

## **APPENDIX B**

### **Analysis of Non-Governmental and Governmental Constraints**

**TABLE OF CONTENTS**

List of Figures..... 3

List of Tables..... 3

Attachments ..... 3

**1 OVERVIEW** ..... 4

**2 NON-GOVERNMENTAL CONSTRAINTS** ..... 5

    2.1 Availability of Financing ..... 5

    2.2 Development and Construction Costs ..... 5

    2.3 Community Opposition ..... 7

    2.4 School Capacity ..... 8

**3. ENVIRONMENTAL CONSTRAINTS** ..... 8

    3.1 Wildfire ..... 8

    3.2 Topography..... 9

    3.3 Creeks and Flood Zones ..... 9

    3.4 Water/Wastewater Capacity ..... 9

**4. LOCAL EFFORTS TO REMOVE NON-GOVERNMENTAL CONSTRAINTS** ..... 11

    4.1 Requests for Housing Developments at Reduced Densities ..... 11

**5 GOVERNMENTAL CONSTRAINTS** ..... 13

    5.1 Land Use Controls..... 13

    5.2 Development Standards ..... 13

    5.3 Analysis of Land Use Controls: Impacts on Recent Developments ..... 14

    5.4 Density..... 17

    5.5 Inclusionary Housing ..... 18

    5.6 On- and Off-Site Improvements ..... 22

    5.7 Lot Area and coverage ..... 22

    5.8 Housing Types ..... 22

    5.9 Accessory Dwelling Units..... 23

    5.10 Design Review ..... 24

    5.11 Annexation Standards ..... 25

    5.12 Wildfire Safety Requirements ..... 25

    5.13 Affirmatively Furthering Fair Housing ..... 26

    5.14 Condominium Conversions..... 26

    5.15 AppliCAtion and Development Fees ..... 27

    5.16 Building and Municipal Codes ..... 30

    5.17 Processing Time ..... 31

    5.18 Infrastructure Constraints ..... 34

    5.19 Transitional, Supportive, and Farmworker Housing ..... [3635](#)

5.20	Constraints on Housing for People with Disabilities .....	36
5.21	Lot Consolidation .....	39
5.22	Parking .....	<del>40</del> <sup>39</sup>
5.23	Emergency Shelters .....	41
<b>6</b>	<b>CONCLUSIONS</b> .....	<b>42</b>

**List of Figures**

FIGURE 1: AVERAGE PER UNIT CONSTRUCTION OF NEW BELOW MARKET RATE HOUSING .....	7
FIGURE 2: HALF-MILE RADIUS FROM LAFAYETTE BART STATION (BLUE) AND DOWNTOWN BOUNDARY (RED) .....	41

**List of Tables**

TABLE 1: CONCESSIONS AND WAIVERS FOR RECENT DENSITY BONUS PROJECTS.....	14
TABLE 2: ANALYSIS OF 950 HOUGH AVENUE .....	15
TABLE 3: ANALYSIS OF MADISON PARK .....	16
TABLE 4: DENSITIES OF MULTIFAMILY PROJECTS (2017-2022) .....	17
TABLE 5: ZONING FOR DIFFERENT HOUSING TYPES .....	23
TABLE 6: DISCRETIONARY APPLICATION FEES .....	27
TABLE 7: DEVELOPMENT IMPACT FEES FOR RESIDENTIAL DEVELOPMENT .....	28
TABLE 8: DEVELOPMENT FEE ANALYSIS SUMMARY .....	<del>30</del> <sup>29</sup>
TABLE 9: EXAMPLE DEVELOPMENT FEES FOR CONTRA COSTA COUNTY JURISDICTIONS.....	30
TABLE 10: YEAR 2021 CODE VIOLATION COMPLAINTS .....	31
TABLE 11: ESTIMATED APPLICATION PROCESSING TIMES .....	<del>33</del> <sup>32</sup>
TABLE 12: PROCESSING TIMES FOR SELECTED PROJECTS .....	<del>34</del> <sup>33</sup>
TABLE 13: RECENT DEVELOPMENT PROJECTS INVOLVING LOT CONSOLIDATION .....	39
TABLE 14: PREVIOUS AND CURRENT PARKING REQUIREMENTS FOR MULTIFAMILY HOUSING .....	40

**Attachments**

- Attachment A: Zoning District Development Standards
- Attachment B: Residential Design Guidelines
- Attachment C: Development Impact Fee Analysis

Potential constraints to the provision of adequate and affordable housing can be created by government policies and regulations as well as non-governmental factors, such as costs associated with land and construction. These constraints may increase the cost of housing or may render residential construction economically and/or politically infeasible for developers. Housing production constraints can also significantly impact households with low and moderate incomes and special needs. Land use controls, as summarized below, may constrain the maintenance, development, and improvement of housing to some degree while serving other public policy goals.

The purpose of this section, per Government Code Section 65583(a)(5-6), is to identify non-governmental and governmental factors (constraints) that inhibit the development, maintenance, or improvement of housing. Examples of such constraints are land and construction costs, access to credit, permit fees, development standards, and compliance with Federal and State laws intended to facilitate housing for lower-income and special needs households.

Clearly, the potential list of all constraints on the development could be quite long and might include information on national economic conditions and regional geology. A thorough understanding of the constraints to development can help to create appropriate policy responses to mitigate constraints and make it easier and more affordable to develop housing. The City has analyzed both its own regulations as well as those of nearby jurisdictions and regional market trends to assess what constraints exist in Lafayette and identify potential modifications to City policies to remove these barriers to development to the maximum extent feasible.

## 2 NON-GOVERNMENTAL CONSTRAINTS

The availability and cost of housing is strongly influenced by market forces over which local governments have little or no control. Nonetheless, State law requires that the Housing Element contain a general assessment of these constraints, which can serve as the basis for actions to offset their effects on the maintenance, improvement, or development of housing for all income levels. Potential nongovernmental constraints are largely determined by market conditions over which local jurisdictions have little control and may include the availability of financing, the price of land, and the cost of construction. However, local governments can influence market conditions and their associated costs, even if only indirectly.

This section provides an analysis of various potential and actual constraints to housing development in the City. The primary non-governmental constraints to the development of new housing in the County can be broken into the following categories: availability of financing, development and construction costs, environmental constraints, school capacity, and requests of housing development at reduced densities.

### 2.1 AVAILABILITY OF FINANCING

The availability of financing is a critical factor that can influence the cost and supply of housing. There are generally two types of financing used in the housing market: (1) capital used for initial site preparation and construction; and (2) capital used to finance the purchase of units by homeowners and investors. Interest rates substantially impact home construction, purchase, and improvement costs. A small fluctuation in interest rates can make a dramatic difference in the annual income needed to qualify for a loan. In general, financing for new residential development in the City is available at reasonable rates. However, economic variability due to the COVID-19 pandemic has made lenders more cautious, which has the potential to have lasting effects on the availability of financing. While interest rates remain reasonably low, lenders are deliberating upon applicants more closely for consideration than in the past, leading to the availability of credit tightening despite affordable interest rates. As a result, the cost to develop housing continues to increase.

### 2.2 DEVELOPMENT AND CONSTRUCTION COSTS

According to a report released in March 2020 on multifamily construction costs in California from the Turner Center, many different factors layer together to affect the bottom-line costs of building new housing and whether or not a project will ultimately “pencil”: the costs of acquisition (e.g., land and closing costs), hard construction costs (e.g., materials and labor), soft costs (e.g., legal and professional fees, insurance, and development fees), and the costs of conversion once a project is completed (e.g., title fees and the operating deficit reserve).<sup>1</sup> According to its research, the largest share of a project’s total cost comes from materials and labor, or hard costs.

In addition, hard construction costs make up more than 60 percent of total development costs. The Turner Center study found that on average, construction costs were about \$222 per square foot in 2018 compared to \$177 in 2008-2009, representing a 25 percent increase. While these increases have been felt across the state, costs are highest in the Bay Area, which saw costs rising by

---

<sup>1</sup> See the Turner Center’s series on housing costs at <https://turnercenter.berkeley.edu/research-and-policy/the-cost-of-building-housing-series/>.

119% during the same period to over \$380 per square foot. The reasons for this increase in construction costs are complex, but the Turner Center suggests this is in part because of higher labor costs to attract workers to the Bay Area where the cost of living is very high; local regulations that require certain materials or building components to be used; lengthy review processes; and other local constraints.<sup>2</sup>

Statewide, labor costs have also increased in recent years, as the labor pool has not kept pace with the increase in demand, likely due to costs of housing in the state. Since the recession in the mid-2000's, California has seen a severe tightening in the construction labor market, especially for workers trained in specific construction trades. The lack of an available labor force drives up the cost of labor and leads to project delays as workers are either unavailable or lost to more profitable projects.

Adding to the overall development costs are the high land costs in Lafayette as well as the limited availability of vacant or underutilized land. Not only is acquiring the property a large expense when compared to many other Contra Costa County jurisdictions, but also “buying out” businesses for relocation or demolition of existing structures further contribute to the necessary expenses to redevelop property in Lafayette and add to the overall development costs.

Several additional factors have caused the increased cost of materials, including global trade patterns and federal policy decisions, such as tariffs, as well as state and local regulations, such as building codes. The COVID-19 pandemic has also influenced the cost and availability of construction materials. Supply chain disruptions have resulted in project delays and increased costs due to a shortage of construction materials and equipment.

The cost of land has also increased substantially over the past decade. Many jurisdictions are now essentially built out, with no available vacant land for development. Many locations in the Bay Area experience substantially higher land values than in other areas of the State because of the attractiveness of living along the coast, with its mild climate, access to high-tech jobs, and plentiful amenities. A 2021 City study to adjust park-related development fees for FY 2021-22 found that the Fair Market Value of a buildable acre, based on sales of undeveloped land, is approximately \$879,000. A desk review of vacant land sales in 2021 and early 2022 may be even higher now, as the information shows that the average sales price for one acre was \$978,000,

All these factors work together to make it so developers must charge substantial rents and sales prices to cover the development costs for financing and construction. For example, the Turner report notes that a multifamily unit that costs \$800,000 to build will need to charge approximately \$4,000 in monthly rent—a price well over the typical monthly earnings in the State—to cover those costs and meet return on investment requirements for investors.

The impact of high construction costs on affordable housing cannot be underestimated. According a study by the Bay Area Council, in 2019 there were 23 new construction projects of below market-rate housing financed through the California Tax Credit Allocation Committee, with a total of 1,912 units, across six counties of the nine-county Bay Area. Each project in California requested federal and/or state tax credits to finance the new construction of housing units with rents affordable to households earning 30-60% of area median income (AMI), which are very low-income households. The project costs consist of land and acquisition, construction costs, construction contingency,

---

<sup>2</sup> Turner Center, *The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California*, March 2020, p. 15.

architectural/engineering, construction interest, permanent financing, legal fees, reserves, other costs, developer fees, and commercial costs. Project costs were analyzed to determine the reasonableness of all fees within TCAC’s underwriting guidelines and TCAC limitations.

The report found that the average construction cost of new below market rate housing in the Bay Area was \$664,455 per unit, far more than lower income households can afford without subsidies. In comparison, other projects across California (excluding the Bay Area), on average cost \$385,185 per unit of below market rate housing.<sup>3</sup>

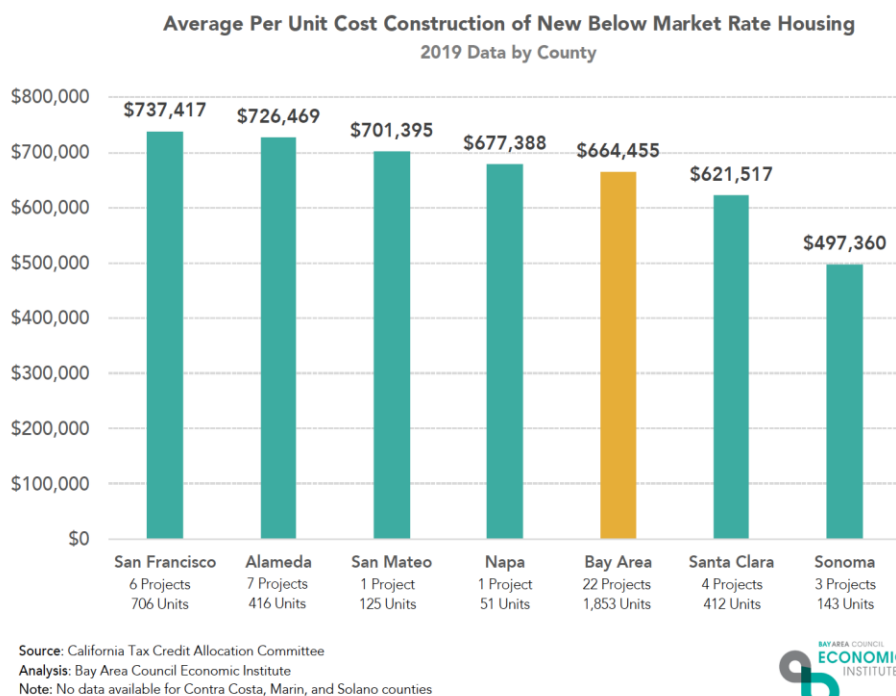


Figure 1: Average Per Unit Construction of New Below Market Rate Housing

## 2.3 COMMUNITY OPPOSITION

Another constraint to housing production in many communities is public opposition to higher-density or affordable housing. Such objections may be based on concerns about traffic, parking, school overcrowding, police and fire response times, fiscal impacts, and other issues. However, they may also be based on misinformation and misconceptions about affordable housing, or concerns that can be directly mitigated, such as the appearance and quality of such housing.

The potential for community opposition means that good design and planning are essential in high-density projects. Such design efforts require early consultation with the public, close collaboration with neighbors and homeowners’ associations, genuine respect for public concerns, and public education as to the need for and benefits of affordable and higher density housing. Design guidelines and standards will become increasingly important, as will community benefits, such as public open

<sup>3</sup> <http://www.bayareaeconomy.org/how-much-does-it-cost-to-produce-one-unit-of-below-market-housing-in-the-bay-area/>

space and childcare facilities. High-quality architecture, “green” construction, good property management processes, and commitments to maintenance and upkeep will all be important. Continued attention to public input will be critical.

## 2.4 SCHOOL CAPACITY

Although State law prohibits the City from denying development because of school capacity, the effect of school overcrowding on housing production cannot be overlooked. School impacts have consistently been among the public’s top concerns when discussing future residential development. School capacity issues are often a point of contention when housing is proposed, particularly when families with children are expected. In the past, these concerns have galvanized neighborhood opposition.

During its review of new multifamily proposals, the City refers the project to several agencies for comments to inform the design as appropriate. These agencies include not only utility providers, homeowners’ associations, and fire department, but also the Lafayette School District and Lamorinda School Bus Program.

The addition of 2,114 housing units —as allocated through the ABAG Regional Housing Needs Determination process—would generate additional demand for classroom space and school facilities. To offset these impacts, each school district levies fees on new development. As authorized by California Government Code Sections 65995 and 65996, the Lafayette School District (LAFSD) collects school impact fees from developers of new residential building space. The impact fee revenue is used together with other LAFSD funds (e.g., State grants, general obligation bonds) to complete capital improvements. The amount of the fee (currently \$2.86 per square foot of new residential space) is established through LAFSD’s Developer Fee Justification Study. The Acalanes Union High School District (AUHSD) also levies school impact fees from developers of new residential building space, the amount of which (currently \$1.22 per square foot of new residential space) is established through AUHSD’s Developer Fee Justification Study.

## 3. ENVIRONMENTAL CONSTRAINTS

### 3.1 WILDFIRE

The entirety of the City is designated as a Local Responsibility Area (LRA) by the California Department of Forestry and Fire Protection (CalFire). The same is true for the surrounding incorporated communities of Orinda, Moraga, Walnut Creek, and Pleasant Hill. The unincorporated area to the north of the City is a State Responsibility Area (SRA), with CalFire or its designee providing fire protection services.

As part of its Fire and Resources Assessment Program (FRAP), CalFire has mapped areas of significant fire hazards throughout the State. The maps classify lands into fire hazard severity zones, based on a hazards scoring system that takes into account localized factors such as fuel loading, slope, fire weather, and other relevant considerations, including areas where winds have been identified as a major cause of wildfire spread. Substantial areas of the City are either undeveloped or managed as some



form of open space, including areas of open grassland and oak woodland and have been designated by the FRAP as a Very High Fire Hazard Severity Zone (VHFHSZ). In general, nearly all areas of the City north of SR-24 are within a designated VHFHSZ, as is an area south of SR-24 on the west side of the City adjacent to the Lafayette Reservoir. Several Housing Element Update planning areas fall within a VHFHSZ. In fact, approximately 45% of the City is located within a VHFHSZ, substantially limiting the areas of the City where high density housing should be located.

### 3.2 TOPOGRAPHY

Though Downtown Lafayette is generally flat, except for the northern boundary which contains some hilly terrain, the City is characterized by its hillsides and ridgelines that identify the various neighborhoods throughout, including Reliez Valley, Acalanes Valley, Happy Valley, and Burton Valley. The City adopted a Hillside Overlay District intended to protect the health, safety, and welfare of the public by establishing regulations for the development of ridgeline, hillside, and other rural residential areas within the City. The district was created and established to implement the goals, policies and programs of the general plan that relate to hillside and ridgeline development, development hazards and protection of open space lands and hillside residential areas. Because of the environmental impact, limitations on developing in these areas, and cost in developing in these areas with varied topography, much new residential development is limited to the Downtown corridor, which has few vacant sites in the existing flat areas.

### 3.3 CREEKS AND FLOOD ZONES

As a result of the previously described topography, there are several creeks that run throughout the City's Downtown that have associated flood zones. Many parcels throughout the Downtown Core are constrained by creeks. Development near these creeks can trigger additional review and permits from outside agencies, such as the Department of Fish and Wildlife, as well as flood mitigation and control measures in the project design. Not only do the creeks present a physical site constraint, but additional permits and design modifications can add significant time and costs to development and can pose a challenge to high density development.

### 3.4 WATER/WASTEWATER CAPACITY

The East Bay Municipal Utility District (EBMUD) is a publicly owned utility that owns, operates, and maintains the water distribution system within the City of Lafayette. EBMUD facilities collect snowmelt and runoff at the Pardee Reservoir in the Mokelumne River watershed and farther downstream in the Camanche Reservoir. EBMUD has water rights for up to 325 million gallons per day (mgd) from the Mokelumne River watershed and can store up to a 10-month supply for the 1.4 million water customers in EBMUD's service area. Runoff within the Bay Area is stored in several local reservoirs to provide emergency supplies. On average, EBMUD stores approximately a six-month emergency reserve in local reservoirs. EBMUD also has rights to up to 100 mgd from the Sacramento River in dry years through a contract with the U.S. Bureau of Reclamation that is pumped at the Freepoint Regional Water Facility owned by EBMUD and Sacramento County.

EBMUD has six water treatment plants for potable water supplies located in the EBMUD service area, with one located in the City of Lafayette. The Lafayette Water Treatment Plant receives water directly from the Pardee Reservoir. The Lafayette Water Treatment Plant together with the Walnut Creek Water Treatment Plant serve primarily the area east of Oakland-Berkeley Hills. There are also five

local water supply reservoirs (referred to as the terminal reservoirs): Briones, Chabot, Lafayette, San Pablo, and Upper San Leandro. The terminal reservoirs serve multiple functions that include: (1) regulating EBMUD's Mokelumne River supply in winter and spring; (2) augmenting EBMUD's Mokelumne River water supply with local runoff; (3) providing emergency supply during extended drought or in the event of interruption in Mokelumne River supply delivery; (4) providing local supply during high turbidity events in the Mokelumne River reservoirs; (5) providing environmental and recreational benefits to East Bay communities; and (6) providing some stream flow regulation. The Lafayette Reservoir is not connected to the potable water distribution system but can be available as emergency standby supplies.<sup>4</sup> The Lafayette Reservoir is primarily used for recreation and is only filled from local runoff.

The 2020 Urban Water Management Plan (UWMP), adopted on June 22, 2021 by EBMUD's Board of Directors, is a long-range planning document used to assess current and projected water usage, water supply planning, and conservation and recycling efforts. In addition to its Mokelumne River rights, EBMUD has a Long-Term Renewal Contract (Contract No. 14-06-200-5183A-LTR1) with the U.S. Bureau of Reclamation to receive water from the Central Valley Project (CVP) through the Freeport Regional Water Facility in years when EBMUD's water supplies are relatively low. During some dry years, EBMUD may purchase water transfers to help meet customer demands. EBMUD maintains a biennial budget and five-year capital improvement program to optimize investments and maximize drinking water quality, and the reliability, safety, flexibility, and overall efficiency of the water supply system.

The Central Contra Costa Sanitary District (Central San) collects and treats wastewater from over 480,000 residents and approximately 3,000 businesses covering approximately 147 square miles in central Contra Costa County, including the City of Lafayette. In addition to collecting and treating wastewater, Central San provides recycled water for parks, medians, school fields, and golf courses and manages both commercial and residential recycled water programs. Central San also operates a household hazardous waste collection facility.

Central San's treatment plant, located at the intersection of Interstate 680 and State Route 4 in Martinez, has a permitted capacity of 53.8 million gallons per day (MGD) and cleans an average of 38.6 MGD, 2.5 MGD of which can be further treated into recycled water and reused within the treatment plant and distributed to customers for non-potable uses (Central San, 2020a). The treatment plant has managed peak flows as high as 230 MGD during extreme winter storms. Central San uses over 1,500 miles of piping with over 35,000 manholes and 19 pump stations to convey wastewater to the treatment plant in Martinez. The Via Roble pump station is located within the City of Lafayette. The average age of the collection system pipes is approximately 40 years. Some pipe segments are over 100 years old, and some of the most critical pump stations are over 55 years old. Since its original construction in 1948, the treatment plant has been modified through successive projects, including a major expansion to secondary treatment in the 1970s. Although other improvements have been made since then, most of the treatment plant remains unchanged. Despite their age, the collection system and treatment plant are generally in good condition. However, repairs and upgrades are required to maintain reliable operation.

It is anticipated there is adequate capacity to meet demand and adequate capacity to expand to meet projected development as part of the Housing Element. The current facilities and/or infrastructure

---

<sup>4</sup> Of the five terminal reservoirs, only Briones, San Pablo, and Upper San Leandro provide water supply throughout the year to EBMUD customers.

are reported to be in good operating condition. Therefore, it is determined that the City has enough capacity to meet the 2023-2031 RHNA allocation.

#### **Senate Bill 1027**

To comply with SB 1087, the City will immediately forward its adopted Housing Element to its water providers so they can grant priority for service allocations to proposed developments that include units affordable to lower-income households.

#### **Senate Bill 244**

SB 244 requires cities and counties, prior to adoption of the Housing Element, to address the infrastructure needs of disadvantaged unincorporated communities outside the city's limits but within the city's planning area. No disadvantaged communities exist outside the city limits in unincorporated areas that fall within the city's planning area (sphere or influence).

## **4. LOCAL EFFORTS TO REMOVE NON-GOVERNMENTAL CONSTRAINTS**

Government Code 65583(a)(6) also requires a review of local efforts to remove nongovernmental constraints that create a gap in the jurisdiction's ability to meet RHNA by income category. The primary non-governmental constraint is the overall cost of affordable housing development (high land and development costs) in most parts of the State. In general, constructing affordable housing, especially for low- and very low-income households is not profitable to housing developers. Therefore, deed-restricted affordable units require subsidy beyond available density or financial incentives.

This places the construction burden on affordable housing developments and may result in affordable projects that are not always dispersed throughout the region but are concentrated in limited areas with lower development costs. While the City can offer developer incentives such as expedited permit processing or fee deferrals, it cannot afford to fully mitigate the high cost of development for affordable housing developments. County Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funding helps support gap financing for affordable housing projects; however, the City's ability to support projects is limited by available funds.

### **4.1 REQUESTS FOR HOUSING DEVELOPMENTS AT REDUCED DENSITIES**

California Government Code, Section 65583(a)(6), requires an analysis of requests to develop housing at densities below those anticipated in the Sites Inventory and the length of time between receiving approval for housing development and submittal of an application for building permit. The analysis must also look at local efforts to remove nongovernmental constraints that create a gap in the jurisdiction's ability to meet the Regional Housing Needs Assessment (RHNA) by income category.

This analysis is required to examine local efforts to remove nongovernmental constraints that create a gap in the jurisdiction's ability to meet the RHNA by income category. The primary nongovernmental constraint is the overall cost of affordable housing development (high land and development costs) and the lack of public funding sources to subsidize the development of these units. Data on construction costs indicates that, even with by-right density bonuses pursuant to California's Density Bonus Law, constructing affordable housing (particularly for households with low and very low

incomes) is not profitable for developers and results in a loss without public funding sources. Developers requiring funding from investors and lending institutions are required to submit a pro forma analysis (i.e., an analysis showing the costs to develop and the revenues available to fund the development) demonstrating financial feasibility or costs that are less than or equal to revenues.

Therefore, public subsidies are required to develop affordable housing. The subsidy typically comes in the form of LIHTC, State grants, federal HOME funds, dedication of land for projects, and/or other public sources. The lack of funding options can result in affordable projects that are more concentrated in areas with lower development and land costs. It is important to note that the City can offer concessions, such as expedited permit processing, development impact fee deferrals, parking waivers, etc., but overall, the cost to develop housing is the biggest impediment to meeting a jurisdiction's RHNA allocation.

The length of time between receiving approval for housing development and approval of an application for building permit is typically four to six months under normal circumstances with a reasonably good design team, but can vary depending on project complexity and the time the developer takes to complete construction documents. Items like changes to construction costs or other development costs that affect the feasibility, financing, or negotiations with design professionals are outside the City's control but may delay projects.

In the past, housing projects were proposed at densities well-below the underlying allowed densities, in part because of the City's hilly topography or because smaller developments bring an overall greater return to the investor. One such example can be found in the Woodbury condominium development, which was originally proposed with over 80 units and was ultimately built with 56 units. More recently, projects come in at or above zoned density by using the State Density Bonus Law. Over the last five years, multifamily development densities in Lafayette have averaged about 111% of zoned density or about 39 dwelling units per acre, which is significantly higher than in the previous Housing Element. [The City anticipates this trend continuing through the 6<sup>th</sup> Housing Element cycle given ongoing changes to local and State regulations.](#)

## 5 GOVERNMENTAL CONSTRAINTS

Governmental policies and regulations can result in both positive and negative effects on the availability and affordability of housing. This section, as required by Government Code Section 65583(a)(5), describes City policies and regulations that may constrain the City's ability to achieve its housing goals. Potential constraints to housing include land use controls (through General Plan policies and zoning regulations), development standards, infrastructure requirements, development impact fees, and development approval processes. While government policies and regulations are intended to serve legitimate public policy objectives and further the public good, the City recognizes that such objectives and regulations can impact the availability and affordability of housing to meet the community's future needs.

Consistent with Government Code 65940.1 et seq., the City's internet website contains a current schedule of fees, exactions, affordability requirements and other requirements imposed by the City that are applicable to proposed housing developments.

### 5.1 LAND USE CONTROLS

[The Lafayette Zoning Ordinance contained within Title 6 of the Lafayette Municipal Code sets forth land use regulations and development requirements for construction activity within the City. The City's analysis finds that Lafayette's land use controls are typical of jurisdictions throughout the county. As detailed below, those objective standards that are the most frequent subject of waivers under State Density Bonus Law are setbacks and height limits. While any setback requirement and any height limit will constrain development to some degree, the City is committed to increasing densities and reducing or eliminating constraints affecting the production of housing. While the ultimate sales or rental price may be a function of the market, fewer constraints will serve to reduce costs and incentivize housing production.](#)

California law requires that the Zoning Ordinance be consistent with the General Plan. The Lafayette Zoning Ordinance and the Land Use and Safety Elements of the General Plan will be amended to be consistent with the Housing Element following its completion. [Program 10.3.a "Zoning to Accommodate RHNA" commits the City to rezoning districts that already permit multifamily development to increased densities and heights to promote the development of new housing.](#)

### 5.2 DEVELOPMENT STANDARDS

The Zoning Ordinance establishes two primary types of residential zoning: Single-Family Residential (R-6, R-10, R-12, R-15, R-20, R-40, R-65, R-100, LR-10 and LR-5) and Multiple-Family Residential (D-1, MRA, MRB, MRO, MRT, APO and MRP). Multifamily residential is also permitted by right in the commercial zoning districts (C, C-1, SRB, RB). [Thus, almost the entire City is zoned for and permits residential by right.](#) Tables included in the Attachment A illustrate the City's development standards for each of these zoning districts.

[In addition to these zoning districts, the municipal code offers developers the opportunity to pursue a Planned Unit Development \(PUD\) zoning designation, which allows flexibility in project-specific development standards, such as reduced internal setbacks. While PUD remains available to developers,](#)

[all multifamily development projects proposed in Lafayette over that past five years have utilized State Density Bonus Law to achieve relief from objective design standards normally applicable under the municipal code.](#)

In total, 670 multifamily housing units have been entitled and 346 multifamily units have been built in the City’s Downtown over the 5<sup>th</sup> Cycle and the City anticipates that the majority of higher density, affordable units will be built in the Downtown zoning districts C, C-1, SRB and RB throughout the 6<sup>th</sup> Cycle. It is in these districts that services such as grocery and drug stores, civic uses such as the library and post office, K-8 schools, and transit facilities such as BART are located. As can be seen from the zoning standards table in Attachment A, the building setback requirements in these districts are modest. A density of 35 du/acre – the maximum currently permitted in Lafayette -- and a 35-foot height limit are allowed. There is no floor area ratio (“FAR”) requirement in these districts.

**5.3 ANALYSIS OF LAND USE CONTROLS: IMPACTS ON RECENT DEVELOPMENTS**

Regulations for residential development (e.g. required setbacks, maximum lot coverage, height limits, minimum lot sizes) are no more restrictive than those of surrounding jurisdictions. The Zoning Ordinance and related land use regulations serve to promote the health, safety and general welfare of the community and do not unduly constrain housing development. In addition to these zoning districts, the Zoning Ordinance provides for Planned Unit Development and flexibility with respect to these standards. Lafayette’s PUD process permits housing developments to be built with flexible setbacks, lot coverage and other regulations and permits the construction of mixed-use developments. The Woodbury condominiums (56 units) and Town Center apartments (75 units) are examples of higher density projects that have successfully used the PUD process.

State Density Bonus Law allows developers to obtain concessions and waivers for projects providing a minimum prescribed percentage of affordable housing. ALL multi-family residential projects proposed in the last five years have requested one or more concessions and waivers, in part because Lafayette’s inclusionary housing requirements make the projects eligible to do so. An overview of the concessions and waivers requested provides some insight into elements of existing zoning standards that may act as constraints to development. Eight recent projects seeking concessions and waivers to development standards are outlined in the table below. While each site and each project has unique site considerations, the development standards that appear to consistently constrain multifamily development are minimum setbacks and maximum height limits.

**Table 1: Concessions and Waivers for Recent Density Bonus Projects**

Project	Setbacks	Height	Parking	Building Design	Fee Deferral	Inclusionary Housing	Other
950 Hough (Griggs)	X	X		X		X	
Lafayette Lane (Miramar)	X			X		X	X
Terraces of Lafayette (O’Brien)		X					
210 Lafayette Circle (Lenox)	X						X
West End (Stone)	X	X			X		
3483 Golden Gate Way (Madison Park)		X	X	X	X		
Samantha Townhomes (Bay Area Dev.)	X		X				
3458 Mt. Diablo Blvd (Schadek)	X	X					X

Source: City of Lafayette, 2021

The following tables analyze the impacts of the City’s development standards on two recent development proposals.

Table 2: Analysis of 950 Hough Avenue

950 Hough Avenue (APN: 243-190-003)			
Total Lot Area: 0.43 acres			
Zone: Retail Business (RB)			
Regulation	City Requirement	Proposed Project	Comments
Allowed uses	Offices, commercial, residential	Four stories with 20 residential units and ground floor parking tucked under.	<i>Regulation is not a constraint as housing is permitted by-right.</i>
Minimum lot area	5,000 SF.	18,582 sq. ft. (0.43 acres)	<i>Regulation is not a constraint.</i>
Maximum density	35 du/acre (15 units)	46 du/acre (20 units)	<i>The maximum density may be a constraint as the developer added density under State Density Bonus Law.</i>
Maximum height	35’ (3 stories)	49’ (4 stories)	<i>The 35-foot height limit may be a constraint as the developer sought a waiver to the building height under State Density Bonus Law.</i>
Front setback	10’ (adjacent to residential)	3’-6”	<i>The developer sought a waiver to the setback requirements under State Density Bonus Law.</i>
Side yard setback	10’ (adjacent to residential)	3’ & 3’	<i>The developer sought a waiver to the setback requirements under State Density Bonus Law.</i>
Rear yard setback	10’ (adjacent to residential)	30’	<i>Regulation is not a constraint.</i>
Creek Setback	15’	4’-6”	
Parking	30 auto spaces 4 bike spaces	25 auto spaces 18 bike spaces	<i>The developer sought a waiver for not only the parking quantity, but also the location and dimensions of the parking spaces.</i>
Other Regulations			
Building Design	The upper level building bulk exceeds the maximum floor areas prescribed based on the ground floor (parking level) – 95% at 2 <sup>nd</sup> and 85% at 3 <sup>rd</sup> floors.		
Open Space	The project included less than the required 20% minimum open space is proposed based on the lot size (approx. 4,092 sq. ft. required; approx. 2,730 sq. ft. provided)		
Inclusionary Housing	Inclusionary units must be dispersed throughout the project and be comparable in terms of bedroom count and exterior design to the market rate units. The project sought a concession to provide a different		

950 Hough Avenue (APN: 243-190-003)			
Total Lot Area: 0.43 acres			
Zone: Retail Business (RB)			
Regulation	City Requirement	Proposed Project	Comments
	bedroom count mix compared to the market rate units.		

Table 3: Analysis of Madison Park

3483 Golden Gate Way (APNs: 243-232-027, 028)			
Total Lot Area: 1.49 acres			
Zone: General Commercial (C-1)			
Regulation	City Requirement	Proposed Project	Comments
<b>Allowed uses</b>	Offices, commercial, residential	4-story mixed-use building with an underground parking garage and a public plaza.	<i>Regulation is not a constraint as housing is permitted by-right.</i>
<b>Minimum lot area</b>	7,500 SF.	64,904 sq. ft. (1.49 acres)	<i>Regulation is not a constraint.</i>
<b>Maximum density</b>	35 du/acre (52 units)	48 du/acre (71 units)	<i>The maximum density may be a constraint as the developer added density under State Density Bonus Law.</i>
<b>Maximum height</b>	35' (3 stories)	53'-6" (4 stories)	<i>The 35-foot height limit may be a constraint as the developer sought a waiver to the building height under State Density Bonus Law.</i>
<b>Front setback</b>	10'	10'	<i>Regulation is not a constraint.</i>
<b>Side yard setback</b>	10' (adjacent to residential)	10' to 34'	<i>Regulation is not a constraint.</i>
<b>Rear yard setback</b>	10' (adjacent to residential)	13' to 65'	<i>Regulation is not a constraint.</i>
<b>Upper Story Setback</b>	50'	3 <sup>rd</sup> Floor: 10' to 80' 4 <sup>th</sup> Floor: 25' to 115'	<i>The upper story setbacks may be a constraint as the developer sought a waiver under State Density Bonus Law.</i>
<b>Parking</b>	63 spaces (8 guest spaces) 10 bike spaces	86 auto spaces (5 guest spaces) 70 bike spaces	<i>Waiver for the reduction to the number of guest parking spaces.</i>



## 5.4 DENSITY

The maximum density currently allowed in Lafayette’s Downtown zoning districts is 35 du/acre. Though this figure is the maximum permitted density, the City has established a track record of approving higher density residential and mixed-use projects. The City received a total of eight applications to build new, high density multifamily housing projects in the last five years and all have been approved. The average yield of those projects is 111% of units permitted by the underlying zoning, in part because all but one has used State Density Bonus Law.

Table 4 provides more detailed information on these projects. This table presents all developments proposed between 2017 and 2022 at the time of this draft, all of which were approved by the City. As previously discussed, most proposals for new residential development in Lafayette use the State Density Bonus Law not only to seek concessions and waivers to existing development standards, but also to increase the overall unit count of a given project. While other factors like City subsidies or developer interest in developing lower-income units can affect below-market-rate production, the development track record in the City indicate that the permitted density is a potential constraint to new housing development.

Table 4: Densities of Multifamily Projects (2017-2022)

Project Name	VLI Units	LI Units	Mod Units	AM Units	Base Units (Before SDBL)	Density Bonus Units (#)	Total Units	% BMR (of Base Units)	Density Bonus (%)	Project Density (units/acre)	Mathematical Capacity (units)	Yield % (Total Units / Mathematical Capacity)
<b>Lenox Lafayette Circle</b> 210 Lafayette Cir	0	0	2	10	12	0	12	17%	0%	32	13	90%
<b>Valley View Apartments</b> 1059 Aileen & 1044 Stuart	0	0	0	42	42	0	42	0%	0%	35	43	99%
<b>The Mill at Brown Avenue</b> 3408 Mt. Diablo Blvd	0	0	2	11	13	0	13	15%	0%	34	13	98%
<b>950 Hough Avenue</b> 950 Hough Ave	0	0	3	14	17	3	20	18%	18%	47	15	134%
<b>Madison Park</b> 3483 Golden Gate Way	6	4	0	42	52	19	71	19%	35%	48	52	136%
<b>Miramar/Lafayette Lane</b> 3470 Mt Diablo Blvd	38	0	0	108	146	20	166	26%	14%	40	146	114%
<b>Samantha Townhomes</b> 1050 Stuart St	0	0	2	10	12	0	12	17%	0%	29	14	83%
<b>West End</b> 3721 Mt. Diablo Blvd	0	0	2	10	12	2	14	17%	17%	47	11	133%
											<b>Average Yield</b>	<b>111%</b>

SOURCE: Lafayette Planning Department

MFR projects > 10 units of new construction in the Downtown

The City’s Density Bonus Ordinance (Chapter 6-36 of the City Municipal Code) mirrors the language of State Density Bonus law and is regularly updated to reflect ongoing changes to State law:

- **6-3601 - Purpose.**

The purpose of this chapter is to:

- (a) Facilitate the production of affordable housing by providing incentives;
- (b) Implement the goals, policies and programs of the Housing Element of the Lafayette General Plan; and
- (c) Comply with Government Code Section 65915.  
(Ord. No. 637, § 4(exh. A), 11-10-2014)

The ordinance includes definitions, the percentage of bonuses allowed depending on the amount of lower-income units being provided, and provides a detailed breakdown of how density bonus calculations are made for both rental and for-sale developments. It includes provisions for land donation, child care facilities, and condominium conversions. The ordinance discusses the design, distribution and timing of affordable housing to ensure that affordable units are of high quality and are available at the approximate time as market-rate units. Lastly, it provides detailed procedures for requesting and granting concessions, waivers, and incentives and the level of review required for each request.

The City has included program 8.3.a in the Implementation Plan to update the local ordinance to align with current State law and to further streamline review. Further, under AFFH Action 2.2 the City will evaluate and adjust the city's inclusionary and density bonus programs to allow a smaller unit contribution (<15%), larger density bonuses, and/or increased city support in exchange for affordable units that address the needs of under-represented residents with disproportionate housing needs (e.g., child-friendly developments with day care on site for single parents, and 3-4 bedroom units for larger families).

## 5.5 INCLUSIONARY HOUSING

Inclusionary zoning programs – of which the City’s local Below Market Rate or BMR program is one variant – are sometimes perceived as adding to the cost of housing by requiring the market-rate units to subsidize the affordable units. This is an area of much dispute, both in the Bay Area and nationally. There are as many positive aspects of inclusionary programs than there are negative aspects. For example, a study conducted by the National Housing Conference’s (NHC) Center for Housing Policy (2000) highlighted several important contributions to inclusionary zoning to communities, not the least of which is the creation of income-integrated communities without sprawl.<sup>5</sup>

~~Over the last ten years,~~ Several studies have been published that specifically address the issue of who pays for inclusionary zoning. Some of these studies assert that the costs associated with inclusionary programs are passed on to the market priced homes, while other studies assert that in fact the cost is not borne by the end users at all. For example, the “Reason Foundation” study entitles “Housing Supply and Affordability: Do Affordable Housing Mandates Work?” (April 2004) argues that housing consumers and some landowners pay for inclusionary requirements, not developers. The author asserts that market-rate buyer (and some extent, renters) will be forced to pay higher amounts than they otherwise would for their units because of inclusionary zoning’s implicit tax on other units.

In an article published in the Hastings School of Law Review in 2002 which provided one of the first comprehensive reviews of inclusionary zoning and its cost implications for jurisdictions in California, Barbara Kautz, former Director of Community Development for the City of Dan Mateo and now a lawyer with Goldfarb and Lipman, noted that:

Most cities that have conducted economic analyses have concluded that, in the long run, most of the costs are borne by landowners [rather than market rate renters or buyers.] Initially, before land prices have had time to adjust, either the market-rate buyers or the developer pays,

---

<sup>5</sup>Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?” (Washington, DC: The Center for Housing Policy, National Housing Conference, October 2000).

depending on whether the market allows the developer to increase his prices. If the developer cannot raise the market price for the non-inclusionary units or lower his total costs, or some combination, his profits will decline.... To put this another way, builders will pay less for land because inclusionary zoning lowers their profits.<sup>6</sup>

Kautz asserts that developers will sell at the highest level they are able to sell at, meaning they will set prices according to what the market will bear. If a unit's market value is \$900,000, it will be sold for \$900,000. Developers would not "add" more to the price to pay for the affordable units that are required; if they could sell it at \$1,000,000, for example, they would have sold it for that price in the first place. Furthermore, if the market value of a unit is \$900,000, a buyer would not pay \$1,000,000. And, if all a buyer can afford is \$900,000, then the buyer will not spend \$1,000,000. Ultimately, the price for a unit is dependent on what the market will bear; it is not directly affected by the affordability requirement.

The requirement to add inclusionary units results in substantial costs to a project compared to being allowed to build all market rate units. These costs cannot be passed on to other purchasers because buyers will not pay more because the development costs more; buyers pay what the market will bear relative to the desirability of the unit, the location, and the community. Nor will the developer build for a lesser profit (unless the developer is unlucky enough to have purchased land and planned a project under one set of conditions and must sell units under a different set of conditions as a result of an unanticipated City policy.) The land price is the variable that adjusts, over time, to absorb the increased costs of development within the community.

If the cost of inclusionary zoning is not borne by the buyers or renters, but rather the developers (in terms of less profit) or the original landowners (also in terms of less profit), the question then becomes whether or not inclusionary zoning unfairly reduces the profit one can realize through the development of property. As the courts have repeatedly shown, zoning laws do not constitute a "taking" unless an owner is deprived of most, if not all, of the economic benefit of a property. Land is a limited community resource, and as such courts have given jurisdictions broad discretion in implementing a variety of land use mechanisms that tend to restrict both the value and the particular use of property in order to achieve objectives that meet the greatest public good.

In most instances – certainly within the State of California – local jurisdictions with inclusionary programs have analyzed them as potential constraints to development. This has been the directive of State HCD: while it pronounces "Housing Element law neutral relative to enactment of mandatory local inclusionary provisions," the State also notes that there may be tradeoffs that must be discussed in the Housing Element's constraints section. However, jurisdictions almost always have implemented a number of incentives and cost benefits to mitigate these impacts, so that whatever constraint has been identified there is an offset offered to mitigate it.

[The City implemented its inclusionary zoning program in the Downtown only in 2016 \(subsequent amendments have taken place in 2017 and 2018\). The purpose of the program is to facilitate the development and availability of housing affordable to a broad range of households of various income levels and sizes in Lafayette, specifically to assist in the dispersal of affordable housing units throughout the downtown.](#)

---

<sup>6</sup>Barbara Ehrlich Kautz, "In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing," *University of San Francisco Law Review* – Vol. 36, No 4 (Summer 2002).

## Basic Requirements

The ordinance applies to developments of two or more units and essentially re-implements the inclusionary requirements of the former redevelopment agency, which was dissolved by the governor in 2012. For single family for-sale projects, 15 percent of the units must be inclusionary units sold or rented at an affordable price to moderate-income households. For projects creating multiple for-sale family dwellings, 15 percent of the total units must be inclusionary units, with nine percent sold at an affordable sales price to low or moderate-income households and six percent sold to an affordable sales price of very low-income households.

For projects in the downtown that are multi-family rental dwellings, 15 percent of the total units must be inclusionary units, with nine percent rented at an affordable price to low-income households and six percent rented at an affordable price to very low-income households.

## Alternatives to development

*In-Lieu Fees:* A project with two to six for-sale units may elect to pay the applicable in-lieu fees and is not required to build inclusionary units. Further, a project with seven to 20 for-sale units may elect to make all of the inclusionary units affordable at moderate-income. Similarly, a project with seven to 20 rental units may elect to make all of the inclusionary units affordable at low-income.

*Off-Site Development:* In addition, instead of providing inclusionary units on-site to satisfy inclusionary requirements, a developer may propose providing all or a portion of the inclusionary units off-site, including for-sale housing or rental housing. In order to approve such a proposal, the city council must find that on-site production of such units is infeasible or that greater public benefit will result from the units being off-site. The city council may require the provision of a minimum of one and may require up to two off-site units for every unit not provided on-site.

Regardless of the number of off-site for-sale units that are required, 40 percent of the off-site units must be affordable to very low-income households and 60 percent must be affordable to low- or moderate-income households.

In addition, regardless of the number of off-site rental units that are required, 40 percent of the off-site units shall be affordable to very low-income households and 60 percent shall be affordable to low-income households.

## Affordability Restrictions

*Basic Restrictions:* For-sale inclusionary units are restricted to the applicable income level for a period not less than 45 years, while rental inclusionary units are restricted to the applicable income level for a period not less than 55 years, including inclusionary units proposed as off-site rental units.

*Special Options for Ownership Developments:* An applicant for a residential ownership project may elect to provide all or a portion of the inclusionary units required for the residential project at affordable rent to lower income households rather than provide for-sale units. Fifteen percent of the total units must be affordable to lower incomes, with nine percent rented at an affordable rent to low income households and six percent rented at an affordable rent to very low income households. If the applicant proposes to provide rental units off-site, 40 percent of the off-site rental units must be affordable to very low-income households and 60 percent must be affordable to low-income households.

*Sales of Affordable Rental Units.* If the owner of the ownership project later determines to offer the affordable rental units in the project for sale at an affordable sales price, any subsequent

regulatory agreement shall include provisions for sale of the affordable units, as well as relocation benefits for tenants of the affordable rental units.

#### Development Allowances, Reductions, Adjustments and Waivers

In approving an inclusionary housing agreement, the city may, at its sole discretion, include one or more of the following allowances:

- Unit Size Reduction. The size of the required inclusionary units may be smaller than the market rate units.
- Interior Finishes. Inclusionary units may have different interior finishes than market rate units so long as the interior features are durable, of good quality and consistent with current state building code standards for new housing.
- Accessory Dwelling Units. Projects consisting of single-family detached units may meet the inclusionary unit requirements by providing an accessory dwelling unit in accordance with the provisions of the city's accessory dwelling unit regulations on a one-for-one basis. Further:
- A developer of a project may petition the city council for a reduction, adjustment, or waiver of requirements based upon substantial evidence showing the absence of any reasonable relationship or nexus between the impact of the development and the inclusionary requirements.
- A project that has received approval for a tentative subdivision or parcel map, use permit or other discretionary approval and submits a new or revised application for the same property may petition for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously.

Because developers can receive density bonuses when they provide affordable housing, the cost to develop the below market rate units is offset by the additional density – along with concessions and waivers – received. Table 4 above documents the achieved density of all recent multifamily projects developed since 2017. In addition to illustrating that average densities are being achieved well above zoned density, this table also notes that projects have proposed larger percentages of affordable units than required by the City's inclusionary requirements, in part because of the additional densities achieved through a density bonus.

Although the ordinance calls for the setting of in-lieu fees, the City has not established in-lieu fees at this time. As a result, the Implementation Plan includes a program (6.1.c) to ~~assess~~ the feasibility of a fee. The Implementation Plan also includes AFFH Action 2.2, which is an evaluation and adjustment the city's inclusionary and density bonus programs to allow a smaller unit contribution (<15%), larger density bonuses, and/or increased city support in exchange for affordable units that address the needs of under-represented residents with disproportionate housing needs (e.g., child-friendly developments with day care on site for single parents, and 3-4 bedroom units for larger families).

Based on the research and many years of implementation, the City's inclusionary program is not a constraint to development. As noted above, ~~D~~developers have a variety of options for complying with the provisions and will use the density ~~bonus – which requires a certain level of affordability anyway – to obtain additional concessions and waivers.~~ bonus to offset costs associated with providing affordable units.

## 5.6 ON- AND OFF-SITE IMPROVEMENTS

The standards for on- and off-site improvements contained in the Subdivision Ordinance do not constitute a constraint to housing development. They are no more restrictive than those typically found in other Contra Costa County cities, like Pleasant Hill. Indeed, in some cases, less restrictive standards exist in Lafayette since sidewalks with full curb and gutters are not always required for most types of residential subdivisions. Standards for improvements to new developments, such as road widths or fire truck turnarounds, are not controlled by the City, but are under the jurisdiction of other agencies like the Contra Costa County Fire Protection District (CCCFPD). While these standards may impede the maximum potential development, these improvements constitute critical public safety infrastructure and are not considered a governmental constraint on development. Additionally, Sewer and water connection fees are established by the Contra Costa Central Sanitary District and the East Bay Municipal Utilities District and are therefore similar to fees in other jurisdictions served by these districts in the County.

## 5.7 LOT AREA AND COVERAGE

Existing parcels in the multifamily zoning districts (MRA, MRB, MRO) are typically modest in area and cannot accommodate many residential units. The minimum lot area requirement for new lots (10,000 SF) was put in place to ensure that newly zoned multifamily parcels would be large enough to accommodate projects of considerable size and density. However, this requirement does not apply to the development of multifamily projects on existing lots less than 10,000 SF in area and is therefore not a constraint. Additionally, in the MRA district, the City allows for increases in floor area ratio (FAR) to a maximum of 0.40 on lots that are under 20,000 SF in area if it finds that the lot cannot be reasonably merged with an adjacent parcel. This exception removes the lot area constraint for parcels that are identified as being able to support new development. In the MRO district, a FAR of 0.50 is allowed for residential projects. The City's Downtown is built out and few new lots are being created in this area as there is a lack of vacant land available to do so. Given that the City has established standards for exceptions for existing parcels that do not meet the minimum lot area requirements, lot area and coverage requirements are not a constraint to development.

## 5.8 HOUSING TYPES

The kinds of housing allowed by-right or with a permit in zoning districts as well as the overall land area covered by those zoning districts can affect the ability to provide a range of housing types that meet the needs of the current and future population. The City has analyzed the types of housing allowed in its zoning districts and a summary of those findings are provided in Table 5. Two kinds of housing that are not currently permitted in the City include farmworker housing and low barrier navigation centers. While these housing types are not currently allowed, the Element includes a program to remove this constraint. Beyond these two cases, the City has limited restrictions on the housing types permitted in its zoning districts.

Table 5: Zoning for Different Housing Types

Housing Types	Zoning Districts Where Permitted
<b>Multifamily Rental Housing</b>	RB, C, SRB, C-1, APO, D-1, MRA, MRB, MRO, MRT, MRP
<b>Housing for Agricultural Employees</b>	This type of residential land use is not currently permitted in the City, but included in this Element is a program to incorporate this use into the Zoning Code to allow farmworker housing in the following zoning districts:  <i>6 people or fewer:</i> R-6, R-10, R-12, R-15, R-20, R-40, R-65, R-100, LR-10, LR-5 <i>7-12 people or 36 beds:</i> A-2, A-3, LR-10, LR-5
<b>Emergency Shelters</b>	C-1
<b>Low Barrier Navigation Centers</b>	This type of residential land use is not currently permitted in the City, but included in this Element is a program to incorporate this use into the Zoning Code to allow low barrier navigation centers in the following zoning districts: RB, C, SRB, C-1, APO, D-1, MRA, MRB, MRO, MRT, MRP
<b>Transitional Housing</b>	All zoning districts
<b>Supportive Housing</b>	All zoning districts
<b>Single-Room Occupancy Units</b>	All zoning districts
<b>Manufactured Homes</b>	All zoning districts
<b>Mobile Home Parks</b>	There are not currently any mobile home parks in the City and future development of this housing type is unlikely given the amount of land needed for this residential use and the cost of land in Lafayette.
<b>Accessory Dwelling Units</b>	All zoning districts

### 5.9 ACCESSORY DWELLING UNITS

Title 6, Chapter 6-5, Article 3 of the Municipal Code sets forth regulations for accessory dwelling units in single-family residential and multifamily zoning districts. The accessory dwelling unit ordinance was updated in 2018 and 2020 to conform to several changes to California legislation relating to accessory dwelling units, including: S.B. 1069 (Chapter 720, Statutes of 2016) amending Government Code § 65582.1, 65583.1, 65589.4, 65852.150, 65852.2, and 66412.2, AB 2299 (Chapter 735, Statutes of 2016) amending Government Code §65852.2, and AB 2406 (Chapter 755, Statutes of 2016) adding Government Code §65852.22.

Pursuant to State law, the City’s development standards allow one accessory dwelling unit and one junior per parcel on single-family residential lots provided that certain conditions are met. These include that the accessory dwelling unit:

- does not have more than two bedrooms
- is between 250 sq. ft. and 1,200 sq. ft.
- complies with all applicable building codes
- has side and rear setbacks of 4 ft.
- Does not exceed 17 ft. in height

- conforms to existing fire and other health and safety codes
- is owner-occupied or that the primary unit is owner-occupied

The City developed three classes of ADUs to help in expediting review of proposals. Class A ADUs are under 800 sq. ft. in area and Class B ADUs are constructed within the footprint of an existing structure; both of these classes require only an over-the-counter review, thus reducing the time and expense previously required when similar projects would go through discretionary review. Additionally, the City exempts ADUs under 750 sq. ft. from development impact fees and waives deed restriction recordation fees and address assignment application fees for these units. The City's ADU standards are designed to promote the development of new ADUs and do not create a constraint on development.

## 5.10 DESIGN REVIEW

Lafayette adopted its Residential Design Review Guidelines on July 30, 1990. The stated goals of the design review process are to 1) minimize the visibility of structures and other improvements and to protect views to the hills, 2) retain natural features of the land, and 3) protect vulnerable habitat and native vegetation. The guidelines set forth criteria for site and building design and landscaping, with emphasis on hillside and ridgeline areas and are made available online for review prior to proposal submittal. The City's Residential Design Review Guidelines do not represent a significant constraint to housing production in Lafayette (see Attachment B).

In 2000 and 2002, the Lafayette City Council approved amendments to the zoning ordinance requiring design review of structures exceeding 6,000 in gross floor area and structures exceeding 17 feet in height. The stated intent of these regulations is to minimize loss of light and privacy to neighbors, to minimize the out-of-scale appearance of large structures, to maintain the existing character of established residential neighborhoods, and to permit reasonable expansion of existing structures. To streamline the development review process, the City also amended the zoning ordinance to grant the zoning administrator authority to act on most design review applications or refer them to the Design Review Commission.

In 2014, the City adopted Design Guidelines for the Downtown. The Guidelines support the Downtown Specific Plan and the General Plan and outline the City's design objectives for Downtown development. The purpose of the Guidelines is to maintain and enhance the City's informal, small-town character. The Guidelines hold values of the town, which include high quality design and construction and sensitivity to character and place.

Recent changes to State law have limited the scope of Design Review for local jurisdictions. SB 330 took effect January 1, 2020 and was aimed at increasing residential unit development, protecting existing housing inventory, and expediting permit processing. This law modified existing legislation, such as the Permit Streamlining Act and the Housing Accountability Act and instituted the Housing Crisis Act of 2019. Under this legislation, municipal and county agencies are restricted in the local ordinances and policies that can be applied to review of housing development proposals. One such restriction is review of housing developments against objective design standards that are uniform in their application. In 2017, the City adopted objective design standards for Downtown development and plans to continue development of objective standards as part of this Housing Element. The objective criteria laid out in these standards remove constraints on development and aid in streamlining housing production and reducing overall development costs. The City regularly conducts reviews for ongoing compliance for compliance with State Density Bonus law and the Housing Accountability Act.



Per SB 330, housing developers may submit a “preliminary application” for a residential development project. Submittal of a preliminary application allows a developer to provide a specific subset of information on the proposed housing development before providing the full amount of information required by the local government for a housing development application. Submittal of the preliminary application secures the applicable development standards and fees adopted at that time. The project is considered vested and all fees and standards are frozen, unless the project changes substantially.

The City of Lafayette has developed a preliminary application form consistent with SB 330. In addition, the bill limits the application review process to 30 days, for projects less than 150 units, and 60 days, for projects greater than 150 units, and no more than five total public hearings, including planning commission, design review, and city council.

SB 330 also prohibits cities and counties from enacting a development policy, standard, or condition that would have the effect of: (A) changing the land use designation or zoning to a less intensive use or reducing the intensity of land use within an existing zoning district below what was allowed on January 1, 2018; (B) imposing or enforcing a moratorium on housing development; (C) imposing or enforcing new design standards established on or after January 1, 2020, that are not objective design standards; or (D) establishing or implementing certain limits on the number of permits issued.

#### 5.11 ANNEXATION STANDARDS

Although the City of Lafayette does not expect to annex land within the planning period, an important land use regulation affecting development in Lafayette, as well as other cities in Contra Costa County, is the policy adopted by the Contra Costa County Local Agency Formation Commission (LAFCO) regarding annexation proposals. The standards and procedures set forth in the LAFCO policy affect its review of requests for City annexation of lands proposed for development. The application of these standards will affect development of land outside existing City limits.

Currently, the Lafayette's Sphere of Influence does not extend substantially beyond the City limits. It is not expected that the existing Sphere of Influence area will be altered to include vacant lands that would yield many more developable lots; therefore, annexation standards are not a constraint to development in Lafayette.

#### 5.12 WILDFIRE SAFETY REQUIREMENTS

Recent State laws have imposed more intensive local planning efforts to mitigate wildfire hazards in communities identified as being at an elevated risk for wildfires. As previously stated, a large proportion of the City is designated as Very High Fire Hazard Severity Zones, which necessitate additional planning and building requirements for housing development in these areas. Such requirements might include retrofits to existing structures, the use of fire-resistive materials in new construction. While State law requires jurisdictions to adopt local ordinances for wildfire planning, many of these requirements have been implemented through the California building and residential codes, which are the standards used for development in Lafayette. Given that wildfire mitigation requirements are imposed throughout the State, these safety measures are not a constraint to development.

### 5.13 AFFIRMATIVELY FURTHERING FAIR HOUSING

In January 2017, Assembly Bill 686 (AB 686) introduced an obligation to affirmatively further fair housing (AFFH) into California state law. AB 686 defined “affirmatively further fair housing” to mean “taking meaningful actions, in addition to combat discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity” for persons of color, persons with disabilities, and other protected classes.

AB 686 requires that all Housing Elements prepared on or after January 1, 2021, assess fair housing through the following components:

- An assessment of fair housing within the jurisdiction that includes the following components: a summary of fair housing issues and assessment of the City’s fair housing enforcement and outreach capacity; an analysis of segregation patterns and disparities in access to opportunities; an assessment of contributing factors; and identification and prioritization of fair housing goals and actions.
- A sites inventory that accommodates all income levels of the City’s share of the RHNA that also serves the purpose of furthering more integrated and balanced living patterns.
- Responsive housing programs that affirmatively further fair housing, promote housing opportunities throughout the community for protected classes, and address contributing factors identified in the assessment of fair housing.
- The analysis must address patterns at a regional and local level and trends in patterns over time. This analysis compares the locality at a county level for the purposes of promoting more inclusive communities.

The analysis completed for this work includes a series of actions to address fair housing concerns in the community. The complete analysis is found in Appendix D.

### 5.14 CONDOMINIUM CONVERSIONS

The conversion of apartment units to condominium units was a major regional problem identified by the Association of Bay Area Governments in the late 1970's. In response, the Lafayette City Council adopted a Condominium Conversion Ordinance in 1979 requiring an evaluation of each potential conversion in the City. The Ordinance provided that the City should deny a conversion if the evaluation revealed that the conversion would be incompatible with the goals and policies of the General Plan.

In 1985, the City Council adopted amendments to the Ordinance (Chapter 32 of Title 6 of the Municipal Code) to allow a maximum of 12 such conversions annually. The provisions also provide for a review of this limitation in order to prevent adverse effects on the City's existing rental stock. The ordinance sets forth a general policy that units appropriate for conversion should be higher-quality units, the loss of which would have the least effect on low- and moderate-income tenants. Thus, while these restrictions place limitations on conversion of rental units to condominiums, they have the beneficial effect of preserving the diversity of the City's housing stock.

## 5.15 APPLICATION AND DEVELOPMENT FEES

Fees are tied to the City's actual costs of providing necessary services such as project review and plan checking fees or are set to recover the cost of needed infrastructure. The current fee schedule as well as the supporting nexus studies are made available online for review. These fees are reviewed and adjusted periodically; Lafayette's fees were last adjusted in 2008 and 2009, but the City plans to undertake a nexus study update. Planning fees are a small percentage of the total fees charged so even if the fees are increased, they would not constitute a deterrent to development.

[To cover the costs associated with review and processing of development applications, the City charges application fees for various types of discretionary applications. These fees are based upon the average staff time needed to process the application and charged as a flat fee. Fees for multiple requests, such as Design Review and Tree permits, are additive at a reduced rate to cover the incremental additional staff time needed to review materials beyond the primary application.](#)

Table 6: Discretionary Application Fees

Item	Fee
Hourly Rate (per hour)	\$175
Accessory Dwelling Unit (Zoning Administrator)	\$700
Address Assignment / Change of Address	\$525
Appeals or Reconsiderations	75% of application fee
Appeal of Staff Determination	\$175
Building & Grading Permit Surcharge (County)	50% of permit fee
Certificate of Compliance	\$3,650
Design Review: Major (new houses, houses > 6,000 sq. ft. and new commercial buildings)	\$5,700
Design Review: Minor (all projects not classified as "Major")	\$3,800
Design Review Commission Study Session <sup>1</sup>	\$700
Environmental Review – by consultant (IS, ND, MND, EIR)	15% admin fee
Environmental Review – by staff (IS, ND, MND, EIR). Billed at hourly rate.	\$2,625 deposit
General Plan Amendment / Specific Plan Amendment	\$9,500
Grading (Design Review Commission and/or Planning Commission)	\$3,800
Hillside Development Permit: Major (in/within 100' of ridgeline setback or vacant lot in HOD; DRC & PC review) <sup>2</sup>	\$5,700
Hillside Development Permit: Minor (non-ridgeline in the HOD, non-vacant property; review only by the DRC)	\$3,800
Major Subdivision (Tract)	\$8,750 + \$200/lot
Major Subdivision (Tract) in the Hillside Overlay District	\$12,250 + \$200/lot
Minor Subdivision <sup>3</sup>	\$5,250 + \$200/lot
Minor Subdivision in the Hillside Overlay District	\$8,750 + \$200/lot
Notice of Exemption / Notice of Determination	\$175
Pre-Application Meeting (no charge for 1 <sup>st</sup> meeting)	\$175
Re-Approval (PC or DRC) <sup>4</sup>	\$875
Re-Approval (ZA) <sup>4</sup>	\$525
Rezoning	\$9,500 + \$100/acre
SB 9 New Unit	\$2,250
SB 9 Urban Lot Split	\$2,250
Stormwater Quality Implementation	\$175

Stormwater Quality Control Plan	\$625
Tree Permit – Category I (not associated with a development application)	\$350
Tree Permit – Category II (associated with a development application)	\$350
Tree Permit Appeal	\$350
Variance or Exception (Design Review or Planning Commission or City Council)	\$4,375
Variance or Exception (Zoning Administrator)	\$1,750
Waste Management Review	\$80
Zoning Administrator - No Hearing (hillside development, design review, grading permits)	\$700
Zoning Administrator Review and Determination	\$350
Zoning Administrator - Hearing (hillside development, design review, grading permits)	\$2,250

The City requires payment of different fees as a condition of development approval.

Table 7: Development Impact Fees for Residential Development

<b>Drainage</b>	-	-
Drainage Impact (per sq. ft. of impervious surface added) (effective 07/25/2009)	\$0.52	per sq. ft.
Drainage Impact Administration Fee (effective 07/25/2009)	\$0.03	per sq. ft.
<b>Parkland Dedication Fees (revision effective 7/1/2022)</b>	-	-
(1) Additions	\$ 2.31	per unit
(2) Single-Family Residence	\$ 11,664.00	per unit
(3) Duplex; Townhouse	\$ 8,099.00	per unit
(4) Apartments / Condominium	\$ 7,051.00	per unit
(5) Mobile Home	\$ 6,888.00	per unit
(6) Second Unit (Accessory Dwelling Units)	\$ 3,338.00	per unit
<b>Park Facilities Fees (revision effective 7/1/2022)</b>	-	-
(1) Additions	\$ 2.12	per sq. ft.
(2) Single-Family Residence	\$ 9,274.00	per unit
(3) Duplex; Townhouse	\$ 6,447.00	per unit
(4) Apartments / Condominium	\$ 5,612.00	per unit
(5) Mobile Home	\$ 5,483.00	per unit
(6) Second Unit (Accessory Dwelling Unit)	\$ 3,020.00	per unit
<b>Park Fees Program Administration (effective 07/01/2021)</b>	1%	Parkland + Park Facilities
<b>Walkways (effective 07/25/2009)</b>	-	-
(1) Single-Family Residence	\$ 1,076.22	per unit
(2) Duplex; Townhouse	\$ 747.27	per unit
(3) Apartments / Condominium	\$ 650.59	per unit
(4) Mobile Homes	\$ 635.56	per unit
(5) Second Units	\$ 385.19	per unit

<b>Walkways Fees Program Administration (effective 07/25/2009)</b>	-	-
(1) Single-Family Residence	\$ 53.81	per unit
(2) Duplex; Townhouse	\$ 37.36	per unit
(3) Apartments / Condominium	\$ 32.53	per unit
(4) Mobile Homes	\$ 31.78	per unit
(5) Second Units	\$ 19.26	per unit
<b>Lamorinda Sub-Regional Transportation (effective 12/01/2019)</b>	-	-
(1) Single-Family Residential Use: Individual Unit; Duet w/ One Shared Wall	\$ 8,848.70	per unit
(2) Multiple-Family Residential; Second Unit, Apartments; Condominium; Townhouse	\$ 6,193.72	per unit
(3) Multi-Family Residential – Transit Oriented Development	\$ 3,283.10	per unit
(4) Commercial; Office; Retail; or Industrial use	\$ 9.46	per sq. ft. GFA
(5) Other non-residential uses not identified in above (per peak hour trip generated)	\$ 973.86	per peak hour trip
<b>Parking Development Payment (effective 01/15/2006)</b>	-	-
Structured Parking in Downtown Core (Mountain View Drive to First Street) - (per space)	\$ 36,900.00	per space
Surface Parking in East End (First to Pleasant Hill Road) & West End (Risa to Mountain View Drive) - (per space)	\$ 19,200.00	per space
<b>Public Art (in-lieu fee)</b>	<b>1% of total project cost</b>	<b>1% of total project cost</b>

Attachment C lists Lafayette’s permit, development, and impact fees and provides a comparison of fees for other cities in Contra Costa County. Based on a survey of other cities, Lafayette’s fee levels for developers are midway in the range of fees charged by neighboring cities. Total estimated fees for construction of a 3,100 square foot single-family home are \$68,946. It should be noted that 70% of this total is from development fees imposed by agencies outside the City’s control, such as the Contra Costa County Central Sanitary District and the School District. Since fees, particularly development impact fees, are set to recover the cost of needed infrastructure so that new development can proceed while maintaining desired public service levels, it can be concluded that the City’s existing fee levels are appropriate and do not generally constitute an undue governmental constraint on housing production.

However, there may be an imbalance in the proportion of City fees paid across different housing types (single family, small multifamily, and large multifamily developments). Though the cost per unit was lowest for large multifamily projects, the proportion of City impact fees to other fees is significantly higher for these projects. This disparity across types of developments may be a constraint to development and the City has incorporated a program to amend its fee structure to reduce the cost burden of fees for multifamily development by calculating fees on a per-square-foot basis rather than per unit.

Table 8: Development Fee Analysis Summary

Single Family		Multifamily - Large		Multifamily - Small	
Unit S.F.	3100	Unit S.F.	800	Unit S.F.	800
# of Units	1	# of Units	100	# of Units	10
Cost Per Unit	\$68,946.25	Cost Per Unit	\$31,320.50	Cost Per Unit	\$37,096.95
Planning and Permit %	30%	Planning and Permit %	3%	Planning and Permit %	8%
Impact Fee %	70%	Impact Fee %	97%	Impact Fee %	92%

The Contra Costa County Collaborative (“C4”), comprised of MIG and Veronica Tam Consultants, conducted a review of fees levied on housing projects for all of the jurisdictions in Contra Costa County. According to their analysis, the City of Lafayette’s fees are consistent with the fees of other jurisdictions. The following table summarizes this information.

Table 9: Example Development Fees for Contra Costa County Jurisdictions

Jurisdiction	Single Family Residential	Multifamily - Large	Multifamily - Small
Antioch	\$22,146	\$8,139	\$10,395
Brentwood	\$113,159	\$47,663	\$49,414
Clayton	\$39,160	\$16,692	\$24,914
Concord	\$47,248	\$17,658	\$23,726
Danville	\$62,489	\$33,369	\$34,708
El Cerrito	\$57,356	\$29,278	\$44,073
Hercules	\$64,065	\$29,674	\$31,681
<b>Lafayette</b>	<b>\$68,946</b>	<b>\$31,320</b>	<b>\$37,097</b>
Martinez	\$58,702	\$24,688	\$27,121
Moraga	\$85,110	\$41,017	\$43,494
Oakley	\$70,088	\$35,722	\$32,887
Orinda	\$64,628	\$33,480	\$37,614
Pinole	\$56,666	\$22,774	\$21,698
Pittsburg	\$60,830	\$31,982	\$33,140
Pleasant Hill	\$30,928	\$16,704	\$17,748
Richmond	\$45,694	\$23,011	\$23,834
San Pablo	\$29,499	\$6,741	\$8,245
San Ramon	\$100,496	\$33,188	\$34,012
Walnut Creek	\$31,005	\$15,076	\$16,865
<b>Average Cost</b>	<b>\$58,327</b>	<b>\$26,220</b>	<b>\$29,088</b>
<b>Median Cost</b>	<b>\$58,702</b>	<b>\$29,278</b>	<b>\$31,681</b>

Source: MIG/VTA, Contra Costa County Collaborative, May 2022

## 5.16 BUILDING AND MUNICIPAL CODES

Building codes and enforcement do not constrain housing development in Lafayette as the City of Lafayette does not maintain its own Building Department. The Contra Costa County Building Inspection Department provides building inspection and building code enforcement services to the City. New construction is required to meet the requirements of the California Building Code (CBC) and California Residential Code (CRC), which are updated every three years by the California Building Standards Commission. [There are no local amendments to the building code.](#)

The County Building Department inspects housing units when an owner seeks a permit to build or when a specific complaint relating to the health and safety of the building occupants is received. In conformance with the CBC, the County requires new construction to meet all building codes in effect today but does not typically require previous work that was completed with the necessary permits to comply CBC with current standards.

The City’s code enforcement officer meets regularly with the City Planning Department and the County’s code enforcement division to coordinate tasks. A summary of code enforcement activities in 2021 is listed in Table 7. The City attempts to strike a balance between preventing blighted conditions and reasonable use and maintenance of a property. The code enforcement officer serves largely as an information officer, providing the homeowners with copies of the City’s regulations and advising them of ways to bring their properties into compliance.

Table 10: Year 2021 Code Violation Complaints

Month	Trim Notices re: veg. & trees	Building/Zoning	Fire Hazard	Graffiti	Landscape Maintenance	Miscellaneous	Noise	Other Violation(s)	Overgrown Vegetation/Weeds/Trees	Parking/Storage	Property Violations	Spill/Illicit Discharge	Tree/Brush Maintenance	Grand Total
January	0	6	1	0	0	2	0	0	1	4	1	0	3	18
February	0	9	0	0	0	6	0	8	2	3	4	0	3	35
March	0	5	0	0	0	1	0	8	6	5	4	0	4	33
April	0	6	2	0	0	1	0	3	4	1	7	0	4	28
May	0	7	8	0	0	1	0	7	3	2	4	0	4	36
June	0	4	6	0	0	1	0	3	13	1	4	0	5	37
July	0	7	8	0	0	4	0	6	9	5	7	0	4	50
August	1	9	6	0	0	9	0	1	7	3	6	0	2	44
September	1	2	9	1	0	1	1	5	13	5	6	0	1	45
October	0	11	11	1	0	2	4	12	9	11	8	0	1	70
November	0	0	0	0	1	0	3	2	3	4	4	1	1	19
December	0	5	0	0	0	0	1	0	4	1	0	0	0	0
<b>Total</b>	<b>2</b>	<b>71</b>	<b>51</b>	<b>2</b>	<b>1</b>	<b>28</b>	<b>9</b>	<b>55</b>	<b>74</b>	<b>45</b>	<b>55</b>	<b>1</b>	<b>32</b>	<b>415</b>

### 5.17 PROCESSING TIME

In an effort to meet the affordable housing goals, SB 35 requires cities and counties that have not made sufficient progress towards their state-mandated affordable housing goals to streamline the review and approval of certain qualifying affordable housing projects through a ministerial process. SB 35 requires cities and counties to streamline review and approval of eligible affordable housing projects through a ministerial approval process, exempting such projects from environmental review under the California Environmental Quality Act (“CEQA”). If it is determined that the project is eligible, SB 35 specifies the timeframes within which the jurisdiction must make a final decision on the application (between 90-180 days). To further streamline project review, this ministerial process also restricts

design review of the project to objective design standards. [While there are currently no locally adopted written procedures specific to SB 35, Lafayette follows State law and local procedures will be developed as part of Program 2.1.a.](#)

For projects that do not qualify for permit streamlining under SB 35, Lafayette’s zoning code stipulates that residential land uses are permitted by right in each of its residential zoning districts. There are ten single-family zoning districts in which single family residences are allowed by right (R-6, R-10, R-12, R-15, R-20, R-40, R-65, R-100, LR-5, LR-10). Discretionary review by the City is required for new homes over 17 feet in height or over 6,000 square feet in area and for homes within the City’s hillside overlay district.

[Under the City’s municipal code, certain types of discretionary applications require review by specific hearing bodies. The Zoning Administrator is the lowest level of review for discretionary applications and has the authority to act on many kinds of applications. The City’s policy is to review projects at the lowest hearing body possible; however, certain applications require review by specific hearing bodies. Municipal Code Section 6-3611 “Types of incentives and concessions” outlines three tiers of incentives and concessions and the hearing body that is empowered to act on that request. For example, a request for reduced building setbacks or open space requires action by the Planning Commission. Because all of new residential development proposed in Lafayette in the past seven years has invoked the State Density Bonus Law for concessions and waivers, these projects have typically been reviewed by the Design Review Commission, Planning Commission, and City Council.](#)

[For all other housing developments, the City’s staff zoning administrator authority to act on all applications except those within the environmentally sensitive restricted ridgeline area. The zoning administrator may forward an application to the Design Review Commission or Planning Commission if they feel that level of review is warranted on a case-by-case basis. To provide greater certainty for non-Density Bonus projects, the City has included program 10.3.f to amend the zoning standards to more clearly identify the hearing bodies for certain requests.](#)

Duplexes and townhouses are permitted by right in two low-density multifamily zoning districts (D1, MRT). Higher density multi family is permitted by right in eight districts (MRA, MRB, MRO, MRP, C, C-1, SRB, RB). Design review approval is required for projects in the Downtown but may be reviewed by the City’s Zoning Administrator, Design Review Commission or Planning Commission. The time taken to process development applications affects housing costs, since interest on development loans must continue to be paid. The longer it takes for the development to be approved, the higher the overall project costs will be. The following are estimated processing times for residential development. The time to process residential developments does not constitute a constraint in Lafayette.



Table 11: Estimated Application Processing Times

Type of Approval or Permit	Processing Time	Approval Body
Building permit	Planning Department – 1 day to 1 week Building Department - 2 hours to 2 weeks	City staff Building Inspection
Variance	1-2 months	ZA, DRC or PC
Land use permit	3-4 months	PC
Design review – minor	1-2 months	ZA or DRC
Design review – major	3 months	PC
Minor subdivision	2-4 months	PC
Tract	4-8 months	PC
Rezoning	4-8 months	CC
General Plan Amendment	4-8 months	CC
Negative Declaration	2 months	PC
Environmental Impact Report	4-6 months	PC or CC

Note: DRC: Design Review Commission, PC: Planning Commission, CC: City Council

Below is a summary of the permit procedures for single-family and multifamily development:

1. Application submitted to the City of Lafayette
2. Staff review the application for completeness within 30 days
3. Schedule for public hearing with sufficient time for public noticing
  - a. Public hearings for all hearing bodies are held twice a month to reduce the downtime between hearings
4. Public hearings
  - a. Single family projects outside the Hillside Overlay District typically go to one or two hearings (approximately two months); single family projects on vacant parcels within the Hillside Overlay District typically go to two to four hearings (approximately three months)
  - b. Hearings for multifamily projects do not exceed five hearings
5. Two week appeal period
6. Planning review of construction drawings (approximately two weeks)
7. Building department review of construction drawings (approximately four weeks)

These processing times are comparable to the time taken for processing similar projects in surrounding cities. The following table shows the length of time taken to approve recent housing and commercial development applications in the Downtown. This table illustrates that the cumulative impact of various City-imposed reviews generally does not negatively impact the time it takes to move projects through the approval process.

Table 12: Processing Times for Selected Projects

Name of Project	Entitlement sought	Deemed complete	Approved	Time taken
Lafayette Lane	Minor Subdivision, Land Use Permit, Design Review	October 16, 2020	January 25, 2021	< 3 months
West End	Major Subdivision, Design Review	October 25, 2019	June 22, 2020	8 months
Madison Park	Design Review	March 4, 2020	February 22, 2021	11 months
Samantha Townhomes	Design Review	January 27, 2021	June 21, 2021	5 months
950 Hough Ave	Major Subdivision, Design Review	September 23, 2020	March 22, 2021	6 months
The Mill at Brown Ave	Major Subdivision, Design Review	October 24, 2018	March 25, 2019	6 months
Valley View	Minor Subdivision, Design Review	November 2, 2018	May 6, 2019	7 months

To further reduce the time taken to process and review discretionary applications, the City has implemented the following measures:

1. Objective design standards for new multifamily housing in the downtown establish clear criteria for project assessment
2. Providing all application forms, design guidelines, and relevant planning documents online
3. Conducting pre-application meetings between City staff and the property owner/developer at no cost to the applicant to discuss and resolve any problems associated with a proposed development
4. Scheduling informal study sessions with the Design Review Commission for a reduced fee prior to the filing of an application
5. Scheduling pre-application joint meetings of the City Council, Planning Commission and Design Review Commission for major projects at no cost to the applicant
6. Bottom-loading the approval process by allowing the zoning administrator to handle almost all discretionary applications (except those involving certain requests under State Density Bonus Law)

#### 5.18 INFRASTRUCTURE CONSTRAINTS

Despite the buildout figures mentioned earlier, there exist potentially significant constraints to increased housing development related to the adequacy of the City’s infrastructure. These include:

- The potable water system needs immediate and significant repair and upgrading. Leaks have been identified on several main water distribution lines and several others show signs of deterioration. This problem is being actively assessed by the East Bay Municipal Utility District, which owns and operates the system.
- The City’s storm drain system is aging, and portions of the system are in need of repair or replacement. Additionally, ~~because Lafayette was developed as a semi-rural city,~~ most of Lafayette’s drainage system consists of open ditches and creek tributaries as opposed to more formal storm

drain systems. Any new development that adds additional impervious surfaces will strain an already over-taxed storm drain system.

- Traffic congestion on arterials is a significant and worsening problem. Through-traffic during peak hours and during school pick-up and drop-off times are the predominant sources of traffic congestion. Given Lafayette's topography, roads often cannot be widened to accommodate additional traffic.
- Based on the City's Pavement Management System there is an ongoing \$3 million per year cost associated with maintaining the existing streets in a good condition.
- As future residential development occurs, greater demands will be placed on the existing pathway and sidewalk systems within the City. The City needs to expand the available pedestrian and bicyclist facilities available and has adopted a Vision Zero policy requiring greater access to these facilities and more facilities be built for active transportation users. An evaluation of the existing aging facilities and maintenance needs has not been done. However, the costs associated with maintaining and expanding these facilities is likely to be high and is currently unfunded
- The adoption of the Municipal Regional Discharge Permit (MRP 3.0) will be occurring in the next year and the requirements placed on the City for additional inspections, reporting and treatment of runoff from public streets will increase costs compared to historical past permits. The full impact of these new requirements is unknown at this time, but the City was already spending in excess of the stormwater fees collected in prior to MRP 3.0 and does not have a viable source or program to increase those fees. Most future residential development will occur Downtown, since the City is nearly built out and the majority of remaining vacant and underdeveloped parcels permitting higher-density residential uses are located there. The Downtown is ill equipped to handle a large increase in population since it has few amenities such as parks, trails, and other recreation facilities.
- Financial limitations are acute, since Lafayette is one of the few "no or low property tax" cities in California. The City also does not compete well for many State grants dedicated to infrastructure improvements because many grants favor disadvantaged communities, which does not include the City of Lafayette.
- The impacts of increasing enrollment in an already strained educational system that receives insufficient funding needs to be analyzed.
- The existing hilly topography and layout of the City creates the need to study several safety issues, such as seismic constraints, emergency evacuation plans, and the stability of soils. Many existing households have only one access route to and from their homes.
- Much of the City lies within the high fire hazard zone. The City's hilly terrain causes response times for the fire department to exceed minimum standards and makes the physical fighting of a wildfire more difficult.
- The City has the lowest per capita police staffing in Contra Costa County and steeply increasing costs for police. The City contracts with the County Sheriff's Office for Police services.
- Currently, the annual cost for maintaining the landscape and street lighting within the Core Area Maintenance District is \$408,000 of which only \$218,000 is funded by revenues from the District. The cost difference of \$180,000 is being funded from the City's General Fund. Unless a new funding source is realized, the added maintenance cost of any additional landscape and/or street lighting, or inflationary cost increase, must be funded by the City.

To address these issues, the City proposed a ballot measure in 2016 to introduce a new sales tax for general basic City services. However, this measure was unsuccessful and only received 42% of votes in favor.

Several infrastructure needs remain, some of which include:

- Replace and reconstruct storm drains in coordination with street reconstruction projects (ongoing).
- Continue implementation of the City's Downtown Street Improvement Master Plan, which includes planting new and replacing deficient street trees, improving, and irrigating street islands, and improving pedestrian walkways (ongoing).
- Procure land for new parks as sought in the Parks and Recreation Facilities Master Plan (ongoing).
- Procure land and provide convenient off-street parking lots in the Downtown area according to the City's master parking improvement plan (ongoing).

#### 5.19 TRANSITIONAL, SUPPORTIVE, AND FARMWORKER HOUSING

The City's Zoning Code does not define transitional housing or supportive housing as housing types that are any different from traditional residential dwellings. In September of 2014, the City processed a zoning text amendment specifically defining transitional and supportive housing in the Zoning Code, noting that these are treated as regular residential uses subject only to those restrictions that apply to other residential uses of the same type in the same zone and therefore removing any constraint to these land uses. Consistent with the State and federal law, the City treats transitional and supportive housing as a residential use subject only to those restrictions that apply to other residential uses of the same type in the same zone.

The City does not currently define farmworker housing as a specific land use in its Zoning Code, but has provided a program as part of its housing strategy to permit this use as required under the California Employee Housing Act to remove any constraints to production of this housing type.

#### 5.20 CONSTRAINTS ON HOUSING FOR PEOPLE WITH DISABILITIES

Both the Federal Fair Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) impose an affirmative duty on local governments to make reasonable accommodations (i.e., modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." This directive was further enhanced by adoption of Senate Bill 520 in 2002, which amended Housing Element law to require local governments to analyze constraints upon the development and maintenance of housing for persons with disabilities and to remove those constraints or provide reasonable accommodations for housing designed for persons with disabilities.

##### Reasonable Accommodation

"Reasonable accommodation" is defined as the act of making existing facilities used by residents readily accessible to and usable by individuals with disabilities, through the removal of constraints within the zoning, permit, and processing procedures. Reasonable accommodation was originally meant to provide accommodation for housing for people who needed accommodation on a personal basis.

However, the State has taken an expanded view and now considers reasonable accommodation to include land use, development improvements, and accessibility, as well as processing and administration. An accommodation is deemed “reasonable” if it does not impose “undue financial and administrative burdens” on the jurisdiction or require a “fundamental alteration in the nature” of its zoning scheme. In other words, the City must create a process to allow disabled persons or developers and operators of housing for people with disabilities to make a claim for relief from whatever constraints they assert exist.

In response to Senate Bill 520 and amended Housing Element law, a program was added to the Housing Element of the 2002 General Plan to analyze and determine whether there are constraints on the development, maintenance and improvement of housing intended for persons with disabilities, consistent with Senate Bill 520 enacted on January 1, 2002. The analysis must include an evaluation of existing land use controls, permit and processing procedures and building codes. If any constraints are found in these areas, the City will initiate actions to address these constraints, including removing the constraints or providing reasonable accommodation for housing intended for persons with disabilities.

Reasonable accommodation and modification are a process for making residential facilities readily accessible to and usable by individuals with disabilities through the removal of constraints within land use, zoning, permit, and processing procedures. There appear to be no overt constraints in the City’s codes or permit and processing procedures. The City adopted the latest California Building Standards Uniform Building Code, which includes provisions for accessibility and the zoning ordinance allows the establishment of group homes for up to six persons by right in single-family zoning districts. However, the City’s codes, as well as permit and processing procedures, also do not explicitly facilitate housing for persons with disabilities through special procedures or reduced requirements. The zoning ordinance contains occupancy standards that apply specifically to unrelated adults and not to families. Residential uses on the ground floor in two commercial districts are not allowed and the parking ordinance does not provide for a reduction in parking for special needs housing. Although a variance or land use permit may be granted to overcome these limitations, procedures to process these permits typically require the filing of an application and the filing of fees.

Upon review of the City’s codes and permit and processing procedures and review of guidance from the Attorney General and the California Department of Housing and Community Development, the City determined that a reasonable accommodation ordinance is an appropriate way to implement the provisions of the FHA and FEHA. As illustrated in the ordinance adopted by the City Council in March 2006, reasonable accommodation requests are to be reviewed at a staff level by the Zoning Administrator.

If the request is *de minimus* in nature, the Zoning Administrator may issue a reasonable accommodation permit without holding a hearing. Requests for reasonable accommodation may include yard encroachments for ramps and other accessibility improvements, hardscape additions that result in noncompliance with required landscaping or open space provisions, and reduced parking where the disability clearly limits the number of persons operating vehicles. Prior to approving a reasonable accommodation request, the Zoning Administrator must make findings related to special need, potential impact on surrounding uses, and whether the requested modification would require a fundamental alteration in the nature or effect of the city’s land use and zoning ordinances, programs or policies. The Zoning Administrator must act on the request within 30 days of receiving a complete application.-

### 6-3407 - Specific findings required.

In making a determination regarding the reasonableness of a requested modification, the following factors shall be considered:

- (a) Special needs created by the disability;
- (b) Potential benefit that can be accomplished by the requested modification;
- (c) Potential impact on surrounding uses;
- (d) Physical attributes of and any proposed changes to the subject property and structures;
- (e) Alternatives which may provide an equivalent level of benefit;
- (f) Whether the requested modification would impose an undue financial or administrative burden on the city;
- (g) Whether the requested modification would require a fundamental alteration in the nature or effect of the city's land use and zoning ordinances, programs or policies;
- (h) Whether the modification would create a "direct threat," which is a significant risk to the health or safety of others, that cannot be eliminated or reduced to an acceptable level by further modification of the city's policies, practices, or procedures; and
- (i) Whether the requested modification is consistent with the Federal Americans with Disabilities Act, the Federal Fair Housing Act and the California Fair Employment and Housing Act.

Although a reasonable accommodation request could not include exemption from the requirement for a land use permit if one were required, an applicant could request accommodation in completing application forms or request an alternate time for a public hearing. For example, a disabled person wanting to establish a group home for more than six disabled persons would still be required to obtain use permit approval by the Planning Commission. If the applicant cannot drive or their caregiver cannot drive after dark, the applicant cannot request exemption from the land use permit process, but the applicant can request transportation to the evening meeting or request that the meeting occur before sunset so the caregiver can drive them. Given the modified arrangements available to apply for a reasonable accommodation request, the application process is not a governmental constraint.

Reasonable accommodation was originally meant to provide accommodation for housing for people who needed accommodation on a personal basis. To address the new expanded view, section 6-3401, Purpose, is revised as follows, "by providing reasonable accommodation in the application of its land use and zoning regulations and reasonable modification in a policy, practice, or procedure for housing designed for occupancy by qualified persons with disabilities seeking fair access to housing."

### Definition of "Family"

With respect to the definition of "family," the City's outdated municipal code contains the following definition:

- 6-323 - Family.

"Family" means (a) an individual, (b) two or more persons related by blood, marriage or legal adoption, or (c) a group of not more than five persons, excluding servants, who are not related by blood, marriage or legal adoption, living together as a single nonprofit housekeeping unit in a dwelling unit, as distinguished from a hotel, club, fraternity or sorority house, dormitory or boarding house. A family includes necessary servants.

(Ord. 221 § 4 (part), 1980)

While this Housing Element includes a program (10.3.e) to correct this definition to be consistent with Federal and State laws, there are no current zoning and land uses processes or requirements that rely on the outdated definition of family that are constraints on housing for persons with disabilities, such as limits on unrelated persons.

In addition, group homes of seven or more persons are not specifically allowed in the City, which is a constraint for persons with disabilities in group homes settings. As such, the implementation plan includes program 7.1.e to adopt zoning code amendments to allow such developments as permitted uses in districts where residential is allowed.

### 5.21 LOT CONSOLIDATION

The City incentivizes the consolidation of lots for the development of housing, primarily through reviewing lot mergers through a ministerial process. This process reduces the time and effort required to combine lots for a development process. Given that many of the largest parcels in the downtown have already been redeveloped, most new development will require the consolidation of multiple lots, which the City aims to streamline to promote the production of housing in Lafayette. Several recent residential developments have combined smaller parcels to create a more developable lot. Of the pipeline projects identified in the housing inventory, the following developments included lot consolidations:

Table 13: Recent Development Projects Involving Lot Consolidation

Project Name	Pre-Project Number of Parcels	Number of Units	Pre-Project Land Uses	Status
The Mill at Brown Ave	2	13	Gas Station/Auto Repair	Under construction
Samantha Townhomes	3	12	Vacant	Entitled; pre-construction
The Brant	3	66	Restaurant, Office Building, Auto Repair and Parking	Under construction
The Woodbury	4	56	Shuttered motel	Complete and occupied
Woodbury Highlands	2	99	Offices complex and Parking	Under construction
Lafayette Lane	2	166	Office Complex and Parking	Entitled; pre-construction
Lynx/Schadek	4	9	Construction Office and Parking	Entitled; pre-construction
Madison Park	2	71	Residential Units Partially Converted to Office/Service and Parking	Entitled; pre-construction

Other projects that are not yet in the pipeline but have initiated the development process include the 42-unit Valley View Apartments (3 lots) and Oak Hill Road (3 lots). As part of its efforts to further incentivize lot consolidation for new housing, the City will consider waiving lot merger processing fees for multifamily projects; this has been added as a new implementation program.

## 5.22 PARKING

Parking has been cited as a key consideration in development feasibility in the production of new housing. In 2018, the City updated its parking code to develop creative ways to create more public parking, more shared parking, reduce parking each project must produce, and to accommodate parking as part of multifamily residential development. The City’s previous parking standards for multifamily projects were comparable to the standards in neighboring jurisdictions but have since been revised to reduce the overall parking requirements, as shown in the table below.

Table 14: Previous and Current Parking Requirements for Multifamily Housing

Unit Size	Previous Requirement	Current Requirement
1 Bedroom	1.2 spaces	1.0 spaces
2 Bedroom	1.5 spaces	1.2 spaces
3+ Bedroom	2 spaces	1.5 spaces

In addition to the reduction in required parking for new developments, the Off-Street Parking Ordinance update included an entire section dedicated to reductions and exceptions to these parking requirements. Reductions and exceptions may be granted through implementation of the Parking Management Strategy mitigations, which include offering shared or public parking, proximity to transit or publicly available car sharing services, and other exceptions. Although not cited specifically in the code, the City has and will continue to allow for the use of alternative parking arrangements and has approved the installation of a hydraulic lift system that stacks cars in an apartment complex as well as tandem parking spaces.

In recent years, several proposed senior housing projects have illustrated the unique needs of these types of developments – needs that make the strict application of certain residential zoning controls problematic. Seniors tend to drive less than their younger counterparts, and they typically do not need (or want) as much living space as is found in family housing types. As a consequence, residential parking requirements may be too onerous for a senior development, and the smaller unit sizes increase the density of a project such that it may conflict with existing zoning requirements. In recognizing these unique needs, the City adopted a Senior Housing Overlay zone – with reduced parking standards and increased density, among other things -- to allow senior housing developments that are truly reflective of their resident populations.

In the 2022, the State passed AB 2097, which prohibits the requirement of parking minimums within a half-mile of transit. Lafayette’s BART station is one of the eligible transit stations around which the City can no longer require a minimum amount of parking for new development. Much of the City’s downtown and the opportunity sites identified to accommodate the City’s RHNA fall within this half-mile radius, as shown below in Figure 2. As part of its Housing Element, the City has added a program to assess the need for additional provisions within this ordinance to further reduce parking requirements for other types of housing developments, such as affordable housing incorporate the provisions under AB 2097 into the Off-Street Parking ordinance. While the City and State have taken steps to address the cost implications of parking on development feasibility by reducing the amount of required parking, the Lafayette market calls for parking as potential buyers are less likely to buy or rent a unit that does not come with dedicated parking. Though parking is sought after in this community, parking requirements are not a governmental constraint on development given these various changes to reduce the City’s parking requirements for new multifamily development.



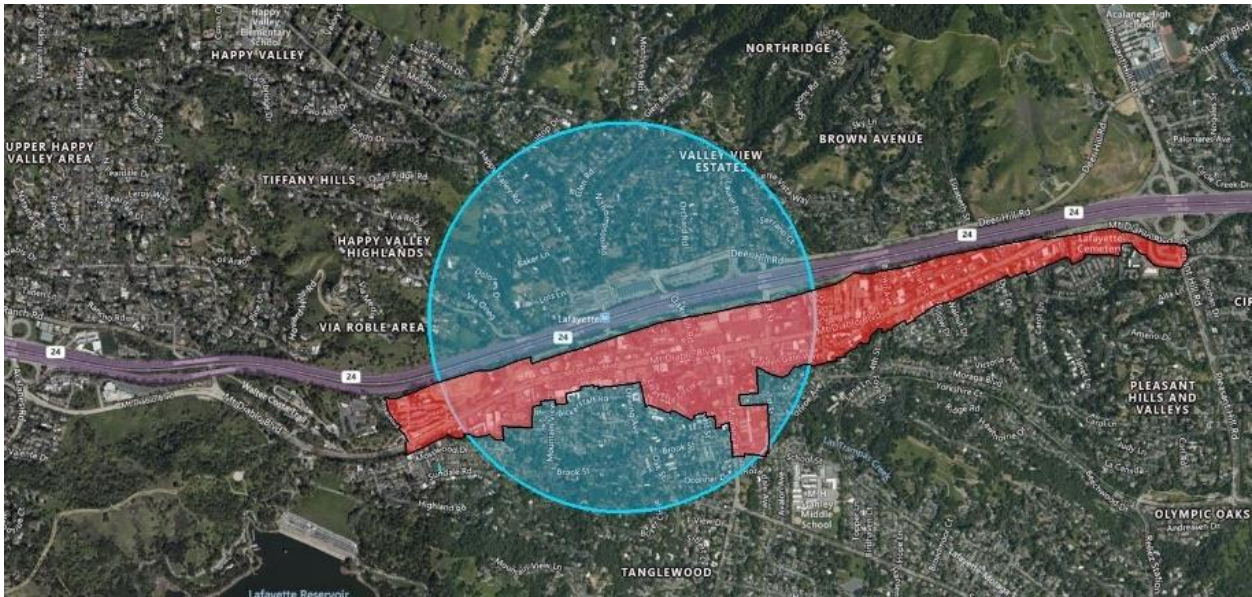


Figure 2: Half-mile radius from Lafayette BART station (blue) and Downtown boundary (red)

**5.23 EMERGENCY SHELTERSEMERGENCY SHELTERS**

In 2013, the City approved a Zoning Ordinance Amendment to allow emergency shelters as a permitted use in the General Commercial District C-1 (Zoning Map symbol C-1). The C-1 Zoning District was selected as an appropriate location for such a facility because:

1. There are several underutilized sites within this district;
2. This area is centrally located and near public transit; and
3. All infrastructure, such as water, sewer, roads, and sidewalks, is in place.

An informal survey of a broad range of homeless shelters – from small shelters with fewer than 30 people to mass shelters for more than 200 people – indicates that the average square footage per homeless shelter client is approximately 150 square feet (gross). For comparison purposes, the City’s proposed senior housing overlay zoning ordinance calls for studios to be no less than 450 square feet; to accommodate a shelter of up to 30 clients, any site needs to roughly be able to accommodate ten studio apartments (150 SF X three clients = 450 SF; for 30 clients, multiply by ten). Considering that emergency shelters are arranged dormitory-style and not as housing units, the space needed to create a 30-bed shelter is significantly less than for traditional housing and as such, should easily be accommodated within the C-1 district.

The City included in its review of suitable locations for shelters ten discrete development sites, totaling more than ten and a half acres, within the C-1 zone. All of these sites are within the Redevelopment Area, and all are sites that are in the inventory of adequate sites for housing. The average size of these sites is 1.05 acres (aggregated), with the largest at 1.50 acres and the smallest at 0.60 acres. Within these aggregated sites, many individual sites are large enough to accommodate a small emergency shelter. Further, some individual sites are in common ownership and could also accommodate a shelter. This subset of sites – sites that do not need lot consolidation in order to serve

as a viable shelter location – includes nine sites, totaling 7.50 acres. The largest of these sites is 1.50 acres, the smallest is 0.4, and the average is 0.83 acres.

There are potentially other sites within the C-1 zone that could be used for this purpose, but this Housing Element only includes sites that have already been reviewed for their suitability as housing and/or mixed-use development. Should any one of these sites be developed for a shelter rather than for permanent housing, the City will identify a replacement site of like kind consistent with the “no net loss” provisions of State Housing Element Law, as warranted. Conversely, if any of these sites are developed for non-shelter uses, the City will identify appropriate replacement sites.

## 6 CONCLUSIONS

The biggest constraint concerning the development of housing – especially that which is affordable – is the very high cost of development (including but not limited to land costs, labor costs, material costs), and the lack of funding to support that development. The dissolution of Redevelopment Agencies in California has left Lafayette with few tools to support the development of affordable housing within the City. This non-governmental constraint means that in order to develop the approximately 1,300 lower-income units in the RHNA allocation, approximately \$900 million would be needed. Land, construction, and labor costs account for the largest proportion of development costs and, while the City is committed to making concerted efforts to remove constraints, the primary cost drivers are out of the City’s control and will remain a challenge to housing development without State or Federal intervention.

Analysis of past projects and the City’s zoning standards have identified height, setback, and other objective development standards as potential governmental constraints to the development of housing. The Implementation Plan includes multiple programs to address these potential constraints, including but not limited to working with real estate professionals – economists and developers, among others - to analyze the specific impacts of various building standards on the cost to develop housing. From this work, the City is able to make informed changes to zoning requirements to reduce or eliminate these constraints.