

**RESOLUTION NO. 14890**

**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

**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 |

| 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-

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

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.

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: Bushey, Hill, Llorens Gulati & Mayor Kate**

**NOES:**           **COUNCILMEMBERS: Kertz**

**ABSENT:**       **COUNCILMEMBERS: None**



**LINDSAY LARA, City Clerk**