.

While the proposed amendments allow an exception to formal design review, it is important to note that the City would still require all proposals for public art to go through a public review process. An opportunity for review, input and direct feedback from San Rafael's art and business communities, as well as members of the public, is critical to supporting the City's intent of bring community-supported art to publicly visible spaces.

## **Community Outreach**

Community outreach has been conducted and will continue for both proposed public art projects, as well as the proposed ordinance amendments.

Updates regarding the Terra Linda Public Art project have been posted on the City's [webpage](#) over the last few months and through signage at the site. The webpage includes a form where members of the public can provide their feedback and also subscribe for updates regarding the proposed project. In addition to the webpage, information regarding the purpose of the project and a "Call for Artists" has been promoted through the community starting in January 2021. The project was shared with local art groups including Artworks Downtown, the Marin Society of Arts, and the County of Marin's Cultural Services division. The project was also shared with local youth and student groups including Youth in Arts, Dominican University, and the Marin City Arts and Culture. Furthermore, the project was promoted on the City's social media platforms including, Facebook, Instagram, Nextdoor, and Twitter. The group also set up an email address to receive feedback from the community and has been monitoring and responding regularly to inquiries.

The Canal Arts Initiative is a coalition of artists and organizations that first convened in fall 2020 intent on finding ways to bring more public art to East San Rafael and the Canal. The group is led by Rich Storek of Storek Studio/Architecture and includes representatives from a broad group of both Canal and arts-focuses organizations in San Rafael; including the Canal Alliance, SR Chamber of Commerce, Marin Cultural Services Department, Dominican University, Art Works Downtown, Marin Open Studios, Marin Society of Artists and others.

In fall 2020 the Canal Arts Initiative secured a grant from the California Arts Council for the installation of a public art mural in the Canal neighborhood at 3301 Kerner Blvd. The group has selected two lead artists for the project and has set up a "community review group" to work with the artists over the next few months to ensure the mural is representative of what the Canal community wants to see in a public art project. The community review group is made up of members of the Canal Alliance and the Canal-based [Parents Services Project](#).

The proposed ordinance amendments were noticed in the *Marin Independent Journal* and notices were sent to residents and businesses within 300 feet of the proposed project sites at Arbor Park and in the Canal neighborhood. Signs were also posted at these sites with additional information regarding the upcoming public hearing.

**FISCAL IMPACT:** The proposed amendments to the San Rafael Municipal Code will likely result in a minor loss of General Fund revenue for the Community Development Department. Current code requires public art to be submitted as an application for Major Physical Improvements requiring Design Review and Planning Commission review, which carries a deposit-based fee of \$8,523:

DESIGN REVIEW – ALL OTHERS (PLANNING COMMISSION)	\$ 8,523.00 INITIAL DEPOSIT BASED ON 70% OF ANTICIPATED TYPICAL APPLICATION COST. STAFF TIME BILLED AT FBHR. SUBMITTALS WHICH INCLUDE MULTIPLE DEPOSIT-BASED APPLICATIONS MAY REDUCE THE INITIAL DEPOSIT AMOUNT BY 25%.
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However, the impact to revenues is likely to be minimal due to the temporary nature of the pilot program. Furthermore, in order to support the City's mission of bringing more art to public spaces as set forth in the General Plan, staff recommends removing the fiscal barrier which may disincentivize public art projects from coming forward.

Staff recommends not assessing a fee for proposed projects undergoing the new, pilot public art approval process.

**OPTIONS:**

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

1. Pass the ordinance to print and accept the informational report;
2. Pass the ordinance to print with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDATION:**

1. Accept the informational report on proposed public art projects in San Rafael.
2. Pass Ordinance to print adopting the proposed amendments to the San Rafael Municipal Code.

**ATTACHMENTS:**

1. San Rafael Social Justice Community Art Group Purpose and Call for Artists
2. Canal Arts Initiative 3301 Kerner Mural Project Outline
3. Ordinance Amending San Rafael Municipal Code Section 14.25.040 Exempting from Environmental and Design Review Any Public Art Projects, Including Murals, That Undergo Review Through a Separate Review Process Established by the City for That Purpose



## San Rafael Social Justice Community Art Group Project Purpose, Goals & Call for Artists

### **GROUP PURPOSE**

The San Rafael Social Justice Community Art Group formed in October 2020 and is comprised of arts and community advocates who live and/or work in the City of San Rafael. The group wanted to find a way to support the social justice messaging which was embedded in the chalk art mural created over the Summer of 2020 honoring Breonna Taylor's life at the intersection of Las Gallinas and Freitas Parkway. The mural was removed as the City's policy is to keep public property clear of markings of any kind<sup>1</sup>. The City and members of the community group have been working together toward the common goal of creating a publicly sanctioned art piece in Terra Linda, in the same vicinity and theme as the original mural.

### **GROUP GOALS**

The community groups' goals are to:

- Co-create, along with the City of San Rafael, a user-friendly, expeditious pilot process for approving public art projects on City owned property. This project will serve as a pilot, which will inform a future Public Arts program for the City of San Rafael.
- Shepherd a social justice public art proposal through this pilot process and see the project through its installation.

### **PROJECT GOALS**

- The art installation will create a positive message to celebrate the core themes of JEDI – Justice, Equity, Diversity, and Inclusion through the lens of a Marin-based black, Indigenous and people of color (BIPOC) perspective.
- The impact of the art installation will demonstrate that art is a representation of the collective community, and that the community can come together to heal, learn, and feel hope and unity. To that end, the creation of the art piece itself will have an educational and awareness building experience “baked in” for the community.

### **ART MEDIUM**

- Depending on the artist interpretation, the medium may consist of a mural, sculpture, and/or permanent canvas. The installation must be able to be moved to an alternative location at a future date.

### **ARTIST ELIGIBILITY**

The Call for Artists is open to all San Rafael and surrounding Marin County community adult and student practicing artists. Priority will be given to San Rafael-based artists and to those who identify as

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<sup>1</sup> The policy specifically states to keep public property clear of markings of any kind or design which are marked, etched, written, drawn, painted, stuck or otherwise applied to or on any surface of any public or private property without the consent of the owner of that property.

a BIPOC individual. All entries must be an original design and artwork of the entrant and must be suitable for viewing by all ages.

### **APPLICATION/PROPOSAL PROCESS FOR ARTISTS**

Artists are to complete and submit their proposals by **February 15, 2021** to [srccommunityart@gmail.com](mailto:srccommunityart@gmail.com). If you have any questions about this project or the application/proposal requirements, please submit them in writing to the Group at the email address above.

Artists are required to submit proposals which include the following elements:

- a. First and Last Name
- b. Mailing Address
- c. Phone Number and Email Address
- d. What is your affiliation with San Rafael (live, work, other?)
- e. Experience or work related with youth arts and/or arts education. (This is not a requirement, but any previous experience should be listed and is preferred)
- f. Describe how you and your art will create a positive message of racial diversity, equity and inclusion through the lens of a Marin-based black, Indigenous and people of color (BIPOC) artist.
- g. Why do you want to participate in this project and what makes your work stand out from others?
- h. In detail, describe the type/medium and size of your proposed of your artwork. How will the artwork be created and what similar experiences do you have creating similar art?
- i. Include pictures of past artwork.
- j. Estimated time and cost to construct artwork.
- k. Describe how you will install the art such that it can be moved at a future date.
- l. Attach a mock-up image and/or rendering of proposed artwork design(s).
- m. Confirm you are available to complete the art installation in the Spring 2021.

### **BUDGET FOR INSTALLATION**

The artist(s) will receive compensation for their work; the amount will be determined at the conclusion of fundraising for the project. The City of San Rafael will provide resources to maintain the park and installation (providing anti-graffiti application to artwork, lighting, cleaning, trees, etc.).

### **FISCAL SPONSOR**

Youth in Arts (YIA) will act as the fiscal sponsor and recipient of all grants and funding sources for the project. This partnership ensures the next generation has a voice in this process and leverages the experience of YIA in developing local art projects. They will also provide support to the selected artist(s) by supporting them to incorporate a youth education component into the project.

**DESCRIPTION AND ART LOCATION:** Arbor Park resides in the northern part of San Rafael in the Terra Linda neighborhood. Located at the southwest intersection of Las Gallinas Ave and Manuel T. Freitas Pkwy, Arbor Park is what San Rafael calls a Parkette, or a small park. It consists of a few benches, grass area, and walking path. The park is highly visible to cars and pedestrians who travel in Terra Linda along Manuel T. Freitas which is the main thoroughfare for the neighborhood.



Figure 1 – Arbor Park outlined in red

### PROPOSED SELECTION PROCESS

Once all artist proposals are received, the San Rafael Social Justice Public Art Community Group will review and select the top 2-3 artists.

The City of San Rafael is creating a Pilot Public Art Advisory Group who will review the top 2-3 artist proposals and provide feedback on them to staff.

This group will be purely advisory in nature and will not have approval authority for the project. It will include:

- 1 Community Based Organization representative who has Diversity, Equity & Inclusion expertise
- 2 Local Community Arts representatives (one of which will be the fiscal sponsor – Youth in Arts)



- 2 members of the San Rafael Social Justice Community Art Group
- 1 member of the Planning Commission
- 1 member of the Park & Recreation Commission
- 1 member of the Design Review Board

The City of San Rafael City Council will serve as the approval authority for the project.

**TIMELINE FOR INSTALLATION**

- Spring 2021

# CANAL ARTS INITIATIVE 3301 KERNER MURAL PROJECT OUTLINE

November 10, 2020



Following impactful mural projects completed for Canal Alliance, a coalition of San Rafael arts, business education and community groups has formed to promote public art projects in the Canal:

Canal Alliance  
Marin Cultural Services Department  
San Rafael Chamber of Commerce  
Dominican University  
Art Works Downtown  
Marin Society of Artists  
Marin Open Studios  
Marin MOCA  
MarinSEL  
Parent Services Project  
TeamWorks  
Storek Studio/Architecture

The direction of the CAI is by this core group

Omar Carrera, Canal Alliance  
Joanne Webster, San Rafael Chamber of Commerce  
Elisabeth Setten, Art Works Downtown  
Meg Reilly, Marin Society of Artists  
Rich Storek, Storek Studio/Architecture

The CAI's inaugural mural project is partially funded through a California Arts Council Local Impact matching grant, supporting

- Community-driven arts projects for historically marginalized communities,
- Using the arts as a vehicle for building strong, healthy, vibrant, and resilient communities,
- Celebration of local artists,
- Forms of arts and cultural expression that are unique to, and/or historically rooted in, the community.
- Activation of community participants to develop and express their own creative and artistic abilities.
- Foster intergenerational and lifelong arts learning, participation, and exchange.

CAI's mural project is designed to achieve all the above, in addition to video documentation similar to these produced for Canal Alliance mural projects:

<https://canalalliance.org/other/you-are-home-mural-project/>

<https://canalalliance.org/other/canal-alliance-unveils-new-mural-empowered-through-education/>

The CAI's initial public art project was selected for 3301 Kerner for its prominent Canal gateway location, and had approval by the building owner prior to sale to the County. The grant requires completion of a project that was originally scheduled over a one-year period, from June 2020 to July 2021. Delay in obtaining location approval, and then community outreach, artist selection, creation, approval, and a lengthy permitting process has reduced that by several months, but may still be accomplished.

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING SAN RAFAEL MUNICIPAL CODE SECTION 14.25.040 EXEMPTING FROM ENVIRONMENTAL AND DESIGN REVIEW ANY PUBLIC ART PROJECTS THAT UNDERGO REVIEW THROUGH A SEPARATE REVIEW PROCESS ESTABLISHED BY THE CITY FOR THAT PURPOSE**

**WHEREAS**, City staff is working to establish a program to allow public arts projects on public and private properties within the City subject to a specially established City approval process; and

**WHEREAS**, under existing provisions of Chapter 14.25 of the San Rafael Municipal Code, art projects and/or installations on private properties, which could be considered to be public arts projects under the City's new public arts program, are required to obtain Environmental and Design Review approval prior to installation; and

**WHEREAS**, the City Council wishes to establish a unified process for approval of public arts projects on both public and private properties within the City; and desires this separate process to be used to review and approve public arts projects on private property rather than the Environmental and Design Review process; and

**WHEREAS**, the City Council finds that adoption of this ordinance would make minor alterations to the process for administrative review of murals and other art installations in the City, and is therefore categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15305 exempting minor alterations in land use limitations; and

**WHEREAS**, the City Council further finds:

1. The amendments to San Rafael Municipal Code Section 14.25.040 are consistent with the following policies and programs of the San Rafael General Plan 2020 as follows:
  - a. General Plan Policy CA-3-Cultural and Arts Programs and Activities encourages opportunities for both public and private cultural arts programs and activities addressing the needs and interests of the whole community
  - b. General Plan policy CA-6 -Community Art, *Encourage community art projects that create a greater understanding and appreciation of art and artists through community involvement.*
  - c. General Plan Program CA-6b-Mural Review, supports reevaluation of the City's mural review process. The proposed amendment will allow the city to initiate a pilot program that will test a local arts process for review of private and public installation of public arts projects.

2. The proposed amendments are consistent with the following DRAFT GP2040 policies and programs:
  - a. Policy AC-1.2: Arts Programming, which states: *Encourage and support an array of cultural arts programs and activities addressing the needs and interests of the whole community.*
  - b. Policy AC-1.4: Inclusive Activities, which states: *Encourage activities, entertainment and events that reflect San Rafael's diverse cultural heritage and population. Programming should be inclusive of all ages, ethnicities, genders, abilities, and socio- economic groups. Participation in the arts should be supported as a way to promote intercultural understanding, and to bridge differences and forge unity. All residents should have access to arts and cultural activities.*
  - c. Policy AC-1.5: Public Art, which states: *Promote a stimulating and engaging environment through the greater display of public art, including both temporary and permanent works. Locations throughout the city should be considered.*
  - d. Program AC-1.5A: Art in Public Places. Evaluate the feasibility of an Art in Public Places Ordinance (or “percent for art” program) that would establish a funding source and/or mechanism for increasing public art. Strive for solutions that maximize flexibility in the way funds are collected and used.
  - e. Program AC-1.5B: Community-Based Outdoor Art Installations, which states: *Support participatory public art projects that engage the community, such as murals, 3D art, and street painting. Such projects should foster a greater understanding of local cultures, arts, and history and provide an opportunity to express neighborhood identity.*
  - f. Policy AC-1.8: Arts and the Local Economy which states *Recognize the value of the arts to the economy of the city, and the role of the arts in community revitalization.*
  - g. Policy AC-1.9: Arts-Supportive Environment, which states: *Create an environment that is supportive to arts professionals.*
  
3. The public health, safety and general welfare are served by adoption of the proposed amendments, in that the amendments would provide opportunity for the City to establish a path to implement General Plan policies related to cultural and art programs that are inclusive of the whole San Rafael Community; and would allow opportunity to create a pilot program that could be used to review public arts projects;

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

**DIVISION 1: AMENDMENT.**

Section 14.25.040 of the San Rafael Municipal Code, entitled “Improvements Subject to Design Review” is hereby amended by amending subsection A (“Major Physical Improvements”) thereof to read in its entirety as follows:

- A. Major Physical Improvements.
1. New construction on vacant property, including, but not limited to:
    - a. Any residential structure located within one hundred (100) vertical feet of a ridgeline,
    - b. Residential structures with three (3) or more dwelling units, and boarding houses,
    - c. Residential structures as required by subdivision or zoning approvals,
    - d. Offices, retail and industrial structures,
    - e. Public, quasi-public, religious, social and similar community structures,
    - f. Marinas and yacht clubs;
  2. Modifications to existing structures, including, but not limited to:
    - a. Additions to multifamily residential structures with three (3) or more units, where the addition constitutes more than forty percent (40%) of the total square footage of the building,
    - b. Additions and alterations to existing nonresidential structures where the addition is greater than forty percent (40%) of the existing square footage. (Note: The community development director may determine that an addition or alteration greater than forty percent (40%) which has a minor impact on the visual character or function of a building is subject to a minor design review permit.),
    - c. Relocation of a nonresidential structure, or of a residential structure with three (3) or more existing dwelling units,
    - d. Second dwelling units, as prescribed by Section 14.16.285.C.9;
  3. Major site design improvements, including but not limited to:
    - a. Subdivisions located on properties with an average slope of twenty-five percent (25%) or greater, or with a general plan land use designation of hillside residential or hillside resource residential,
    - b. Cutting of one thousand (1,000) or more cubic yards per site per year, or fill of two thousand (2,000) or more cubic yards per site per year. (Exempt: Where removal is being done in accordance with an approved and legally effective tentative and/or final subdivision map, and a legally

effective building permit.) (Note: A use permit is also required where the principal use proposed is cutting or filling.),

- c. Landscaping as part of a development subject to major environmental and design review,
  - d. Circulation and parking and loading facilities for pedestrians, bicycles and motor vehicles on a development subject to major environmental and design review,
  - e. Signs for a development subject to environmental and design review. The sign permit application shall be reviewed for location, size and type of signs concurrently with the design review application. See Chapter 14.19, Signs;
4. Development subject to review as a major physical improvement pursuant to any other provision of this title;
  5. Mural signs painted on the exterior surface of a wall of an existing or new structure;
  6. Wireless telecommunications facility, as prescribed under Section 14.16.360.B.

## **DIVISION 2: AMENDMENT.**

Section 14.25.040 of the San Rafael Municipal Code, entitled “Improvements Subject to Design Review” is hereby amended by amending subsection D (“Exempt from Design Review”) thereof to read in its entirety as follows:

- D. Exempt from Design Review.
  1. Single-family dwellings when sited on individual lots with frontage on a public street and not otherwise subject to design review as listed above;
  2. Ordinary maintenance and repairs;
  3. New decks or additions to decks, except where review is required for decks located in hillside areas as prescribed in Section 14.25.040.C, above;
  4. Installation of solar panels on existing structures or grounds, as provided under state law and in compliance with all applicable development standards;
  5. Public art installations on public or private property approved through a City-established public art program. For purposes of this section (14.25.040), “public art” is defined as all forms of art including, but not limited to: sculptures, murals, mosaics, and fountains, which are located on the exterior of a publicly owned facility or on a privately owned property when such artwork is placed in a location intended to be visible to the general public;

6. The community development director may declare improvements which have been determined to be minor or incidental within the intent and objectives of this chapter to be exempt from review.

**DIVISION 3: SEVERABILITY.**

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

**DIVISION 3: PUBLICATION; EFFECTIVE DATE.**

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

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

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

\_\_\_\_\_  
KATE COLIN, Mayor

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

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



AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 1<sup>st</sup> day of March, 2021.

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LINDSAY LARA, City Clerk



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Fire

Prepared by: Darin White, Fire Chief

City Manager Approval: \_\_\_\_\_

**TOPIC: GRAND JURY REPORT ON ROADBLOCKS TO SAFE EVACUATIONS IN MARIN**

**SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE RESPONSE TO THE 2019-2020 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED “ROADBLOCKS TO SAFER EVACUATION IN MARIN”**

**RECOMMENDATION:**

Staff recommends the adoption of a resolution approving and authorizing the Mayor to execute the City of San Rafael’s response to the 2019-20 Marin County Civil Grand Jury Report entitled “Roadblocks to Safer Evacuation in Marin.

**BACKGROUND:**

During the past several years, catastrophic wildfires throughout California have led to numerous evacuation orders in small and large populations. Even the most prepared of communities, Paradise, CA found itself in severe danger in 2018 when it had to conduct a mass evacuation with little to no warning (as opposed to the systematic zoned evacuations the community had practiced) as the Camp Fire destroyed the town. This and numerous other incidents before and after that fire, including the Kincade Fire in 2019, and recent Glass Fire in Sonoma County and LNU Lightning Complex Fire in Napa have called into question the ability of communities to safely alert and notify community members about the pending dangers and immediately engage in safe and expedited evacuations.

On December 14, 2020, the 2019-2020 Marin County Civil Grand Jury released a report entitled [“Roadblocks to Safer Evacuation in Marin”](#). The Grand Jury Report investigates and makes determinations about Marin’s evacuation needs and whether they are considered adequately when planning for and building improvements to roads and traffic infrastructure. The report recognizes the fact that wildfire evacuations were a remote concern when the Transportation Authority of Marin (TAM) was chartered, and that the Marin Wildfire Prevention Authority (MWPA) does not possess the authority or funding to address the infrastructure needs. Instead, the report places the responsibility for public safety on the county, towns, and cities and suggests that none have prioritized evacuation needs when funding public work projects.

The Grand Jury Report makes the following findings:

- F1. No single agency or jurisdiction is taking responsibility and authority for building infrastructure for safe evacuation routes across jurisdictions in Marin County.

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**FOR CITY CLERK ONLY**

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

- F2. There is confusion in the county as to who has ultimate responsibility and authority for ensuring that Marin has safe evacuation routes.
- F3. Marin County Board of Supervisors and town and city councils have the responsibility for safe evacuation routing, and they have not sufficiently considered evacuation as a criterion when approving improvements to roads and traffic infrastructure in their jurisdictions.
- F4. County and municipal administrators, public works, and traffic engineers have not adequately considered mass evacuation as a criterion for planning and funding traffic infrastructure improvements.
- F5. Most Marin jurisdictions have not yet included urgently needed evacuation plans in their general plans as required by state law and as recommended by the Governor's Office of Planning and Research.
- F6. As Marin's designated "congestion management agency," the Transportation Authority of Marin, is best positioned to coordinate and support the funding of public works projects for improving evacuation routes, including cross-jurisdictional evacuation routes.
- F7. Contrary to its previous responses to the Grand Jury, the Transportation Authority of Marin is not precluded or constrained from incorporating evacuation planning needs as a criterion in its infrastructure projects.
- F8. The Transportation Authority of Marin's decision-making process is inadequate unless it includes evacuation as a criterion when funding improvements.
- F9. The Marin Wildfire Prevention Authority's Advisory/Technical Committee would benefit from having the expertise of the Transportation Authority of Marin to advise on evacuation infrastructure needs.

The Grand Jury Report makes the following recommendations:

- R1. Within 180 days of the date of this report, the governing boards of the County of Marin and its cities and towns should direct their respective planning and public works departments to include evacuation needs among their criteria for evaluating and recommending public works projects.
- R2. Within 180 days of the date of this report, the governing boards of the County of Marin and its cities and towns should adopt resolutions calling on the Transportation Authority of Marin to include evacuation needs among the criteria it considers when planning and funding public works projects.
- R3. In calendar year 2021, the County of Marin and its cities and towns should update the safety elements of their general plans to include evacuation planning.
- R4. Within 120 days of the date of this report, the Transportation Authority of Marin should establish a criterion requiring that evacuation impacts be examined and stated when planning and funding infrastructure projects.

- R5. Within 120 days of the date of this report, the Marin Wildfire Prevention Authority should invite a Transportation Authority of Marin representative to become an at-large, nonvoting member of its Advisory/Technical Committee to support program development, funding, and implementation of improvements in evacuation routes.

The City is required to respond to the Grand Jury Report, Penal Code Section 933 states in part:

“No later than 90 days after the Grand Jury submits a final report...the governing body of the public agency shall comment to the presiding Judge of the Superior Court on the findings and recommendations...[contained in the report].”

To comply with this statute, the City’s response to the Grand Jury must be approved by Resolution of the City Council and submitted to the Presiding Judge of the Marin County Superior Court and the Foreperson of the Grand Jury by March 14, 2021. A proposed Resolution is attached that would approve the City’s response, a copy of which is attached hereto as Attachment A.

**ANALYSIS:**

The Grand Jury report released in December of 2020, was distributed to the County of Marin and presumably to all cities and towns therein. Of the five recommendations made in the report, the City of San Rafael has been requested to respond to findings F1-F5 and the first three recommendations of five: R1-R3. Staff’s recommended responses are as follows:

Response to Findings:

F1. Agree with the finding. However, there appears to be no one mechanism or entity in place that can assume this responsibility. Multiple agencies are collaborating in the evaluation of evacuation routes and are placing resources toward reducing impediments. Additionally, the MWPA provides essential support via funding for projects involving roadside vegetation clearance, canopy reduction, and other effective tools for safe evacuations such as the development of evacuation maps. Thus far, the effort has been collaborative but is not led by Fire, Law Enforcement, or Transportation stakeholders.

F2. Partially Agree with the finding. Since there is no established single representative agency or Authority to ensure safe evacuation routes exist in Marin, community members and agency representatives do not know who to look to for guidance, direction, or critical information. Safe evacuation may be attributable to multiple factors which, when aligned can lead to effective and timely evacuations. However, mechanical failure, human error or lack of situational awareness and decisive actions, weather conditions, unimpeded travel routes, familiarization with multiple routes of travel and community safe refuge areas, and much more can all affect the safe, orderly, and rapid evacuations of neighborhoods, towns, and cities.

F3. Partially Agree with the finding. It can be argued that the responsibility for safe evacuation routing is a shared responsibility at the local, state, and federal levels of government. To assign the responsibility to County Supervisors and Town and City Councils could likely affix an insurmountable cost on local agencies who may not be able to absorb the substantial costs of any infrastructure improvements or alterations deemed necessary or desirable. The MWPA is taking a proactive approach and is on the verge of releasing a Request for Proposal (RFP) for a comprehensive evacuation study.

F4. Disagree with the finding. According to staff from the Department of Public Works and Planning Departments, the City of San Rafael includes evacuation needs among the criteria for evaluating and

recommending public works projects. Evacuation needs are included as part of our Capital Improvement Project (CIP) creation process and we promote a concept referred to as “complete streets” which would include their usage for evacuation.

F5. Partially disagree with the finding. Based on preliminary conversations with a few Fire Department agencies in Marin County, it appears that multiple agencies incorporate evacuation plans into their respective communities’ General Plans as required by state law. The City of San Rafael’s draft General Plan 2040 Safety and Resilience element incorporates evacuation as a component of the element.

Response to Recommendations:

R1. This recommendation has already been incorporated into the Public Works and Planning departments considerations for any CIP and those involving transportation land development reviews, critical infrastructure, and the General Plan policies summarized in later pages of this report. The City of San Rafael includes evacuation needs among the criteria for evaluating and recommending public works projects. Evacuation needs are included because it is a part of our CIP creation process and we promote a concept referred to as “complete streets” which would include their usage for evacuation.

R2. The Transportation Authority of Marin assists the City of San Rafael, and other jurisdictions in Marin County with the implementation of capital projects by identifying sources of funding and by ensuring that funding is distributed from other State and regional agencies in a way that is consistent with law and other shared agreements. While TAM provides a high level of support and works to ensure there is communication and coordination among the communities in Marin County, each jurisdiction is responsible for determining their own capital improvement project needs. As such, local governing bodies such as the Board of Supervisors and local City Councils are best suited to address the needs and priorities of the communities they represent.

R3. This recommendation has already been implemented. As per State law, which encouraged local governments to integrate their Local Hazard Mitigation Plan (LHMP) into the mandatory Safety Element of their local General Plan. The City of San Rafael draft General Plan 2040 Safety and Resilience element has included evacuation.

The geographic extent of potential wildfire hazard is significant (affecting 10-50% of the City) with a magnitude of severity for damage being catastrophic (more than 50% of properties severely damaged). In late fall 2020, the City of San Rafael released the Draft [San Rafael General Plan 2040](#) (General Plan 2040). The Draft General Plan 2040 presents a shared vision for San Rafael’s future for the next 20 years. As follow-up to the City’s adoption of the [LHMP](#) (2019) and the [Wildfire Prevention and Protection Action Plan](#) (2020), the Draft General Plan 2040 incorporates multiple policies and programs to plan for and implement wildfire prevention measures, including evacuation planning. These policies and programs are addressed in numerous elements of the Draft General Plan 2040 and are summarized as follows:

1. Policy S-6.3 (Improving Evacuation Capacity) of the Safety and Resilience Element calls for improving local evacuation by identifying and improving escape routes for areas with unique hazards of at-risk populations and identifying safe assembly locations for evacuees. To effectively implement this policy, Plan Program S-6.3A (Evacuation-Related Capital Projects) is recommended. The goal of this program is to identify key capital improvements needed to facilitate the orderly evacuation of at-risk areas and the ability of designated assembly points to handle evacuees.

2. Policy S-6.1 (Disaster Preparedness Planning) of the Safety and Resilience Element calls for conducting disaster prevention and preparedness planning in cooperation with other public agencies and public interest organizations. To implement this policy, Plan Program S-6.1C (Emergency Preparedness Plan) is recommended. This program prescribes an update of the City's emergency preparedness plan in conformance with State guidelines, including information on evacuation routes and shelter locations.
3. Policy S-6.2 (Neighborhood Disaster Preparedness Programs) of the Safety and Resilience Element encourages educational outreach to the City's neighborhoods to promote awareness and readiness regarding disaster preparedness. One of the recommended programs to implement this policy is Program S-6.2E (Disaster Management Drills) which would require that emergency response drills be conducted to test the effectiveness of the local procedures, including evacuation and emergency shelters drills in neighborhoods prone to wildfire.
4. Policy S-6.7 (Emergency Connectors) of the Safety and Resilience Element encourages that the City pursue the development of road connections for emergency vehicles only to improve access within San Rafael and between adjacent communities. Two programs are recommended to support and implement this policy, Programs S-6.7A (Emergency Connectors) and S-6.7B (Obstruction of Evacuation Routes). Program S-6.7A calls for a commitment to maintain specific, existing access routes for emergency vehicles (e.g., Manuel T. Freitas Parking connection to Fawn Drive, San Anselmo). Program S-6.7B (Obstruction of Evacuation Routes) calls for reducing obstacles for emergency vehicles along evacuation routes.
5. Policy M-5.3 (Traffic Calming) of the Mobility Element encourages effective traffic calming measures in residential neighborhoods but acknowledges that such measures should not conflict with emergency response capabilities. To address this concern, Program M-5.1B (Emergency Access Considerations) requires that road design projects be designed to maintain evacuation capacity and emergency vehicle response time, particularly along designated evacuation routes.
6. Policy EDI-6.5 (Disaster Preparedness) of the Equity, Diversity and Inclusion Element calls for ensuring that the needs of older San Rafael residents are specifically considered in disaster preparedness planning. To achieve this policy, Program EDI-6.5A (Outreach and Education) prescribes that special outreach and education of disaster preparedness be extended to older residents including evacuation planning.

The Draft General Plan 2040 includes a Neighborhoods Element, which covers specific policies and programs that are unique to San Rafael's 30+ neighborhoods. This element was prepared based on community outreach, and significant contributions and input by the many neighborhood organizations. Emergency preparedness and evacuation planning is addressed in several of the neighborhood policies and programs. For example, Policy NH-5.1 (San Pedro Peninsula) acknowledges that the peninsula, which includes expansive open space is served by one, major road (Point San Pedro Road), which is the primary access to the large area. For this reason, the San Pedro Peninsula community is very active in emergency preparedness. The community requested the inclusion of Program NH-5.1A (Hazard Mitigation), which calls for proactive community planning to improve resilience to natural hazards, including evacuation routes and procedures.

While the MWPA may not have the authority as described, the various fire service agencies, public safety partners, stakeholders, and committees have taken a proactive approach to addressing some key evacuation-based needs within the scope of the Measure C language referenced in the Grand Jury Report. Specifically, the reference to this statement placed in a Measure C campaign flyer that stated

one of the outcomes of approving the measure would be: “improve evacuation routes and infrastructure for quicker, safer evacuations.” In San Rafael, one of the first actions taken by Fire Chief White was to have the Engine Companies conduct assessments of roads and thoroughfares which might contain hazards that could be abated by MWPA resources. A list was generated, and Vegetation Management staff prioritized the identified locations for vegetation removal efforts and hazard planning purposes. There were 55 or so such locations identified, and vegetation removal efforts are planned for this year.

Recently, MWPA Executive Director Mark Brown notified the Operations Committee and Marin County Fire Chiefs Association that a contract with Zonehaven had been approved by the MWPA Board of Directors. This zoned-based application is an Evacuation Management Platform that enables law enforcement, fire, and Office of Emergency Services personnel to collaborate, build, and maintain evacuation plans. This cutting-edge technology will allow for real-time traffic monitoring, community notification, and information sharing among public safety personnel. The platform empowers fire and law enforcement officials with the decision-making ability to evacuate to determine which zones to evacuate, and when. Additional features include real-time wildfire modeling and connectivity with Alert Marin, and this tool can be utilized for other emergencies requiring evacuation such as hazardous materials spills/leaks, tsunamis, and flooding.

**COMMUNITY OUTREACH:**

The Planning Commission has conducted several public hearings on and is completing its review of the draft General Plan 2040. For example, the Neighborhoods Element utilized the input and contributions of neighborhood organizations for its preparation. Evacuation mapping and its development resulted in multiple community meetings, presentations, and feedback pertaining to evacuation maps and evacuation specific action items incorporated into the Wildfire Prevention and Protection Action Plan as it was developed and later adopted.

**FISCAL IMPACT:**

There is no fiscal impact associated with this report.

**OPTIONS:**

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

1. Adopt the resolution approving the response to the Grand Jury report.
2. Adopt the resolution with modifications to the response.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Staff recommends the adoption of a resolution approving and authorizing the Mayor to execute the City of San Rafael’s response to the 2019-20 Marin County Civil Grand Jury Report entitled “Roadblocks to Safer Evacuation in Marin”.

**ATTACHMENTS:**

- A. Resolution with Exhibit: Response to Grand Jury Report Form and Attachment 1
- B. Marin County Civil Grand Jury Report dated December 14, 2020.

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE RESPONSE TO THE 2019-2020 MARIN COUNTY CIVIL GRAND JURY REPORT ENTITLED “ROADBLOCKS TO SAFER EVACUATION IN MARIN”**

**WHEREAS**, pursuant to Penal Code section 933, a public agency which receives a Grand Jury Report addressing aspects of the public agency’s operations, must comment on the Report’s findings and recommendations contained in the Report in writing within ninety (90) days to the Presiding Judge of the Superior Court with a copy to the Foreperson of the Grand Jury; and

**WHEREAS**, Penal Code section 933 specifically requires that the “governing body” of the public agency provide said response and, in order to lawfully comply, the governing body must consider and adopt the response at a noticed public meeting pursuant to the Brown Act; and

**WHEREAS**, the City Council of the City of San Rafael has received and reviewed the 2019-2020 Marin County Civil Grand Jury Report, issued December 14, 2020, entitled “Roadblocks to Safer Evacuation in Marin” and has agenzized it at this meeting for a response.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of San Rafael hereby:

1. Approves and authorizes the Mayor to execute the City of San Rafael’s response to the 2019-2020 Marin County Civil Grand Jury Report, issued December 14, 2020, entitled “Roadblocks to Safer Evacuation in Marin”, a copy of which is attached hereto as Attachment 1.

2. Directs the City Clerk to forward the City’s Grand Jury Report response to the Presiding Judge of the Marin County Superior Court and to the Foreperson of the Marin County Civil Grand Jury.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on February 16, 2021, by the following vote to wit:

**AYES: Councilmembers:**

**NOES: Councilmembers:**

**ABSENT: Councilmembers:**

\_\_\_\_\_  
LINDSAY LARA, City Clerk



# RESPONSE TO GRAND JURY REPORT FORM

Report Title: Roadblocks to Safer Evacuation in Marin  
Report Date: December 14, 2020

Response By: San Rafael City Council  
Title: Mayor and City Council

## FINDINGS:

- We agree with the findings numbered F1
- We disagree wholly or partially with the findings numbered F2, F3, F4, and F5 (See Attachment 1)

## RECOMMENDATIONS:

- Recommendations numbered R1 and R3 have been implemented. (See Attachment 1)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented but will be implemented in the future.
- Recommendations numbered R2 require further analysis. (See Attachment 1)
- Recommendations numbered \_\_\_\_\_ will not be implemented because they are not warranted or are not reasonable.

DATED: \_\_\_\_\_

SIGNED: \_\_\_\_\_  
KATE COLIN, Mayor

ATTEST: \_\_\_\_\_  
Lindsay Lara, City Clerk

Number of pages attached: 3

**ATTACHMENT 1: RESPONSE OF THE CITY OF SAN RAFAEL TO GRAND JURY**  
**REPORT “ROADBLOCKS TO SAFER EVACUATION IN MARIN”**

FINDINGS AND RESPONSES

**F1. *No single agency or jurisdiction is taking responsibility and authority for building infrastructure for safe evacuation routes across jurisdictions in Marin County.***

Response: We agree with this finding.

There appears to be no mechanism or entity in place that can assume this responsibility. Multiple agencies are collaborating in the evaluation of evacuation routes and are placing resources toward reducing impediments to successful evacuations. Additionally, the Marin Wildfire Prevention Authority (MWPA) provides essential support via funding for projects involving roadside vegetation clearance, canopy reduction, and other effective tools for safe evacuations such as the development of evacuation maps. Thus far, the countywide effort has been collaborative but is not led by Fire, Law Enforcement, or Transportation stakeholders.

**F2. *There is confusion in the county as to who has ultimate responsibility and authority for ensuring that Marin has safe evacuation routes.***

Response: We partially agree with this finding.

Since there is no established single representative agency or Authority to ensure safe evacuation routes exist in Marin, many community members and agency representatives do not know who to look to for guidance, direction, or critical information. Safe evacuation may be attributable to multiple factors which when aligned can lead to effective and timely evacuations. However, mechanical failure, human error, or lack of situational awareness and/or decisive actions, weather conditions, unimpeded travel routes, familiarization with multiple routes of travel and community safe refuge areas, and much more can all affect the safe, orderly, and rapid evacuations of neighborhoods, towns, and cities.

**F3. *Marin County Board of Supervisors and town and city councils have the responsibility for safe evacuation routing, and they have not sufficiently considered evacuation as a criterion when approving improvements to roads and traffic infrastructure in their jurisdictions.***

Response: We partially agree with this finding.

It can be argued that the responsibility for safe evacuation routing is a shared responsibility at the local, state, and federal levels of government. To assign the responsibility to County Supervisors and Town and City Councils could likely affix an insurmountable cost on local agencies who may not be able to absorb the substantial costs of any infrastructure improvements or alterations deemed necessary or desirable. Furthermore, affixing responsibility on the local government may place an undue burden on the community (if fatalities or injuries are experienced) due to impeded evacuations or other travel route challenges. The MWPA is taking a proactive approach and is on the verge of releasing a Request for Proposal (RFP) for a comprehensive evacuation study.

**F4. County and municipal administrators, public works, and traffic engineers have not adequately considered mass evacuation as a criterion for planning and funding traffic infrastructure improvements.**

Response: We disagree with this finding.

According to staff from the Department of Public Works and Planning Departments, the City of San Rafael includes evacuation needs among the criteria for evaluating and recommending public works projects. Evacuation needs are included as part of the CIP creation process and the City of San Rafael promotes a concept referred to as “complete streets” which includes their usage for evacuation.

**F5. Most Marin jurisdictions have not yet included urgently needed evacuation plans in their general plans as required by state law and as recommended by the Governor’s Office of Planning and Research.**

Response: We partially disagree with this finding.

Based on preliminary conversations with a few Fire Department agencies in Marin County, it appears that multiple agencies incorporate evacuation plans into their respective communities’ General Plans as required by state law. The City of San Rafael’s draft General Plan 2040 Safety and Resilience element incorporates evacuation as a component of the element.

## RECOMMENDATIONS AND RESPONSES

**R1. Within 180 days of the date of this report, the governing boards of the County of Marin and its cities and towns should direct their respective planning and public works departments to include evacuation needs among their criteria for evaluating and recommending public works projects.**

Response: This recommendation has already been implemented.

Evacuation needs are currently incorporated into the Public Works and Planning departments considerations for any Capital Improvement Projects (CIP) and those involving transportation land development reviews, critical infrastructure, and the General Plan policies summarized in the Agenda Report. The City of San Rafael includes evacuation needs among the criteria for evaluating and recommending public works projects. Evacuation needs are included because it is a part of our CIP creation process and the City of San Rafael promotes a concept referred to as “complete streets” which would include their usage for evacuation.

**R2. Within 180 days of the date of this report, the governing boards of the County of Marin and its cities and towns should adopt resolutions calling on the Transportation Authority of Marin to include evacuation needs among the criteria it considers when planning and funding public works projects.**

Response: This recommendation requires further analysis.

The Transportation Authority of Marin (TAM) assists the City of San Rafael, and other jurisdictions in Marin County with the implementation of capital projects by identifying sources of funding and

by ensuring that funding is distributed from other State and regional agencies in a way that is consistent with law and other shared agreements. While TAM provides a high level of support and works to ensure there is communication and coordination among the communities in Marin County, each jurisdiction is responsible for determining their own capital improvement project needs. As such, local governing bodies such as the Board of Supervisors and local City Councils are best suited to address the needs and priorities of the communities they represent.

**R3. *In calendar year 2021, the County of Marin and its cities and towns should update the safety elements of their general plans to include evacuation planning.***

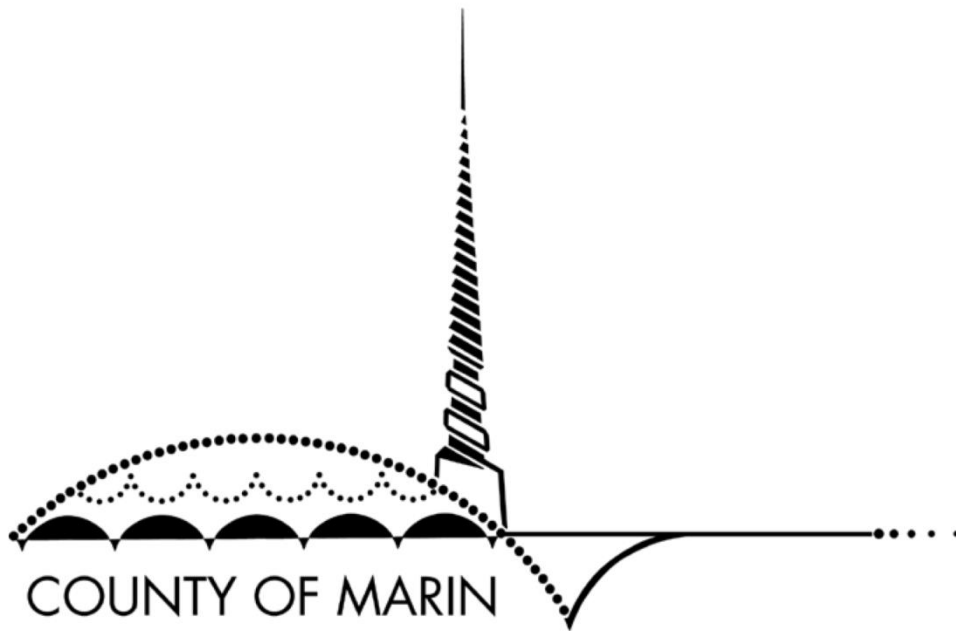
Response: This recommendation has been implemented.

As per State law, which encouraged local governments to integrate their Local Hazard Mitigation Plan (LHMP) into the mandatory Safety Element of their local General Plan. The City of San Rafael Draft General Plan 2040 (Safety and Resilience element) has included evacuation.

2019–2020 MARIN COUNTY CIVIL GRAND JURY

# Roadblocks to Safer Evacuation in Marin

December 14, 2020



### **A Note about the Coronavirus Pandemic**

The 2019–2020 Marin County Civil Grand Jury is issuing its reports during the unprecedented conditions of the COVID-19 pandemic. We are well aware that Marin County is in crisis and that critical public health concerns, operational difficulties, and financial challenges throughout the county have a greater claim to government attention right now than the important issues raised by this Grand Jury.

We are confident that, in due course, Marin will come through this crisis as strong as ever.

# Roadblocks to Safer Evacuation in Marin

## SUMMARY

California's 2020 fire season got off to an early start in mid-August with dry lightning that sparked five of the six largest wildfires in the state's history.<sup>1</sup> As of the end of September, nearly four million acres had burned, 22 major wildfires were still active, and 30 people were dead.<sup>2</sup>

As fires burned throughout the San Francisco Bay Area, anxious Marin residents sheltered from heavy smoke and kept a wary eye on the Woodward Fire in the Point Reyes National Seashore, hoping they would not be forced to evacuate at a moment's notice. People worried whether it would be possible to evacuate safely. The Grand Jury chose to investigate this question. Specifically, the jury sought to determine whether Marin's evacuation needs are considered adequately when government entities plan and build improvements to roads and traffic infrastructure.

Funding for transportation-related infrastructure projects is complicated, involving agencies at the local, county, regional, state, and federal levels. The rules and regulations governing these funding sources were largely developed before wildfire was the threat it has become in recent years and before the citizenry was fully aware of the urgent need to be able to evacuate quickly and safely. For instance, the Transportation Authority of Marin was chartered at a time when traffic congestion was high on Marin's priority list and wildfire evacuation was a remote concern. Times have changed.

Today, there is considerable uncertainty about who has the ultimate responsibility for building the transportation infrastructure capable of evacuating Marin residents safely in a rapidly evolving emergency. The Transportation Authority of Marin has not been willing to include evacuation as a criterion when funding roadway projects. The recently created Marin Wildfire Prevention Authority has neither the authority nor the funds to address the infrastructure needs. In fact, the county, towns, and cities have responsibility for public safety, but they have not prioritized evacuation needs when funding public works projects.

The Grand Jury recommends the following:

- Marin's county, town, and city governing bodies should include evacuation needs among their criteria for evaluating and recommending public works projects, and that they call on the Transportation Authority of Marin to do the same
- Marin's county, town, and city governing bodies should address evacuation infrastructure needs as they update their general plans

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<sup>1</sup> Michael McGough, "5 of the 6 Largest California Wildfires in History Started in the Last 6 Weeks," *Sacramento Bee*, September 22, 2020, <https://www.sacbee.com/article245917915.html>.

<sup>2</sup> Phil Helsel, "Deadly Fires in California have claimed at least 30 lives this year," NBC News, September 30, 2020, <https://www.nbcnews.com/news/us-news/deadly-fires-california-have-claimed-least-30-lives-year-n1241632>.

- The Transportation Authority of Marin should formally establish evacuation as one of its criteria for consideration when planning and funding traffic projects
- The Marin Wildfire Prevention Authority should invite a Transportation Authority of Marin representative to become an at-large, nonvoting member of its Advisory/Technical Committee to support program development, funding, and implementation of improvements to evacuation routes

## APPROACH

The Grand Jury interviewed officials of the Transportation Authority of Marin (TAM) and the Marin Wildfire Prevention Authority (MWPA), as well as county supervisors, city and town council members, city managers, public works directors, fire and police officials, agency legal counsel, and staff of the Marin County Office of Emergency Services. The Grand Jury reviewed TAM's charter as well as its response to a previous Grand Jury wildfire report that called on TAM to assume some responsibility for evacuation planning. In addition, it reviewed the authorizing documents of the MWPA, attended public meetings, and examined county and municipal general plans.

The Grand Jury investigation focused exclusively on evacuation as it relates to planning, funding, and implementing public works projects on our roads.

## BACKGROUND

Marin County has made progress in addressing the threat of wildfire with the formation and funding of the MWPA that was recommended by the 2018–19 Marin County Civil Grand Jury. With the leadership of fire officials and FIRESafe Marin, county residents are establishing certified Firewise neighborhoods focused on vegetation management and hardening homes against the risk of fire. The MWPA is getting off to a good start with several important initiatives, including inspection, vegetation management, public education, establishment of refuge centers, signage, planning, and mapping.

Planning to safely evacuate a community is complex and includes the need to consider public works projects for making rapid evacuation possible along Marin's narrow and congested roads. The September 2020 Glass Fire forced the sudden evacuation of 68,000 Sonoma County residents and resulted in gridlock on a major route.<sup>3</sup> During the 2018 Camp Fire in Paradise, flames raced at a rate of more than one football field every three seconds.<sup>4</sup> In that fire, eight people perished in their cars trying to escape.

In Marin, evacuation needs are not routinely included in the criteria used by county and municipal public works departments or TAM to prioritize and finance traffic projects. When it comes to planning and funding public works projects, the primary considerations are the safety

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<sup>3</sup> Lori A. Carter, Kevin Fixler, Guy Kovner, et al., "Live Updates: More Fire Evacuation Orders Issued for East Santa Rosa," Santa Rosa Press Democrat, September 28, 2020, <https://www.pressdemocrat.com/article/news/live-updates-more-fire-evacuation-orders-issued-for-east-santa-rosa/amp/>.

<sup>4</sup> Judson Jones, "One of California Wildfires Grew So Fast It Burned the Equivalent of a Football Field Every Second," CNN, November 10, 2018, <https://www.cnn.com/2018/11/09/us/california-wildfires-superlatives-wcx/index.html>.

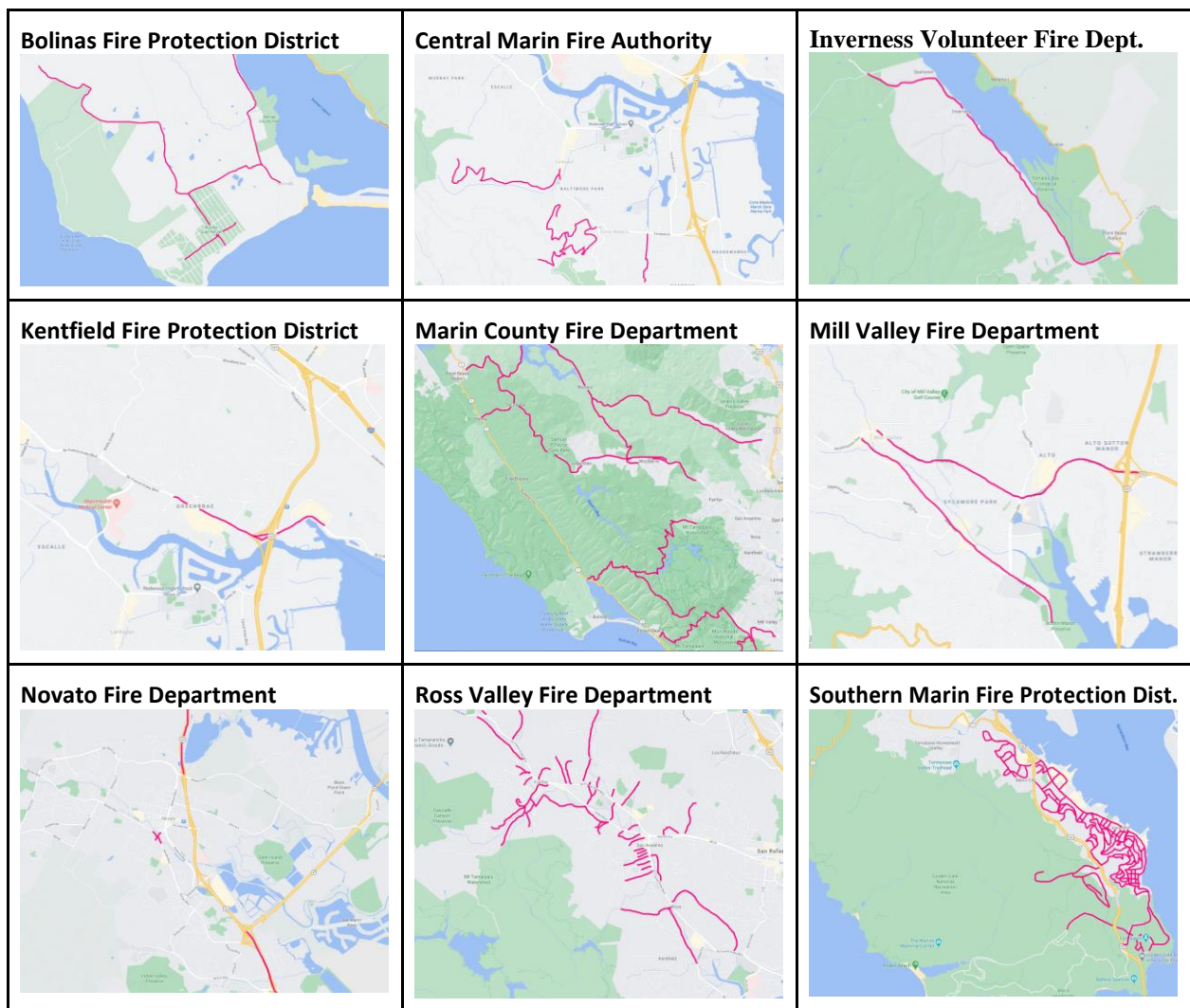


of pedestrians, bicyclists, and drivers as well as smooth, efficient traffic flow and congestion management. In numerous jurisdictions, evacuation needs do not make the list of approved criteria that are evaluated when deciding on a project. As one official put it, evacuation is “not on the radar.”

### Traffic Congestion and Evacuation Challenges

Marin’s unique geography creates exceptional challenges for transportation planners across the county. The 2018–2019 Marin County Civil Grand Jury presented an extensive list of choke points identified by Marin’s fire districts.<sup>5</sup> Some of these are illustrated in Figure 1.

**Figure 1. Choke Points Identified by Fire Districts in 2019**



<sup>5</sup> Marin County Civil Grand Jury, *Wildfire Preparedness: A New Approach*, Appendix C, April 25, 2019, <https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2018-19/wildfire-preparedness--a-new-approach.pdf?la=en>.



Road narrowing at eastbound East Blithedale Avenue approaching Highway 101. (Photo by Spencer Sias)

The problem is compounded when evacuation routes cross multiple jurisdictions where no single agency has authority to make improvements along the entire route. These problems are illustrated at several locations in Marin.

For example, Mill Valley's Miller Avenue and Blithedale Avenue are the primary evacuation routes for more than 15,000 people, almost all of whom live in a fire-prone wildland-urban interface area. Normal traffic there is consistently backed up at three key choke points: the intersection of Camino Alto and East Blithedale, the Highway 101 interchange at Blithedale, and the heavily gridlocked intersection on Shoreline Highway (Highway 1) at Tam Junction. Evacuation to refuge centers near Highway 101 will almost certainly not be possible for many Mill Valley residents. Two of the three choke points that affect Mill Valley lie outside its city limits. To address this problem, multi-jurisdictional cooperation among TAM, Mill Valley, Marin County, and Caltrans will be needed.

The two primary emergency exits from San Anselmo and Fairfax are Sir Francis Drake Boulevard and Red Hill Avenue, which pass through many choke points across multiple jurisdictions, including Ross, San Rafael, Larkspur, County of Marin, and the Caltrans interchanges at Highway 101.

Similar choke points exist in Sleepy Hollow, where the Butterfield Road escape route runs across the jurisdictions of unincorporated Marin County and San Anselmo. Santa Venetia's escape route on San Pedro Road crosses unincorporated Marin County, San Rafael, and the Caltrans interchange at Highway 101. Evacuation along Novato Boulevard involves the City of Novato and the county.

In addition to the choke points on major arterial routes, natural and constructed obstacles on Marin's narrow hillside and feeder roads impede safe evacuation.

## DISCUSSION

Planning for safe wildfire evacuation is complicated. It requires multi-agency cooperation to address a multitude of tasks by many different departments and administrators under the direction of Marin's elected officials. These tasks are performed by county and municipal public works, fire, and law enforcement agencies; the Marin County Office of Emergency Services; and the Marin Wildfire Prevention Authority; as well as by regional, state and federal agencies.

Current thinking among most of the county's public safety officials is that residents needing to evacuate should get into their cars, drive down to valley floors, and then go to mapped refuge centers. If necessary, evacuees can then move onto highways and out of the county. Refuge centers are typically large parking lots, playing fields at schools and community centers, and shopping malls. Putting aside the question of whether the designated refuge centers are large enough to accommodate all the evacuees from heavily populated areas, the paths to reach these refuge centers could be impassable. In the long run, it will be essential to move traffic through known choke points in order to ensure public safety in a swiftly moving emergency requiring mass evacuation with little or no warning.

Fire professionals tell residents that they will be safe in their cars on pavement en route to valley floors or designated refuge centers.<sup>6</sup> They stress that residents should evacuate as soon as they are warned to avoid congestion and panic. However, fires often strike suddenly and create the need to move thousands of cars immediately with little or no warning.

While Marin's agencies are implementing many aspects of evacuation planning, they are not considering infrastructure improvements such as the removal of impediments or the widening of roads for evacuees and emergency vehicles. In interviews with the Grand Jury, many officials expressed reluctance to take on these specific evacuation infrastructure challenges because of the enormous costs, potential litigation, environmental complexities, neighborhood resistance, and lack of authority. Furthermore, it is not clear who has responsibility for addressing this critical need. Nevertheless, the dire consequences of failing to address this challenge could result in a catastrophe that far outweighs the cost of improving our roads to support mass evacuation.

### Political Confusion

Marin has political as well as physical impediments to safe evacuation.

At present, it is not clear who has the political authority for all of the many aspects of planning and implementing evacuations. In fact, no single governmental entity has the authority or has accepted responsibility for overseeing and executing all of these tasks.

In interviews with the Grand Jury, public officials often expressed the belief that some other agency had the responsibility for evacuation. For example, some public works directors and city managers believe that fire and law enforcement are in charge of evacuation and involved in its planning. Transportation officials said that the county's Office of Emergency Services is in

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<sup>6</sup> FIRESafe Marin, "Wildfire Evacuation Guide," accessed November 5, 2020, [https://firesafemarin.org/index.php?option=com\\_content&view=article&id=100&Itemid=614](https://firesafemarin.org/index.php?option=com_content&view=article&id=100&Itemid=614).

charge. However, when asked, officials from the Office of Emergency Services and law enforcement responded that they focus on evacuation only during active emergencies.

The Grand Jury heard from several elected officials that they anticipate that the new wildfire authority will take care of evacuation planning. To add to the muddle, there was often confusion over what planning for evacuation actually entails. No one had a complete grasp of all of the interconnected components, whether it is educating the public, cutting back vegetation, improving mapping and signage, designating refuge centers, executing evacuation during emergencies, or actually building and improving the infrastructure to support a mass evacuation.

After completing its investigation, the Grand Jury believes that the ultimate responsibility for road improvements and establishing safe evacuation routes lies with our elected officials, specifically the Marin County Board of Supervisors as well as Marin's town and city councilmembers. For a fully functional evacuation infrastructure, these officials must execute their local policies and decisions through their public works, fire, and law enforcement departments and agencies while also coordinating with one another across jurisdictions. They must also reach out to the state and federal transportation agencies to seek funds. All of this work will require the support of the Transportation Authority of Marin and the new Marin Wildfire Prevention Authority. No jurisdiction or agency can do this entirely by itself.

### **County, Towns, and Cities**

It is up to the county and municipalities to propose and build the public works infrastructure needed to support evacuation as well as emergency access by fire equipment and first responders. It is critical that they remediate traffic choke points and improve key narrow roads within their boundaries. They also must look beyond their borders at cross-jurisdictional evacuation routes that will be needed to accommodate mass evacuations.

While jurisdictions may have the resources for small projects, they will need to coordinate with one another and regional, state, and federal transportation agencies to obtain the funding required for larger local and cross-jurisdictional projects. Major public works projects can involve enormous expense, generate litigation, and take years to accomplish. However, the Grand Jury believes that even small projects that address evacuation can make a big difference over time.

Elected officials through their local public works departments are responsible for building and maintaining a safe road infrastructure for the public, whether they are in automobiles, on bikes, or on foot. Safe, smooth, and efficient traffic flow on an everyday basis is their prime consideration. Evacuation has not been one of the criteria in planning road projects but given the effects of climate change and the rising risk of fire, it cannot be ignored.

Public works decisions are often made in response to demands from local residents who lobby for specific improvements in their neighborhoods. The Grand Jury heard from a number of public works directors that they respond to appeals from parents in regard to pedestrian safety. There have not been similar appeals from the public for evacuation-related improvements.

The responsibilities of each public works department end at its jurisdictional boundaries. While there has been some informal coordination between cities, there is no formal plan for coordinating traffic flow across cross-jurisdictional evacuation routes.

Each jurisdiction has its own challenges and priorities, and the solutions to those challenges may conflict with evacuation concerns. In some cases, individual jurisdictions have chosen to address local demands for quieter, slower streets by narrowing major routes within their cities.

Mill Valley is a good example of trying to balance evacuation with safe traffic flow, aesthetics, and other competing requirements. In 2017, Miller Avenue was re-stripped to narrow the road from four lanes to two lanes in order to add a bike lane and needed parking in the downtown area. In 2019, after evacuation concerns were expressed, the city amended the plan to prohibit parking on Miller Avenue on “red flag” days when fire danger is high. This compromise is a recognition of the need to be able to evacuate large numbers of vehicles out of the city in an emergency.

Individual governing bodies of the cities, towns, and the county should direct their departments of public works to add evacuation as an important criterion to be considered as part of their normal planning process. This does not need to be an onerous addition. A simple item on a checklist should be included with a short explanation of how evacuation would be impacted.

The county and municipal elected officials have the ultimate responsibility for evacuation and public roadways, and they can also strongly influence the policies and decisions of the Transportation Authority of Marin. TAM is a resource and the primary source of funding for transportation infrastructure projects in the county. Its board is composed solely of a councilmember from every town and city as well as all five members of the county’s board of supervisors. Unless the county, towns, and cities prioritize infrastructure work to improve evacuation, this work will not happen.

As part of fulfilling their responsibility for evacuation safety, Marin’s board of supervisors and municipal councils should each pass a resolution requesting TAM establish a policy to examine the impact on evacuation of every road project presented to it for funding.

## County and Municipal General Plans

County and municipal general plans lay out each jurisdiction’s vision for long-term development, including its traffic infrastructure. General plans are required by state law, and the law requires that general plans include evacuation as a component of their safety element. Specifically, it states that “the safety element . . . shall also address evacuation routes . . . and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.”<sup>7</sup>

In addition, the 2015 Governor’s Office of Planning and Research’s *Fire Hazard Planning* guide recommends that general plans include evacuations.<sup>8</sup> Specifically, the guidelines call for:

- Designating and maintaining safe emergency evacuation routes on publicly maintained roads for all communities and assets at risk

<sup>7</sup> California Government Code 65302(g), [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65302.&lawCode=GOV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65302.&lawCode=GOV).

<sup>8</sup> Governor’s Office of Planning and Research, *Fire Hazard Planning*, May 2015, p. 21, [Fire Hazard Planning: General Plan Technical Advice Series](#).

- Identifying potential circulation improvements necessary to avoid unacceptable community risks

The Grand Jury reviewed the general plans of the county and the municipalities and found that evacuation is not adequately addressed. As of October 2020, only Belvedere, Mill Valley, and Novato had included evacuation in their general plans, although several other jurisdictions are in the process of making some changes.

California state law also mandates that general plans be updated on a regular basis. These plan updates provide government officials the opportunity to consider evacuation when making decisions involving land use, development, and infrastructure. Given the dangers illustrated by the 2020 wildfire season, the Grand Jury believes that the county, cities, and towns should amend their general plans to explicitly address evacuation issues. Specifically, they should identify the roads within their jurisdictions that create unacceptable community risks and plan to improve them as soon as possible.

### The Transportation Authority of Marin

In its *Wildfire Preparedness: A New Approach* report, the 2018–19 Marin County Civil Grand Jury made four recommendations calling on the Transportation Authority of Marin to participate in planning, prioritizing, and funding evacuation projects.<sup>9</sup> TAM responded to that Grand Jury report by stating that “TAM is a funding agency and does not set local policy.”<sup>10</sup> During subsequent interviews, the 2019–2020 Grand Jury heard TAM officials continue to deny that the agency has any role or responsibility for considering evacuation needs in its transportation projects. However, the current Grand Jury believes that the TAM board can and should ensure that evacuation considerations are integrated as a criterion into the planning and funding of all transportation projects.

TAM is ideally positioned to help address the county’s evacuation infrastructure needs. It is the only entity in Marin with countywide authority over transportation projects. It is also the primary agency through which Marin’s major transportation projects are developed and funded. Its board is broadly representative of Marin’s jurisdictions, and therefore it can support large cross-jurisdictional projects along Marin’s major evacuation routes. By coordinating grant applications for multi-jurisdictional and countywide evacuation infrastructure projects, TAM can strengthen Marin’s chances of obtaining regional, state, and federal funds.

TAM was established as Marin’s official congestion management agency<sup>11</sup> and is the major source of funding for many Marin transportation projects, both small and large. It provides funding for roads, bikeways, sidewalks, and pathways. It also supports local transit services and school safety programs. TAM gets funding from local sales taxes and a local vehicle registration fee, as well as from regional, state, and federal grants.

<sup>9</sup> Marin County Civil Grand Jury, *Wildfire Preparedness: A New Approach*, p. 24.

<sup>10</sup> Transportation Authority of Marin, “Response to Grand Jury Report “Wildfire Preparedness - A New Approach,” June 27, 2019, <https://www.marincounty.org/-/media/files/departments/gj/reports-responses/2018-19/responses/wildfire-preparedness-a-new-approach/wildfire--tam.pdf?la=en>.

<sup>11</sup> Transportation Authority of Marin, “Overview,” accessed November 5, 2020, <https://www.tam.ca.gov/overview/>.

In 2018, Marin’s voters approved Measure AA, a ½-cent sales tax to support local transportation projects. This tax is expected to generate up to \$273 million that could be used to improve local roads over the next 30 years.<sup>12</sup> This money is prescribed for many purposes, but one such purpose is to make investments to address congestion and improve “traffic flow” on local streets and road corridors. Of the \$273 million, TAM estimates that \$7.2 million will be available annually for maintenance of Marin’s local transportation infrastructure, including roads, bike paths and walking paths. The measure also makes an additional \$1.9 million available on an annual basis to reduce congestion on Highway 101 and adjacent roadways.

Local spending in these areas could help to alleviate impediments to safe evacuation. The money could also be used as matching funds to obtain larger regional, state, and federal grants. This can be accomplished within the Measure AA framework approved by Marin’s voters, and it would be in keeping with the vital public interest in having safe evacuation routes.

The Grand Jury’s review indicates that TAM has the discretion as well as financial resources to address unanticipated events under existing rules. For example, TAM recently made Quick Build Grants to towns and cities to close streets to traffic so restaurants could provide outdoor dining during the COVID-19 pandemic.<sup>13</sup>

TAM does not need to amend its charter or amend the expenditure plan for AA funds in order to consider evacuation routes in its funding algorithms. The TAM board is not prohibited from establishing a policy that every project submitted for funding must consider the impact of the project on mass evacuation. TAM’s board can also direct its staff to work with the county and municipalities to ensure that every project proposal includes consideration of the impact on Marin’s evacuation infrastructure.

TAM could be more effective if it works directly with the new Marin Wildfire Prevention Authority to help identify and fund evacuation infrastructure projects. TAM has traffic models and an extensive set of data that could be extremely useful for evacuation planning.<sup>14</sup>

## **The Marin Wildfire Prevention Authority**

The Marin Wildfire Prevention Authority is a new, countywide agency dedicated to all aspects of wildfire prevention and preparation. It is the first agency of its kind in the state and represents a pioneering effort in fire prevention. When it was being formed, the MWPA was presented as the agency that would address Marin’s wildfire prevention, evacuation infrastructure, and planning needs.

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<sup>12</sup> Transportation Authority of Marin, *2018 Final Expenditure Plan*, p.9, accessed October 15, 2020, [https://2b0kd44aw6tb3js4ja3jprp6-wpengine.netdna-ssl.com/wp-content/uploads/2018/07/TAM\\_2018FinalExpenditurePlan\\_062918.pdf](https://2b0kd44aw6tb3js4ja3jprp6-wpengine.netdna-ssl.com/wp-content/uploads/2018/07/TAM_2018FinalExpenditurePlan_062918.pdf).

<sup>13</sup> Will Houston, “Marin Grant Program Offers Virus Aid for Outdoor Commerce,” *Marin Independent Journal*, July 12, 2020, <https://www.marinij.com/2020/07/12/marin-grant-program-offers-virus-aid-for-outdoor-commerce/>.

<sup>14</sup> Transportation Authority of Marin, *Travel Demand Model & Traffic Monitoring*, accessed October 3, 2020, <https://www.tam.ca.gov/planning/travel-demand-model-traffic-monitoring/>.

The Measure C initiative placed on the ballot to fund the MWPA specifically stated:

Marin Wildfire Prevention Measure. To support coordinated wildfire prevention including early detection, warning and alerts; reducing vegetation; ensuring defensible space around homes, neighborhoods and critical infrastructure; and **improving disaster evacuation routes/procedures**; shall the Marin Wildfire Prevention Measure, levying up to 10¢ per building square foot tax (\$75 per multifamily unit or as described in the full measure) for ten years, providing \$19,300,000 annually, with annual inflation adjustments, independent citizen oversight/audits, and low-income senior exemptions, be adopted?<sup>15</sup>

In addition, the campaign literature promoting Measure C to fund MWPA explicitly promised to address evacuation infrastructure. The image below shows a Measure C campaign flyer describing in the second bullet point that a yes vote on Measure C will “improve evacuation routes and infrastructure for quicker, safer evacuations.”

**DON'T PLAY WITH FIRE: IT'S NOT WORTH THE RISK**

**LOCAL LEADERS AGREE — VOTE YES ON C**  
 League of Women Voters of Marin County  
 Coalition of Sensible Taxpayers (COST)  
 Marin Independent Journal  
 Marin County Fire Chief's Association  
 FIREsafe MARIN  
 Marin Association of REALTORS®  
 Marin Conservation League  
 Conservation Corps North Bay  
 North Bay Leadership Council  
 Jared Huffman, US Congressman  
 Mike McGuire, CA State Senator  
 Judy Arnold, Marin County Board of Supervisors  
 Damon Connolly, Marin County Board of Supervisors  
 Katie Rice, Marin County Board of Supervisors  
 Dennis Rodoni, Marin County Board of Supervisors  
 Kate Sears, Marin County Board of Supervisors  
 James Andrews, Mayor, Town of Corte Madera  
 Denise Athas, Mayor, City of Novato  
 Elizabeth Brekhus, Mayor, Town of Ross  
 Renee Goddard, Mayor, Town of Fairfax  
 Ford Greene, Mayor, Town of San Anselmo  
 Gary Phillips, Mayor, City of San Rafael  
 Catherine Way, Mayor, City of Larkspur  
 Jim Wickham, Mayor, City of Mill Valley  
 \*Partial list. Titles for identification purposes only.

We teach our children not to play with fire and now it's our turn to follow this commonsense advice. With longer, hotter and drier fire seasons combined with Marin's abundant natural vegetation that could fuel a wildfire, we've been fortunate to date. Destructive and fatal wildfires in Sonoma, Paradise and elsewhere have taught us that we must be proactive. Voting Yes on C — the Marin Wildfire Prevention Measure — will help protect Marin from the very real threat of wildfire.

**VOTE YES ON MEASURE C TO:**

- Improve emergency alert and fire warning systems
- Improve evacuation routes and infrastructure for quicker, safer evacuations
- Reduce hazardous vegetation using environmentally-responsible practices
- Expand defensible space and fire safety inspections
- Protect roads, bridges, power and communication lines, schools and police and fire stations
- Provide support for seniors, low-income homeowners and people with disabilities needing assistance to keep their homes fire resistant
- Expand neighborhood wildfire safety and preparedness programs

**STRICT FISCAL ACCOUNTABILITY:**

- All funds must be spent locally for wildfire prevention and preparedness only
- By law, no funds can be taken by the State
- An independent citizens' oversight committee ensures funds are spent properly
- Low-income senior citizens are eligible for an exemption from the cost
- Administrative costs are strictly capped at no more than 6% so funds go directly to wildfire prevention

**YES ON C FOR WILDFIRE SAFETY**

**VOTE YES ON C TO PROTECT MARIN FROM WILDFIRE**

Ad paid for by Committee for Wildfire Safety — Yes on C, committee major funding from Christian Larsen FPPC# 1422676.

Yes4WildfireSafety.org  
 /Yes4WildfireSafety

Measure C campaign flyer promising, among other statements, that a yes vote would “improve evacuation routes and infrastructure for quicker, safer evacuations.”

<sup>15</sup> Marin County Registrar of Voters, “March 3, 2020 - Measure C,” emphasis added, <https://www.marincounty.org/depts/rv/election-info/election-schedule/page-data/tabs-collection/2020/march-3/measure/measure-c-tab>.



Marin voters approved the ballot initiative with a 71 percent majority.

The Grand Jury is concerned that Marin’s public may have a false sense of security regarding evacuation routes, thinking that all issues relating to the matter will be handled by the new government agency. Local officials told the Grand Jury that citizens are not calling on them to improve evacuation routes in current or future infrastructure projects. They are not demanding action on the inevitable, and possibly lethal, road congestion that will occur in the event of a mass evacuation.

From its interviews and investigation, the Grand Jury confirmed that not only the public, but others, including some government officials, expect that evacuation improvements will fall under the purview of the MWPA. FIRESafe Marin, a nonprofit organization formed by Marin County’s fire chiefs, produced and distributed a fact sheet about the new agency and described one of its tasks as “improving evacuation routes and infrastructure to enhance traffic flow and promote safe evacuation.”<sup>16</sup> Seeming to further support this assumption, the MWPA website states that one of its roles is to “improve disaster evacuation routes for organized evacuation.”<sup>17</sup> Despite these assertions, the MWPA does not plan to actually make infrastructure improvements.

The MWPA is funding major vegetation management projects, creating evacuation maps, applying for and giving grants, providing defensible space evaluations, and planning many other important tasks. However, it should be clearly understood that the MWPA does not have the political authority to initiate the public works projects to build safe mass evacuation routes, nor does it have sufficient financial resources to fund them.

The MWPA is composed of 17 different jurisdictions. Rather than giving the MWPA top-down authority, its formation agreement requires that all its actions are to be achieved through cooperation among its constituent jurisdictions. It cannot impose a requirement for major infrastructure work on the county or any individual jurisdiction. Political authority remains with the towns, cities, and county.

Although the tax for the MWPA is expected to raise approximately \$19.3 million per year, this amount of money is not enough to cover the cost of any major roadway improvement. The MWPA is planning to fund and execute other evacuation-related projects. For instance, it has allocated \$1 million for a traffic study of evacuation routes. This traffic study could be the blueprint for planning future roadway improvements; but beyond this, the agency will not be responsible for executing or funding such work.

It would make sense for the MWPA and the Transportation Authority of Marin to coordinate this infrastructure planning work with the towns, cities, and county. To facilitate this coordination, the MWPA should invite a TAM representative to become an at-large, nonvoting member of its Advisory/Technical Committee.

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<sup>16</sup> FIRESafe Marin, “Local Wildfire Prevention & Mitigation Initiative,” accessed October 4, 2020, [https://www.firesafemarin.org/images/articles/mwpa/JPA\\_FactSheet\\_Final.pdf](https://www.firesafemarin.org/images/articles/mwpa/JPA_FactSheet_Final.pdf).

<sup>17</sup> Marin Wildfire Prevention Authority, “About Us,” accessed October 17, 2020, <https://www.marinwildfire.org/about-us>.

## CONCLUSION

Planning, executing, and building for evacuation is an enormous, complex, expensive, and time-consuming task that can only be achieved one step at a time. As a start, to meet the need for safer evacuation, Marin’s officials and agencies should consider evacuation impacts whenever they are planning a new roadway improvement project. Success in this endeavor will require dedicated attention by our elected leaders and cooperation across and within Marin’s jurisdictions as well as the Transportation Authority of Marin and the Marin Wildfire Prevention Authority. With recognition of the progress made so far and in view of the extensive work that remains to be done, the Grand Jury is recommending the next steps needed to build for evacuation.

## FINDINGS

- F1. No single agency or jurisdiction is taking responsibility and authority for building infrastructure for safe evacuation routes across jurisdictions in Marin County.
- F2. There is confusion in the county as to who has ultimate responsibility and authority for ensuring that Marin has safe evacuation routes.
- F3. Marin County Board of Supervisors and town and city councils have the responsibility for safe evacuation routing, and they have not sufficiently considered evacuation as a criterion when approving improvements to roads and traffic infrastructure in their jurisdictions.
- F4. County and municipal administrators, public works, and traffic engineers have not adequately considered mass evacuation as a criterion for planning and funding traffic infrastructure improvements.
- F5. Most Marin jurisdictions have not yet included urgently needed evacuation plans in their general plans as required by state law and as recommended by the Governor’s Office of Planning and Research.
- F6. As Marin’s designated “congestion management agency,” the Transportation Authority of Marin, is best positioned to coordinate and support the funding of public works projects for improving evacuation routes, including cross-jurisdictional evacuation routes.
- F7. Contrary to its previous responses to the Grand Jury, the Transportation Authority of Marin is not precluded or constrained from incorporating evacuation planning needs as a criterion in its infrastructure projects.
- F8. The Transportation Authority of Marin’s decision-making process is inadequate unless it includes evacuation as a criterion when funding improvements.
- F9. The Marin Wildfire Prevention Authority’s Advisory/Technical Committee would benefit from having the expertise of the Transportation Authority of Marin to advise on evacuation infrastructure needs.

## RECOMMENDATIONS

- R1. Within 180 days of the date of this report, the governing boards of the County of Marin and its cities and towns should direct their respective planning and public works departments to include evacuation needs among their criteria for evaluating and recommending public works projects.
- R2. Within 180 days of the date of this report, the governing boards of the County of Marin and its cities and towns should adopt resolutions calling on the Transportation Authority of Marin to include evacuation needs among the criteria it considers when planning and funding public works projects.
- R3. In calendar year 2021, the County of Marin and its cities and towns should update the safety elements of their general plans to include evacuation planning.
- R4. Within 120 days of the date of this report, the Transportation Authority of Marin should establish a criterion requiring that evacuation impacts be examined and stated when planning and funding infrastructure projects.
- R5. Within 120 days of the date of this report, the Marin Wildfire Prevention Authority should invite a Transportation Authority of Marin representative to become an at-large, nonvoting member of its Advisory/Technical Committee to support program development, funding, and implementation of improvements in evacuation routes.

## REQUEST FOR RESPONSES

According to the California Penal Code, agencies required to respond to Grand Jury reports generally have no more than 90 days to issue a response. It is not within the Grand Jury's power to waive or extend these deadlines, and to the Grand Jury's knowledge, the Judicial Council of California has not done so. But we recognize that the deadlines may be burdensome given current conditions caused by the COVID-19 pandemic.

Whether the deadlines are extended or not, it is our expectation that Marin's public agencies will eventually be able to return to normal operations and will respond to this report. In the meantime, however, public health and safety issues are of paramount importance and other matters might need to wait.

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as shown below. Where a recommendation is addressed to multiple respondents, each respondent should respond solely on its own behalf without regard to how other respondents may respond.

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing bodies:

- County of Marin Board of Supervisors (F1–F5, R1–R3)
- Belvedere City Council (F1–F5, R1–R3)
- Corte Madera Town Council (F1–F5, R1–R3)
- Fairfax Town Council (F1–F5, R1–R3)
- Larkspur City Council (F1–F5, R1–R3)
- Mill Valley City Council (F1–F5, R1–R3)
- Novato City Council (F1–F5, R1–R3)
- Ross Town Council (F1–F5, R1–R3)
- San Anselmo Town Council (F1–F5, R1–R3)
- San Rafael City Council (F1–5, R1–R3)
- Sausalito City Council (F1–F5, R1–R3)
- Tiburon Town Council (F1–F5, R1–R3)
- Transportation Authority of Marin Board of Directors (F1, F2, F6–F9, R4)
- Marin Wildfire Prevention Authority Board of Directors (F1, F2, F9, R5)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933(c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

Note: At the time this report was prepared information was available at the websites listed.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.