

# 5 Housing Constraints

## 5.1 Introduction

Every housing element must include an analysis of constraints to the maintenance, improvement, and development of housing for all income levels. The contents of this analysis are prescribed by Government Code Section 65583(a). Constraints are broadly defined as being “governmental” or “non-governmental.”

Governmental constraints include land use controls (such as plans and zoning regulations), building codes and their enforcement, site improvement requirements, fees and other exactions required of developers, local processing and permitting procedures, and any other locally adopted ordinances that impact the cost and supply of residential development. While these measures are important to ensure public health and protect the quality of life, they can also add to the cost of housing. It is useful to periodically reexamine local ordinances and policies to determine whether, under current conditions, they are accomplishing their expected purpose or have become a barrier to housing production. The evaluation below concludes with findings and recommendations for each of the topic areas addressed.

Non-governmental constraints include the price of land, the cost of construction, the availability of financing, requests to develop housing at densities significantly below what is allowed by zoning, and delays in construction timelines. Community opposition to development is another non-governmental constraint, as it may result in fewer units and more costly housing due to continuances and appeals.

## 5.2 Governmental Constraints

### 5.2.1 San Rafael General Plan 2040

General Plan 2040 was adopted in August 2021, following a three-year update process. The document was a major update of General Plan 2020, which was adopted in 2004. The General Plan Update moved the planning horizon forward 20 years, addressed new State requirements, and responded to current and emerging issues in the city. One of these issues was the housing crisis and the urgent need for more affordable housing. Another was the need for more equitable growth, a greater voice for the city’s lower income and immigrant communities, and fair housing opportunities throughout the city.

The General Plan includes 15 chapters, including an Introduction, Framework, and 13 “elements.” The only element not updated as part of the 2018-2021 process was Housing, due to the State-legislated schedule for Housing Element updates. Housing is addressed both directly and indirectly in other Plan elements. For example, the Land Use Element includes policies strongly supporting housing construction at a variety of densities, particularly in Downtown San Rafael and in other commercial areas. The Mobility Element likewise promotes

higher densities around transit stations to achieve more walkable communities and reduce vehicle miles traveled.

General Plan 2040 also includes an Equity, Diversity and Inclusion (EDI) Element that addresses the need for lower income and senior housing, as well as tenant protection and anti-displacement strategies. The Plan further addresses housing preservation and maintenance (Neighborhoods Element), accessory dwelling unit production (Land Use Element), energy costs (Conservation and Climate Change Element), parking requirements (Mobility Element), the need for workforce housing (Economic Vitality Element), and the protection of housing from hazards such as sea level rise and wildfire (Safety and Resilience Element). The General Plan has a strong focus on sustainability, including the use of greener construction methods and low impact development, providing housing near workplaces, and balancing job and housing growth.

The General Plan positions San Rafael for residential growth, consistent with regional plans such as Plan Bay Area 2050. Although the City's Regional Housing Needs Allocation (RHNA) was not known when the General Plan was prepared, Bay Area cities were advised that significant increases were likely. The updated Plan identified the capacity for 4,400 units, or roughly 35 percent more than the 3,220 units ultimately allocated to San Rafael through the RHNA process. A majority of this capacity is on sites zoned for multi-family or mixed use housing at densities exceeding 30 units per acre, enabling the City to accommodate lower-income housing as well as market-rate development. The General Plan EIR provides initial clearance for future housing projects under the California Environmental Quality Act (CEQA), to the extent they are consistent with the Land Use Map and General Plan policies.

The Land Use Element of the General Plan includes San Rafael's Land Use Map, which identifies all parts of the city where housing is allowed, along with residential density ranges. The following residential categories are included on the map:

- Hillside Resource Residential is used on constrained sites with limited potential and allows one unit per 0.5 acres (2 acres per home).
- Hillside Residential allows up to 2.2 units per acre (20,000 square foot lots), typically on hillside sites.
- Very Low Density Residential allows up to 2.2 units per acre (20,000 square foot lots), typically in flat or gently sloping subdivisions.
- Low Density Residential is the predominant single family home designation in San Rafael, allowing up to 8.7 units per net acre (5,000 square foot lots).
- Medium Density Residential applies to small lot residential areas, as well as "missing middle" housing types such as 2-4 plexes, mobile home parks, and townhomes. Densities are 8.7 to 21.8 units per net acre (one unit per 2,000 square feet of lot area).
- High Density Residential applies to multi-family housing and allows 21.8 to 43.6 units per net acre (one unit per 1,000 square feet of lot area).

Vacant sites with General Plan designations of Hillside Resource, Hillside Residential, and Very Low Residential are generally not included when identifying potential housing opportunity sites due to the very low densities, natural hazards, and high construction costs associated with these sites.

Residential uses are also encouraged in the city's mixed use land use categories. These categories are intended to support both residential *and* commercial uses, including projects where housing and business occur on the same parcel. The following provisions for housing apply:

- Marine-Related Mixed Use allows 8.7 to 21.8 units per acre (one unit per 2,000 square feet of lot area), along with other water-oriented uses such as marinas and boating services. Sites with this designation are located along the San Rafael Canal. Housing is limited to upper stories only.
- Neighborhood Commercial Mixed Use allows 8.7 to 24.2 units per net acre (one unit per 1,800 square feet of lot area). These sites are typically used for neighborhood shopping centers and local-serving businesses, often close to lower density residential neighborhoods.
- Community Commercial Mixed Use allows 21.8 to 43.5 units per net acre (one unit per 1,000 square feet of lot area). These sites are typically used for larger commercial centers, auto dealerships, region-serving commercial uses, shopping centers, and hotels, often near freeways and major thoroughfares.
- Office Mixed Use allows 21.8 to 43.5 units per net acre (one unit per 1,000 square feet of lot area). These sites are typically developed with general offices, professional and medical offices, administrative facilities, and office parks.
- Downtown Mixed Use is a new land use classification that replaced six different classifications in the 2020 General Plan. High-density housing and mixed use development is strongly encouraged in this area, which is further guided by a Precise Plan (see next section). Density is not regulated in this classification. New buildings are subject to height limits in the Precise Plan and Floor Area Ratio (FAR) caps that range from 3.0 to 6.0, depending on the height limit.<sup>1</sup>

The other land use categories are non-residential in nature, although limited opportunities for housing are acknowledged in the General Plan. Residential uses are permitted on land designated Public/Quasi-Public. Another category, Light Industrial-Office, includes a zoning district in which live-work development is allowed. Residential uses are not permitted in the land use categories corresponding to general industry, open space, conservation, quarries, airports, and water.

With the exception of Downtown, each of the mixed-use categories includes two metrics for determining the amount of development allowed on a site. The total square footage of commercial space is regulated with a FAR limit for each category. The total amount of

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<sup>1</sup> Floor Area Ratio is the ratio of floor area on a parcel to the land area on that parcel. A 10,000 square foot building on a 5,000 square foot lot has an FAR of 2.0. In Downtown San Rafael, FARs have been set at levels that exceed what can be built under the allowable building heights, so they are not a factor in determining the square footage that can be built on any given site.

residential space is regulated with a density limit. A property owner is entitled to a certain amount of commercial square footage plus a certain number of residential units on each site. The FAR limits are relatively low (generally ranging from 0.3 to 0.4), which creates an incentive for adding residential development to a project on commercially zoned land.

### **Findings and Recommendations**

*Overall, the new General Plan is strongly supportive of housing and does not present a constraint to development. During the planning period, the City could consider increasing the allowable densities in the Marine-Related Mixed Use and Neighborhood Commercial Mixed Use categories so they are equivalent to the Community Commercial and Office Mixed Use categories.*

## **5.2.2 Area Plans and Precise Plans**

In addition to General Plan 2040, San Rafael has adopted plans for several specific geographic subareas of the city. These plans influence housing opportunities and are highlighted below.

### **Downtown Precise Plan**

The Downtown Precise Plan was prepared concurrently with General Plan 2040 and was adopted at the same time (August 2021). The Precise Plan covers 265 acres, extending from the Second/Fourth Street intersection on the west to Montecito Plaza on the east, and from Mission Street on the north to San Rafael Creek/ 1<sup>st</sup> Street on the south. This encompasses the traditional central business district of San Rafael and the city's densest neighborhoods. The area includes a diverse range of housing, from historic Victorian homes to mid-rise apartments. It also includes the facilities of many of Marin County's supportive service providers, some of which provide on-site housing for extremely low-income residents and persons with special needs.

The Precise Plan provides a vision for Downtown, accompanied by land use, urban design, historic preservation, economic development, and infrastructure policies. The Plan includes an affordable housing and anti-displacement strategy, including specific measures and programs to protect the area's supply of lower cost housing, address homelessness, and avoid displacement of lower income renters. At its core, the Plan was designed as a tool for removing constraints to residential development while fostering economic growth. To accomplish this, it provides a pathway to expedited approval for housing developments that meet objective design standards.

The Downtown Precise Plan identifies "development opportunity sites" estimated to have the capacity for 2,200 new housing units. It also identifies longer-term opportunities for housing on sites with active commercial uses such as the Montecito Shopping Center. One of the benefits of the Plan is that it includes an inventory of historic resources. It also includes standards for preservation, demolition, and alteration, in the event housing is proposed on the site of a historic resource. These standards expedite the development review process, as they reduce the need for costly and time-consuming cultural resource surveys for each project while providing standards for preservation and development.

Chapter 9 of the Precise Plan is a Form-Based Zoning Code that replaced what was formerly seven separate Downtown zoning designations. Height limits were increased relative to the previous zoning code, and density and FAR regulations were eliminated. A discussion of Downtown zoning is provided in Section 5.2.3.

The Precise Plan has stimulated interest in developing Downtown and is not considered a constraint to housing. Since its adoption, a number of large-scale residential and mixed use projects have been proposed.

### **Station Area Plans**

The City of San Rafael prepared Station Area Plans for the Downtown SMART (Sonoma Marin Area Rail Transit) station and Civic Center SMART station areas in 2012 and 2013, respectively. Each of these plans seeks to leverage new rail transit service, which started in 2017. Downtown San Rafael was already a transit hub, and its Bus Transit Center served as the transfer point and destination for multiple bus lines and connections to the East Bay, North Bay, and San Francisco. With the arrival of SMART, Downtown was connected by rail to Santa Rosa and the Larkspur Ferry, creating another commute option and opportunity for transit-oriented development (TOD). The Civic Center station is located in a more suburban setting underneath Highway 101 near the Marin County Civic Center in North San Rafael, but also presents opportunities for TOD and less car-dependent development.

The Downtown Station Area Plan identified potential land use, transportation, and urban design improvements for parcels within a ½ mile radius of the new SMART station. These recommendations were the genesis for the Precise Plan, which was prepared seven years later. Like the Precise Plan, the Station Area Plan strongly supported additional Downtown housing. It proposed increases in height limits and changes to parking requirements to facilitate housing development. These ideas were later incorporated as development standards in the 2021 Precise Plan.

The Civic Center Station Area Plan focused on improving access to the station for pedestrians, bicyclists, and transit users, and maximizing the benefits of the new station for surrounding neighborhoods. The Plan identified several parcels as opportunities for housing and/or office development. These sites were subsequently re-designated for mixed use (including multi-family housing) in General Plan 2040. Proposed transportation improvements include better connections to Northgate Mall, which can help reduce traffic and facilitate planned housing development at that site.

### **PDA designations**

Priority Development Areas (PDAs) are locations within cities and counties that prioritized for housing, jobs, and services. When a PDA is formally recognized by the Association of Bay Area Governments (ABAG), the area becomes eligible for planning grants that facilitate access to funds for infrastructure and transportation improvements, such as bike lanes, streetlights, and sidewalks. PDAs eligible for such funds must meet certain criteria established by ABAG.

San Rafael established a Downtown PDA in 2009. Since that time, the City has received funding to prepare the Station Area Plan and Downtown Precise Plan, as well as \$4 million for

transportation improvements. The PDA designation has also enabled housing, office, hotel, civic, and retail projects to move forward and created an environment that supports additional housing.

In 2020, San Rafael nominated two additional PDAs at Northgate and Southeast San Rafael/ Canal. Both of these designations have been recognized by ABAG, making these areas eligible for future funding.

### **Findings and Recommendations**

*The Downtown Precise Plan and Civic Station Area Plan are strongly supportive of housing and are not development constraints. The PDA designations likewise provide a strong foundation for future higher-density housing and investment. Area plans for the North San Rafael PDA and the Southeast San Rafael/ Canal PDA should be prepared in the coming years, identifying more housing opportunities. As a condition of grant funding, each PDA Plan must include an Affordable Housing and Anti-Displacement strategy.*

## **5.2.3 Zoning Standards**

### **Overview**

The Zoning Ordinance consists of the Zoning Map, which delineates the boundaries of zoning districts in San Rafael, and the zoning regulations, which govern the use of land and placement of buildings and improvements within each district. Zoning regulations include development standards, parking standards, performance standards, and procedural rules. Zoning implements the General Plan by translating the General Plan's policy directives and generalized maps into more specific measurable standards for development. The Downtown San Rafael Precise Plan and Form-Based Code serve as the zoning regulations for Downtown San Rafael and are incorporated into the zoning regulations by reference.

While the zoning ordinance has not been comprehensively revised in 30 years, it is regularly updated and amended as state laws change and new local plans and programs are adopted. For example, the Ordinance has been amended during the last few years to add standards for streamlining review of Accessory Dwelling Units and large family care homes; and rules related Short-Term Rentals, wireless communication facilities, cannabis uses, and.

Relative to housing, the zoning regulations indicate the maximum (and in some cases minimum) density and intensity of development that may occur on a property, as well as standards for height, lot coverage, setbacks (distance between structures and the property line), open space, parking, and the type of permitting and approval that is required for each land use. Collectively, these rules determine the number of housing units that may be developed on a parcel and influence the size and characteristics of those units.

There are 14 separate residential zoning districts in the city, distinguished from one another by allowable density as well as the permitted uses and development standards that apply in each zone. There are seven commercial/mixed use zones in which housing is a permitted use, excluding Downtown which has its own set of regulations. In the commercial/mixed use zones,

maximum densities are comparable to the high-density residential zoning districts. Residential uses are generally not allowed in industrial and open space districts. There are limited provisions for residential uses in the public/quasi-public district, but the standards in this district are not designed for housing. San Rafael also uses a Planned Development (PD) district designation on larger sites to facilitate more environmentally sensitive design and creative architecture. Uses within a PD district must align with the underlying General Plan land use designation.

In general, the densities allowed in San Rafael are higher than in other parts of Marin County. This reflects the city's history as the county seat and major urban center. Adoption of the Downtown Precise Plan, coupled with density bonus provisions, enable densities of well over 100 units per acre in much of Downtown San Rafael. This is far greater than the highest density that is allowed in other Marin County cities. Two recently approved Downtown projects-- 703 Third Street (Seagate) and 999 Third Street (Vivalon) will be built at densities of 191 units per acre and 197 units per acre, respectively. This is almost three times the 72 unit/acre maximum density that was allowed by the prior Downtown zoning.

### **Single Family Residential Zones**

Table 5.1 shows standards in the City's single family residential zones. There are six zones, with minimum lot sizes ranging from two acres (87,120 SF) to 5,000 square feet. Development standards are scaled to respond to the different lot sizes, with larger lot width, depth, and setback (minimum yard) requirements in the larger lot zones. In general, single family lots must be 50 feet or wider, with front setbacks of 15-20 feet. Side yard setbacks in the R5 zone are equal to 10% of the lot width but must be at least three feet. Rear yard setbacks are ten feet in all zones except those with one and two acre lots. A 30-foot height limit applies in all single family zones.

The single family zones are also subject to lot coverage limits. These standards limit the portion of a lot that may be covered by structures, including non-habitable structures such as garages, elevated decks, and exterior stairways. In the densest zones, maximum lot coverage is 40 percent (in other words 2,000 square feet on a 5,000 square foot lot). In new development, higher lot coverage limits are possible through Planned Development (PD) zoning. In established neighborhoods with smaller lots, the lot coverage limit results in demand for second story additions since first-floor additions would exceed the standard in many cases. The City has established standards for upper stories to minimize potential scale and mass impacts on adjacent properties (see Table 5.1). San Rafael has also created an overlay district in the Terra Linda area to maintain the one-story scale of the Eichler-Alliance homes. These homes have a unique mid-century modern aesthetic characterized by single story construction.

As noted on the previous page, the City has a Planned Development (PD) process which allows waivers from zoning standards for larger-scale projects. PD applications are currently required on all parcels that are five acres or larger. In the past, this was a useful way of creating standards that were tailored to individual sites and to allow clustering of allowable density to respect topography and preserve open space. PD zoning allowed reduced (or no) setbacks, and enabled variations in lot coverage and other standards. There are very few sites left in San Rafael that are five acres or larger, and the PD process may be less useful in the future than it was in the past. It is also a discretionary process that requires City Council approval. A General

Plan 2040 program recommends making the PD process optional rather than mandatory on sites over five acres.

The City’s single family zoning standards support reinvestment in the housing stock and do not constrain construction. The greater constraint is that there are very few vacant sites with the potential for single family housing left in San Rafael. Most of the remaining vacant lots have constraints such as steep slopes or poor access. On larger vacant sites, developers have the option of PD zoning to achieve smaller lots, reduced setbacks, and higher lot coverages, while conserving open space on less buildable terrain.

The passage of SB9 in 2020 adds opportunity for additional units on single family lots as long as objective standards can be met. The law effectively overrides some of the dimensional standards in single family zones to enable lot splits and the development of additional dwelling units on qualifying individual lots. The City of San Rafael recently local standards to implement SB9 in July 2022. Standards such as lot width and minimum lot area may be superseded for projects that comply with SB9 requirements. Given the cost of land and construction in San Rafael, new units created in single family infill lots (including SB9 units) are likely to be above moderate-income units, rather than housing affordable to lower income households. The City has not quantified SB9 units in its calculation of potential future housing opportunities as the regulations were just adopted and there is no basis for speculating on how many units may be produced by 2031. However, such opportunities do exist and complement the housing sites listed in Chapter 4.

**Table 5.1: Development Standards in Single Family Zoning Districts(\*)**

Zone	Units per Acre	Minimum Lot Area (sq ft)	Min. Lot Width (feet)	Lot Coverage	Height (feet) <sup>1</sup>	Setbacks			Max upper story floor size
						Front <sup>2</sup>	Side <sup>3</sup>	Rear	
R2a	0.5	87,120	150	20%	30'	20'	15'	25'	Lots less than 5,000 – 50% of max lot coverage  Lots more than 5,000 SF – 75% of max lot coverage. <i>Design criteria apply.</i>
R1a	1	43,560	150	25%	30'	20'	15'	25'	
R20	2.2	20,000	100	30%	30'	20'	12.5'	10'	
R10	4.4	10,000	75	40%	30'	20'	10'	10'	
R7.5	5.8	7,500	60	40%	30'	15'	6'	10'	
R5	8.7	5,000 6,000 corner	50' 60' corner	40%	30'	15'	10% of lot width, min 3' max 5'	10'	

Source: San Rafael Municipal Code, Chapter 14.04, 2022

Notes: (\*) Additional regulations apply in hillside areas

(1) 17' in the Eichler-Alliance Combining District

(2) On blocks with improved buildings, the minimum is based on the average of improved lots along the street. A 20' setback also applies to garages built after 1992.

(3) In the R7.5, R10, and R20 districts where two or more lots on a block have buildings, the minimum is based on the average of improved lots on both sides of the street on that block (for lots within the same zoning district). Special requirements apply on corner lots (see zoning regulations)



### Multi-Family Residential Zones

Table 5.2 shows development standards in Multi-Family Zoning Districts. There are eight multi-family zones, including a duplex zone that supports a mix of single family and two-family units. Four of the zones are medium-density residential, ranging from 8.7 to 21.8 units per acre. Three of the zones are high-density residential, ranging from 24.2 to 43.6 units per acre. Most of these zones have a 6,000 square foot minimum (although pre-existing lots smaller than 6,000 square feet may be developed at their zoned densities). Maximum lot coverage standards apply in each zoning district, with a 40% limit in the low-density zoning districts (density less than 8.7 units/acre), a 50% limit in the medium-density zoning districts (densities of 8.7-21.8 units/acre) , and a 60% limit in the high-density zoning districts (densities greater than 21.8 units/acre).

The 60% limit in the HR-1 zone is somewhat low, particularly for smaller lots in urban settings. For example, a three-story building on a 10,000 square foot lot could have 3,000 square feet of additional floor area if the lot coverage was 70% instead of 60%. This could enable several additional housing units to be constructed.

Height limits in all of the medium and high-density residential zones are 36 feet, which accommodates three-story construction. Given the maximum density of 43 units per acre, the three-story limit is appropriate and supported by the other development standards. Projects eligible for density bonuses may request waivers to enable additional height if needed. Similarly, the setbacks required in the multi-family zones allow adequate space on most lots to accommodate the allowable density within the building envelope.

**Table 5.2: Development Standards in Multi-Family Zoning Districts(\*)**

Zone	Units per Acre	Minimum Lot Area (sq ft)	Lot Area per dwelling	Min. Lot Width (feet)	Lot Coverage	Height (feet)	Setbacks <sup>1</sup>		
							Front <sup>2</sup>	Side <sup>3</sup>	Rear <sup>4</sup>
DR	17.4	5,000 6,000 corner	2,500	50' 60' corner	40%	30'	15'	10% of lot width, min 3' max 5'	10'
MR5	8.7	6,000	5,000	60'	40%	36'	15'	10'	5'
MR3	14.5	6,000	3,000	60'	50%	36'	15'	10'	5'
MR2.5	17.4	6,000	2,500	60'	50%	36'	15'	10'	5'
MR2	21.8	6,000	2,000	60'	50%	36'	15'	10'	5'
HR1.8	24.2	6,000	1,800	60'	60%	36'	15'	Same as DR	5'
HR-1.5	29.0	6,000	1,500	60'	60%	36'	15'	Same as DR	5'
HR-1	43.6	6,000	1,000	60'	60%	36'	15'	Same as DR	5'

Source: San Rafael Municipal Code, Chapter 14.04, 2022. Notes: (\*) Additional regulations apply in hillside areas  
 (1) Standards for distance between residential structures also apply. See text.  
 (2) Front yard setbacks may be reduced and instead based on the average of setbacks on developed lots on both sides of a block  
 (3) If the side yard has street frontage, side setback is 10 feet, except it is 20 feet if there is a driveway and garage. Additional exceptions apply.  
 (4) 10' if adjacent to a single family district. Additional separation may be required through design review.

Other residential zoning constraints have been removed through recent Council actions. In 2021, the City amended its zoning ordinance to remove a provision in the Code related to multi-family development on sites smaller than 5,000 square feet. The provision limited development to one unit per lot (except in Downtown). Under current laws, a 5,000 square foot lot could potentially accommodate between 2-5 units. In some cases, this could require waivers from setback and lot coverage standards.

One remaining constraint is that most of the medium- and high-density residential zoning districts do not allow the maximum density envisioned by the General Plan for medium-density and high-density residential areas (as shown on the General Plan Land Use Map). The General Plan indicates that densities up to 21.8 units per acre are allowed in Medium Density Residential areas, and densities up to 43.6 units per acre are allowed in High Density Residential areas. However, in the medium-density zoning districts, only the MR-2 zone allows 21.8 units per acre. Among high-density zoning districts, only the HR-1 zone allows 43.5 units per acre. Rezoning some of the high-density residential districts (HR-1.5 and HR-1.8) to allow the maximum specified in the General Plan should be considered, particularly for sites near major transit routes or in Priority Development Areas.

Multi-family residential development is subject to additional standards, including minimum distances between structures when there are multiple structures on a single parcel. These standards are intended to ensure light and open space in garden apartment complexes and other developments comprised of multiple buildings. The standards vary from 8 to 20 feet, depending on where the primary building entrances are (the 20' standard applies to the primary access side). There also building code standards requiring two or more buildings on the same lot to be regulated as separate buildings.

Usable outdoor open space standards also apply to multi-family development. These range from 100 square feet per dwelling unit in the HR-1 zone to 150 square feet per dwelling unit in the HR-1.5 and HR-1.8 zones to 200 square feet in the medium-density (MR) zones. While the standards are comparable to those in other Bay Area jurisdictions, the higher standards (200 SF/unit) could pose a constraint on smaller sites. Projects using State density bonuses frequently request waivers of the open space standard.

### **Mixed Use Districts**

Table 5.3 indicates the zoning standards for residential development in mixed use districts outside of Downtown (Downtown is addressed in the next section). The abbreviations in Table 5.3 are as follows:

- General Commercial (GC)
- Neighborhood Commercial (NC)
- Commercial/Office (C/O)
- Residential/Office (R/O)
- Office (O)
- Marine (M)
- Francisco Boulevard West (FBWC)

Multi-family housing is permitted in all of these districts; however, the level of permitting varies from district to district. In the O and R/O districts, multi-family residential is permitted outright. In the GC, NC, C/O, FBWC, and M districts, an Administrative Use Permit (AUP) is required. Chapter 21 of the Zoning Code lists the requirements and procedures for an AUP. Such permits may be approved by the Planning Director, provided that the application complies with performance standards and other requirements of the Municipal Code. The performance standards for residential uses in commercial districts are specified in Chapter 14.17.100 of the Municipal Code. They include compliance with parking, noise, lighting, refuse disposal, and access standards. Special standards apply to live/work development and boarding houses.

AUP requests may also be referred to the Planning Commission at the discretion of the Planning Director. In either case, approval is contingent on certain findings, including compatibility with the surrounding neighborhood and no adverse effects on public health, safety, and welfare. In addition, AUPs in the FBWC zone require special findings related to the project’s contribution to revenue and job creation. These findings make it somewhat more difficult to locate housing in the FBWC zone, which is consistent with local policy goals to retain these areas for economic development and the provision of essential services to County residents.

The performance standards for multi-family development in commercial areas are measurable and objective. However, the general findings for an AUP—that a residential use is “harmonious” or “compatible” with surrounding uses—is subjective. An action program in this Housing Element calls for the City to adopt objective design standards for multi-family residential projects to provide greater certainty for projects meeting specified criteria.

**Table 5.3: Development Standards in Commercial/Mixed Use Districts(\*)**

Zone	Units per Acre	Minimum Lot Area (sq ft)	Lot Area per dwelling	Min. Lot Width (feet)	Lot Coverage	Height (feet)	Setbacks <sup>1</sup>		
							Front	Side	Rear
GC	43.6	6,000	1,000	60'	None	36'	None	None	None
NC	24.2	6,000	1,800	60'	None	30' res 36' mixed use	None	None	None
O	43.6	7,500	1,000	60'	40%	36'	20'	6-10'	20'
C/O	43.6	2,000/ bldg.	1,000	None	None	36'	None	None	None
R/O	43.6	6,000	1,000	60'	None	36'	None	None	None
FBWC	43.6	6,000	1,000	60'	None	36'	None	None	None
M	21.8	6,000	2,000	60'		36'	None	None	None

Source: San Rafael Municipal Code, Chapter 14.04, 2022

Notes: (\*) Minimum landscaping requirements also apply in most zones.

(1) Where the frontage of a block is partially in an R district, the R district front setback shall apply and when the side or rear abuts an R district, the respective side and rear setbacks shall be 10 feet..

With the exception of the Marine district, the City allows projects that are 100 percent residential in its commercial zoning districts.<sup>2</sup> In other words, it does not require commercial sites to be developed with mixed use projects (ground floor commercial and upper story housing) as a prerequisite for housing. This makes almost all commercially zoned property eligible to be included as housing opportunity sites. Because commercial square footage is based on floor area ratio and residential capacity is calculated separately (through density), there are incentives to include housing on commercial sites to maximize return on investment.

In addition to the standards shown in Table 5.3, minimum landscaping requirements apply in several of the mixed use zones. These range from ten percent in the NC, R/O, and M zones, to 15 percent in GC and FBWC, to 25 percent in the O zone. There is no minimum requirement in the C/O zone. Residential uses in most commercial/mixed use districts are not subject to outdoor open space requirements, which provides another incentive for housing in these zones. Residential uses in the Downtown Precise Plan area are subject to civic space requirements, to enhance the quality of the public realm and implement Plan recommendations.

Other residential standards are supportive of mixed use and multi-family residential development. The allowable density of 43.6 units per acre in most zones matches the top end of the HR1 district. The City has adopted standards for more dense/taller development in Downtown San Rafael by using height to regulate development rather than density. It could consider using this approach in other zoning districts as a way to increase development potential.

The City should also consider raising the allowable density in the NC district so it is comparable to the allowable density in the General Commercial and Office districts. Since the other standards in NC match those in the denser zoning districts, the existing 24.2 unit/acre density cap is a constraint to redeveloping underutilized centers to their maximum potential. Additionally, the City could consider modifications to the setback standards in the O district, as the existing standards make it difficult to build multi-family housing on smaller parcels in this zone. In particular, the 20' front and rear setbacks and 40 percent lot coverage limit do not accommodate the typical multi-family footprint. Alternatively, the City could consider rezoning property in the O district to R/O to facilitate housing or mixed use development.

The 36-foot height limit in the commercial districts is a potential constraint to higher density housing. This requirement generally limits buildings to three stories. In the case of a mixed use project with ground floor commercial uses, only two stories would be available for residential use. This can make it difficult to achieve the allowable 43.5 unit/acre density. A taller height limit could be considered for all projects in which at least ten percent of the housing units are affordable. This would avoid the need to request a concession or waiver for projects using density bonuses.

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<sup>2</sup> *The Marine District allows residential uses “on the second floor or above in a mixed use project”*

**Downtown San Rafael**

Table 5.4 shows development standards in the Downtown Precise Plan Area. As the table indicates, most of the traditional metrics used to regulate development are absent. There are no density limits, no minimum lot area requirements, and no floor area ratio limits. There are no lot width or lot coverage requirements. Building envelopes are largely defined by height limits and setback standards, which vary from zero to 15 feet. In some cases there are maximum setbacks as well as minimum setbacks. These standards are intended to create a “street wall” that helps make the street a more attractive and well-defined public space. Building mass is further shaped by “stepback” requirements, which require that upper floors (usually above the third floor) are recessed to reduce shadows and the perceived mass of taller buildings from the street.

A local density bonus program is included in the Form Based Code. Projects in which at least 10 percent of the units are affordable (in other words, meeting the City’s inclusionary housing requirement on-site) are eligible for 10 to 20 feet of additional building height. Projects may use the local density bonus program, or the State density bonuses (discussed later in this chapter) but they may not use both.

The Form-Based Code has only been in effect for a year, and its effects on the Downtown development market appear to be positive so far. Applications for more than 260 housing units have been submitted since the Plan’s adoption, and more are in the works. The City has seen an uptick in interest in Downtown development, with more inquiries about housing opportunities in the area. The absence of density and FAR limits, in particular, have enabled projects with substantially larger numbers of units to be proposed.

**Table 5.4: Development Standards in Downtown Precise Plan Districts(\*)**

Zone	Units per Acre	Minimum Lot Area (sq ft)	Lot Area per dwelling	Min. Lot Width (feet)	Lot Coverage	Base Height (feet) before bonuses <sup>1</sup>	Setbacks <sup>2</sup>		
							Front	Side	Rear <sup>3</sup>
T4N	No limit	No limit	No limit	No limit	No limit	30-50'	7' min 15' max	5'	15'
T4MS	No limit	No limit	No limit	No limit	No limit	40-60'	0' min 10' max	None	
T5N	No limit	No limit	No limit	No limit	No limit	40'-50'	0' min 15' max	None	None
T5MS	No limit	No limit	No limit	No limit	No limit	70'	0' min 5' max	None	None

Source: San Rafael Municipal Code, Chapter 14.04, 2022

- Notes: (1) Bonuses range from 10' to 20' depending on the community benefits (including affordable housing) included in the project.
- (2) Setback requirements also apply to off-street parking.
- (3) 10' setbacks are required on parcels adjacent to specific lower scale zoning districts

The effectiveness of the Code will be monitored in the coming years to ensure that it is achieving its desired effects. One early observation is that applicants continue to use the State density bonus to meet (or exceed) the City's inclusionary requirements and request additional height rather than the height bonuses included in the Downtown Plan. Another observation is that additional guidance and clarity is needed on the calculation of density bonuses, since there is no density metric in the zoning. Currently, applicants calculate the number of units permitted in the "base project" using setback and height standards and apply the applicable bonus to this number.

### **Findings and Recommendations**

*Zoning in San Rafael supports and facilitates a diverse mix of housing types. A number of strategic changes could enhance the City's ability to affirmatively further fair housing and meet its RHNA targets. These include:*

- *Increasing the maximum lot coverage limit in the HR-1 district*
- *Aligning the HR-1.5 and HR-1.8 zoning districts with the top of the General Plan "High Density Residential" housing range, particularly for sites along major transit routes or in Priority Development areas*
- *Raising the height limit in the GC, Office, and other mixed use commercial districts*
- *Considering future increases to the maximum density in the Neighborhood Commercial (NC) zone so it aligns with the other commercial zoning districts*
- *Considering modified setbacks and lot coverage limits for multi-family residential projects in the Office (O) zone*
- *Considering using FAR or height limits (rather than maximum density) to regulate mixed use development, as has been done in Downtown San Rafael*

### **5.2.4 Parking Requirements**

In many communities, local parking standards are cited by developers as a significant constraint to housing construction. The cost of structured parking may be as high as \$50,000 to \$60,000 a space. This cost is typically passed on to the buyer or renter in the form of higher sale and rent prices. San Rafael has taken a number of steps to reduce parking requirements in areas where other transportation options are available. More recently, the State of California has pre-empted minimum parking requirements near public transit.

Parking standards are defined in Chapter 14.18 of the San Rafael Municipal Code. The Code includes a chart indicating the required number of parking spaces for each use classification, including various types of residential development. The Code also includes requirements for clean air vehicles, off-street loading and unloading, mixed use parking, changes in occupancy in multi-tenant buildings, shared parking, bicycle parking, parking space dimensions, alternatives for sites that cannot meet the parking requirements, parking lot screening and landscaping requirements, and special provisions for Downtown. Code provisions are guided by General Plan policies that strive to manage parking in a way that protects neighborhood quality, supports businesses and economic development, and achieves the City's sustainability and climate change goals. These policies recognize that less parking may be required in denser areas of

the city served by public transportation, where the priority is on non-motorized transportation and the safety of pedestrians and bicyclists.

Parking requirements are summarized in Table 5.5. Single family residential uses require two covered off-street parking spaces per unit, with guest parking requirements applying on narrow hillside streets to maintain emergency vehicle access. Multi-family requirements are differentiated by the number of bedrooms, with one space required for a small (<500 SF) studio, 1.5 spaces required for a one-bedroom and larger studio, and two spaces required for units with two or more bedrooms. For most multi-family units, at least one of the required spaces must be covered. Multi-family housing is also subject to a guest parking requirement of one space per five units.

Reduced parking requirements apply to senior housing, which require only 0.75 spaces per unit. There are also special requirements for emergency shelters and residential care facilities. Additionally, the City requires that where ten or more spaces are provided, a percentage are set aside for clean air vehicles. For example, where 26 to 50 parking spaces are provided, at least three must be clean air vehicle spaces. In multi-family buildings, bicycle parking must be provided at the rate of five percent of the requirement for automobile parking, with a minimum of one two-bicycle capacity rack.

Much of Downtown San Rafael is covered by a parking district. Properties in the district benefit from a shared supply of municipal parking, which is supported by an in-lieu fee paid by new development. The Downtown Form-Based Code included reduced parking standards for residential development, including 0.5-0.75 spaces for a studio or one-bedroom, 1.0 spaces for a two-bedroom, and 1.5 spaces for three or more bedrooms. Increased requirements for bicycle parking also are included.

**Table 5.5: Parking Requirements for Residential Development in San Rafael**

Housing Type	Citywide, except Downtown	Downtown(*)
Single Family Home	2 covered	N/A
SF Hillside on street < 26'	2 covered plus two on-site	
Multi-Family Studio	1 covered	0.5 in T4 and T5 MS 0.75 in T4 and T5 N
Duplex Studio	1 if <500 SF 1.5 if >500 SF	
Multi-Family One Bedroom	1.5 including one covered	
Multi-Family Two Bedroom	2.0 including one covered	1.0
Multi-Family Three+ Bedrooms		1.5
Guest Parking	1 space per five units	Only required in West End Village (1 per 5)

Source: City of San Rafael, 2022

(\*) supplemental standards apply in West End Village

AB 2097, approved in September 2022, prohibits minimum parking requirements within one-half mile of major public transit stops. This eliminates parking requirements in most of Downtown San Rafael and in the vicinity of the Civic Center SMART station. Developers may still choose to provide parking within new projects, but it is not mandated. In addition, the City's parking requirements include allowances for reduction of the standards through an administrative use permit process. The Code allows modifications to the standards if they are "fair, equitable, logical and consistent" with the intent of the regulations. Developers have also had the option of using the reduced parking standards available to projects using State density bonuses.

### **Findings and Recommendations**

*Given the relief provided by AB 2097, parking is no longer a constraint to multi-family housing development in much of San Rafael. Even prior to the State legislation, the City recognized the opportunity for reductions Downtown and in projects with affordable or senior housing units. It also recognized (and continues to recognize) the importance of tailoring parking standards to the number of bedrooms in the unit.*

*The City will continue to work with property owners and residents to develop create effective parking management programs that balance the need for parking with the need for more robust transit and affordable housing. While local parking standards are no longer a challenge, the ability to physically accommodate parking remains a potential obstacle for some Downtown housing sites. The City continues to pursue opportunities to expand the Downtown parking district and create additional shared parking opportunities. Further action also could be taken to support "unbundling" of parking. Unbundling means separating the cost of parking from the cost of housing; in other words, allowing residents to decide if they wish to pay for a parking space when renting or buying renting a home rather than simply assigning them parking and embedding that cost in their rent or purchase price.*

### **5.2.5 Density Bonus Regulations**

The premise of density bonuses is that additional density (i.e., additional housing units above and beyond those permitted by zoning) may be added to a project in exchange for setting aside a certain percentage of the units as affordable. The bonuses are higher where deeper levels of affordability are provided (e.g., for very low-income vs low or moderate). The additional units are an incentive for developers, in that they offset potential lost revenue from rent/sale of the affordable units by allowing more units to be built. State law requires that the City offer waivers to developers using density bonuses, because existing zoning standards may not accommodate the additional units.

On January 1, 2021, new State density bonus rules went into effect, expanding and enhancing these incentives. AB 2345 increased the maximum density bonus from 35 percent to 50 percent. To be eligible for a 50 percent bonus, a project must set aside:

- At least 15% of the units for very low-income households
- At least 24% of the units for low-income households
- At least 44% of the units (in a for-sale project) for moderate income households



Below the 50 percent maximum, bonus percentages are awarded on a sliding scale based on the percentage of affordable units. Density bonuses of 20 percent are also available for senior housing projects (even if they are market-rate) and to projects serving foster youth, disabled vets, and homeless persons. Density bonuses are not available for moderate-income for-rent units, since market-rate rents are often already in the moderate-income affordability range.

Provisions for State density bonuses are included in Section 14.16.030(c) of the San Rafael Municipal Code. These provisions allow bonuses, as well as additional concessions and waivers of development standards, that are consistent with California Government Code Section 65915 (State Density Bonus Law). As required by the Government Code, this includes a height bonus of up to 33 feet for 100% affordable projects within ½ mile of a major transit stop. Because the State's density bonus regulations are regularly amended, the City has moved the specific provisions for bonuses to a Council policy resolution rather than specifying numeric limits in its Municipal Code. This allows the City to incorporate changes to State law more easily.

The City itself has adopted its own bonus system for affordable housing. In Downtown San Rafael, local height bonuses of ten feet are available for any project meeting the City's inclusionary housing requirement (currently ten percent of the units in any market-rate project). Projects exceeding the City's inclusionary requirement (for example, offering 12 percent of the units as below market) are eligible for a 20-foot height bonus, if they are located in a defined geographic area that comprises most of the Downtown core and SMART station area. Local height bonuses are only available to projects that are not already using the State density bonus program to request additional height.

Height bonuses are also available in specific areas, pursuant to General Plan policies. These include:

- A 12-foot bonus for projects with affordable housing exceeding the inclusionary requirement on Lincoln Avenue between Mission and Hammondale<sup>3</sup>
- A 24-foot bonus for projects with affordable housing exceeding the inclusionary requirement at Marin Square
- A 24-foot bonus for projects with affordable housing exceeding the inclusionary requirement at North San Rafael Town Center (Northgate Mall)
- A 24-foot bonus for projects that are 100% affordable and more than ½ mile from a major transit stop
- A 12-foot bonus for projects in which 50% or more of the units are affordable, located more than ½ mile from a major transit stop.

### **Findings and Recommendations**

*Density bonuses are not a constraint to development and have been an effective incentive for both affordable and market rate housing in recent years. However, since the changes to State density bonus laws in 2021, developers have been opting to use State rather than local bonuses in their applications. The City may need to revisit its bonus programs so they are more competitive, especially in Downtown San Rafael. The City could also consider local bonuses on some of the Housing Opportunity Sites listed in this Housing Element, as it did with Northgate Mall in Marin Square in the past General Plan. In the past, Staff has also suggested the concept*

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<sup>3</sup> On lots that are 20,000 square feet in larger and at least 150 feet wide

*of density bonuses for projects with fewer than five units (for example, allowing an additional unit of 500 square feet or less).*

### **5.2.6 Affordable Housing Ordinance**

San Rafael adopted a voluntary affordable housing program in 1980 and made that program mandatory in 1985. The program requires that market-rate units contribute to the development of affordable housing. The City's Affordable Housing Ordinance has been one of the City's most effective tools for creating affordable housing and resulted in more than 600 deed-restricted affordable units between 1980 and 2009. This includes below market rate (BMR) ownership units in projects like Redwood Village and Chapel Cove and BMR rental units in projects like San Rafael Town Center.

Prior to 2020, the City's Affordable Housing Ordinance required a ten percent affordable housing set-aside for projects with 2-10 units, a 15 percent set-aside for projects with 11-20 units, and a 20 percent set-aside for projects with 21 or more units. Policies and regulations favored on-site construction so that the units were integrated into the project and throughout the community. Where the requirement could not be met on site, construction of off-site affordable units was a second choice option, and payment of an in-lieu fee was a third choice option.

By 2019, it was becoming apparent that rising land and construction costs were making it more difficult for the development community to meet the 20 percent inclusionary requirement. In discussion forums organized by staff, developers expressed that the requirements were too high and inflexible, and that the City had not supported or encouraged the option of paying an in-lieu fee. Several projects that received entitlements but did not proceed to building permits noted that the on-site affordable housing obligation made their projects financially infeasible. Developers expressed that paying into the fee would significantly reduce their costs and boost the affordable housing fund balance in a way that could subsidize the construction of 100 percent affordable projects, which could ultimately result in more affordable units.

In early 2020, the City considered a number of options for making the existing Ordinance more flexible. This was underpinned by financial feasibility studies to explore the impacts of 10, 15, and 20 percent set-aside requirements, and alternatives to providing the units on-site (including land conveyance as well as off-site construction and in-lieu payments.) Although every option emphasizes the City's preference that the units be provided on-site, a number of developers with previously entitled projects approached the City with requests to pay in-lieu fees rather than building units on-site. Ultimately, the City agreed to allow buyouts for several projects. The subsequent increase in the City's affordable housing trust fund helped the City provide financial assistance to three more deeply affordable projects in other parts of San Rafael.

An amended Affordable Housing Ordinance was adopted in 2021, reflecting the input received from the development community, Planning Commission, and City Council during the prior two years. The revised Ordinance establishes the following requirements:

- All projects with 2-15 units must set aside 10% of the proposed units (excluding density bonus units) as affordable to low-income households

- All projects with more than 15 units must set aside 5% of the proposed units (excluding density bonus units) as affordable to low-income households. These projects also must meet a “secondary” requirement through one of the following alternate means (all of which exclude density bonus units):
  - Provide an additional 5% of the proposed units as lower income
  - Provide an additional 10% of the units as moderate income
  - Pay an in-lieu fee equivalent to 5% of the proposed units
  - Provide an equivalent or larger number of off-site affordable units within ½ mile
  - Donate land to the City, provided the land is valued equal or greater than an equivalent in-lieu fee and can be feasibly developed with affordable housing

The ordinance also establishes that fractional units are rounded up to the nearest whole number if they are greater than 0.5 and converted to an in-lieu fee if they are less than 0.5. It further requires that affordable units must be dispersed throughout the project (unless clustering would further affordable housing opportunities) and should be if a similar mix, type, design, and bedroom count to other units in the project. The affordable units must be built concurrently (or prior to) the market rate units and must be subject to regulatory agreements ensuring their long-term affordability.

### **Findings and Recommendations**

*The revised terms of the Affordable Housing Ordinance have had a positive effect, with the number of projects in the pipeline increasing since its approval. While a 10% inclusionary requirement may mean fewer affordable housing units per project, more overall housing units will be built under this scenario, increasing the net affordable housing stock. Builders and developers have consistently stated that the 20% requirement presented a substantial challenge to getting a project financed and built. The updated ordinance allowed developers with previously entitled projects to request an amendment to their entitlements reducing their BMR obligations. Several developers have used this provision, making it more likely that these projects will proceed.*

*This Housing Element includes a program to continue to evaluate the Inclusionary Ordinance every three years to determine if additional amendments are needed. The Annual Progress Report likewise includes an update on the number of BMR units produced, and the effectiveness of the recent changes on overall development in the city.*

### **5.2.7 Accessory Dwelling Units**

Accessory dwelling units (ADU), also referred to as second units and “in-law” units, have been regulated in San Rafael since 1983. ADUs typically contain a living/sleeping area, a small kitchen and a bathroom and are less than 1,000 square feet. San Rafael was the first jurisdiction in Marin County to adopt an ADU Ordinance. Initially, ADUs required approval of a Use Permit, Design Review, and substantial utility and traffic mitigation fees. All of these requirements have been removed by the State, making it much easier to add an ADU in the city.

ADUs provide numerous benefits, including:

- A source of income for the homeowner
- A housing resource for extended families, including housing for grown children, elder parents, or other relatives
- A housing option that can be affordable “by design”, given the lower cost to create an ADU compared to a new multi-family apartment
- An effective strategy to create lower-cost housing in high-resource neighborhoods without changing the character of the neighborhood
- An option for older adults who wish to remain on their properties but downsize their living space—or “age in place” with a live-in caregiver on site.

In 2008, the City of San Rafael surveyed its ADU owners and found that a quarter of the roughly 200 units that existed in the city were occupied by tenants paying no rent. Additionally, a 2021 survey of ADUs in the Bay Area conducted by ABAG found that half were affordable to lower income households. ADUs are an essential resource for lower-income households and households with special needs.

Over the past 40 years, the City has amended its ADU regulations several times to facilitate ADU construction. In 2003, the City removed use permit requirements for ADUs and eliminated public hearing requirements for units meeting specific standards. At that time, the City also reduced the parking requirements, allowed detached units, and allowed ADUs to be built in higher density residential districts as well as single family districts. Despite these amendments, ADU production remained sluggish in the city, with an average of only five new units a year between 2004 and 2016. Homeowners continued to face challenges such as the cost of construction, utility connections, off-street parking requirements, and traffic mitigation fees.

In 2016, the City adopted an ordinance establishing “junior” ADU (JADU) regulations. A JADU is a small, self-contained living space within an existing home that is under 500 square feet in size. JADUs were exempt from some of the requirements that previously applied to ADUs, making them a more attractive option. Also in 2016, new State laws required major revisions to ADU regulations. Local regulations were effectively repealed across the state in 2017 as the new State regulations became effective. The most significant changes were elimination of the off-street parking requirement for units within ½ mile of public transit, allowances for garage conversions without replacing parking, further limits on a local government’s ability to require a use permit or notify adjacent neighbors, and a prohibition on utility connection fees for attached ADUs.

In 2018, a year after the new State laws became effective, the City received 27 ADU applications. Twenty-one of these units received final building permits. Between 2019 and the end of 2021, an average of 19.3 units per year received final building permits. These units count toward the City’s RHNA allocation and have been an important part of housing production in the last five years.

Additional state laws relating to ADUs were passed in 2019 and 2020, further limiting the scope of local regulatory authority. These laws included a prohibition on minimum lot size requirements for ADUs, a prohibition on requirements that at least one unit on the property be owner-occupied, further limits on impact fees, and a prohibition on requirements for fire sprinklers if sprinklers are not required in the primary dwelling. In addition, the newer legislation

limited maximum size limits of less than 850 square feet for ADUs, or less than 1,000 square feet for ADUs with more than one bedroom.

San Rafael adopted an updated ADU ordinance in November 2021. An initial draft of the Ordinance included a prohibition on ADUs on certain narrow hillside streets due to concerns about emergency vehicle access. This prohibition was removed prior to adoption due to other measures being taken by the City to mitigate emergency access constraints.

The standards for ADUs and JADUs are shown in Table 5.6. The standards establish a size range from 150 square feet (minimum) to 1,000 square feet (maximum). Consistent with State law, there is no limit on the size of an ADU that involves the conversion of an existing detached structure or the conversion of portions of an existing primary residence. ADUs are subject to 4-foot side and rear setback standards. Detached ADUs are subject to an 18-foot , but may not exceed the height of existing homes on the property if they are located in the Eichler-Alliance overlay district in Terra Linda.

**Table 5.6: Development Standards for Accessory Dwelling Units (ADUs)**

	Attached ADU	New Detached ADU	Conversion of Existing Space	Junior ADU
Minimum Floor Area	150 SF	150 SF	150 SF	150 SF
Maximum Floor Area	Lesser of 1,000 SF or 50% of primary unit floor area	1,000 SF	N/A	500 SF
Lot Coverage	None			
Minimum Setbacks				
	Front	Same as primary dwelling		N/A
	Side	4 feet	4 feet	N/A
	Rear			
	Rear entry	10' from any ROW		N/A
Maximum Height	16 feet (a)		N/A	
Parking	1 space (b)		None	
Separate independent entrance required?	Yes			
Interior access allowed?	No			Yes
Separate bathroom required?	Yes			No
Kitchen required?	Yes			

Source: City of San Rafael, 2022

Notes: (a) may not exceed primary residence if in Eichler-Alliance Overlay; (b) exclusions apply to units meeting specific criteria. See text.

Pursuant to State law, off-street parking is not required for an ADU if it is located within one-half mile of a public transit stop. This includes approximately 80 percent of the city. The only areas excluded are the San Pedro Peninsula, Gold Hill Grade, portions of Sun Valley, and Southern Heights Ridge between San Rafael, Ross and Larkspur. Even in these areas, replacement off-street parking cannot be required for an ADU created through the conversion of a garage, carport or covered parking structure. In addition, there are no lot size limits for parcels with ADUs. Each single family parcel may include both an ADU and a JADU.

Consistent with State law, ADUs up to 750 square feet are exempt from impact fees. ADUs that are 750 square feet or larger may be charged impact fees but such fees must be proportional to the size of the unit. In addition, the requirement that JADUs be created through conversion of a bedroom has been removed, as has the requirement for an interior connection between the JADU and primary residence. The Code also permits the conversion of non-habitable multi-family space (such as storage rooms, basements, or garages) to ADUs, provided that not more than 25% of the units are ADUs. Up to two detached ADUs also may be built on multi-family lots.

For projects that meet the standards, an ADU may be approved by applying for a building permit and remitting a \$300 ADU review fee. The City has developed a data sheet/ checklist to assist applicants in submitting complete applications. Once an application is deemed complete, the City has 60 days to make its determination.

### ***Findings and Recommendations***

*The City has strongly supported ADUs as a housing option and is committed to expanding the number of ADUs in the future. San Rafael has conservatively estimated that it will produce 25 ADUs annually through the planning period, or 200 ADUs between 2023 and 2031. However, the City aspires to produce a larger number through education and outreach, new incentives, and potential grant programs that could create below market rate units. There are over 11,000 single family detached housing units in the city; adding an ADU to just ten percent of these homes would result in 1,100 new units—a third of the City's RHNA. The City is working with the County and local non-profits to expand homeowner awareness of the benefits of ADUs, the process of designing and approving an ADU, and resources available for construction. It has expanded web-based information on ADUs and participated in workshops and webinars to educate homeowners about best practices from around the State.*

### **5.2.8 Standards for Different Housing Types**

Housing Element law specifies that jurisdictions must identify adequate sites to be made available through appropriate zoning and development standards to encourage the development of various types of housing for all economic segments of the population. This includes a number of specific housing types, including manufactured housing, emergency shelters, supportive and transitional housing, and residential care facilities. Table 5.7 summarizes the range of housing types permitted within San Rafael's zoning districts.

#### **Single and Multi-Family Housing**

As shown in Table 5.7, single family housing is permitted in all residential zoning district. It is generally not listed as a permitted use in commercial districts, as residential development opportunities in these areas are reserved for multi-family housing.

Duplexes are permitted in the Duplex Residential district, in all multi-family districts, and in Downtown San Rafael. Multi-family housing is permitted in the Medium- and High-Density Residential districts, in Downtown San Rafael, and in the Office and Office/Residential Districts. It is permitted with an Administrative Use Permit in the General Commercial and Neighborhood Commercial districts, and in the Commercial/Office and Francisco Boulevard West districts. The AUP is considered a ministerial approval, as it simply requires that the Planning Director find that the project meets objective standards with respect to noise, lighting, access, trash storage, and parking.

Single and multi-family housing is not permitted in the City's industrial districts. However, the Zoning Code includes allowances for live-work uses in the Lindero Mixed Use district just south of Downtown.

#### **Manufactured Housing**

Manufactured homes are addressed by Section 16.240 of the San Rafael Municipal Code. The Code states that manufactured homes are permitted within all zoning districts that allow single family homes, provided that the lot and structure meet the property development standards and requirements of the district, the home is on a permanent foundation, and the home meets federal safety standards. In addition, the roof and exterior siding and trim must use materials and treatment compatible with adjacent residential structures, and the roof overhang must not be less than 12" (unless surrounding homes have smaller eaves). Manufactured homes are subject to the same design requirements that would be required for single family homes on the same lot.

Mobile home parks are conditionally permitted in the High-Density Residential districts and the Francisco Boulevard West district. The City's two mobile home parks are located in these districts.

**Table 5.7: Allowance for Different Housing Types in San Rafael Zoning Districts**

Zoning District	Single Family Home	Duplex	Multi-Family	Live-Work	Residential Care, <6	Residential Care, 6+	Boarding House or SRO	Mobile Home Park	Emergency Shelter, Permanent	Emergency Shelter, Temporary/ Rotating
Single Family Residential (R-)	P				P	P <sup>(A)</sup>				C
Duplex Residential (DR)	P	P			P	P <sup>(A)</sup>				C
Medium Density Residential (MR-)	P	P	P		P	P <sup>(A)</sup>	C			C
High Density Residential (HR-)	P	P	P		P	P <sup>(B)</sup>	C	C	C	C
Downtown Mixed Use (DMU)	P	P	P	P	P	C	A			C
General Commercial (GC)			A	A	P	P <sup>(B)</sup>	A		P <sup>(C)</sup>	C
Neighborhood Commercial (NC)	C		A	A	P	P <sup>(B)</sup>	C			C
Office (O)			P	A	P	P <sup>(B)</sup>	A			C
Commercial/Office (C/O)			A	A	P	P <sup>(B)</sup>	A		C	C
Residential/Office (R/O)	C	C	P	A	P	P <sup>(B)</sup>	A		C	C
Francisco Blvd W. Comm (FBWC)			A	A	P	P <sup>(B)</sup>	A	C		C
Industrial (I)									C	C
Light Industrial/Office (LI/O)									P <sup>(C)</sup>	C
Core Canal Industrial/Office (CCIO)									C	C
Lindero Mixed Use(LMU)				A					C	C
Marine (M)			A	A	P	P <sup>(B)</sup>	C		C	C
Public/Quasi-Public	C	C	C	A	P	P <sup>(B)</sup>	A		C	C

Source: City of San Rafael Municipal Code, 2022

**KEY:**

P = Permitted

C= Conditional Use Permit

A= Administrative Use Permit (subject to conditions for residential uses in commercial zones)

**Notes:**

(A) Only permitted if for handicapped;

(B) Permitted if for handicapped; CUP otherwise;

(C) Permitted within a specific geographic area south of Bellam and east of I-580. Conditionally permitted elsewhere.



## **Transitional and Supportive Housing**

Transitional housing is temporary housing (generally six months to two years) for a homeless individual or family transitioning to permanent housing. Residents are provided with one-on-one case management, education and training, employment assistance, mental and physical services, and support groups. Transitional housing can take several forms, including group housing and multi-family units.

Supportive housing is permanent, affordable housing, with no limit on the length of stay, occupied by the target population (persons with disabilities, AIDS, substance abuse, or chronic health conditions). It is linked to on-site services that allow residents to live independently.

SB 2 (2008) requires transitional and supportive housing to be treated as residential uses that are only subject to those restrictions that apply to other residential uses of the same type in the same zone. For example, a single family house occupied by formerly homeless veterans is subject to the same rules as a single family house occupied by a traditional family.

San Rafael currently accommodates both transitional and supportive housing. Examples of transitional housing include multi-unit residences operated by the Center for Domestic Peace, Homeward Bound of Marin, and Center Point. Examples of supportive housing include apartments operated by the St. Vincent de Paul Society and the Marin Housing Authority.

The City has added definitions of transitional and supportive housing to its zoning code. Both uses are treated as residential uses of property subject only to those restrictions that apply to other residential uses of the same type in the same zone.

## **Residential Care Facilities**

Consistent with State law, the City has defined residential care facilities in its zoning regulations as being either “large” or “small.” Both are licensed by the State to provide 24-hour non-medical care to persons in need of personal services, supervision or assistance to help residents sustain their daily lives. Large facilities have seven or more clients and small facilities have six or fewer clients.

As shown in Table 5.7, small residential care facilities are permitted in all zoning districts where housing is allowed. Large residential care facilities are permitted or conditionally permitted in most zoning districts. The large facilities are permitted by right if they serve residents with disabilities but require a use permit if they serve other populations.

## **Single Room Occupancy (SRO) Hotels**

San Rafael does not have a use classification for SROs and treats these facilities under the definition of “boarding house.” The definition of boarding house indicates that rooms and/or meals are provided for compensation but the units do not have complete cooking and sanitary facilities. A separate use classification for SROs should be considered, as such facilities often do have complete cooking and sanitary facilities and function as transitional or long-term housing for extremely low-income households.

As a subset of boarding houses, SROs are permitted with an AUP in most commercial zoning districts and with a CUP in the Neighborhood Commercial and High-Density Residential zones. Approval is conditioned on the provision of a management plan to ensure 24-hour on-site management, security, and necessary social services. The development must provide usable outdoor open space consistent with the requirements of the district in which it is located.

## **Emergency Shelter**

California Health and Safety Code Section 50801(e) defines an emergency shelter as “housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less.” The definition further states that no individual or household may be denied emergency shelter because of an inability to pay. The City has adopted this definition in its Municipal Code and has further distinguished between “permanent” shelters and “temporary” shelters. A permanent shelter is a facility operated by a non-profit provider that provides emergency housing year-round to homeless persons or families. A temporary shelter is likewise operated by a non-profit but is set up for limited duration, not to exceed six months. Both types of shelters are intended to serve unhoused residents, rather than persons temporarily displaced by a disaster.

SB 2 requires the Housing Element to address planning and approval requirements for emergency shelters. All jurisdictions in California, regardless of the size of their unhoused population, must designate at least one zone where emergency shelter is a permitted use. The identified zone must have sufficient capacity to accommodate the shelter need and provide capacity for at least one year-round shelter. Permit processing, development, and management standards for emergency shelters must be objective and facilitate their development.

San Rafael currently allows emergency shelters “by right” in a 70-acre area that is partially zoned Light Industrial/Office and partially zoned General Commercial located in southeast San Rafael. This area is located south/east of Bellam Boulevard and north/east of Interstate 580. The area includes the County of Marin Wellness Center, single-story light industrial buildings, warehouses, offices, and miscellaneous retail and service uses. There are a number of vacant buildings in this area and several undeveloped properties.

Emergency shelters are permitted in several other zones with a conditional use permit. These zones include High Density Residential, General Commercial, Commercial/Office, Residential/Office, Lindero Mixed Use, Core Canal Industrial/Office, Marine, Public/Quasi-Public, and the remainder of the Light Industrial/Office Zone. Temporary shelters are permitted with a conditional use permit in every zoning district listed in Table 5-7.

The City is currently home to three permanent emergency shelters. The newly relocated Mill Street shelter is a 40-bed facility at 190 Mill Street (it also includes 32 units of supportive housing). The Family Center at 430 Mission Avenue accommodates nine families (roughly 27 people). There is also a 10-bed shelter at the Carmel Hotel (830 B Street). This is equivalent to roughly 77 shelter beds citywide. The 2019 Point in Time count identified an unmet need for 161 emergency shelter beds in San Rafael. Sufficient land capacity exists to meet this need in the 70-acre LI/O and GC area in southeast San Rafael, both on vacant land and through adaptive reuse of existing structures.

The City's standards for permanent emergency shelters are defined in Section 14.16.115 of the Municipal Code. These standards include:

- On-site management and on-site security shall be provided during hours when the emergency shelter is in operation.
- Adequate exterior lighting shall be provided for security purposes (i.e., one foot-candle at all doors and entryways and one-half foot-candle at walkways and parking lots). The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of intensity compatible with the surrounding area.
- The development may provide one or more of the following specific common facilities for the exclusive use of the residents and staff:
  - Central cooking and dining room(s)
  - Recreation room
  - Counseling center
  - Child care facilities
  - Other support services
- Parking and outdoor facilities shall be designed to provide security for residents, visitors, employees and the surrounding area, and consistent with the requirements of Section 14.18.040 (Parking Requirements).
- A refuse storage area shall be provided that is completely enclosed with masonry walls not less than five feet high with a solid-gated opening and that is large enough to accommodate a standard-sized trash bin adequate for use on the parcel, or other enclosures as approved by the review authority. The refuse enclosure shall be accessible to refuse collection vehicles.
- The agency or organization operating the shelter shall comply with the following requirements:
  - Shelter shall be available to residents for no more than six months. No individual or household may be denied emergency shelter because of an inability to pay.
  - Staff and services shall be provided to assist residents to obtain permanent shelter and income.
  - The provider shall have a written management plan including, as applicable, provisions for staff training, neighborhood outreach, security, screening of residents to ensure compatibility with services provided at the facility, and for training, counseling, and treatment programs for residents.
- No emergency shelter shall be located within three hundred feet (300') of another emergency shelter; unless permitted through review and approval of a conditional use permit where it is determined that the additional shelter location is appropriate and necessary to serve the intended population and would not result in an over-concentration in the community.
- The facility shall be in good standing with City and/or state licenses, if required by these agencies for the owner(s), operator(s), and/or staff of the proposed facility.

- The maximum number of beds or clients permitted to be served (eating, showering and/or spending the night) nightly shall comply with the occupancy limit established by the building code.

In 2019, the State legislature passed AB 139, which limited the range of development and performance standards a local jurisdiction may place on emergency shelters. Parking requirements must be based on the number of staff, rather than the number of beds. San Rafael currently requires one space for each employee plus one space per ten beds for shelters in commercial and industrial zones. This will need to be modified following Housing Element adoption. Cities may still impose limits on the number of beds in the shelter, although San Rafael has not adopted such a limit. Under AB 139, the City can retain its requirements for on-site management, lighting, length of stay, and proximity to other shelters.

The City's ordinance links the number of beds or clients served by an emergency shelter to occupancy limits established in the California Building Code which require 100 square feet (10-foot x 10-foot area) per client. Thus a 5,000 square foot shelter would be permitted to have 50 beds or 50 clients. Approximately 16,000 square feet of floor space would be needed to satisfy the unmet need for shelter in San Rafael based on the 2019 point-in-time count data.

### **Low-Barrier Navigation Centers**

A Low-Barrier Navigation Center (LBNC) is defined by the State as a “service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.” Low-barrier shelters provide more flexibility than a traditional emergency shelter, such as allowing pets or allowing partners to share living space. Assembly Bill 101 (2019) established that local jurisdictions must allow low barrier navigation centers by right in all zones that allow mixed use development and in non-residential zones that permit multi-family housing, provided the facility meets certain standards. The provisions of AB 101 extend through the end of 2026, at which time they are repealed.

LBNCs are not addressed in the San Rafael zoning regulations. As such there is a program in the 2023-2031 Housing Element to permit them as required. In the interim period, the City will comply with AB 101 in a manner that supersedes local zoning to the extent necessary.

### **Farmworker and Employee Housing**

Local jurisdictions are required to treat employee housing for six persons or fewer no differently than other housing types permitted in each zoning district (Health and Safety Code Section 17021.5). This is similar to the requirement for transitional and supportive housing. San Rafael's zoning regulations have no restrictions on unrelated individuals sharing a home, but they do not explicitly reference employee housing. The City does not have any occupancy standards in the zoning code that apply specifically to unrelated adults.

Similarly, farmworker housing is not currently listed as a use type in San Rafael's Municipal Code. There is no agricultural land in the city, and most local farming activity is located in the western part of Marin County. The 2017 USDA Census reported that there were 1,274 hired

farmworkers in Marin County. This population primarily resides in the unincorporated area of Western Marin, but it is possible that some of this labor force lives in San Rafael. The provisions for employee housing described above would include farmworkers, though since there are no local agricultural operations it is unlikely such housing would be proposed in the city.

A program in this Housing Element has been included to expressly treat employee housing of six or fewer people as a residential use. As such, it should be treated the same as other residential structures of the same type in the same zone.

### **Findings and Recommendations**

*The City allows, supports, and encourages a diverse range of housing types. No constraints were identified in this analysis, but the following recommendations are made to ensure compliance with recent State laws and to further support housing for extremely low-income households:*

- *As required by AB 101, Low Barrier Navigation Centers should be defined in the zoning regulations and identified as a permitted use in mixed use commercial districts.*
- *A separate use classification for SROs should be considered, rather than including them in the definition of “boarding houses.” Individual kitchens and bathrooms should be allowed in SRO units, rather than requiring communal facilities.*
- *The parking standards for emergency shelters should be revised to comply with State law (parking may not be based on the number of beds)*
- *A definition of “employee housing” is required, to clarify that it is a residential use subject to the same standards as other residential uses in the same zone.*

### **5.2.9 Housing for Persons with Disabilities**

Residents with disabilities have a number of special housing needs related to the accessibility of dwelling units; access to transportation, employment, and commercial services; and alternative living arrangements that include on-site or nearby supportive services. Since 2002, localities have been required to analyze potential and actual constraints upon the development, maintenance, and improvement of housing for persons with disabilities in their Housing Elements. This includes local efforts to remove relevant governmental constraints.

San Rafael’s current policies and regulations support the development of new housing for persons with disabilities. This includes compliance with Title 24 of the California Code of Regulations, and federal requirements for accessibility such as the Americans with Disabilities Act (ADA). The City actively enforces provisions of the Building Code that regulate access and adaptability to accommodate persons with disabilities and has made no local amendments that impede such construction. The City also complies with AB 3002 (2019), which requires local jurisdictions issuing commercial building permits or business licenses to make available a notice containing specified information regarding disability access.

As required by state law, the City has removed any local discretion for the approval of small group homes for persons with disabilities. San Rafael has also removed local discretion for the

approval of large (more than six persons) group homes for persons with disabilities and allows large group homes for the disabled by right in all districts where housing is a permitted use.

San Rafael accommodates requests for special structures or appurtenances (e.g. access ramps or lifts) serving disabled persons on a ministerial basis. For example, the City would allow displacement of required on-site parking in order to accommodate ADA accessible ramps. The City has developed an on-line complaint form for any resident who feels their current housing is non-compliant with accessibility requirements. Both the Marin Center for Independent Living and Fair Housing Advocates of Northern California are based in San Rafael and advocate on behalf of persons with disabilities at the local and regional levels.

Several projects in the city specifically serve residents with disabilities. Other projects include individual housing units that are designed for residents with mobility impairments and other specific disabilities. Examples include the 11-unit Ecology House for residents with environmental sensitivities, ten units of housing for disabled residents at 1103 Lincoln, ten units at 7 Mariposa, and 11 units at 410 Mission operated by EAH Housing, as well as housing at a Marin Housing Authority operated property on Golden Hinde Boulevard in North San Rafael. The City also strongly supports “age in place” retrofits to make it easier for residents to remain in their homes as their physical abilities change.

Chapter 14.26 of the San Rafael Municipal Code specifically addresses housing for disabled persons. Any person with a disability, or their representative, may make a request for *reasonable accommodation* when the application of a zoning law or other land use regulation, policy or practice acts could be a barrier to their housing. Chapter 14.26 allows exceptions to any rules, standards, or practices if they would eliminate regulatory barriers. This requires submittal of an application explaining the nature of the request and basis for the claim. The Community Development Director reviews the request, provided that no other planning approvals are being requested concurrently. Written notice is provided to adjacent property owners.

The decision to grant or deny a request for reasonable accommodation is based on six conditions specified by the Ordinance. These include whether the housing will be used by an individual with a disability, whether the request is necessary to make the housing available to that individual, whether there is an alternative with an equivalent benefit, whether there would be negative impacts, whether there would be a financial burden to the City, and whether the change would fundamentally alter a City program or law. Conditions of approval may be placed on the reasonable accommodation by the Planning Director, and the decision may be appealed.

### ***Findings and Recommendations***

*San Rafael's policies and regulations do not pose a constraint to the development of housing for persons with a disabilities, and its Reasonable Accommodation procedures comply with State law. This Housing Element includes a program to continue working with organizations serving residents with disabilities in the future. The intent is not only to remove obstacles to housing construction and adaptation, but to work proactively to improve transportation, supportive services, and other provisions that foster independent living. The Housing Element program also calls for all future projects receiving City funding to include a specified percentage of units*

*that are "adaptable" for persons with disabilities. Adaptable units are designed to accommodate changing future needs and be easily modified over time for disabled and older occupants.*

### **5.2.10 Building Codes**

San Rafael's building regulations are codified in Title 12 of the Municipal Code. The City has adopted the 2019 California Building Code by reference, as well as the Electrical Code, Green Building Code, Energy Code, Mechanical Code, Plumbing Code, and Historic Building Code. These codes establish minimum standards for residential development and all other structures. While building codes add material and labor costs, they are essential to provide minimum levels of safety for those occupying the structures.

The City has made several amendments to the Building Code that may affect the cost of residential construction. These are generally addressed in Chapters 12.200-12.265 of the Municipal Code. Local amendments include requiring automatic fire sprinkler systems in all new buildings, as well as Class A fire-retardant roofs for fire protection. Fire sprinkler systems also may be required for substantial remodels, which are defined in the Code. These amendments are important given the high wildfire hazards present in San Rafael, the extended drought emergency, and recent experiences with wildfire in Northern California over the past five years.

The City enforces energy conservation standards enacted by the State. The standards may increase construction costs but over time will result in energy savings. The City's Climate Change Action Plan includes a number of recommendations that could affect future construction costs, including recommendations for building electrification, renewable energy, and energy conservation. Its Wildfire Action Plan recommends additional measures to reduce wildfire hazards, which are considered essential to make the community more fire-safe.

San Rafael also has a very active Code Enforcement program intended to respond to code violations and proactively support housing maintenance. The program requires remedial actions or abatement to maintain the safety of all housing units.

### ***Findings and Recommendations***

*Building codes are necessary to protect public health and safety, and ensure the long-term habitability of the City's housing stock. They do not pose a constraint to housing development or maintenance in San Rafael.*

### 5.2.11 Processing and Permitting Procedures

Processing and permit procedures can be a constraint to the production and improvement of housing due to the time they add to the development process. Unclear permitting procedures, layered reviews, multiple discretionary review requirements, and costly conditions of approval can increase the final cost of housing, create uncertainty in the development process, and increase the overall financial risk assumed by the developer.

Over time, the City has worked to streamline its procedures to remove obstacles to housing development and simplify the process for applicants. The Department has moved an increasing number of its services and functions on-line, making it easier for applicants to receive information, submit plans, and get their projects approved. The City's "e-trakit" on-line system allows applicants (and the public) to track the progress of applications in real time.

In San Rafael, proposals for new housing development require review by the Planning Division of the Community Development Department. Most applications for larger-scale development require review and approval by designated hearing bodies, including the Design Review Board (DRB), the Planning Commission, and/or the City Council. The function of the DRB is to advise staff, the Planning Commission, and the City Council on major physical improvements requiring environmental and design review permits. The function of the Planning Commission is to advise the City Council on land use matters, including implementation and amendment of the General Plan and zoning ordinance. The Commission also convenes public hearings and issues environmental and design review permits, conditional use permits, and decisions on appeals.

The level, cost, and time required for processing and permitting review depends on the type of application and scope of the project. Smaller projects can be reviewed and approved by staff without a public hearing. Larger projects, such as major multi-family housing developments, typically require DRB and Planning Commission hearings. Recent changes to State law limit the City's ability to require such hearings as well as the City's discretion to deny projects that are consistent with adopted plans and standards.

Planning permits for development (Design Review Permits) generally require completion of an application form, payment of fees, preparation of a written statement/narrative describing the project, photographs, a site plan, project data, floor plans, roof plans, landscape plans, and elevations or sections. Depending on their location and scope, larger projects may also require grading plans, boundary surveys, historic resource evaluations, geotechnical/soils reports, arborist reports, and local traffic assessments. Prior to receiving a building permit, projects creating new housing units typically require an environmental and design review permit.<sup>4</sup>

Design review permits are classified as follows:

- Administrative Design Review permits are approved by the Community Development Director or designated staff. These permits generally do not require a public hearing, although the Community Development Director may refer an application to the Design Review Board for recommendations if needed. Typical projects requiring such permits are single-story new homes on flag lots, conversion of single family residences to duplexes, and additions that include a bedroom or are over 500 square feet in hillside areas.

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<sup>4</sup> ADUs can be approved with a building permit alone.



- Minor Design Review permits are approved by the Zoning Administrator through a public hearing. These improvements may be referred to the Design Review Board, at the discretion of the Zoning Administrator. Examples include large multi-family and second story additions, new two-story homes and duplexes, and additions over 500 square feet located in hillside areas.
- Major Design Review permits are approved by the Planning Commission in a public hearing, typically following a recommendation from the Design Review Board. Their action may be appealed to the City Council. Major Design Review is typically required for hillside development, new residences near ridgelines, and larger multi-family structures.

Applications for design review permits are approved if it is determined that the project design:

- Is in accord with the general plan and zoning
- Is consistent with all applicable site, architecture and landscaping design criteria and guidelines for the district in which the site is located
- Minimizes adverse environmental impacts; and
- Will not be detrimental to the public health, safety or welfare, nor materially injurious to properties or improvements in the vicinity.

Over the years, the City has developed design guidelines to facilitate these findings. The guidelines indicate the City's expectations for new projects to applicants, while serving as a benchmark for staff, the DRB, and the Planning Commission for evaluating new projects. These include Guidelines for the San Rafael Canalfront (2009), a Hillside Design Guidelines Manual (1991), and the Civic Center Station Area Plan Guidelines (2013).

In 2004, the City consolidated design guideline documents developed over the prior 25 years into a single set of short and very basic guidelines for residential and non-residential uses. In some cases, these guidelines incorporated direction from neighborhood plans developed decades earlier. The guidelines cover such topics as building design, scale, height, rooflines, building entrances, additions, windows, driveways, and lighting. They were intended to encourage creative design rather than prescribe specific standards.

While the guidelines have been helpful in helping architects, developers, and homeowners understand the community's design objectives, they are inherently subjective. The City is working on replacing these guidelines with objective standards that are more prescriptive, but more conducive to expedited approval.

Processing time for approval varies depending on project complexity, level of review, initial completeness, whether multiple zoning entitlements are required, and the complexity of environmental issues, as well as the volume of projects under review. Table 5.8 indicates the approximate processing time for most applications. Once design review permits are approved, they remain in effect for two years. Applicants may request a different approval term and may apply to extend permits if they are unable to start construction within two years.

**Table 5.8: Processing Time for Planning Applications**

Level of Approval Required	Approximate Timeframe
Staff Level Approval	4-6 weeks
Staff Level with DRB Meeting	6-10 weeks
Administrative Design Review with Zoning Administrator Approval	10-12 weeks
Minor Design Review with DRB meeting	14-18 weeks
Major Design Review with DRB and Planning Commission hearing	20-25 weeks
Major Design Review with DRB, Planning Commission hearing, and Environmental Review	24-48 weeks
Major Design Review for application requiring City Council action	28-55 weeks

Source: City of San Rafael, 2021

The time required for project approval is impacted by the level of environmental review required. Many smaller projects are categorically exempt from the California Environmental Quality Act (CEQA), meaning no environmental review is necessary. Mitigated Negative Declarations (MNDs) and Environmental Impact Reports (EIRs) are most commonly associated with projects on sites that require rezoning or General Plan Amendments, or that are located on hillside sites, in wetland or riparian areas, near important historic and/or archaeological resources, or in areas where natural hazards such as flooding and wildfire are present. CEQA mitigation requirements, such as special requirements for construction to avoid impacts to special status species, may add time and cost to the development process. Fees for the preparation of environmental impact reports also may be substantial, as they cover the City’s costs for contracting out the service.

As noted earlier, the City currently requires an Administrative Use Permit (AUP) for mixed use projects and multi-family housing in commercial zoning districts outside of Downtown. This is a staff-issued permit that requires conformance with specific performance standards. While the AUP is not a development constraint, this requirement could potentially be removed by incorporating relevant AUP findings into objective design and development standards. The requirement has already been removed in Downtown San Rafael. The Form-Based Code allows housing “by right” throughout Downtown, with limitations only for housing on the ground floor within 30 feet of the sidewalk in designated “Main Street” (MS) sub-districts.

The City has developed a number of tools to expedite project approval over the years. Since 1989, it has had a “Neighborhood Meeting Procedure” intended to reduce delays caused by concerns raised during the public hearing process. These meetings are not mandatory but are strongly recommended so that applicants can learn about local concerns and suggestions for

improvements. The City has also offered a Conceptual Design Review process through the Design Review Board, providing timely feedback to applicants before detailed plans and studies are prepared. It also has had a longstanding Development Coordinating Committee (DCC) comprised of City staff from Planning, Building, Public Works, and Fire that meets every other week to discuss upcoming applications, identify potential issues, and provide feedback to applicants.

The City has also eliminated what was formerly known as the “Project Selection Process” (PSP). This was a growth management mechanism initially adopted in 1988 to manage congestion at specific intersections. The PSP effectively metered the number of housing units that could be built in parts of North San Rafael and southeast San Rafael during the 1990s and early 2000s. As the remaining vacant sites in these areas were developed, the need for this program diminished and it was ended in 2011. More recently, the City has shifted to a Vehicle Miles Traveled (VMT) standard for new development and has refocused its transportation planning to emphasize low-emission travel modes and pedestrian/bicycle safety. Under State law (SB 743), level of service (LOS) is no longer a valid metric for determining that a project may have a significant impact on the environment.

### **Findings and Recommendations**

*San Rafael has worked proactively to streamline its development review and permitting processes. The adoption of objective design and development standards creates opportunities to further expedite project approvals, and potentially eliminate administrative use permit (AUP) requirements for mixed use projects and multi-family housing in commercial zones. The next section of this chapter summarizes actions the City has taken over the last few years to improve the application and entitlement process.*

#### **5.2.12 Recent Measures Taken to Expedite Processing and Permitting**

In August 2018, City staff presented the San Rafael City Council with a comprehensive informational report on housing, including an assessment of challenges to housing production. Staff’s evaluation was based on data collection and analysis, interviews with stakeholders, a review of best practices in other cities, and a number of specialized studies. Each year since 2018, the City has delivered updates to the Council on its progress in removing potential constraints to housing development. Some of these changes have been compelled by State legislation such as SB 35 and SB 330, while others were locally driven.

#### **Timing of Design Review Board / Planning Commission Hearings**

Prior to 2018, the City’s procedures called for Design Review Board (DRB) hearings to occur *before* Planning Commission hearings. The logic was that the DRB recommendations would inform subsequent Planning Commission decisions, since the DRB is advisory to the Commission. However, since these hearings were the first time projects were discussed in a public forum, the DRB often found itself receiving public testimony on issues outside their purview such as parking, density, and traffic.

Beginning in 2019, the City reversed the order of public hearings so that the Planning Commission considered the merits of new applications prior to the DRB. The Commission's meetings were considered "study sessions" and provided a forum for the Commission to address the major policy issues raised by the public. This provided the applicants with high-level feedback, allowing the DRB to focus on the details of project design. The City further established that a planning commissioner attend all DRB meetings as a liaison to offer advice and direction on matters of Commission concern.

The City has further expedited the design review process by adopting a streamlining process for certain residential projects, including residential structures of three to ten units and additions to multi-family residential structures, where the addition constitutes no more than 40 percent of the building and would not increase the unit count by more than three units. The streamlined review process allows for design review to occur a joint meeting of the Planning Commission and two DRB members.

Over the last three years, the City has considered other changes to the DRB to expedite decision-making. During the initial year of the COVID-19 pandemic, the DRB was replaced by a Design Review Subcommittee including two DRB members advising on Planning Commission applications. A subsequent pilot program created a Design Review Advisory Committee to consider smaller residential projects. The City will continue to evaluate ways to improve the efficiency of DRB and Planning Commission review as needs and conditions change.

### **Streamlining Environmental Review**

Environmental review processes and practices have been identified by stakeholders as a potential development constraint. All project applicants are required to comply with CEQA. In the past, this has required costly technical studies and reports (such as traffic studies), which in some cases are redundant or confirm findings that are already known. For projects requiring an EIR, it is not uncommon for the approval process to take more than a year and add several hundred thousand dollars to the cost of approval.

The City has been pursuing ways to streamline this process, including relying on CEQA urban infill exemptions (Section 15332) and allowing projects to tier off the General Plan and Downtown Plan EIR. This allows for more focused environmental review based on the characteristics of individual projects. Projects may rely on the General Plan EIR to assess and mitigate broader impacts (such as greenhouse gas and air quality emissions) for projects that are consistent with the General Plan. In such cases, the City may still require site-specific studies related to geology/soil conditions, stormwater drainage, ingress and egress, and other issues of local concern.

In recent years, the City has relied on CEQA categorical exemptions for projects such as Northgate Walk and 703 Third Street. Both of these projects involve the addition of more than 100 units of housing. Since they are located on previously developed sites in urban settings, are served by transit, did not require rezoning, and are consistent with the General Plan, an EIR was not required.

In Downtown San Rafael, requirements for multiple, repeated historic resource assessments had been identified as a potential challenge. The area's historic buildings contribute to its character

and charm, but often resulted in requirements for costly historic surveys for every development project. The City addressed this constraint by completing a comprehensive inventory of Downtown historic resources as part of the Downtown Precise Plan in 2019. More than 500 properties were evaluated and each building was rated based on its historic attributes. This provided a resource for CEQA streamlining as well as development standards for projects adjacent to historic buildings and future projects that could impact historic buildings.

The City does not have comparable historic resource data for the rest of the city. An action program in General Plan 2040 calls for a citywide update of historic resources data, which would facilitate similar streamlining of applications in areas outside of Downtown where historic resources may be present.

### **Pre-Application Review Process**

Pre-application review is recommended for most infill and large residential projects. This process provides prospective applicants with early feedback from City departments and services before a formal application is submitted. The review requires submittal of schematic drawings, concept plans, and an application fee, followed by review by the Development Coordinating Committee (DCC). A summary of pre-application comments is provided to the applicant, usually within 30 to 60 days.

In response to a review of best practices, the City has established a second, higher-level “concept review” process for housing projects. This does not replace the formal pre-application process but provides a more affordable option for a prospective applicant who is simply seeking preliminary verbal feedback from City staff on a potential application. The approach provides quick feedback to the applicant (7-14 days) and allows modifications to projects before the formal pre-application process begins.

### **Objective Development and Design Standards**

Objective design standards for Downtown San Rafael were adopted through the Precise Plan Form-Based Code in August 2021. The Downtown standards provide a streamlined path to approval for residential and mixed use projects, as they allow for ministerial review for projects meeting the criteria. Elsewhere in the city, the guidelines and criteria that have been used to evaluate proposed projects include many subjective references, such as compatibility with adjacent uses, creation of visual interest, and variation in building facades. The City is in the process of developing and adopting Objective Design and Development Standards (ODDS) for multi-family projects outside of Downtown San Rafael.

The Draft ODDS are expressly intended for SB 35 applications. SB 35 requires that local jurisdictions that have not met their RHNA goals have a “by right” process for qualifying residential development near major transit stops. Eligible projects must include two or more dwelling units, provide certain levels of affordable housing, and pay prevailing wages for construction. SB 35 applications are also eligible for streamlined processing and are not subject to CEQA review or a DRB public hearing. To qualify for SB 35 approval, a project must set aside ten percent or more of its units for lower income households. This threshold may rise to 50 percent in the future in the event the City begins producing market rate housing in line with its Regional Housing Needs Allocation.

The City has also implemented a pilot program to provide by right approval for projects that are 100 percent affordable. This enabled expedited approval of the 32-unit extremely low-income housing project at 190 Mill Street in 2019.

### **Findings and Recommendations**

*The City has made substantial progress in removing process-related constraints and facilitating project review and approval. Community development and planning staff will continue to provide regular updates to the City Council on further ways to improve development review, and the progress the City is making on programs to expedite housing construction.*

#### **5.2.13 Fees and Exactions**

Development fees, including planning fees, building fees, and impact fees have been identified as a factor in the financial feasibility of housing development throughout the Bay Area. Because of Proposition 13 and other State-imposed limits, the City, School districts, and other special districts must levy fees to help fund the expansion of infrastructure needed to support housing. HCD indicates that the effects of such fees can be ameliorated by ensuring that they are scaled to reflect the true impact of a project and avoid using a “one size fits all” formula in their calculation. The State has also limited the applicability of fees on ADUs, with smaller units exempt from most impact fees.

Table 5.9 lists the major planning fees in San Rafael. Some are calculated as “flat fees”, while others are scaled based on the actual cost of providing the service to the applicant. In such cases, an initial deposit representing roughly 70 percent of the total cost is collected. The deposit is based on actual data on the cost of processing permits for comparable projects in the recent past. The remaining 30 percent (or other balance due) is paid later, based on the actual time and materials cost, assuming a fully burdened hourly rate for staff positions.

The City also collects development impact fees to cover the cost of capital improvements that may be attributable to each new project. These fees are necessary to equitably distribute the costs of growth to new development rather than to existing taxpayers. City impact fees include a parkland dedication fee, a traffic mitigation fee, a street maintenance fee, and a general development impact fee used to cover impacts on overall public facilities and services. The latter is calculated based on the number of bedrooms and is sometimes referred to as the “bedroom tax”. The City also has a General Plan maintenance and implementation fee, which is collected as a surcharge on City building permits (see Table 5.9). There is also an affordable housing in-lieu fee for projects that do not meet their inclusionary housing obligation on-site. Additionally, development is subject to fees collected by other public agencies, including the School Districts, the Sanitary (sewer) Districts, and Marin Municipal Water District. These fees are typically calculated on a per dwelling unit or per square foot basis.

**Table 5.9: Major Planning Fees, 2022**

Fee	Amount	Comments
Lot Line Adjustment	\$3,131	Flat fee
Small Subdivision Map	\$3,735	Initial deposit, based on 70% of typical cost, which is based on staff time at a fully-burdened hourly rate (Note 1)
Tentative Map	\$7,293	
Development Agreement	\$11,534	
Administrative Use Permit (AUP)	\$1,420	Flat fee
Planning Commission Use Permit	\$4,305	See Note 1 above
Minor Variance	\$2,508	Flat fee
Planning Commission Variance	\$3,767	See Note 1 above
Reasonable Accommodation	\$964	Flat fee
Zoning Exception	\$1,023	Flat fee
Staff Design Review-Administrative	\$398	Over the counter
	\$1,167	Conventional
Design Review – with DRB	\$3,564	See Note 1 above
Design Review – Zoning Admin with DRB	\$4,693	
Design Review – SF home with Planning Commission hearing	\$6,872	
Design Review—all other applications with Planning Commission hearing	\$8,523	
Design Review with exception to Hillside Standards	\$8,493	
Conceptual Review (Pre-application review)	\$1,750	Flat fee
Appeal to Planning Commission	\$300	For resident
	\$4,834	For applicant/non-resident
Appeal to City Council	\$350	For resident
	\$4,476	For applicant/non-resident
Negative Declaration	\$10,346	See Note 1 above
EIR	Actual cost plus 25% surcharge for admin	
General Plan Amendment	\$8,646	See Note 1 above
Rezoning	\$7,176	
Planned District (PD)	\$11,194	
General Plan Maintenance	35.5% surcharge on building permit fee (9.6% for maintenance, 25.9% for implementation)	
Pre-Application Meeting (for applicants to receive preliminary staff feedback prior to application filing)	\$1,191	Reflects 60% discount as an incentive for developers
Neighborhood Meeting	\$1,444	See Note 1 above

Source: San Rafael Master Fee Schedule, 2022. Fees are subject to change.

Table 5.10 summarizes impact fees in San Rafael. Impact fees represent a greater share of development costs than planning and building fees and are typically the largest component of fees collected on new residential development.

San Rafael increased its traffic mitigation fee in 2021. The fee had been set at \$4,246 per AM and PM peak hour trip generated in 2004, with exemptions for affordable housing. The fee remained the same for 17 years, losing ground against inflation during that period. The updated (October 2021) fee raises the amount to \$6,909 per trip based on anticipated growth and capital facility needs under General Plan 2040. The Council approved a phased approach to the fee increase to minimize increases in development costs, with incremental increases of roughly \$553 a year over five years to reach the higher amount by 2027. The fee was \$4,779 per trip in 2022 and will increase to \$5,312 per trip in 2023. A typical single family home generates two AM/PM peak hour trips, meaning that the fee per new single family dwelling is about \$9,500. This is comparable to the traffic mitigation fees per new home collected in Novato (\$9,151) and Santa Rosa (\$9,009) and well below the fees collected in Petaluma (\$18,656). No fees are collected for Accessory Dwelling Units.

San Rafael has not increased its parkland dedication fee in many years. The fee is currently \$1,967 per dwelling and is only collected on for-sale projects that require a subdivision. An action program in General Plan 2040 recommends a nexus study to update this fee and potentially collect it as an impact fee (for all residential units) rather than a Quimby Act fee (limited to subdivisions). The current fee is well below the fees collected in other Marin County jurisdictions and does not cover costs for parkland improvement or renovation.

Other agency fees represent more than half of the impact fee total. These include school impact fees (\$3.79/square foot), water connection fees (roughly \$7,000 per unit), and sewer connection fees (\$7,000-\$10,000 per unit). Total (City + Special District) impact fees on a new 2,000 square foot townhome would be roughly \$42,800 per dwelling. Assuming a sales price of \$1.1 million, this would represent about four percent of the total home price.

Table 5.10 does not show the “fractional” fees that are often required for larger projects that are complying with the City’s inclusionary housing requirements. For example, in a 24-unit project, the inclusionary requirement would be 2.4 units. The applicant would be required to set aside two units for lower-income households and pay a fractional fee equivalent to 0.4 units. Using the current fee of \$343,969.47 per unit, this would equate to a fee of \$137,587.79, or about \$5,700 per unit. The City could potentially modify its fractional fee policy in the future to reduce the burden on applicants. The downside of such a reduction is that this fee provides an essential source of revenue for affordable housing, with the proceeds going directly to the City’s Affordable Housing Fund.

Table 5.11 shows actual permit data for four recently approved projects. The table only shows fees collected by the City of San Rafael and excludes school and utility connection fees, which are controlled by other agencies. The table also excludes fees that may have been collected prior to project entitlement, such as those required for design review or use permits. The projects represent a range of project types, including a new single family home on a vacant lot, a four-unit apartment building, a nine-unit Downtown condominium, and a 67-unit affordable housing development for seniors.



**Table 5.10: Development Impact Fees in San Rafael, 2022**

<b>Fee</b>	<b>Purpose</b>	<b>Amount</b>
<b>CITY FEES</b>		
San Rafael Traffic Mitigation Fee	Compensates for the impacts of new traffic generated by a development upon the City's transportation network, including streets, and bike/ped system. Funds used for Citywide traffic improvements.	\$4,779/peak hour trip (roughly equivalent to \$9,558/SF unit)
Parkland Dedication Fee	Used for acquisition and improvement of parkland for additional population generated by new development.	\$1,967.98/unit (the fee is only collected on for-sale units in new subdivisions that do not provide on-site public parkland)
Street Maintenance Fee	Covers the cost of maintenance of City streets due to impacts of construction-related vehicles.	\$.01 x Valuation Improvements (first \$10,000 in valuation is exempt). A \$750,000 house would pay \$7,400
General Development Impact Fee	Covers the cost of new development's impact upon public facilities and services in the City.	\$127.50 per Bedroom for Residential Uses (\$255 in a 2-bedroom home and 382.50 in a 3-bedroom home)
<b>OTHER AGENCY FEES</b>		
School Districts	Covers the cost of new development's impact upon school facilities. May be used for maintenance and/or expansion.	\$3.79/ SF (\$1.17 HS, \$2.62 Elementary) or \$7,580 for a 2,000 square foot home
Marin Municipal Water District	Covers the cost of upgrading water system capacity to serve new housing	\$7,040-\$7,720 depending on meter size
San Rafael Sanitation District (excludes North San Rafael)	Covers the cost of connecting a new home to the sanitary sewer system	\$10,306/ unit
Las Gallinas Sanitary District (North San Rafael Only)	Covers the cost of connecting a new home to the sanitary sewer system	\$7,106 plus \$500 application fee/ unit

Source: City of San Rafael, 2022

**Table 5.11: Local Planning, Building, and Impact Fees for Four Recent Projects<sup>(a)</sup>**

Fee Category	Single Family Home (2019)	4-unit apartments (2022)	9-unit condo project (2021)	67-unit Affordable Senior Housing (2022)
Est. Valuation	\$520,000	\$1,000,000	\$2,500,000	\$28,300,000 <sup>(b)</sup>
Bldg Permit Fee	\$4,865	\$8,386	\$14,476	\$122,836
CA Green Bldg Fund	\$21	\$40	N/A	\$1,132
SMIP (Seismic)	\$68	\$280	\$325	\$7,924
Street Maintenance Fee	\$5,106	\$9,900	\$24,900	\$282,900
Long Range Planning Fee	\$1,260	\$805	\$3,749	\$31,815
GP Maintenance Fee	\$467	\$2,172	\$1,390	\$11,792
Electrical Fee	\$208	\$800	\$1,125	\$500
Plumbing Fee	\$125	\$800	\$1,125	\$500
Mechanical Fee	\$125	\$800	\$1,125	\$500
Plan Checking	\$3,649	\$6,290	\$10,857	\$92,127
Bedroom Tax	\$510	\$1,020	N/A	\$8,670
Traffic Mitigation Fee	N/A	\$16,984	\$38,214	Exempt
Fire Department	N/A	N/A	N/A	\$600
Planning Review of Building Application	\$813	\$327	\$1,314	N/A
Planning Inspection at Final	N/A	\$255	\$284	N/A
Parkland Dedication Fee	N/A	N/A	\$17,712	N/A
<b>TOTAL</b>	<b>\$17,217</b>	<b>\$48,859</b>	<b>\$116,595</b>	<b>\$561,296</b>
<b>Fee Per Unit</b>	<b>\$17,217</b>	<b>\$12,215</b>	<b>\$12,955</b>	<b>\$8,378</b>

Notes: (a) The four projects are: 2 Capri Ct, 10 E. Crescent, 1628 5<sup>th</sup> Av, and 999 3<sup>rd</sup> St.; (b) 999 3<sup>rd</sup> also includes community facilities, offices, and a wellness center

The fees for these four projects ranged from \$8,300 per unit in a large multi-family project to \$17,200 per unit for an individual single family home. The total of all fees on a typical project, including City fees, school district fees, utility connection fees, planning fees that precede entitlement, and affordable housing fractional fees, may exceed \$60,000 per unit. This is comparable to the planning, building, and development fees collected by other Bay Area cities.

A review of other area draft housing elements indicates some with higher fees than San Rafael's and some with lower fees. Total fees for single family homes exceed \$100,000 per dwelling unit in some Bay Area cities and are almost always over \$40,000 per unit.<sup>5</sup> This is a statewide issue, resulting from statewide limits on increasing property taxes to cover public facility costs. For example, a 2021 report by the Building Industry Association reported average fees per single family home of \$95,000 in the Sacramento Area and \$50,000 in the Central Valley.

Over the past several decades, the City has explored ways to mitigate the effects of high development fees on housing costs. In 2001, it adopted a resolution establishing the conditions under which fees could be waived, including impact fee exemptions. This resolution was

<sup>5</sup> In Contra Costa County, the C4 Housing Collaborative reported total fees of \$100,496 per single family home in San Ramon and \$113,158 in Brentwood. Several San Mateo County cities also report fees exceeding \$100,000 per unit.

subsequently rescinded due to budget constraints and replaced with a new resolution placing new limits on fee waivers. Current policy allows waivers of planning and building fees, but not mitigation fees (e.g., impact fees). Waivers may be considered for affordable housing projects and affordable units within market rate developments. In practice, waivers are rarely granted as there is not an alternative source of funding to cover the City's costs (for plan checking, inspections, etc.).

### **Findings and Recommendations**

*Planning and development fees, including impact fees, contribute to the high cost of housing in the Bay Area and California. Fee waivers for affordable housing often are not viable, since alternate funding sources are not available to cover the cost of processing applications or providing services and capital improvements to these projects. Other ways to reduce the burden of high fees could be considered in the future, such as deferring certain impact fees until a project is completed rather than collecting them at the time a permit is issued. The City could also consider reductions, rather than waivers, for projects with certain features such as affordable housing projects located within a certain distance of transit. The fiscal impacts of fee reductions and waivers must be carefully evaluated. Waivers result in decreased resources for City services and infrastructure, with the shortfall potentially compounding over time. The City should continue to evaluate its fee waiver, reduction, and deferral policies.*

#### **5.2.14 On-Site and Off-Site Improvement Requirements**

New residential development typically requires on-site improvements such as new or repaired curbs, sidewalks, driveways, crosswalks, bike lanes, and utility connections. New public streets are rarely required, as most development is occurring on infill sites with street frontage (and in some cases, existing development). Where new streets are required, they are typically constructed by developers in accordance with the City's Subdivision Ordinance (Chapter 15.06) and Public Works specifications. The extent of on-site improvements varies with the project's setting and characteristics. Larger projects may require new traffic control devices, emergency vehicle access and fire-fighting improvements, and turning lanes to ensure safe ingress and egress. All projects are reviewed by the City's Development Coordinating Committee (DCC) to ensure compliance with Public Works and Fire Department standards and determine the need for improvements.

### **Findings and Recommendations**

*Given the developed nature of the city, site improvement requirements are generally not a development constraint. Most sites have utilities and do not require extension of services or off-site improvements. Over the course of the Housing Element, the City did receive feedback that regional stormwater controls and local utility undergrounding requirements were potentially onerous and should be re-evaluated in the future.*

## 5.3 Non-Governmental Constraints

*Sections 5.3.1 and 5.3.2  
added on 11/14*

### 5.3.1 Land and Construction Costs

The San Francisco Bay Area is one of the most expensive real estate market markets in the United States. Between 2000 and 2022, Bay Area home prices rose 84.3 percent faster than inflation.<sup>6</sup> High housing costs have been fueled by rising land and construction costs, a labor shortage, financing, rising fees and sales commissions, and increased profit margins. The last 10 years have also seen an imbalance between supply and demand due to regional job growth outpacing construction, pushing prices even higher.

Within the Bay Area, sales prices and rents in Marin County are substantially higher than the regional average. A contributing factor is the limited amount of developable land in the County. Almost 85 percent of Marin County's land has been protected from development through open space purchases, federal parkland, watershed lands and strict agricultural zoning. Most of the remaining area is urbanized, leaving very little vacant land available for development. San Rafael's General Plan 2040 identified 291 acres of vacant land in the City limits, representing 2.7 percent of the City's land area. This includes land zoned for industrial and commercial uses, as well as land zoned for housing. Most of the vacant residentially zoned land consists of steep parcels with limited access. The City's best development prospects are on sites that are already developed. These sites are more expensive than raw land due to the value of existing improvements. They also require demolition and site preparation expenses prior to redevelopment.

Data on raw land cost in San Rafael is limited because there are so few vacant properties for sale. A scan of commercial and residential data bases indicated only a few choices, primarily vacant single family lots in hillside subdivisions. Typical cost for a 10,000 square foot lot with single family zoning was \$250,000-\$350,000. Most for-sale commercial and multi-family residential properties include buildings, typically selling for \$300 to \$500 per square foot (including land and improvements). A scan of office buildings for sale in San Rafael indicates properties ranging from \$1.6 to \$7.0 million, on sites ranging from 0.13 to 1.5 acres. These properties include buildings, amenities, tenant improvements, and parking, making demolition less feasible.

In addition to high land costs and few available sites, the cost of construction in Marin County is very expensive. In 2018, Marin County was reported to be the fourth most expensive place to construct a home in the Bay Area, behind New York City, San Francisco, and San Mateo County.<sup>7</sup> It is even more expensive today. In August 2022, CBRE real estate reported that San Francisco had the highest construction costs in the world. The City's average of \$440 per square foot exceeded Tokyo, New York, and London.

The COVID-19 pandemic, coupled with the North Bay wildfires and various global events, have contributed to supply chain interruptions, labor shortages, and high construction costs in 2020, 2021, and 2022. For example, the price per 1,000 board feet of lumber topped \$1,500 in 2021,

<sup>6</sup> Source: S&P Case Schiller Index, *bankingstrategist.com*, Aug 2022

<sup>7</sup> Source: *North Bay Business Journal*, 2018

nearly three times the pre-pandemic record.<sup>8</sup> According to the Associated General Contractors of America, a national source for industry data, construction costs increased by 21.5 percent between 2021 and 2022, with particularly large increases for aluminum, steel, and fuel. Gypsum, and asphalt costs also increased by over 20 percent during this time period. The International Code Council's building cost valuation data reflects a 16 percent increase for Type V (single family) construction between February 2021 and February 2022 alone. Similarly, the prices of services used in home building, including trade services, transportation, and warehousing, is up 45.6 percent since the start of the pandemic and increased 18 percent between May 2021 and May 2022 alone.

In the wake of these increases, the level of subsidy needed to construct “affordable” housing has increased dramatically. In September 2022, the San Francisco Chronicle reported that the average cost to construct an affordable housing unit in the Bay Area was \$1.2 million. The high cost of materials has led to growing interest in modular construction, accessory dwelling units, tiny homes, and other methods to reduce building costs. It has also led to an increased need for gap financing, causing some projects to delay the start of construction.

### 5.3.2 Availability of Financing

In general, there are two types of financing used in the housing market: (1) financing used by buyers to purchase housing and (2) financing for site preparation and construction. Interest rates and lending terms can substantially impact both types. A small change in rates can have a dramatic impact on the ability to qualify for a loan, as well as the ability to make monthly payments.

When work on the 2023-2031 San Rafael Housing Element began, interest rates were at near record lows. Through 2021 and 2022, rates rose significantly, resulting in higher development costs and lowering the purchasing power of many home buyers. This has impacted the viability of new construction while also affecting the local housing market. In January 2021, mortgage interest rates for a 30-year fixed loan mortgage were 2.65 percent. By October 2022, interest rates had topped 7.0 percent. The monthly payment on an \$800,000 30-year mortgage is \$5,322 at 7.0 percent, compared to \$3,223 at a 2.65 percent rate. This represents an increased cost of over \$25,000 per year for the purchaser, or \$750,000 over the life of the mortgage.

Although interest rates have increased, financing is generally available for new market-rate construction and rehabilitation projects. Funding is more limited in the affordable housing/ non-profit sector. Most affordable housing developments require multiple funding sources, including bank loans, government funds, and philanthropic or foundation funding. Major sources of funding include federal (HOME and CDBG) funds, and State Sustainable Communities funding. Access to these funds is extremely competitive.

Local sources, such as Housing Trust Funds seeded with money from local transient occupancy taxes, transfer taxes, and in-lieu housing fees, can also help close the funding gap for affordable projects. In addition, low-income housing tax credits are issued to the State of California by the federal government. The State awards the tax credits to developers of affordable rental projects

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<sup>8</sup> Source: *Pew Charitable Trusts, April 25, 2022*

on a competitive basis. Developers sell the credits to private investors to obtain funding for their projects. These investors can then claim the tax credit deduction over a 10-year period.

Currently, State formulas for allocating tax credits favor “high-resource” areas, as these areas have historically had the most limited opportunities for lower income households. Although most of San Rafael is considered a “moderate resource” area, the supply of tax credits remains very limited. In addition, a few of the City’s opportunity sites are in “low” resource areas where affordable housing is strongly supported but tax credit funding may be harder to secure.

Another issue related to financing is the eligibility of prospective buyers for home mortgage and home improvement loans. Following the 2008-9 global financial crisis, access to credit became more limited due to high rates of default. Data from the Home Mortgage Disclosure Act (HMDA) indicates that 10 percent of all home purchase and improvement loan applications in Marin County were denied in Marin County in 2020. At the Countywide level, about 21 percent of the loan applications were withdrawn or closed for incompleteness and 69 percent were approved. Most of the loan applications processed were for refinancing. The highest rates of loan denial were for home improvement loans; conventional home purchase loans had a denial rate of just 5.6 percent countywide, and government-backed mortgage loans had a denial rate of just 3.2 percent.

HMDA data for San Rafael in 2021 is shown in Table 5-12. At the citywide level, approximately 77 percent of all conventional home loan applications in San Rafael were approved and 4.5 percent were denied. Another 19 percent were either withdrawn by the applicant or closed for incompleteness. A majority of the loan applications in 2021 were for refinancing, and fewer than 10 percent of these applications were denied.

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**Table 5-12: Disposition of Home Purchase and Improvement Loan Applications in San Rafael, 2021**

Loan Type	Total Applications	Approved	Denied	Other
Government-Backed Purchase	22	77.3%	4.5%	18.2%
Conventional Purchase	815	76.4%	4.3%	19.3%
Refinance	3,776	67.2%	9.1%	23.7%
Home Improvement	272	55.1%	21.3%	23.5%
<b>Total</b>	<b>4,885</b>	<b>68.1%</b>	<b>9.0%</b>	<b>22.9%</b>

Source: Home Mortgage Disclosure Act (HMDA) data for San Rafael, 2022

Note: Data is by Census Tract and includes homes in unincorporated tracts partially within San Rafael (Santa Venetia, Country Club, Bayside Acres, and Los Ranchitos)

### 5.3.3 Community Opposition

Community opposition to housing may result in proposed projects being scaled back or withdrawn entirely. Opposition can also add to the number of meetings required and extend the approval process, resulting in additional costs to the applicant, higher financing costs, and potentially changed market conditions by the time the project is approved. Community members may also have specific objections to affordable housing or housing for persons with special needs. Residents may express that proposed housing does not “fit in” with the community, or that it will negatively affect property values, schools, traffic, parking, fire safety, and the availability of services such as water. The consequence of such opposition is often less development—or even no development—at a time when the community desperately needs more housing.

The City of San Rafael has worked proactively to address community opposition through processes that facilitate dialogue and conflict resolution between applicants and neighbors, raising awareness about the essential need for more housing, and providing data and information regarding commonly raised neighborhood concerns. The City has also developed design standards and guidelines that respond to many of these concerns, addressing issues such as building height, mass and parking through its zoning standards. The development review process has been structured to consider neighborhood concerns early on, to listen and respond to these concerns, and incorporate reasonable changes in project design through public hearings.

Opposition may be rooted in legitimate issues that can be ameliorated through project design, construction, and operation. However, opposition may also be rooted in misinformation, prejudice, or simply a desire to keep things as they are. Education and advocacy are essential strategies to inform the community of the benefits of more housing, and affordable housing in particular. The National Low Income Housing Coalition has published a guide for overcoming neighborhood opposition, emphasizing:

- General audience education campaigns, increasing the understanding of the positive impacts that affordable housing has on individuals, families, and communities, including credible research, local data, and anecdotal information about community residents.
- Garnering support from a broad range of interests, including the business community, labor, the faith community, the media, educators and health care professionals, and social service providers.
- Engaging elected officials in conversations about affordable housing and housing needs.
- Engaging neighborhood groups proactively in discussions about specific development proposals, and addressing all legitimate concerns
- Understanding the law and legal protections to ensure that state and federal civil rights and fair housing requirements are being met.

San Rafael has implemented practices and procedures that incorporate all of these recommendations. The City has worked with local non-profits and volunteer housing advocacy groups to support education and outreach campaigns. Over time, these sustained efforts have led to positive changes and increased support for affordable and multi-family housing in the city.

Another strategy for addressing opposition is to create more pathways for ministerial (“by right”) project approval rather than requiring discretionary hearings, or by placing limits on the number of discretionary hearings that may be required for a project. Such measures are required by State law for many types of projects and have been implemented at the local level.

#### **5.2.4 Other Considerations**

State Housing Element law requires that other potential constraints be considered as part of this analysis. These include requests to develop at densities below the ranges set by the General Plan and Zoning, and the time lapse between when a project is entitled and when permits are issued. These are generally considered to be non-governmental constraints as they are not directly affected by local regulations.

##### **Requests to Develop at Lower Densities**

In some cities, new development projects on vacant and underutilized land may be proposed at densities that are well below what is allowed by zoning. This may be a reflection of the real estate market, developer and builder preferences, environmental conditions, or regulatory constraints that make it difficult to build the allowable number of units. This has not been an issue in San Rafael. The City has taken a number of steps to ensure that its land supply is used efficiently, including requiring that projects be developed within the density ranges set by the General Plan. Single family detached homes are not permitted in most of the higher density districts, including commercial zoning districts where housing is allowed.

Chapter 4 of the Housing Element provides data for recent projects comparing the “theoretical” capacity of sites based on zoning with the actual number of units that were built. The table indicates that development is occurring at or above the theoretical capacity on most sites due to density bonuses. Among projects recently completed or now under construction, the median built or proposed density exceeds the base densities allowed by zoning by 142 percent.

##### **Delays Between Entitlement and Construction**

Given the high cost of construction, recent rise in interest rates, and supply chain disruptions associated with the COVID-19 pandemic, there have been delays between when projects are entitled and when they are actually constructed. Applicants may postpone their projects for a number of reasons, including high material costs, supply shortages, and a lack of skilled construction workers and tradespeople. The economic upheaval of the COVID-19 pandemic also caused projects to stall over the last two years. Occasionally, projects are cancelled altogether, or properties are sold to new owners who may modify or abandon previously approved plans. In the case of affordable housing projects, delays may occur due to the limited availability of tax credits and competition for grant funding.

These factors are out of the City’s control but can have a real impact on housing supply and construction. A number of large-scale multi-family projects in San Rafael were approved in 2018 and 2019 and have yet to start construction. The City regularly reaches out to developers to identify potential challenges, and to determine if there are steps the City can take to facilitate construction. In a few cases, this has included modifying previously entitled projects to reduce



the percent of BMR units required (in accordance with changes to the citywide ordinance), and to allow additional units (in accordance with changes to density bonus law). The City also works with applicants to facilitate permit extensions and to avoid the expiration of previously approved projects.

### **Environmental and Infrastructure Constraints**

Environmental and infrastructure constraints are addressed in the Sites Inventory (see Section 4.8). Environmental constraints include wildfire hazards, sea level rise and flooding, landslide and seismic hazards, and the potential disturbance of sensitive plant and animal species on undeveloped sites. The principal infrastructure constraint facing the City is a constrained water supply, exacerbated by a multi-year drought. Other infrastructure constraints include road capacity and congestion, stormwater management and water quality needs, an aging power grid, and the need for continued investment in the sanitary sewer collection and treatment system.

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