



Agenda Item No: 3.a
Meeting Date: December 5, 2022

SAN RAFAEL CITY COUNCIL STAFF REPORT

Department: Community Development

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City Manager Approval: _____ *AS*

TOPIC: SAN RAFAEL 2023-2031 HOUSING ELEMENT

SUBJECT: SUBMITTAL OF THE HCD DRAFT 2023-2031 SAN RAFAEL HOUSING ELEMENT TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR THEIR INITIAL REVIEW AND COMMENT

RECOMMENDATION:
Direct staff to submit the HCD Draft 2023-2031 San Rafael Housing Element to the California Department of Housing and Community Development for their initial review and comment.

EXECUTIVE SUMMARY:
The Housing Element is the City’s long-range plan for conserving and maintaining its housing supply, removing regulatory barriers to housing production, promoting fair housing, and creating new housing opportunities for all residents. Requirements and timelines for Housing Elements are established by State law, as well as guidelines developed by the California Department of Housing and Community Development (HCD). All cities and counties in the Bay Area are currently updating their Housing Elements to cover the 2023-2031 period.

Through its Housing Element, each city and county must demonstrate that it has the capacity to accommodate its “fair share” of the region’s housing needs for the next eight years. San Rafael’s fair share assignment was calculated by the Association of Bay Area Governments (ABAG) to be 3,220 housing units, including 1,387 units affordable to low- and very low-income households. Although the City itself does not develop housing, it must show that it has a sufficient number of sites zoned for housing construction by the private and non-profit sectors. It must also demonstrate that it will implement programs to mitigate or remove constraints to development and encourage a variety of housing types. The Element must further demonstrate that the City is “affirmatively furthering fair housing” (AFFH) by creating opportunities for affordable housing in high-resource neighborhoods along with programs to end housing discrimination and promote fair housing practices.

State law requires that cities and counties publish a “Working Draft” of their Housing Elements for HCD review prior to adoption (“Draft Housing Element”). The City of San Rafael published its Working Draft on November 4, 2022 and is soliciting public comments during a statutorily required 30-day review period. At its November 15 meeting, the Planning Commission unanimously recommended that the City Council

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Council Meeting: _____

Disposition: _____

authorize staff to forward the Draft Housing Element to HCD in December at the end of the review period. Staff is now seeking Council authorization to revise the Element in response to public comments received since November 4 and authorization to submit the Draft Housing Element to HCD for its review. The City Council will adopt the Element and associated zoning code revisions in early 2023, after staff receives HCD comments and makes appropriate revisions.

BACKGROUND:

Overview

Every city and county in California is required to adopt a Housing Element as part of its General Plan. The Housing Element is the only part of the General Plan that must be submitted to the State for certification, a process that is performed by HCD. Cities without certified Housing Elements face adverse consequences, including limited access to State funding and vulnerability to lawsuits and financial penalties. To avoid such consequences, HCD must make a formal determination that each Housing Element substantially complies with Government Code requirements.

San Rafael's current [Housing Element](#) was adopted on January 5, 2015 and was certified by the State on January 23, 2015. The planning period covered by that Housing Element was February 1, 2015 through January 31, 2023. State law requires that the City's next Housing Element be adopted by January 31, 2023 and cover the period from February 1, 2023 through January 31, 2031.

State requirements for Housing Elements have expanded considerably in the last eight years. The focus of prior Housing Elements was on housing conservation and the creation of new housing opportunities. While housing production is still the central focus, there is a much greater emphasis on equity, fair housing, and meeting the needs of lower-income households and persons with special needs. Cities have been asked to plan for much larger quantities of housing and provide substantially more detail on potential housing sites. Requirements for community engagement and outreach to under-represented populations also have been expanded. Cities and counties must demonstrate that their policies and programs are affirmatively furthering fair housing and directly addressing the factors that have resulted in segregation and concentrated poverty around the State.

The City of San Rafael initiated its Housing Element update process in September 2021. Over the last 14 months, the City has completed background data collection and analysis tasks; completed a robust public outreach program; and drafted new goals, policies, and programs. In November 2021, the City Council appointed a 13-member Working Group to advise on key policy choices. The Working Group met eight times between December 2021 and August 2022. Other community engagement activities included three community workshops, a developer forum, presentations and outreach to neighborhood and community-based organizations, a community survey, numerous focus groups and interviews, a project website, pop-up workshops, and focused outreach to the Spanish-speaking community. Outreach efforts have been aligned with other City initiatives promoting equity and inclusion.

Regional Housing Needs Allocation

The key driver of the Housing Element is the Regional Housing Needs Allocation (RHNA). The RHNA process has been in effect since 1969 when the State legislature mandated that all communities do their "fair share" to meet California's housing needs. The RHNA is a top-down process that begins with the State determining the eight-year housing need for each region of California. Each regional council of governments is given the task of assigning the regional need to individual counties and cities. The Association of Bay Area Governments (ABAG), the Bay Area regional council, was tasked with

disaggregating a regional assignment of 441,176 housing units to nine counties and 101 cities. This process occurred in 2020-2021.

San Rafael’s allocation for the 2023-2031 planning period is 3,220 units. This is more than three times the 2015-2023 allocation of 1,007 units. Marin County, including the unincorporated areas and the 11 cities, saw much steeper rates of increase. The countywide RHNA increased by 526 percent, from 2,298 units (2015-23) to 14,405 units (2023-31).

ABAG disaggregates the RHNA into four income categories, as shown in the table below.

Table 1: 2023-2031 Regional Housing Needs Allocation (RHNA) for San Rafael

	Very Low	Low	Moderate	Above Moderate	Total
Number of Units	857	492	521	1,350	3,220
Income Range (Household of 4)	>\$93,200	\$93,200-\$149,100	\$149,100-\$199,200	>\$199,200	

Source: ABAG, 2021. HCD Income Limits, 2022.

In order to have a substantially compliant Housing Element, the City is required to demonstrate that it has the zoning capacity to produce this quantity of housing by 2031. It is not required to issue building permits or provide entitlements for this quantity of housing. However, the number of units permitted annually (by income category) will be used as a metric to evaluate the Element’s success and the need for additional programs to come closer to the targets.

ANALYSIS:

Housing Element Organization and Contents

The San Rafael 2023-2031 Housing Element includes six chapters and three technical appendices. Highlights of each chapter are provided below.

Chapter 1: Introduction

The introduction explains the purpose of the Housing Element. It also describes San Rafael’s local and regional context, the RHNA process and San Rafael’s assignment, and the statutory requirements for the Housing Element. The Element also explains the organization of the document and includes a detailed description of the community engagement program. The community engagement discussion focuses on efforts to reach lower income households, non-English speaking households, and persons with special housing needs.

Chapter 2: Evaluation of the 2015 Housing Element

This chapter evaluates the City’s progress toward implementing the last (2015-2023) Housing Element. It includes a program-by-program assessment of the 2015 Housing Element, indicating whether each program should be carried forward, edited, or replaced. The Chapter also indicates the extent to which the City met its RHNA for the previous planning period. The Planning Commission reviewed this chapter at its [February 15, 2022 meeting](#).

Chapter 3: Housing Needs Assessment

The Needs Assessment includes an analysis of demographic and socio-economic conditions, housing conditions, and market trends. The analysis is used to identify current and future housing needs in San Rafael, particularly for lower-income households and populations with special housing needs. Highlights and findings of the Needs Assessment were included in a Progress Report delivered to the City Council at their [April 4, 2022 meeting](#).

Chapter 4: Housing Sites and Resources Analysis

This chapter includes an evaluation of the sites most likely to be available for residential development in the next eight years. The City Council received a presentation and staff report on housing sites at its [August 1, 2022 meeting](#). The list of sites was refined in August 2022 to incorporate public input and to ensure that the Housing Sites Inventory was fully aligned with the development opportunities identified in General Plan 2040 and the Downtown Precise Plan. The inventory identifies opportunities for 4,658 housing units on 112 sites in San Rafael, providing a substantial buffer above the RHNA. A summary of housing capacity by site type is shown in Table 1 below. Sites with the potential for lower-income units are generally zoned at densities of 30 units per acre or more and are geographically distributed in support of the State goal to affirmatively further fair housing.¹

The Sites chapter has been structured to address HCD requirements. The City must demonstrate that the presumed development capacity estimates for each site are reasonable and that each listed site could realistically be developed in the next eight years. The chapter also addresses projected accessory dwelling unit (ADU) production over the next eight years, environmental constraints on the housing sites, and the availability of infrastructure to serve the sites. This chapter also includes State-mandated discussions of energy conservation resources in San Rafael, and a discussion of potential sources of funding for affordable housing and housing programs in the city.

Table 1: Summary of Housing Site Potential for 2023-2031 by Income

Site Type	Income Category			Total
	Lower	Moderate	Above Moderate	
Approved and Proposed Projects				
Approved Projects	200	3	582	785
Proposed Projects	115	135	954	1,204
Opportunity Sites				
Low-Medium Density Residential	3	88	56	147
High-Density (30+ DU/Ac) Residential	335	81	42	458
Mixed Use (Non- Downtown)	373	57	74	504
Mixed Use (Downtown)	587	280	693	1,560
TOTAL POTENTIAL	1,613	644	2,401	4,658
<i>Plus presumed Accessory Dwelling Units</i>	70	100	30	200
Total Potential Including ADUs	1,673	744	2,431	4,858
RHNA	1,349	521	1,349	3,220
Percent over RHNA (“buffer”)	25%	43%	N/A	N/A

Source: City of San Rafael, 2022

¹ According to HCD, “the goal of Affirmatively Furthering Fair Housing (AFFH) is to combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access in order to foster inclusive communities and achieve racial equity, fair housing choice, and opportunity for all Californians.”

Chapter 5: Housing Constraints

The Constraints chapter addresses governmental constraints to housing development such as zoning, development fees, development standards, and development review processes. It also addresses non-governmental constraints, such as high land and construction costs. The analysis concludes that the City's General Plan and Precise Plan are strongly supportive of housing production. It identifies a number of potential zoning constraints, including height limits in the commercial zones and multi-family zoning districts with maximum densities that are below the levels authorized by the General Plan. The analysis notes that parking requirements are generally not a constraint in transit-served areas (due to recent State laws) and concludes that the recent modifications to the City's affordable housing ordinance and changes to State Density Bonus Law have had a positive effect on housing production.

As required by State law, this chapter evaluates constraints to the production of particular types of housing in the City, including ADUs, single room occupancy hotels, emergency shelters, and transitional and supportive housing. Specific recommendations are included to expand opportunities for special needs housing. The chapter also addresses local permitting procedures and fees, noting the progress that has been made since 2018 when the City began convening developer forums and Council study sessions on strategies to remove constraints and increase housing production.

The final part of this chapter evaluates non-governmental constraints. The focus is on land and construction costs, and financial constraints such as high interest rates and limited availability of low-income housing tax credits. Other non-governmental constraints include community opposition, requests to develop at densities below what is allowed by zoning, and lengthy time delays between project entitlement and construction.

Chapter 6: Housing Plan

This chapter presents goals, policies, and programs to address the City's housing needs as well as quantified objectives for housing development and preservation during the planning period. It is addressed in more detail in the next section of this staff report.

Appendix A: Assessment of Fair Housing

The Assessment of Fair Housing uses maps and tables to illustrate spatial patterns of segregation and concentrated poverty in the city, and the location of high, moderate, and low resource neighborhoods. This data is used to evaluate the adequacy of the City's housing sites, and also to ensure that housing programs further fair housing and provide greater access to resources (e.g., high-performing schools, quality City parks, health care facilities, etc.) in under-served neighborhoods. The analysis informs many of the policies and programs in Chapter 6. Appendix A also evaluates fair housing practices and provides data on discrimination complaints in the city during recent years.

Appendix B: Housing Opportunity Site Inventory

This is a detailed parcel-level spreadsheet with data for each of the 112 identified housing opportunity sites. The sites are organized into six categories (approved projects, proposed projects, vacant low-density residential sites, medium- and high-density residential sites, mixed use sites outside Downtown, and Downtown mixed-use sites). For each property, the database provides assessor parcel number, address, acreage, zoning and General Plan designation, existing land use, theoretical capacity, realistic capacity (by income group), and any constraints or comments.

Appendix C: Public Participation Matrix

The matrix lists the various outreach and engagement efforts that occurred over the course of the project, including key takeaways and metrics for participation. The matrix provides a bridge from the engagement program to the Housing Element policies and program and illustrates how community feedback has shaped the contents of the document.

Goals, Policies, and Programs

The HCD Draft Housing Element includes four goals:

1. End and prevent homelessness in San Rafael.
2. Combat housing discrimination, eliminate racial bias, and undo historic patterns of segregation.
3. Ensure housing habitability and maintenance.
4. Meet housing needs by providing a variety of housing choices throughout the city.

The goals have been substantially reorganized from the 2015 Housing Element, with a greater focus on fair housing and resources for lower income households. As with the other elements of General Plan 2040, a set of policies follows each goal. The policies are intended to provide broad guidance for future decision-making over the eight-year planning period. Each of the goals is also followed by a series of housing programs, which include more prescriptive direction as well as an assessment of resources, a timetable for implementation and metrics to measure future success.

Programs are summarized below. Chapter 6 of the Draft Housing Element has additional detail. Each of the programs listed below includes a narrative description of the program, specific actions to be taken, a timeline for those actions, the responsible City department or division, the resources available to undertake the action, and the relevant housing policies that are implemented through the program.

Programs to End and Prevent Homelessness

1. Create a Housing and Homelessness Division within the Community Development Department.
2. Require rental property owners to provide relocation assistance to low-income tenants in no-fault evictions.
3. Expand housing resources and supportive services for extremely low-income households.
4. Actively seek funding for strategies that prevent homelessness and help San Rafael residents experiencing homelessness in securing a place to live and access to the services they require.
5. Provide emergency shelter capacity sufficient to meet local needs.

Programs to Combat Housing Discrimination, Eliminate Racial Bias, and Undo Historic Patterns of Segregation

6. Expand awareness of housing laws, programs, and resources provided by the City and by other agencies and organizations through a comprehensive, multi-lingual community outreach and engagement initiative.
7. As part of the Cooperative Agreement with the County on CDBG funding, direct a portion of the City's allocation to a local fair housing assistance program.
8. Affirmatively market local affordable housing opportunities to include groups that have historically been disadvantaged in the local housing market.

9. Undertake a capacity-building and educational program designed to increase understanding of the housing system by the City's Latinx community.
10. Collaborate with Marin County, cities and towns to address regional planning and housing issues. Remain open to alignment in service delivery to increasing housing supply and furthering fair housing.
11. Maintain and monitor effectiveness of local just cause for eviction regulations.
12. Evaluate existing and additional measures to protect tenants from eviction or the loss of housing due to economic or other factors.

Programs to Ensure Housing Habitability and Maintenance

13. Continue and strengthen the Periodic Housing Inspection Program to ensure the safety and habitability of the rental housing stock.
14. Provide effective code enforcement efforts in all neighborhoods to abate unsafe or unsanitary conditions. Organize service delivery around principles of equity and inclusion.
15. Continue residential building inspections at the time of sale to ensure the safety and habitability of units.
16. Support lower income households in maintaining their homes and increase their ability to participate in and reap the benefits of housing sustainability initiatives.

Programs to Increase Housing Choice

17. Increase funding for affordable housing through the City's Affordable Housing Trust Fund and other sources.
18. Maintain affordable housing requirements for market-rate residential and commercial developments. Monitor the policy's effectiveness and periodically revise to reflect changing housing market conditions.
19. Apply for designation as a "Pro-Housing City" by the State of California.
20. Develop an official City process for developing housing in air rights on municipally-owned sites, including Downtown municipal parking lots (i.e., an "air rights strategic plan"). The process should support and promote public-private partnership opportunities that result in new housing on these sites.
21. Prepare a Precise Plan (or equivalent planning document) for the North San Rafael Priority Development Area (PDA).
22. Prepare a Precise Plan (or an equivalent planning document) for the Southeast San Rafael Priority Development Area (PDA).
23. Provide periodic updates on progress toward Housing Element implementation and other City Council and community housing priorities.
24. Maintain capacity to meet the RHNA at all times during the 2023-2031 planning period and add new sites as opportunities arise. Make the list of housing opportunity sites (Appendix B) available to prospective developers and the public.
25. Develop a list of sites located along commercial corridors that could be prime for "by right" development under Assembly Bill 2011 (AB 2011).
26. Adopt objective design and development standards (ODDS) to expedite project approvals for all "by right" multifamily housing projects.

27. Expand resources and reduce barriers for the construction of ADUs and Junior ADUs (JADUs) in San Rafael neighborhoods.
28. Implement Senate Bill 9 (SB 9) regulations and update the website with information to support property owners pursuing lot splits and duplexes on qualifying single-family lots.
29. Support housing development on institutional and religious properties.
30. Discourage conversion of residential units to non-residential uses, and limit loss of rental housing stock. Encourage conversion from commercial/office space back to residential use.
31. Monitor the status of affordable units created through local inclusionary housing requirements to ensure that they are occupied by qualifying households and rented or sold at affordable rates.
32. Implement Age-Friendly San Rafael Strategic Plan recommendations.
33. Create additional housing resources for persons with disabilities, including developmental disabilities.
34. Facilitate the development of large and small residential care facilities in San Rafael.
35. Creative incentives that result in a larger percentage of apartments that are three bedrooms or more in affordable housing developments.
36. Review and update the master fee schedule periodically to reflect the costs of delivering City services and to reduce fee burdens for affordable housing projects, where possible.
37. In response to feedback received during past developer and community forums, provide an update on the changes made to reduce costs, time delays, and other barriers to housing development. Measure the success of these changes.
38. Implement State and local density bonus programs, including allowances for additional height and concessions and waivers to development standards for projects with affordable housing.
39. Establish written procedures so that projects with affordable housing units are granted priority for water and sewer connections in the event of future service limitations.
40. Implement measures to streamline the development approval process and reduce the time required between project proposal and project entitlement.
41. Complete strategic revisions to the San Rafael Zoning Ordinance to better achieve Housing Element objectives (see discussion in next section of this staff report).
42. Complete an evaluation of residential off-street parking standards to reduce parking as a housing development expense. This should include the removal of minimum parking standards within one-half mile of SMART stations and high-frequency bus corridors.

Chapter 6 concludes with a summary of quantified objectives for the programs (including objectives for housing production and conservation). It also indicates the extent to which programs address specific AFFH themes identified by HCD, including fair housing outreach and enforcement, housing mobility, new opportunities in high resource areas, place-based strategies for neighborhood improvement, and tenant protection and anti-displacement. Guidance from HCD now requires metrics for many of the programs (number of units built, number of residents assisted, etc.) so that each jurisdiction's progress can be monitored over time.

Zoning Changes and Future Zoning Studies

As noted earlier in this report, the City of San Rafael already has zoning in place to meet the RHNA. No rezoning is required to accommodate the City's 3,220-unit assignment.

The Housing Element does propose the rezoning of one parcel that is currently zoned "Light Industrial-Office", a change that was already anticipated by General Plan 2040 and would help the City maintain a "buffer" of extra capacity for higher-density housing. The parcel is 401 Merrydale (APN 179-041-05) and contains a self-storage business. It is just under an acre in size and would be rezoned to "Office." The "Office" zoning matches the General Plan designation for this property and allows maximizes flexibility for the property owner by allowing both commercial development as well as residential development at 43 dwelling units per acre. In this case, the site is adjacent to the Civic Center SMART station. General Plan 2040 describes this property and the adjacent Public Storage property at 380 Merrydale (APN 179-041-022, zoned PD) as opportunities for transit-oriented development. The properties were previously envisioned as housing opportunities in the 2013 Civic Center Station Area Plan. They were presumed to be high-density housing by the General Plan 2040 EIR. No other rezoning is proposed as a part of the Housing Element update.

In addition to the map change described above, Draft Housing Element Program 43 calls for several future zoning studies that could increase the City's residential capacity. The zoning changes described below are not required to meet the RHNA but would be beneficial in expanding housing opportunities in "high-resource" areas. These studies include:

- Considering an increase in the allowable density in the Neighborhood Commercial zone (currently 24.2 units/acre, whereas all other commercial zones allow 43.5 units/acre)
- Considering increases to the allowable density in the HR-1.5 and HR-1.8 (High-Density Residential zoning) districts. These districts currently allow 29 units/acre and 24.2 units per acre respectively, but are in a General Plan designation that allows up to 43.5 units/acre. Currently only the HR-1 district allows 43.5 units/acre.
- Considering increases to allowable building heights for mixed use or residential projects in the General Commercial zoning district (currently limited to 30 feet or 36 feet)
- Considering modifications to setback, height, and lot coverage standards for mixed use or residential projects in the Office zoning district (the standards envision office development, rather than housing)
- Allowing Low-Barrier Navigation Centers in mixed use zones, as required by State law (AB 101).

Other Relevant Legislative Requirements

Since the time the last Housing Element was adopted (2015), the State has adopted legislation that trigger amendments to the General Plan upon adoption of the 6th Cycle Housing Element. Because the City of San Rafael adopted an updated General Plan in August 2021, most of these requirements have been satisfied and amendments are not required. However, the City will need to amend its Safety Element in 2023 to identify evacuation routes and to map developed areas of San Rafael that have only one means of ingress and egress.

SB 1000 was adopted in 2016 and requires that cities with "disadvantaged communities" (as defined by the State) include an Environmental Justice Element in their General Plans. The City of San Rafael met this requirement by including an Equity, Diversity, and Inclusion Element in its 2040 Plan.

SB 99 required that cities adopting Housing Elements from 2020 onward must amend their Safety Elements to "identify residential development in hazard areas that do not have at least two emergency

evacuation routes.” These include fire hazard areas, flood-prone areas, and areas subject to seismic hazards. While General Plan 2040 includes maps showing the extent of these hazards, it does not specifically map areas with less than two points of ingress/egress.

AB 747 went into effect in 2020 and requires that Plan updates adopted after January 1, 2022 (including the Housing Element) include a review of evacuation routes and their capacity, safety, and viability under a range of emergency scenarios. The City of San Rafael will need to add this review to General Plan 2040 and its Local Hazard Mitigation Plan in 2023.

Schedule

The HCD Draft Housing Element was published on November 4, 2022. As explained previously, a 30-day public review period is required by State law and will end on December 5, 2022. The City Council is considering the Draft Housing Element on December 5, 2022. Comments received through the end of the December 5, 2022 meeting (including comments from the Council and oral testimony from the public received at the meeting) will be considered prior to submitting the draft to HCD.

The City is statutorily required to allow 10 business days after the 30-day period to consider the public’s comments and make edits in response. Thus, submittal of the edited Draft is projected by December 19, 2022. The State has up to 90 days to issue its review letter following receipt of the document.

As noted earlier in this report, the deadline for Housing Element adoption is January 31, 2023. The implications of not having an adopted Housing Element by January 31, 2023 include potential application of the so called “Builder’s Remedy” under the Housing Accountability Act. In general, under the Builder’s Remedy housing projects with a certain level of affordability have to be allowed “by right.” Once the State comments are received on the Draft Housing Element, the City will make necessary edits, and return to the Planning Commission with a resolution recommending City Council adoption of the Housing Element as well as recommendations on associated zoning code and zoning map amendments. Once adopted, the Final Housing Element will be resubmitted to the State for a compliance determination.

If HCD has not certified the City’s Housing Element within 120 days following January 31, 2023, then the City must complete all rezonings required by the Housing Element by January 31, 2024. San Rafael’s zoning is largely in place and the City would not be impacted by this requirement. However, it is in the City’s best interest to remain in compliance and adopt the Element as quickly as possible after receiving State comments.

As of November 17, four cities in Marin County have submitted their Draft Elements to the State. Only the County of Marin has received its comment letter. Three cities (including San Rafael) have released their drafts and four cities anticipate publication in the coming months. Only two jurisdictions in the Bay Area (Alameda and Emeryville) have been found in compliance for the 2023-2031 cycle at this time. In the Los Angeles region, where the deadline for Housing Elements was more than one year ago, only 40 percent (79) of the 197 jurisdictions have been found in compliance.

Planning Commission Feedback

As noted above, the Planning Commission convened a public meeting on the HCD Draft Housing Element on November 15, 2022. The Commission expressed their support for the document and its policies and programs and adopted a resolution recommending Council adoption. There were two public speakers at the meeting—one expressing concern regarding the density of proposed development at Northgate Mall and one suggesting expanded availability of housing vouchers to close the gap between affordable and market-rate rents. The Commission’s comments addressed:

- the importance of programs for unhoused residents and residents at risk of homelessness
- the delivery of services for people experiencing homelessness (City vs County role)
- opportunities for affordable housing in “high resource” neighborhoods
- recent issues related to renter displacement in the Canal neighborhood
- the need to address infrastructure needs and issues as the city grows
- the impacts of new energy codes on housing costs
- recognition that generational wealth is needed for home ownership.

COMMUNITY OUTREACH:

The December 5 City Council public hearing was advertised in the Marin Independent Journal and also publicized with a notice to stakeholders, agencies, and special interest groups. The meeting was preceded by a Planning Commission public hearing on November 15 that was similarly noticed. The City also has a Housing Element email list with approximately 1,100 addresses receiving notification of the availability of the Housing Element and the related public meetings.

The Housing Element itself is the product of an intensive public outreach program that included three community workshops, eight Working Group meetings, eight briefings to Planning Commission and City Council, a resident survey, a developer forum, focus groups, interviews, a youth/school program, and presentations to multiple neighborhood groups and community-based organizations.

ENVIRONMENTAL REVIEW:

As a General Plan amendment, the Housing Element update is subject to the California Environmental Quality Act (CEQA). An addendum may be prepared to a previously certified Final EIR by a Lead Agency (City of San Rafael) when changes or additions are needed, provided that these changes do not trigger conditions requiring preparation of a Subsequent EIR or other form of environmental review. No public notice is required for an Addendum and an Addendum does not need to be circulated for public review. The Addendum will be considered concurrently with the Public Review Draft Housing Element in early 2023.

FISCAL IMPACT:

The Housing Element is a policy document and does not have a direct fiscal impact on the city. Future programs developed as a result of HE2023-2031 adoption could have fiscal impacts by identifying programs requiring funding. Other HE2023-2031 programs may have positive fiscal impacts by identifying new revenue sources or improving the City’s eligibility for grants and other funds. Conversely, the absence of a certified Housing Element would have adverse fiscal impacts, as the City would become ineligible for numerous state grants and funds and potentially vulnerable to lawsuits and fines.

RECOMMENDED ACTION:

Direct staff to submit the HCD Draft 2023-2031 San Rafael Housing Element to the California Department of Housing and Community Development for their initial review and comment.

ATTACHMENTS:

1. The HCD Draft 2023-2031 San Rafael Housing Element may be accessed online at: <https://www.cityofsanrafael.org/hcd-draft-housing-element-2022-2023/>
2. Correspondence

November 30th, 2022



Protecting Marin Since 1934

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Subject: City of San Rafael Draft Housing Element

Dear Ms. Giudice:

Thank you for the opportunity to review and submit comments on the City of San Rafael Draft Housing Element. The Marin Conservation League (MCL) acknowledges that development and adoption of a Housing Element is critical and important in this pivotal time of balancing the need for housing and the growing consequences of climate change.

MCL is an environmental organization, and housing is not its principal focus. Nonetheless, MCL follows its current policy position on housing, which is to: a) support a balance of commercial development and workforce employment with needed housing; b) avoid sprawl; c) correspond to the service capacity of Marin’s infrastructure; and d) protect specific areas of environmental importance. As a result of the State’s housing crisis, in the past five years there have been dramatic changes in mandated housing laws to promote housing development. These new laws prescribe public review processes that promote streamlining and “by-right” (ministerial) permitting processes. To fully understand these new housing laws, in January 2022, MCL hosted “MCL After Hours – The Impacts of the New State Housing Laws.” This event was intended to educate interested attendees on the recent State housing laws and how they affect the review and development of housing at a local level in Marin County. Consequently, with the many changes in the housing laws, MCL is in the process of updating its housing policy position.

MCL has reviewed the Draft Housing Element for alignment with its adopted policy positions on, among others, housing, flooding/sea level rise, greenhouse gas emissions, and wildfire management. Further, the draft document has been reviewed for alignment with MCL’s longstanding mission, which is, “*To preserve, protect and enhance the natural assets of Marin in a changing environment.*” MCL respectfully submits the following comments, which factor in the recent changes in State housing law:

1. Housing Needs Assessment (Chapter 3).

San Rafael’s Regional Housing Needs Assessment (RHNA) for the next 8-year cycle is 3,220 housing units, which is triple the 2014-2022 RHNA of 1,007 units. As is the case with other Marin jurisdictions, the greatest need has been identified in the extremely low-/very

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Marin Conservation League was founded in 1934 to preserve, protect and enhance the natural assets of Marin County.

low- and low-income household categories. Unlike many of the Marin cities/towns, San Rafael has adequate sites for higher-density zoning, which has proven to be necessary to feasibly finance lower-income housing development.

2. The needs assessment notes that a big challenge is keeping the existing rental housing affordable over time to serve the low-wage earner and to keep these earners living locally. San Rafael has the only federally designated “Opportunity Zone” in Marin County, which covers a large portion of the Canal neighborhood. Opportunity Zones are structured to promote private investment in aging property through incentives, which could result in higher rents, resident displacement, and gentrification. MCL acknowledges that this is a social equity and economic issue, but the fallout of resident displacement also has environmental consequences. Specifically, if existing lower income residents are displaced, they are forced to relocate to areas where there is more affordable housing. Increased travel from home-to-work results in increased greenhouse gas emissions. Preserving the existing housing stock and planning for new housing opportunities to accommodate the lower-wage workforce will promote a more sustainable balance in jobs and housing within the County, which will reduce the environmental impacts associated with climate change.
3. Housing Opportunity Sites and Resources (Chapter 4).
This chapter is comprehensive and includes a detailed discussion of, among others, housing opportunity sites, accessory dwelling unit (ADU) forecasts, and energy and financial resources. MCL favorably acknowledges that the City publicly-vetted a preliminary housing opportunity site inventory this past summer, prior to release of the Draft Housing Element. The initial preliminary inventory presented sites to accommodate 5,393 housing units. Based on comments from the City Planning Commission and public, the preliminary inventory was revised resulting in a reduced number of sites to accommodate a potential of 4,858 housing units. MCL appreciates that the updated housing opportunity site inventory: a) presents more realistic expectations; b) generally carries over the housing expectations of the recently adopted San Rafael General Plan 2040; and c) acknowledges some individual, site-specific environmental conditions and constraints that must be considered when planning for development.

Some of the higher density opportunity sites are located in the Federal Emergency Management Agency (FEMA) flood hazard zone and are vulnerable to projected sea level rise. These sites are located in fully developed areas and are surrounded by development. For these vulnerable areas, areawide adaptation planning is paramount. Nonetheless, for site development review in these areas, it is expected that the City will follow through on implementing General Plan 2040 Program S-3.5A: Code Amendments for Floor Elevation. This program prescribes that the City has committed to update and adopt zoning, building and public works code requirements to establish and mandate a minimum finished floor elevation for new development, redevelopment, and substantial additions to existing development. The program suggests adopting a minimum, finished floor elevation requirement of +3 feet above the FEMA 100-year flood elevation requirement.

4. Constraints to Housing Production (Chapter 5).

This covers a discussion of a number of governmental and non-governmental topics that have the potential to create constraints for housing development. MCL would like to thank the City for including a discussion of environmental and infrastructure issues. As noted in this chapter (and in comments above), the housing site inventory acknowledges some individual, site-specific environmental conditions and constraints that must be considered when planning for development. While general, this information is enough to provide the City decision-makers and the public with known environmental issues and an understanding of site challenges.

5. Housing Action Plan (Chapter 6).

The draft policies and programs are well written to cover all housing laws. MCL supports the following policies and programs, which are in alignment with our mission and adopted policy position statements:

- a. Policy H-2.8: Fair Housing and Transportation Choice. Work with local transportation agencies and transit service providers to sustain, and where possible expand, transportation choices for San Rafael residents, particularly lower-income renters who are transit-dependent.
- b. Policy H-3.3: Resilient Housing. Improve the resilience of housing and residential neighborhoods to the effects of climate change, including sea level rise, increased wildfire risks, extreme heat, and drought.
- c. Policy H-3.5: Housing and Greenhouse Gas Emissions. Design and locate new housing in a way that supports the city's greenhouse gas reduction goals.
- d. Policy H-3.6: Sustainable Design. Encourage the use of building materials, construction methods, and designs that reduce environmental impacts and the consumption of non-renewable resources.
- e. Policy H-4.2: Preventing Displacement. Prevent the displacement of lower income residents due to expiring housing subsidies, rising costs, evictions without cause, conversion of housing units to non-residential use, and other factors that make it difficult for people to stay in San Rafael.
- f. Policy H-4.15: Housing and Infrastructure. Coordinate with water, sanitary sewer, and dry utility service providers to ensure that infrastructure is available to support anticipated housing development.
- g. Program 21: Precise Plan for North San Rafael. Prepare a Precise Plan (or equivalent planning document) for the North San Rafael Priority Development Area (PDA).
- h. Program 22: Precise Plan for Southeast San Rafael. Prepare a Precise Plan (or an equivalent planning document) for the Southeast San Rafael Priority Development Area (PDA).
- i. Program 27: Accessory Dwelling Units (ADUs) Expand resources and reduce barriers for the construction of ADUs and Junior ADUs (JADUs) in San Rafael neighborhoods.
- j. Program 30: Conversion of Residential and Non-Residential. Discourage conversion of residential units to non-residential uses, and limit loss of rental housing stock. Encourage conversion from commercial/office space back to residential use.

CEQA Review for Draft Housing Element

The various reports published on the Draft Housing Element indicate that the required California Environmental Quality Act (CEQA)/environmental review for the Housing Element will be addressed in an “Addendum” to the recently certified San Rafael General Plan 2040 environmental impact report (EIR). The General Plan 2040 EIR considered cumulative impacts for the addition of over new 4,000 units in preparation of this subsequent, Housing Element update. Substantial new housing is planned for in Downtown (under the Downtown Precise Plan), as well as several other sites/areas such as Northgate Mall. The EIR Addendum may be appropriate as the General Plan 2040 anticipated and planned for new housing, and the supportive EIR is a recent document, and a very detailed one. However, MCL reserves the right to review the EIR Addendum when it is completed and available for review.

Of particular concern is how the CEQA document will address housing projects that are eligible for the “by-right” review process, which are exempt from environmental review. While the state housing laws covering “by-right” review acknowledge some environmental topic areas under CEQA to determine site eligibility and project review (e.g., federally designated wetlands, FEMA flood plain zone, historic and cultural resources), it does not cover or address all environmental topic areas that are covered under CEQA. One example is air quality. Low-, medium-, and high-density residential uses are considered sensitive receptors. Sensitive receptors are subject to air-pollutant related health risks. A number of the housing sites on the Site Inventory are within 500 feet of US 101, which is a source of cancer-causing pollutants. Some of these sites might be eligible for the “by-right” review process. For housing projects being processed through the conventional, discretionary planning process, a health-risk assessment would be required to assess future resident exposure to air pollutants. Such an assessment would not be required for a project seeking “by-right” review. This type of void should be acknowledged in the Addendum text and could be addressed in possible amendments to the City’s SB35 and SB9 ordinances, and, where appropriate, in the accompanying “objective design standards.” Regarding the latter, MCL encourages the City to complete and adopt it’s draft objective design standards. In doing so, it is encouraged that the City look to how the County’s objective standards (“ODDS”) anticipate what they may be able to, and want to, protect when the by-right review process is in effect.

Thank you for this opportunity to comment this critical policy planning document.

Yours truly,



Robert Miller
President



Paul Jensen
Board Member