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Update on City Council Housing Policy Priorities – February 2023

Background

On August 20, 2018, the City Council was presented a comprehensive, [informational report](#) on housing. In response to the housing report information, the City Council directed staff to follow-up on four specific housing topics and issues: renter regulations, Short-Term Rentals, housing for an aging population, and challenges to the approval and development of housing.

On September 3, 2019, City staff presented an [informational report](#) on challenges to housing development. The report presented 11 key challenges pertaining to the approval and development of housing in San Rafael. Moreover, this report identified 13 recommended measures to address these challenges. At the September 3rd City Council meeting, staff was directed to host public housing workshops on proposed policies to address challenges to approving and developing housing. The purpose of these workshops was to gain a better understanding of the public's view on the housing crisis, as well as to get feedback on the prioritization of the proposed policy actions. The City hosted two housing workshops, which were attended by the City Council and the public. These workshops educated the public on issues surrounding the housing crisis and generated feedback from both the public and City Council.

On January 21, 2020, the City Council was presented an [informational report](#) on staff recommendations for prioritization, timing, and future City Council actions on these proposed policy actions to address challenges to approving and developing housing.

The purpose of this informational report is to provide an update on these housing policy actions, as well as on the implementation of state laws related to local housing policy.

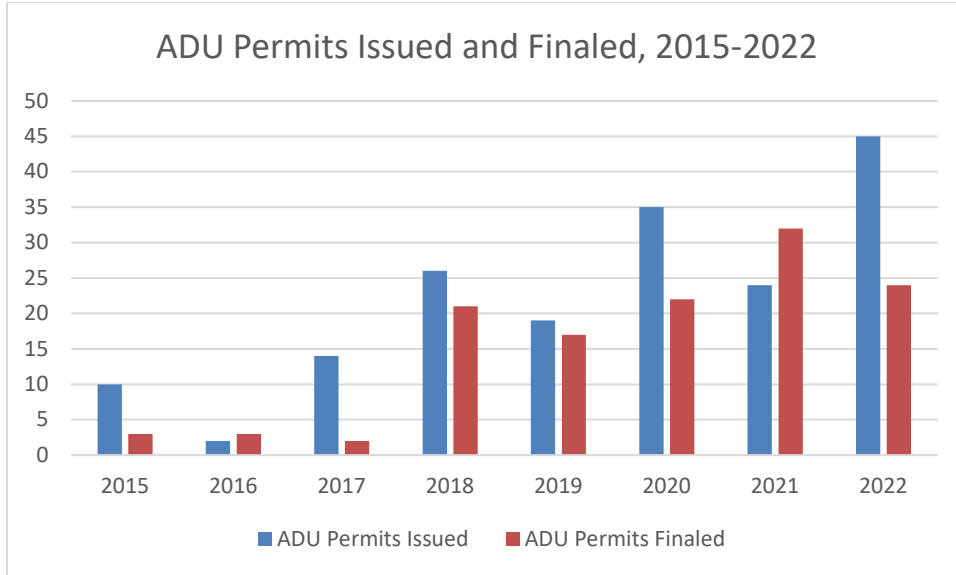
Implementation of State Laws

Accessory Dwelling Unit Regulations

Effective January 1, 2017, the State Legislature modified state law (California Government Code Section 65852.150 et seq.) governing ADUs and JADUs to reduce barriers, streamline the approval process, and expand production throughout California. Additional changes enacted in 2019 and 2020 further limit jurisdictions' ability to establish local standards. In December 2021, the City adopted an ordinance establishing local regulations consistent with these changes in state law. California instituted further changes to state law in 2022 and the City operates in compliance with these additional changes.

As shown in the chart below, the City saw a considerable increase in ADU construction following the change in state laws effective January 1, 2017. In 2015-2017, just a few ADUs were produced each year, but from 2018 to 2022, more than 15 were constructed each year, with more than 30 constructed in 2021. Most recently in 2022, building permits were issued for construction of 45 ADUs and 24 ADUs were finalized. Note that ADUs may be completed in a subsequent year and not necessarily in the same year that a building permit is issued.

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The draft 2023-2031 Housing Element includes a program to expand resources and reduce barriers for the construction of ADUs and JADUs. In addition, the program proposes to survey ADU owners in 2026 to understand how the units are being used, the rents being charged and the income levels of the occupants. This data can inform strategies that encourage the use of ADUs as active long-term rentals that contribute to the housing supply.

Senate Bill 9

Senate Bill (SB) 9, the California Home Act, which took effect on January 1, 2022, requires local jurisdictions to adopt a ministerial review process to allow two-unit residential developments and urban lot splits in single family zoning districts, a mechanism aimed to address the State's growing housing shortage. To be eligible for ministerial review, the proposed housing development must not require demolition of deed-restricted affordable housing, rent controlled or rental housing; not be a historic landmark or in an historic district; and not be in areas of high fire hazard, farmland, wetland, hazardous waste site, flood hazard areas, conservation land, or habitat protection areas. State law prohibits the rental of any unit created under SB 9 for a term less than 30 days, and uses created through the Urban Lot Split are limited to residential uses.

To date, the City has not received any SB9 building permit submittals. The City has received one pre-application submittal inquiry for an SB9 lot split. Given the steepness of the lot, the applicant would need to revise the project design to meet the Hillside Overlay's "natural state" standards or reduce the size of the proposed dwelling units to 800 square feet, which the City must permit regardless of development standards. The City has received two applications on single-family lots where staff have indicated to the applicant that SB9 could be an appropriate route for the application, however the applicants declined to adjust their projects to meet the size and other required standards for SB9.

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Senate Bill 35

Senate Bill (SB) 35 applies in cities that are not meeting their Regional Housing Need Allocation (RHNA) goal. Codified in Government Code Section 65913.4, SB 35 requires local entities to streamline the approval of certain housing projects by providing a ministerial approval process. In San Rafael, projects wishing to utilize the SB35 process must include at least 10% affordability. Pursuant to AB168, prior to submitting a formal SB35 application, a project applicant must submit a Notice of Intent (NOI) and tribal consultation is required if requested by any California Native American Tribe that is traditionally and culturally affiliated with the geographic area of the proposed development. A project is not eligible for the SB35 process if the project would create an impact on tribal resources or if an agreement for protection measures of potential tribal cultural resources are not agreed upon.

To date, the City has received three Notices of Intent (NOI) to submit an SB35 application. One of the NOIs was subsequently withdrawn, while a second is on hold while the developer is weighing options on how to proceed; staff anticipates that it may also be withdrawn. The third applicant applied in Summer 2022 and is still pursuing the SB35 application route, however the project has not yet received clearance from the local tribe for SB35 eligibility.

The SB 35 application process includes tribal consultation, and the City of San Rafael has significant tribal cultural resources. Given the favorable climate towards housing projects in San Rafael, developers may elect to proceed through the standard development application process.

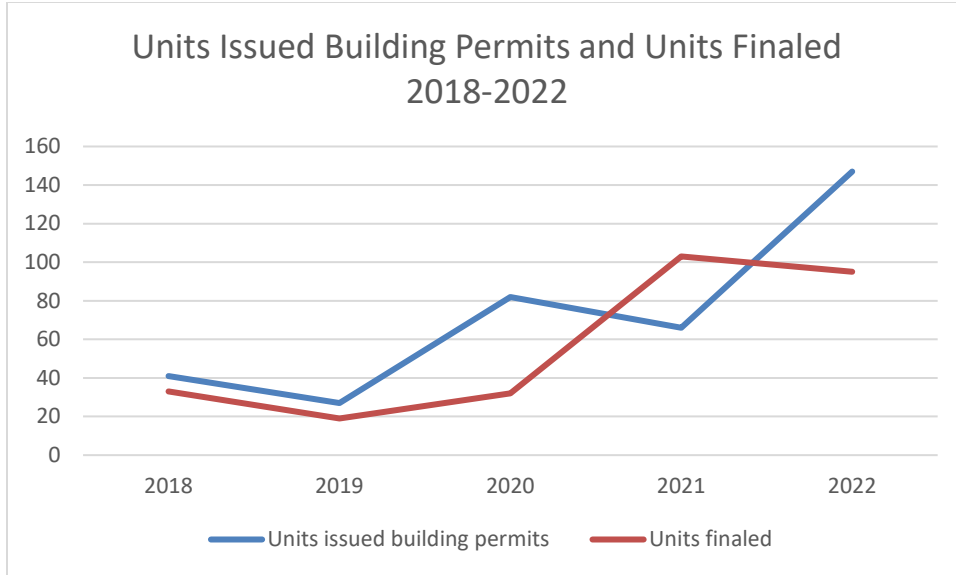
Local Policies

Changes to Affordable Housing Requirements for Developers

The City requires all new developments, residential and non-residential, to contribute towards the provision of affordable housing. On February 16, 2021, the City Council adopted an amendment to the Affordable Housing [Ordinance 1990](#) and associated Resolutions [14890](#) and [14891](#) amending the affordable housing obligation for residential projects. To encourage construction of entitled housing developments, the City lowered its affordable housing requirement for market-rate developments from 20% to 10% and provided additional flexibility in how the requirement is met.

City Council directed staff to monitor and evaluate the effect of these changes. There are a variety of factors that impact construction outcomes, however initial observations indicate some success. As shown in the chart below, the number of housing units that were issued building permits more than doubled from 2021 to 2022, and the number of housing units finalized decreased only slightly from 2021 to 2022, despite supply chain issues and increased construction costs. The additional flexibility provided in the amended policy allowed the development at Loch Lomond Marina to contribute \$3.6 million to the Affordable Housing Trust Fund in lieu of building affordable units on site. This enabled the completion of units previously stalled at Loch Lomond Marina and also funded awards to 100% affordable housing projects including 190 Mill St and 999 Third St, both of which saw unexpected cost increases and reapplied for City trust fund dollars to close the gap. Construction costs and interest rates continue to be a challenge for builders, with some market-rate projects currently on hold. Affordable housing developers continue to demonstrate interest in advancing projects in San Rafael. In 2022, the City awarded \$2.6 million in funding to support affordable housing.

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Housing Element Update

The update of the Housing Element is underway, and the draft 2023-2031 Housing Element includes a program to further streamline development approval by implementing measures related to the pre-application process, CEQA, technical studies, and design review. The program is intended to reduce the time required between project proposal and entitlement.

Housing Policy Actions

Since January 21st, 2020 staff has completed the following policy actions:

	Summary	Status
<u>Completed Policy Actions</u>		
Policy 1	"Planning Commission First" Review Maintain current policy of a Planning Commission study session as first public forum on development projects, rather than the Design Review Board.	In effect.
Policy 2	Form-Based Code for Downtown Precise Plan Support the direction of a form-based code for the Downtown Precise Plan	Downtown Precise Plan draft released Q1 2021, Adopted Q2 2021
Policy 3	Streamline CEQA/ Environmental Review Continue the practice of using the CEQA exemptions, where appropriate and practical, to streamline the CEQA/ environmental review process for housing projects	In effect.
Policy 4	Reduce Requirements for Technical Studies Continue to minimize requirements for the preparation of technical studies when appropriate and warranted	In effect.
Policy 5	Streamlined Pre-Application "Concept" Review Process Continue with streamlined, Pre-Application "concept review" process for housing projects with no fee	In effect.
Policy 6	Affordable Housing Trust Fund Administration Policy resolution establishing policies and procedures for awarding trust fund monies	In effect.

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Policy 7	Adopt Changes to Inclusionary Housing Requirements	Amendments reducing the City's Inclusionary Housing Requirement and allowing developers flexibility in meeting the requirement, including paying an in-lieu fee for a portion of the requirement.	On September 21, 2020, City Council directed staff to move forward with a reduced requirement meeting 10% below market rate (BMR) equivalent option. Planning Commission recommended moving forward with this option at the November 17, 2020 meeting.
Policy 8	Adopt Changes to Affordable Housing In-lieu Fee	Update fee consistent with the proposed fee amount developed collaboratively with neighboring cities and the county.	In December 2022, City Council adopted an updated affordable housing in-lieu fee.
Policy 11	Update "Density Bonus" Ordinance	Align the City's Density Bonus Ordinance with the State Density Bonus Law (SDBL)	On September 21, 2020, City Council directed staff to move forward with a amendments aligning the SRMC with the SDBL. Planning Commission recommended moving forward with this option at the November 17, 2020 meeting.
Policy 10	New Accessory Dwelling Unit (ADU) Ordinance	Adopt a new ADU ordinance compliant with recently passed State Legislation	Completed Q4 2021.
Policy 12	Consider Changes to Design Review Board (DRB)	Amendments changing the structure and role of the DRB to one that is more informal and advisory.	On September 21, 2020, City Council directed staff to work with the DRB to "pilot" a Less Formal Design Review Advisory Committee (DRAC) and to include Public Noticing Procedures & Measures similar to Zoning Administrator Meeting Format. In April 2022, the City established a one-year pilot program for streamlined review for certain residential projects.
Policy 15	Raise Appeal Fee and/or Change Appeal Process	Appeal fee to be studied as part of the Citywide Master Fee Schedule Update	On February 16, 2021, SRMC Chapter 14.28 was amended to streamline the scheduling and action on an appeal. On December 19, 2022, the Council approved raising the appeal fee as part of the Citywide Master Fee Schedule Update.

The following policies and corresponding ordinances and policy resolutions are ready for City Council consideration at a future meeting:

	Summary		Status
<u>Ready for Council Consideration</u>			
Policy 8	Adopt Changes to Commercial Linkage Fee	Update fee consistent with the proposed fee amount developed collaboratively with neighboring cities and the county.	The County has completed a collaborative in-lieu fee study for southeastern Marin County. The recommended fee schedule is available for consideration and adoption and will be presented to Council in the 2 nd quarter of 2023.

Staff is currently working on follow-up actions for the following policy actions:

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	Summary		Status
<u>Under Development</u>			
Policy 9	“By-Right” Zoning for Affordable Housing Projects	Resolution establishing a "by right" planning process for affordable housing projects	Aligning process with the Objective Design Guidelines required by SB35. Draft Guidelines expected to be completed by Q1 2024.
<u>On-Hold</u>			
Policy 13	Changes to Payment of Development Impact Fees	Resolution changing the timing of fee payments for development impact fees	Informational Report on potential changes to the payment of development impact fees will be prepared at a future date.
Policy 14	Support City/Developer Partnerships	Conduct an in-depth assessment of airrights use of the seven City-owned parking lots for development potential.	In 2019, the City completed a study of opportunities for air rights development in Downtown San Rafael, including seven City-owned sites. The draft 2023-2031 Housing Element includes a program to build on the study by developing a Downtown Air Rights Strategic Plan.

Since the January 21, 2020 City Council meeting, staff has identified the following new policy actions:

	Summary		Status
<u>New Policy Actions</u>			
New Policy	Expanded Renter Relocation Assistance for Opportunity Zone	Expansion of Renter Relocation Assistance for households displaced due to a no-fault eviction in the City’s federally designated Opportunity Zone.	Completed. On November 2, 2020, City Council directed staff to move forward with amendments expanding protections to Opportunity Zone.
New Policy	Allow Developer Buy-out of New Construction projects	Allow entitled development projects to buy-out half of the required onsite below market rate units under certain conditions.	In effect. On September 21, 2020, City Council directed staff to move forward with allowing Buy-outs. No further action necessary, any requested buy out will require City Council approval
New Policy	Minor Streamlining Amendments	Minor amendments to streamline the permitting process including changes to Appeals scheduling, development on small lots, changes to the City's Height Bonus, and align the hillside exception process within similar exception permits.	On September 21, 2020, City Council directed staff to move forward with amendments aligning the SRMC with the SDBL. Planning Commission recommended moving forward with this option at the November 17, 2020 meeting.
New Policy	Priority Development Area (PDA) Designation	Designate Northgate and Canal Neighborhoods as PDAs for the Plan Bay Area 2050 process allowing access to funding for a Specific or Precise Plan process.	PDAs approved by ABAG/MTC. In January 2023, the City was awarded \$1.6 million in planning grants for the Canal and North San Rafael Priority Development Areas. These grants will support the city’s efforts to eliminate constraints to development.

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<i>New Policy</i>	Housing Development Incentive Pilot Program	Development of a "Pilot" incentive program providing developers additional height, density, and parking reductions if specific community benefits are provided.	Feedback received during Inclusionary Housing policy outreach indicated interest in a pilot program but further analysis is needed.
<i>New Policy</i>	Canal Policy Working Group	Collaborative policy working group aimed at identifying policy actions to address the impacts of COVID-19 on households in the Canal Neighborhood	In Progress. Follow-up actions to be identified through the Canal Policy Working Group.
