



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

Brian C. Crawford
DIRECTOR

August 1, 2017

Marin County Civic Center
3501 Civic Center Drive
Suite 308
San Rafael, CA 94903
415 473 6269 T
415 473 7880 F
415 473 2255 TTY

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903

BOARD PROVIDED DIRECTION
TO STAFF AND APPROVED
AMENDMENT TO AGREEMENT
WITH THE MARIN HOUSING
AUTHORITY FOR THE
LANDLORD PARTNERSHIP
PROGRAM

AUG 01, 2017

SUBJECT: Progress report on work plan to preserve housing affordability and prevent displacement.

Dear Board Members:

RECOMMENDATION:

1. Enhance our preservation strategy by considering hiring technical assistance to evaluate and facilitate the acquisition of affordable housing units.
2. Approve an amendment to the County contract with Marin Housing Authority (MHA) for the Landlord Partnership Program to increase security deposit assistance, loss mitigation and vacancy loss coverage.
3. Provide policy direction for these remaining options:
 - a. Voluntary rent guidelines;
 - b. Ordinance to require Just Cause for evictions;
 - c. Second unit amnesty;
 - d. Re-evaluation of Housing Overlay Designation (HOD) Policy; and
 - e. Mandatory mediation.

SUMMARY:

A comprehensive set of policy options to address the County's affordable housing needs was first presented to your Board through a series of three public workshops between October and December 2015. At the December workshop your Board directed staff to pursue eleven of those policy options. An eighteen-month, three-phase implementation timeline and work plan was confirmed by your Board at a subsequent hearing on February 9, 2016. In accordance with direction provided by your Board at a regular meeting on July 26, 2016, mandatory mediation is presented as a potential alternative to replace the voluntary rent guidelines program.

The median price for a single-family home in Marin reached record levels in April of this year. As housing and rental prices continue to rise, many residents are being displaced from their homes. Since the initiation of this work plan, your Board has advanced several programs of the work plan including: (1) acquisition of new property; (2) preservation of existing affordable housing; (3) adoption of an ordinance to establish source of income protection for renters; (4) development of landlord incentives to maintain and support the Housing Choice Voucher ("Section 8") program; and (5) amendment of the Development Code to encourage second units.

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

www.marincounty.org/cda

Previous actions to preserve housing affordability and prevent displacement.

Acquisition/preservation strategy. Since February 2016, the Board has contributed financing through the Housing Trust Fund and staff has provided technical assistance for the following projects:

Piper Court Apartments. In February 2016, the Board approved a \$675,000 loan to finance the acquisition of 49% of a twenty-seven unit property in Fairfax. This loan contributed to the conversion of twenty-seven multi-bedroom homes into units affordable to low-income families. Located near a high performing school and close to public transit, this agreement furthers a County Fair Housing goal of providing affordable housing to families in areas of opportunity.

Ocean Terrace Apartments. In June 2016, the Board approved a \$500,000 grant and a \$500,000 loan to support the acquisition of an eight-unit apartment complex in the coastal community of Stinson Beach.

This policy option represents an ongoing strategy of CDA. Staff continues to collaborate with community partners to identify and assess the feasibility of properties for acquisition and several properties are currently under consideration. The collaborative effort has benefited from real estate professionals that offer their services pro bono to identify potential multi-family acquisition opportunities prior to or at the time that such properties are placed on the open market.

Landlord partnership program. Since September 2016, 52 families have been successfully housed through the Landlord Partnership Program “security deposit assistance” service and 55 new landlords have partnered with MHA to increase access to housing for Housing Choice Voucher recipients.

Ordinance to establish source of income protection. The Board adopted a Fair Housing Ordinance to establish source of income protections on November 8, 2016¹ and adopted amendments to eliminate exceptions for owner-occupied properties on March 21, 2017.²

Development code amendments. Comprehensive amendments to the Development Code were adopted by the Board on March 14, 2017. In compliance with new State law,³ detached Accessory Dwelling Units (ADUs) in new homes or accessory buildings may now be as large as 1200 SF and ADUs designed to fit within the envelope of existing homes may be larger. These code amendments also implement State law for Junior Accessory Dwelling Units.

Recommended actions to enhance existing efforts.

Staff continues to assess opportunities for improvement of ongoing programs and makes the following recommendations to improve on existing successes.

¹ Ord. No.3656

² Ord. No. 3667

³ SB 1069

Acquisition/preservation strategy. To expedite the property vetting process, staff is exploring the possibility of partnering with a local organization to engage a neutral and locally-informed professional to assist in the preparation of feasibility analyses and budgets, to identify short and long-term expenses, and to explore creative financing solutions as needed. CDA is collaborating with the County Administrator’s Office (CAO) and partnering with the Marin Community Foundation (MCF) to identify and retain an appropriate candidate. The Board Housing Subcommittee and staff will continue to work on this issue and will provide updates as this strategy progresses.

Landlord partnership program. Staff recommends that the funds initially allocated for the voluntary rent guidelines be redistributed to other aspects of the landlord incentives package that have exceeded expectations in their ability to create sustainable affordable housing solutions for program clients. As the program has exceeded many of its first year goals and even a few of its second year objectives, additional funding could be allocated for MHA’s security deposit assistance, loss mitigation and vacancy loss coverage to support its continued success.

Items for further policy discussion.

Several programs of the work plan require further consideration and direction from you Board. Those items are presented within the body of this report; a detailed progress report of all other work plan programs is provided in Attachment 1.

For context, Table A identifies the timeline, responsible entity, and implementation status associated with each work item. Programs identified with an asterisk in Table A require further direction from your Board; a detailed discussion of those items follows.

Table A. Housing Policy Options: August 2017 Status			
Timeframe	Initiative	Responsible Entity	Status / Recommendation
Phase I: Aug. – Oct. 2016	Acquisition of multi-family rental properties for preservation as affordable housing.	CDA: Housing and Federal Grants	Complete and continue
	Development Code amendments for junior second units.	CDA: Current Planning	Complete
Phase II: Oct. 2016 – Feb. 2017	Landlord incentives program.	MHA	Complete and continue
	Voluntary rent guidelines.*	MHA	Consider deletion or replacement; consider amendment to MHA contract
	Ordinance to establish source of income protection.	CDA: Housing and Federal Grants	Complete
Phase III: Feb. – Aug. 2017	Ordinance to require Just Cause for evictions.*	CDA: Housing and Federal Grants	Direction requested
	Development Code amendments for second	CDA: Current Planning	Complete

	unit regulations.		
	Short-term rental regulations.	CDA: Current Planning	In progress
	Second unit amnesty.*	CDA: Housing and Federal Grants	Consider deletion
	Evaluate multi-family land use designations.	CDA: Housing and Federal Grants	In progress
	Re-evaluate the Housing Overlay Designation (HOD) policy.*	CDA: Housing and Federal Grants	Direction requested

The work plan items scheduled for further deliberation at this Board of Supervisors hearing are examined below. Individual work plan items are indicated by a bold font and followed by an italicized description of work initially described in the work plan approved by your Board on February 9, 2016. A discussion of each item is accompanied by potential options for your Board to consider, and also staff recommendations.

Voluntary rent guidelines. *MHA staff will begin by collaborating with stakeholders in the community to draft a set of voluntary rent guidelines. The proposed guidelines will then be presented to the Board of Supervisors for consideration at a public hearing. If approved by the Board, the guidelines will apply as a voluntary policy for the unincorporated county.*

Last year, staff from Marin Housing Authority (MHA) and the Community Development Agency (CDA) held several meetings with landlords, property managers, tenants, and leadership from local income property associations to design voluntary rent guidelines. Initiated as a strategy to stabilize rapidly increasing rents and curb displacement among Marin communities, the program sought to work with neighborhood landlords to highlight their accountability to the larger communities. The effectiveness of such a program would rely upon two fundamental components: (1) establishment of a limit that will make a positive impact towards affordability for renters; and (2) wide-spread participation among landlords.

Those incentives proved insufficient to overcome the critical challenge of agreeing to an effective annual limitation on rent increases. The working group recommended discontinuation of the program and staff supports this recommendation. Financial incentives for landlords in the amount of \$135,000 were allocated for this program in the July 2016 Landlord Partnership Program contract with MHA. A detailed report on the landlord incentives program and a proposed revision of the County contract with MHA for the Landlord Partnership Program are provided in Attachments 1 and 2, respectively.

In July 2016, staff presented two alternatives to the voluntary rent guidelines program: 1) development of a data collection program to track specific trends in rental rates and 2) expansion of existing tenant-landlord mediation services. Your Board requested that staff return with additional information as to the opportunities for and implications of each option. To date, research and development of best practices for a data collection initiative have not resulted in a feasible option for further discussion with the Board; staff therefore does not recommend a course of action at this time. Discussion of an option to expand the County's existing tenant-

landlord mediation services is discussed below as a second alternative to pursuing voluntary rent guidelines.

Alternative program: Mandatory mediation. Mandatory mediation is used in San Leandro, Fremont and Los Gatos as a tool to promote community accountability and to support housing stability. Such ordinances may be structured to facilitate constructive conversation in a neutral and accountable environment for a variety of issues including rent increases above a specified percentage or lease terminations. Mandatory mediation is distinguished from the County's existing voluntary mediation services in that it requires that parties participate in a mediated discussion, although the outcome of the mediation would not be binding on the parties; it would not require parties to reach or abide by a decision.

Similar to the intent of the voluntary rent guidelines, mandatory mediation could be tailored to address rapid increases in rental housing costs by requiring mediation for rental increases over a specified percentage, for example over 5%. If the County chooses to pursue this option, it would require additional staffing for mediation services or funding for a contract with the California State Office of Administrative Hearings (OAH) or similar organization. The cost of a hearing by OAH is often as much as \$5,000. The city of Fremont reduced the cost of its program to approximately \$30,000 per year through the utilization of an outside provider and volunteer mediators.

Recommendation: MHA and CDA recommend removal of the voluntary rent guidelines program from the work plan and request that monetary resources designated for that line item in the July 2016 Landlord Partnership Program contract be reallocated to security deposit assistance, loss mitigation and vacancy loss coverage. CDA staff also request that your Board provide direction to staff on whether or not to proceed with mandatory mediation.

Ordinance to require Just Cause for evictions. *CDA staff will draft an ordinance establishing criteria that constitute a "just cause" for eviction of rental housing tenants. The proposed ordinance will be presented to the Board of Supervisors for consideration. If adopted by the Board, the ordinance will apply to all rental housing in the unincorporated county.*

Under state law, landlords are able to terminate a periodic tenancy without reason so long as they provide written notice to the tenant to vacate. State law requires that a residential tenant living in a home for less than one year receive thirty-days written notice; the termination of a tenancy where the tenant has resided in a home for one year or more must be noticed sixty days in advance. Landlords can also serve tenants with a three-day written eviction notice for any reason consistent with the State Code of Civil Procedure §1161, such as non-payment of rent or remaining in a home after the expiration of a lease.

Just Cause ordinances are intended to provide stability for households who rent by preventing the termination of leases without cause. Such ordinances fully retain the rights of landlords to terminate a lease for valid reasons such as owner move-in, non-payment of rent, nuisance to landlords/other tenants, damage to unit/building, illegal activity, or any other violation of a lease agreement. This would prevent "no-fault" eviction of responsible tenants, providing them with greater security and stability. It would not protect tenants from lease terminations or evictions based on

non-payment of rent or other lease violations, nor would it prevent landlords from raising rents.

Just Cause ordinances have existed in California and the Bay Area since the 1980s and have recently reemerged as a tool to provide stability in the rental market (Table B shows Just Cause ordinances around the Bay Area and the State). In some Bay Area jurisdictions, Just Cause protections are triggered only by code violations; they prevent a landlord from evicting a tenant without cause for a period of time following the submission of a formal complaint to the local agency code enforcement staff. However, according to staff from other jurisdictions, these have proven difficult to enforce and tend to have a limited impact. The City of San Jose originally adopted a Just Cause ordinance with tenant protection based on code violations, but opted to revise and expand the scope of their ordinance to reflect more typical penalty mechanisms for enforcement. A Just Cause ordinance could also include provisions to help offset relocation costs for tenants in certain scenarios, for example when a new owner decides to renovate and requires tenants to move out.

Jurisdiction	Just Cause? (Year Est.)	Rent Stabilization?	Mediation?
Alameda Co.	Y (2017)	Y	Y
Berkeley	Y (1980)	Y	Y
East Palo Alto	Y (1988)	Y	N
Emeryville	Y (2017)	N	Y
Glendale	Y (2002)	N	N
Hayward	Y (2003)	Y	Y
Maywood	Y (2008)	N	N
Oakland	Y (2004)	Y	Y
Richmond	Y (2016)	Y	Y
San Diego	Y (2004)	N	N
Union City	Y (2017)	N	Y

Other jurisdictions with Just Cause ordinances with simple metrics for establishing applicability and with the most straightforward enforcement mechanisms are more effective by virtue of their being more easily communicated to and understood by both landlords and tenants. Similar to the County’s own Fair Housing Ordinance to establish source of income protections, Just Cause ordinances that are enforced by civil and criminal penalties are commonly held to be the most unambiguous.

Recommendation: Provide direction on whether to further consider a Just Cause ordinance in the near term. If the Board chooses to proceed, staff would explore options and address issues in accordance with the Board’s direction, conduct case studies of Just Cause ordinances, and return to the Board later this year with a report after conducting outreach with landlords and tenant groups.

Second unit amnesty. *CDA staff will draft an ordinance re-establishing the second unit amnesty program to create opportunities for existing, unpermitted second units in unincorporated Marin to be brought into compliance with County standards and to become a legal, permitted unit. The proposed ordinance will be presented to the Board of Supervisors for consideration. If adopted by the Board, the program will commence and CDA staff will begin outreach to communities throughout unincorporated Marin.*

Since the establishment of the work plan, the State Legislature passed new legislation to remove or mitigate many of the preexisting regulatory barriers to the approval of Accessory Dwelling Units (ADUs, formerly called “Second Units”) and Junior Accessory Dwelling Units (JADUs).

Effective January 1, 2017, changes to California law⁴ made it significantly easier to create an ADU (formerly called a “second unit”) on a property developed with a single family residence. If a property in a single-family zoning district was developed with a main residence or accessory building prior to January 1, 2017, creating an ADU will not be subject to any parking requirements or size limitation other than those typically associated with the main residence. In March 2017, your Board approved Development Code amendments implementing these new state laws.

In consideration of these changes, staff considers a revival of the Amnesty Program to be unnecessary and duplicative as a tool to encourage this type of housing. Therefore, staff recommends that this program be removed from the work plan.

Ancillary to the aforementioned changes, staff will explore local regulatory or procedural reforms with the goal of further facilitating the creation of ADUs and Junior Accessory Dwelling Units (JADUs).

Recommendation: Delete program and continue to facilitate the approval of ADUs and JDUs.

Re-evaluate the Housing Overlay Designation (HOD) policy (Housing Element Program 1.c, scheduled for 2016). *CDA staff will analyze the effectiveness of the Housing Overlay Designation (HOD) in the unincorporated county, consistent with Housing Element Program 1.c. If opportunities for amending the HOD policy are identified, then any proposed changes will be presented to the Planning Commission followed by the Planning Commission’s recommendation being presented to the Board of Supervisors for consideration. The Board will review the recommendation and provide staff with direction on next steps.*

The Housing Overlay Designation (HOD) was established in 2007 as a policy and program of the Countywide Plan (CWP) (CD-2.3 excerpted below). Designed and promoted as a critical tool supporting the County’s efforts to develop new affordable workforce housing, the program has fallen short of its aspirations to encourage the development of that housing through infill development on commercial sites.

CWP CD-2.3 Establish a Housing Overlay Designation. The Housing Overlay Designation (HOD) is established, as shown in Maps 3-2a and 3-2b. The purpose of the HOD is to encourage construction of units to meet the need for workforce housing, especially for very low and low income households, and for special needs housing, in the City-Centered Corridor close to transit, employment, and/or public services. Sites for the HOD include reuse of existing shopping centers or other underutilized sites. Development on sites designated as both mixed use and as suggested HOD sites shall be developed pursuant to the HOD Policy and Program and not the mixed-use land designation criteria. Each square foot of market-rate HOD housing shall be offset by an equal reduction in the square footage of the

⁴ AB 2406; SB 1069

permissible commercial development. Up to 658 housing units may be approved within the HOD, subject to a discretionary approval process.

The HOD program requires that to the maximum extent feasible, 49% of all new units developed on selected sites be restricted as affordable to low- and very-low-income households. In exchange, it incentivizes development by requiring housing densities of at least thirty units per acre and establishes grounds for developers to apply for concessions such as parking, floor area ratio (FAR), and height and fee reductions. The HOD also requires high-quality building and site design that fits into the surrounding area. However, as a result of the expansion of State density bonus⁵ law, all of the incentives offered to induce the development of affordable housing through this program are available to projects that qualify for a State-mandated density bonus. With the adoption of the most recent Housing Element, your Board directed staff to evaluate the program and identify alternative strategies to reinvigorate it as an effective tool to promote affordable workforce housing.

In early 2017, CDA staff convened a working group of industry experts to evaluate ways to make the policy more effective. Their deliberations and recommendations are discussed below.

Amend the HOD to require residential development. Since the HOD Policy does not establish a minimum residential requirement (affordable housing is strongly encouraged), a loophole in this policy permits a site to develop as a 100% commercial use without any residential development. An amendment to require that a minimum percentage of new floor area be created for residential use would not only support the intent of this policy but also better align it with the vision of the County's Mixed-Use Policy, which promotes the creation of walkable, economically diverse communities.

The minimum residential standard could be structured to mirror the criteria of the Mixed-Use Policy, which requires:

“For parcels larger than two acres in size, no more than 50% of the new floor area may be developed for commercial uses, and the remaining new floor area shall be developed for new housing.”

“For parcels 2 acres and less in size, no more than 75% of the new floor area may be developed for commercial uses, and the remaining new floor area shall be developed for new housing.”

Specific Plans. As in the 2017 Grand Jury Report,⁶ the working group identified lengthy, costly and uncertain entitlement processes as a critical barrier to the creation of affordable housing in Marin. Specific Plans could lower this barrier by doing up front detailed planning with a community to establish specific criteria that would be used to evaluate housing projects on defined sites before a development is proposed. The planning review process and criteria would be developed with input from the community and major planning issues would be resolved up front through the Multifamily Design Guidelines, adopted by your Board on December 10, 2013, community plans and the Countywide Plan. Environmental review would be required

⁵ Marin County Code § 22.24.030

⁶ Marin Civil Grand Jury. (April 12, 2017). *Overcoming Barriers to Housing Affordability*.

to implement such a program. Specific Plans would enhance transparency for all interested parties, as it could specify physical and programmatic criteria that a housing development would necessarily meet to receive approvals.

In addition to the above options, staff can work with the Board Housing Subcommittee to explore additional strategies.

Recommendation: Direct staff to work with the Board subcommittee on presenting options to revise the HOD Program and to schedule a workshop on a date to be determined by staff.

CONCLUSION:

As has been demonstrated over the past several years, there is not one solution to our affordable housing challenge. Staff has been successful in implementing most of the programs on the work plan, however, as noted above, after further consideration a number of the items have been identified as less effective and are recommended for deletion. After further study, staff is recommending enhancing our existing efforts and further consideration of some additional policy options. Our overall goal is to help preserve existing rental housing and stabilizing our renter community.

REVIEWED BY:

- | | |
|--|---|
| <input type="checkbox"/> Auditor Controller | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

Respectfully submitted,



Leelee Thomas
Planning Manager



Brian C. Crawford
Director

Attachments:

1. Report on Work Plan Implementation Status.
2. Draft amended contract with Marin Housing Authority for the Landlord Partnership Program.
3. Administrative Record (comments received).

A full reference copy of this staff report and associated attachments are available for public review at the Board of Supervisors office, 3501 Civic Center Drive, Suite 329 (8:00 a.m. to 5:00 p.m., Monday through Friday) and at the Community Development Agency, Planning Division, 3501 Civic Center Drive, Suite 308 (8:00 a.m. to 4:00 p.m., Monday through Thursday, closed Fridays).