



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Community Development

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

**TOPIC: SAN RAFAEL 2023-2031 HOUSING ELEMENT**

**SUBJECT: INFORMATIONAL REPORT ON THE 2023-2031 HOUSING ELEMENT AND COMMUNITY ENGAGEMENT PROGRAM**

**RECOMMENDATION:**

Accept the report and provide feedback to staff.

**EXECUTIVE SUMMARY**

This staff report addresses the purpose and required contents of the Housing Element, the Regional Housing Needs Allocation (RHNA), new Housing Element requirements, and the timeline for the Housing Element update. It also addresses community engagement, including creation of a “Housing Element Working Group”.

The Housing Element is the City’s plan for conserving and maintaining its housing supply, removing regulatory barriers to housing production, and meeting the housing needs of all residents, including lower-income households and individuals with special needs. The element must include an analysis of these four areas:

- Integration and segregation patterns and trends
- Racially or ethnically concentrated areas of poverty
- Disparities in access to opportunity
- Disproportionate housing needs within the jurisdiction, including displacement risk

The Housing Element is part of the San Rafael General Plan. However, it was not included in the General Plan 2040 (adopted on [August 2, 2021](#)) because the Housing Element follows a schedule set by the State of California. The schedule aligns with housing production allocations established by the State. Cities and counties in the Bay Area were provided with their final housing production targets in May 2021 and are required by State law to adopt new Housing Elements by January 2023.

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**FOR CITY CLERK ONLY**

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

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

**BACKGROUND:**

**Overview**

Every city and county in California is required to adopt a Housing Element that is a part of their General Plan. The Housing Element is the only part of the General Plan that must be submitted to the State for certification, a process that is performed by the State Department of Housing and Community Development (HCD). Cities without certified Housing Elements face negative consequences, including limited access to State funding and increased vulnerability to costly lawsuits, penalties, and court injunctions. To avoid such consequences, HCD must make a formal determination that the Housing Element fully complies with Government Code requirements, including demonstration that the City is accommodating its “fair share” of the region’s housing needs and is “affirmatively furthering fair housing.”

San Rafael’s current [Housing Element](#) was adopted on January 5, 2015 and was certified by the State on January 23, 2015. The planning period covered by that Housing Element was January 31, 2015 through January 31, 2023. The next Housing Element is due on January 15, 2023 and will cover the period from January 15, 2023 to January 15, 2031. In order to provide sufficient time for data collection and analysis, community engagement, public hearings, responses to State comments, and environmental review, the City has initiated the update process. The timeline allows roughly 10 months to develop a Draft Housing Element and another seven months to go through an iterative process with State reviewers, the Planning Commission, the City Council, and the community to revise, finalize, and adopt the Draft.

The contents of the Housing Element are driven by State law. HCD has developed guidelines for local governments that list the specific data to be collected and analyzed, the research questions to be answered, and the standards that must be met. For example, cities must demonstrate that they are planning for a “wide variety of housing types”. This requires more than an aspirational statement—the City must show (and quantify) that it allows multi-family housing in specific density ranges, allows for emergency shelter “by right” in at least one zoning district, allows mobile and manufactured homes, does not apply special rules for transitional and supportive housing, and has adopted specific zoning requirements and densities that support its policy goals.

The analysis has become more rigorous over time. The policy and program requirements also have become more demanding. In response to the statewide housing crisis, dozens of housing bills have been approved by the legislature in the last few years. Some have included specific policy and program requirements for Housing Elements.

**Regional Housing Needs Allocation**

The driving force behind each community’s Housing Element is the Regional Housing Needs Allocation (RHNA). The RHNA process has been in effect since 1969, when the State legislature mandated that all communities do their “fair share” to meet California’s housing needs, regardless of income. The process has evolved over the last 50 years, with an increasing focus on factors such as equity and sustainability.

The RHNA process begins at the State level. California HCD determines the projected housing need over an eight-year period for each region in California, including the nine-county Bay Area. The need for each region is broken down into four income categories, ensuring that housing is constructed for persons of all economic means. It is then up to the Association of Bay Area Governments (ABAG) in its capacity as the regional Council of Governments to disaggregate the RHNA to the nine counties and 101 cities that comprise the Bay Area.

Ultimately, each city and county is assigned a specific number of units for which it must plan. The city/county is not required to actually construct the units, as this is beyond the financial capacity and traditional role of most local governments. However, local jurisdictions must zone a sufficient amount of land to allow for construction of the allocated units by the private and non-profit sectors. Additionally, local jurisdictions must demonstrate that progress is being made toward their allocation. Cities and counties that are not demonstrating progress toward RHNA requirements must streamline housing developments that include specified percentages of affordable housing and are encouraged to undertake programs to facilitate housing development. Finally, jurisdictions must demonstrate that their plan for accommodating the RHNA does not concentrate low income housing in particular areas and supports broader goals to end segregation and promote fair housing practices.

On June 9, 2020, HCD notified ABAG that the regional housing need for the 2023-2031 period was 441,176 units. The assignment is 2.34 times higher than the need identified for the 2015-2023 period, which was 187,990 units. This reflects the prolonged and sustained effects of Bay Area jobs growing at a faster rate than housing for the last eight years, and the growing affordability gap among Bay Area households.

During Fall 2020, the 441,176 units were allocated to cities and counties with the guidance of a 37-member "Housing Methodology Committee" (HMC) comprised of local government staff, local elected officials, and stakeholders from jurisdictions around the region. Alternative methodologies were explored, and weighting factors were tested so that housing could be directed in a way that achieved regional goals such as equity, mobility, jobs-housing balance, and sustainability.

In October 2020, the HMC voted to accept a methodology that assigned housing units based on the percentage of the region's households that were projected to live in each jurisdiction by 2050. One of the consequences of this methodology is that smaller, suburban communities received much higher allocations than they had in the past, including San Rafael. Whereas the regional total was 2.34 times higher than it was in 2015-2023, the total for individual cities increased by more than 10 times in some cases. More than 50 of the region's cities registered objections to the methodology, either by submitting letters or co-signing letters submitted by coalitions of local governments. Several jurisdictions and organizations also challenged the total Bay Area allocation, arguing that it "double counts" certain components of need, overestimates desired vacancy rates, and does not reflect the impacts of the COVID-19 pandemic.

The ABAG Executive Board voted to finalize the methodology in January 2021. Changes were made to align the RHNA with Plan Bay Area 2050. These changes included reducing the allocations for Santa Clara County and increasing allocations for several cities, including San Rafael. The methodology was submitted to HCD and was formally approved by the State in spring 2021.

Cities and counties were given an opportunity to appeal their RHNA numbers, with a filing deadline of July 9, 2021. A total of 28 local governments appealed, including ten from Marin County; six from Santa Clara County; six from Contra Costa County; three from Alameda County; and three from Sonoma County. The City of San Rafael did not submit an appeal, but did provide a comment letter indicating that any reallocation of units resulting from successful appeals by other cities should not be allocated to San Rafael, since the increase in the City's allocation was already well above the regional average and had already been adjusted upward in December 2020.

Based on past RHNA cycles and recent experience among Southern California jurisdictions, appeals are very rarely granted. In Southern California, which went through their RHNA process in 2020, 50 cities appealed their allocations and only two were granted. Likewise, multiple Bay Area cities appealed their 2015-2023 allocations in 2014, and only three were granted.

San Rafael’s allocation for the previous planning period (2015-2023) was 1,007 units. The allocation approved by ABAG for the upcoming period (2023-2031) is 3,220 units, which represents a 220 percent increase. Marin County, including the unincorporated areas and the 11 cities, saw a much steeper rate of increase. The countywide RHNA was 2,298 units in the last cycle and is 14,405 units in the current cycle, an increase of 526 percent. The cities of Mill Valley, San Anselmo, Larkspur, Corte Madera, Fairfax, and Sausalito all saw increases of over 600 percent. However, in terms of sheer numbers, San Rafael’s increase is the largest among the 11 Marin cities.

ABAG disaggregates the RHNA into four income categories. San Rafael’s 3,220-unit allocation by income level is shown below. The allocation for 2015-2023 is provided for comparison. The combined percentage of need associated with low and very low-income households has increased slightly, from 38.5% of the total in the current cycle to 41.9% in the upcoming cycle.

***Housing Element Assignments for RHNA Cycles 5 and 6***

Income Level	2015-2023	Percent of total	2023-2031	Percent of total
Very Low	240	23.8%	857	26.6%
Low	148	14.7%	492	15.3%
Moderate	181	18.0%	521	16.2%
Above Moderate	438	43.5%	1,350	41.9%
TOTAL	1,007	100.0%	3,220	100.0%

As a benchmark, in 2021 a household of four earning less than \$91,350 in Marin County would be considered “very low income” and a household of four earning between \$91,350 and \$146,350 would be considered “low” income. These income thresholds are used by the state to determine eligibility for various state and federal housing assistance programs.

In general, the “above moderate” income units correspond to market-rate single family homes, townhomes, and condominiums. “Moderate income” units typically include market-rate rental apartments. “Low income” units include a mix of units that are “affordable by design” such as accessory dwelling units (ADUs) and units that are income restricted and subsidized. “Very low” income units are typically subsidized but may also include junior ADUs and studios. A subset of very low-income units serves extremely low-income residents and includes single room occupancy hotels (SROs), emergency shelter, and transitional and supportive housing.

The allocation of 3,220 housing units would require the construction of roughly 400 units a year, which is a far greater rate of construction than San Rafael has seen in the last 20 years. While current State law does not penalize the City if this target is not met, there is increasing pressure from the State to achieve more rapid housing construction at all price points. There are also new requirements requiring each city to demonstrate good faith efforts to produce housing equitability and for all income groups.

**Sites Analysis**

In 2017 the State adopted a requirement (SB 166) that cities make “no net loss” findings in order to approve market-rate housing projects on sites that were counted in the Housing Element as available to meet affordable housing needs. This effectively requires that cities plan for a “buffer” of potential housing opportunity sites to ensure they can meet their RHNA throughout the planning period. Therefore, while the City’s RHNA allocation is 3,220 housing units, the City will need to identify capacity for closer to 4,000 housing units due to the “no net loss requirement.”

General Plan 2040 identified housing sites with the capacity for approximately 4,400 units. This includes roughly 2,200 units in downtown San Rafael. As a result, large-scale rezoning is not anticipated as part of this update. Small zoning map changes and changes to zoning standards are possible, however.

The City will need to prepare a detailed inventory of the Housing Opportunity Sites and demonstrate that these sites are viable to meet the RHNA. Zoning provisions for by-right development may be needed on sites that are being carried over from the 2015-2023 Housing Element. New incentives and bonuses may be considered for small sites and sites with one or more development constraints.

## **Content of the Current Housing Element**

### *2015-2023 Housing Element*

The 2015-2023 Housing Element consists of two volumes—a policy document and a technical appendix. The policy document includes goals, policies, and implementation programs and relationship to other General Plan elements. This is followed by short descriptions of the City's past housing production efforts, local housing needs, and key recommendations. Some of the key policies in the 2015-2023 Housing Element include:

- Protect the existing housing stock
- Distribute affordable housing throughout the City
- Create regulatory incentives for affordable housing (including allowing innovative approaches to developing affordable housing; providing local funding of affordable housing; and allowing certain types of housing by right)
- Prevent discrimination
- Encourage senior housing and housing for people with special needs
- Support infill near transit
- Maintain inclusionary housing requirements
- Encourage accessory dwelling units
- Collaborate with other Marin jurisdictions to meet housing needs
- Encourage public participation in housing matters
- Maintain an adequate supply of housing sites to meet the RHNA
- Encourage energy conservation (to reduce home energy costs)

The technical appendix contains the underlying data and analysis that supports the policies and programs, including sections that correspond to specific Government Code requirements. The technical appendix includes six chapters, as follows:

1. Needs Assessment: This section provides detailed tables and narratives on San Rafael's demographics, including age, household size, household type, persons with disabilities, unhoused residents, housing costs, employment and income, and percent of income spent on housing. It also includes detailed information on the City's housing stock, including rate of construction (units per year), housing type and tenure (rent/own), housing age and condition, and code enforcement issues. All of this information will be updated as part of the upcoming process.
2. Housing Constraints: This section evaluates governmental and non-governmental constraints to housing production. It evaluates zoning and land use regulations, building codes, and requirements for particular housing types, such as emergency shelter, Accessory Dwelling Units (ADUs), and transitional housing. It also evaluates local fees, permitting costs, processing time, and special requirements such as inclusionary zoning. Non-governmental constraints include land and construction costs, financing availability,

community opposition, and similar factors. San Rafael has researched these issues extensively in the last few years and will build on the feedback provided by the development community and others in this analysis.

3. **Sites Inventory:** This section demonstrates that the City has adequate capacity to meet its RHNA. It quantifies projects that are under construction or entitled, and then evaluates the capacity of residential sites, mixed use sites, and commercial sites where housing is allowed. It also demonstrates the adequacy of these sites to accommodate housing for lower income households. The sites inventory also estimates the potential for ADU development. A new inventory of Housing Opportunity Sites will be including in the 2023-2031 Housing Element update.
4. **Housing Resources:** This section evaluates the resources available to support affordable housing production, including financial resources and administrative resources. It also describes energy conservation programs. This information will be updated for the 2023-2031 Housing Element update.
5. **Evaluation of Accomplishments Under Adopted Housing Element:** This section describes the programs that were implemented under the prior (2009-2014) Housing Element and evaluates the effectiveness of that Element. A similar exercise will be conducted as part of the analysis phase of the 2023-2031 Housing Element update.
6. **Public Participation:** This section describes outreach efforts conducted over the course of the Housing Element update project, including the organizations, groups and individuals on the City's meeting notification list.

### ***Proposed 2023-2031 Housing Element***

The updated 2023-2031 Housing Element will likely follow a similar format as the 2015-2023 Housing Element with the technical appendix affixed separately. This will allow the policy document (which is currently 30 pages) to be "inserted" as a chapter of General Plan 2040, while the technical appendix will remain "Appendix B" of General Plan 2040, as it is today. In addition to policies mentioned above, the 2023-2031 Housing Element will likely also include an analysis of: integration and segregation patterns and trends; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs within the jurisdiction, including displacement risk. Additional policies related will likely be included as a result of this analysis.

### **New Requirements**

Over the past 6 years (since adoption of the 2015-2023 Housing Element) the state has adopted a number of bills related to housing and Housing Element requirements. The 2023-2031 Housing Element will need to consider requirements established by the following bills:

AB 686 (2018) requires specific Housing Element policies and programs to "Affirmatively Further Fair Housing." It also requires an analysis of fair housing enforcement, segregation patterns, displacement risks, and racial concentration of poverty. It requires that an equity lens be applied to the selection of Housing Opportunity Sites, to ensure that cities do not perpetuate past patterns of concentrating lower income housing in particular areas.

AB 1397 (2017) places new limits on a city's ability to continue identifying the same sites for meeting the lower income RHNA from one planning period to the next. Specifically, non-vacant sites identified in the last housing element, and vacant sites identified in the last two housing elements may only be counted

toward the lower income RHNA if they are zoned at densities of at least 30 units per acre and are zoned to allow “by right” development for projects in which at least 20 percent of the units are affordable to lower income households. In this case, “by right” development does not preclude Planning Commission or Design Review Board hearings, but it does mean that a proposed project cannot be denied if it meets the objective standards that apply within the applicable zoning district. New requirements also make it more difficult to count sites that are smaller than 21,780 square feet (e.g., one-half acre) or larger than 10 acres.

SB 330 (the Housing Crisis Act of 2019) includes requirements for expediting development approval and limiting zoning changes that would reduce density or make housing more difficult to build. It effectively prohibits residential “downzoning” through Jan 1, 2025.

SB 1486/ AB 1255 requires the City to include an inventory of publicly owned surplus land in the Housing Element, including property that may be sold over the planning period.

SB 6 identifies specific variables that must be included in the Housing Opportunity Sites inventory. This information is being used by HCD to create a consistent statewide data base of housing opportunity sites.

AB 1763 allows 100% affordable housing projects located within ½ mile of transit to be taller and denser.

AB 139 amends the method for determining whether the City has adequate capacity for emergency shelters in the Housing Element. It also requires that the parking requirements for emergency shelters be based on the number of staff rather than the number of beds.

SB 13, AB 68, AB 587, AB 670, AB 671, and AB 881 all address Accessory Dwelling Units and Junior Accessory Dwelling Units. ADU programs in the existing Housing Element will need to be checked for conformity.

AB 2162 streamlines requirements for supportive housing, which may require an action program in the Housing Element to amend the Zoning Code.

AB 879 expands the required analysis of housing constraints.

AB 72 allows HCD to find a city out of compliance with State housing law at any time (this has implications for submittal of the Annual Progress Report required under State law).

#### *New Safety Element Requirements*

Since 2017, the State has required specific amendments to the Safety Element to be made concurrently with amendments to any part of the General Plan. This includes amendments to address climate resilience (SB 379), fire hazards (SB 1241), and consistency with the Local Hazard Mitigation Plan (AB 2140). As a result, most cities in the Bay Area are updating their Safety Elements as part of their Housing Element updates. Because San Rafael just updated its General Plan, these requirements have already been satisfied.

However, during the final year of the General Plan update, the legislature passed AB 747 and SB 99, both of which have implications for the City’s newly adopted Safety Element. AB 747 requires cities to identify evacuation routes and their capacity, safety, and viability under different emergency scenarios. This is in response to the Camp Fire (Paradise) in 2018. The requirement also applies to the Local Hazard Mitigation Plan, which is updated every five years.

SB 99 requires cities to update their Safety Elements concurrently with the Housing Element in order to identify every residential development in a designated “hazard area” within the city that has less than two emergency evacuation routes. This includes parcels in the Wildland Urban Interface (WUI) areas with only one means of ingress and egress.

As part of the Housing Element Update, San Rafael will need to update its Safety Element to address these two new requirements. City staff from the Community Development Department, Fire Department, and Department of Public Works will collaborate together to update the Safety Element.

### **Community Engagement**

Like the General Plan Update, the Housing Element is subject to Government Code requirements to provide opportunities for public input. The requirements are more prescriptive for the Housing Element, since the Housing Element’s focus is on meeting the needs of lower income residents, many of whom have historically been under-represented. Part of “affirmatively furthering fair housing” requires cities to go beyond traditional outreach methods and work closely with community partners and trusted messengers in our historically under-represented neighborhoods to develop customized outreach approaches toward achieving a truly inclusive process. This additional effort is also consistent with the philosophy of the recently adopted Equity, Diversity, and Inclusion Element of San Rafael General Plan 2040.

Of particular interest is the engagement of non-English speaking households and organizations representing those facing particular housing challenges, including unhoused residents, persons at risk of experiencing homelessness, and persons with disabilities. One of the early tasks in the Housing Element update will be to develop an inclusive public engagement strategy that includes input from community partners and non-profits, affordable housing developers, supportive service providers, housing advocates, extremely low-income residents, and fair housing interests. Staff is also planning a specific Spanish language outreach and engagement program in collaboration with Canal Alliance. This will include retaining a bilingual outreach consultant with expertise in equity issues.

The City has historically created working groups and/or steering committees when preparing long-range planning documents such as the Housing Element. For example, General Plan 2040 was guided by a 24-member Steering Committee and the Climate Change Action Plan included a 20-member Climate Action Working Group. Staff is proposing creating a Working Group with 12 members to provide guidance on the Housing Element. This is discussed below in the Analysis section.

### **ANALYSIS:**

#### **Schedule**

The 2023-2031 Housing Element must be adopted by January 15, 2023. However, preparation of this document requires an intermediate step in which HCD reviews a “working draft” prior to the adoption hearings. This allows HCD to provide comments to the City which can be addressed before adoption, thereby ensuring certification. As such, the City has roughly 10 months to complete a working draft. Therefore, staff expects the 2023-2031 Housing Element schedule to be:

- August 2021 through January/February 2022 - Preparation of community outreach and engagement, technical analysis, sites analysis and working with HCD to ensure State requirements are being met. At least one community workshop will be convened, and multiple smaller meetings with groups of stakeholders are planned. Grass roots outreach to lower income households, especially renters, is a critical part of this process. Staff will also be soliciting input from housing advocates, tenant groups, the development, real estate, and business communities,



neighborhood groups, environmental groups, and social service providers, including organizations serving unhoused residents.

- Early 2022 – Evaluate accomplishments from the 2015-2023 Housing Element; New or amended policies and programs will be assembled for discussion
- June 2022 - “Working Draft” Housing Element will be completed
- July 2022 - Working Draft presented to the Planning Commission (PC) and the City Council (CC) for technical review and comments
- August 2022 - Housing Element reviewed by HCD
- September 2022 - Housing Element revised based on HCD comments
- October through December 2022 - Planning Commission and City Council hearings and final adoption

### **Housing Element Working Group**

Staff seeks City Council direction on the creation of a 12-member Housing Element Working Group. Staff recommends the Working Group include one member each from the following types of organizations:

- Housing advocacy organization
- Homeless-service advocacy organization
- Tenants’ rights organization
- Senior housing organization
- Environmental advocacy group
- Spanish-speaking community advocate
- Non-profit affordable housing representative
- For-profit residential developer/ broker
- Business community representative
- Neighborhood organization representative
- Planning Commissioner
- One at large member

Members would be solicited by reaching out to each organization and asking for a nominee. Due to the limited number of meetings, alternates would not be designated. The meetings would be open to the public and include an opportunity for public comment. The format of the meetings (Zoom vs in-person) would be determined based on the County health protocols in effect at the time of each meeting.

The Working Group would be convened approximately six (6) times, or roughly every two months. Their role would be to review draft policy and program language and to provide guidance to staff reflecting their insights as representatives of a particular organization or as practitioners in the housing field. Some of the members should be technical experts in the housing field and will be asked to share their expertise with the group and provide feedback to staff on proposed housing programs.

Working Group members representing specific organizations would be asked to report back to those organizations and serve as conduits for communication during the project. Working Group members would also spread the word about community engagement opportunities to the broader public.

Staff seeks City Council confirmation of staff’s recommendations regarding the number of Working Group members, the role of the Working Group, and the interests and organizations represented.

### **ENVIRONMENTAL REVIEW:**

As a General Plan amendment, the Housing Element update is subject to the California Environmental Quality Act (CEQA). However, staff does not envision a full Environmental Impact Report (EIR). Because

the City just completed an EIR for the General Plan 2040 and Downtown Precise Plan, the impacts of adding 3,220 units that need to be accounted for in the 2023-2031 Housing Element have already been evaluated.

The appropriate form of CEQA review for the 2023-2031 Housing Element is an Addendum to the General Plan EIR. The Addendum would determine if the findings identified in the General Plan EIR would be changed by the policies and programs in the new Housing Element. In the event the Housing Element proposes substantial changes to the General Plan Map and/or allowable densities, a higher level of CEQA review could be required. As with the General Plan EIR, environmental review will still be required for individual projects proposed after the 2023-2031 Housing Element is adopted.

**COMMUNITY OUTREACH:**

The August 16<sup>th</sup> City Council public hearing was advertised in the Marin Independent Journal and also publicized with a postcard notice to stakeholder, agencies, and special interest groups.

**FISCAL IMPACT:**

The Housing Element is a policy document and does not have a direct fiscal impact on the city. Future programs developed as a result of Housing Element adoption could have fiscal impacts by identifying programs requiring funding. Other 2023-2031 Housing Element programs may have positive fiscal impacts by identifying new revenue sources or improving the City's eligibility for grants and other funds. Conversely, the absence of a certified Housing Element would have adverse fiscal impacts, as the City would become ineligible for numerous state grants and funds.

**RECOMMENDED ACTION:**

1. Accept the report and provide feedback to staff