



MEMORANDUM

DATE: September 30, 2019

TO: Housing Advisory Committee

FROM: Patrick Kelley, Planning & Building Director
Danielle Staude, Senior Planner

SUBJECT: Housing Committee Meeting #4 (September 30, 2019 6-8PM)

The September 30th meeting is cancelled due to committee member conflicts. Upcoming scheduled Committee meetings include November 13, 2019 and January 8, 2020. Please mark your calendars accordingly. As you may know, Councilmember Jessica Jackson recently announced her resignation from City Council due to relocation. City Manager Jim McCann will discuss options for filling the Councilmember Committee position at City Council's upcoming meeting of October 21, 2019.

Staff continues to work on various items of interest and priorities expressed by the Committee. At the Committee's next scheduled meeting of November 13, 2019, staff will report on the Housing Advisory Committee's Draft Work Plan and Priorities (attached), as well as follow-on work conducted by staff between meetings, including meetings with Marin Housing Authority and the Home Match program.

Below are several informational items that serve as a follow-up to committee discussions and inquiries, including:

- I. Establishing preferences for occupancy of an affordable unit.
- II. Summary of condominium conversion regulations, and related regulations that restrict tearing down existing housing stock.
- III. Summary of permitted uses in commercial and multi-family residential areas in terms of building a residential project.

I. Establishing Preferences for Occupancy of an Affordable Unit.

Summarized below are questions researched by the City Attorney's Office, describing the legal framework for establishing local preferences in terms of restricting the occupancy of an affordable unit in Mill Valley.

- 1. Can the City (1) rent City-owned or City-leased housing units to City employees, before making vacant units available to other members of the public?*

Yes. Government Code Section 54701.1 states, “[a] local agency may construct or cause to be constructed rental housing for employees,” which includes employees of the local agency, or any other local government entity. With this authority, a city can acquire property, or an interest in property for workforce housing (GC § 54700.4.). Therefore, the City can rent units in publically owned and operated buildings, or acquire interest in a private property through a lease agreement, and sublease the units to municipal employees.

Still, there a few restrictions that the City should keep in mind. First, the City cannot help fund workforce housing using federal or state low-income housing tax credits (LIHCs). To be eligible for LIHCs, affordable housing units must be available for use by the general public. LIHC rules only allow occupancy preferences based on tenants with special needs, tenants involved in art or literary activities, or members of a specific group authorized by a federal or state program. Affordable housing units in California can be prioritized for school district employees due to SB 1413 (adopted in 2018), which specifically designates school district employees as a specific group for the purposes of LIHCs. However, municipal employees are not a designated group under federal or state law.

The City Attorney’s Office also researched whether workforce housing could invite a discrimination claim under the Fair Housing Act (FHA), Equal Protection Clause, Fair Employment and Housing Act (FEHA), or Civil Rights Act. Under the FHA and FEHA, individuals can bring claims alleging that a housing policy has an adverse and disparate impact on a protected class. A local housing preference is vulnerable to a disparate impact claim if the preferred group is significantly more homogenous than the other eligible applicants. For example, in *US v. Housing Authority of City of Chickasaw*, the court invalidated a residency requirement for public housing because of its disparate impact. The City of Chickasaw was a predominantly white community, while the surrounding areas were comprised of mostly African Americans. The residency requirement effectively excluded African Americans from seeking public housing in the City.

If City employees are overwhelmingly representative of a certain group that substantially differs from other housing applicants, it is possible that someone could bring a claim alleging that the provision of workforce housing to City employees prior to other eligible applicants has a disparate impact on a protected class. However, the chances of success of such a claim appears to be quite low under the scenario described here, where a preference would be given to City employees but vacant units would be available more broadly. At least for purposes of FEHA, it also appears relevant that state law expressly authorizes cities to provide rental housing for employees. Finally, we found several other instances of cities with inclusionary ordinances that include preferences for city employees.

2. Can Mill Valley Restrict its Below Market Rate Units Managed through Marin Housing Authority Units Solely for to Mill Valley Residents?

There is a substantially higher risk of a successful FHA/FEHA claim if the City were to request that the Marin County Housing Authority restrict units in its BMR program to only Mill Valley residents. Mill Valley is a predominantly white community, and this request would preclude residents from more diverse cities in Marin such as San Rafael or Marin City from moving into MHA housing located in Mill Valley, like in the *City of Chicksaw* case described above. Therefore, the City Attorney does not recommend that the City make such a request of the Housing Authority.

3. Can Marin Housing or Other Third Parties Establish Housing for a Select Group of Individuals?
 Yes. Marin Housing Authority as well as non-profits can establish project-based housing, in which the housing, and the related services, is targeted for certain individuals, such as the homeless, seniors and/or families.

II. Summary of Condominium Conversion Regulations, and Related Regulations that Restrict Tearing Down Existing Housing Stock.

Condominium conversion regulations are established based on state law (Government Code Section 65915), and apply to the conversion of two or more rental units. A Conditional Use Permit is required to convert such units, subject to the Planning Commission making the findings that the proposed conversion does not substantially affect the availability of rental housing in the community.

There are also a series of tenant rights associated with the conversion of units including: identifying replacement housing for displaced tenants and requiring lifetime leases with reasonable terms for “low income”, seniors (68 years or older), and/or disabled tenants.

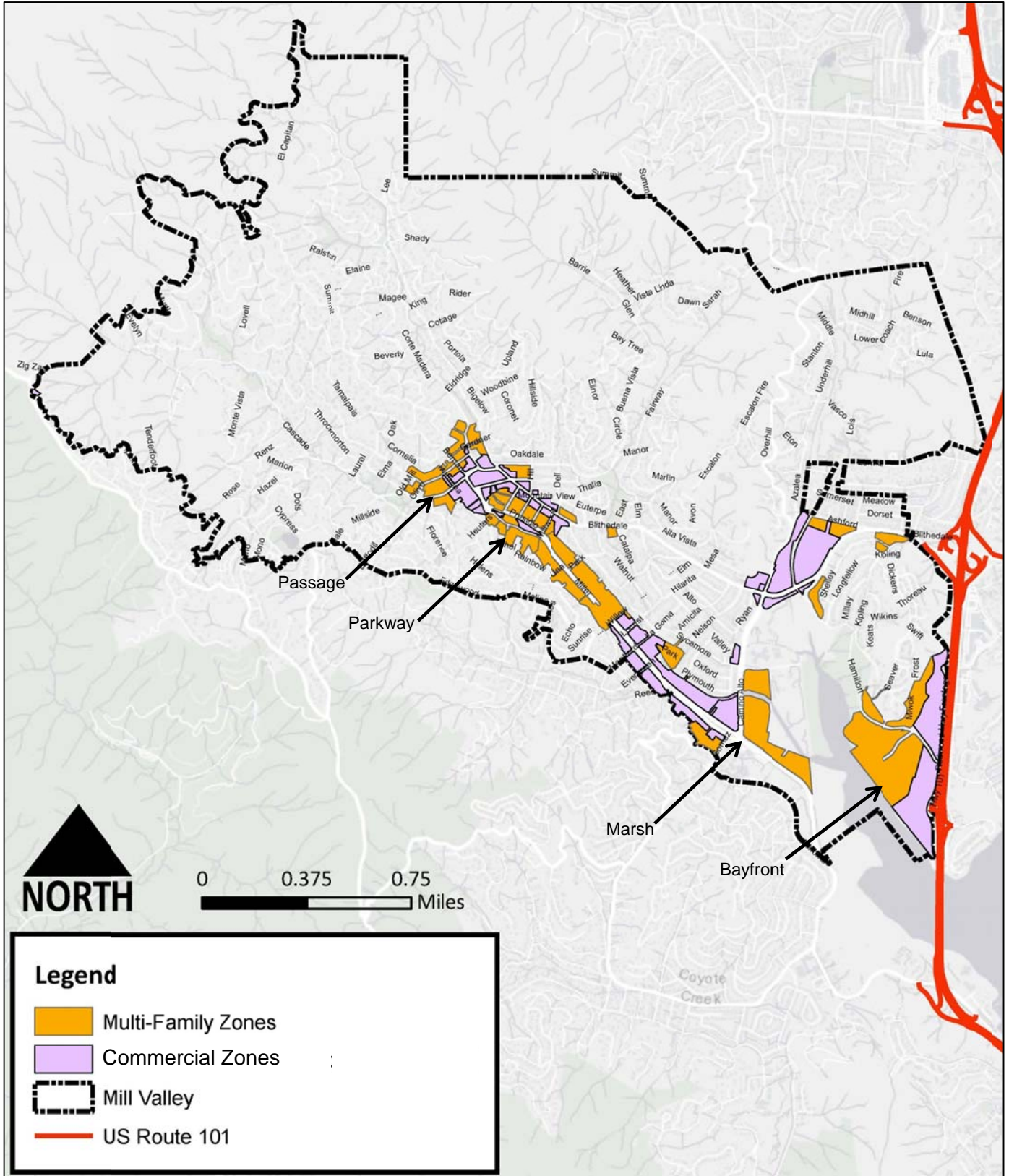
The condominium conversion regulations, however, do not apply to redevelopment projects that propose to tear down and rebuild multi-family rental units. Staff intends to develop draft regulations to require more stringent requirements, such as requiring a conditional use permit, to grant the demolition of a dwelling unit as part of next steps to preserve existing rental housing. In the meantime, there are some additional restrictions currently in place should an owner be interested in utilizing the state’s redevelopment incentives under the density bonus regulations (Government Code Sections 65915 – 65918). For any proposed development project with five or more dwelling units interested in utilizing development incentives under the density bonus law, a parcel must be vacant or not contain active rental units for five or more years preceding the development review application.

III. Summary of Permitted Uses in Commercial and Multi-Family Residential Areas in terms of Building a Residential Project.

Below is a clarification of when a Conditional Use Permit (CUP) is required to build residential dwelling units. See illustration on page 4, with locations of commercial and multi-family zones.

Multi-Family Development	Multi-Family Residential Zones	Commercial Zones	Downtown Residential Zone
Rental housing	Permitted	CUP	Permitted
For-sale housing	Permitted Note: 2-3 units in Parkway and Passage require CUP.	CUP	Permitted Note: 2-3 units require CUP.
Mixed-use	CUP	CUP Note: Residences integrated as part of an office building permitted in CL District.	CUP
Live-work	CUP: Parkway and Passage. Not permitted: Marsh or Bayfront.	CUP	Not Permitted

Multi-Family Zoning Locations: see illustration on page 4.



**Mill Valley Housing Advisory Committee
2-Year Work Plan (2019-2021)**

Category	Description	Timeline	Notes/Required Resources	FY 19/20 FY 20/21 *Priority
Protect (P) Units	P1: Demolition Regulations. Consider policies that discourage demolition of multi-family units, such as demolition by neglect ordinances, 1-to-1 unit replacement of units, and/or “grandfathering” renovation of non-conforming buildings or number of units on site.	Early 2020	Staff and City Attorney	19/20
Enhance (E) and Preserve Units	E1: Soft Story Regulations. Identify multi-family soft story structures. Consider regulations requiring safety upgrades/retrofits to the soft story. As part of the discussion, consider options that will not adversely impact affordability of units by increasing rent or “luxuryifying” units.	Conduct after demolition ordinance	Inventory required to identify sites. Staff and City Attorney	20/21
Produce Additional (A) Units	A1: Junior / Accessory Dwelling Units (ADUs). Update ADU regulations to include Junior ADUs, and modify regulations for those ADUs receiving additional square footage to build an ADU (“Floor Area Bonus”).	In progress	Staff and City Attorney	* 19/20
	A2: Leverage underutilized housing (e.g. single-occupancy homes such as seniors and empty nesters). Identify opportunities within an existing single family home to allow for home-sharing and/or J/ADU. Foster the conversation through outreach, online website resources, and consider technical assistance to help and facilitate an owner’s interest in converting space. - Identify incentives - Identify partnerships (Marin Housing, Home Match) - Market srogram(s)	In association with SB2 Grant	In conjunction with local jurisdictions/SB2 Grant Funding to promote ADUs. Staff and consultants	* 19/20
	A3: J/ADU technical assistance. Utilize trust funds to facilitate new ADUs that are rented to the City’s workforce.	Could be follow-on work associated with A2 above.	Technical assistance requires funding source and 3 rd party to assist	19/20
	A4: Incentives to Build New Multi-Family Units. Address constraints to producing new housing (Chapter 2 Housing Element) and consider ways to reduce constraints and/or facilitate the production of new housing, particularly “attainable” and below market-rate housing. Discussion items include: <ul style="list-style-type: none"> • Revisiting land use designations (e.g. modify commercial zones to “mixed use” zones to facilitate residential housing as sustainable or as a part of any new development project in commercial areas); • Evaluation of parking ratios to incentivize a particular type of housing (e.g. rental projects, units under a certain size or bedroom count); • Removing conditional use requirement for residential projects in commercial areas; • Inclusionary housing requirements; and/or • Development fees 	Review of Housing Constraints contained in Housing Element	Staff and City Attorney. Some items, such as exploring parking ratios, may require consultant resources.	20/21

Category	Description	Timeline	Notes/Required Resources	FY19/20 Priority?
<i>Continued:</i> Produce Additional (A) Units	A5: Identify Public Land. Conduct inventory of land and discuss options (selling land to leverage funds vs. utilizing land as a housing site), including case studies from other jurisdictions. Financial and construction feasibility study may then be required to further investigate or leverage a site.	Review sites inventory	Develop inventory of public land (map, size of land, slope, zoning) Financial and construction feasibility requires consultant resources.	* 19/20
Target (T) Community Needs (“House Mill Valley”)	T1: Affordable Housing Options. Compare local wages with local housing costs to identify the “housing affordability gap” and identify practical programs or policies to help reduce the affordability gap. Possible programs include: <ul style="list-style-type: none"> • Rental subsidies • Loan program for first/last month rent and/or catastrophic events • Identify and partner with local employers or other community groups (Chamber, Rotary) to sponsor housing-related programs/policies 	Review “affordability gap” information in the Housing Element (Chapter 3).	Consultant resources required to update affordability gap information and obtain more information on Multi-Family housing stock (size and condition of units; rent charged).	* 19/20
	T2: Tenant Protections. Identify policies to protect existing tenants. <ul style="list-style-type: none"> • Anti-gouging of rents (AB 1482) • Mandatory Mediation (rental increases over 5%) • Source of Income (anti-discrimination) 	Wait to determine if AB 1482 is signed into law (mid-October) and then assess programs	Some programs require funding to cover costs of mediation and coordination with the County for mediation services.	20/21