



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by: Alicia Giudice, CDD Director
Jacob Noonan, Housing Manager

City Manager Approval: _____

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TOPIC: URGENCY ORDINANCE REGARDING ACCESSORY DWELLING UNITS

SUBJECT: URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ESTABLISHING A TEMPORARY MORATORIUM ON ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS ON PROPERTIES ACCESSED SOLELY FROM CERTAIN HILLSIDE STREETS WITHIN CITY OF SAN RAFAEL, AND DECLARING THE URGENCY THEREOF

RECOMMENDATION: Adopt an Urgency Ordinance establishing a temporary moratorium on accessory dwelling units and junior accessory dwelling units on properties accessed solely from certain hillside streets within City of San Rafael and declaring the urgency thereof.

BACKGROUND

State law (California Government Code Section 65852.150 et seq.) governing Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) has been evolving in recent years. Changes to ADU laws effective January 1, 2021 further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and JADUs. When enacting changes, the California Legislature has found and declared, among other things, allowing ADUs in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Because the City's ADU ordinance no longer complies with the latest state law, it is considered null and void, and staff has been processing ADU applications solely under the ADU standards and requirements of state law while staff has been developing a new, compliant ADU ordinance. Staff has been studying and working on a draft ADU ordinance that would replace our existing regulations. The draft ordinance includes a proposed prohibition of ADUs and JADUs on certain hillside properties as shown in a [list of prohibited streets](#). The prohibition was included in the draft zoning ordinance based on concerns from the San Rafael Fire Department about inadequate fire response access on roadways

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

that are narrow and steep and also currently experience high levels of on-street parking, which together have the potential to restrict fire truck access during a fire emergency. A draft Ordinance was presented to the Planning Commission for consideration and received an affirmative recommendation on March 23, 2021. However, staff has been getting additional information from the Fire Department to clarify the exact extent of regulation needed to mitigate the high fire risk of the hillside properties and is considering the possibility of imposing special parking requirements for ADUs and JADUs on these properties. Staff has determined that further analysis is required to determine the type of regulations deemed necessary for new ADUs and JADUS on these properties that are also consistent with state housing laws.

ANALYSIS

When a local agency is studying or intending to study changes to local land use regulations, Government Code section 65858 authorizes the local agency to adopt an interim urgency ordinance (commonly known as a “moratorium”) to prohibit temporarily the processing and approval of land use applications that might conflict with the new regulations being studied:

(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

As noted above, the draft ADU ordinance is not quite ready for City Council consideration. The City is aware of at least four (4) ADU applications that may conflict with potential regulations that would prohibit or impose further restrictions on ADUs/JADUs on these certain narrow and steep streets and thus may result in impacts on traffic flow and public safety. To provide the time necessary to complete an adequate and thorough study of possible regulations, staff recommends that the Council adopt the attached interim urgency ordinance (moratorium) temporarily prohibiting ADUs and JADUs on properties solely accessed from those roadway segments included on the attached map and list of restricted streets.

The proposed moratorium ordinance contains urgency findings and must be adopted by a vote of at least four-fifths (4/5) of the members of the Council. If adopted at this meeting, the ordinance will become effective immediately, and will expire 45 days from adoption (December 2) unless further extended by the City Council. If adopted, then, no later November 22, 2021 the City must issue a status report regarding staff’s work on the regulations, pursuant to Government Code Section 65858(d).

FISCAL IMPACT: There is no direct fiscal impact to the City in connection with the action requested in this report.

OPTIONS:

1. Adopt the urgency ordinance.
2. Do not adopt the urgency ordinance, and direct staff to return to the City Council with a non-urgency ordinance conforming with state law once staff's review is completed.

ATTACHMENTS:

- A. Urgency Ordinance
- B. Proposed List of Prohibited Streets

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ESTABLISHING A TEMPORARY MORATORIUM ON THE ISSUANCE OF ACCESSORY DWELLING UNIT AND JUNIOR ACCESSORY DWELLING UNIT PERMITS ON PROPERTIES LOCATED ON CERTAIN HILLSIDE STREETS WITHIN THE CITY OF SAN RAFAEL AND DECLARING THE URGENCY THEREOF

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

DIVISION 1. FINDINGS

WHEREAS, the City Council has broad discretion pursuant to Article III, Sections 16 and 59 of the City Charter; California Constitution Article XI, Section 5; and the general law of the state, including but not limited to the California Planning and Zoning Law (Gov. Code §§65000 et seq.), to legislate for public purposes and for the general welfare, including but not limited to matters of public health and safety; and

WHEREAS, the City currently regulates the permitted uses of real property within the City pursuant to the provisions of its zoning ordinance, codified in San Rafael Municipal Code Title 14; and

WHEREAS, in 2016 the State of California legislature adopted changes to Government Code Sections 65852 et seq., related to Accessory Dwelling Units, which preempted the field of Accessory Dwelling Unit regulation and made the City's existing regulations for accessory dwelling units null and void; and

WHEREAS, in 2019 and 2020, the State of California legislature adopted additional changes and clarifications to Government Code Sections 65852 et seq. related to Accessory Dwelling Units ("ADUs") and Junior Accessory Dwelling Units ("JADUs") and imposed further restrictions limiting the City's authority over such things as accessory dwelling unit and junior accessory dwelling unit location standards, development standards, parking requirements, and review procedures; and

WHEREAS, Government Code Section 65852.2(a)(1)(A) allows local jurisdictions to designate areas where ADUs and JADUs may be permitted, based on the impact of ADUs and JADUs on traffic flow and public safety; and

WHEREAS, the City is currently studying the existing and potential impacts of ADUs and JADUs within the City, and working on drafting an updated zoning ordinance related to ADUs and JADUs; and

WHEREAS, the City's Community Development Department is working with the City's Fire Department to evaluate the potential need to prohibit or impose additional requirements on ADUs and JADUs on certain hillside streets that, due to narrow travel

lanes (<14'), maneuvering difficulty, and/or lack of turnarounds, may result in impacts on traffic flow and public safety; and

WHEREAS, according to the San Rafael Fire Chief, potential lack of access is an issue on certain hillside streets with narrow travel lanes; the risks are particularly high because (1) these hillside residential lots tend to be surrounded by dry, flammable brush, and (2) there is an existing inability for certain fire safety vehicles to access, maneuver and turn around, the results of which mean that fire suppression capabilities are drastically slowed or impeded during fire events; and

WHEREAS, according to the San Rafael Fire Chief, additional development, density and population in and around the above-described hillside streets may increase the risk of fire danger due to the potential to add additional improperly parked vehicles on or near roadways that would further impede public safety vehicle access; and

WHEREAS, in connection with the draft ADU/JADU regulations that City staff are studying and working on, City Staff prepared a Draft Proposed Prohibited Streets List setting forth those City streets that are described above (i.e. that are hillside streets with narrow travel lanes (<14'), maneuvering difficulty, and/or lack of turnaround); and

WHEREAS, City Staff is further reviewing the proposed regulations concerning ADUs and JADUs on those streets included in the Proposed Prohibited Streets List to gather information and ensure the proposed regulations conform with state law; and

WHEREAS, the City is aware of at least four ADU applications that may conflict with potential regulations that would prohibit or impose additional requirements on ADUs/JADUs on streets included in the Proposed Prohibited Streets List and thus may result in impacts on traffic flow and public safety; and

WHEREAS, the City anticipates receiving additional ADU and/or JADU applications that may conflict with potential regulations that would prohibit or impose additional requirements on ADUs/JADUs on streets included in the Proposed Prohibited Streets List and thus may result in impacts on traffic flow and public safety; and

WHEREAS, currently the City has no means to prohibit or regulate ADUs or JADUs on the Proposed Prohibited Streets List, because the City has adopted no regulations or ordinance to this effect; and

WHEREAS, pursuant to Government Code section 65858, in order to protect the public health, safety or welfare, the City Council may, by at least a four-fifths (4/5) vote, adopt an interim urgency ordinance to prohibit uses that may be in conflict with a contemplated general plan or zoning proposal that the City is studying or intends to study within a reasonable time; and

WHEREAS, the City Council determines that the permitting and construction of ADUs and/or JADUs on streets included in the Proposed Prohibited Streets List must be

further reviewed, studied and possibly prohibited to protect the public against potentially grave fire risks and negative health, safety and welfare impacts associated with an increase in development and population in certain hillside areas of the City; and

WHEREAS, the City Council determines that as of the date of the adoption of this Interim Urgency Ordinance, the City needs to further review and study whether the permitting and construction of ADUs and JADUs on the Proposed Prohibited Streets List may result in impacts on traffic flow and access by public safety vehicles and would reasonably threaten to cause adverse impacts to surrounding neighbors, including impacts on or related to available emergency response, parking and traffic flow; and

WHEREAS, construction of ADUs/JADUs on streets included in the Proposed Prohibited Streets List within the City creates an additional current and immediate threat to the public safety, health, and welfare, in that such operations reasonably threaten to undermine the overall goals and purposes of the City's zoning ordinance and the City's General plan including General Plan Program LU-2.12D which encourages ADUs/JADUs except where access difficulties for fire and emergency vehicles pose risks to public health and safety; and

WHEREAS, for the reasons stated above, the San Rafael City Council wishes to adopt a temporary moratorium on construction of ADUs/JADUs on the streets included in the Proposed Prohibited Streets List within the City. The temporary moratorium will allow the City to (1) review and analyze the City's ability to impose limitations based on parking related concerns; (2) consider potential restrictions that may range from complete prohibition of ADUs/JADUs on these streets to prohibitions only where adequate parking standards are not met; and (3) research, draft, and adopt appropriate parking regulations governing ADUs/JADUs within the City; and

WHEREAS, the City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular person or entity that seeks to permit and construct an ADU or JADU; and

WHEREAS, this ordinance is necessary as an urgency measure to preserve the public peace, health or safety; and

WHEREAS, the City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt

from CEQA;

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

DIVISION 2. -- DECLARATION OF MORATORIUM.

1. In accordance with Government Code section 65858, and pursuant to the findings stated above, the City Council hereby declares:
 - A. There exists a current and immediate threat to the public health, safety, and welfare requiring this interim urgency ordinance;
 - B. This ordinance is necessary for the immediate preservation of the public peace, health, and safety; and
 - C. That it is hereby imposing a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below:
2. During the term of this interim urgency ordinance (“moratorium”), no permit for a proposed ADU and JADU located on property accessed from the streets included in the Proposed Prohibited Streets List (which List is set forth in subsection 5(C) of this ordinance) shall be issued.
3. City staff is directed forthwith to (a) review and analyze the state legislation regarding the state’s reservation to local jurisdictions of the authority to prohibit ADUs and JADUs in certain locations; (b) consult with the California Department of Housing and Community Development regarding such reservation of authority; and (c) continue to study and analyze issues related to ADUs and JADUs being permitted and constructed on properties accessed from the streets included within the Proposed Prohibited Streets List, including but not limited to analyzing and studying the potential impacts of such ADUs and JADUs on the public health safety and welfare of the community, the fire risks of such ADUs and JADUs being located within streets on the Prohibited Streets List, and the extent of regulatory controls, if any, to impose on such ADUs and JADUs.
4. Staff is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the conditions that led to the adoption of this ordinance and the measures taken to alleviate any such conditions, in accordance with state law.
5. For purposes of this temporary moratorium, the following terms shall have the following meanings:

- A. "Accessory Dwelling Unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following: (A) An efficiency unit, (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.
- B. "Junior Accessory Dwelling Unit" means an accessory dwelling unit that is no more than 500 square feet in size and contained entirely within the walls of a proposed or existing single-family residential space.
- C. "Proposed Prohibited Streets List" shall mean the following streets:

<p><u>San Rafael Hill/Lincoln</u> Prospect Drive Coleman Drive Fair Drive Graceland Drive Vineyard Tampa Drive La Vista Way Chula Vista Drive</p>	<p><u>Montecito/Happy Valley</u> Eucalyptus Lane Marinita Avenue Jewell Street (between Marinita Ave and Mission Ave)</p>
<p><u>Dominican/Black Canyon</u> Terradillo Ave Roger Drive Lillian Lane Hacienda Court Hearfield Lane</p>	<p><u>Sun Valley</u> Bayo Vista Way</p>
<p><u>West End/Gerstle Park</u> Dunand Ave Sentinel Court Marquard Avenue Fremont Road Upper Fremont Road Trost Road West Street Viox Way Miramar Avenue Miraflones Ave Reservoir Road (above Ross Street) Gerstle Court Wood Street Clayton Ave (west of Welch Street)</p>	<p><u>Bret Harte/Picnic Valley</u> Southern Heights Boulevard Perry Walk McCoy Road Bungalow Avenue Glen Ave (above Robert Ave) Courtright Road Pearce Road Martens Blvd Bret Harte Road (below 270 to above 470) Baldwin Court</p>

DIVISION 3. EXPIRATION

Pursuant to the pertinent provisions of Government Code section 65858, this interim urgency ordinance shall expire and shall be of no further force and effect forty-five (45) days from and after the date of its adoption; provided however, that after notice and public hearing, the City Council may, upon an affirmative vote of at least four-fifths of its members, extend this interim ordinance as provided in section 65858, for an additional period of time, not to exceed a total extension period of twenty-two (22) months and fifteen (15) days.

DIVISION 4. 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 City 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 are declared invalid.

DIVISION 5. EFFECTIVE DATE OF ORDINANCE.

This ordinance is an urgency ordinance enacted under Government Code section 65858. This urgency ordinance is effective immediately after approval by a four-fifths vote of the City Council for a period of 45 days, at which time it will automatically expire unless extended by the City Council as permitted under the Government Code. The City Clerk is directed to publish forthwith a copy of this Ordinance, 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

I, LINDSAY LARA, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths (4/5) of the members thereof, at a regular meeting held on Monday, the 18th day of October 2021, by the following vote, to wit:




AYES: Councilmembers:

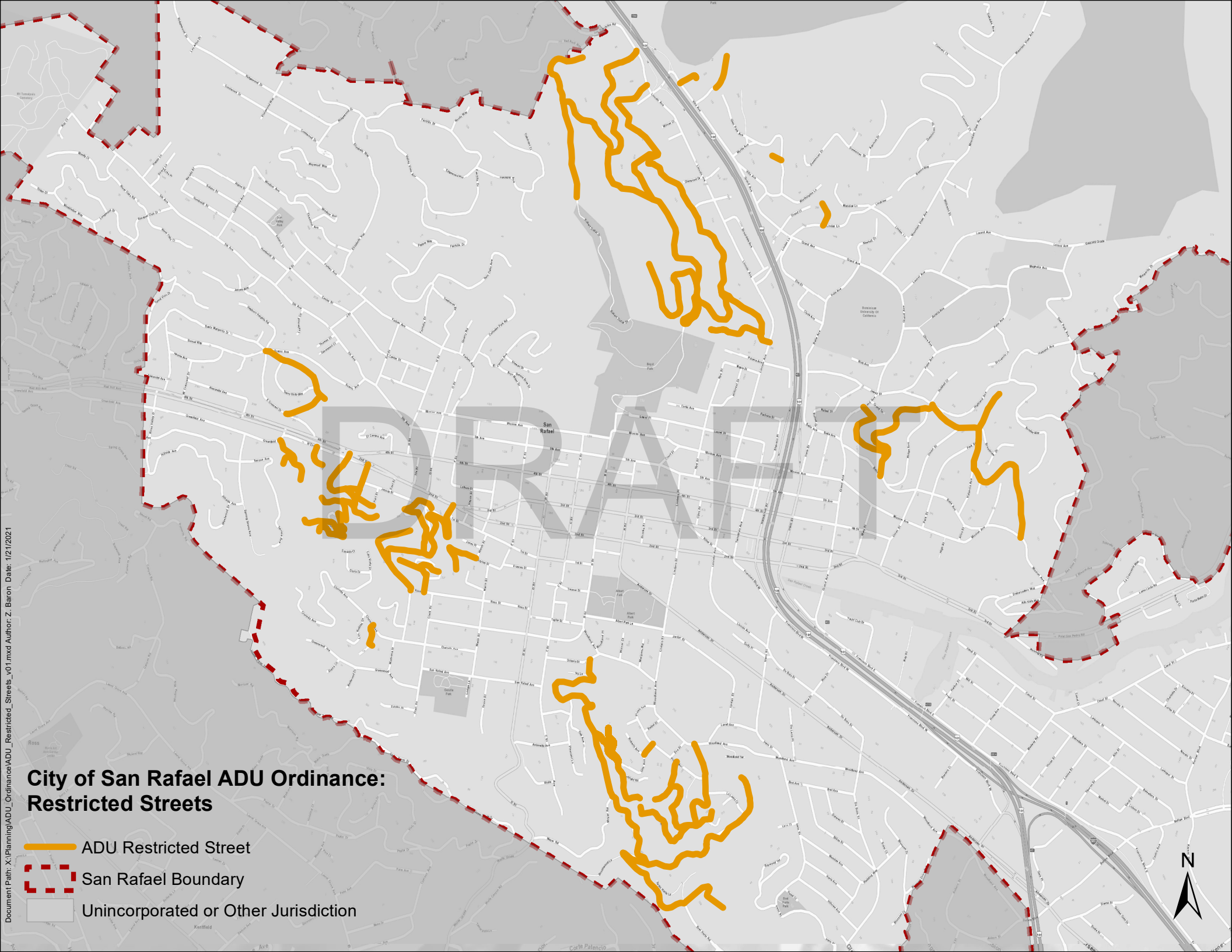
NOES: Councilmembers:

ABSENT: Councilmembers:

LINDSAY LARA, City Clerk

City of San Rafael ADU Ordinance: Restricted Streets

-  ADU Restricted Street
-  San Rafael Boundary
-  Unincorporated or Other Jurisdiction



DRAFT

LIST OF ROADS/STREETS WHERE ADUs/JADUs ARE PROPOSED TO BE PROHIBITED

List considers the follow factors:

Staff is proposing that that the ordinance prohibit ADUs and JADUs on certain streets due to narrow travel lanes (<14'), excessive turning radius, maneuvering difficulty, and/or lack of turnaround.

San Rafael Hill/Lincoln

Prospect Drive
Coleman Drive
Fair Drive
Graceland Drive
Vineyard
Tampa Drive
La Vista Way
Chula Vista Drive

Montecito/Happy Valley

Eucalyptus Lane
Marinita Avenue
Jewell Street (between Marinita Ave and Mission Ave)

Dominican/Black Canyon

Terradillo Ave
Roger Drive
Lillian Lane
Hacienda Court
Hearfield Lane

Sun Valley

Bayo Vista Way

West End/Gerstle Park

Dunand Ave
Sentinel Court
Marquard Avenue
Fremont Road
Upper Fremont Road
Trost Road
West Street
Viox Way
Miramar Avenue
Miraflores Ave
Reservoir Road (above Ross Street)
Gerstle Court
Wood Street
Clayton Ave (west of Welch Street)

Bret Harte/Picnic Valley

Southern Heights Boulevard
Perry Walk
McCoy Road

Bungalow Avenue
Glen Ave (above Robert Ave)
Courtright Road
Pearce Road
Martens Blvd
Bret Harte Road (below 270 to above 470)
Baldwin Court