

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

Date/Time: **Wednesday, August 8, 2018, 4:00 p.m.**
(or as soon thereafter as possible)

Location: **Council Chambers, City Hall**
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. *Items from the Audience - In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2015-052 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting.*
4. RECEIVE AN ELECTIONS CODE SECTION 9212 INFORMATIONAL REPORT REGARDING THE WORKFORCE AND SENIOR HOUSING ATTAINMENT INITIATIVE AND: (1) EITHER ACCEPT THE REPORT AND SUBMIT THE INITIATIVE TO THE VOTERS AT THE NEXT REGULAR MUNICIPAL ELECTION ON NOVEMBER 6, 2018 OR DIRECT STAFF TO SUPPLEMENT THE REPORT; AND (2) APPROVE AN APPROPRIATION OF \$15,000 FROM GENERAL FUND RESERVES FOR ELECTION SERVICES IN THE CITY CLERK'S OFFICE FY 2018/19 BUDGET
5. Adjournment



Mayor

Tuesday, August 7, 2018

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

AGENDA ITEM 4

REQUEST

RECEIVE AN ELECTIONS CODE SECTION 9212 INFORMATIONAL REPORT REGARDING THE WORKFORCE AND SENIOR HOUSING ATTAINMENT INITIATIVE AND: (1) EITHER ACCEPT THE REPORT AND SUBMIT THE INITIATIVE TO THE VOTERS AT THE NEXT REGULAR MUNICIPAL ELECTION ON NOVEMBER 6, 2018 OR DIRECT STAFF TO SUPPLEMENT THE REPORT; AND (2) APPROVE AN APPROPRIATION OF \$15,000 FROM GENERAL FUND RESERVES FOR ELECTION SERVICES IN THE CITY CLERK'S OFFICE FY 2018/19 BUDGET

EXECUTIVE SUMMARY

On July 17, 2018, the City Council directed staff to prepare an informational report in accordance with California Elections Code Section 9212 analyzing the impact of the Workforce and Senior Housing Attainment Initiative ("Initiative"). This item requests that Council either accept the report and submit the Initiative to the voters, without alteration, at the next regular municipal election on November 6, 2018, or direct staff to supplement the report.

If Council decides to submit the Initiative to voters this November, Council action is needed in order to direct the City Attorney to prepare an impartial analysis, set dates for submittal of ballot arguments and allow rebuttal arguments and determine whether Council wants to submit an argument in opposition to the Initiative. If Council decides to direct staff to supplement the report, this will potentially result in the Initiative being submitted to the voters at either a special election or the November 2020 election. The last day for the City to place an item on the November 6, 2018 ballot is August 10, 2018.

Staff further requests that Council appropriate \$15,000 to the City Clerk's Office to pay for election services from the San Joaquin County Registrar of Voters.

DISCUSSION

On June 7, 2018, a Notice of Intent to Circulate Petition was filed with the City Clerk by proponents William Reeve, Gurcharan Takhar, and Grace Alvarez for the "Workforce and Senior Housing Attainment Initiative." (Attachment A). The Initiative seeks to amend Chapter 10.12 of the Tracy Municipal Code to exempt certain deed-restricted senior housing, attached homes, and homes on lots of 4,000 sq. ft. or less from the City's Growth Management Ordinance (GMO). The Initiative also proposes that each subdivision or project phase be released for sale only after a lottery is held for Tracy residents to obtain an opportunity to purchase dwelling units in that phase or subdivision.

Direction from Council at July 17th Meeting

On July 17, 2018, Council accepted the City Clerk's Certificate of Sufficiency of the Initiative Petition deeming the Initiative sufficient under the Elections Code. Upon

accepting the Certificate of Sufficiency, Council was advised that it had the following options pursuant to Section 9215 of the Elections Code:

- (a) Adopt the Ordinance without alteration;
- (b) Submit the Ordinance to the voters, without alteration, in accordance with Elections Code Section 1405; or
- (c) Order that an informational report be prepared.

Staff advised Council that because the Initiative seeks to amend the GMO, which was amended by the voters in 2000 via Measure A, Council could not adopt the Initiative. Staff recommended that Council either: (1) submit the Ordinance to the voters at the November 6, 2018 election, provide direction on election matters, and appropriate funds, as needed, or (2) order that an informational report analyzing the Initiative be prepared and appropriate funds, as needed. Staff informed Council that while Section 9212 of the Elections Code provides that an informational report must be submitted to the legislative body no later than 30 days after the Initiative was certified by Council, the deadline to submit measures to the County for the November 6th ballot is August 10, 2018. Staff informed Council that a report could be prepared in less than 30 days, however, a shorten timeframe would likely result in truncated report. Council directed staff to prepare an informational report to be submitted to Council on August 3rd (17 days after certifying the Initiative), and that a special meeting be scheduled for the week of August 6th.

Correspondence since July 17th Council Meeting

Since the July 17th Council meeting the City has received correspondence from Petrulakis Law and Advocacy regarding the Initiative; the first letter suggested items to be considered in the Section 9212 report (Attachment C) and the most recent letter alleged that a “procedural irregularity” occurred during Council’s consideration of its options relating to the Initiative on July 17th (Attachment D) because staff allegedly failed to present Council with all of its options under the Elections Code.

Staff has analyzed the correspondence from Petrulakis Law and Advocacy and has determined that the Council was adequately provided their options at the July 17th meeting. The City Council has not lost or waived any rights under the law. At that meeting, staff was proactive in providing the City Council with the option of having a truncated Section 9212 report in a shortened period of time in order to maintain the Council’s option of placing the Initiative on the November 6, 2018 election ballot. However, through this staff report and at the August 8th Council meeting, staff will further explain and clarify the impacts of taking the entire 30 days to prepare the Section 9212 report, as highlighted by the referenced correspondence.

The City received correspondence from the Law Offices of Robert Melhaff on August 6, 2018 responding to Mr. Petrulakis’ letter dated July 19, 2018 (Attachment E).

Options Under Elections Code / Additional Days for Report

Council continues to have the same options under Elections Code Section 9215 that it had at its July 17th meeting. If Council desires to place the Initiative on the November 6th ballot, Council must be presented the informational report and adopt a resolution submitting the Initiative to voters at the next regularly scheduled municipal election on November 6, 2018 at today's (August 8, 2018) meeting. If Council seeks to take advantage of the 30 days provided under Section 9212, Council may direct staff to supplement, or further review the informational report and submit the updated report to Council on or before August 16, 2018. If Council decides to take that additional time, it would result in the Initiative being presented to voters at either: (a) the next regularly scheduled municipal election that is at least 88 days from the order of the election, which would be the November 2020 election, or (b) a special election to be held at least 88 days from the order of the election but not more than 103 days. This means that if Council were to direct staff to supplement the report and the report were presented to Council on August 16, 2018, a special election could be ordered to take place sometime between November 13, 2018 and November 27, 2018.

If the Council decides to submit the Initiative to the voters, it should also determine whether to direct the City Attorney to prepare an impartial analysis of the proposed Initiative and establish the dates for submittal of ballot arguments.

Pursuant to Section 9280 of the Elections Code, when directed by the City Council, the City Attorney must prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis must include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. The analysis must be printed preceding the arguments for and against the measure and may not exceed 500 words in length.

The persons filing the initiative petition may file a written argument in favor of the ordinance, and the City Council may submit an argument against the ordinance. All arguments for and against the Initiative must comply with Sections 9282 and 9283 of the Elections Code. If the Council chooses, it can also, by resolution, allow for rebuttal arguments of no more than 250 words. If rebuttal arguments are permitted, they must be filed with the City Clerk no later than 10 days after the final filing date for primary arguments.

If the City Council chooses to submit an argument against the measure, staff recommends that it: (a) form a subcommittee of the Council to draft a proposed argument for consideration by the Council as a whole at the next City Council meeting on August 21, 2018; or (b) schedule a special City Council meeting to consider the contents of such argument before the next City Council meeting.

Informational Report

Elections Code section 9212 provides, in relevant part, that before submitting a proposed initiative measure to a vote, the Council may refer a proposed initiative measure to any city agency or agencies for a report on any or all of the following:

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the City's General and specific plans, including the Housing Element, the consistency between planning and zoning, and the limitations on City actions set forth in the Government Code relating to discrimination and the density bonus provisions of the Government Code.
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the City to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment
- (6) Its impact on the uses of vacant parcels of land.
- (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- (8) Any other matters the City Council requests to be in the report.

An informational report prepared pursuant to Section 9212 of the Elections Code must be presented to the City Council within the time prescribed by the Council, but no later than 30 days after the City Clerk certifies to the City Council the sufficiency of the petition.

On July 17, 2018, the City Council directed that an informational report be prepared regarding the Initiative, pursuant to Elections Code Section 9212. The City Council directed that the report be distributed to the City Council by August 3rd and for the City Council to conduct a special meeting to review the report prior to August 10th.

The City hired Placeworks to collaborate with City staff in the preparation of the report. Placeworks is familiar with Tracy, having worked on projects for the City in the past, including the most recent comprehensive General Plan update in 2011. Key sources of information used to prepare the report include the City's General Plan, the Tracy Municipal Code Zoning Regulations, the Growth Management Ordinance (GMO), the GMO Guidelines, and the City's infrastructure master plans.

Attachment B contains the informational report. The report includes a description of the Initiative; a discussion of several issues that lead to uncertainty regarding implementation of the Initiative; consistency with the City's General Plan and zoning; effects of the Initiative on the provision of housing, including affordable housing; effects on roadways and other infrastructure and potential administrative and capital cost implications.

Additional Appropriation for Election Services

Staff is requesting that Council appropriate additional funds to the City Clerk's Office to cover the costs of election services from the County of San Joaquin. Currently, the City Clerk's elections budget is \$110,000. The County fees for one initiative is \$60,000, which the City Council previously approved with the addition of the Cannabis Tax

(approved on March 20). The City's cost for a second initiative on the November ballot is an additional \$15,000. If Council decides to place this Initiative on the November ballot, the County estimates that its services will cost will total \$185,000. These amounts are only estimates and the final billing may be different.

There is no statute or regulation requiring that a proponent of an initiative pay the costs associated with an election. However, a proponent of an initiative may voluntarily decide to reimburse the City for costs associated with placing an initiative on the ballot, as was the case when Ponderosa Homes Inc. sponsored Measure K and reimbursed the City for the expenses related to a special election in 2015.

The City Clerk's Office is requesting an increased appropriation of \$15,000 for election services. If additional funds are needed, the City Clerk will submit a request to Council at a later date.

STRATEGIC PLAN

This is a routine operational item and is not related to any of the Council Strategic Plans.

FISCAL IMPACT

The City Clerk's Office requires an additional appropriation of \$15,000 from General Fund Reserves to fund the estimated costs of election services from the County to add a second initiative to the November 2018 elections. There are sufficient funds to cover this request.

RECOMMENDATION

That the City Council:

1. Appropriate, by resolution, \$15,000 to the City Clerk's Office for election services from the San Joaquin County Registrar of Voters; and either
2. Accept, by resolution, the Section 9212 informational report regarding the Initiative and submit the Initiative to voters on November 6, 2018, direct the City Attorney to prepare an impartial analysis, and set dates for arguments and rebuttal arguments and decide, by motion, to submit an argument against the Initiative; or
3. Direct staff to supplement the informational report.

Prepared by: Andrew Malik, Development Services Director
Leticia Ramirez, Assistant City Attorney

Reviewed by: Karin Schnaider, Finance Director
Midori Lichtwardt, Interim Assistant City Manager

Approved by: Randall Bradley, City Manager

ATTACHMENTS

Attachment A – Initiative

Attachment B – Informational Report

Attachment C – Letter from Petrulakis Law and Advocacy, APC, dated July 19, 2018

Attachment D – Letter from Petrulakis Law and Advocacy, APC, dated July 31, 2018

Attachment E – Letter from Law Offices of Robert Melhaff, dated August 6, 2018

Date: June 7, 2018

RECEIVED
CITY CLERK'S OFFICE
2018 JUN -7 PM 5:48

City Clerk
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

CITY OF TRACY
TRACY, CA

Re: Initiative Measure to be Submitted to Voters

Dear City Clerk:

The undersigned are registered voters in the City of Tracy and proponents of the enclosed proposed initiative measure. Find enclosed with this letter:

- Text of a proposed initiative measure;
- Notice of Intent to Circulate Petition;
- Signed proponent affidavits as required by Section 9608 of the California Elections Code; and
- Check in the amount of \$200.

Please transmit the initiative measure to the City Attorney for preparation of a Title and Summary pursuant to California Elections Code Section 9203.

For all matters relating to this initiative, we authorize your office to provide notices and to otherwise communicate with our attorneys, and authorize our attorneys to file any and all documents relating to this initiative with your office:

Robert Mehlhaff
LAW OFFICES OF ROBERT MEHLHAFF
4600 S. Tracy Boulevard, Suite 114
Tracy, CA 95378
(209) 835-3232
rmehlhaff@mehlhaff-law.com

Ashlee Titus
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
(916) 442-7757
atitus@bmhlaw.com

Very Truly Yours,


William Reeve

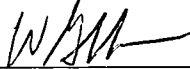

Gurcharan Takhar


Grace Alvarez

AFFIDAVIT

I, William Reeve, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Signed:



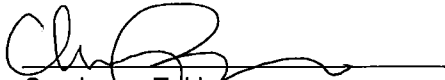
Dated this 7 day of June, 2018

William Reeve
1417 Harding Avenue
Tracy, CA 95376

AFFIDAVIT

I, Gurcharan Takhar, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Signed:



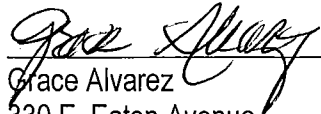
Gurcharan Takhar
1735 Birchwood Lane
Tracy, CA 95376

Dated this 7 day of June, 2018

AFFIDAVIT

I, Grace Alvarez, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Signed:



Grace Alvarez
330 E. Eaton Avenue
Tracy, CA 95376

Dated this 2th day of June, 2018

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appears hereon of their intention to circulate the petition within the City of Tracy for the purpose of adopting an ordinance to amend the City's Residential Growth Management Plan. A statement of the reasons for the proposed action as contemplated in the Petition is as follows:

Tracy families and residents are frustrated by the skyrocketing prices of new housing in Tracy. Burdensome regulations, high labor and materials costs and artificial limits on supply from residential growth limits are combining to make a new home in Tracy less and less attainable to the middle class.

The Workforce and Senior Housing Attainment Initiative is designed to make new homes in Tracy attainable and affordable by removing artificial limits on certain types of new housing and encouraging the development of housing for Tracy's seniors, first-time homebuyers and other middle-income home buyers who do not qualify for government subsidies.

The Workforce and Senior Housing Residential Attainment Initiative would make residential development projects that meet the following specific criteria exempt from the city's artificial restrictions on new residential development:

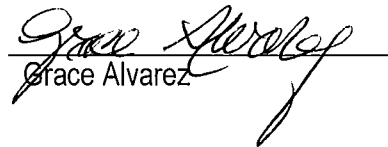
- A. Senior Housing Projects that are deed restricted to at least one occupant of age 55+.
- B. Market rate housing projects that are "Attainable by Design," defined to mean that they offer multiple types of housing products for all life stages, including first-time buyers, families, and seniors, by including both (i) attached homes (condominiums, duplexes, Townhomes, attached dwellings) and/or (ii) single-family detached homes on lots of 4,000 square feet or less.



William Reeve



Gurcharan Takhar



Grace Alvarez

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE CLERK OF THE CITY OF TRACY:

We, the undersigned, registered, qualified voters of California, residents of the City of Tracy, hereby propose an amendment to Chapter 10.12 of the City of Tracy Municipal Code, the Residential Growth Management Plan, and petition you to immediately submit this initiative to the City Council for adoption without alteration, or alternatively for submission to the voters of the City of Tracy at a special election or the next regular municipal election for which it qualifies, pursuant to Elections Code section 9215. The proposed ordinance reads as follows:

The People of the City of Tracy hereby do ordain as follows:

SECTION 1: Purpose of Initiative Ordinance.

The People of the City of Tracy hereby find that it is in the best interests of the present and future residents of Tracy to encourage and promote the development of new housing that is affordable to middle-income residents, first-time homebuyers and seniors by exempting certain types of housing projects from the artificial growth limits of the Residential Growth Management Plan within the areas shown on the attached map.

SECTION 2: Amendment and Adoption.

Section 10.12.060 of the Tracy Municipal Code Chapter 10.12 (Residential Growth Management Plan), the entirety of the existing text, a copy of which is attached to this Initiative Ordinance and marked "Amended by this Initiative", is hereby amended by adding subdivision "(f)" as follows:

10.12.060 – Exemptions.

(f) A project shall be exempt from further compliance with this chapter if the developer includes (in addition to the requirements of this chapter and the GMO guidelines) documentation, to the satisfaction of the Development and Engineering Services Director, which establishes that the development project which is the subject of the application meets the requirements of one of the following subsections:

(1) Attainable Workforce and Senior Housing. The development project meets one of the following requirements:

(a) All senior residential units in the project are deed restricted to at least one occupant of age 55 or greater;
or

(b) The project offers multiple types of housing products and consists exclusively of for-sale housing units that are (i) attached homes (including condominiums, duplexes, triplexes, four-plexes, attached dwellings, and townhomes), and/or (ii) single-family detached homes on lots that are 4,000 square feet or less.

SECTION 3: Title, chapter and section headings.

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, or section hereof.

SECTION 4: Implementation.

(a) Upon passage of this Initiative Ordinance, its provisions shall be immediately effective, and the City shall immediately adopt all changes required by this Initiative Ordinance.

(b) The City shall amend the Residential Growth Management Plan, any successor Growth Management Ordinance, all ordinances, GMO Guidelines, Guidelines, regulations, its zoning ordinance, and all other land use, development, and subdivision regulations to bring them into conformity with this Initiative Ordinance. Revisions to the RGMP, GMO, GMO Guidelines or other Guidelines, regulations and ordinances may include

revisions which are necessary to reflect development which has already occurred and approved development proposals for which the right to develop was legally vested as of the date this Initiative Ordinance is passed by the voters.

(c) Prior to each subdivision or project phase to be released for sale and prior to receiving the first occupancy permit a lottery will be held to sell the dwellings within a subdivision or project phase released for sale to only designated buyers. A designated buyer is a Tracy resident. Once the lottery is completed, any remaining dwelling units may be sold to non-Tracy residents.

(d) The City shall not adopt any amendments to the General Plan inconsistent with the terms and purposes of this Initiative Ordinance without a majority vote of the electorate of the City of Tracy.

SECTION 5: Amendment and Repeal.

This Initiative Ordinance as amended shall remain in effect and no part of this Initiative Ordinance may be amended or repealed except by a majority vote of the electorate of the City of Tracy.

SECTION 6: Severability and Interpretation.

This Initiative Ordinance shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. Nothing in this Initiative Ordinance shall be construed to interfere with municipal annexation processes. If any portion of this Initiative Ordinance is held to be invalid by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Initiative Ordinance. Tracy voters hereby declare that this Initiative Ordinance and each portion thereof, would have been adopted or passed even if one or more portions are declared invalid. If any provision of this Initiative Ordinance is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative Ordinance that can be given effect without the invalid application.

This Initiative Ordinance shall be broadly construed in order to achieve the purposes stated in this Initiative Ordinance.

AMENDED BY THIS INITIATIVE

10.12.060 - Exemptions.

A project shall be exempt from further compliance with this chapter if the developer includes (in addition to the requirements of this chapter and the GMO guidelines) documentation, to the satisfaction of the Development and Engineering Services Director, which establishes that the development project which is the subject of the application meets the requirements of one of the following subsections:

- (a) *Remodel; minor addition; conversion.* The development project is a rehabilitation or remodeling of, or a minor addition to, an existing structure, or a conversion of apartments to condominiums; or
- (b) *Replacement.* The development is replacing legally established dwelling units that have been demolished and do not exceed the number of legally established dwelling units demolished. Where the number of new dwelling units exceeds the number of legally established dwelling units demolished, an allocation of RGAs must be obtained for the additional dwelling units; or
- (c) *Model homes.* To the extent the development project includes "model homes" (structures used as an advertisement for housing sales and not used as dwellings), the model homes shall not be required to obtain an allocation of RGAs; provided, however:
 - (1) The number of model homes shall be limited to the lesser of twenty (20) percent of the total dwelling units identified in the application, or seven dwelling units per project;
 - (2) Prior to the issuance of each building permit, the subdivider shall pay all required fees, including impact fees required by title 13 of this Code; and
 - (3) Model homes may be converted and occupied as dwellings only after RGAs are allocated for each dwelling unit as required by this chapter; or
- (d) *Four units or fewer on a single lot.* The development project is either a four-plex or lesser number of dwelling units on a single existing lot; provided, however:
 - (1) The dwellings are not part of a larger eligible parcel that will result in more than four dwelling units at build-out of the project;
 - (2) The exemption is limited to no more than a total of four such dwelling units per subdivider per calendar year; and
 - (3) Prior to the issuance of each building permit, the subdivider shall pay all required fees, including impact fees required by title 13 of this Code.
- (e) *Second unit.* The development is a secondary residential unit.

(Ord. No. 1136, § 1, 2009; Ord. No. 1184, § 1, 4-2-201)

Amended by this Initiative

RECEIVED
CITY CLERK'S OFFICE

2018 JUN 13 PM 2: 13

CITY OF TRACY
TRACY, CA

Chapter 10.12 - RESIDENTIAL GROWTH MANAGEMENT PLAN⁶

Sections:

Footnotes:

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Editor's note— Ord. No. 1136, § 1, adopted June 2, 2009, repealed the former Ch. 10.12., §§ 10.12.010—10.12.210, and enacted a new Ch. 10.12 as set out herein. The former Ch. 10.12 pertained to similar subject matter and derived from Ord. No. 1071, § 1 (part), adopted 2005 and Ord. No. 1095, effective 2006.

Article 1. - General Provisions

10.12.010 - Authority and reference to chapter.

This chapter 10.12 of the Tracy Municipal Code may be referred to as the "Growth Management Ordinance" or "GMO", and is adopted pursuant to article XI, sections 7 and 9 of the California Constitution.

(Ord. No. 1136, § 1, 2009)

10.12.020 - Purpose.

The purpose and intent of this chapter is to:

- (a) Achieve a steady and orderly rate of annual residential growth in the City, and to encourage diverse housing opportunities for the region in which the City is situated, and to balance these needs with the City's obligation to provide public facilities and services to the City's residents with available fiscal resources; and
- (b) Regulate the timing and annual amount of new development projects, so that necessary and sufficient public facilities and services are provided, and so that new development projects will not diminish the City's level of service standards; and
- (c) Encourage concentric growth of the City by promoting efficient residential development patterns and orderly expansion of residential areas to maximize the use of existing public services and infrastructure; and
- (d) Encourage development which will efficiently utilize existing and planned future, public facilities; and
- (e) Encourage a balance of housing types in the City which will accommodate a variety of persons, including affordable housing projects which will accommodate persons of very low, low, and moderate income, and persons on limited or fixed incomes; and
- (f) Implement and augment the City policies related to the regulation of new development as set forth in the general plan, specific plans, City ordinances and resolutions, master plans, finance and implementation plans and design documents.

(Ord. No. 1136, § 1, 2009)

10.12.030 - Definitions.

Unless otherwise provided in this chapter, the definitions set forth in chapter 10.08 (Zoning Regulations), chapter 12.08 (Subdivision Ordinance), title 9 (Building Regulations), and title 13 (Impact

Amended by this Initiative

Fee Ordinance) of this Code shall apply to this chapter. In the event that the definitions or provisions of the Zoning Regulations, the Subdivision Ordinance, the Impact Fee Ordinance, or any other provisions of this Code conflict with any provisions of this chapter, then this chapter shall control to the extent necessary to administer and effectuate the purpose of this chapter. As used in this chapter:

"Affordable dwelling unit" means either a "moderate income dwelling unit", or a "low income dwelling unit", or a "very low income dwelling unit", as defined by the State Department of Housing and Community Development. In general, an affordable dwelling unit means a dwelling unit for rent or sale with a rental rate or consumer purchase cost which enables persons to rent or purchase that dwelling unit, if their gross household income is within the following percentages of the San Joaquin County area median income (as adjusted for family size):

- (a) For a moderate-income dwelling unit, more than eighty percent (80%), but not more than 120%;
- (b) For a low-income dwelling unit, more than fifty percent (50%), but not more than eighty percent (80%); and
- (c) For a very low-income dwelling unit, not more than fifty percent (50%).

"Applicant" means "developer", as defined below.

"Board" means "Growth Management Board".

"Developer" means a person, or other legal entity, who applies to the City to divide or cause to be divided real property into a development project, or who applies to the City to improve (into a development project) any existing parcel of real property.

"Development project" means any project undertaken for the purpose of development, as defined in the Subdivision Map Act (Government Code § 66410 et seq.), and shall specifically include any tentative parcel map, tentative subdivision map, final parcel map, final subdivision map, preliminary development plan, final development plan or building permit.

"Growth Management Board" or *"Board"* means the Board as established and defined by section 10.12.040.

"Public facilities and services" is as described in this chapter and the GMO guidelines.

"Reasonable certainty" means that the applicant has provided documentation, to the satisfaction of the Board, which establishes that the financing necessary for the public facilities and services required to serve the development project is secured, and is described in a finance and implementation plan, approved by the City Council, which feasibly provides the required public facilities and services in a timely manner. In analyzing "reasonable certainty", the Board shall consider:

- (a) The availability of capacity in public facilities;
- (b) The availability of financing for the public facilities which will serve the applicant's development project, including an analysis of financing from the applicant and financing which will come from other development projects which benefit from the public facilities; and
- (c) The anticipated date of completion of construction of the permanent public facilities which will serve the applicant's development project.

"RGA" means "residential growth allotment", and is an allotment made by the City in accordance with this chapter which must be obtained by a developer (by allocation or conveyance) before each residential building permit is issued by the City, unless the subdivider obtains an exemption in accordance with this chapter. One RGA is required for each dwelling unit to be constructed.

(Ord. No. 1136, § 1, 2009)

10.12.040 - Establishment of the Growth Management Board.

Amended by this Initiative

The Growth Management Board ("Board") is hereby established in order to manage and enforce the requirements of this chapter. All decisions of the Board shall be made by the City Manager in consultation with appropriate department heads, particularly including the Development and Engineering Services Director and the Public Works Director, or their respective designees. The Board may meet as necessary to implement the GMO and GMO guidelines.

(Ord. No. 1136, § 1, 2009)

10.12.050 - GMO guidelines.

The City Council shall adopt GMO guidelines, in order to implement the requirements of this chapter. In the event that the provisions of this chapter conflict with any provisions of the GMO guidelines, then this chapter shall control.

(Ord. No. 1136, § 1, 2009)

10.12.060 - Exemptions.

A project shall be exempt from further compliance with this chapter if the developer includes (in addition to the requirements of this chapter and the GMO guidelines) documentation, to the satisfaction of the Development and Engineering Services Director, which establishes that the development project which is the subject of the application meets the requirements of one of the following subsections:

- (a) *Remodel; minor addition; conversion.* The development project is a rehabilitation or remodeling of, or a minor addition to, an existing structure, or a conversion of apartments to condominiums; or
- (b) *Replacement.* The development is replacing legally established dwelling units that have been demolished and do not exceed the number of legally established dwelling units demolished. Where the number of new dwelling units exceeds the number of legally established dwelling units demolished, an allocation of RGAs must be obtained for the additional dwelling units; or
- (c) *Model homes.* To the extent the development project includes "model homes" (structures used as an advertisement for housing sales and not used as dwellings), the model homes shall not be required to obtain an allocation of RGAs; provided, however;
 - (1) The number of model homes shall be limited to the lesser of twenty (20) percent of the total dwelling units identified in the application, or seven dwelling units per project;
 - (2) Prior to the issuance of each building permit, the subdivider shall pay all required fees, including impact fees required by title 13 of this Code; and
 - (3) Model homes may be converted and occupied as dwellings only after RGAs are allocated for each dwelling unit as required by this chapter; or
- (d) *Four units or fewer on a single lot.* The development project is either a four-plex or lesser number of dwelling units on a single existing lot; provided, however;
 - (1) The dwellings are not part of a larger eligible parcel that will result in more than four dwelling units at build-out of the project;
 - (2) The exemption is limited to no more than a total of four such dwelling units per subdivider per calendar year; and
 - (3) Prior to the issuance of each building permit, the subdivider shall pay all required fees, including impact fees required by title 13 of this Code.
- (e) *Second unit.* The development is a secondary residential unit.

(Ord. No. 1136, § 1, 2009; Ord. No. 1184, § 1, 4-2-2013)

10.12.065 - Compliance with the regional housing needs assessment.

- (a) *Authority.* This section is enacted under the authority of and is intended to comply with and implement Government Code section 65584.
- (b) *RHNA.* The State Department of Housing and Community Development requires that each city adopt a housing element as part of its general plan. That Department also establishes a "Regional Housing Needs Allocation" (RHNA) for all cities, setting forth the target number of dwelling units to be constructed during any planning period. (The "planning period" is defined in each housing element. The planning period in effect at the time this code amendment was adopted is July 1, 2009 through December 31, 2015.) The RHNA housing unit allocations are established by income categories: very low-, low-, moderate, and above-moderate-income.
- (c) *Requirement.* Notwithstanding other provisions of this chapter, in any calendar year, once RGAs have been allocated or building permits have been issued for the number of residential units permitted by this chapter, the City shall continue to issue building permits for residential dwelling units if they are necessary to achieve the RHNA goals in a particular income category (during each planning period). The number of building permits may not exceed the RHNA goals in each income category. Any building permits issued in accordance with this provision shall not require an RGA.
- (d) *Purpose of calculating averages.* For the sole purpose of calculating the RGA and building permit averages contained in sections 10.12.100 and 10.12.110, any building permits issued under the authority of this section shall be treated as if an RGA and a building permit were issued under the GMO.

(Ord. No. 1184, § 2, 4-2-2013; Ord. No. 1201, § 1, 11-3-2015)

Article 2. - Applications

10.12.070 - Application requirements for RGAs.

No RGA shall be allocated by the City unless the developer submits an application in accordance with the requirements of this chapter and the requirements of the GMO guidelines.

(Ord. No. 1136, § 1, 2009)

10.12.080 - Affordable housing project exceptions.

An application for an RGA shall be considered an affordable housing project exception if the application includes (in addition to the application requirements of this chapter and the GMO guidelines) documentation, to the satisfaction of the Board, which establishes that the housing unit which is the subject of the application meets the following requirements:

- (a) The housing unit meets the income level requirements for low, very low, or moderate income levels, as defined by section 10.12.030.
- (b) The housing unit is formally dedicated to provide affordable dwelling units in accordance with a locally recognized program.
- (c) The applicant provides documentation that the requirements of this section will be met and maintained for a minimum of ten years.

(Ord. No. 1136, § 1, 2009; Ord. No. 1184, § 3, 4-2-2013)

Amended by this Initiative

Article 3. - Allocations; Development Agreements

10.12.090 - Allocations; development agreements.

- (a) RGAs shall be allocated in accordance with this chapter and the GMO guidelines. Notice shall be given to each applicant of the availability of the annual report.
- (b) At a minimum, the terms of any development agreement providing for an allocation of RGAs, shall identify: (1) the timing of the applicant's obligation to comply with the requirements set forth in GMO; (2) the timing and amount of RGA allocations (not to exceed a maximum of 225 RGAs per calendar year, as set forth in GMO subsection 10.12.100(c)); and (3) remedies for default, including the time after which RGAs shall be invalid as described in the GMO guidelines.
- (c) Unless specifically modified by a development agreement identified in subsection 10.12.090(b), above, each applicant shall comply with all requirements set forth in the GMO and the GMO guidelines. A development agreement may only modify the requirements of the GMO related to: (1) the timing requirements for applications for RGAs; and (2) the time after which RGAs will be deemed invalid (as identified in the GMO guidelines).
- (d) The number of RGA allocations per application shall not exceed: (1) the number requested in the application; and (2) the number which can be reasonably anticipated to be used by the applicant based on development project approvals (such as general plan, specific plan, tentative map, final map or development plan). The Board has the discretion to award all of the RGAs that are available in that allocation cycle, or fewer, based on the applications received and the criteria as established in the GMO guidelines.

(Ord. No. 1136, § 1, 2009; Ord. No. 1201, § 2, 11-3-2015)

Article 4. - Annual limits

10.12.100 - Residential growth allotments (as set forth in Measure A adopted by voters November 2000).

- (a) The City shall not allocate RGAs in any calendar year in excess of either of the following: (1) an average of 600 RGAs per year calculated pursuant to subsection 10.12.100(b); and (2) a maximum of 750 RGAs per year calculated pursuant to subsection 10.12.100(c).
- (b) The average number of RGAs per year shall be calculated as follows: (1) the total sum of RGAs allocated by the City from January 1, 2000, through the calendar year of the allocation; (2) less the sum of RGAs which are invalid, as defined in the GMO guidelines; (3) less the sum of RGAs allocated for affordable housing project exceptions; and (4) divided by the number of years which have passed from January 1, 2000, to the year of the allocation, inclusive.
- (c) The maximum number of RGAs per year shall equal the total sum of RGAs allocated by the City for the calendar year of the allocation, including a maximum of 150 RGAs allocated for affordable housing project exceptions, and including a maximum of 225 RGAs allocated to development projects with which the City has entered into a development agreement providing for an allocation of RGAs (as identified in the GMO guidelines). The City shall not allocate more than 150 RGAs in any calendar year for affordable housing project exceptions. The City shall not allocate more than 225 RGAs in any calendar year to development projects with which the City has entered into a development agreement providing for an allocation of RGAs (as identified in the GMO guidelines). The annual limit of 225 RGAs for development agreement shall include the sum of all RGAs allocated to all development agreements in any calendar year. The City shall not allocate more than 750 RGAs in any calendar year.

Amended by this Initiative

- (d) To the extent that RGAs have not been allocated in any calendar year for affordable housing project, the City shall reserve, until the first Friday in July of each year: 150 RGAs for affordable housing projects.

(Ord. No. 1136, § 1, 2009)

10.12.110 - Residential building permits (as set forth in Measure A adopted by voters November 2000).

- (a) The City shall not issue residential building permits in any calendar year in excess of either of the following: (1) an average of 600 residential building permits per year calculated pursuant to subsection 10.12.100(b); and (2) a maximum of 750 residential building permits per year calculated pursuant to subsection 10.12.100(c).
- (b) The average number of residential building permits per year shall be calculated as follows: (1) the total sum of residential building permits allocated by the City from January 1, 2000, through the calendar year of the allocation; (2) less the sum of residential building permits which expired prior to completion of construction; (3) less the sum of residential building permits allocated for affordable housing project exceptions; (4) less the sum of residential building permits exempt from this chapter; and (5) divided by the number of years which have passed from January 1, 2000, to the year of the allocation, inclusive.
- (c) The maximum number of residential building permits per year shall be calculated as follows: (1) the total sum of residential building permits allocated by the City for the calendar year of the allocation; and (2) less the sum of residential building permits exempt from this chapter.
- (d) Applications for residential building permits will be evaluated (and, for each approved application, will be issued) by the City in the order they are received.

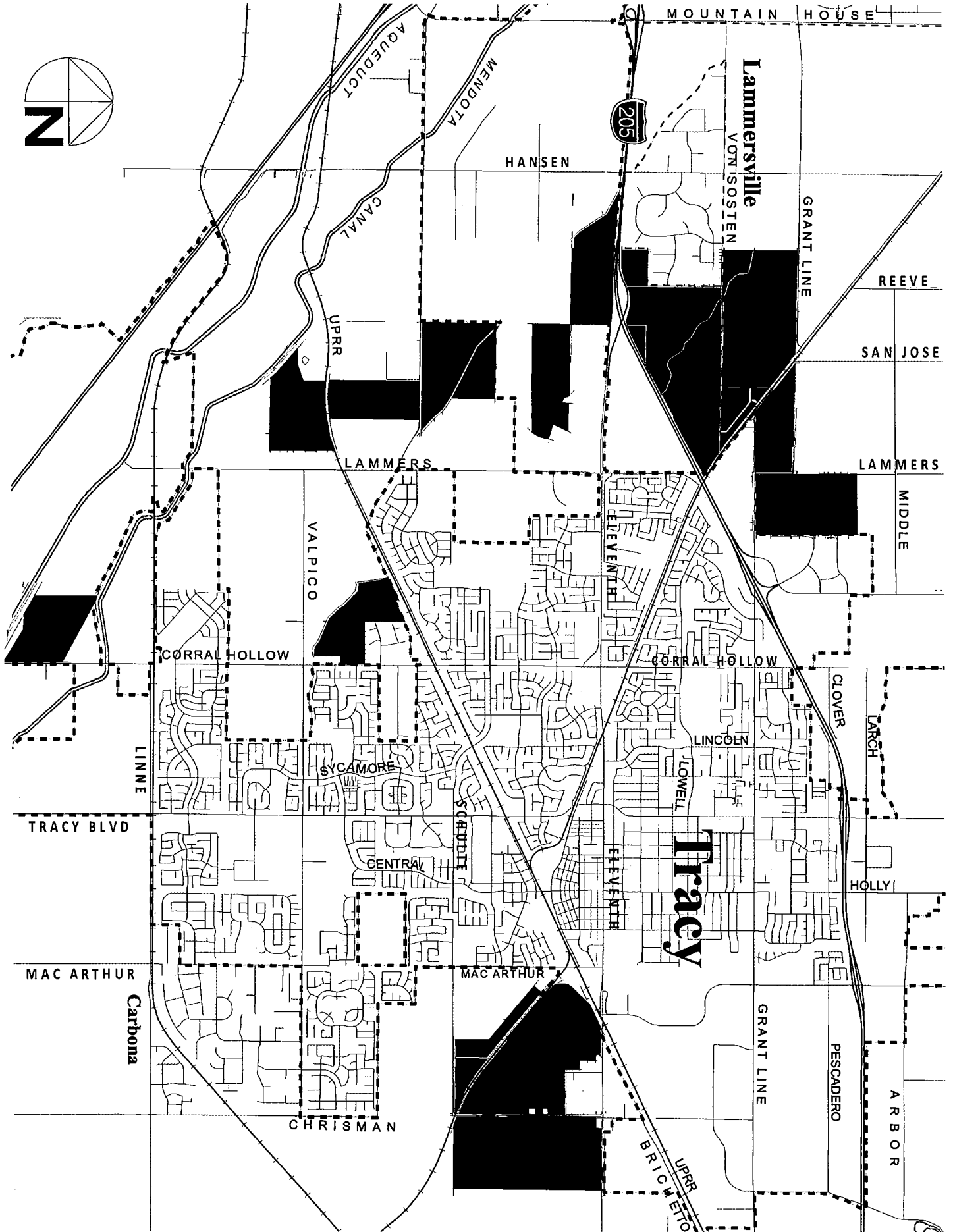
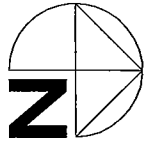
(Ord. No. 1136, § 1, 2009)

Article 5. - Appeals

10.12.120 - Appeals.

Any applicant dissatisfied with any decision made pursuant to this chapter, by the Development and Engineering Services Director or the Board, may submit a written appeal to the City Clerk in accordance with chapter 1.12 of this Code. All decisions of the City Council are final.

(Ord. No. 1136, § 1, 2009)



MOUNTAIN HOUSE

Lammersville
VON SOSTEN

HANSEN

GRANT LINE

REEVE

SAN JOSE

LAMMERS

MIDDLE

AQUEDUCT

MENDOTA

CANAL

UPRR

LAMMERS

VALPICO

CORRAL HOLLOW

CORRAL HOLLOW

LINNE

SYCAMORE

LINCOLN

CLOVER

LARCH

TRACY BLVD

CENTRAL

SCHULTE

ELEVATION

Tracy

HOLLY

MAC ARTHUR

MAC ARTHUR

Carbona

GRANT LINE

PESCADERO

ARBOR

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RESOLUTION 2012-214

CITY OF TRACY

**ADOPTING REVISED GROWTH MANAGEMENT ORDINANCE GUIDELINES
AND NOTICE OF INTENT TO PERIODICALLY REVISE THE GUIDELINES**

WHEREAS, On June 16, 1987, the City Council adopted by ordinance a Residential Growth Management Plan, (commonly referred to as the Growth Management Ordinance "GMO"), which has been amended from time to time and which is codified in Tracy Municipal Code Chapter 10.12; and

WHEREAS, On February 20, 2001, the City Council adopted Resolution 2001-067, GMO Guidelines to aid in the implementation of the Growth Management Ordinance; and

WHEREAS, Measure A, which became effective December 22, 2000, caused a change in the growth rate and patterns of the City, thus creating a need to review and update the GMO and GMO Guidelines to most effectively implement the Intentions of the Residential Growth Management Plan; and

WHEREAS, On April 5, 2005, the City Council adopted Resolution 2005-092 which amended the GMO Guidelines; and

WHEREAS, It is the intent of the City Council to substantially modify the GMO Guidelines from time-to-time to implement the General Plan; and

WHEREAS, On May 19, 2009, the City Council adopted Resolution 2009-084 which amended the Growth Management Ordinance Guidelines; and

WHEREAS, On October 1, 2012, the City Council held a workshop to consider and receive comments on proposed revisions to the GMO Guidelines; and

WHEREAS, On October 16, 2012, the City Council held a regular meeting to consider Revisions to the Growth Management Ordinance Guidelines; and

WHEREAS, The revised GMO Guidelines, which implement the requirements of the GMO, are set forth below;

NOW, THEREFORE, BE IT RESOLVED, by the Tracy City Council as follows:

SECTION 1. Resolution 2009-084 is hereby repealed.

SECTION 2. In accordance with the Growth Management Ordinance ("GMO"), Tracy Municipal Code Chapter 10.12, specifically section 10.12.050, the Tracy City Council hereby adopts the "Growth Management Ordinance Guidelines," as set forth below.

Amended by this Initiative

Growth Management Ordinance ("GMO") Guidelines

A. Overview: Purpose of Guidelines.

The Guidelines are intended to contemporize the City's residential growth management program by addressing the following components:

- Residential Growth Allotment and Building Permit activities including tracking and forecasting of all RGAs and Building Permits
- RGA Exemptions
- RGA Issuance including application requirements, deadlines, expirations
- System for Allocation of RGAs/Building Permits

B. Annual Report on Residential Building Activity and Projections/Forecast.

An Annual Report, and a preliminary, and final RGA allocation, shall be prepared by staff and presented to the Growth Management Board ("GMB"). This Annual Report shall serve as the official tracking system for the GMO and shall include historic information as well as update the annual average/maximums of the GMO. In addition, the Annual Report shall serve as the official forecast for the purposes of planning the next calendar year's RGA allocation by identifying various residential projects in process.

C. Applications. All applications for RGAs shall meet all requirements of the GMO, and these Guidelines.

1. Applicability; Application Contents. Every project is subject to these Guidelines unless specifically exempted by the GMO. Each application shall identify, at a minimum, (1) the project which is the subject of the application; (2) the applicant; (3) all property owners; (4) the purpose of the application; (5) each development project which is the subject of the application; (6) the total number of dwelling units included in the project which is the subject of the application for which: (i) the City has previously allocated RGAs, (ii) the applicant has received building permits, (iii) the applicant has received certificates of occupancy or approved final building inspection, (iv) the applicant's RGA has expired; and (7) compliance with all requirements of the GMO and the GMO Guidelines relevant to the application.

2. Application and Eligibility Requirements.

(a) In order to apply for an RGA a project must demonstrate *all of the following components*:

- (i) be within the City limits,
- (ii) be identified in the City's General Plan ("GP") as an area for residential growth consistent with all GP growth policies set forth in Object LU 1.4,
- (iii) be within an approved specific plan/PUD, or within a zoning district that permits residential uses,
- (iv) be subject to an approved Finance and Implementation Plan (FIP) based on approved Infrastructure master plans,

- (v) have an approved Tentative Subdivision Map, Vesting Tentative Subdivision Map, or if no map is required, Development Review approval in accordance with Tracy Municipal Code ("TMC") Section 10.08.3920 et seq., or a Final Development Plan in accordance with Tracy Municipal Code ("TMC") Section 10.08.1760, et seq.

3. Application due dates. The term "application date" shall mean the deadline for filing any complete application pursuant to the GMO (including applications for RGAs, exceptions, and residential building permits). Unless otherwise established in these Guidelines, the application for RGAs, other than Affordable Housing Project RGAs, shall be the first Thursday in September each year for RGAs to be used to obtain building permits in the following calendar year. See Section D below for Timeframes for Allocations.

4. Application dates for Affordable Housing Project exception applications. In accordance with the GMO, the application date for filing Affordable Housing Project exception applications shall be at any time during normal City working hours. (Also see GMO section 10.12.100(d)).

5. Affordable Housing Project exceptions. The GMB shall determine, and allocate, the number of RGAs which are subject to the Affordable Housing Project exception set forth in the GMO. The allocation of RGAs for Affordable Housing Project exceptions may occur at any time, regardless of the allocation cycles established in the GMO. These applications will be processed as they are received, and RGAs shall be allocated to the qualifying applicants in accordance with the GMO. Affordable housing exceptions count against the GMO average/maximum for affordable housing but not against GMO average of 600 for market rate. Affordable housing exceptions do count against the GMO maximum of 750 per calendar year.

D. Timeframes for RGA allocations, expirations.

1. Allocations timeframes. The following timeframes shall apply to the allocations of RGAs:

- 1st Thursday in September: Application date per C 3 above
- October-November: GMB Public hearing to allocate RGAs
- December: Appeals (if any) to City Council
- October-March: Staff verification of submitted or approved project Final Map
- No later than March 31: GMB verifies number of RGAs allocated against number of lots on submitted or approved Final Map

2. Calendar years 2013 and 2014. The application date for an RGA application in calendar years 2013 and 2014 shall be at any point during this period. The GMB shall meet as needed in response to complete RGA applications in calendar years 2013 and 2014 to allocate RGAs. However, the application date for an RGA application for RGAs described in subsection F 6 shall be no earlier than April 1st of each of those years.

3. Expirations.

(a) RGAs shall be valid only for the calendar year for which they are allocated, and shall expire concurrently with issuance of the building permit, or pursuant to this subsection.

(b) No later than March 31st the GMB shall verify that a Final Map and improvement plans have been submitted and/or approved for the number of lots for which RGAs were awarded. Any RGAs for the number of lots that do not have submitted or approved Final Maps or improvement plans as of March 31st shall automatically revert back to the City and shall be available for the GMB to allocate to projects with complete applications in accordance with the criteria in Section F.

(c) RGAs must be used to obtain a building permit no later than September 30th of the year following the allocation in accordance with GMB action. For RGAs allocated in years 2013 and 2014, the RGA must be used by September 30th in the year for which it was allocated. In the event an RGA has not been used to obtain a building permit by September 30th, then such RGAs automatically revert back to the City and shall be available for the GMB to allocate to projects with complete applications in accordance with the criteria set forth in Section F. The GMB shall meet as needed to address such RGA allocations.

E. Evaluation of RGA Applications and Final RGA Allocations.

1. In order to obtain an RGA allocation, the applicant shall provide documentation to the satisfaction of the Board, that the public facilities and services required to serve the development project are available to the project, including each of the elements set forth below. A project with an approved Vesting Tentative Subdivision Map, Tentative Subdivision Map, Development Review approval, or Finance and Implementation Plan is deemed to have complied with the public facilities obligations of this section. The public facilities and services to be analyzed by the Board for each RGA application shall include, at a minimum: (1) the water system (including supply, storage, treatment, distribution); and (2) the wastewater system (including conveyance and treatment); and (3) the storm drainage system (including permanent facilities and interim ponds prior to construction of the permanent facilities); and (4) the roadway system (including regional streets and interchanges, transit, bikeways, local streets, traffic signals, and other public right-of-way improvements); and (5) the parks system (including mini parks, neighborhood parks, and community parks); and (6) public buildings (including but not limited to buildings for city hall, police, fire, public works maintenance, community meeting facilities, libraries, and aquatics); and (7) police protection services and facilities; and (8) fire protection services and facilities. Any application which does not meet all of the minimum requirements shall not receive any RGA allocations.

2. In accordance with the preparation and process for the Annual Report, as described in Section B above, the GMB shall issue a recommendation of preliminary allocations, hold a public hearing for input on the proposed allocations, and issue final allocations. At the public hearing, the Board shall address written and oral comments regarding the Annual Report and the proposed RGA allocation. The purpose of the Board's consideration of written and oral comments at the public

hearing shall be for applicants to provide information which was not included in the application. The public hearing may be continued by the Board, as necessary, to obtain additional information. After the conclusion of the public hearing, the Board shall provide written notice to each applicant of the Board's final RGA allocations. After the appeal period has expired pursuant to Tracy Municipal Section 10.12.160, and after the City Council has acted on any relevant appeals, the Board shall issue a final determination of RGA allocations. The allocations of the GMB shall be final unless appealed to the City Council in accordance with the GMO. Allocations shall be project-specific.

F. RGA allocation criteria, order of priority for allocations of RGAs; proportionate allocation of previously unallocated RGAs.

The GMB shall evaluate RGA applications, and allocate RGAs, in accordance with these criteria. A project may not receive more RGAs than on its approved Tentative Subdivision Map or Development Review Approval, or Final Development Plan. In any year, the GMB shall not allocate more RGAs than the anticipated number of available building permits for that same year. RGAs shall be issued on a first come first serve basis based when the City receives a complete application and in accordance with the following order of priority:

1. Vested Projects: RGA applications from projects vested under a previous GMO Guidelines shall be process in accordance with such guidelines.
2. Primary Growth Areas. Primary Growth Areas are defined in Exhibit "A", attached hereto and incorporated herein by this reference. Subject to the requirements of the GMO and these Guidelines, including criteria in subsection F 8 below, Primary Area projects shall be entitled to receive, at the beginning of each allocation cycle:
 - (a) In years where 750 RGAs may be allocated, the Primary Growth Areas shall be entitled to receive 100 RGAs;
 - (b) In years where 600 RGAs may be allocated, the Primary Growth Areas shall be entitled to receive 80 RGAs
3. Development Agreements. Notwithstanding subsection 4 below, Development Agreement projects may receive allocations as specifically set forth in the applicable development agreement subject to the provisions in these Guidelines. In any conflict between the development agreement and these Guidelines, the development agreement provisions shall control.
4. Tracy Hills and Ellis Specific Plan Projects. The following specific plan projects, more fully described in the General Plan and subject to the requirements of the GMO and these Guidelines, shall be entitled to receive, at the beginning of each allocation cycle:
 - (a) In years where 750 RGAs may be allocated, Tracy Hills shall be eligible to receive 406 RGAs and Ellis shall be eligible to receive 194 RGAs
 - (b) In years where 600 RGAs may be allocated, Tracy Hills shall be entitled to receive 325 RGAs and Ellis shall be entitled to receive 155 RGAs

- (c) If either Tracy Hills or Ellis receives less than the number of RGAs described above, the difference between the numbers of RGAs allocated and the numbers of RGAs described above shall be reserved. Either Tracy Hills or Ellis may apply for such RGAs no later than the March GMB meeting described in Section D. If Tracy Hills or Ellis do not apply for RGAs prior to the March GMB meeting, the RGAs shall be available in accordance with this Section F.
5. Other Projects. "Other Projects" is defined as initially beginning with the Kagehiro Phase III project (Assessor's Parcel Number 242-040-360) and then commencing with development sites identified in the General Plan Objective LU 1.4 that are not within the Primary Areas as defined in these GMO Guidelines. Subject to the requirements of the GMO and these Guidelines, the Other Projects shall be entitled to receive, at the beginning of each allocation cycle:
- (a) In years where 750 RGAs may be allocated, Other Projects shall be entitled to receive 50 RGAs per year
- (b) In years where 600 RGAs may be allocated, Other Projects shall be entitled to receive 40 RGAs per year
6. If the number of RGAs allocated does not meet or exceed the number of RGAs available, the remaining RGAs shall then be made available on a proportionate basis in accordance with the criteria set forth in subsections F 1-5 to the projects identified in subsections F 1-5, for which a complete application has been submitted. Any RGAs then allocated would be in addition to the RGAs identified in subsections 1-5 of this Section F. The GMB can meet as needed to allocate such RGAs.
7. During years when a number of RGAs other than 600 or 750 are available, the RGAs shall be issued in proportionate amounts as established in section F 1-5.
8. Additional Primary Areas Criteria. These Primary Areas criteria will apply to all Primary Areas Projects in competition for RGAs. The following criteria can be used to determine which projects will have priority to receive RGAs in the event that the number of RGAs requested exceeds the number available in any allocation cycle for the Primary Areas numeric parameters established in section F 2 above. Within these categories, projects that meet more of the criteria listed are considered preferred to receive RGAs. Based on the following criteria, staff will make a recommendation to the Board as to which proposed projects have best achieved the criteria.
- (a) Housing Type, in order of importance
- (i) High Density—12.1 dwelling units per gross acre or more
- (ii) Medium Density—5.9-12 dwelling units per gross acre
- (iii) Low Density—5.8 dwelling units per gross acre or less
- (iv) Projects with an affordable component, including moderate and low to very low income categories (RGAs for the affordable component come from the "Affordable Housing Exception" category in the GMO)
- (v) Innovative housing types—Mixing products in a single project, cluster housing, mixed-use developments
- (b) Geographic Area, in order of importance
- (i) In a Village Center, as established in the General Plan

- (ii) Connects incomplete infrastructure (streets, water, sewer, etc.)
- (iii) Projects that combine several smaller parcels
- (iv) Fit and compatibility with the surrounding area
- (c) Project Size and Proximity to Existing Development, in order of importance
 - (i) Small infill (less than 5 acres surrounded by development on 3 sides)
 - (ii) Large infill (over 5 acres surrounded by development on 3 sides)
 - (iii) Project in progress that needs additional RGAs to complete construction
- (d) Project Design
 - (i) High level of connectivity, vehicular and pedestrian, both internally and externally to the project
 - (ii) Amenities—public or private, parks, schools, etc.
 - (iii) Architecture—compatible with, enhances, and/or improves neighborhood
 - (iv) Energy efficient design, using recycled or green/sustainable materials
 - (v) Walkability and high intersection density
 - (vi) Building type and building frontage type variation
- G. Processing Fees. The fees for processing all applications pursuant to the GMO shall be as set forth in a separate Resolution of the City Council.
- H. 1994 GMO Guidelines for Pre-Measure A Projects. The Board shall award RGAs to any applications for Pre-Measure A Vested Projects in accordance with the provisions of the 1994 GMO.
- I. Building Permit Issuance. The City shall evaluate applications for residential building permits (and, for each approved application, issue the building permit) in the order in which the City receives them. The City shall not issue any building permits in excess of the limitations set forth in the GMO, except the limit Measure A and the GMO impose on the average number of building permits issued each year does not, by its terms, apply to affordable housing projects.

SECTION 3. Pursuant to Section 15183 of the California Environmental Quality Act this amendment to the GMO Guidelines is exempt because there will be no significant on or off-site impacts as a result of the amended GMO Guidelines (CEQA Guidelines, 14 Cal. Code of Regs. §15061(b)(3).) All development projects are required to comply with CEQA as a part of their project approvals, and all of the potential environmental impacts are studied and mitigated through the development process, not through the administration of the GMO. These GMO Guidelines simply provide procedures related to future land use applications, which must first undergo CEQA review.

Furthermore, in accordance with CEQA Guidelines Section 15162, no further environmental assessment of the GMO Guidelines is required. An analysis of the project shows that no substantial changes are proposed that would require major changes to any existing environmental documentation, including the General Plan EIR SCH #2008092006, or cause any increase in severity of previously identified significant effects or any new significant effects. Also, no new information of substantial importance shows that there will be additional significant effects not discussed in the previous environmental documentation of the General Plan EIR, or that any previously identified significant effects will be substantially more severe, or that any potential mitigation measures are now considered feasible that weren't previously, nor are any new mitigation measures identified but not implemented. The GMO Guidelines add no new

development areas, remove no new development areas, or modify any development areas. The GMO Guidelines provide procedures for future land use applications.

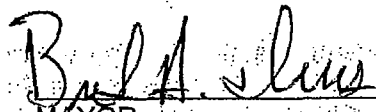
SECTION 4. In the event any provision of the Guidelines is held invalid by a court of competent jurisdiction, the Guidelines shall be construed as not containing that provision, and the remainder of the Guidelines shall remain in full force and effect.

SECTION 5. The City Council finds that these GMO Guidelines will not be detrimental to the health safety and welfare of the residents of Tracy because they aid only in the administration (i.e. timing and distribution of RGAs) of the existing regulations within the GMO.


This resolution shall be effective upon adoption.

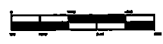
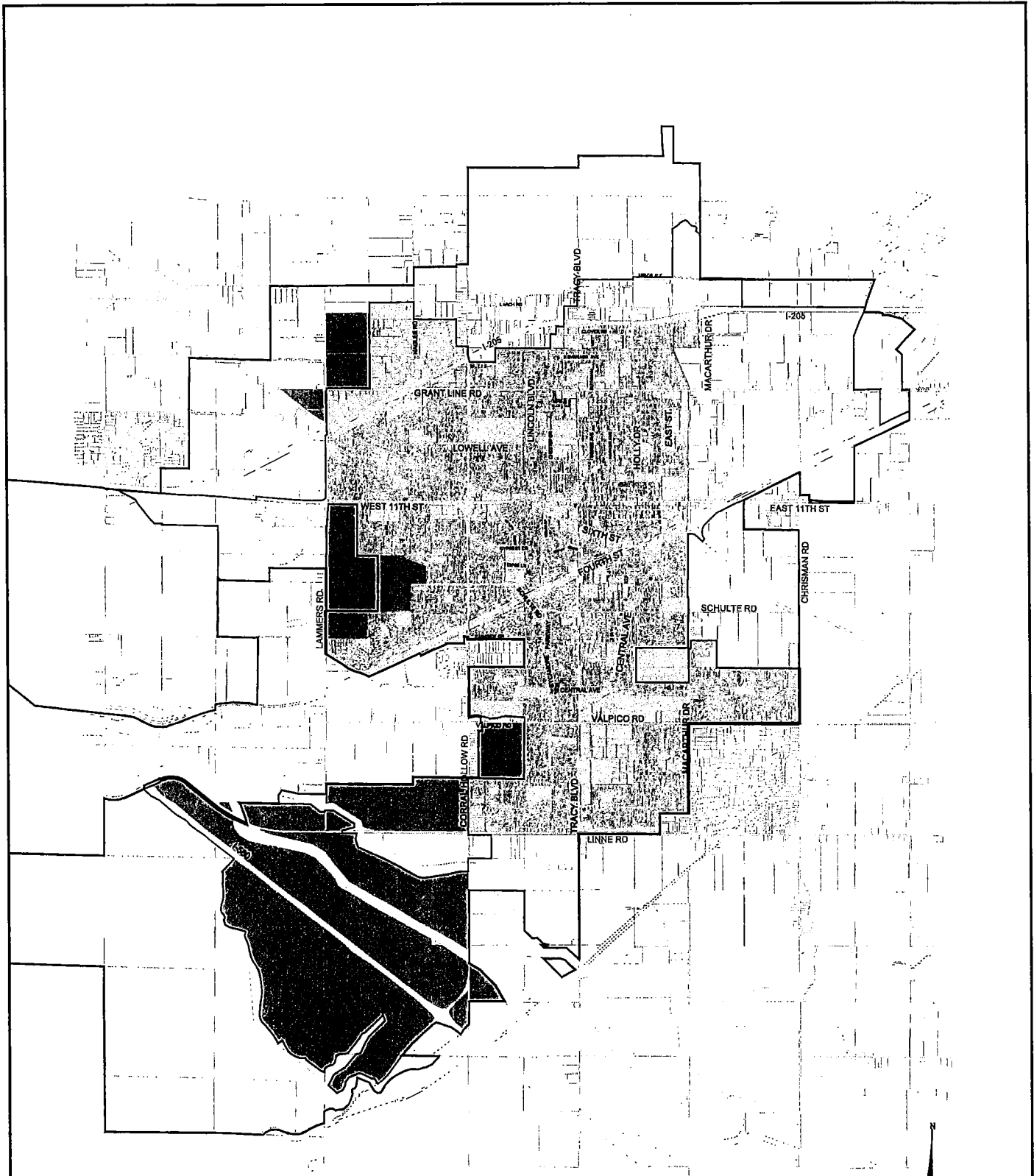
The foregoing Resolution 2012-214 was adopted by the Tracy City Council on the 16th of October 2012, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, ELLIOTT, MACIEL, RICKMAN, IVES
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE






MAYOR

ATTEST:


CITY CLERK



Residential Growth Areas

-  City Limits
-  Sphere of Influence
-  Primary Residential Growth Areas
-  Secondary Residential Growth Areas

Amended by this Initiative

**WORKFORCE AND SENIOR HOUSING
ATTAINMENT INITIATIVE
SECTION 9212 REPORT**

PREPARED FOR:

CITY OF TRACY

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1. Introduction

This report, prepared pursuant to California Elections Code Section 9212, evaluates the proposed Workforce and Senior Housing Attainment Initiative (“Initiative”) presented to the Tracy City Council at its July 17, 2018 meeting.

1.1 ABOUT THE INITIATIVE

A “Notice of Intent to Circulate Petition” for the Initiative was filed with the City Clerk by proponents William Reeve, Gurcharan Takhar, and Grace Alvarez on June 7, 2018. Pursuant to the State Elections Code, the City Attorney prepared a ballot title and summary of the Initiative on June 14, 2018, and the proponents provided proof of publication of the title and summary to the City Clerk on June 15, 2018. The proponents circulated the petition for signatures by Tracy voters and submitted the petition to the City Clerk on June 25, 2018. The City Clerk completed a prima facie examination of the petition and submitted the petition to the County Registrar of Voters on June 27, 2018 to verify signatures in accordance with Elections Code Section 9114. On July 12, 2018, the Registrar of Voters issued a Signature Verification Certificate. The City Clerk has issued a Certificate of Sufficiency of the Initiative Petition deeming the petition sufficient under the Elections Code.

According to Section 9215 of the Elections Code, upon certification of the sufficiency of signatures at a regular meeting, the City Council must either:

- Adopt the ordinance without alteration; or
- Submit the ordinance to the voters, without alteration, in accordance with Elections Code Section 1405; or
- Order that an informational report be prepared in advance of choosing to either adopt the ordinance or submit it to the voters.

In this case, the option to adopt the ordinance without alteration is not available to the City Council, because provisions of the Initiative create an exemption from the City’s Growth Management Ordinance (GMO), which was adopted by the voters in 2000 via Measure A. Section 9217 of the Elections Code provides that an ordinance that is adopted by the voters may only be repealed or amended by a vote of the people unless the provision is otherwise made in the original ordinance. Because Measure A did not contain a provision allowing the GMO to be amended by the City Council to create this type of exemption, the City Council must submit the Initiative to the voters. Therefore, the City Council is required to place the Initiative on the ballot, either with or without first ordering preparation of an informational report.

Under the Elections Code, the City Council must receive and review this informational report, and must then place the Initiative on the ballot. To conform with San Joaquin County ballot timing, these actions

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must occur on or before August 10, 2018 in order to allow the Initiative's placement on the November 6, 2018 ballot.

1.2 ABOUT THIS REPORT

During its July 17, 2018 meeting, the City Council ordered that an informational report be prepared in advance of submitting the Initiative to the voters. Elections Code Section 9212 states that this report may address any or all of the following issues:

1. The proposed Initiative's fiscal impact.
2. The proposed Initiative's effect on the internal consistency of the City's General and specific plans, including the Housing Element, the consistency between planning and zoning, and the limitations on City actions set forth in the Government Code relating to discrimination and the density bonus provisions of the Government Code.
3. The proposed Initiative's effect on the use of land, the impact on the availability and location of housing, and the ability of the City to meet its regional housing needs.
4. The proposed Initiative's impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
5. The proposed Initiative's impact on the community's ability to attract and retain business and employment.
6. The proposed Initiative's impact on the uses of vacant parcels of land.
7. The proposed Initiative's impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
8. Any other matters the City Council requests to be in the report.

1.3 REPORT CONTENTS

This report contains four introductory chapters, which include this introduction, an overview of the proposed Initiative, background on the City's existing Growth Management Ordinance (GMO), and a description of several issues that lead to uncertainty with regard to the Initiative. It then focuses on the following topics that are allowed under Section 9212:

- Chapter 5 considers the effect of the Initiative on the internal consistency of the City's planning documents.
- Chapter 6 explores the consistency of development types identified in the Initiative with those already found in Tracy and foreseen in the City's planning documents.
- Chapter 7 analyzes the effect of the Initiative on provision of affordable housing.

INTRODUCTION

- Chapter 8 estimates the number of units whose construction might be encouraged under the Initiative.
- Chapters 9 and 10 consider the effect of development encouraged by the Initiative on traffic and infrastructure.
- Chapter 11 explores the Initiative's potential effect on the City's efforts to create employment opportunities.
- Chapter 12 considers the Initiative's potential administrative and capital cost implications.

INTRODUCTION

2. Key Features of the Initiative

The Workforce and Senior Housing Attainment Initiative is 1½ pages long and consists of six sections. This section of this report summarizes the key features of the Initiative.

Section 1 describes the Initiative's purpose is as follows:

... to encourage and promote the development of new housing that is affordable to middle-income residents, first-time homebuyers and seniors by exempting certain types of housing projects from the artificial growth limits of the Residential Growth Management Plan within the areas shown on the attached map.

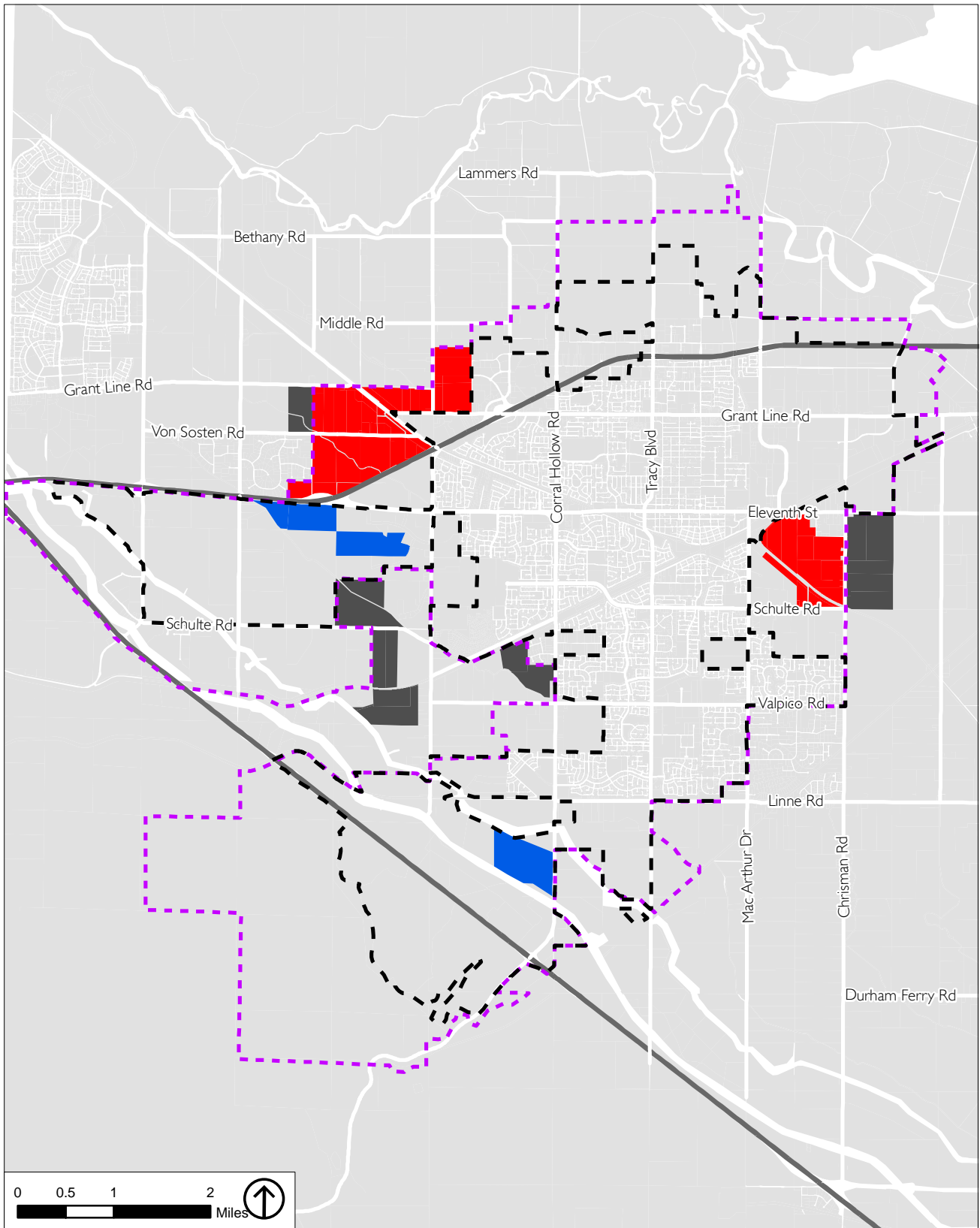
The mapped areas referenced in Section 1 of the Initiative are shown in Figure 2-1. City staff received a list of Assessor's Parcel Numbers of the areas shown on the map attached to the Initiative from the Initiative proponent's legal counsel. Where discrepancies occurred between the list and map, the analysis in this report includes the parcels shown on the map so that the report is consistent with the map shown to voters. These areas are referred to as the "Initiative-Exempted Parcels" in this report. They comprise approximately 2,511 acres, including lands that are 1) within Tracy's existing City limit, 2) within the City's Sphere of Influence (SOI) but outside the current City limit, and 3) outside of both the City limit and the SOI. In general, the Initiative-Exempted Parcels are located in the following areas:

- Portions of the Tracy Gateway Planned Unit Development south of Eleventh Street, as well as the northeastern portion of the Tracy Hills Specific Plan area along Corral Hollow Road. These areas are inside the current City limit.
- Urban Reserve 3 (UR-3) on the City's General Plan land use map, as well as an adjacent area to the east of UR-3, and an area south of Eleventh Street and east of the City limit, between South MacArthur Drive and South Chrisman Road. Both of these areas are outside the current City limit but inside the City's SOI.
- An area west of the SOI between Grant Line Road and Von Sosten Road, areas adjacent to the SOI in the South Lammers Road/West Schulte Road area, and an area east of the SOI between Eleventh Street and West Schulte Road. These three areas are outside of both the existing City limit and the SOI.

Section 2 of the Initiative creates new exemptions from the City's existing Growth Management Ordinance (GMO). Background information about the GMO is contained in Chapter 3 of this report. The specific exemptions created by the Initiative are for:

- Senior residential units that are deed restricted to at least one occupant of age 55 or greater.

KEY FEATURES OF THE INITIATIVE



Source: City of Tracy, 2018; PlaceWorks, 2018.

- Inside City Limit
- Inside Sphere of Influence & Outside City Limit
- Outside City Limit & Sphere of Influence
- City Limit
- Sphere of Influence

Figure 2-1
Initiative-Exempted Parcels

KEY FEATURES OF THE INITIATIVE

- Projects with multiple types of housing products and consisting exclusively of for-sale units that are:
 - Attached homes (including condominiums, duplexes, triplexes, fourplexes, attached dwellings, and townhouse); and/or
 - Single-family detached homes on lots that are 4,000 square feet or smaller.

Most of the remaining sections of the Initiative are for “housekeeping,” in that they give information on interpretation, implementation, amendment and repeal of the Initiative. There are two other key provisions included in these sections:

- Section 4(c) of the Initiative includes a provision that units exempted under the Initiative shall be made available for purchase by Tracy residents through a lottery prior to being released for sale to non-Tracy residents.
- Section 4(b) of the Initiative requires the City to update its plans and ordinances to achieve consistency with the Initiative.

KEY FEATURES OF THE INITIATIVE

3. Growth Management Ordinance Background

Since the Initiative would affect the City of Tracy's existing residential growth management program, it is important to understand how the existing program works as a foundation for evaluating the effects of the proposed Initiative. This chapter provides background information on the existing residential growth management program.

The City's residential growth management program is comprised of three principal policy and implementation documents: the General Plan, the GMO, and the GMO Guidelines. Each of these has a role in establishing growth areas, types of development desired by the community, and the rate and sequencing of residential development. Each of these policy/implementation documents changes with changing City priorities, and together they ensure that needed infrastructure is in place, and that growth is managed to meet City Council's priorities.

In general terms, the goal of the residential growth management program is to achieve a steady and orderly growth rate that allows for the adequate provision of services and community facilities, and includes a balance of housing opportunities.

The foundation for the residential growth management program is contained in the City's General Plan, which is adopted by the City Council. It lays out areas where residential growth is expected, the expected residential densities, and the timing of new development in various areas relative to other areas.

The GMO, which was adopted by the City Council in 1987 and amended by Tracy's voters through Measure A in 2000, goes beyond the General Plan to limit the number of residential units that can be approved in a year. Under the GMO, builders must obtain a Residential Growth Allotment (RGA) in order to secure a residential building permit. One RGA equals the public services and facilities required to serve one residential dwelling unit. The GMO establishes requirements for RGAs and the annual limits on the number of RGAs and building permits the City can annually issue. In general the maximum is 750 and the annual average is 600; these numbers were set by Measure A in 2000.

The GMO includes five existing exemptions to the requirement that new residential units must receive RGAs. These exemptions are for the following categories of homes:

- Remodels or conversion of existing homes.
- Replacement of existing homes.
- Model homes.
- Projects consisting of four or fewer units on a single lot.
- Second units.

GROWTH MANAGEMENT ORDINANCE BACKGROUND

The GMO also allows the City to issue building permits for residential units necessary to meet the State-mandated Regional Housing Needs Allocation (RHNA) for each of the four income categories: very low, low, moderate, and above moderate. Additionally, the GMO contains an affordable-housing exception for deed-restricted, very low, low, and moderate income housing units. Although affordable housing projects have been developed since 1987, this affordable-housing exception has never been used by developers to obtain RGAs since the GMO was first adopted in 1987.

The GMO Guidelines, which are adopted by the City Council, comprise the City's principal tool and method for allocating RGAs. The GMO Guidelines work in tandem with the GMO and General Plan to implement City Council's residential growth priorities. Currently, these priorities focus on the Tracy Hills and Ellis projects, as well as categories for other projects and "infill" areas. This means there are areas foreseen for residential development in the General Plan that will not develop until other areas are built out and additional RGAs become available.

The GMO Guidelines have changed over time, yet there are several overarching themes that have remained constant. One theme is that all the building permits available should be able to be issued in any given year. To accomplish this, RGAs have a short life of one building year, and builders issued RGAs must use them by September 30th of the following year or run the risk of having them allocated to another project.

The following is a brief overview of several of the more significant changes to the City's growth management program

- **1987.** City adopts first GMO (Municipal Code Chapter 10.12), sets annual limits of 1,200 annual average and 1,500 annual maximum residential building permits, and creates Residential Growth Allotment (RGA) system.
- **1993.** Comprehensive overhaul of the City's General Plan, which establishes a significant SOI and new growth areas.
- **1996 to 2000.** Several major developments approved, including South Schulte (since rescinded), Tracy Hills, and Plan "C" subdivisions.
- **2000.** Measure A changes GMO annual average limit to 600 and annual maximum limit to 750.
- **2001.** GMO Guidelines amended to aid in implementing Measure A.
- **2005.** GMO Guidelines amended to create eligibility areas and criteria to facilitate RGA allocations.
- **2006.** New General Plan adopted, with new polices related to land development and community character.
- **2007.** New Local Agency Formation Commission (LAFCO) policies adopted necessitating that Tracy's proposed SOI be reduced in area.
- **2008 to 2009.** City Council evaluates new SOI, new approaches to infrastructure planning, and new growth policy, and amends the GMO and GMO Guidelines.
- **2011.** General Plan amended with revised, smaller SOI.
- **2012.** Significant amendment to the GMO Guidelines to prioritize Ellis, Tracy Hills, and several other projects, and create limited pool of RGAs for "infill" projects.

GROWTH MANAGEMENT ORDINANCE BACKGROUND

- **2014.** GMO amended to create an exemption to the annual limits to accommodate the City's RHNA, which facilitated approval by the State Department of Housing and Community Development (HCD) of the City's General Plan Housing Element.

GROWTH MANAGEMENT ORDINANCE BACKGROUND

4. *Uncertainties within the Initiative*

This report makes several assumptions for the purpose of analyzing the Initiative because the language in the Initiative is either unclear or ambiguous and therefore could result in divergent interpretations. These ambiguous items raise questions regarding the implementation of the Initiative that potentially can only be resolved through litigation. In addition to these ambiguities, the lottery and priority sale of units to Tracy residents proposed in the Initiative raises concerns regarding its constitutionality.

4.1 GEOGRAPHIC SCOPE

The Purpose section of the Initiative (Section 1) states that it would exempt “certain types of housing projects from the artificial growth limits of the Residential Growth Management Plan within the areas shown on the attached map.” However, apart from its mention in the Purpose section, the map is not referenced in the remainder of the Initiative. Section 2 of the Initiative, which describes the exemptions to the GMO for senior housing, attached housing and lots of 4,000 square feet or less, makes no reference to the mapped areas, and instead adds this new exemption to the existing list of five exemptions, all of which apply City-wide. Because the Initiative is vague, the new exemptions may be construed as applying to all new residential development in Tracy, and not just to the Initiative-Exempted Parcels.

Given the language in Section 1, this report interprets the Initiative as creating an exemption for the Initiative-Exempt Parcels only. However, this interpretation could be subject to legal challenge and a court could hold differently, which would vastly change the nature of the exemption and the Initiative’s impact on the GMO. This range of implications is addressed in the remaining chapters of this report.

4.2 SENIOR UNITS

The exemption for senior units in Section 2 of the Initiative is worded in a way that could be construed to apply to all units in a development that includes even just one senior unit. The Initiative states that there would be an exemption for “projects” in which “[a]ll senior residential units in the project are deed restricted to at least one occupant of age 55 or greater.” This language does not say that a project must consist entirely of senior units in order to be exempted; instead, it says that an entire project would be exempt if its senior units are deed restricted. This implies that a project consisting of multiple units would be exempted as a whole, even if it includes only one deed-restricted senior unit.

This report assumes that the Initiative will only apply to units which are actually deed restricted, and not to other, non-deed restricted units within the same project. This interpretation may be subject to legal challenge. A court may find that the Initiative exempt units that are not deed-restricted to seniors simply by virtue of the fact that they are part of a project with one or several deed-restricted senior units.

UNCERTAINTIES WITHIN THE INITIATIVE

4.3 AMENDMENTS TO EXISTING LAND USE DESIGNATIONS

As noted above, the Initiative makes reference to about 2,511 acres of Initiative-Exempted Parcels, and it appears to intend to specifically exempt these parcels (and none others) from the requirements of the GMO.

As explained further in Chapter 5, most of the Initiative-Exempted Parcels are not currently designated for residential development, either because they have other City General Plan designations or because they are outside the SOI and therefore have not been designated. Those Initiative-Exempted Parcels which are designated for residential use generally do not carry a designation that would allow for attached units or single-family lots of 4,000 square feet or less. The Initiative does not include redesignation of these parcels for residential use, but it implies the landowner's intent to ask for redesignation.

While Section 4 of the Initiative contains language stating that the City shall amend and update its General Plan and zoning ordinances to achieve consistency with the Initiative, it does not include text specifying what changes are needed. This omission may make the Initiative subject to legal challenge and calls into question its effect.

Therefore, the Initiative does not appear to allow for any additional residential units to be constructed in Tracy under the Initiative's exemption, because the Initiative does not contain provisions establishing land use designations or zonings for the Initiative Exempted Parcels that allows the types of development exempted by the Initiative. The City would have to redesignate and rezone the Initiative-Exempted Parcels for the types of residential development foreseen in the Initiative and/or the terms of the Initiative would have to be applied City-wide (or at least to residentially-designated parcels) before the Initiative would have any effect. Thus, this report assumes that new development eligible for the exemptions created by the Initiative would occur only if, and after, General Plan and zoning district amendments were approved by the City Council on a case-by-case basis through the appropriate review processes (and, in many cases, only after inclusion of the parcels in the SOI and annexation).

4.4 LOTTERY

Section 4(c) of the Initiative requires that a lottery be held to give priority to existing Tracy residents. This provision of the Initiative raises various legal issues that may require judicial interpretation. The following are some these issues:

- The language of Section 4(c) does not specify that it applies only to projects exempted under the Initiative. Therefore, if the Initiative is passed, it may be interpreted to mean that all subdivisions and projects in the City shall be subject to the proposed lottery process.
- The term "Tracy resident" is not defined in this provision. Federal, state and local laws and regulations have various definitions and standards for determining residency. It is unclear what criteria would apply for determining if an individual constitutes a Tracy resident for purposes of implementing this lottery.

UNCERTAINTIES WITHIN THE INITIATIVE

- Federal laws prohibit housing discrimination on the basis of a protected class such as race, religion, or sex. Depending on the demographics of “Tracy residents” compared to “non-Tracy residents,” the proposed assignment of a preference to Tracy residents could be in violation of those laws.
- The Commerce Clause of the U.S. Constitution prohibits state and local governments from restricting interstate commerce. The proposed assignment of a preference to Tracy residents may be determined to restrict interstate commerce if, in its application or in its intent, it discriminates against out-of-state buyers.

UNCERTAINTIES WITHIN THE INITIATIVE

5. Policy Analysis

Section 4(a) and (b) of the Initiative require the City of Tracy to “immediately adopt all changes required by this Initiative Ordinance” and to “amend the Residential Growth Management Plan, any successor Growth Management Ordinance, all ordinances, GMO Guidelines, Guidelines, regulations, its zoning ordinance, and all other land use, development, and subdivision regulations to bring them into conformity with this Initiative Ordinance.” This chapter of the report identifies the changes that would likely be necessitated under this requirement.

Each of the changes described in this chapter would likely involve costs to the City. Chapter 12 of this report provides a more detailed discussion of cost implications.

The Initiative does not include redesignation of the Initiative-Exempted Parcels for residential use, but it implies the landowner’s intent to ask for redesignation. As noted in Chapter 4, the Initiative would not require the City to allow development on any particular parcel, and Section 5.1 of this chapter is based on this assumption. However, if the City were to redesignate the Initiative-Exempted Parcels for residential use and/or if the exemptions in the Initiative were to be applied to additional parcels, then more extensive changes would be required. These changes are described in Section 5.2 of this chapter.

5.1 REQUIRED CHANGES

5.1.1 GENERAL PLAN POLICIES

The City’s General Plan last underwent a complete update in 2011. It is a comprehensive land use and development policy document that establishes a vision for the future and a series of policies to achieve that vision over time. The General Plan contains goals, objectives, policies, and actions categorized into ten Elements.

Table 5-1 provides a discussion of the Initiative’s consistency with existing General Plan policies, focusing on the changes that would be needed to bring the General Plan into conformity with the Initiative.

5.1.2 GROWTH MANAGEMENT ORDINANCE

The City’s Residential Growth Management Plan, or GMO, is codified in Chapter 10.12 of the City’s Municipal Code. The following sections of the GMO and GMO Guidelines would need to be amended to bring the GMO into conformity with the Initiative:

POLICY ANALYSIS

TABLE 5-1 REQUIRED GENERAL PLAN POLICY AMENDMENTS

General Plan Policy/Action	Discussion
Land Use Element	
<p>Objective LU-1.4, Policy P2 On a regular basis, the City shall prioritize the allocation of Residential Growth Allotments (RGAs) and Building Permits for new residential development to meet the goals of the General Plan including, but not limited to, growth concentrated around existing urban development and services, infill development, affordable housing, senior housing, and development with a mix of residential densities and housing types, as a high priority.</p>	<p>Objective LU-1.4, Policy P2 states that the City shall prioritize the allocation of RGAs based on a number of factors, including senior housing and affordable housing. By exempting from the GMO senior housing and housing types assumed to be affordable to the workforce, the Initiative would circumvent this prioritization. Objective LU-1.4, Policy P2 would require amendment to reflect that senior housing, attached housing, and housing on 4,000-square-foot lots are exempt from the GMO, and instead focus on other types of projects that may be prioritized for RGAs.</p>
Community Character Element	
<p>Objective CC-6.1, Policy P4 Blocks within neighborhoods should contain a mix of lot sizes and house sizes. Some lots may be designed to accommodate one-story houses, which generally require greater lot width to avoid front elevations of houses that are dominated by garages.</p>	<p>Objective CC-6.1, Policy P4 requires a mix of lot sizes within neighborhood blocks. The Initiative gives an RGA exemption to single-family homes on 4,000-square-foot lots or smaller, so it stands to reason that projects seeking an exemption would include predominantly small lots instead of a mixture. Objective CC-6.1, Policy P4 would need to be amended to allow for fewer mixed lot sizes in exempt, small lot developments.</p>

Source: City of Tracy, PlaceWorks, 2018.

▪ **GMO Section 10.12.020 – Purpose**

The purpose and intent of this chapter is to:

- a) Achieve a steady and orderly rate of annual residential growth in the City, and to encourage diverse housing opportunities for the region in which the City is situated, and to balance these needs with the City's obligation to provide public facilities and services to the City's residents with available fiscal resources; and
- b) Regulate the timing and annual amount of new development projects, so that necessary and sufficient public facilities and services are provided, and so that new development projects will not diminish the City's level of service standards; and
- c) Encourage concentric growth of the City by promoting efficient residential development patterns and orderly expansion of residential areas to maximize the use of existing public services and infrastructure; and
- d) Encourage development which will efficiently utilize existing and planned future, public facilities; and
- e) Encourage a balance of housing types in the City which will accommodate a variety of persons, including affordable housing projects which will accommodate persons of very low, low, and moderate income, and persons on limited or fixed incomes; and
- f) Implement and augment the City policies related to the regulation of new development as set forth in the general plan, specific plans, City ordinances and resolutions, master plans, finance and implementation plans and design documents.

Discussion:

- The Initiative would be inconsistent with Section 10.12.020, and would therefore be generally inconsistent with the purpose of the GMO.

Section 10.12.020(a) establishes that the GMO is intended to achieve a steady and orderly rate of annual residential growth, encouraging diverse housing opportunities (such as those encouraged in Section 10.12.020(e)) in balance with the City's provision of public services and facilities.

Section 10.12.020(b) highlight's the GMO's role of regulating the timing of annual growth to be in line with the provision of sufficient public services and facilities. By exempting from the GMO certain types of housing, the Initiative would circumvent the GMO as a mechanism to control and sequence development.

Section 10.12.020(c) encourages concentric growth patterns. As shown in Figure 2-1, the Initiative-Exempted Parcels are located along the periphery of the city and SOI, and in some areas outside of the SOI. Therefore, depending on the timing of development, Initiative-Exempted Parcels could be developed before lands within the City are built out, resulting in "leap frog" development patterns and potentially inefficient expansion of services and utilities (which would be inconsistent with Section 10.12.020 (d)).

Section 10.12.020(f) states that the GMO implements the City's plans and regulations, including its General Plan and master plans (such as the City's infrastructure master plans). By exempting certain residential development from the GMO, and if the Initiative requires General Plan land use amendments, the Initiative could allow development that would exceed current projections. Therefore, the City's master plans would need to be updated to reflect growth projections under the Initiative. See Chapter 10 of this report for discussion of additional implications of the Initiative related to infrastructure planning.

- **GMO Guidelines Section F – RGA Allocation Criteria, Order of Priority for Allocations of RGAs; Proportionate Allocation of Previously Unallocated RGAs**

2) Primary Growth Areas. Primary Growth Areas are defined in Exhibit "A", attached hereto and incorporated herein by this reference. Subject to the requirements of the GMO and these Guidelines, including criteria in subsection F 8 below, Primary Area projects shall be entitled to receive, at the beginning of each allocation cycle:

a) In years where 750 RGAs may be allocated, the Primary Growth Areas shall be entitled to receive 100 RGAs,

b) In years where 600 RGAs may be allocated, the Primary Growth Areas shall be entitled to receive 80 RGAs

Discussion:

- The GMO Guidelines identify areas of the City where the issuance of RGAs will be focused. By exempting certain types of projects in certain areas from the GMO, the City may reevaluate the geographic focus of RGAs, to align with or balance the areas where growth would be exempted from the GMO under the Initiative.

POLICY ANALYSIS

5.2 ADDITIONAL CHANGES REQUIRED IF EXEMPTED PARCELS WERE REDESIGNATED

As noted in Chapter 4 and above, the Initiative does not include a redesignation of the Initiative-Exempted Parcels for residential use, although the Initiative implies the landowner's intent to ask for redesignation. If the City were to redesignate the Initiative-Exempted Parcels for residential use and/or if the Initiative's exemptions were applied to additional parcels, then significant additional changes to City policies and regulations would be needed.

5.2.1 SPHERE OF INFLUENCE

As noted in Chapter 2 of this report, many of the Initiative-Exempted Parcels are outside the City's SOI. The SOI is the area outside of the City limit that the City expects to annex and urbanize in the future, as determined by the Local Agency Formation Commission (LAFCO) of the County. The primary focus of LAFCO is to ensure efficient public services delivery and avoid duplication of services across jurisdictional boundaries. When a city submits a boundary change to LAFCO, the city is also required to submit a corresponding Municipal Services Review (MSR). LAFCO uses the MSR to determine whether the city, in its role as a service provider, has the physical capacity and financial ability to accommodate the planned growth in its proposed SOI.

The City's SOI was last amended as part of the 2011 General Plan Update, and the City's desired SOI is documented in the General Plan. The City's General Plan land use map applies land use designations to lands within the City limit and SOI to represent the intended future use of each parcel of land. There are no land use designations for areas outside the SOI, and it is assumed that no City development outside of the SOI will occur until all or substantially all of the existing SOI is developed.

If the City were to allow and plan for development on the Initiative-Exempted Parcels outside of the SOI, amendments to the SOI would be required and a General Plan amendment would also be required to reflect the City's proposed SOI changes. Amendments to the City's SOI would require preparation of a new MSR and subsequent review and approval by LAFCO.

The City's current SOI contains capacity to accommodate roughly 30 years' worth of future residential development, and redesignating the Initiative-Exempted Parcels inside the City limit for residential development would add capacity for additional units, as documented in Chapter 6 of this report. LAFCO policy generally prohibits SOIs to be expanded to include more than 20 years' worth of growth potential. It is unknown whether the San Joaquin County LAFCO would allow an expansion of the SOI, given the existing capacity within the current SOI.

Moreover, the Initiative-Exempted Parcels that are outside of the SOI include several parcels in the vicinity of Lammers Road and Schulte Road, along the western edge of the current SOI, that were removed from the SOI as part of the City's 2011 General Plan Update. The fact that these particular parcels were removed from the SOI to conform with LAFCO mandates only seven years ago might make it especially difficult to add these parcels back into the SOI at this time.

5.2.2 GENERAL PLAN LAND USE DESIGNATIONS

Beyond the policy changes identified in Section 5.1.1, several changes would be required to the General Plan if the City Council were to redesignate the Initiative-Exempted Parcels for residential use.

In general, residential development on the Initiative-Exempted Parcels would conflict with existing land use designations. None of the Initiative-Exempted Parcels are currently designated for residential use, so development of housing under the Initiative would conflict with existing land use designations.

The current General Plan land use designations of the Initiative-Exempted Parcels are summarized in Table 5-2. As shown in Table 5-2, none of the Initiative-Exempted Parcels are currently designated for residential use, although residential uses are envisioned in some of the City's Urban Reserves, as described below. Land use designations for the Initiative-Exempted Parcels are mapped in Figure 5-1.

As shown in Table 5-2, the Initiative-Exempted Parcels include lands within Urban Reserve 1 (UR-1) and Urban Reserve 3 (UR-3). Urban Reserves are undeveloped areas at the city's periphery.

Regarding UR-1, the General Plan states, "The vision for this area includes primarily residential uses, with a small amount of commercial uses, parks and public schools to support the residential neighborhoods."¹ Therefore, residential growth in UR-1 would be consistent with the City's overall land use vision for LU-1. The Statistical Profile for UR-1 (Table 2-3 in the General Plan) includes 55 acres for Residential Medium (5.9 to 12 units per acre) and 21 acres for Residential High (12.1 to 25 units per acre) development; in these areas, development under the Initiative would be generally consistent with the General Plan. In order for development in other areas of UR-1 to occur under the Initiative, the City's land use designations and policies would need to be amended to allow the attached housing and residential development on 4,000-square-foot lots, as supported by the Initiative.

Regarding UR-3, the General Plan states, "The vision for this area is for industrial and office uses with the potential for some low-density residential uses."² Urban Reserve 3 Policy 3c is as follows:

Residential Very Low uses could be located in the north and west of the area, away from industrial and commercial areas and near the adjacent existing single family residential uses in San Joaquin County. An alternative is to create a significant landscape buffer on the west and north of at least 100 feet outside of the public right-of-way with low maintenance landscaping and equestrian trails. Structures on the western and northern edges of the areas should not be more than one story in height.³

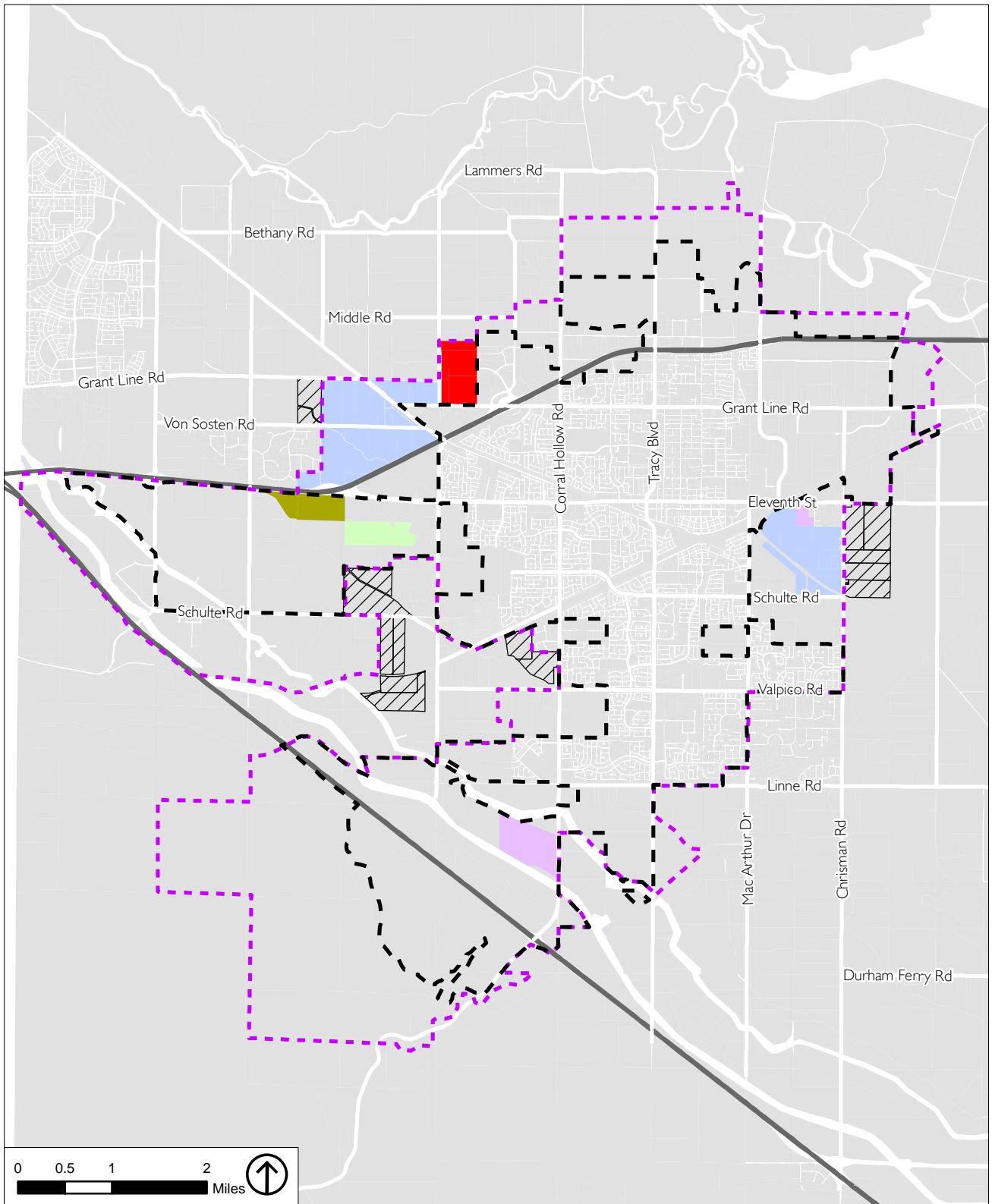
Urban Reserve 3 Policy 3a is as follows: "Industrial, office and commercial uses shall be located closest to I-205."

¹ City of Tracy, 2011, General Plan, page 2-62.

² City of Tracy, 2011, General Plan, page 2-66.

³ City of Tracy, 2011, General Plan, Urban Reserve 3, Policy 3c, page 2-66.

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Source: City of Tracy, 2018; PlaceWorks, 2018.

- Not Designated
- Commercial
- Office
- Industrial
- Open Space
- Urban Reserve
- City Limit
- Sphere of Influence

Figure 5-1
Initiative-Exempted Parcels
General Plan Land Use Designations

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TABLE 5-2 CITY OF TRACY GENERAL PLAN LAND USE DESIGNATIONS ON INITIATIVE-EXEMPTED PARCELS

General Plan Land Use Designation	Number of Parcels	Acres
Within City Limit		
Industrial	1	169.8
Office	2	122.3
Open Space	1	115.7
Outside of City Limit but within Sphere of Influence		
Commercial	11	172.8
Industrial	1	22.6
Urban Reserve 1	18	335.4
Urban Reserve 3	42	669.5
Total	76^a	1,608.0

This table includes only the Initiative-Exempted Parcels within the city limit and Sphere of Influence (SOI). The City of Tracy’s General Plan land use designations do not apply to lands outside of the SOI.
Source: City of Tracy, 2018.

Therefore, residential growth in UR-3 would be inconsistent with the General Plan if it would include low-, medium-, and high-density residential uses (that is, housing at densities greater than “very low”), if it would include residential use in areas other than those described in Urban Reserve 3 Policy 3c, if it would allow residential use adjacent to I-205, and if it would not address the land use compatibility considerations described in Policy 3c. In order for development in UR-3 to be exempted from the GMO as proposed by the Initiative, the City’s land use designations and policies for UR-3 would need to be amended to allow the attached housing and residential development on 4,000-square-foot lots, as supported by the Initiative. Redesignation of lands along I-205 to allow residential use could also create land use conflicts by developing housing in an area subject to noise and air quality impacts.

Thus all of the Initiative-Exempted Parcels would need to receive new residential General Plan land use designations if the City Council later decided to allow residential development on them. The new designations would presumably allow for either or both attached housing and/or single-family lots of 4,000 square feet or less. The Residential Medium General Plan land use designation is the only designation that currently matches this requirement.

5.2.3 GENERAL PLAN POLICIES

Beyond the changes to the General Plan that are identified in Section 5.1.1 above, additional changes would also be required if the City decided to allow residential development on the Initiative-Exempted Parcels or if the Initiative’s exemptions were applied to additional parcels. Table 5-3 lists the General Plan policies that would be affected.

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TABLE 5-3 ADDITIONAL GENERAL PLAN POLICY CHANGES IF INITIATIVE-EXEMPTED PARCEL RESIDENTIAL DEVELOPMENT IS MANDATORY

General Plan Policy/Action	Discussion
Land Use Element	
<p>Objective LU-1.2, Policy P3 The first application for development in each Urban Reserve shall be responsible for preparing a General Plan amendment to establish specific land use designations for each parcel of land within the Urban Reserve and a Zoning District, Specific Plan or PUD for the entire Urban Reserve area. When the development intended for areas within an Urban Reserve is initiated solely to accommodate schools, parks, and public facilities, then the requirement to prepare comprehensive Zoning Districts, Specific Plans or PUDs for the entire area does not apply until development of commercial, industrial, office or residential development is proposed.</p>	<p>Objective LU-1.2, Policy P3 requires the first application for an Urban Reserve to prepare a General Plan amendment, Zoning District, and Specific Plan or Planned Unit Development (PUD) for the entire Urban Reserve area. Because the Initiative-Exempted Parcels include lands within UR-1 and UR-3, projects under the Initiative could require the preparation of new Specific Plans or PUDs.</p>
<p>Objective LU-1.4, Policy P3 The City shall encourage residential growth that follows an orderly pattern with initial expansion targeted for areas shown in Figure 2-3. Applications for residential development shall only be considered in the following instances:</p> <ul style="list-style-type: none"> ▪ In areas designated within Figure 2-3 or on a property with a recorded Development Agreement that allows for the allocation of RGAs and building permits. ▪ In areas and Urban Reserves that primarily contain land uses focused on the generation of jobs with ancillary residential development. However, the residential portions of such areas or Urban Reserves shall not be considered eligible to apply for RGAs and building permits until RGAs and building permits necessary to develop all areas within Figure 2-3 have been awarded, unless those RGAs and building permits sought for projects in such areas are for affordable housing as defined by the Tracy Municipal Code, in which cases RGAs and building permits for affordable housing may be awarded. 	<p>Objective LU-1.4, Policy P3 reflects the City’s long-term planning in considering the areas in and around the City for future residential growth. Figure 2-3 in the General Plan shows secondary residential growth areas, which are the areas identified for residential development before developing residential portions of Urban Reserves (with exceptions for affordable housing). The majority of the Initiative-Exempted Parcels are not within the secondary residential growth areas identified in General Plan Figure 2-3. Therefore, the City would need to reassess this General Plan policy and figure to consider whether and how Initiative-Exempted projects would fit within, or require changes to, this policy framework. One option would be to revise Figure 2-3 to map the Initiative-Exempted Parcels as secondary residential growth areas. However, because Initiative-Exempted Parcels include lands outside of the SOI, annexations would be required before housing could be developed under the Initiative.</p>
<p>Objective LU-6.2, Policy P1 Uses that are compatible with the noise, air quality and traffic impacts associated with freeways, such as auto-oriented commercial and industrial uses, should be located near and along freeway corridors whenever possible.</p>	<p>Many of the Initiative-Exempted Parcels are located along the I-205 freeway corridor. These areas are not currently designated or zoned for residential use, and would need to be redesigned and rezoned to allow residential development under the Initiative. Redesignation and rezoning of lands along I-205 to allow residential use could create land use conflicts by developing housing in an area subject to noise and air quality impacts. Objective LU-6.2, Policy P1 would require amendment to reflect this change in planned land uses along the I-205 corridor.</p>
Economic Development Element	
<p>Objective ED-4.1, Action A1 Monitor current and future land supply needs for industrial, office and retail growth.</p>	<p>One of the ways in which the City plans for future land supply needs for industrial, office, and retail growth, as called for in Objective ED-4.1, Action A1, is through its designation of Urban Reserves in the General Plan. The City has not attributed precise land use designations to these areas, but has included Statistical Profiles in the General Plan that</p>

POLICY ANALYSIS

TABLE 5-3 ADDITIONAL GENERAL PLAN POLICY CHANGES IF INITIATIVE-EXEMPTED PARCEL RESIDENTIAL DEVELOPMENT IS MANDATORY

General Plan Policy/Action	Discussion
	<p>indicate the overall mix of uses envisioned for each Urban Reserve (UR-). Of the ten Urban Reserves, five of them – UR-2, UR-3 (part of which overlaps with the Initiative-Exempted Parcels), UR-4, UR-6, and UR-10 – are envisioned for primarily non-residential uses. These areas are not currently designated or zoned for residential use, and would need to be redesignated and rezoned to allow residential development under the Initiative. See Chapter 11 of this report for further discussion of the potential economic development impacts of the proposed Initiative.</p>
Circulation Element	
<p>Objective CIR-1.1, Action A1 Update the Roadway Master Plan upon adoption of the General Plan. The Roadway Master Plan should contain the following information:</p> <ul style="list-style-type: none"> ▪ Improvement needs and ultimate right-of-way for 50 years, based on development anticipated by the General Plan and foreseeable development based on proposed projects, current absorption rates for nonresidential properties and historical population growth rates. [...] 	<p>The City’s Roadway Master Plan is a long-range (50-year) plan for roadway improvements and rights-of-way needs that is based on the buildout levels of the adopted General Plan. The Initiative could lead to new, previously unforeseen residential development, on lands both within and outside of the existing SOI. These land use changes would require related changes to the City’s Roadway Master Plan to ensure that the City is planning for roadway needs to serve new development areas.</p>
<p>Objective CIR-1.3, Policy P1 To the extent feasible, the City shall strive for LOS D on all streets and intersections, with the LOS standard for each facility to be defined in the Transportation Master Plan in accordance with the opportunities and constraints identified through the traffic projections and analysis performed for that Plan. The following exceptions to the LOS D standard may be allowed:</p> <ul style="list-style-type: none"> ▪ LOS E or lower shall be allowed on streets and at intersections within one-quarter (1/4) mile of any freeway. This lower standard is intended to discourage inter-regional traffic from using Tracy streets. ▪ LOS E or lower shall be allowed in the Downtown and Bowtie area of Tracy, in order to create a pedestrian-friendly urban design character and densities necessary to support transit, bicycling and walking. 	<p>Residential growth within the Initiative-Exempted Parcels would contribute to an increase in vehicular trips, which would result in a worsening of traffic delay at intersections in comparison to existing conditions, affecting LOS levels. Residential growth in areas not currently planned for such growth would require the City to reevaluate its traffic forecasts and potentially make additional improvements to intersections or road segments, or amend its level of service standards for certain intersections.</p>
Public Facilities and Services Element	
<p>Objective PF-6.1, Action A2 Revise the water use projections in the Urban Water Management Plan based on development projections contained in the General Plan and the Growth Management Ordinance (GMO).</p>	<p>The City’s Urban Water Management Plan (UWMP) projections are based on the growth projections of the General Plan. By exempting eligible residential development from the GMO, the Initiative could allow development that would require water service in excess of current projections. Therefore, the UWMP would need to be updated to reflect growth projections under the Initiative. See Chapter 10 of this report for discussion of additional implications of the Initiative related to infrastructure planning.</p>

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TABLE 5-3 ADDITIONAL GENERAL PLAN POLICY CHANGES IF INITIATIVE-EXEMPTED PARCEL RESIDENTIAL DEVELOPMENT IS MANDATORY

General Plan Policy/Action	Discussion
<p>Objective PF-6.2 Provide adequate water infrastructure facilities to meet current and future populations.</p>	The City strives to maintain adequate water supply facilities and systems to serve all users. Because growth under the Initiative is not currently planned in the City’s General Plan, development under the Initiative would increase water demand beyond the level planned for, which may affect the City’s ability to meet this objective.
<p>Objective PF-7.3, Policy P1 Wastewater collection and treatment facilities shall be designed to serve expected buildout of the areas served by these facilities but constructed in phases to reduce initial and overall costs.</p>	The City’s wastewater system is designed to meet expected buildout, and the City requires that sufficient capacity exist in the wastewater treatment and collection system prior to approving development. New development is required to expand collection lines as needed. Because growth under the Initiative is not currently planned in the City’s General Plan, development under the Initiative would increase demand for wastewater collection and treatment facilities beyond the level planned for, which could affect the City’s ability to meet these policies.
<p>Objective PF-7.3, Policy P2 The City shall construct new wastewater trunk lines as needed. Individual development projects shall be responsible for construction of all collection lines other than trunk lines.</p>	
<p>Objective PF-7.3, Policy P3 The approval of new development shall be conditioned on the availability of sufficient capacity in the wastewater collection and treatment system to serve the project.</p>	

Source: City of Tracy, PlaceWorks, 2018.

5.2.4 ZONING

The City’s Zoning Ordinance is Title 10 of the City of Tracy Municipal Code. The Zoning Ordinance establishes the City’s development standards and regulations.

The current Zoning Districts applicable to the Initiative-Exempted Parcels are summarized in Table 5-4 and mapped in Figure 5-2. As shown in Table 5-4, none of the Initiative-Exempted Parcels are currently designated for residential use. The 238 acres zoned Planned Unit Development are part of the Tracy Gateway Planned Unit Development and are envisioned for office and open space uses. The approximately 170 acres zoned Tracy Hills Specific Plan envisioned for light industrial use.

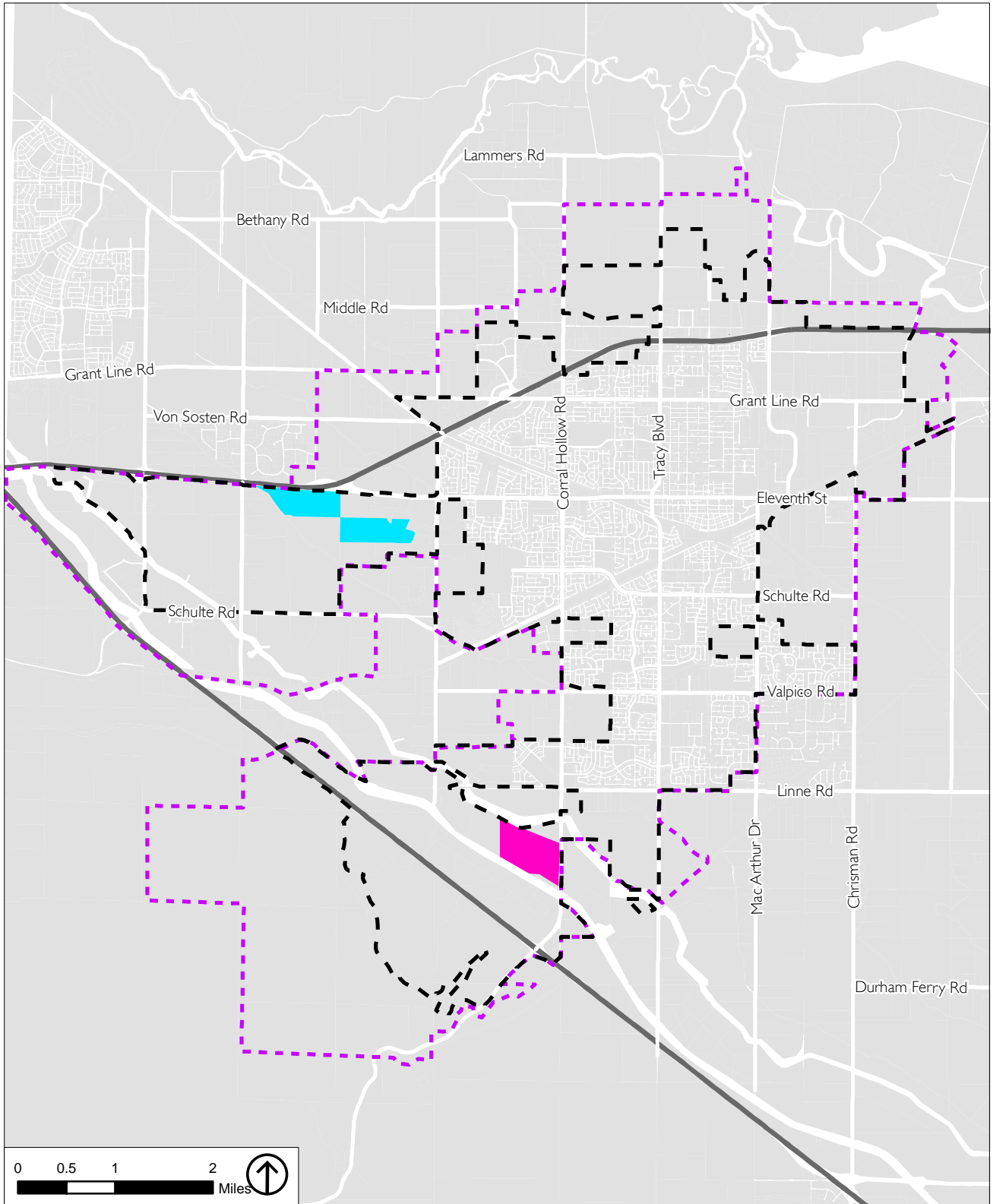
TABLE 5-4 CITY OF TRACY ZONING OF INITIATIVE-EXEMPTED PARCELS

Zoning	Number of Parcels	Acres
Planned Unit Development	3	238.0
Tracy Hills Specific Plan	1	169.8
Total	4^a	407.8

a. This table only includes the Initiative-Exempted Parcels within the City limit. The City of Tracy’s Zoning District’s do not apply to lands outside of the City limit.

Source: City of Tracy, 2018.

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Source: City of Tracy, 2018; PlaceWorks, 2018.

- Light Industrial
- Planned Unit Development (PUD)
- Tracy Hills Specific Plan (THSP)
- City Limit
- Sphere of Influence

Figure 5-2
Initiative-Exempted Parcels Zoning

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As described in Section 5.2.2, the Initiative may require several amendments to the City's General Plan land use designations map. These amendments would require associated parcel rezonings to ensure consistency between the City's General Plan and Zoning maps.

For most residential Zoning Districts, the Zoning Ordinance provides a minimum lot size requirement. In nearly all residential Zoning Districts, the minimum lot size is greater than 4,000 square feet. However, 4,000-square-foot lots are permitted within the following Zoning Districts:

- Medium Density Cluster (MDC) – minimum lot size 3,500 square feet
- Central Business District (CBD) – no minimum lot size
- Low Density Residential – Tracy Hills (LDR-T) – minimum lot size 3,900 square feet
- Medium Density Residential – Tracy Hills (MDR-T) – minimum lot size 3,500 square feet
- High Density Residential – Tracy Hills (HDR-T) – minimum lot size determined on a case-by-case basis

To allow 4,000-square-foot lots on Initiative-Exempted Parcels, these parcels would need to be rezoned to one of the Zoning Districts listed above, or the City would need to amend its Zoning Ordinance to allow 4,000-square-foot lots in additional Zoning Districts.

See Chapter 6 of this report for further discussion of 4,000-square-foot lots in Tracy.

5.2.5 SPECIFIC PLANS AND CONCEPT DEVELOPMENT PLANS

The Initiative-Exempted Parcels overlap with the following plans adopted by the City of Tracy:

- **Tracy Gateway Concept Development Plan.** The Tracy Gateway Concept Development Plan was adopted in 2002 for the Tracy Gateway Planned Unit Development, to satisfy the Concept Development Plan requirements of the City's Planned Unit Development Zoning. The Tracy Gateway Concept Development Plan encompasses approximately 538 acres, 238 acres of which are within the Initiative-Exempted Parcels. Tracy Gateway is located at the western edge of the City, south of I-205 at the Eleventh Street off-ramp. This plan allows office space, commercial uses, retail uses, and a golf course. Earlier this year, the City initiated a process to update the Tracy Gateway plan. That process is underway and is expected to be completed in 2019. At this point, it is unknown if that process would result in any of Tracy Gateway being designated for residential development.
- **Tracy Hills Specific Plan.** The Tracy Hills Specific Plan was adopted in April 2016 and encompasses approximately 2,732 acres, 170 acres of which are within the Initiative-Exempted Parcels. Tracy Hills is located on the south side of the City. Nearly 5,500 new residential units are forecasted for Tracy Hills. The Tracy Hills Specific Plan envisions a mix of residential densities, along with mixed-use business park, highway commercial, and light industrial uses. The Tracy Hills Specific Plan was originally adopted in 1998.

As previously stated, the Initiative-Exempted Parcels are not planned for residential use by the Tracy Gateway Planned Unit Development or Tracy Hills Specific Plan. Therefore, these adopted plans would require amendment for conformance with the Initiative.

5.2.6 AIRPORT LAND USE PLAN

The Initiative-Exempted Parcels include lands within Airport Land Use Compatibility Zone 2 (Inner Approach/Departure Zone), Zone 3 (Inner Turning Zone), Zone 4 (Outer Approach/Departure Zone), and Zone 7 (Traffic Pattern Zone).⁴ The City's General Plan currently designates these parcels for Industrial use. These parcels would need to be redesignated and rezoned before residential development could occur.

Under State law, and as supported by Objective LU-6.3, Policy P1, General Plan amendments for lands within the County's Airport Influence Area would require review by the Airport Land Use Commission. Residential projects exempt from the GMO under the Initiative would likely not meet the criteria established for the Airport Land Use Compatibility Zones. For example, within Zone 2, the maximum residential density is one dwelling unit per 10 acres, which is a substantially lower density than required to qualify for a GMO exemption under the Initiative.

If the Airport Land Use Commission (ALUC) were to refuse to redesignate the affected lands for residential use, then the City Council would need to consider overriding the ALUC, which could occur with a 4/5 majority vote of the Council.

5.2.7 INFRASTRUCTURE PLANS AND POLICIES

The City has adopted master plans to identify its infrastructure needs for parks, public facilities, public safety, water, stormwater, wastewater, and roadways. These plans, referred to collectively in this report as the "Infrastructure Master Plans," were prepared in conjunction with the City's 2011 General Plan Update and are intended to identify needs to accommodate buildout under the 2011 General Plan.

By exempting eligible residential development from the GMO, the Initiative could allow development that would exceed current growth projections. Therefore, the Infrastructure Master Plans would need to be updated to reflect growth projections under the Initiative.

In addition, as identified in Table 5-3, the General Plan establishes policies related to adequate water supply, wastewater, and roadway services and facilities. Residential growth in areas not currently planned for such growth would require the City to reevaluate its forecasts and potentially amend its level of service standards for certain services or areas of the City.

See Chapter 9 and Chapter 10 for additional discussion of the Initiative's implications for the Infrastructure Master Plans.

5.2.8 ECONOMIC DEVELOPMENT GOALS

As identified in Section 5.2.2, none of the Initiative-Exempted Parcels are currently designated for residential use. In addition, as discussed in Table 5-3, the City plans for future land supply needs for industrial, office, and retail growth through the designation of Urban Reserves in the General Plan. Of the

⁴ San Joaquin County's Aviation System, 2009, Airport Land Use Compatibility Plan, Amended January 2018, Exhibit 3TM-1.

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ten Urban Reserves, five of them—UR-2, UR-3 (part of which overlaps with the Initiative-Exempted Parcels), UR-4, UR-6, and UR-10—are envisioned for primarily non-residential uses. Therefore, development of housing under the Initiative would conflict with existing land use designations and would require conversion to residential use of lands planned for non-residential use. Decreasing the supply of non-residential land could decrease the availability of future job-generating land uses.

As shown in Table 8-2, by allowing housing development in areas planned for non-residential development, implementation of the Initiative could result in a 7,616,636-square-foot loss of non-residential space.

By allowing housing in areas currently planned for non-residential use, the City would experience a loss in land area available for planned job and industry growth. Many of these areas are along the freeway corridor. The City may decide to identify additional lands suitable for non-residential development to replace these land supplies; if it did not do so, there would be a reduction in the potential for new job-generating development.

See Chapter 11 for additional discussion of the Initiative’s implications for the City’s economic development goals.

5.2.9 DEVELOPMENT SEQUENCING

The GMO is intended to achieve a steady and orderly rate of annual residential growth, encouraging housing opportunities in balance with the City’s provision of public services and facilities. The GMO serves to regulate the timing of annual growth. By exempting from the GMO certain types of housing, the Initiative would circumvent the GMO as a mechanism to control and sequence development.

5.2.10 CEQA IMPLICATIONS

As described in the preceding sections, the Initiative would require amendments to several City plans, regulations, and documents. Because a California Environmental Quality Act (CEQA) review process is required for any discretionary action (made by City Council or Planning Commission), the City would need to complete CEQA review for these amendments prior to adopting the amendments. The type of CEQA review required would depend on the extent to which the amendments could directly or indirectly impact the physical environment. It is also important to note that the CEQA review process can be lengthy, depending on the areas of controversy involved in the decision and the amount of technical analysis required to adequately evaluate potential environmental impact(s) of the proposed decision.

6. *Consistency with Existing and Planned Land Use Patterns*

This chapter of the report considers the extent to which new development under the Initiative would be consistent with existing and planned development land use patterns in Tracy. It assesses two separate issues:

- Overall land use patterns.
- Residential unit type and lot size.

6.1 OVERALL LAND USE PATTERNS

6.1.1 EXISTING LAND USE PATTERNS

The existing land use of the Initiative-Exempted Parcels is shown in Figure 6-1. Most of the parcels are currently in agricultural and vacant use. Some residential sites are scattered throughout the parcels.

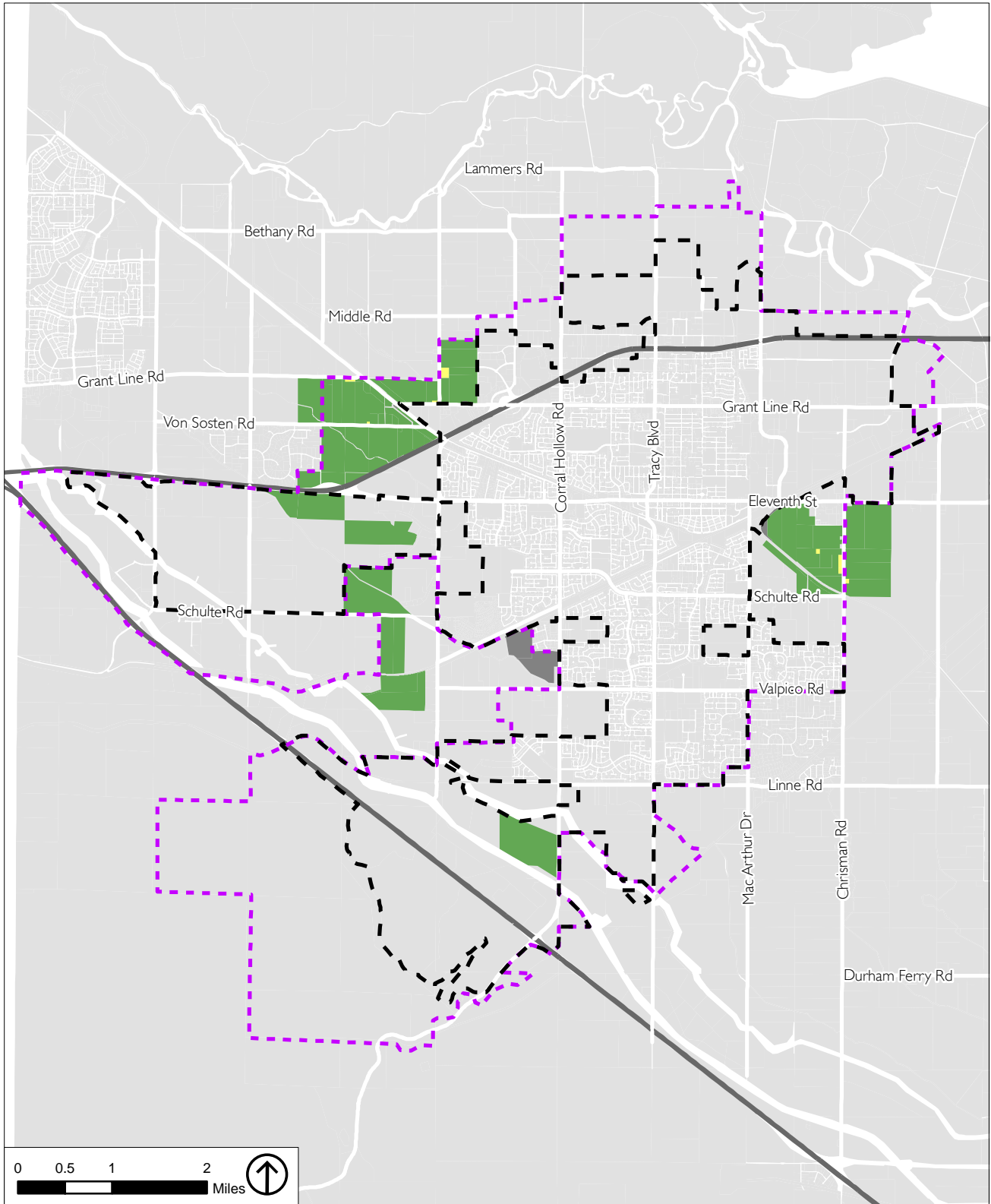
In general, land uses in Tracy are mixed and parcel sizes are smaller within central Tracy. Land uses Downtown include largely commercial, office, public, and residential uses. Traveling outward from Downtown, parcel sizes become larger and large vacant sites and industrial lands appear. Major concentrations of commercial uses are along the Eleventh Street corridor and in association with the I-205 Regional Commercial Area in the northwest corner of the City. Several concentrations of industrial uses are in and around Tracy, including the Northeast Industrial Area, near Tracy Boulevard, West Tracy around Mountain House Parkway, and around the Airport.

Within the City as a whole, the predominant land uses are single-family residential, vacant land, agriculture, industrial, and commercial. Ninety percent of residential units within Tracy are single-family dwellings.

Vacant buildings exist in fairly equal numbers within the City and SOI. Several smaller vacant buildings are located within the downtown area and a few larger parcels are located on the northern edge of the City limit. Vacant land is located within the City and SOI, with a greater amount within the SOI. There are both large single vacant parcels and groupings of smaller vacant parcels within the City limit.

Working and non-working agricultural lands, for crops, grazing, dairy farms and related production are located on all four sides of Tracy, with approximately 1,600 acres within the City limit and 5,600 acres within the SOI, adjacent to the urban edge.

CONSISTENCY WITH EXISTING AND PLANNED LAND USE PATTERNS



Source: City of Tracy, 2018; San Joaquin County Assessor, 2018; PlaceWorks, 2018.

- Agriculture
- Public Facilities
- Residential
- Vacant
- City Limit
- Sphere of Influence

Figure 6-1
Initiative-Exempted Parcels Existing Land Use

CONSISTENCY WITH EXISTING AND PLANNED LAND USE PATTERNS

6.1.2 PLANNED LAND USE PATTERNS

As described in Chapter 5, within the Initiative-Exempted Parcels land is planned for future non-residential use. Based on the City's General Plan land use map, the Initiative-Exempted Parcels are intended to develop with a variety of commercial, industrial, office, and open space uses. Development under the General Plan would transform these largely vacant and agricultural sites at the edges of the City and along the freeway to employment centers serving workers from Tracy and the region. The exception is within UR-1, where a mix of residential uses is envisioned.

As development would occur in the Initiative-Exempted Parcels under planned land uses, parcels would likely be subdivided to align with future internal roadways, blocks, and neighborhood uses. For example, within the Tracy Gateway Planned Unit Development, a portion of which overlaps with the Initiative-Exempted Parcels, new internal roadways would be created, a central open space/golf course would be developed, and lots would be subdivided in varying sizes to allow for office, research and development, and commercial uses. Within the Tracy Hills Specific Plan, which also overlaps with the Initiative-Exempted Parcels, new roadways, neighborhood and community parks, school sites, and commercial, mixed-use, and industrial sites would be developed. Within residential areas, lot sizes would vary from less than 4,000 square feet to 15,000 square feet.

6.2 RESIDENTIAL UNIT TYPE AND LOT SIZE

The Initiative exempts attached housing and lots of 4,000 square feet or less from the GMO, and would therefore encourage these housing types in future housing developments. This raises the question of whether these unit types and lot sizes would be consistent with Tracy's existing and planned development character.

There are currently approximately 2,130 parcels within the City and SOI with a parcel size of 4,000 square feet or smaller. These parcels are mapped in Figure 6-2. Nearly all of these parcels are located within the City limit (with the exception of 12 parcels totaling 0.5 acre in area outside of the City limit within the SOI). These parcels are scattered throughout the City and SOI. Within the Downtown they are fairly dispersed, but in other areas they are typically clustered as part of subdivisions. Over half of the existing 4,000-square-foot parcels are zoned Planned Unit Development, over 20 percent are zoned Medium Density Cluster, and nearly 10 percent are zoned Medium Density Residential. The remaining parcels are zoned for a variety of uses, predominantly High Density Residential, Light Industrial, Central Business District, General Highway Commercial, Professional Office Medical, Low Density Residential, and Medical Office.

Over 97 percent of the existing 4,000-square-foot parcels are already developed, and over half of them are developed with single-family homes. While some of these subdivisions date back to the 1970s, most were developed in the 1980s and 1990s. Some of these parcels were developed more recently, such as the homes on Union Lane at the northwestern edge of the City near West Byron Road, which were built in 2015 and 2016. Some of the existing homes in these subdivisions are detached single-family homes, while

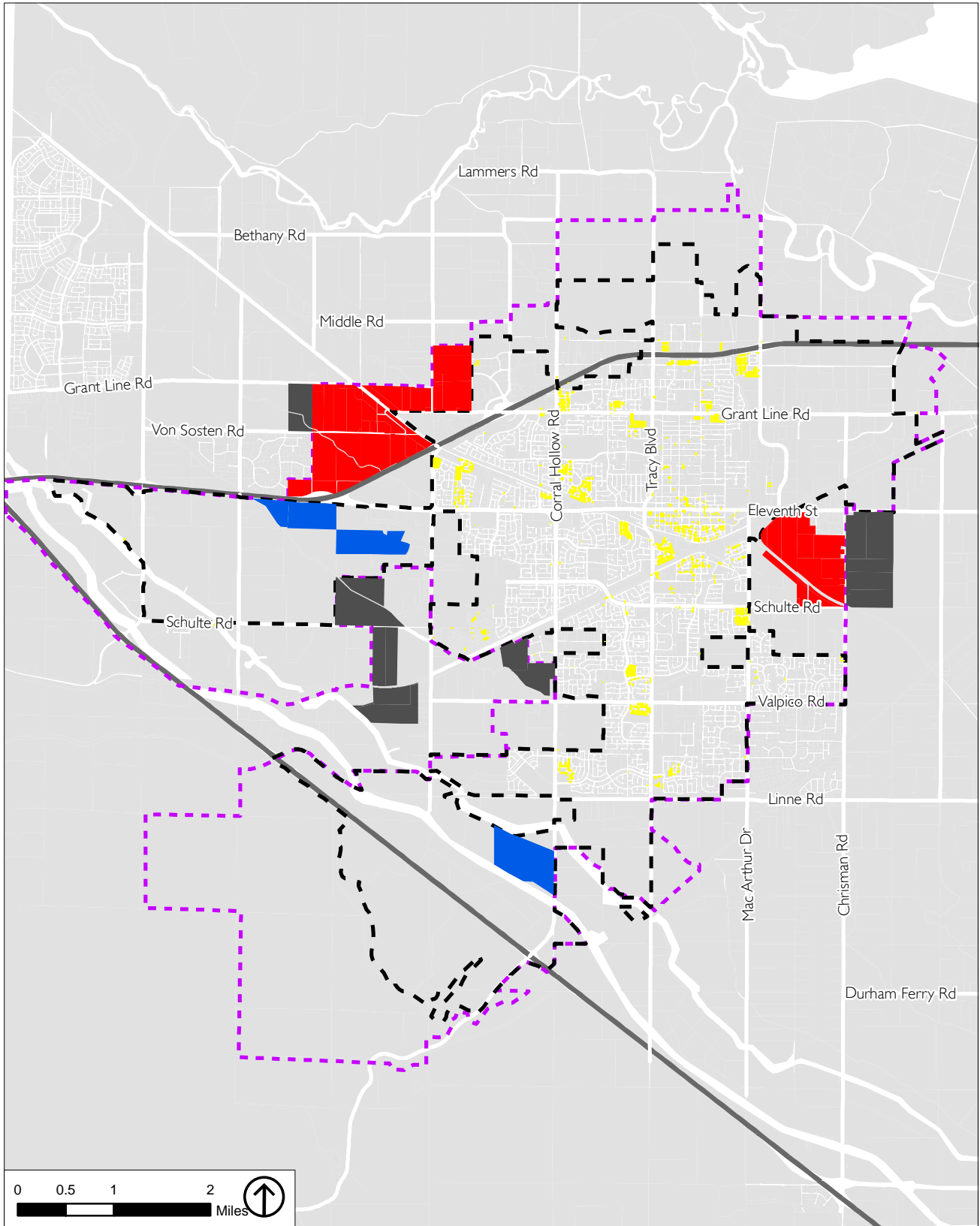
CONSISTENCY WITH EXISTING AND PLANNED LAND USE PATTERNS

others are attached. The types of homes supported by the Initiative – detached single-family homes or attached housing – would be consistent with these styles of development.

As described in Section 5.2.4 of this report, 4,000-square-foot lots are currently allowed in five of the City's Zoning Districts. These districts are located only in the downtown, medium-density subdivisions, and Tracy Hills. In all other Zoning Districts, the minimum allowable lot size is greater than 4,000 square feet. City planning documents do not foresee new residential developments on such lot sizes in most parts of Tracy, so encouraging this lot size would be a departure from the City's previously planned land use patterns.

As discussed above, some of the existing housing in the City on 4,000-square-foot lots are attached single-family homes. Other styles of attached housing include duplexes, triplexes, fourplexes, townhomes, apartment buildings, condominium buildings. Most of these types of housing units are located within the Downtown. The attached housing units supported by the Initiative would be consistent with these styles of development.

CONSISTENCY WITH EXISTING AND PLANNED LAND USE PATTERNS



Source: City of Tracy, 2018; San Joaquin County, 2018; PlaceWorks, 2018.

- Inside City Limit
- Inside SOI & Outside City Limit
- Outside City Limit & SOI
- Parcels 4,000 Square Feet or Less
- City Limit
- Sphere of Influence

Figure 6-2
Existing 4,000-Square-Foot Parcels

CONSISTENCY WITH EXISTING AND PLANNED LAND USE PATTERNS

7. *Potential for Generation of Affordable Housing Units*

Section 1 of the Initiative states that the Initiative’s purpose is to promote the development of housing affordable to middle-income residents, first-time homebuyers, and seniors. With this in mind, this chapter of the report provides background information about affordable housing, provides an overview of current home prices in Tracy, and evaluates the potential of the Initiative to generate affordable housing units. Data for this section have been compiled, in part, from the following sources:

- City of Tracy, City Council staff report, April 3, 2018
- BAE Urban Economics (formerly Bay Area Economics), May 2009, Affordable and Workforce Housing Briefing Book

7.1 AFFORDABLE HOUSING BACKGROUND INFORMATION

7.1.1 MEDIAN INCOME DEFINITIONS

State of California definitions of "affordable housing" costs use between 30 and 35 percent of household income for rent/mortgage calculations. In other words, households spending more than 35 percent of their income on housing costs would be considered “cost-burdened,” while housing is considered to be “affordable” if it costs less than 35 percent of a household’s income.”⁵ Using this same definition and converting for costs of ownership, families can purchase a home that costs roughly 4.15 times their annual household income.

The California Department of Housing and Community Development (HCD) establishes the following household income categories in setting affordable housing policy for the State:

- Very-Low Income: Up to 50 percent of Area Median Household Income (AMI)
- Low Income: 51 to 80 percent of AMI
- Moderate Income: 81 to 120 percent of AMI
- Above-Moderate Income: above 120 percent of AMI

Consistent with these definitions, most affordable housing programs supported by the State and local governments serve households earning up to 120 percent of AMI.

⁵ California Health and Safety Code Section 50052.5.

POTENTIAL FOR GENERATION OF AFFORDABLE HOUSING UNITS

The term “workforce housing” has been used by housing policy analysts in recent years. For some analysts, this term is a catch all that includes the Very-Low, Low, and Moderate Income categories described above, which means that “workforce housing” is housing that is affordable to workers earning 120 percent of AMI. Other analysts have pointed that households earning as much as 180 percent of AMI in many areas of California could not afford to own a home locally, and lived in distant, more affordable locations to satisfy their housing needs. These analysts have started to use the term “workforce housing” to describe housing that is affordable to households earning between 120 and 180 percent of median income. By this definition, these households are above moderate income and are not formally supported by most existing affordable housing laws, regulations, or policies.

7.1.2 SAN JOAQUIN COUNTY

Since definitions of affordable housing are based on local incomes, it is important to understand income brackets in local markets. In the case of Tracy, incomes are generally measured for San Joaquin County when assessments are made regarding housing affordability and qualifications for housing subsidies or special housing programs.

The 2017 median income in San Joaquin County was \$66,300. Based on this number, Table 7-1 shows maximum income, maximum affordable rent and maximum affordable purchase price for each of five income categories. Given that the average rent for a two-bedroom apartment in Tracy is \$1,825, only those households in San Joaquin County earning more than 120 percent of the median income would be able to afford the average market rent for a two-bedroom apartment in Tracy. The average listing price for a home in Tracy is \$518,000, which would be affordable to those earning more than 180 percent of the County median income, but not to those earning 150 percent of the County median.⁶

TABLE 7-1 AFFORDABILITY OF MARKET RATE HOUSING IN SAN JOAQUIN COUNTY

Income Category	Maximum Household Income ^a	Maximum Affordable Rent ^b	Maximum Affordable Purchase Price ^c
Very-Low: 50% of County Median Income	\$33,150	\$579	\$127,000
Low: 80% of County Median Income	\$53,050	\$1,076	\$231,000
Moderate: 120% of County Median Income	\$79,550	\$1,739	\$369,400
Above-Moderate: 150% of County Median Income	\$99,450	\$2,236	\$473,300
Above-Moderate: 180% of County Median Income	\$119,340	\$2,733	\$577,200

a. San Joaquin County Median Income, \$55,045; based on 2016 American Community Survey Data.

b. Assumes 30% of household income spent on rent and utilities (assumes \$250 per month for utilities).

c. Housing Payment Assumptions: 30-year fixed loan, 3.875% APR, 1.125% property tax, 19% down payment, <https://www.redfin.com/how-much-house-can-i-afford>.

Sources: PlaceWorks, 2018, Redfin.com.

⁶ Three-year average, 2015 to 2018, Realtor.com, https://www.realtor.com/local/Tracy_CA, accessed on July 30, 2018.

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7.1.3 TRACY

Tracy’s median income is significantly higher than the median income in San Joaquin County as a whole, so the City has often considered housing affordability relative to Tracy incomes instead of those of the entire county. While this frame of reference cannot be used legally when considering affordable housing mandates, it provides a useful picture of actual conditions in Tracy.

2017 data for the median income in Tracy is not readily available for comparison to the 2017 data for San Joaquin County as a whole that is shown in Section 7.1.2. Therefore, this section is based on 2016 income data.

The 2016 median income in Tracy was \$84,330. Based on this number, Table 7-2 shows maximum income, maximum affordable rent and maximum affordable purchase price for each of six income categories in Tracy. Given that the average rent for a two-bedroom apartment in Tracy is \$1,825, those households in Tracy earning more than 80 percent of the local median income would be able to afford the average market rent for a two-bedroom apartment. The average listing price for a home in Tracy is \$518,000, which would be affordable those earning more than 150 percent of the County median income.⁷

For the purposes of understanding affordable housing needs in Tracy, the City in 2017 defined a “Head of Household” wage for Tracy (as part of the City’s High Wage Incentive Program) and ascertain wage levels for various local jobs. The Council set the “Head of Household” wage to \$72,000. This wage is also included on Table 7-2.

TABLE 7-2 AFFORDABILITY OF MARKET RATE HOUSING IN TRACY

Income Category	Maximum Household Income ^a	Maximum Affordable Rent ^b	Maximum Affordable Purchase Price ^c
Very Low: 50% of Tracy Median Income	\$42,165	\$804	\$175,300
Low: 80% of Tracy Median Income	\$67,464	\$1,437	\$280,000
Tracy “Head of Household” Wage	\$72,000	\$1,550	\$299,293
Moderate:120% of Tracy Median Income	\$101,196	\$2,280	\$420,656
Above-Moderate 150% of Tracy Median Income	\$126,495	\$2,912	\$528,820
Above-Moderate:180% of Tracy Median Income	\$151,794	\$3,545	\$630,894

a. Tracy Median Income, \$84,330; based on American Community Survey Data.

b. Assumes 30% of household income spent on rent and utilities (assumes \$250 per month for utilities).

c. Housing Payment Assumptions: 80-10-10 financing (4.75% for 1st, 6.5% for 2nd, 30-year fixed); property tax at 1.25% of sales price; homeowner’s insurance at 0.2% of sales price; maximum 30% of income spent on principal, interest, insurance and taxes.

Source: PlaceWorks, 2018.

⁷ Three year average, 2015 to 2018, Realtor.com, https://www.realtor.com/local/Tracy_CA, accessed on July 30, 2018.

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7.2 LIKELY AFFORDABILITY OUTCOMES

As noted in Chapter 4, the Initiative does not allow for any additional residential units to be constructed in Tracy under the Initiative's exemption, because the Initiative, as drafted, does not include land use designation or zoning provisions that allow the types of development exempted by the Initiative. Thus the Initiative would not, by itself, result in the construction of any new affordable housing units. The City would have to redesignate and rezone the Initiative-Exempted Parcels for the types of residential development foreseen in the Initiative and/or the terms of the Initiative would have to be applied City-wide (or at least to residentially-designated parcels) before the Initiative would have any effect and there would be a potential for construction of affordable units.

With that in mind, this section considers the potential affordability of units that might be built in the event that some parcels are redesignated or the Initiative is applied to additional parcels.

7.2.1 TARGETED GROUPS

The Initiative states that it seeks to encourage construction of housing that is affordable to middle-income residents, first-time homebuyers and seniors. This section examines whether this is likely to occur by encouraging the construction of attached housing and single-family homes on lots of 4,000 square feet or less.

As a first consideration, we should consider the definitions of the three terms in the initiative:

- "Middle-income" residents would most strictly be defined as households earning the documented median income in the area. In San Joaquin County as a whole, this was \$66,300 in 2017, while it was \$84,300 in Tracy in 2016.
- Nationally, first-time home buyers make up 35 percent of all home buyers. Viewed nationally, this group earns a median income of \$72,000 per year. The median income among all buyers nationally is \$88,500, which means that the national median income for first time home buyers is 81 percent of the median income of all home buyers.⁸ There are two ways to consider this data. First, the national median income among first-time home buyers equals Tracy's "Head of Household" wage; as shown in Table 7-2, these households can afford to purchase a home worth up to \$299,293. Second, if the same ratio of median income of first-time home buyers vs. all residents holds true, then first-time home buyers in Tracy would earn about \$68,600, which is 81% of Tracy's current median income and which would be able to affordably purchase a home valued at \$284,700.
- Seniors often have incomes lower than people who are younger, but there can be no strict rules about senior incomes or housing purchase capabilities. In 2016, half of all older households nationally (age 65 and older) earned less than \$39,823 in income annually from all sources.⁹ As an example of supportive housing programs for seniors, HUD's Section 202 Supportive Housing for the Elderly

⁸ National Association of Realtors, 2016. Profile of Home Buyers and Sellers, <https://www.nar.realtor/research-and-statistics/research-reports/highlights-from-the-profile-of-home-buyers-and-sellers>.

⁹ Pension Rights Center, 2016, Statistics, Income of Today's Older Adults, <http://www.pensionrights.org/publications/statistic/income-today-s-older-adults>, accessed on July 31, 2018.

POTENTIAL FOR GENERATION OF AFFORDABLE HOUSING UNITS

provides rental housing for low-income seniors who are at least 62 years old earning 50 percent or less of the area's median income.¹⁰

7.2.2 FOR-SALE UNITS

With this information in mind, we can consider the possible implications of encouraging construction of for-sale attached housing and single-family homes on lots of 4,000 square feet or less.

Based on a search of online real estate databases, approximately 124 single-family detached homes are currently for sale in Tracy.¹¹ A total of 15 listings are for single-family homes located on a 4,000-square-foot lot (or smaller), with a mean listing price of \$454,487.¹² Based on the definitions described in Section 7.1, this indicates that homes built on 4,000-square-foot lots might, on average, be affordable to households earning about \$109,500 per year. This is 165 percent of San Joaquin County's 2017 median income and 129 percent of Tracy's 2016 median income. This would not be of assistance to households typically referred to as needing affordable housing, nor would it assist households earning Tracy's "Head of Household" wage or who would meet the above definition of "middle-income."

In fact, the median listing price of \$454,487 for single family homes on lots less than 4,000 square feet is only slightly less than Tracy's overall median home price of \$518,000. As noted above, homes that sell for \$454,487 are affordable to households earning \$109,500 or more, while homes selling for \$518,000 are affordable to households earning \$124,800 per year or more. Thus the benefit to encouraging homes on 4,000 square foot lots or smaller would accrue primarily to households earning between \$109,500 and \$124,800 per year. Those earning less than this range would still be unable to afford a median-priced home, while those earning above this range are already able to afford Tracy's median priced home.

A total of eight townhomes and apartments are currently for sale in Tracy with a mean list price of \$346,025; housing at this price would be affordable to those earning at least \$84,400 per year, which is about 125 percent of the 2017 median income in San Joaquin County as a whole and almost exactly equal to the 2016 median income in Tracy. Thus the benefit to encouraging attached housing would accrue primarily to households earning between \$84,330 and \$124,800 per year. Those earning less than this range would still be unable to afford a median-priced townhome or apartment, while those earning above this range are already able to afford Tracy's median priced home.

7.2.3 RENTAL UNITS

The Initiative would exempt only for-sale units, so it would have little if any effect on the availability or cost of rental housing. As shown in the statistics presented in Section 7.1, rental housing is often more affordable than for-sale housing, so this means that the Initiative's effects on the most affordable housing

¹⁰ US Department of Housing and Urban Development, Programs, Section 202 Supportive Housing for the Elderly Program, https://www.hud.gov/program_offices/housing/mfh/progdesc/eld202, accessed on July 31, 2018.

¹¹ Based on a search of Zillow.com, Realtor.com, Redfin.com conducted by PlaceWorks on July 30, 2018.

¹² Based on searches of Realtor.com, Redfin.com, and Zillow.com conducted by PlaceWorks on July 26, 2018.

POTENTIAL FOR GENERATION OF AFFORDABLE HOUSING UNITS

would be minimal. This is consistent with the Initiative's stated purpose, which is to encourage construction of housing that is affordable to middle-income residents, first-time homebuyers and seniors.

7.3 SENIOR HOUSING

The Initiative would exempt all units that are deed restricted to at least one person who is age 55 or greater. However, the Initiative does not describe the type, size or pricing of senior units that may be constructed. Therefore, these units might be of any size, type or cost, so it is impossible to predict effects on affordability. In fact, development of exempt senior housing units under the Initiative might have no effect whatsoever on the supply of affordable housing in Tracy.

8. *New Development Potential Under the Initiative*

This chapter of the report presents projections regarding the potential for additional new residential development that could be generated by developing the types of housing encouraged by the Initiative.

As stated in Chapter 2, although the Initiative implies the landowner's intent to ask for redesignation, this analysis assumes that the Initiative would not by itself allow development on any particular site; its RGA exemptions would only come into play if the Initiative-Exempted Parcels were first redesignated and rezoned in separate actions by the City. Because the Initiative-Exempted Parcels include lands outside of the City's SOI, LAFCO approval would also be required in order for the City to approve development on some sites. With that in mind, this chapter provides a theoretical analysis of how much development could occur if the Initiative-Exempted Parcels were developed with the types of housing encouraged by the Initiative.

As noted in Chapter 4, the Initiative does not allow for any additional residential units to be constructed in Tracy under the Initiative's exemption, because the Initiative does not contain provisions specifying land use designation(s) or zoning that allow the types of development exempted by the Initiative. The City would have to redesignate and rezone the Initiative-Exempted Parcels for the types of residential development foreseen in the Initiative and/or the terms of the Initiative would have to be applied City-wide (or at least to residentially-designated parcels) before the Initiative would have any effect.

This chapter considers the level of development that would be possible if such changes were to occur:

- Section 8.1 discusses the buildout from implementing the Initiative strictly on the Initiative-Exempted Parcels.
- Section 8.2 provides further estimates of buildout that might occur if the Initiative were interpreted to apply to both all of the Initiative-Exempted Parcels and to all other vacant, residentially-designated lots within the City.
- Section 8.3 considers the number of units that are already foreseen under existing land use designations and zoning whose development might be accelerated if the Initiative were to apply City-wide.

8.1 INITIATIVE-EXEMPTED PARCELS

This analysis calculates the amount of residential growth that could occur on the Initiative-Exempted Parcels that are currently vacant. Table 8-1 summarizes the buildout of the Initiative-Exempted Parcels. It shows the amount of land within the Initiative-Exempted Parcels that is currently designated by the City's

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TABLE 8-1 BUILDOUT OF VACANT INITIATIVE-EXEMPTED PARCELS

	Current Residential GPLU Designation ^a			Current Non-Residential GPLU Designation ^b			Totals		
	Within City Limit	Within SOI, Outside City Limit	Outside SOI	Within City Limit	Within SOI, Outside City Limit	Outside SOI	Within City Limit	Within SOI, Outside City Limit	Outside SOI
Area	0 acres	335.4 acres	0 acres	407.8 acres	864.9 acres	902.9 acres	407.8 acres	1,200.3 acres	902.9 acres
Max Current GPLU Allowance ^c	0 units	22 units	0 units	4,556,637 sq ft	3,059,999 sq ft	0 sq ft	0 units + 4,556,637 sq ft	22 units + 3,059,999 sq ft	0 units + 0 sq ft
Single-Family Detached Housing Buildout (8.4 du/ac)	0 units	2,817 units	0 units	3,425 units	7,265 units	7,584 units	3,425 units	10,082 units	7,584 units
Attached Housing Buildout (25 du/ac)	0 units	8,384 units	0 units	10,194 units	21,623 units	22,572 units	10,194 units	30,007 units	22,572 units

Note: GPLU = General Plan land use

a. This reflects the 58% of Urban Reserve 1 (UR-1) that made up of Initiative-Exempted Parcels.

b. Includes Commercial, Office, Industrial, Open Space, Urban Reserve 3 (UR-3), and all parcels outside of the SOI.

c. Maximum allowable residential density multiplied by gross acreage.

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General Plan for residential versus non-residential use, and the maximum buildout that could occur on these lands based on the existing General Plan land use designation and the Initiative.

Most of the Initiative-Exempted Parcels are currently designated for non-residential uses such as commercial, office, or industrial uses. However, some parcels are designated Urban Reserve and are within UR-1, which is envisioned for primarily residential uses. This analysis assumes that all vacant Initiative-Exempted Parcels would be developed with housing. Parcels outside the SOI were classified as non-residential uses.

The Initiative encourages housing that is “attainable by design” and in terms of building design it would allow attached units and/or detached units on 4,000-square-foot or smaller lots. In order to approximate the amount of housing that could be developed as envisioned by the Initiative, this analysis calculates a potential development that would occur at both 8.4 and 25 units per acre. The lower of these densities – 8.4 units per acre – represents development on lots with a net size of 4,000 square feet lots and assuming that 30 percent of the land is used for roads and other public infrastructure. The higher of these densities—25 units per acre—represents the high end of the densities that may be achieved by typical attached housing unit development. Since the Initiative requires a mixture of unit types in order to achieve an exemption, resulting densities would likely be somewhere in the middle of this range, and probably at the lower end since developers in Tracy generally build single-family homes instead of attached units.

As shown in Table 8-1, buildout as envisioned under the Initiative could generate within the Initiative-Exempted Parcels a total of 21,091 detached single-family housing units on 4,000-square-foot lots and 62,773 attached housing units. A portion of the buildout will occur outside of the SOI, with 7,584 detached single-family housing units and 22,572 attached housing units. Table 8-2 compares new growth from the Initiative-Exempted Parcels to the net new growth estimated in the 2011 General Plan Update. With implementation of the measure, a 159 to 295 percent increase in residential units could occur within the Initiative-Exempted Parcels. At the same time, projected non-residential uses such as retail, office, commercial, and industrial would decrease by 7 percent.

TABLE 8-2 INITIATIVE-EXEMPTED PARCELS BUILDOUT IMPACT ON GENERAL PLAN BUILDOUT

New Growth	Net New Development Allowed by Current General Plan	Net New Development Allowed by Current General Plan + Initiative Buildout	Net Change	Percent Change	Estimated New Population in Newly Allowed Units
Residential	13,225 to 21,300 units	34,294 to 84,051 units	21,069 to 62,751 units gained	159% to 295% gain	74,584 to 222,139 residents
Non-Residential	116,100,000 sq ft	108,483,364 sq ft	7,616,636 sq ft lost	7% loss	NA

Source: PlaceWorks, 2018.

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8.2 CITY-WIDE APPLICATION OF THE INITIATIVE

This analysis provides estimates of buildout that might occur if the Initiative were interpreted to apply to both all of the Initiative-Exempted Parcels and to all other vacant, residentially-designated lots within the City. Table 8-3 summarizes the results.

As shown in Table 8-3, buildout under the scenario could generate a total of 30,758 detached single-family housing units on 4,000-square-foot lots or up to 91,543 attached housing units. The numbers in Table 8-3 include projected buildout for vacant land designated as residential for both 8.4 and 25 units per acre densities.

TABLE 8-3 BUILDOUT OF INITIATIVE-EXEMPTED PARCELS AND VACANT RESIDENTIALLY-DESIGNATED CITY LANDS

	Residential GPLU Designation ^a			Totals	
	From Table 8-1	Inside City Limit but not Exempted by Initiative	Non-Residential GPLU Designation ^b From Table 8-1	From Table 8-1	Inside City Limit but not Exempted by Initiative
Area	335.4 acres	1,150.8 acres	2,175.6 acres	2,511.0 acres	1,150.8 acres
Max Current GPLU Allowance ^c	22 units	10,604 units	7,616,636 sq ft	22 units + 7,616,636 sq ft	10,604 units
Single-Family					
Detached Housing Buildout (8.4 du/ac)	2,817 units	9,667 units	18,274 sq ft	21,091 units	9,667 units
Attached Housing Buildout (25 du/ac)	8,384 units	28,770 units	54,389 sq ft	62,773 units	28,770 units

Note: GPLU = General Plan land use

a. This reflects the 58% of Urban Reserve 1 (UR-1) that made up of Initiative-Exempted Parcels, vacant Residential Very Low, Residential Low, Residential Medium, Residential High, Traditional Residential – Ellis, and 98% of Urban Reserve 7 (UR-7).

b. Includes Commercial, Office, Industrial, Open Space, Urban Reserve 3 (UR-3), and all parcels outside of the SOI.

c. Maximum allowable residential density multiplied by gross acreage.

Source: PlaceWorks, 2018.

Given the parameters of this analysis, there would be neither additional loss of planned non-residential uses nor planned jobs compared to the analysis conducted in Section 8.1. This is because the only additional parcels added in this analysis are those that are currently designated for residential development in the General Plan.

Similar to Table 8-2, Table 8-4 compares the new growth from the Initiative-Exempted Parcels and vacant City lands to the net new growth estimated in the 2011 General Plan. Implementing the Initiative within the entire City and SOI would produce an increase of 232 to 430 percent gain in residential units, much higher than the Initiative-exempted parcels analysis because of the amount of available residentially-designated vacant land. No additional non-residential square footage and would be lost.

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TABLE 8-4 INITIATIVE-EXEMPT PARCELS AND VACANT RESIDENTIAL CITY LANDS BUILDOUT IMPACT ON GENERAL PLAN BUILDOUT

New Growth	Net New Development Allowed by Current General Plan	Net New Development Allowed by Current General Plan + Initiative Buildout	Net Change	Percent Change	Estimated New Population in Newly Allowed Units
Residential	13,225 to 21,300 units	43,961 to 112,821 units	30,736 to 91,521 units gained	232% to 430% gain	108,805 to 323,984 residents
Non-Residential	116,100,000 sq ft	108,483,364 sq ft	7,616,636 sq ft lost	7% loss	NA

Source: PlaceWorks, 2018.

8.3 RATE OF DEVELOPMENT

As explained in Chapters 4 and 5 and earlier in this chapter, most lands inside the City and all of the Initiative-Exempted Parcels would require rezoning before they could be developed with attached units or single-family residences on 4,000-square-foot lots. However, there is a limited amount of land inside the City limit that is already designated and zoned for this type of residential development, which could be developed immediately if the Initiative’s exemption were to apply to them. This analysis identifies parcels that could be developed with attached units or single-family residences on 4,000-square-foot lots without rezoning and calculates the amount of development they would accommodate. This amount of development could be “accelerated” if the Initiative were applied to these parcels, since development would then be able to occur without the need to wait for assignment of RGAs.

Zoning districts identify minimum lot requirements and therefore are used to identify compatible lots. There are eight zoning districts in Tracy that allow attached housing and/or single-family homes on lots of 4,000-square feet or less. They are:

- Medium Density Cluster (MDC)
- Central Business District (CBD)
- Low Density Residential – Tracy Hills (LDR-T)
- Medium Density Residential – Tracy Hills (MDR-T)
- High Density Residential – Tracy Hills (HDR-T)
- Medium Density Residential (MDR)
- High Density Residential (HDR)
- Ellis Specific Plan (ELLIS)

Table 8-5 summarizes the vacant lands that are within these compatible zoning areas. The Tracy Hills Specific Plan area contains the majority of the compatible vacant residential land.

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TABLE 8-5 VACANT CITY LAND WITH COMPATIBLE ZONING FOR ATTACHED HOUSING AND 4,000 - SQUARE-FOOT LOTS

Compatible Zoning	Acres
Medium Density Cluster (MDC)	4.8
Central Business District (CBD)	7.1
Low Density Residential – Tracy Hills (LDR-T) ^a	400.5
Medium Density Residential – Tracy Hills (MDR-T) ^a	296.5
High Density Residential – Tracy Hills (HDR-T) ^a	2.1
Medium Density Residential (MDR)	31.9
High Density Residential (HDR)	12.0
Ellis Specific Plan (ELLIS)	104.7
TOTAL	859.7

a. Calculation is approximate. Parcel lines and Tracy Hills Specific Plan designations are not exact.
Source: PlaceWorks, 2018.

The potential buildout on the identified compatible sites is calculated using each parcel’s City’s General Plan Land Use designations. Table 8-6 summarizes the current General Plan Land Use allowance and potential buildout with implementation of the Initiative. The Downtown designation allows for an additional 10 units per acre for senior housing developments, and this is also considered in Table 8-6.

As shown in Table 8-6, the compatible vacant parcels have a maximum allowance of 7,421 units without senior housing and 7,469 units with senior housing.

TABLE 8-6 CURRENT GENERAL PLAN LAND USE ALLOWANCE OF VACANT CITY LAND WITH COMPATIBLE ZONING FOR ATTACHED HOUSING AND 4,000 -SQUARE-FOOT LOTS

General Plan Land Use	Maximum Allowed Density	Max Current GPLU Allowance	Max Current GPLU Allowance with Senior Housing
Downtown	40 units per acre OR 50 units per acre for Senior Housing	192 units	240 units
Residential Very Low	2 units per acre	109 units	109 units
Residential Low	5.8 units per acre	2,008 units	2,008 units
Residential Medium	12 units per acre	4,026 units	4,026 units
Residential High	25 units per acre	355 units	355 units
Traditional Residential - Ellis	7 units per acre ^a	733 units	733 units
TOTAL		7,421 units	7,469 units

a. Used maximum of overall residential sites densities.
Source: PlaceWorks, 2018.

NEW DEVELOPMENT POTENTIAL UNDER THE INITIATIVE

In sum, this analysis shows that the City could expect a total of up to 7,469 residential units to be constructed without any need for redesignation or rezoning if the Initiative were to be applied City-wide. The vast majority of these units would be located in the Tracy Hills area, with some in the Ellis area, a few in the downtown and in some Medium Density Cluster, Medium Density Residential, and High Density Residential located around the downtown area. If the Initiative were applied City-wide, these units could all be developed without waiting for RGAs, so their development could be accelerated faster than currently expected.

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9. Potential Traffic Impacts

This chapter provides an overview of the City's Transportation Master Plan (TMP), areas of the City that are currently subject to congestion, and areas that may be subject to additional congestion if additional, currently unforeseen residential development occurs under the Initiative.

9.1 OVERVIEW OF CITY TRANSPORTATION MASTER PLAN

The 2012 Transportation Master Plan is based on the City's 2011 General Plan, which includes a long-range plan for a significantly expanded local roadway network designed to support the eventual buildout of the General Plan; the Plan also takes into account the San Joaquin Council of Government regional travel demand model, which has a buildout horizon year of 2030. As such, this chapter discusses potential traffic impacts through the year 2030. The planned network includes reclassifying portions of several streets from minor arterial to major arterial status, widening existing and constructing new roads, Caltrans' planned widening of I-205 to eight lanes, signalization of approximately 30 intersections, and upgrading of Eleventh Street/Lammers Road to an urban interchange. Due to the current GMO and market conditions, not all of the General Plan area is expected develop by 2030. As a result, the entire General Plan roadway network would not be required to be constructed by 2030, which is the target year for the TMP.

Based on expected 2030 development under the General Plan, total vehicle trips generated in Tracy are projected to nearly triple by 2030. Most of this increase in vehicular trips is attributable to projected growth in employment within Tracy, which is expected to nearly double by 2030 under the current General Plan. Residential trips also account for a portion of the increase in vehicle trips, although to a lesser extent than is generated by employment.

9.2 AREAS SUBJECT TO TRAFFIC CONGESTION

The City measures traffic congestion using a level of service (LOS) classification along roadways and at intersections. General Plan Objective C-1.3, Policy P1 strives to maintain LOS D on all streets and intersections, except in the following cases:

- LOS E is allowed on streets and at intersections within one-quarter (1/4) mile of any freeway. This lower standard is intended to discourage inter-regional traffic from using Tracy streets.
- LOS E is also allowed in the Downtown and Bowtie areas, in order to create a pedestrian-friendly urban design character and densities necessary to support transit, bicycling and walking.

POTENTIAL TRAFFIC IMPACTS

The General Plan also allows individual locations to fall below the City's LOS standards if constructing the improvements needed to expand roadway or intersection capacity would be physically impossible or prohibitively expensive, would significantly impact adjacent properties or the environment, or would have a significant adverse effect on the character of the community.

9.2.1 EXISTING CONDITIONS

Most of the roadways within the City currently operate at an acceptable level of service (i.e., LOS D or better). Traffic volumes and congestion are heaviest along arterial streets and at major intersections in urbanized areas, including Eleventh Street, Corral Hollow Road, and Tracy Boulevard, and at the intersections of these streets. However, existing level of service is still at an acceptable LOS C or better at all of these locations. In other, less-developed areas of the City, such as portions of Lammers Road, Valpico Road, and Linne Road, the traffic volumes and resulting congestion are less than in the developed areas of the City. There is some congestion along these roadways, which usually results from the use of stop signs as traffic control devices.

The only locations that currently experience LOS D or worse are unsignalized intersections where traffic attempting to enter the main street from the stop-controlled side-street experiences long wait times. The affected intersections are:

- Grant Line Road/Byron Road.
- Eleventh Street/MacArthur Drive (south) (although the recent improvements to this intersection are expected to improve its level of service).
- Schulte Road/Lammers Road (south).
- Schulte Road/Chrisman Road.

9.2.2 GENERAL PLAN BUILDOUT

Development in Tracy and the SOI under the General Plan horizon year conditions is projected to cause a substantial increase in traffic by 2030. However, the traffic forecast indicates that the City's LOS standards will be maintained except at all locations except the Eleventh Street/Corral Hollow Road and Eleventh Street/Lammers Road intersections.

In contrast, many of the regional highways in and near Tracy are expected to operate at a deficient level by 2030. These regional roadways include I-5, I-205, and I-580. Several county roadways to the west of Tracy, such as Altamont Pass Road and Tesla Road, would also operate at a deficient level (LOS E or worse).

Regional transportation plans such as the San Joaquin Council of Government's Regional Transportation Plan (SJCOG RTP) indicate that there are several proposed improvements that could improve the operation of the regional roadway system. However, these improvements are not funded and cannot be anticipated to be constructed prior to 2025.

POTENTIAL TRAFFIC IMPACTS

9.3 POTENTIAL IMPACTS UNDER THE INITIATIVE

Given the short timeframe under which this report had to be prepared, it was not possible to conduct a full traffic analysis of impacts that would be created by new development that could occur under the Initiative. Moreover, it is impossible to predict what development, if any, would actually be triggered by the Initiative, since it appears that the City would need to take separate actions to allow new residential development under the Initiative.

However, even without detailed analysis, it is clear that significant traffic impacts would occur if the development levels calculated in Chapter 8 of this report were to occur as a result of the Initiative. As described in Chapter 8, it is possible that no new residential units would be built as a result of the Initiative. But depending on how the Initiative is implemented, and depending also on future City Council actions, there could be as many as 7,469 residential units built inside the City limit on parcels currently designated for attached and small lot single-family homes, as many as 62,773 unanticipated residential units built under the Initiative on the Initiative-Exempted Parcels, or as many as 91,543 unanticipated residential units built under the Initiative citywide.

New residential development could occur partially on lands currently designated for commercial uses, and most commercial uses have higher trip generation per acre characteristics than do residential uses. Thus there could be a net decrease in predicted trips in certain areas. This additional development would impact all the regional highways and roadways, including those already predicted to operate at LOS E or worse by 2030. Any new development, however, would be required to pay transportation impact fees to help mitigate its impacts on roadways.

POTENTIAL TRAFFIC IMPACTS

10. Potential Infrastructure Impacts

This chapter provides an overview of the City’s six infrastructure master plans (other than the Traffic Master Plan, which is covered in Chapter 9 of this report). It identifies issues that may arise if additional, currently unforeseen residential development occurs under the Initiative. This chapter focuses on identifying infrastructure facilities that are subject to the greatest constraints, and how areas that are currently impacted overlap with areas that could be most affected by the Initiative.

The City undertook an effort to identify its infrastructure needs for parks, public facilities, public safety, water, stormwater, waste water, and roadways in connection with its 2011 General Plan Update process. Except where noted, all infrastructure master plans (herein collectively referred to as the “Master Plans”) are consistent with the 2011 General Plan buildout condition, which anticipates 54,500 new residents and 147,200 new workers by the year 2025.

The Master Plans identify the standards for and approach to serving new development foreseen through 2025. The Initiative could increase the amount of new residential development in the City, exceeding the buildout condition previously analyzed for the General Plan, and could therefore require the plans to be revised where existing deficiencies either occur or are projected to occur by the year 2025. Projected costs to remedy these deficiencies are provided, where available.

10.1 PARKS MASTER PLAN

Adopted on April 16, 2013, the Parks Master Plan addresses the demand for parkland and recreation facilities created by new residential development in future service areas. The Plan provides policies, design guidelines, and preliminary costs associated with building new parks infrastructure to serve these residential areas. The Study Area for the Plan is the City limit plus SOI, which includes 19 future services areas.

10.1.1 SERVICE STANDARDS

The Parks Master Plan aims to maintain a service level of 4.0 acres of parkland per 1,000 residents as future development occurs; therefore, approximately 154 acres of new park land will be needed in future service areas at buildout to accommodate the growth envisioned in the City’s General Plan.

As described in Chapter 8, it is possible that no new residential units would be built as a result of the Initiative. But depending on how the Initiative is interpreted by the City and the courts, and depending also on future City Council actions, there could be as many as 7,469 residential units built on an accelerated schedule inside the City limit on parcels currently designated for attached and small lot single-family homes, as many as 62,773 unanticipated residential units built under the Initiative on the Initiative-

POTENTIAL INFRASTRUCTURE IMPACTS

Exempted Parcels, or as many as 91,543 unanticipated residential units built under the Initiative citywide. These additional units correspond to a population increase of 26,440, 222,139, and 323,984 residents, respectively, based on a household size of 3.54 persons.¹⁴ In order to maintain the City's park land standard, 105.8, 888.6, and 1,295.9 additional acres of new parkland would need to be developed, respectively, for each of these scenarios, beyond the amount of park land projected under the buildout condition of the adopted General Plan.¹⁵ The estimated additional costs of developing new park land required to maintain the City's service ratio would depend on the type of park land desired (i.e., neighborhood and/or community), and could range from approximately \$58,000,000 to \$756,000,000. Park fees paid by new development would be expected to generate revenue for new parks development.

10.1.2 FUTURE SERVICE AREAS

The Initiative-Exempted Parcels overlap with six areas that are planned to accommodate future residential growth in the Parks Master Plan, as shown in the following list. The amount of residential growth anticipated in the Parks Master Plan is indicated in the list below for each growth area. The Master Plan anticipates little or no residential development in four areas (Tracy Gateway, Catellus, Filios, and 1-205 Expansion):

- **Tracy Gateway (0 anticipated additional housing units).** At approximately 538 acres, Tracy Gateway is located at the western edge of the City, south of I-205 at the Eleventh Street off-ramp. This future service area is anticipated to include office space, commercial uses, and retail uses that support residents and workers. If developed as planned, the service area would include a golf course. No public parks are included in the Master Plan in this area, so they would need to be added if new residential development occurred under the Initiative. As noted in Chapter 5, an update to the Tracy Gateway land plan is underway, which could change the current zoning.
- **Catellus (UR-3) (60 anticipated additional housing units).** Located north of I-205, this 700-acre area is anticipated to support industrial and office uses and, potentially, a small amount of low-density residential development. Plans also include low-intensity uses in the north and west, or a significant landscape buffer that may include low-maintenance landscaping and equestrian trails. In accordance with City standards, four acres of public parks per 1,000 population would need to be developed under the Initiative.
- **Filios (UR-2) (0 anticipated additional housing units).** This 43-acre triangular area on the northwestern side of the City is bounded by Grant Line Road to the north, Lammers Road to the east, and Byron Road and the Union Pacific railroad to the southwest. A 435-unit apartment project (Gateway Crossing) is currently under construction on 20 acres of this site. Given its proximity of the remaining 23 acres to the I- 205 Regional Commercial Area and frontage along major arterials, a majority of this area is planned for commercial and office uses. No public parks are included in the Master Plan in this area, so they may need to be added if new residential development occurred under the Initiative.

¹⁴ California Department of Finance, Table E-5: City/County Population and Housing Estimates, 1/1/2018, City of Tracy, <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/>.

¹⁵ 26,440 residents / 1,000 x 4 acres = 105.8 acres; 222,139 residents / 1,000 x 4 = 888.6 acres; 323,984 residents / 1,000 x 4 = 1,295.9 acres.

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- **I-205 Expansion (0 anticipated additional housing units).** The I-205 Expansion service area includes approximately 172 acres of land in northwest Tracy, adjacent to the interstate. This area is zoned to support shopping centers, auto plazas, and general retail uses. It may also include residential and commercial development as well as light industrial uses. No public parks are included in the Master Plan in this area, so they would need to be added if new residential development occurred under the Initiative.
- **Alvarez and Others (UR-1) (2,929 anticipated additional housing units).** Located on the eastern side of Tracy, Alvarez and Others is 780 acres in size. In the long term, this area is anticipated to include residential development supported by businesses, parks, and public schools. More than 2,900 new residential units are forecasted for this future service area, which could make it the second largest future service area in terms of new population growth. Upon development, this area will significantly increase the demand for parks and recreation services.
- **Tracy Hills (5,491 anticipated additional housing units).** At approximately 2,604 acres, Tracy Hills is located on the south side of the City. Nearly 5,500 new residential units are forecasted for Tracy Hills, making it the largest future service area in terms of new residential growth. If developed as planned, there will be a significant need for neighborhood and community parks in Tracy Hills. Approximately 78 acres of public parks are included in the Master Plan in this area; additional acres would need to be added if more residential development occurred under the Initiative in this area than was anticipated in the Master Plan.

10.2 PUBLIC FACILITIES MASTER PLAN

Completed in January 2013, the Citywide Public Facilities Master Plan addresses the demand for public facilities and staff as a result of the projected number of new residents and workers under the General Plan. The Plan projects the number of new staff and building square footage needed to accommodate public facilities staff. Building square footage is converted expressed in facility equivalent dwelling units (EDUs), which approximates the amount of public facility space needed based on the number of full-time equivalent employees. The Plan projects that the new residential and non-residential development under the General Plan will require approximately 27,200 new public safety facility EDUs, and therefore require the development of additional public facilities.

As previously discussed, development of the Initiative-Exempted Parcels could generate 26,440, 222,139, or 323,984 currently unanticipated new residents. Based on the staffing assumption in the Plan of Staff = 0.00331 X Population, these new residents would require 88, 735, or 1,072 new staff, respectively.¹⁶ Using the Plan assumption of 0.82 EDUs per housing unit, 6,125, 51,474, or 75,065 EDUs would be required¹⁷ and therefore require development of additional building space. Because the amount of space per employee depends on their job type, the Plan would need to be updated to estimate the number of each type of employee needed to serve new development under the Initiative and thus the total square feet of

¹⁶ 26,440 residents x 0.00331 staff = 87.5 staff; 222,139 residents x 0.00331 staff = 735.3 staff; 323,984 residents x 0.00331 staff = 1,072.4 staff.

¹⁷ 7,469 units x 0.82 = 6,125 EDUs; 62,773 units x 0.82 = 51,474 EDUs; 91,543 units x 0.82 = 75,065 EDUs.

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new facilities that should be built to accommodate them.¹⁸ Cost estimates based on current conditions would also need to be projected by and updated Plan to accurately account for changes in the construction industry since the time the Plan was adopted in 2012.

10.3 PUBLIC SAFETY MASTER PLAN

Adopted on March 21, 2013, the Citywide Public Safety Master Plan identifies public safety facilities needed to serve future development under the General Plan, and considers the needs for buildings for the fire department, police department, public safety training, and public safety training site elements. The Plan looks at public safety needs to serve both residents and workers, and projects the total EDU's needed to accommodate the staff required to serve new development.

Under 2025 General Plan buildout, the Plan states that new residents and workers will create the need for approximately 88,000 square feet of new public safety building space to serve new development, plus an additional 1,000 square feet to serve existing unmet need. The identified needed public safety facilities are the following:

- Fire Stations (4)
- Public Safety Center at Civic Center
- Police Department Service Center
- Police and Fire Departments Training Facility
- Radio Communications Tower

In addition, the Plan projects 38,797 EDU's will be needed to accommodate development under General Plan buildout. As described above, the Initiative would result in the need for 6,125 to 75,065 EDUs and therefore require development of additional building space. Because the amount of space per employee depends on their job type, the Plan would need to be updated to estimate the number of each type of employee needed to serve new development under the Initiative and thus the total square feet of new facilities that should be built to accommodate them.¹⁹ Cost estimates based on current conditions would also need to be projected by and updated in the Plan to accurately account for changes in the construction industry since the time the Plan was adopted in 2012.

The Master Plan also looks at personnel requirements for the police and fire departments. The ratio of sworn police officers is 1.19 per 1,000 residents. Therefore, an increase of 26,440, 222,139, and 323,984 new residents under the Initiative would create a need for 32, 264, and 386 new police officers, respectively, beyond the amount projected under the General Plan buildout condition considered in the Public Safety Master Plan.²⁰

¹⁸ Public Facilities Master Plan, Appendix C, Page 3: Projected New Equivalent Dwelling Units Through Buildout

¹⁹ Public Safety Master Plan, Appendix C, Page 2.

²⁰ 26,440 residents / 1,000 x 1.19 officers = 31.5 officers; 222,139 residents / 1,000 x 1.19 officers = 264.3 officers; 323,984 residents / 1,000 x 1.19 officers = 385.5 officers.

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The ratio of certified firefighters is 0.89 per 1,000 residents. Therefore, the Initiative would result in the need for 24, 198, or 288 new firefighters, depending on the scenario.²¹ In total, between 55 and 674 public safety personnel would be needed beyond the amount projected under the General Plan buildout condition and planned for in the Public Safety Master Plan, in order for the City to continue providing adequate services under current standards.

10.4 WATER SUPPLY PLANS

The City of Tracy maintains three separate planning documents that address water delivery: the Water System Master Plan, the Urban Water Management Plan, and the Water Supply Assessment. This chapter considers each of these documents in light of the Initiative.

10.4.1 WATER SYSTEM MASTER PLAN

Completed in December 2012, the Water System Master Plan (WSMP) analyzes the following City systems and facilities, and evaluates the capacity of the potable water system to accommodate new development under the General Plan. These potable water system components are the following:

- Surface Water Treatment Capacity.
- Water Storage Capacity.
- Pumping Capacity.
- Critical Supply Facilities.

The WSMP presents assumptions about the number of dwelling units for each development at buildout and planning area, then estimates future populations associated with each types of development based on an assumed number of people per dwelling unit (people/du). People/du factors were developed for five categories of residential housing densities that reflect a range of dwelling units per acre (du/acre). The density factors utilized in the WSMP are:

- Very Low Density – 0.1 to 2.0 du/acre; 3.3 people/du;
- Low Density – 2.1 to 5.8 du/acre; 3.3 people/du
- Medium Density – 5.9 to 12 du/acre; 2.7 people/du
- High Density – 12.1 to 25 du/acre; 2.2 people/du
- Very High Density – greater than 40 du/acre; 1.5 people/du

Using these assumptions, the WSMP projects that the City will have a population of 134,100 in the horizon year 2025, which is greater than projected in the General Plan due to additional assumptions regarding the population served.

The WSMP states that the City does not have sufficient surface water treatment and pumping capacity to meet demand under the horizon year condition. It predicts that the City will need to expand its surface

²¹ 26,440 residents / 1,000 x 0.89 firefighters = 23.5 fire fighters; 222,139 residents / 1,000 x 0.89 firefighters = 197.7 fire fighters; 323,984 residents / 1,000 x 0.89 firefighters = 288.3 fire fighters.

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water treatment capacity at the John Jones Water Treatment Plant by 21 million gallons per day to meet future demand. In addition, a new clear well will need to be constructed to accommodate the planned Tracy Hills development project. The City will also have potable water storage capacity deficits within each pressure zone in the horizon year, ranging from 0.6 to 8.8 million gallons. To accommodate new development, approximately 623,360 linear feet of new pipelines must be either installed or upsized. The WSMP includes a Capital Improvement Plan to guide decisions related to the timing, location, and extent of these needed system improvements.

The Initiative would increase water demand for residential use through development of 7,469, 62,773, or 91,543 new units, depending on the scenario, which could be anywhere in the medium to high or very high density ranges presented above. As shown in Table 10-1, demand for an additional 1,120,350 to 28,378,330 gallons per day could be generated by new units developed within the Initiative-Exempted Parcels. The range was calculated by assuming that either 7,469 units would all be developed at a very high density (low-end), or that 91,543 units would be developed at a medium density (high-end). Even though a portion of this unanticipated new development would replace commercial development currently foreseen in the WSMP, this additional demand for water would exacerbate existing deficits identified in the Plan, requiring the Plan to be updated in order to provide programs that would ensure the City could provide enough water to serve this new growth.

TABLE 10-1 PROJECTED ADDITIONAL WATER DEMAND

Number of Additional Units	Additional Water Demand ^a	
	Medium Density	Very High Density
7,469	2,315,390 gpd	1,120,350 gpd
62,773	19,459,630 gpd	9,415,950 gpd
91,543	28,378,330 gpd	13,731,450 gpd

Notes: gpd = gallons per day

a. Water demand was calculated using unit demand factors, which are based on land use type. Medium Density = 310gpd; Very High Density = 150 gpd.

Demand equals number of units multiplied by land use type.

Source: City of Tracy, 2015 Urban Water Management Plan, Table 3-3, Adopted Unit Water Demand Factors.

10.4.2 URBAN WATER MANAGEMENT PLAN

As a water supplier, the City must prepare an Urban Water Management Plan (UWMP) every 5 years to ensure that adequate water supplies are available to meet existing and future water needs over a 20-year time period, consistent with the buildout condition of the City's General Plan. The City must report its water use and planning data to the State Department of Water Resources annually. The most recent UWMP was completed in July 2016.

The UWMP states that the City of Tracy provides water service to all water users in the City limit, plus approximately 118 residences of the Larch-Clover Community Services District. In 2015, the City served 24,500 metered service connections, the majority of which are single-family residences.

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The population estimates in the UWMP are projected using the City's WSMP methodology, as well as additional assumptions about the timing of planned development, resulting in an estimated population of 111,364 in 2040. Specifically, development assumptions were revised by the City to reflect the development that is expected to occur through 2040, which is less than the amount projection in the WSMP. The UWMP analyzes the City's future capacity to serve residents in both normal and dry conditions.

The UWMP states that the City is expected to have adequate water supplies during normal years to meet its projected demands through 2040. However, in normal years under the General Plan buildout condition (which is not tied to a specific year), the City's total annual water demand is expected to exceed total annual supply by approximately 2,614 AFY, which represents a projected shortfall of 7 percent. Moreover, the UWMP also states that there could be single-year water shortages beginning in 2040, when it projects that water demand could exceed supply by approximately 1,557 AFY (6 percent) during single dry years. This shortfall is projected to increase to 11,464 AFY, or 31 percent, under the General Plan buildout condition. The City expects to meet these dry-year shortfalls through implementation of its Water Shortage Contingency Plan.

New development that would be encouraged under the Initiative would further exacerbate these conditions, and hasten the time when these conditions arise. This would require the City to update its UWMP to reflect the revised population projections under the buildout condition, and provide additional programs and/or strategies to acquire additional supplies and reduce to demand.

10.4.3 WATER SUPPLY ASSESSMENT

California Senate Bill (SB) 610 and SB 221 seek to link information on water supply availability and land use decision-making among cities and counties. Specifically, these statutes require cities and counties to provide detailed information regarding water availability prior to approval of large development projects. SB 610 requires cities and counties to:

- Identify any public water purveyor that may supply water for a proposed development project; and
- Request a Water Supply Assessment (WSA) from the identified water purveyor.

The purpose of the WSA is to demonstrate that the water purveyor is able to supply the projected water demand of a proposed project, while still meeting the water purveyor's existing and planned future uses. SB 610 applies to projects subject to CEQA, and those considered a "project" under the State Water Code Section 10912.²² The water supplier must prepare a WSA within 90 days of a request, and may use the City's UWMP to provide a record that the project would be adequately served. The WSA addresses whether the projected supply for the next 20 years will meet the demand for the proposed project. Based on the result of the WSA, the City must either 1) provide a plan to acquire additional supplies, or 2) approve the assessment, and include the results in the required CEQA document approving the proposed project.

²² California Department of Water Resources, Guidebook for Implementation of Senate Bill 610 and Senate Bill 221 of 2001, https://water.ca.gov/LegacyFiles/pubs/use/sb_610_sb_221_guidebook/guidebook.pdf, accessed on July 30, 2018, page vii.

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While SB 610 requires the preparation of a WSA, SB 221 requires that approval by a city or county of residential subdivisions (more than 500 dwelling units) include a written verification of sufficient water supply, prior to approval of building permits.

A WSA will be required for any new development projects under the Initiative which meet the definition in SB 610 of a “project.” Based on the fact that the UWMP identifies a shortfall of supply to meet demand as projected by the adopted General Plan, any WSA prepared in the City will need to include plans to acquire additional water supplies, and provide programs to reduce water demand.

10.5 STORM DRAINAGE MASTER PLAN

Completed in November 2012, the Citywide Storm Drainage Master Plan (SDMP) covers the City of Tracy’s City limit and SOI, except for Tracy Hills, which is to be developed as the area is built out as a gravity system using pipes and channel to carry runoff to onsite retention basins. As the system is built out, it will be owned, operated and maintained by the City.

Land uses assumed in the SDMP were taken from the City’s General Plan and supplemental information from City staff regarding planning and urban reserve areas. The SDMP identifies storm drainage facilities needed to serve future land development projects under the General Plan buildout condition within the City limit and SOI, as well as storm drainage facility upgrades needed to correct existing deficiencies. The SDMP recommends storm drainage upgrades for the Eastside Channel Watershed, Westside Channel Watershed, Lammers Watershed, and Mountain House Watershed.

The Initiative-Exempted Parcels overlap with the SDMP’s Lammers, Westside, and Eastside Watersheds. Storm drainage upgrades for the Eastside Channel Watershed and Westside Channel Watershed include facilities to serve new development and existing development. Storm drainage upgrades for the Lammers Watershed include facilities to serve new development only, with one exception for a flood risk reduction project serving existing development.

In general, new development projects are required to provide site-specific or project-specific storm drainage improvements consistent with the SDMP. There are also several impact fee program areas established for individual properties or groupings of properties within the Eastside Channel Watershed and/or Westside Channel Watershed. The South Linne future service area is covered by an existing impact fee program area, and located within the Initiative-Exempted Parcels. New or modified impact fee areas will cover the majority of remaining properties in the SOI for which impact fee programs do not exist. The following areas overlap with the Initiative-Exempted Parcels:

- I-205 Expansion
- Filios
- Catellus
- Cordes Ranch
- Gateway
- UR-1

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Any development under the Initiative would be subject to the impact fees related to stormwater drainage facilities, and could likely be designed to include needed storm drainage. Therefore, the Initiative would not impact the funding mechanism to improve existing stormwater facilities, and runoff from new development encouraged by the Initiative could likely be accommodated. However, new development under the Initiative would require the City to plan for additional stormwater drainage capacity, and could also result in increases to costs for enhancements of the drainage system.

10.6 WASTEWATER MASTER PLAN

Completed in December 2012, the Wastewater Master Plan (WWMP) identifies future sewerage requirements under the horizon year, similar to the UWMP.

The WWMP finds that the existing Wastewater Treatment Plant (WWTP) on Holly Drive will need to be expanded and upgraded to accommodate 21.1 million gallons per day to accommodate increased flows from new development under General Plan buildout conditions. Specifically, the WWTP would be expanded, over a five-phase process scheduled by growth-driven flow increases. The WWMP also points out that the Tracy Hills Specific Plan foresees the construction of a second wastewater treatment facility; all remaining wastewater flows are to be conveyed to the existing WWTP.

The Initiative would increase water demand for residential use through development of 7,469, 62,773, or 91,543 new units, depending on the scenario, which could be anywhere in the WWMP's medium, high, or very high density ranges. As shown in Table 10-2, demand for an additional 1,314,544 to 19,773,288 gallons per day could be generated by new units developed on the Initiative-Exempted Parcels. There is an inverse relationship between the demand for wastewater flow and density. This is, higher density development generates less wastewater flow per unit than medium density development.

The resulting additional flows would result in an accelerated need to upgrade and expand the WWTP, and would require additional capacity beyond the 21.1 million gallons per day estimated in the Wastewater Master Plan. The City would therefore need to update its existing Plan to accommodate new demand generated by the Initiative.

TABLE 10-2 PROJECTED ADDITIONAL WASTEWATER FLOWS

Number of Additional Units	Additional Wastewater Demand ^a	
	Medium Density	Very High Density
7,469	1,613,304 gpd	1,314,544 gpd
62,773	13,558,968 gpd	11,048,048 gpd
91,543	19,773,288 gpd	16,111,568 gpd

Note: gpd = gallons per day

a. Wastewater flows calculated using a flow parameter, which is based on land use type. Residential Flow, Medium Density = 216gpd/unit; Residential Flow, High Density = 176gpd/unit.

Demand equals number of units multiplied by land use type.

Source: City of Tracy, 201. Tracy Wastewater Master Plan, Table 2-2, Wastewater Flow Generation Factors.

POTENTIAL INFRASTRUCTURE IMPACTS

11. Potential Economic Development Impacts

This chapter describes planned development projects in Tracy that overlap with the Initiative-Exempted Parcels in order to estimate the potential economic development impacts of the Initiative to the City, such as fiscal impacts, loss of jobs, and potential revenue implications.²³

As shown on Figure 5-1, the Initiative-Exempted Parcels are currently designated for Commercial, Office, Industrial, Open Space, and Urban Reserve land uses. The Initiative does not include redesignation of these parcels for residential use, but it implies the landowner's intent to ask for redesignation. If the City later agreed with the landowner's request, the result would be a loss of commercial development potential on sites currently targeted by the City of Tracy for job generation.

11.1 KEY ECONOMIC DEVELOPMENT AREAS

For approximately the past 50 years, Tracy has seen considerable residential development as home buyers searched for lower-priced housing as compared to the San Francisco Bay Area. Job growth in Tracy has lagged behind housing development, and the City has increasingly sought to jumpstart job growth so that local residents could also work in Tracy. The City's General Plan seeks to attract emerging growth industries to increase employment opportunities for all skill levels and salaries, by targeting corporate headquarters and other office uses within a range of high-wage industries.²⁴

A forecast prepared by Gruen Gruen + Associates in 2007 forecasts demand for retail, office, and industrial space through 2022. The forecast suggests that as competition in the retail market increases through the year 2022 within the region (including Manteca, Lathrop, Mountain House and eastern Livermore), the City may see expanded demand for retail spaces, lodging, education and healthcare uses. The forecast also states that in order to avoid increased land costs that could act as a disincentive on future demand, at least 172 acres should be made available for potential development of office uses, which should include land on the west side of Tracy that does not adjoin industrial facilities, is suitable for master-planned campuses, and could accommodate large education and health care uses. Finally, the report states that Tracy needs an additional 239 acres of land to be planned and made available for potential industrial development on the west side of Tracy, beyond the lands included in the Northeast Industrial Area, the Stonebridge Industrial Park, and the I-205 Specific Plan area.

This section analyzes how the City has responded to the Gruen + Gruen report by designating land for additional commercial development.

²³ United States Green Building Council, 2008, Building Area per employee by Business Type, <https://www.usgbc.org/Docs/Archive/General/Docs4111.pdf>, accessed on July 30, 2018.

²⁴ City of Tracy, General Plan, 2011. Economic Development Element, Objective ED-1.1, Policy P1.

POTENTIAL ECONOMIC DEVELOPMENT IMPACTS

11.1.1 TRACY GATEWAY

The 538-acre Tracy Gateway project is located at the western edge of the incorporated City boundary, and south of I-205 at the Eleventh Street off-ramp. The proposed development consists of 5.8 million square feet of office uses, commercial uses, and retail uses that support the Tracy community and an anticipated 20,000-person business population. The proposed project also includes a multi-story hotel and a golf course.

The Tracy Gateway project has been the City's most highly emphasized area for future high-end job generating growth, with a focus on office space that would ultimately attract major employers from the San Francisco Bay Area and/or Silicon Valley.

The existing Development Agreement for this project is about to expire, and the City is currently in the process of updating the Plan for this area.

11.1.2 TRACY HILLS

The Tracy Hills Specific Plan area, located on the southwest side of the City, covers approximately 6,230 acres, approximately 2,730 acres of which falls within the City limit and is planned with residential, commercial, office, industrial and recreational land uses. The remaining 3,500 acres are located outside the city limit and within the SOI, and are planned as permanent open space for habitat conservation and managed grazing. Of the 2,700 acres within the City limit, approximately 600 acres with up to 6 million square feet of space are planned for commercial, office, and industrial uses.²⁵ An important portion of the Tracy Hills commercial development area is located along I-580, where it enjoys excellent access and appears to be a prime candidate for office, light industrial, or manufacturing development.

11.1.3 CATELLUS

Also known as the Tracy Lammers Road project, this 700-acre area located north of I-205 is anticipated to support industrial and office uses and, potentially, low-density residential development. Plans also include low-intensity uses in the north and west, or a significant landscape buffer that may include low-maintenance landscaping and equestrian trails.

11.1.4 FILIOS (FORMERLY UR-2)

The 23-acre vacant portion of this triangular area on the northwestern side of the City is bounded by Grant Line Road to the north, Lammers Road to the east, and Byron Road and the Union Pacific railroad to the southwest. Given its proximity to the I-205 Regional Commercial Area and frontage along major arterials, a majority of this area is planned for commercial and office uses. As described in the

²⁵ 6,000,000 square feet divided by 278 square feet per employee = 21,583 employees.

POTENTIAL ECONOMIC DEVELOPMENT IMPACTS

Filios/Dobler EIR, the development scenario assumed for the vacant, 23-acre portion of the project site is approximately 249,000 square feet of commercial/office uses.²⁶

11.1.5 I-205 EXPANSION AREA

The I-205 Expansion Area includes approximately 172 acres of land in northwest Tracy, adjacent to Interstate 205. This area is zoned to support shopping centers, auto plazas, and general retail uses. It may also include residential and commercial development as well as light industrial uses.

11.2 POTENTIAL ECONOMIC DEVELOPMENT IMPACTS

As shown in Table 8-3, the Initiative-Exempted Parcels include 2,176 acres of land currently designated for job-generating commercial uses. Development of residential units on these lands would result in the loss of lands designated for up to 7,616,636 square feet loss of commercial space. Therefore, the Initiative could result in a loss of job opportunities for existing and future Tracy residents, as well as lost revenue to the City in the form of business licenses and permit fees, property tax, sales tax for retail development, as well as revenue generated by people who work and/or live in Tracy and shop at local stores or eat at local restaurants. This would not only be a detriment to the City, but would impact the City's ability to meet its General Plan objectives with regard to job growth.

These findings are especially true with regard to the Tracy Gateway and Tracy Hills areas, which are located in prime locations for job generating uses and which have been targeted by the City for significant job growth. The only Initiative-Exempted Parcels currently inside the City limit are located in these two areas, and they are currently designated for commercial and job generating development. Loss of these areas to residential development could have an especially important effect on the City's future job generating efforts.

²⁶ City of Tracy, 2011, Filios/Dobler Annexation and Development Project Draft EIR, https://www.ci.tracy.ca.us/documents/Filios_Dobler_Draft_EIR.pdf, accessed on July 30, 2018.

POTENTIAL ECONOMIC DEVELOPMENT IMPACTS

12. Cost Implications

This chapter describes the types of costs the City of Tracy could incur as it implements the Initiative and serves future development encouraged by it.

12.1 COSTS TO THE CITY

Implementation of the Initiative could result in three separate types of cost to be borne by the City of Tracy: capital costs, service costs and administrative costs. Each of these is considered below.

12.1.1 CAPITAL COSTS

As discussed in Chapters 9 and 10 of this report, new development encouraged by the Initiative would result in the need for a series of new infrastructure facilities and upgrades. Most of the capital costs associated with these improvements would likely be covered by impact fees that are associated with each of the City's seven infrastructure Master Plans, although these fees may need to be studied and amended to accommodate currently unforeseen development . Moreover, there can be no guarantee that adequate funds can be collected to address all these capital needs, so some additional costs could accrue to the City.

12.1.2 SERVICE COSTS

Previous studies reviewed by the City indicate that the fees paid by residential projects, by themselves, do not fully cover the costs of services for residential development. The Initiative could exacerbate this existing dynamic, putting strain on the City's ability to service new housing exempted from the GMO under the Initiative. This could situation could potentially be mitigated, either partially or completely, by requiring any new development built under the exemption to be subject to the existing City-wide services Community Facilities District or a similar funding mechanism.

12.1.3 ADMINISTRATIVE COSTS

As explained in Chapter 5, the proposed Initiative would require the City to amend its GMO Guidelines, General Plan, and possibly several other planning documents, in order to bring them into conformity with the Initiative. Additionally, as noted in Chapters 9 and 10, the City would also likely need to update its seven infrastructure Master Plans and the associated impact fee schedules to accommodate new development encouraged by the Initiative. These changes would all need to be reviewed under the California Environmental Quality Act (CEQA) as well. These planning costs would likely come to a total in the hundreds of thousands or even low millions of dollars.

COST IMPLICATIONS

12.2 COST RECOVERY

The Initiative does not include provisions for cost recovery of administrative costs, meaning that the Initiative does not create a way for the City to bill the administrative costs described above to the developers who would build the units that are encouraged by the Initiative. As noted in Sections 12.1.1 and 12.1.2, existing or revised impact fees and the City-wide services Community Facilities District may be available to cover capital and service costs, but these mechanisms might need to be revised to ensure full cost recovery.

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July 19, 2018

Via Email and Federal Express

Mr. Randall Bradley
Interim City Manager
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Mr. Thomas Watson
City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: Suggested Items to Review Under Section 9212 Informational Report for Sandhu Initiative

Dear Mr. Bradley and Mr. Watson:

In my initial review of the Sandhu Initiative, I respectfully suggest analysis of the issues listed below would be prudent for the City Council and Tracy citizens. In addition, each element listed in Section 9212(a) should be addressed as the Sandhu Initiative implicates each item.

First, it is important the report address the horizontal consistency of all planning documents and the vertical consistency of the hierarchy of land use related enactments of the City as suggested by Subsection 9212(a)(2) of the Elections Guide.

For example, the Sandhu Initiative creates a vertical inconsistency between the City's General Plan and the initiative through identifying areas outside of the City's General Plan current land use designations for the type of future development contemplated by the initiative.

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The mandatory land use element of a General Plan "designates the proposed general distribution and general location and extent of the uses of the land for housing..." Gov. Code § 65302 (a). The Sandhu Initiative usurps this requirement of the General Plan by creating an inconsistency in land uses between General Plan and the initiative by purportedly slating land without any general plan land use designation for residential growth.

To illustrate this the City should prepare an exhibit for the Council and public identifying land in the Sandhu Initiative that currently has no general plan land use designations.

In a similar manner, the Sandhu Initiative creates another vertical inconsistency by making a zoning ordinance superior to the General Plan. Section 5(d) of the Initiative states: "(t)he City shall not adopt any amendments to the General Plan inconsistent with the terms and purpose of this Initiative Ordinance without a majority vote of the electorate of the City of Tracy." This reverses the hierarchy of land use regulations by forcing the General Plan to be consistent with a zoning ordinance. To be effective, the Sandhu Initiative would have had to amend the General Plan along with your zoning ordinances.

Second, the City urgently should address whether the lottery provisions of the Initiative are unconstitutional. Section 4(c) gives a preference to Tracy residents to purchase the dwelling units. Is this lawful? I am consistently told by city attorneys that local hire rules violate the U.S. Constitution and federal law because there is a right to travel and due to violations of the Commerce Clause. Does this provision have the same or similar infirmity? This will be the main "selling point" for the Sandhu Initiative. If this provision is illegal, the Sandhu Initiative becomes a "fraud on the electorate."

Third, the Sandhu Initiative conflicts with your General Plan Policy P2. That policy states that the city "shall prioritize" the allocation of RGAs considering a number of factors, including senior housing and mixed use housing. As you know, "shall" is a mandatory and not a permissive term in this context. By exempting senior housing and mixed use housing from the GMO, the initiative disables the City's ability to fulfill the General Plan's mandatory requirement to "prioritize" this type of housing in relationship to the other housing items referenced in Policy P2. Exempting is not prioritizing.

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Fourth, does the Sandhu Initiative apply the exemption to your City's growth management policies if only one age-restricted residential lot or dwelling is part of a larger project? Section 2 10.12.060(f)(1)(a) suggests this unfortunate outcome. Perhaps the intent was to have only a project that was fully age-restricted enjoy the exemption from your growth management regime, but does the technical wording requires just one age restricted lot in order to be exempt from the GMO? This result would completely eviscerate the City's long-cherished growth control system.

Fifth, section 4(b) of the Sandhu Initiative compels the City to make certain changes to regulations and administrative rules. As you know, the initiative power is limited to legislative actions. Can an initiative amend and revise non-legislative matters? If not, the Sandhu Initiative exceeds the initiative power.

Sixth, the City should estimate the Sandhu Initiative's effect on a "traffic congestion" and other infrastructure, environmental, and governmental service. I've read article after article in The Tracy Press on traffic congestion suffered by Tracy residents due to the closure of Corral Hollow Road. Corral Hollow - style congestion could be made permanent by the Sandhu Initiative. It facilitates thousands and thousands of high density units inside and outside of the City limits. To circumvent your growth management system, this initiative allows attached housing and small lots of 4,000 square feet or less on an enormous amount of acreage. Calculations must be made of the worst case-scenario in housing density and its effect on traffic, schools, parks, governmental services and the like.

Seventh, the City is authorized to analyze the impact on the Sandhu Initiative on the community's ability to attract and retain business and employment. The City should explain that the Sandhu Initiative identifies all remaining vacant land along the I-205 corridor in the western part of the City as enjoying the initiative's exemption from your growth management regime. This will encourage all this I-205 corridor land to be developed as residential without any high-end office park. This western corridor I-205 is the only location such uses would be viable. Instead of a future Hacienda Business Park or Bishop Ranch that would make your citizens more prosperous, it is foreseeable that the City instead will end up with hundreds of acres of very dense residential development. The initiative proponents will want you to emphasize that the initiative helps employment by providing workforce housing, but you should analyze the other side of the coin: how does the Sandhu initiative help attract businesses and employment if it facilitates conversion of what is currently planned to be your City's strategic high-end office park in Tracy Gateway to yet more residential development?

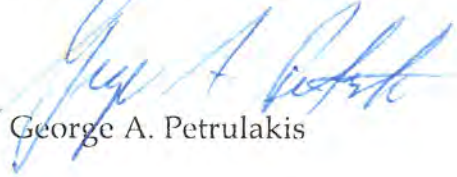
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Eighth, the City should explain the different land use and development scenarios the three different categories of land (as illustrated in the staff exhibit at the Council's Tuesday meeting) included in the Sandhu Initiative will likely follow. For example, as shown on the staff exhibits only three areas in the Sandhu Initiative are in the current City limits. Two of these are in the Tracy Gateway planning area. These three areas would likely develop much, much sooner than those areas outside the City limits. So a foreseeable effect of the Sandhu Initiative is to undermine the current expectation that Tracy Gateway will be the City's future home for high-end office park jobs.

Thank you for the opportunity to provide this initial input on the Sandhu Initiative. Please contact me for questions or clarifications.

Very truly yours,

PETRULAKIS LAW & ADVOCACY, APC



George A. Petrulakis

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July 31, 2018

Via Email and Hand-Delivery

Mayor Rickman and
City Councilmembers
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: Request to Cure Procedural Irregularity in City's Handling
of the Sandhu Initiative/Interference with Discretion of Full City Council

Dear Honorable Mayor and Councilmembers:

I previously wrote to your City Manager and City Attorney with suggestions on items to address in the Section 9212 Informational Report that the City Council requested at your July 17, 2018 meeting about the Sandhu Initiative. I previously emailed you copies of that letter. While relatively short in length, the initiative is long and complex in how it will affect your City's time-honored growth management system, environment, long-term fiscal health, and many other issues.

Today, I respectfully write you directly requesting that you cure a procedural error in the City's handling of the Sandhu Initiative that creates a storm cloud over both City Hall and the initiative.

In particular, decision-making discretion completely within the scope of the full City Council was snatched from the full Council when you were not presented with your full range of Council options in qualifying the Sandhu Initiative for an election order. Your full options were not provided to you either in the staff report or in your discussion with city staff at the July 17th council meeting.

What is the problem in short? Through mistake or obstruction, discretion clearly given to the full City Council about how to fulfill its duty to process and qualify the Sandhu Initiative was removed from the full Council. This resulted in the City Council

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choosing to commission a time-shortened, and thus, truncated Section 9212 Informational Report without considering the option to order a full informational report that would be of greater benefit to voters.

What is the solution in short? Call and hold a special meeting of the City Council to immediately address the concerns outlined in this letter and properly exercise your discretion as a full City Council to consider all the options you have when an initiative is certified to you as sufficient.

Since the certification of the Sandhu Initiative was made at the City Council meeting on July 17th, under the controlling authority of Elections Code Sections 1405, 9212, and 9215, the City Council had four options with which it should have been presented. These options were as follows:

First, at the July 17th meeting or within ten (10) days after, adopt the initiative without alteration. Elec. C. §9215(a).¹

Second, at the July 17th meeting, immediately order an election and send the initiative without alteration to the voters in the next regular election occurring not less than 88 days after the date of the order of the election. If the Council's order of election given at the July 17th meeting, the next regular election occurring not less than 88 days after the date of the order would be the November 6, 2018 election.

The next Council decision properly could lead to two different options. Each option would begin by the City Council declining to order an election on July 17th and instead ordering a Section 9212 Informational Report. Since the Council can utilize up to 30 days for the report preparation, the Council decision whether or not to utilize the full time provided to it by statute could affect the date of the election that voters would vote on the initiative.

Thus, **third**, if the Council on July 17th declined to order an election and instead decided to utilize all or most of the 30-day maximum to prepare the Section 9212 Informational Report, that decision would have moved the election from 2018 to 2020 because by the time the Council made its

¹ Note that this statutory option was not an actual option because as your staff and the staff report pointed out, portions of the Sandhu Initiative were revising provisions that previously were adopted by initiative so they could only be amended by initiative.

election order, the next regular election occurring not less than 88 days after the order would have been November 3, 2020. Consequently, a fuller and more robust Section 9212 Informational Report would cause a delay in the calculating of the “next regular election” date.

The **fourth** option was also to decline to immediately order an election and instead order a time-shortened Section 9212 Informational Report that would allow the election order to be made by the Council in a timeframe where the next regular election occurring not less than 88 days after the date of the order would be the November 6, 2018 election. So, a less full and robust informational report would equate to an earlier “next regular election” date.

In short, the City Council at the July 17th meeting, should have been presented with all four options. For unknown reasons, the Council was only presented with three of the four. This was a decision that should have been made by the full City Council in open session at a regular meeting.

Why was the City Council’s discretion on this decision removed? Two possible answers arise: a mistake was made leading to the omission of one of the options or a decision was made outside of public view by staff, a portion of the Council, all of the Council, or some other person or combination to ignore the full Council’s option to order a full Section 9212 Informational Report instead of a time-shortened and truncated report that necessarily deprives voters of information.

There was much comment at the July 17th meeting about how the normal time to prepare the informational report was being “cut in half” and this lack of time would hamper the information that could be collected in time for Council and public review.

Whether the case was mistake or obstruction, the City Council should consider an immediate special meeting to address the matter and decide if it wants a fuller informational report. Unless corrective action is made by the full Council, the public perception will be that the decision to ignore a key option was made outside of public view by staff or some other improper combination.

This possibility raises serious issues about usurpation of the full City Council’s discretion, Brown Act violations or both. I do not believe there is any question that the City Council could utilize less time for the Section 9212 Informational Report if there was a majority who wanted to order

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the election for the November 2018 ballot. However, there is also no question that the City Council could utilize more time for the Section 9212 Informational Report if there was a majority that placed more emphasis on fully informing the public instead of ordering the November 2018 election.

What are the key factors in this morass? In an effort to address this, I've enclosed my research memorandum. First, there was and is no statutory requirement that the Sandhu Initiative be placed on the November 2018 ballot. Second, the decision on how much time to utilize for the Section 9212 Informational Report was for the full City Council to make in open session. Instead, this possibility was completely suppressed and the decision to favor the timing of the election over the completeness of the information presented to the Council and the public was not made in open session but in the shadows by unknown persons.

I hope you will lift this storm cloud over City Hall and the Sandhu Initiative with an immediate special meeting of the City Council. At this meeting, the full City Council should decide whether the public deserves a more complete Section 9212 Informational Report instead of the truncated version you are on course to receive. If no corrective action is taken, Tracy citizens will be left wondering: who dictated this course for the City Council? And why wasn't this important decision decided by you in your discretion as elected officials in an open and regular meeting?

Please contact me for questions or clarifications.

Very truly yours,

PETRULAKIS LAW & ADVOCACY, APC



George A. Petrulakis

cc: Mr. Randall Bradley, City Manager
Mr. Thomas Watson, City Attorney

RESEARCH MEMORANDUM

TO: File

FROM: George A. Petrulakis

SUBJECT: Excerpts from Key Legal Sources on City Council’s Decision-Making Discretion When Presented with a Certified Initiative Petition

DATE: July 30, 2018

CC: N/A

I. **SUMMARY.** The Tracy City Council was directed in a staff report and staff discussion at the July 17th City Council meeting that it was required to place the Sandhu Initiative on the November 6, 2018 election and that if it wanted a Section 9212 Informational Report, it had to shorten the statutory time provided to have such a report prepared.

This “direction” or “dictate” to the Tracy City Council was incorrect.

The City Council had clear authority and discretion to utilize as much of the 30-day statutory period as it chose to have the Section 9212 Informational Report prepared. This option was not presented to the City Council. The incidental effect of using all, or almost all, of the full time to prepare the Section 9212 Informational Report could be to move the election date that the initiative would have been voted upon from 2018 to 2020.

This was a decision for the entire City Council to make in open session at a public meeting. For some reason, the full City Council was not presented with this option. Elections Code Section 9215 provides three statutory options for a city council receiving a certified initiative petition.

The information provided to the City Council in the staff report and in discussion at the July 17th meeting reversed the order of the Council's decision-making. The Council should have been presented with the different outcomes on calculating the "next regular election" date if the Council utilized the full 30-days to prepare the information report versus shortening the time for the report.

This decision was fully in the discretion of the City Council. It somehow was removed from City Council discretion.

II. SUMMARY OF FACTS. The City Clerk certifies sufficiency of petition for Sandhu Initiative at the City Council's regular meeting on July 17, 2018.

The staff report for Agenda Item 3 lists the three apparent statutory options the City Council may choose from under Election Code §9215 at the regular meeting at which on initiative petition is certified as sufficient.

The staff report properly reports that the first basic option (i.e., for City Council to adopt without alteration) is unavailable since provisions of local ordinance that the Sandhu Initiative seeks to amend were themselves adopted through a previous initiative. Consequently, the amendments in the Sandhu Initiative may only be accomplished through an election vote.

Next the staff report states:

Elections Code Section 1405 was amended, effective January 1, 2018 by Assembly Bill 765, to provide that an initiative that qualifies under Elections Code 9215 shall be considered at the next regularly scheduled municipal election, or in the alternative, the legislative body may call a special election for the purpose of submitting the initiative to voters before the date in which the initiative would have otherwise appeared. The next regularly scheduled municipal election will be held on November 6, 2018. Staff recommends against calling a special election before that date as there will be a greater electorate

participation at that election and this is a measure of great citywide interest.

This misstates the effect of that bill. It ignores that the “next regularly scheduled municipal election” is calculated from the time the City Council finishes qualifying an initiative petition under Elections Code §9215. “Qualifying” an initiative includes the possibility of conducting a full Section 9212 Informational Report by utilizing all or most of the 30-day maximum to prepare such a report. It confuses what “qualifies under Elections Code 9215” means. An initiative does not qualify until the options given to the city council under the play out.

III. APPLICABLE LEGAL AUTHORITY.

A. STATUTES. The three statutes below govern a city council’s options when certification of the sufficiency of an initiative petition is presented to the city council.

Elections Code §9215. If the initiative petition is signed by not less than 10 percent of the voters of the city, according to the last report of registration by the county elections official to the Secretary of State pursuant to Section 2187, effective at the time the notice specified in Section 9202 was published, or, in a city with 1,000 or less registered voters, by 25 percent of the voters or 100 voters of the city, whichever is the lesser number, the legislative body shall do one of the following:

- (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented.
- (b) Submit the ordinance, without alteration, to the voters pursuant to Section 1405.
- (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b).

Elections Code §9212. (a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9215, the legislative body may refer the proposed initiative measure to a city agency or agencies for a report on any or all of the following:

[. . . omitting subsections (1)-(8) listing appropriate topics for the report . . .]

(b) The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.

Elections Code §1405. (a) Except as provided in subdivision (b), the . . . election for a municipal or district initiative that qualifies pursuant to Section 9215 or 9310 shall be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of election.

(b) The governing body of a county, city, or district may call a special election for the purpose of submitting an initiative measure to the voters before the date on which the initiative measure would appear on the ballot pursuant to subdivision (a). If the governing body calls a special election pursuant to this subdivision, the election shall be held not less than 88 days nor more than 103 days after the order of the election.

B. CASE LAW. Excerpts from *Tuolumne Jobs* case decided by the California Supreme Court in 2014. In analyzing whether initiative petitions are subject to CEQA, the California Supreme Court in the *Tuolumne Jobs* case interprets the mandatory timelines in the Elections Code that govern a city council's processing of such petitions. Note that the case involved a special election so the Elections Code section at issue was §9214 rather than §9215. However, the two sections contained the same parallel text in subsection (c) involving the Section 9212 Informational Report. (Also note, Section 9214 was repealed by Assembly Bill 765, the 2017 law cited in the staff report, but the repeal does not adversely affect the Court's interpretation of the statutory language in this section that finds an exact parallel in Elections Code Section 9215(c).)

The procedures for municipal voter initiatives are found in section 9200 et seq. [of the Elections Code.] Under section 9214, when a local body receives an initiative petition signed by at least 15 percent of the city's registered voters, it must: (1) adopt the initiative, without alteration, within 10 days after the petition is presented; (2) immediately submit the initiative to a vote at a special election; or (3) order a report pursuant to section 9212. The report may examine the proposed initiative's effects on land use, infrastructure, and "[a]ny other matters the legislative body requests" be included. (§ 9212, subd. (a)(8).) If ordered, the report must be prepared and presented within 30 days after the petition was certified as satisfying the

signature requirement. (§ 9212, subd. (b).) **Within 10 days after receiving the report, the legislative body must either adopt the ordinance or order an election** pursuant to section 9214(b). (§ 9214(c).)

Tuolumne Jobs & Small Business Alliance v. Superior Court, 59 Cal. 4th 1029, 1036, 330 P.3d 912, 916, 175 Cal. Rptr. 3d 601, 605, 2014 Cal. LEXIS 5464, *7-8, 2014 WL 3867558

Requiring CEQA review before direct adoption would essentially nullify both subdivisions (a) and (c) of section 9214. The plain language of section 9214 requires that city governments act quickly to either adopt a qualified voter initiative or hold a special election. (§ 9214(a)–(b).) The **only other option is to order a report exploring potential impacts of the initiative**. (§ 9214(c); see § 9212.) This report can only provide an abbreviated review because it must be produced within 30 days after the initiative's certification. (§ 9212(b).) **Once the city receives the report, it must either adopt the initiative within 10 days or immediately order a special election**. (§ 9214(c).) These short deadlines are consistent with other deadlines requiring public officials to act expeditiously on initiatives. For example, once a proposed initiative is filed, the city attorney has only 15 days to prepare a ballot title and summary (§ 9203), and elections officials have only 30 days to verify signatures on the petition (§§ 9114–9115, 9211).

Id., 59 Cal. 4th at 1037, 330 P.3d at 917, 175 Cal. Rptr. 3d at 606, 2014 Cal. LEXIS 5464, *9-10

Considering the time necessary for agencies to review the potential environmental impacts of a project and allow public review and comment, it would be impossible for a city to complete CEQA review within 10 days before adopting a voter initiative. (§ 9214(a).) **Although this period can be extended to 40 days if the city obtains a section 9212 report, under no circumstances can a city delay action on a voter initiative beyond 40 days**. The deadlines in section 9214 are mandatory. As a result, if prior CEQA review is required, a city could *never* adopt a voter initiative under section 9214(a) if that initiative had any potential impact on the environment. Direct adoption would be severely curtailed and, for many initiatives, no longer an option, because it would be impossible for cities to comply with both CEQA and the section 9214 deadlines. (Cf. *DeVita, supra*, 9 Cal.4th at p. 795 [irreconcilable deadlines make it impossible to conduct CEQA review before holding election on a voter initiative].)

Id., 59 Cal. 4th at 1038, 330 P.3d at 917-918, 175 Cal. Rptr. 3d at 607, 2014 Cal. LEXIS 5464, *12

C. **SECONDARY SOURCES.** Leading secondary sources make clear that ordering a Section 9212 Informational Report may affect timing of the general election at which the initiative will be voted upon.

1. **The California Municipal Law Handbook 2018.** Excerpts from the 2018 edition of the leading legal treatise for California city attorneys.

§3.88. (3) City Council May Refer Petition for Report.

During circulation of the petition, or before adopting it or placing it on the ballot, the city council may refer the petition to any city agency or agencies for their reports on fiscal impacts, general and specific plan consistency, various land use issues, and “[a]ny other matters.” Elec C § 912. See *Vargas v. City of Salinas* (2009) 46 C4th 1.

PRACTICE TIP > The report must be presented no later than 30 days after the elections official certifies to the city council the sufficiency of the petition. Elec C. §9212(b). Thirty days may not provide enough time to ask the city council if a report is desired, determine what topics should be included, prepare the report, and properly notice the report on an agenda. Depending on the magnitude of issues, it may be prudent to seek city council direction on the report before the petition is determined to be sufficient to provide enough lead-time. **In addition, the timing to get the initiative on the ballot may be a factor because it could add 30 more days to city council action to either adopt the initiative or call for an election.**

§ 3.89 c. Timing of Election

An initiative qualifying under Elec C §9215 must be placed on the next regular election to be held **not less than 88 calendar days after calling the election**, unless the city council calls a special election to be held between 88 and 103 calendar days after calling the election. Elec C §1405.

§ 3.90 (1) Regular Election

If the petition contains the signatures of at least 10 percent of the registered voters . . . the council must either adopt the ordinance without change, or place the initiative on the ballot at the next regular election held not fewer than 88 days **after the date of the order of election.** Elec C §§1405(a), 9215(b) . . .

The California Municipal Law Handbook 2018 (Cal CEB) §§ 3.88 – 3.90, pp. 277-278.

2. **League of California Cities, Excerpts from 2017 Session Materials.** In a late 2017 presentation, an Initiative Checklist “highlights” a city council’s discretion over election dates.

Initiative – Checklist

- If petition sufficient, Governing Body to receive at next regular meeting date
- Prepare Agenda Report highlighting options, i.e., adopt ordinance outright, call election to submit ordinance to voters, or report on ramifications of adoption. **include possible election dates** (at least 88 days, Tuesday, no Holidays, whether general or special.) **Allow Governing Body to select date. (Highly political decision, provide options and then let them decide.)**
- Report ordered on _____ N/A
- Report presented to Council (no more than 30 days after date ordered by Council) N/A
- Ten (10) day period for Council to adopt ordinance or call election expires on _____ (Within ten days of receipt of report)**

League of California Cities, “Initiative – Checklist” provided in Session Materials by Susan M. Dorman & Stephanie D. Smith, “Initiatives, Referendums and Recalls,” 2017 New Law & Elections Seminar, p. 2 (of 3 unnumbered pp.)

3. **League of California Cities, Paper Prepared by Craig A. Steele, City Attorney, Highland and Monrovia.** Excerpts from a paper prepared to accompany a League of Cities presentation on initiatives and referenda.

§ II.C.2.h. Effect of a Valid Petition. If the petition contains . . . [sufficient] . . . valid signatures . . . the city council has three options: 1) adopt the measure as presented at the regular meeting at which the city clerk certifies the validity of the petition or within 10 days thereafter; 2) order the measure submitted to the voters at the next regular municipal election not less than 88 days in the future, or 3) **order a report to be prepared within 30 days** regarding the impacts of the measure on the city, **and then take either of the previous two actions.** (Citing Elections Code §9215.)

§ II.C.6. Tips on Advising the City Clerk Regarding Initiative and Referenda. . . . During the periods when petitions are being circulated and signatures are being verified, the city attorney can use that time to review

the provisions of the measure and research any legal issues that may be presented.

League of California Cities, "Local Initiatives and Referenda: Key Considerations for City Attorneys," a paper prepared by Craig A. Steele, City Attorney, Highland and Monrovia for a General Session of the League of California Cities, 2015 City Attorney's Spring Conference, (May 7, 2015.)

###

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August 6, 2018

Mr. Thomas Watson
City Attorney
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

via email to: Thomas.Watson@cityoftracy.org

Re: Letter dated July 19, 2018 of George A. Petrulakis suggesting
items to review under Section 9212 Informational Report

Dear Mr. Watson,

I am writing to respond to some of the statements made by Mr. Petrulakis in the above-referenced letter and specifically to address the issue of whether the lottery provisions of the initiative are unconstitutional.

The Need Addressed By The Initiative

The 2015-2023 Housing Element ¹ of the City of Tracy recognized that “[t]owards the latter part of the twentieth century, the City transitioned into a primarily residential community, as more people arrived from the Bay Area seeking affordable housing, a small-town feel, and a respite from the highly-urbanized San Francisco Bay region.” (Housing Elem., p. 1); and, while “[h]ousing prices in Tracy are relatively affordable when compared to the San Francisco Bay region” (*id.*), “the City’s housing is some of the most expensive in San Joaquin County.” (*id.*); suggesting that “[l]ower and moderate income households in the City will have a difficult time finding affordable ownership and rental housing options.” (*id.*)

Compared to the rest of the cities in San Joaquin County, Tracy’s population growth during the 2010 to 2015 period was second to lowest, with only Lodi having a lower rate of growth. (Housing Elem., p. 6, Table 1), which suggests that even new emigrees from the San Francisco Bay region are skipping over Tracy to find more affordable housing in cities like Lathrop, Manteca, Escalon and Stockton. In the years between 2000 and 2010 the age group consisting of young adults/early middle age (25-44) has decreased more than any other age group in Tracy (Housing Elem., p. 7 – Table 2), suggesting that young families who are already residents of the City itself cannot afford to purchase housing here.

“The San Joaquin Valley has become a destination for Bay Area workers seeking lower cost housing and a lower cost of living overall. This can create difficulty for local workers competing for valley housing.” (Housing Elem., p. 11, emphasis added) As the report notes at that page, the median income in San Joaquin County is substantially lower than in Alameda, Contra Costa, San

¹ Unless otherwise indicated, all references or quotations in this first part of this letter are to the “City of Tracy, 2015-2023 Housing Element” adopted by Res. No. 2016-050 on March 15, 2016, and will be referenced as “Housing Elem.” with the page number.

Francisco, San Mateo, and Santa Clara counties. (*id.*) “Housing development in the City is meeting the needs of many Bay Area employees who are themselves priced out of ownership in the areas where they work. *Since local residents employed in Tracy tend to have lower wages, a housing market dictated by persons commuting to Bay Area jobs and their willingness (and ability) to pay presents difficulties in meeting the housing needs of people who live and/or work in Tracy.*” (Housing Elem., p. 14, italics added)

In addition the report recognizes that “[c]ertain groups have greater difficulty finding decent, affordable housing due to special needs and/or circumstances” (Housing Elem., p. 20), and that this “special needs” group includes “seniors” who have limited or fixed incomes, (higher) health care costs, and disabilities. (*id.*)

The report attributes the decline in residential development in the City in part on the limitations imposed by Measure A: “Residential development declined sharply in 2005 due to decreased housing demand and the voter-approved Measure A initiative, which amended the City’s Growth Management Ordinance (GMO) by reducing the number of new residential building permits allowed each year from 1,500 to 750.” (Housing Elem., p. 27) “The City has an adequate supply of vacant, unconstrained land; however, residential construction in Tracy is limited by the City’s Growth Management Ordinance (GMO) . . .” (Housing Elem., p. 39)

In 2015 the median price of a single family home sold in Tracy was \$420,000. (Housing Elem., p. 32 – Table 24), which prices out even “moderate” income households: “Moderate income households earn between 81 percent and 120 percent of the County’s Area Median Income – up to \$85,900 depending on household size in 2015. The maximum affordable home price for a moderate income household is \$196,624 for a one-person household and \$296,095 for a five-person family. Moderate income households in Tracy will also have trouble purchasing adequately-sized homes.” (Housing Elem., p. 34)

As the report notes, “[t]he rate of housing overpayment in Tracy has increased substantially since 2000. Between 2007 and 2011, nearly one-half (48 percent) of Tracy households overpaid for housing compared to 35 percent in 2000 (Table 12).” (Housing Elem., p. 50)

The proponents of this initiative believe that the increase in the availability and supply of “for-sale housing units that are (i) attached homes (including condominiums, duplexes, triplexes, four-plexes, attached dwellings, and townhomes), and/or (ii) single-family homes on lots that are 4,000 square feet or less” will ultimately result in greater affordability of housing within the City as a whole (as these units are populated by City seniors and residents who will vacate rental and housing units in which they live to do so, thereby expanding supply and hopefully decreasing the price of existing housing stocks), particularly in regards to seniors and to young adults/early middle age families and individuals who work and live in the City. This will hopefully reverse the housing “overpayment” trend and the migration of young families and individuals away from the City; provide housing for the jobs being added by such projects as the FedEx distribution center, Amazon distribution center and hopefully filled by residents of the City; and may even ameliorate some of the adverse environmental consequences by reducing the numbers of commuters into the Bay Area from Tracy.

The Lottery Provision Is Not Unconstitutional

I am attaching a law review article entitled, “Local Preferences in Affordable Housing: Special

Treatment for Those Who Live or Work in a Municipality,” 36 B.C. Env'tl. Aff. Law Rev. 207 (2009) which discusses the constitutionality of “local preference” provisions when dealing with “affordable housing.”

1. The “residence” provision in this initiative is *not* a “durational residency requirement” as discussed in that review, commencing at p. 215, but rather “bona fide residency requirement” as discussed in that review, commencing at p. 219, and should *withstand* challenge on the ground that it violates the constitutional right to travel and migrate. (See: *Martinez v. Bynum*, 461 U.S. 321, 325-327 (1983); *Fayerweather v. Town of Narragansett Hous. Auth.*, 848 F. Supp. 19, 22 (1994); *Cohen v. R.I. Tpk. & Bridge Auth.*, 775 F. Supp. 2d 439, 451-452 (2011).)

2. The initiative should also withstand any challenge alleging discrimination due to “disparate impact”² under the Fair Housing Act (42 U.S.C. §§ 3601-3631): “. . . (absent intentional discrimination), the residency preference does not violate the “because of race” provision of the Fair Housing Act standing alone.” (*Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 51 (2000) The burden to show “disparate impact” would fall on the persons challenging the initiative, and the proponents believe that no such disparate impact could or would be shown.

Thank you for considering this letter in your study of this matter.

Sincerely,



Robert Mehlhaff

Attorney for Proponents of the Initiative

² There is clearly no “express” intention to discriminate apparent on the face of the initiative, and hence no “disparate treatment” claim (see: *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, ___ U.S. ___, 135 S.Ct. 2507, 2513, 192 L.Ed.2d 514, 517 (2015)).

January 2009

Local Preferences in Affordable Housing: Special Treatment for Those Who Live or Work in a Municipality

Keaton Norquist

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LOCAL PREFERENCES IN AFFORDABLE HOUSING: SPECIAL TREATMENT FOR THOSE WHO LIVE OR WORK IN A MUNICIPALITY?

KEATON NORQUIST*

Abstract: Local governments are increasingly granting preference to local residents and employees when selecting occupants for affordable housing set-asides. These preferences risk being invalidated for three reasons. First, courts could view the preferences as a penalty on non-residents' fundamental right to travel and migration. Second, preferences implemented with the intention of excluding protected classes of persons could violate the Equal Protection Clause. Finally, preferences could violate the Federal Fair Housing Act by creating or perpetuating discriminatory racial impacts. In order to avoid these legal risks, this Note proposes that local governments should structure their affordable housing selection programs as broadly and inclusively as possible. Specifically, local governments should: (1) offer multiple ways for an applicant to receive preference; (2) base the preferences on an expanded geographic area beyond the local government's particular jurisdictional boundaries; and (3) limit the scope and duration of the preferences.

INTRODUCTION

A shortage and uneven distribution of affordable housing has plagued local governments for decades.¹ It is a problem that threatens the economic, environmental, and general quality of life in cities and counties across the nation.² Local governments have reacted to the prob-

* Executive Editor, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, 2008-09. The author would like to thank William B. Fulton for his guidance and suggestion of this Note topic. Mr. Fulton is the President of Solimar Research Group and a Senior Scholar at the School of Policy, Planning, & Development at the University of Southern California.

¹ See James B. Goodno, *Affordable Housing: Who Pays Now?*, PLANNING, Nov. 2002, at 4, 4-6. See generally Nico Calavita & Kenneth Grimes, *Inclusionary Housing in California: The Experience of Two Decades*, 64 J. AM. PLAN. ASS'N, Spring 1998, at 150 (discussing the history of inclusionary housing in California).

² See David Dillon, *Earning an A for Affordable*, PLANNING, Dec. 2006, at 6, 6-9; see, e.g., Carol J. Williams, *Leaving Key West to the Wealthy*, L.A. TIMES, Feb. 10, 2008, at A17.

lem in a variety of ways.³ One of the most popular and effective solutions has been the enactment of inclusionary zoning ordinances requiring residential developers to set aside a specified percentage of new units—often ten to fifteen percent—which must be sold or rented at prices deemed affordable to low- and moderate-income households.⁴ Another solution is voluntary density bonus incentives, which permit residential developers to build at higher densities than zoning would normally allow in exchange for creating a specified percentage of affordable units.⁵ In addition, local governments often team with nonprofit developers to create housing that is set aside for low- and moderate-income households by leveraging local, state, and federal grants through public-private partnerships.⁶ Such programs have produced tens of thousands of affordable housing units.⁷ These units have historically been available to income-qualified applicants regardless of their residency or occupation.⁸

Local governments are increasingly restricting eligibility for some or all of their affordable housing set-asides.⁹ For reasons this Note will explore, many local governments now stipulate—either through explicit ordinances or through unpublished housing program policies—that preference for affordable units shall be given to applicants who currently reside within the government's jurisdiction.¹⁰ Other programs grant preference to individuals who work within a local government's boundaries or are employed in various civic occupations, such as police officers, firefighters, teachers, or nurses.¹¹

³ See John Emmeus Davis, *Between Devolution and the Deep Blue Sea: What's a City or State to Do?*, in A RIGHT TO HOUSING 364, 364 (Rachel G. Bratt et al. eds., 2006).

⁴ See Brian R. Lerman, Note, *Mandatory Inclusionary Zoning—The Answer to the Affordable Housing Problem*, 33 B.C. ENVTL. AFF. L. REV. 383, 385–89 (2006).

⁵ See, e.g., Mark Bobrowski, *Affordable Housing v. Open Space: A Proposal for Reconciliation*, 30 B.C. ENVTL. AFF. L. REV. 487, 493–94 (2003).

⁶ See, e.g., Goodno, *supra* note 1, at 7; Tim Sullivan, *Putting the Force in Workforce Housing*, PLANNING, Nov. 2004, at 26, 29.

⁷ See, e.g., Calavita & Grimes, *supra* note 1, at 150.

⁸ See Cecily T. Talbert, *California's Response to the Affordable Housing Crisis*, (ALI-ABA Course of Study, Aug. 16–18, 2007), WL SN005 ALI-ABA 1491, 1523.

⁹ See *id.*

¹⁰ E.g., DEP'T OF NEIGHBORHOOD DEV., CITY OF BOSTON, RESIDENT PREFERENCE POLICY IN DND-ASSISTED HOUSING 1 (2003), available at http://www.cityofboston.gov/dnd/pdfs/D_ResidentPreferencePolicyRev8-11-03.pdf; Bonita Brewer, *Livermore Increases Affordable Unit Rules*, CONTRA COSTA TIMES, Apr. 13, 2005, at F4.

¹¹ E.g., Brewer, *supra* note 10, at F4; DEP'T OF HOUS. PRES. & DEV., N.Y. CITY, HOUSING PROGRAMS FOR MUNICIPAL EMPLOYEES (2008), <http://www.nyc.gov/html/hpd/html/apartment/faqs-municipal-employees.shtml> (last visited Jan. 23, 2009); League of Cal. Cities, *Local Preference Plan Approved in Thousand Oaks*, FOCUS ON HOUS., Dec. 2006, at 2, http://www.cacities.org/resource_files/25219.dec2006.pdf.

This Note examines the legal implications of a local government's decision to operate its affordable housing program in a manner that gives preference to local residents and/or persons employed within its boundaries. Such preferences raise constitutional concerns regarding both infringement upon the fundamental right to travel and violation of equal protection guarantees because of racially discriminatory impacts.¹² In addition, local resident and employee preferences implicate a variety of state and federal statutes.¹³ Part I outlines the powerful modern trends that influence local governments to grant preferences. Part II explores the fundamental right to travel. Part III discusses discriminatory racial impacts under the Equal Protection Clause. Part IV investigates how the Federal Fair Housing Act is implicated by housing preferences.¹⁴ Part V analyzes how these legal issues affect local resident and employee preferences.

I. THE RATIONALE FOR GRANTING PREFERENCES

A. *Local Resident Preferences*

Local resident preferences are motivated by one of the most basic realities of representative democracy: an elected official's desire to favor her own constituents over those to whom she is not politically accountable.¹⁵ Elected officials simply cannot ignore the dearth of affordable housing in many metropolitan areas.¹⁶ In Washington, D.C., for example, the waitlist for affordable housing currently includes over 57,000 income-qualified families, and it takes several years before an applicant actually receives any form of assistance.¹⁷ Nationwide, several studies suggest that there is a shortage of affordable housing by at least five mil-

¹² Heather Gould, *The Legal Tightrope of Local Preferences*, FOCUS ON HOUS., June 2006, at 9, available at http://www.cacities.org/resource_files/24811.june2006.pdf.

¹³ This Note will focus specifically on the Federal Fair Housing Act. However, there are a variety of analogous state statutes that could be implicated. Many state fair housing acts include language that expressly prohibits housing decision makers from considering an applicant's lawful "source of income." See, e.g., CAL. GOV'T CODE § 12955(a) (West 2008); CONN. GEN. STAT. ANN. § 46a-64c(a)(1) (West 2008); D.C. CODE ANN. § 2-1402.21(a) (LexisNexis 2008); OR. REV. STAT. § 659A.421(1) (2007); UTAH CODE ANN. § 57-21-5(1) (2000); WIS. STAT. ANN. § 106.50(nm) (West 2007). These statutes ostensibly forbid any type of local employee or civic occupational preference.

¹⁴ 42 U.S.C. §§ 3601-3631 (2000).

¹⁵ See James J. Hartnett, Note, *Affordable Housing, Exclusionary Zoning, and American Apartheid: Using Title VIII to Foster Statewide Racial Integration*, 68 N.Y.U. L. REV. 89, 133 (1993).

¹⁶ See Talbert, *supra* note 8, at 1495-96.

¹⁷ Yolanda Woodlee, *Agency Is Updating Housing Aid Wait List*, WASH. POST, Jan. 16, 2008, at B04.

lion units.¹⁸ Given such a disheartening scenario, it is not surprising that locally elected representatives now seek to favor their own constituents over nonvoting outsiders.¹⁹

There is a perceived problem that desirable communities attract a disproportionate share of nonresident applicants, thereby unfairly burdening low-income applicants who reside in desirable areas because they have to compete for a limited number of affordable housing units against a limitless horde of nonresidents.²⁰ For instance, in Santa Monica, California, a local newspaper article decried the city's lack of preference for current residents because the affordable housing waitlist was inundated by nonresident applicants.²¹ The City of Santa Monica had recently contributed \$2.3 million toward an affordable housing development for elderly persons.²² Of the sixty-five affordable units created, only twelve went to previous Santa Monica residents.²³ Affordable housing units in desirable communities clearly act as magnets, attracting disproportionately large numbers of outsiders.²⁴ Likely for this reason, the majority of local resident preferences have been implemented by desirable communities, where the perceived ills of being an affordable housing magnet are felt most keenly.²⁵

Finally, local governments have an interest in preserving their citizens' residency because continued ties to a community can foster a more stable and involved community over time.²⁶ Long-term local residents

¹⁸ Dillon, *supra* note 2, at 6.

¹⁹ See Hartnett, *supra* note 15, at 133.

²⁰ See, e.g., Teresa Rochester & Jorge Casuso, *Against the Odds: Chances for New Housing Slim for Santa Monica Seniors*, LOOKOUT NEWS (Santa Monica, Cal.), May 12, 2002, available at http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2002/May-2002/05_13_02_Chances_for_New_Housing_Slim_for_SM_Seniors.htm.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See, e.g., *id.*

²⁵ See, e.g., CRANSTON, R.I., MUN. CODE § 8.48.010(c) (2006); MARIN COUNTY, CAL., CODE § 22.22.040(D) (2008); NOVATO, CAL., MUN. CODE § 19.24.050(C) (2006); QUINCY, MASS., MUN. CODE § 17.04.235(D) (2006); SANTA ROSA, CAL., MUN. CODE § 21-02.050(D) (2006); DEP'T OF NEIGHBORHOOD DEV., CITY OF BOSTON, *supra* note 10, at 1; TELLURIDE, COLO., HOUS. AUTH., EMPLOYEE QUALIFICATION AND WAITING LIST POLICY (2003), available at <http://www.smrha.org/EmpQuali.pdf>; PROVINCETOWN, MASS., LOCAL PREFERENCE FOR AFFORDABLE HOUSING (2003), available at <http://www.provincetowngov.org/affordable/AffHsgPreference.htm>.

²⁶ See Patrick C. Jobses, *Residential Stability and Crime in Small Rural Agricultural and Recreational Towns*, 42 SOC. PERSP. 499, 500, 508 (1999); Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCIENCE 918, 918 (1997); Robert J. Sampson, *Linking the Micro- and Macrolevel Dimensions of Community Social Organization*, 70 SOC. FORCES 43, 45 (1991).

are arguably more likely to invest in a community's continued prosperity and livability than are transitory residents.²⁷ Some studies suggest that long-term residents take better care of their property, commit less crime, and demonstrate higher levels of civic involvement than do transitory residents.²⁸

B. Local Employee Preferences

Local employee preferences are supported by a range of urban planning, environmental justice, and even public safety principles.²⁹ Planners have long extolled the virtues of having "jobs-housing balance" in a community.³⁰ Indeed, one of the tenets of "smart growth" development is locating people near their places of employment.³¹ However, residents of many communities not only have to contend with swelling traffic congestion and commute times, but also find it increasingly difficult to obtain affordable housing close to their places of employment.³² A balance between housing and jobs in a city confers many benefits, "including reduced driving and congestion, fewer air emissions, lower costs to businesses and commuters, lower public expenditures on facilities and services, greater family stability, and higher quality of life."³³

It is not just urban planners that advocate jobs-housing balance; the private sector is also a strong supporter. A recent survey of large employers reported that the affordable housing shortage has been problematic for the hiring and retention of entry- and mid-level workers.³⁴ The survey also reported that entry- and mid-level workers expressed keen interest in moving closer to work if affordable housing were to be made available.³⁵ Even middle-class jobs no longer guarantee that an employee

²⁷ See Sampson et al., *supra* note 26, at 919.

²⁸ See *id.*

²⁹ See Susan Handy, *The Road Less Driven*, 72 J. AM. PLAN. ASS'N 274, 274-76 (2006).

³⁰ See Jonathan Levine, *Rethinking Accessibility and Jobs-Housing Balance*, 64 J. AM. PLAN. ASS'N 133, 133-40 (1998).

³¹ See JERRY WEITZ, JOBS-HOUSING BALANCE 9 (2003).

³² MICHAEL ARMSTRONG & BRETT SEARS, S. CAL. ASS'N OF GOV'TS, THE NEW ECONOMY AND JOBS/HOUSING BALANCE IN SOUTHERN CALIFORNIA 11 (2001), available at <http://www.scag.ca.gov/Housing/pdfs/balance.pdf>; see also Robert Cervero & Michael Duncan, *Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing?*, 72 J. AM. PLAN. ASS'N 475, 475 (2006); Handy, *supra* note 29, at 276.

³³ ARMSTRONG & SEARS, *supra* note 32, at 7; see also Handy, *supra* note 29, at 276.

³⁴ URBAN LAND INST., LACK OF AFFORDABLE HOUSING NEAR JOBS: A PROBLEM FOR EMPLOYERS AND EMPLOYEES—NEW SURVEY FROM ULI LOOKS AT IMPACT OF COMMUTING (2007), available at <http://www.uli.org/sitecore/content/ULI2Home/News/MediaCenter/PressReleases/2007%20archives.aspx> (follow hyperlink to title).

³⁵ *Id.*

will be able to find affordable housing reasonably close to work.³⁶ Economists note that the shared public and private need for workforce housing was “born of the economic boom of the 1990s,” during which time “salaries for the top American earners increased dramatically,” while the bottom sixty percent barely kept pace with inflation and home prices doubled.³⁷

The burdens of traffic congestion and long commute times do not fall equally on all members of society.³⁸ Research indicates that both commute times and distances for low-income and minority workers tend to be significantly longer than for other workers.³⁹ This trend particularly impacts low-wage service workers in desirable communities.⁴⁰ Janitorial staff, restaurant workers, and grocery clerks are just a few of the many service workers who are greatly needed to accommodate higher income clientele.⁴¹ However, the lack of affordable housing in desirable communities forces service workers to live in distant locations that are more affordable.⁴² “After housing, transportation is now the second [largest] expense for America’s families.”⁴³ In addition, the need to own multiple automobiles “is placing homeownership out of reach for many low-income families.”⁴⁴

Preferences for vital civic employees also have strong justifications.⁴⁵ There are many benefits to having persons employed in certain critical occupations—such as police officers, firefighters, paramedics, and nurses—reside in the locality for which they work.⁴⁶ Their continued presence provides models of public service to their neighborhoods, and

³⁶ See Sullivan, *supra* note 6, at 26–27.

³⁷ *Id.* at 26.

³⁸ See Qing Shen, *Spatial and Social Dimensions of Commuting*, 66 J. AM. PLAN. ASS’N 68, 68 (2000).

³⁹ See *id.*

⁴⁰ See JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., THE STATE OF THE NATION’S HOUSING 26–27 (2007), available at <http://www.jchs.harvard.edu/publications/markets/son2007/son2007.pdf>.

⁴¹ See Williams, *supra* note 2, at A17.

⁴² See Sullivan, *supra* note 6, at 27.

⁴³ ANNE CANBY, FANNIE MAE FOUND., AFFORDABLE HOUSING AND TRANSPORTATION: CREATING NEW LINKAGES BENEFITING LOW-INCOME FAMILIES I (2003).

⁴⁴ *Id.*

⁴⁵ See, e.g., HUD Good Neighbor Next Door Program, <http://www.hud.gov/offices/hsg/sfh/reo/goodn/gnndabot.cfm> (last visited Jan. 23, 2009). For instance, the Department of Housing and Urban Development, as well as many state housing finance authorities, grant preferences for teachers, firefighters, EMTs, police officers, etc. *Id.*

⁴⁶ See, e.g., Christopher Thale, *Assigned to Patrol: Neighborhoods, Police, and Changing Deployment Practices in New York City Before 1930*, 37 J. OF SOC. HIST. 1037, 1039 (2004); Gary Polakovic, *Housing Perks on the Rise for Middle Class*, L.A. TIMES, Apr. 3, 2006, at B1.

they can more readily respond to emergencies than if they had to commute from distant locations and risk delays due to traffic congestion.⁴⁷ Local governments across the nation are experiencing great difficulty in filling vital civic positions, due largely to the lack of affordable housing.⁴⁸ Some local governments have become so desperate that they provide, at considerable expense, low-interest loans and other fiscal inducements to vital civic employees in exchange for their commitment to reside within the jurisdiction.⁴⁹

Recent downturns in real estate markets are not alleviating the affordable housing crisis for the people who need it the most.⁵⁰ It is a sad irony that, despite stagnating and falling home prices, affordable housing is not becoming more available.⁵¹ In fact, the downturn, which has largely been caused by predatory lending practices to minority and low-income populations, has resulted in skyrocketing default and foreclosure rates in many working-class and low-income neighborhoods.⁵² Presently, nearly one-quarter of subprime mortgages are in default.⁵³

II. RIGHT TO TRAVEL & INTERSTATE MIGRATION

Local resident and employee preferences have been frequently challenged, and occasionally invalidated, for violating constitutional principles.⁵⁴ Though not specifically enumerated in the Constitution, the Supreme Court has long recognized the fundamental right to travel and interstate migration.⁵⁵ Specifically, the Court has interpreted

⁴⁷ See Thale, *supra* note 46; Polakovic, *supra* note 46. Courts have recognized a compelling governmental interest in cases involving municipal requirements that police and firefighters reside within city limits. See *Krzewinski v. Kugler*, 338 F. Supp. 492, 501 (D.N.J. 1972).

⁴⁸ See CHRIS FISCELLI, REASON FOUND., NEW APPROACHES TO AFFORDABLE HOUSING: OVERVIEW OF THE HOUSING AFFORDABILITY PROBLEM 2 (2005); Vaishali Honawar, *School Districts Devising New Ways to Offer Teachers Affordable Housing*, EDUC. WEEK, Aug. 9, 2006, at 1.

⁴⁹ See Walter Olesky, *A Cop Next Door*, POL'Y REV., Mar.–Apr. 1996, at 8; Resident Officer Program of Elgin, <http://www.cityofelgin.org/index.asp?NID=291> (last visited Jan. 23, 2009).

⁵⁰ See JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *supra* note 40, at 3.

⁵¹ See *id.*

⁵² See Peter S. Goodman & Vikas Bajaj, *In the Land of Many Ifs*, N.Y. TIMES, Jan. 2, 2008, at C1; Dean Baker, *The Housing Crash Recession: How Did We Get Here?*, NOW ON PBS, Mar. 21, 2008, <http://www.pbs.org/now/shows/412/housing-recession.html>.

⁵³ Goodman & Bajaj, *supra* note 52, at C1, C6.

⁵⁴ See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 864–68 (3d ed. 2006).

⁵⁵ See, e.g., *Saenz v. Roe*, 526 U.S. 489, 489–90 (1999) (invalidating a state law that limited new residents' welfare benefits to the level of the state from which the person moved); *United States v. Guest*, 383 U.S. 745, 746, 757 (1966) (stating that the right to travel and migrate "occupies a position fundamental to the concept of our Federal Union"); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 36 (1867) (invalidating a state tax on railroads for the trans-

the Privileges and Immunities Clause of Article IV to protect individuals from unreasonable restrictions on basic rights—including conducting commercial activity and exercising constitutionally protected liberties—when traveling to state or local jurisdictions in which they do not reside.⁵⁶ In addition, the Court has most recently interpreted the Fourteenth Amendment to protect the right of individuals to establish residency wherever they choose without being treated differently than longer-tenured residents.⁵⁷

The manner in which a law burdens the fundamental right to travel and migration ultimately determines the level of judicial scrutiny that law will receive.⁵⁸ Courts draw an important distinction between

portation of people out of state); *The Passenger Cases*, 48 U.S. (7 How.) 283 (1849) (invalidating a state law imposing a tax on aliens arriving from foreign ports).

There is some dispute about whether the Federal Constitution protects an individual's right to intrastate travel. *Compare* *Wardwell v. Bd. of Educ.*, 529 F.2d 625, 625 (6th Cir. 1976) (holding that a right to intrastate travel is not protected by the Federal Constitution) *with* *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002) (holding that the Federal Constitution protects the right to intrastate travel through public spaces and roadways). *See generally* Andrew C. Porter, Comment, *Toward a Constitutional Analysis of the Right to Intrastate Travel*, 86 Nw. U. L. REV. 820 (1992) (discussing the right to intrastate travel). Though the Supreme Court has declined to decide the issue, many lower courts have held that intrastate travel is a logical extension of the right of interstate travel, and thus merits the same degree of constitutional protection. *See, e.g.*, *King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646, 648–49 (2d Cir. 1971), *cert. denied*, 404 U.S. 863 (1971); *Hawk v. Fenner*, 396 F. Supp. 1, 4 (D.S.D. 1975); *Wellford v. Battaglia*, 343 F. Supp. 143, 147 (D. Del. 1972), *aff'd*, 485 F.2d 1151 (3d Cir. 1973). In *King v. New Rochelle Municipal Housing Authority*, the U.S. Court of Appeals for the Second Circuit invalidated a five-year durational residency requirement for admission to public housing. 442 F.2d at 649. The Housing Authority argued that there was no fundamental right to intrastate travel for the plaintiffs, who had moved from one city in New York State to another. *Id.* at 648–49. However, the court disagreed, concluding that “[i]t would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state.” *Id.* at 648.

A small minority of lower court decisions reject the existence of a right to intrastate travel. *See* *Wardwell*, 529 F.2d at 625; *Ector v. City of Torrance*, 514 P.2d 433, 436–37 (Cal. 1973). However, these cases are distinguishable from local resident and employee preferences because they involve requirements for municipal employees to be residents of the city for which they work. *See* *Wardwell*, 529 F.2d at 626; *Ector*, 514 P.2d at 433. Additionally, a plaintiff who was not a resident of the state in which he was challenging a local affordable housing preference would be able to invoke interstate travel protections and potentially overturn the policy. *See* *Shapiro v. Thompson*, 394 U.S. 618, 619 (1969). The existence of a federally protected right to intrastate travel therefore appears of little consequence for the purposes of this Note.

⁵⁶ U.S. CONST. art. IV, § 2; *Sup. Ct. of N.H. v. Piper*, 470 U.S. 274, 274 (1985) (invalidating New Hampshire law requiring residence in state prior to being admitted to the bar).

⁵⁷ *See Saenz*, 526 U.S. at 490, 502–03.

⁵⁸ *See* *Attorney Gen. v. Soto-Lopez*, 476 U.S. 898, 903 n.3 (1986) (Brennan, J., plurality opinion).

laws that grant preferences to residents based upon the length of their residency—durational residency requirements—and laws that merely grant preferences to residents over nonresidents—bona fide residency requirements.⁵⁹ Durational residency requirements generally receive strict judicial scrutiny, and therefore will be upheld only upon a showing of a compelling governmental purpose.⁶⁰ Bona fide residency requirements, however, are treated with more deference and are upheld if they are rationally related to a legitimate governmental interest.⁶¹

A. *Durational Residency Requirements*

Some durational residency requirements stipulate that before receiving a certain public benefit a resident must have lived in the jurisdiction for a particular length of time.⁶² Previously litigated examples include waiting periods for welfare benefits, voting, divorces, in-state tuition rates, and state-funded nonemergency hospital services.⁶³ As will be discussed below, courts often apply strict scrutiny to these durational residency requirements because they risk deterring interstate travel and migration.⁶⁴

In *Shapiro v. Thompson*, the leading case invalidating a durational residency requirement, the Supreme Court held a one-year residency requirement for receipt of welfare payments unconstitutional.⁶⁵ Following strict equal protection scrutiny, the Court determined that governmental discrimination between newer and longer-tenured residents imposed an unjustified “penalt[y]” on the rights of those who had recently migrated to the state.⁶⁶ The Court reasoned that the law discouraged people from moving to the state because “[a]n indigent . . . will doubt-

⁵⁹ *See id.*

⁶⁰ *See Mem'l Hosp. v. Maricopa County*, 415 U.S. 250, 250 (1974).

⁶¹ *See Martinez v. Bynum*, 461 U.S. 321, 328 n.7 (1983).

⁶² *See Sosna v. Iowa*, 419 U.S. 393, 395 (1975).

⁶³ *See id.* (upholding law that required one year of residence for citizens to be eligible to divorce); *Mem'l Hosp.*, 415 U.S. at 250 (invalidating law that required one year of residency in the county prior to receipt of non-emergency medical services at the county's expense); *Dunn v. Blumstein*, 405 U.S. 330, 353 (1972) (invalidating law that required one year of residency to establish voter eligibility); *Shapiro v. Thompson*, 394 U.S. 618, 618 (1969) (invalidating law that required one year of residency in the state prior to receipt of welfare payments); *Starns v. Malkerson*, 326 F. Supp. 234, 234 (D. Minn. 1970), *aff'd mem.*, 401 U.S. 985 (1971) (upholding law that required new residents to pay higher tuition rates during their first year of residency).

⁶⁴ *See Attorney Gen. v. Soto-Lopez*, 476 U.S. 898, 898 (1986) (Brennan, J., plurality opinion).

⁶⁵ 394 U.S. at 618.

⁶⁶ *Id.* at 638 n.21.

less hesitate [to move] if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute.”⁶⁷ Because the law deterred migration, it was found to be a “penalt[y]” on nonresidents’ right to travel and migration.⁶⁸ The government was unable to provide a compelling purpose for the durational residency requirement; budgetary planning and the encouragement of new residents to enter the workforce were found to be insufficient purposes.⁶⁹

The Supreme Court affirmed *Shapiro* five years later in *Memorial Hospital v. Maricopa County*.⁷⁰ In that case, the Court applied strict scrutiny to a law that denied government-funded nonemergency hospital services to persons who had not resided in the state for at least one year.⁷¹ Relying more on the basic necessity of medical services than the deterrent effect of the law, the Court held that the law “penalize[d]” migration.⁷² The Court found the county’s justification for the law—preserving fiscal integrity—insufficient to excuse the penalty it placed on newly arrived residents.⁷³

Determining whether strict scrutiny is the appropriate form of analysis ultimately turns on whether the durational residency requirement “penalizes” the exercise of the right to travel and migration.⁷⁴ This penalty inquiry is derived from a footnote in *Shapiro* in which the Court limited the scope of its holding:

We imply no view of the validity of waiting-period *or* residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, *may not be penalties upon the exercise of the constitutional right of interstate travel*.⁷⁵

In *Attorney General v. Soto-Lopez*, a four-vote plurality led by Justice Brennan appeared to adopt this view when it affirmed that a law “implicates the right to travel when it actually deters such travel, when impeding

⁶⁷ *Id.* at 629.

⁶⁸ *Id.* at 638 n.21.

⁶⁹ *Id.* at 634, 638.

⁷⁰ 415 U.S. 250, 250 (1974).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 263–64.

⁷⁴ See *Westenfelder v. Ferguson*, 998 F. Supp. 146, 151 (D.R.I. 1998).

⁷⁵ 394 U.S. 618, 638 n.21 (1968) (emphasis added).

travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right.”⁷⁶ However, the *Soto-Lopez* test has never been accepted by a majority of the Supreme Court, making its precedential significance unclear.⁷⁷ Furthermore, the Court has not explained precisely what constitutes a “penalty” on the right to travel.⁷⁸ Apart from stating that “not all durational residency requirements are penalties,” the Court has provided little guidance.⁷⁹

The only durational residency requirements the Supreme Court has reviewed that have not “penalized” the right to travel, and thus received deferential rational basis review, have been limited to the contexts of divorce and in-state tuition benefits.⁸⁰ Unlike welfare and free medical aid, the Court inferred that divorce and in-state tuition benefits are not of

⁷⁶ 476 U.S. 898, 903 (1986) (Brennan, J., plurality opinion) (citations and quotation omitted).

⁷⁷ *Westenfelder*, 998 F. Supp. at 151 n.7.

⁷⁸ See *Mem'l Hosp.* 415 U.S. at 256–57; *Westenfelder*, 998 F. Supp. at 152.

⁷⁹ *Sosna v. Iowa*, 419 U.S. 393, 418–19 (1975) (Marshall, J., dissenting); see *Mem'l Hosp.*, 415 U.S. at 256–59.

⁸⁰ *Sosna*, 419 U.S. at 393; *Starns v. Malkerson*, 326 F. Supp. 234, 234 (D. Minn. 1970), *aff'd mem.*, 401 U.S. 985 (1971). The Court upheld a durational residency requirement for divorce in *Sosna*, 419 U.S. at 393–94. The law in question, which prevented newly arrived residents from obtaining a divorce during their first year of residency, was upheld in part because it was “of a different stripe.” *Id.* at 406. In his dissent, Justice Marshall inferred that, unlike welfare benefits, free medical aid, and voting, divorce was not of such fundamental importance that it would be unconstitutional for the State to “condition its receipt upon long-term residence.” See *id.* at 419 (Marshall, J., dissenting). It was doubtful that a waiting period for divorce would actually deter any migration. See *id.* at 406. Thus, Justice Marshall’s dissent implied that the durational residency requirement did not penalize the right to travel. *Id.* at 418–19 (Marshall, J., dissenting).

The Court summarily upheld a lower court decision that employed similar analysis to *Sosna* in allowing a durational residency requirement for in-state tuition benefits. *Starns*, 326 F. Supp. at 234. In *Starns*, the court found the state law to be distinguishable from *Shapiro* in two important respects. *Id.* at 237. First, the law did not have the specific objective of penalizing migration or travel. *Id.* Second, the law did not deter interstate movement by denying basic necessities to needy residents. *Id.* at 238. As with waiting periods for divorce, it is unlikely that a person would hesitate to migrate due to eligibility requirements for in-state tuition. *Id.* at 237–38. Thus, the court implicitly found that a waiting period for in-state tuition benefits did not penalize the right to travel. See *id.*

In the unique context of voting, the Court has both invalidated and upheld durational residency requirements. For instance, in *Dunn v. Blumstein*, the Court overturned a state law requiring one year of residence in the state, or three months of residence in the county, prior to gaining eligibility to vote. 405 U.S. 330, 330 (1972). However, in *Marston v. Lewis*, it upheld a fifty day requirement. 410 U.S. 679, 681–82 (1973). In both cases, the Court noted that “fixing a constitutionally acceptable [waiting] period is surely a matter of degree.” *Marston*, 410 U.S. at 681; see *Dunn*, 405 U.S. at 348. The Court had to balance the state’s compelling interest in preventing voter fraud against the risk that too long of a waiting period would penalize migration. See *Marston*, 410 U.S. at 680. Ostensibly, it decided that 50 days was an appropriate threshold. See *id.* at 679.

such fundamental importance that it would be unconstitutional for the State to “condition [their] receipt upon long-term residence.”⁸¹ Because the divorce and in-state tuition residency requirements did not deny basic necessities to needy residents, the Court surmised that they were unlikely to actually deter any migration.⁸² Thus, the Court implicitly found that a waiting period for these public benefits did not penalize the right to travel and migration.⁸³

In addition to invalidating durational residency requirements that completely deny benefits to newly arrived residents, the Court has also invalidated laws that provide less public benefits to new arrivals.⁸⁴ For example, in *Zobel v. Williams*, the Court invalidated an Alaska law that distributed state oil revenues through a formula that preferred older residents to newer ones.⁸⁵ The Court found Alaska’s goal of rewarding older residents for their past contributions insufficient to justify its penalty on the right to travel and migration.⁸⁶

Two other cases are especially helpful in understanding that courts will protect an individual’s right to travel and migration even when durational residency requirements do not completely deny benefits to newly arrived residents. In *Soto-Lopez*, the Supreme Court overturned a New York law that gave hiring preference to veterans who were residents of the state when they entered the military; the law gave no preference to veterans who resided in other states immediately prior to their military service.⁸⁷ Writing for the plurality, Justice Brennan stated:

Once veterans establish bona fide residenc[y] . . . they . . . “may not be discriminated against solely on the basis of the date of their arrival in the State.” For as long as New York chooses to offer its resident veterans a civil service employment preference, the Constitution requires that it do so without regard to residence at the time of entry into the services.⁸⁸

In *Saenz v. Roe*, the Court invalidated a law that limited for one year the welfare benefits of new residents to the level of the state from which they

⁸¹ See *Sosna*, 419 U.S. at 419 (Marshall, J., dissenting); *Starns*, 326 F. Supp. at 237–38.

⁸² See *Sosna*, 419 U.S. at 419 (Marshall, J., dissenting); *Starns*, 326 F. Supp. at 238.

⁸³ See *Sosna*, 419 U.S. at 406; *Starns*, 326 F. Supp. at 238.

⁸⁴ CHEMERINSKY, *supra* note 54, at 864–66.

⁸⁵ 457 U.S. 55, 55 (1982).

⁸⁶ See *id.* at 65. Similarly, in *Hooper v. Bernalillo County Assessor*, the Court held that a state law providing property tax exemptions to Vietnam veterans who had become residents of the state prior to a certain date failed simple rational basis review. 472 U.S. 612, 612 (1985).

⁸⁷ *Attorney Gen. v. Soto-Lopez*, 476 U.S. 898, 898 (1986) (Brennan, J., plurality opinion).

⁸⁸ *Id.* at 911–12 (quoting *Hooper*, 472 U.S. at 613).

had moved.⁸⁹ Writing for the majority, Justice Stevens made it clear that the Court was not persuaded by arguments that the law only partially denied welfare benefits to new residents.⁹⁰ The fact that the law penalized their right to travel less than an outright denial of welfare benefits was not dispositive.⁹¹ Rather, because “the right to travel embraces the citizen’s right to be treated equally in her new State of residence, the discriminatory classification is itself a penalty.”⁹²

Following *Shapiro*, courts apply strict scrutiny to laws that penalize interstate travel and migration.⁹³ Because courts often determine whether a law imposes a penalty based on the likelihood that the law will discourage residents from migrating to a jurisdiction, courts are likely to find a penalty when the law restricts basic necessities, such as welfare and medical care, from newly arrived residents.⁹⁴ However, the Supreme Court has also recognized penalties in laws that only partially deny non-essential benefits to new residents despite such laws’ seemingly decreased likelihood of deterring travel and migration.⁹⁵

B. *Bona Fide Residency Requirements*

Courts show much more deference to bona fide residency requirements than durational residency requirements.⁹⁶ Whereas durational residency requirements “treat established residents differently based on the time they migrated into the State,” bona fide residency requirements simply provide residents with a public benefit that is not available to nonresidents.⁹⁷ Under a bona fide residency requirement, all current residents are eligible for the public benefit and no distinctions are made based on length of residency.⁹⁸ Such laws are not generally viewed as penalizing the right to travel and migration.⁹⁹

⁸⁹ 526 U.S. 489, 489 (1999).

⁹⁰ *Id.* at 504–05.

⁹¹ *Id.*

⁹² *Id.* at 505. The Court was also unpersuaded by a federal law that expressly allowed states to distinguish welfare benefits between new residents and longer-tenured residents. *Id.* at 508. Congress cannot empower states to violate the Fourteenth Amendment. *Id.*

⁹³ 394 U.S. 618, 638 n.21 (1969).

⁹⁴ See *Sosna v. Iowa*, 419 U.S. 393, 418–19 (1975) (Marshall, J., dissenting); *Starns v. Malkerson*, 326 F. Supp. 234, 237–38 (D. Minn. 1970).

⁹⁵ See *Starns*, 326 F. Supp. at 234.

⁹⁶ See *Attorney Gen. v. Soto-Lopez*, 476 U.S. 898, 903 n.3 (1986).

⁹⁷ See *id.*

⁹⁸ See *Martinez v. Bynum*, 461 U.S. 321, 328–29 (1983).

⁹⁹ See *id.*

The Supreme Court has repeatedly upheld bona fide residency requirements.¹⁰⁰ In *McCarthy v. Philadelphia Civil Service Commission*, the Court used simple rational basis review when it found constitutional a requirement that municipal employees must reside within city limits as a condition of employment.¹⁰¹ Likewise, in *Martinez v. Bynum*, the Court upheld a law that denied free public education to nonresident children who lived apart from their parents and were in the school district solely to attend school.¹⁰² The majority in both cases stated that a government can constitutionally restrict eligibility for a public benefit to its bona fide residents.¹⁰³ In fact, the *Martinez* court explained that governments have a “substantial . . . interest in assuring that services provided for its residents are enjoyed only by residents.”¹⁰⁴ Unlike durational residency requirements that risk penalizing interstate travel and migration, bona fide residency requirements do “not burden or penalize the constitutional right of interstate travel, for any person is free to move to a [governmental jurisdiction] and to establish residence there.”¹⁰⁵

Bona fide resident and employee preferences in affordable housing have been upheld as not violative of the right to travel and migration.¹⁰⁶ In *Fayerweather v. Town of Narragansett Housing Authority*, the U.S. District Court of Rhode Island reviewed a policy that gave preference to both local residents and local employees in the allocation of Section 8 housing vouchers.¹⁰⁷ Citing to *McCarthy* and *Martinez*, the court reviewed the

¹⁰⁰ *E.g., id.* at 331. Bona fide residency requirements risk being invalidated when they employ irrebuttable presumptions—governmental classifications which are made without determining the individual merits of a person’s residency. *See, e.g., Vlandis v. Kline*, 412 U.S. 441, 441 (1973). For instance, in *Vlandis v. Kline*, the Supreme Court overturned a state law requiring students who were not residents when applying for college admission to pay non-resident tuition throughout their education. *Id.* Residents of the state who had established residency after applying for college were barred from receiving in-state tuition benefits, while residents who had been in the state since the time of their application received such benefits. *Id.* In *Vlandis*, the Court pointed to its *Starns* decision, in which it upheld a durational residency requirement allowing students to be eligible for in-state tuition benefits after one year of residency. *Id.* at 452–53 n.9 (citing *Starns*, 326 F. Supp. at 234). Because the law in *Starns* did not perpetually classify students as non-residents, as the law in *Vlandis* did, it did not offend the irrebuttable presumption doctrine. *Id.* at 452–53 n.9.

¹⁰¹ 424 U.S. 645, 646–47 (1976).

¹⁰² 461 U.S. at 321.

¹⁰³ *Id.* at 328; *McCarthy*, 424 U.S. at 647.

¹⁰⁴ 461 U.S. at 328.

¹⁰⁵ *Id.* at 328–29.

¹⁰⁶ *Fayerweather v. Town of Narragansett Hous. Auth.*, 848 F. Supp. 19, 19 (D.R.I. 1994).

¹⁰⁷ *Id.* at 20, 22 n.3.

preferences under rational basis review.¹⁰⁸ The court concluded that the government had a legitimate interest in providing housing for its own residents and employees before aiding residents and employees of other communities; it implied that the preferences did not penalize travel and migration under *Shapiro*.¹⁰⁹

III. EQUAL PROTECTION CLAUSE: FACIALLY NEUTRAL LAWS WITH RACIALLY DISCRIMINATORY IMPACTS

The Equal Protection Clause of the Fourteenth Amendment guarantees that no person or class of persons will be denied the same protections of the law that are enjoyed by other persons or classes in similar circumstances.¹¹⁰ Though challenges to governmental classifications based on equal protection grounds are generally treated with deferential rational basis review, governmental classifications that affect suspect classes or infringe upon fundamental rights are subjected to heightened judicial scrutiny.¹¹¹ For instance, a classification that is drawn based on race—a suspect class—or a classification that burdens migration—a fundamental right—will be invalidated unless it is necessary to promote a compelling governmental purpose.¹¹² However, nonresidents and non-employees have never been recognized as suspect classes.¹¹³ Likewise, courts have never recognized a fundamental right to affordable housing.¹¹⁴ Thus, the Equal Protection Clause appears to be an inappropriate vehicle to overturn the facial classifications used for affordable housing allocation.¹¹⁵

¹⁰⁸ *Id.* at 22.

¹⁰⁹ *See Id.* at 22. In another case that cited *Fayerweather*, the court found that a bona fide residency requirement for a homeless shelter did not violate the right to travel or migration. *Family Life Church v. City of Elgin*, No. 07 CV 0217, 2007 WL 2790752, at *3 (N.D. Ill. Sept. 24, 2007).

¹¹⁰ *See* U.S. CONST. amend. XIV, § 1.

¹¹¹ *See* *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439–40 (1985). Race, alienage, and national origin are generally held to be suspect classes. *Id.* at 440. The Court has recognized an individual's fundamental right to travel, privacy, marriage, and procreation, though these rights are not specifically enumerated in the Constitution. *See generally* CHEMERINSKY, *supra* note 54, ch. 10 (describing fundamental rights under the Due Process and Equal Protection Clauses).

¹¹² *See* Ken Zimmerman & Arielle Cohen, *Exclusionary Zoning: Constitutional and Federal Statutory Responses*, in *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* 39, 45 (Tim Iglesias & Rochelle E. Lento eds., 2005).

¹¹³ *See* CHEMERINSKY, *supra* note 54, ch. 10 (describing fundamental rights under due process and equal protection).

¹¹⁴ *See* *Lindsey v. Normet*, 405 U.S. 56, 73–74 (1972).

¹¹⁵ *See id.*

Though the Equal Protection Clause probably cannot facially invalidate local resident and employee classifications, the discriminatory effects of such policies could theoretically sustain an *as applied* challenge under the Equal Protection Clause.¹¹⁶ Many laws that do not overtly mention race are nonetheless implemented in a manner that either discriminates against minorities or has a disproportionate impact upon them.¹¹⁷ However, the Supreme Court has consistently held that discriminatory racial impacts alone are insufficient to sustain an equal protection claim; there must also be proof of purposeful discrimination.¹¹⁸

Proving the existence of purposeful discrimination has been an exceedingly difficult undertaking for plaintiffs.¹¹⁹ Only the most brazen of legislators would state bigoted purposes for their policies.¹²⁰ In addition, benevolent motives can be espoused for most laws.¹²¹ "Not only might it be impossible for a court to determine the motivation behind the choices of a group of legislators, but, even if a court could do so, the legislature could presumably lawfully reenact the challenged policy by passing it for different reasons."¹²² Thus, the intrinsic difficulties of proving intent can persuade courts to uphold laws despite actual discriminatory intent and impacts.¹²³

The Supreme Court articulated three ways through which purposeful discrimination can be proved in its landmark decision *Village of Arlington Heights v. Metropolitan Housing Development Corp (Arlington Heights I)*.¹²⁴ First, a law's impact may be so plainly discriminatory that no nondiscriminatory justification would be possible.¹²⁵ Second, the context and

¹¹⁶ See CHEMERINSKY, *supra* note 54, at 710.

¹¹⁷ *Id.*

¹¹⁸ See *Washington v. Davis*, 426 U.S. 229, 239 (1976); see also *McCleskey v. Kemp*, 481 U.S. 279, 279–80 (1987) (upholding death penalty conviction despite evidence of statistically disproportionate capital punishment convictions due to lack of discriminatory purpose in plaintiff's immediate case).

¹¹⁹ CHEMERINSKY, *supra* note 54, at 712. When proving purposeful discrimination, a plaintiff must demonstrate that the government acted from a desire to discriminate; legislators' mere knowledge that a policy will have discriminatory consequences is not enough. *Pers. Adm'r v. Feeney*, 442 U.S. 256, 279 (1979) (explaining that purposeful discrimination implies that the government "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group").

¹²⁰ See Daniel R. Ortiz, *The Myth of Intent in Equal Protection*, 41 STAN. L. REV. 1105, 1108 (1989).

¹²¹ See *id.*

¹²² *Id.*

¹²³ CHEMERINSKY, *supra* note 54, at 712.

¹²⁴ 429 U.S. 252, 266–68 (1977) [*Arlington Heights I*].

¹²⁵ *Id.* at 266. In *Yick Wo v. Hopkins*, the plaintiff challenged a city ordinance requiring that laundries be located in brick or stone buildings unless a waiver was obtained. 118 U.S.

sequence of events leading up to the challenged policy can indicate purposeful discrimination.¹²⁶ Third, the legislative and/or administrative history of a law can reveal explicit discriminatory purposes.¹²⁷ Absent purposeful discrimination that can be proved by inexplicably disproportionate effects, obvious contextual circumstances, or barefaced statements, however, the Equal Protection Clause is not suited to overturn a facially neutral law merely because it has discriminatory impacts.¹²⁸

Though discriminatory racial impacts alone are insufficient to establish an equal protection claim, Section Five of the Fourteenth Amendment empowered Congress to legislate against discrimination.¹²⁹ It is through such legislation that Congress has enacted a wide range of civil rights laws—including Title VII of the 1964 Civil Rights Act, the 1982 Amendments to the Voting Rights Act of 1965, and the Fair Housing

356, 356 (1886). Upon producing evidence that over 200 waiver applications were denied to persons of Chinese ancestry whereas all waiver applications filed by non-Chinese persons were approved, the plaintiff convinced the Court of the city's discriminatory intent. *See id.* at 359. Similarly, in *Gomillion v. Lightfoot*, the plaintiff challenged a government's redrawing of municipal boundaries that excluded virtually all of the city's black voters while excluding not a single white voter. 364 U.S. 339, 339 (1960). The Court was once again persuaded that legislators had acted for no other purpose than racial discrimination. *Id.* Statistical evidence, therefore, can be a powerful tool in demonstrating discriminatory intent. *See* CHEMERINSKY, *supra* note 54, at 716. However, cases such as *Yick Wo* and *Gomillion* are quite rare. *Arlington Heights I*, 429 U.S. at 266 ("Absent a [statistical] pattern [this] stark . . . impact alone is not determinative, and the Court must look to other evidence.").

¹²⁶ *Arlington Heights I*, 429 U.S. at 267. For example, in *Guinn v. United States*, the Court invalidated a state law requiring a literacy test for voting that effectively exempted white citizens through a grandfather clause for descendants of those who were eligible to vote in 1866. 238 U.S. 347, 347–48 (1915). Though the law was facially neutral, its historical context made the legislature's discriminatory purpose perfectly clear. *See id.* at 357–58. The Court in *Griffin v. County School Board of Prince Edward County* invalidated a policy that closed public schools in response to desegregation orders, effectively forcing residents to pay for children to attend segregated private schools. 377 U.S. 218, 219 (1964). The facially neutral law's discriminatory purpose was once again ascertained by looking at its historical context. *See id.* at 220–25.

¹²⁷ *Arlington Heights I*, 429 U.S. at 268. By examining statements made by lawmakers in the transcripts of their meetings or reports, courts are able to ascertain publicly stated motivations. *See id.* However, the real-world usefulness of this method is most limited because it would take an unusually shameless legislator to openly state a racially discriminatory motive. *See* Ortiz, *supra* note 120, at 1108.

¹²⁸ *Arlington Heights I*, 429 U.S. at 266–68. Even if a plaintiff is able to prove the existence of purposeful discrimination through one of the three methods mentioned in *Arlington Heights I*, the law is not immediately invalidated. *Id.* at 270 n.21. Rather, the burden would then shift to the government to prove that it would have taken the same action even if it did not have discriminatory motivation. *Id.* Thus, the government is given an opportunity to articulate a non-discriminatory rationale for its law. *Id.* This burden shifting poses yet another obstacle for potential plaintiffs in a judicial system that appears extremely hesitant to overturn facially neutral laws for violating the Equal Protection Clause. *See id.*

¹²⁹ U.S. CONST. amend. XIV, § 5.

Act—which do allow statutory violations to be proved by discriminatory impact apart from discriminatory intent.¹³⁰ Thus, a plaintiff who is foreclosed from bringing suit under the Equal Protection Clause for failing to establish purposeful discrimination may still be able to bring suit under a civil rights statute.¹³¹

IV. THE FAIR HOUSING ACT

A. *Overview of the Fair Housing Act*

The Fair Housing Act (FHA), which was enacted as Title VIII of the Civil Rights Act of 1968, has been successfully used by plaintiffs seeking to invalidate policies or practices shown to have a discriminatory impact on the basis of race—or another criterion barred by the FHA—without evidence of purposeful discrimination.¹³² The FHA prohibits the refusal to rent or sell, or to “otherwise make unavailable or deny,” a dwelling to any person “because of” race, religion, sex, familial status, national origin, or disability.¹³³ In addition to protecting against specific discriminatory actions—such as inequitable advertising practices—the FHA also features relaxed standing requirements for plaintiffs.¹³⁴

¹³⁰ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2006); Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3631 (2000); Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (codified as amended at 42 U.S.C. § 1973 (2000)); *Griggs v. Duke Power Co.*, 401 U.S. 424, 424 (1971); *Ortiz*, *supra* note 120, at 1111.

¹³¹ See CHEMERINSKY, *supra* note 54, at 711–12.

¹³² 42 U.S.C. §§ 3601–3631; see *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 934 (2nd Cir. 1988) (holding that evidence of discriminatory effect establishes prima facie case, at least for public defendants); *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2nd Cir. 1979) (holding that discriminatory effect establishes prima facie case under FHA); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 148 (3d Cir. 1977); see also *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 986 (4th Cir. 1984); *United States v. City of Black Jack*, 508 F.2d 1179, 1184–85 (8th Cir. 1974); *Schmidt v. Boston Hous. Auth.*, 505 F. Supp. 988, 994 (D. Mass. 1981); *Stingley v. City of Lincoln Park*, 429 F. Supp. 1379, 1385 (E.D. Mich. 1977).

¹³³ 42 U.S.C. §§ 3604(a), (c). It is important to note that Congress only intended the FHA to protect the classes that it specifically enumerated in the text. See Zimmerman & Cohen, *supra* note 112, at 53–54. Indigent individuals were not mentioned as such a group. See *id.* Thus, FHA litigation attacking local land use and zoning decisions has had to demonstrate disproportionate impacts on one of the classes protected by the FHA. See *id.*

¹³⁴ 42 U.S.C. §§ 3604(c), 3610(a), 3612; Ronald S. Javor & Michael Allen, *Federal, State, and Local Building and Housing Codes Affecting Affordable Housing*, in *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* 162, 197 (Tim Iglesias & Rochelle E. Lento eds., 2005). The text of the FHA states that an “aggrieved person” may initiate an action in order to attain relief from a discriminatory housing practice. 42 U.S.C. § 3610(a)(1)(A)(i). Congress defined “aggrieved person” to include anyone who “(1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a dis-

B. *The Fair Housing Act as a Litigation Tool*

The FHA picks up where courts are reluctant to extend equal protection guarantees because plaintiffs are able to base their challenges solely on a policy's discriminatory impacts.¹³⁵ After concluding that equal protection claims require evidence of purposeful discrimination, the Court in *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (*Arlington Heights I*) remanded the case to a federal court of appeals for a finding of FHA violations.¹³⁶ Other courts have interpreted this decision to imply that discriminatory impacts alone are sufficient for FHA claims.¹³⁷ In *Resident Advisory Board v. Rizzo*, the U.S. Court of Appeals for the Third Circuit explained that although the FHA's "because of race" language might seem to suggest that a plaintiff must show some measure of purposeful discrimination, such a statutory interpretation would raise the plaintiff's burden to the nearly impossible level of equal protection analysis.¹³⁸ The *Rizzo* court also noted that, on remand, the court in *Metropolitan Housing Development Corp. v. Village of Arlington Heights* (*Arlington Heights II*) found the "because of race" language not to be unique to Section 3604(a) of the FHA; the same language appears in Title VII of the Civil Rights Act of 1964, which allows a prima facie case to be made by discriminatory effects alone.¹³⁹

The legislative history of the FHA also suggests that Congress intended for discriminatory impacts to suffice in an FHA claim apart from purposeful discrimination.¹⁴⁰ The *Rizzo* court noted that during the Senate floor debate prior to passage of the FHA, several Congressmen spoke of the FHA's importance in eliminating the adverse discriminatory effects of past and present prejudice in housing.¹⁴¹ In addition, Senator Baker introduced a doomed amendment that would have required proof of discriminatory intent akin to the equal protection

criminary housing practice that is about to occur." *Id.* § 3602(i). This broad definition ostensibly overrides the traditional prudential limitations on standing, which prevent plaintiffs from resting their claims on third parties without asserting their own legal rights or interests. *See id.* While an "aggrieved person does not necessarily have to be the person discriminated against," an FHA plaintiff must always satisfy constitutional standing requirements under Article III of the Constitution. *See Kyles v. J.K. Guardian Sec. Servs., Inc.*, 222 F.3d 289, 294 (7th Cir. 2000); *Growth Horizons, Inc. v. Del. City*, 983 F.2d 1277, 1282 n.6 (3rd Cir. 1993).

¹³⁵ *See Zimmerman & Cohen, supra* note 112, at 56.

¹³⁶ 429 U.S. 252, 271 (1977).

¹³⁷ *Rizzo*, 564 F.2d at 147; *Schmidt*, 505 F. Supp. at 994.

¹³⁸ *See* 564 F.2d at 146–47.

¹³⁹ *Id.* at 147; *see* 42 U.S.C. § 2000e-2(h) (2000).

¹⁴⁰ *Rizzo*, 564 F.2d at 147.

¹⁴¹ *Id.*; *see* 114 CONG. REC. 3421 (1968) (statement of Sen. Mondale).

standard in all FHA claims.¹⁴² This amendment was rejected, as Senator Percy voiced the opposition's concern about the virtually insurmountable burden it would impose on plaintiffs.¹⁴³

C. *Discriminatory Effects Under the Fair Housing Act*

The Supreme Court has not decided how courts should analyze whether a particular discriminatory impact constitutes a violation of the FHA.¹⁴⁴ Lower courts have taken varied approaches.¹⁴⁵ In *Arlington Heights II*, the U.S. Court of Appeals for the Seventh Circuit stated that not "every action which produces discriminatory effects is illegal [under the FHA]."¹⁴⁶ In a move that was later followed by the Fourth Circuit, the *Arlington Heights II* court created a test to examine the following factors: (1) how strong the plaintiff's showing of discriminatory effect is; (2) whether there is some evidence of discriminatory intent; (3) what the defendant's interest is in taking the action complained of; and (4) whether the plaintiff seeks to either compel the defendant to affirmatively provide housing for minorities, or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.¹⁴⁷ It seems counterintuitive that a test designed to measure discriminatory impact alone would include the second factor, which examines evidence of discriminatory intent.¹⁴⁸ However, the court noted that the controversial second factor was the least important and that "too much reliance on this evidence would be unfounded."¹⁴⁹ The Sixth Circuit has adopted a modified *Arlington Heights II* approach that completely abandons the second factor.¹⁵⁰

The majority of the remaining circuits do not follow the multi-factor approach of *Arlington Heights II*. Instead, they follow a prima facie approach, meaning that "proof of discriminatory effect alone is always sufficient to establish a violation of the [FHA]."¹⁵¹ In *Huntington Branch, NAACP v. Town of Huntington*, the U.S. Court of Appeals for the Second Circuit criticized the *Arlington Heights II* factors because they

¹⁴² 114 CONG. REC. 5221-22 (1968).

¹⁴³ *Id.*; see *Rizzo*, 564 F.2d at 147.

¹⁴⁴ See Zimmerman & Cohen, *supra* note 112, at 56.

¹⁴⁵ See *id.*

¹⁴⁶ *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977) [*Arlington Heights II*], *cert. denied*, 434 U.S. 1025 (1977).

¹⁴⁷ *Id.*

¹⁴⁸ See *id.* at 1292.

¹⁴⁹ *Id.*

¹⁵⁰ See *Arthur v. City of Toledo*, 782 F.2d 565, 575 (6th Cir. 1986).

¹⁵¹ *Keith v. Volpe*, 858 F.2d 467, 482 (9th Cir. 1988).

“place[d] too onerous a burden on [plaintiffs].”¹⁵² It then noted that the legislative history of the FHA argues against such a “daunting . . . standard.”¹⁵³ The chief difference between the multifactor and prima facie approaches involves the government’s burden of proof in justifying its actions.¹⁵⁴ In multifactor jurisdictions, plaintiffs bear the burden of demonstrating that the government can achieve its objectives through a less discriminatory alternative.¹⁵⁵ In more lenient prima facie jurisdictions, the plaintiff establishes an FHA claim once proof of discriminatory effect is shown; the burden then shifts to the government to prove first that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest, and second, that no alternative would serve that interest with less discriminatory impact.¹⁵⁶

All courts recognize two basic types of discriminatory effects.¹⁵⁷ First, a decision can have a greater adverse impact on one protected group than another.¹⁵⁸ This type of discriminatory effect can be demonstrated by statistical demographic information.¹⁵⁹ The court in *Huntington Branch, NAACP* suggested that plaintiffs should focus on “proportional statistics” instead of “absolute numbers.”¹⁶⁰ In that case, although a greater number of whites were below the poverty line, nonwhites were proportionately poorer.¹⁶¹ The second type of discriminatory effect occurs when a government policy perpetuates segregation.¹⁶² In *United States v. City of Black Jack*, the U.S. Court of Appeals for the Eighth Circuit invalidated a city ordinance prohibiting the construction of any new multifamily dwellings.¹⁶³ The court found that the plaintiff’s prima facie case was satisfied upon showing that exclusion of townhouses would “contribute to the perpetuation of segregation in [the city].”¹⁶⁴

¹⁵² 844 F.2d 926, 935–36 (2nd Cir. 1988).

¹⁵³ *Id.* at 936.

¹⁵⁴ See Duane J. Desiderio et al., Fair Housing Act Primer, (ALL-ABA Course of Study, Aug. 16–18, 2007), WL SN005 ALL-ABA 61, 82.

¹⁵⁵ See *id.*

¹⁵⁶ Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 149 (3d Cir. 1977).

¹⁵⁷ Zimmerman & Cohen, *supra* note 112, at 56.

¹⁵⁸ See *id.*

¹⁵⁹ See *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2nd Cir. 1988).

¹⁶⁰ *Id.*

¹⁶¹ See *id.*

¹⁶² *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974).

¹⁶³ *Id.* at 1188.

¹⁶⁴ *Id.* at 1186.

D. Local Resident Preferences Under the Fair Housing Act

Even in jurisdictions that follow the more onerous multifactor test, plaintiffs have successfully used the FHA to invalidate bona fide residency requirements for affordable housing.¹⁶⁵ In *United States v. Housing Authority of Chickasaw*, the U.S. Department of Justice (DOJ) brought suit against the city of Chickasaw, Alabama for using a bona fide residency requirement in its public housing program.¹⁶⁶ The DOJ provided statistical evidence that the residency requirement resulted in a public housing facility that never housed any African American tenants despite being located in Mobile County, which had a large African American population.¹⁶⁷ The district court found both types of discriminatory impact: the residency requirement had a greater adverse impact on African Americans than whites since it had the effect of excluding all nonwhites, and the requirement perpetuated the segregation of the community because it discouraged neighboring African Americans from integrating into Chickasaw.¹⁶⁸

Upon balancing the four *Arlington Heights II* factors, the *Chickasaw* court concluded that the city's bona fide resident requirement violated the FHA due to its discriminatory effects.¹⁶⁹ The court stated that it is required to "decide close cases in favor of integrated housing."¹⁷⁰ However, the court was careful to note that not all affordable housing resi-

¹⁶⁵ E.g., *United States v. Hous. Auth. of Chickasaw*, 504 F. Supp. 716, 716 (S.D. Ala. 1980).

¹⁶⁶ *Id.* at 726.

¹⁶⁷ *Id.* at 717–18.

¹⁶⁸ *Id.* at 730. The *Chickasaw* court next employed the second *Arlington Heights II* factor in determining whether there was some evidence of purposeful discrimination. *Id.* at 731. Though it noted there was no evidence of discriminatory intent, the court repeated a Seventh Circuit opinion which stated that discriminatory intent need not be shown in order to prove a violation of the FHA. *Id.* In examining the city of Chickasaw's governmental interest, the court did not mention whether there were less discriminatory alternatives available. *See id.* at 731–32. Instead, it merely stated that the city "was acting within the ambit of its [state-derived] authority when it adopted the residency requirement" as it found the third factor to weigh heavily in favor of the city. *Id.* Under the fourth factor, the court credited the DOJ for not seeking to require Chickasaw to affirmatively house minorities. *Id.* at 732. Rather, it was merely seeking to invalidate Chickasaw's residency requirement. *Id.*

¹⁶⁹ *Chickasaw*, 504 F. Supp. at 733. Interestingly, the DOJ also attacked the bona fide residency requirement as violative of the fundamental right to travel and migration. *Id.* at 732–33. However, because the case was decided on statutory grounds, there was no need for the court to go into Constitutional analysis. *Id.* at 733.

¹⁷⁰ *Id.* at 732 (quoting *Arlington Heights II*, 558 F.2d 1283, 1294 (7th Cir. 1977)).

dency requirements are per se violations of the FHA; such policies may serve a valid public purpose.¹⁷¹

V. THE LEGALITY OF LOCAL RESIDENT AND EMPLOYEE PREFERENCES IN AFFORDABLE HOUSING

A local government that operates its affordable housing program in a manner that gives preference to local residents and/or persons employed within its boundaries risks offending the fundamental right to travel and migration, the Equal Protection Clause, and the Fair Housing Act.¹⁷² The potential legal problems associated with both types of prefer-

¹⁷¹ *Id.* at 731. Another case is helpful in understanding why a court would overturn a local resident or employee preference for violating the FHA. As in *Fayerweather v. Town of Narragansett Housing Authority*—see discussion *supra* Part II.B—*Langlois v. Abington Housing Authority* involved a challenge to Section 8 voucher preferences for those who lived in the jurisdiction. See *Langlois v. Abington Hous. Auth.*, 234 F. Supp. 2d 33, 33 (D. Mass. 2002). Unlike *Fayerweather*, in which the plaintiff unsuccessfully challenged the preferences as violative of the right to travel and migration, the *Langlois* complaint focused on a statutory FHA challenge. See *id.*; see also *Fayerweather v. Town of Narragansett Hous. Auth.*, 848 F. Supp. 19, 19 (D.R.I. 1994).

Despite no evidence of purposeful discrimination, the district court inferred that the combination of a local preference and severe ethnic and racial differences between Abington, Massachusetts and nearby Boston created discriminatory racial impacts. See *Langlois*, 234 F. Supp. 2d at 43, 66. Under *Huntington Branch, NAACP*, this evidence shifted the burden to the town of Abington to prove that there were no less discriminatory alternatives available. 844 F.2d 926, 936 (2nd Cir. 1988). Noting the similarities to *Huntington Branch, NAACP*, the district court then concluded that Abington failed to demonstrate that no less discriminatory alternatives were available. *Langlois*, 234 F. Supp. 2d at 70. Thus, the preferential policies were invalidated under the FHA. *Id.* at 78.

Prior to *Langlois*, which was at the district court level on remand, the First Circuit Court of Appeals had upheld the local resident requirements due largely to a federal statute permitting such preferences in Section 8 vouchers. *Langlois v. Abington Hous. Auth.*, 207 F.3d 43, 51 (1st Cir. 2000); see 42 U.S.C. § 1437f(o)(6) (2000). The court concluded that “[i]t is hard not to treat Congress’s own [permission] as justification enough to satisfy a statutory impact discrimination claim of the kind before us.” *Langlois v. Abington Hous. Auth.*, 207 F.3d at 51. Absent express congressional permission, the district court’s invalidation of the resident preferences would presumably have been affirmed. See *Chickasaw*, 504 F. Supp. at 732. Thus, because there is no congressional authorization for local resident preferences in non-Section 8 and other municipal housing programs, the FHA appears fully capable of invalidating local resident preferences in local affordable housing programs. See *id.*; *Langlois*, 234 F. Supp. 2d at 78.

The FHA has also been used to invalidate employee preferences in affordable housing. In *Davis v. New York City Housing Authority*, the Second Circuit upheld a district court injunction against a working family preference due to its disparate racial impacts. 278 F.3d 64, 76, 88 (2nd Cir. 2002). However, the preference was for working families in general, and did not favor local employees. See *id.* at 68–69.

¹⁷² See *supra* text accompanying notes 93–96, 125–29, 166–71. A variety of state laws that could be implicated by local resident and employee preferences lie beyond the scope of this Note. See *supra* note 13. In addition, when funds from the U.S. Department of Housing and

ence, as well as suggestions for structuring lawful programs, are discussed below.

A. Local Resident Preferences in Affordable Housing

1. Right to Travel and Migration

a. Durational Resident Preferences

Because courts apply strict scrutiny to durational residency requirements, an affordable housing policy that grants preference to local residents based on the length of their residency would almost certainly be challenged and overturned as violative of the fundamental right to travel and migration.¹⁷³ It is true that a durational *preference* would be less onerous than an absolute *requirement*; depending on how the preference was implemented, such a policy would not completely deny the public benefit to outsiders or newly arrived residents.¹⁷⁴ However, a durational resident preference would probably be invalidated for two reasons. First, following *Saenz v. Roe*, courts are not receptive to the argument that a policy only partially denies benefits to new residents and should thus be treated with more deference.¹⁷⁵ Second, in the spectrum of durational residency requirements that have been challenged, a reviewing court would probably determine that affordable housing is a basic necessity, more similar to welfare and hospital care than divorce or in-state tuition benefits.¹⁷⁶ Thus, under *Shapiro v. Thompson* and its progeny, a durational preference for local residents would be seen as a penalty on the fundamental right of outsiders to migrate to the challenged jurisdiction.¹⁷⁷ A reviewing court would

Urban Development (HUD) or similar state agencies are used in an affordable housing development, preferences may conflict with agency policies. See generally HENRY KORMAN, CITIZENS' HOUS. AND PLANNING ASS'N, MEETING LOCAL HOUSING NEEDS: A PRACTICE GUIDE FOR IMPLEMENTING SELECTION PREFERENCES AND CIVIL RIGHTS REQUIREMENTS IN AFFORDABLE HOUSING PROGRAMS (2004), available at http://www.chapa.org/files/f_1220549146Local-HousingNeedsReport.pdf (outlining various agency policies that both approve and prohibit local resident and employee preferences in affordable housing).

¹⁷³ See *Mem'l Hosp. v. Maricopa County*, 415 U.S. 250, 258 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 618–19 (1969).

¹⁷⁴ See *Saenz v. Roe*, 526 U.S. 489, 504–05 (1999).

¹⁷⁵ See *id.*

¹⁷⁶ See *Sosna v. Iowa*, 419 U.S. 393, 419 (1975) (Marshall, J., dissenting); *Mem'l Hosp.*, 415 U.S. at 256–57; *Shapiro*, 394 U.S. at 629; *Starns v. Malkerson*, 326 F. Supp. 234, 238 (D. Minn. 1970), *aff'd mem.*, 401 U.S. 985 (1971).

¹⁷⁷ See *Sosna*, 419 U.S. at 419 (Marshall, J., dissenting); *Mem'l Hosp.*, 415 U.S. at 256–57; *Shapiro*, 394 U.S. at 638 n.20; *Starns*, 326 F. Supp. at 238.

likely follow strict scrutiny and invalidate the durational preference upon determining that less restrictive means—such as local recruitment and advertising schemes—are able to accomplish the governmental purposes behind the preference.¹⁷⁸

b. Bona Fide Resident Preferences

Though courts have consistently upheld bona fide residency requirements against challenges based on the right to travel and migration, a bona fide resident preference unaccompanied by some other broadening qualification could be invalidated.¹⁷⁹ The chief reason that courts give deference to bona fide residency requirements is that “any person is free to move” to a locality and “establish residence” in order to receive a public benefit.¹⁸⁰ Because all residents are eligible for the public benefit without regard to length of residency, there is no penalty on nonresident travel or migration.¹⁸¹ However, affordable housing is unlike other public benefits. It is logically infeasible for a person to move to a locality unless they can first afford to live there. Bona fide residency preferences in affordable housing consequently pose an immense risk of deterring indigent nonresidents from migrating and establishing residency.¹⁸² Upon challenge, a reviewing court could determine that such preferences are prohibitively burdensome on low-income nonresidents’ fundamental right to travel and migration.¹⁸³

Bona fide resident preferences should be structured as broadly and inclusively as possible in order to avoid potential challenges based on the right to travel and migration.¹⁸⁴ In particular, resident preferences should be accompanied by local employee preferences and/or other broadening qualifications.¹⁸⁵ In giving indigent nonresidents a legitimate opportunity to receive affordable housing benefits through alternative processes, not merely residency alone, local governments would reduce the risk of deterring or penalizing migration.¹⁸⁶ In *Fayerweather v.*

¹⁷⁸ In *Langlois v. Abington Housing Authority*, the court mentioned that a local recruitment and advertising scheme would be a less restrictive alternative to residency requirements. See 234 F. Supp. 2d 33, 70 (D. Mass. 2002).

¹⁷⁹ See *Attorney Gen. v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (Brennan, J., plurality opinion); *Martinez v. Bynum*, 461 U.S. 321, 328–29 (1983).

¹⁸⁰ *Martinez*, 461 U.S. at 328–29.

¹⁸¹ See *id.*

¹⁸² See *id.*

¹⁸³ See *id.*

¹⁸⁴ See Gould, *supra* note 12, at 9.

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

Town of Narragansett Housing Authority, the court credited the breadth of the city's affordable housing policy, which gave preference to both local residents and local employees.¹⁸⁷ The court determined that such inclusive preferences do not penalize or violate a nonresident's right to travel and migration.¹⁸⁸ In addition to having a local employee preference complement its local resident preference, a local government might also broaden its preferred applicant pool by extending affordable housing preferences to a geographic area beyond its jurisdiction.¹⁸⁹ For instance, a city could grant preference to all persons who live or work in the surrounding county.¹⁹⁰ Expanded geographic preferences increase the likelihood that indigent nonresidents can become residents in order to qualify for the public benefit, thereby reducing the risk of deterring or penalizing nonresident travel and migration.¹⁹¹

2. Equal Protection Clause

It is extremely unlikely that a local resident preference would be overturned for violating the Equal Protection Clause on the basis of discriminatory effects.¹⁹² Indeed, it has never happened. While local resident preferences can clearly cause or perpetuate disparate racial impacts, particularly in localities surrounded by greater racial diversity, equal protection jurisprudence requires a challenger to prove that the government was motivated by a desire to discriminate.¹⁹³ In practical terms, the test expressed in *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (*Arlington Heights I*) demands that a plaintiff demonstrate purposeful discrimination through unexplainable and egregious disproportionate effects, obvious contextual circumstances, or statements of legislators.¹⁹⁴ Only in the most exceptional of scenarios would this be possible.¹⁹⁵ Courts are consequently hesitant to overturn

¹⁸⁷ See 848 F. Supp. 19, 22 n.3 (D.R.I. 1994).

¹⁸⁸ *Id.* at 22.

¹⁸⁹ KORMAN, *supra* note 172, at 80; Gould, *supra* note 12, at 9.

¹⁹⁰ KORMAN, *supra* note 172, at 80; Gould, *supra* note 12, at 9. It is worth noting that if federal funds are involved in an affordable housing development, some federal regulations prohibit geographic preference areas smaller than the local government itself. See, e.g., 24 C.F.R. § 5.655(c)(1) (2007) (Section 8 housing); 24 C.F.R. § 960.206(b)(1)–(3) (2007) (public housing); 24 C.F.R. § 982.207(b)(1)–(3) (2007) (multifamily housing); see also KORMAN, *supra* note 172, at 39 n.29.

¹⁹¹ See KORMAN, *supra* note 172, at 80; Gould, *supra* note 12, at 9.

¹⁹² See *supra* notes 116–28 and accompanying text.

¹⁹³ See *Washington v. Davis*, 426 U.S. 229, 239–40 (1976); *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974) (discussing perpetuation of segregation).

¹⁹⁴ See 429 U.S. 252, 266–68 (1977).

¹⁹⁵ See *supra* notes 120–24 and accompanying text.

facially neutral laws, such as local resident preferences, on the grounds that they violate the Equal Protection Clause.¹⁹⁶

3. Fair Housing Act

The FHA and other civil rights laws were originally enacted in order to prevent discrimination against protected classes of people.¹⁹⁷ These same laws apply to local governments seeking to serve their own residents in affordable housing programs.¹⁹⁸ Congress deliberately removed from the FHA a plaintiff's difficult burden of proving purposeful discrimination that is present in equal protection claims.¹⁹⁹ Instead, a plaintiff must only demonstrate that a local resident preference creates or perpetuates a discriminatory impact.²⁰⁰ Thus, of all the legal risks to local resident preferences discussed in this Note, an FHA claim is perhaps the easiest for plaintiffs to bring and the most difficult for local governments to defend.²⁰¹

It is regrettable that residential segregation still characterizes many of America's metropolitan regions.²⁰² Discrimination takes numerous forms and comes from a variety of institutions.²⁰³ Overt harassment and violence, income inequality, exclusionary zoning, prejudiced mortgage lending, and bigoted home sales and rentals are just a few of the many practices that have contributed to modern residential segregation.²⁰⁴ However, even the most blameless of local governments cannot ignore regional racial imbalances.²⁰⁵ When racial imbalances exist, the resulting discriminatory effects of a local resident preference can be obvious. In a predominantly white municipality, for example, a local resident preference would disproportionately benefit whites while excluding other races from affordable housing.²⁰⁶ The preference would also perpetuate

¹⁹⁶ *See id.*

¹⁹⁷ Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3631 (2000).

¹⁹⁸ *See, e.g.,* Fayerweather v. Town of Narragansett Hous. Auth., 848 F. Supp. 19, 20 (D.R.I. 1994).

¹⁹⁹ *See supra* notes 141–44 and accompanying text.

²⁰⁰ *See* United States v. City of Black Jack, 508 F.2d 1179, 1186 (8th Cir. 1974).

²⁰¹ *See* Gould, *supra* note 12, at 9.

²⁰² *See* Nancy A. Denton, *Segregation and Discrimination in Housing*, in *A RIGHT TO HOUSING* 61, 62 (Rachel G. Bratt et al. eds., 2006).

²⁰³ *See id.* at 69.

²⁰⁴ *See generally id.* (describing many of the causes of racial segregation in housing).

²⁰⁵ *See* Gould, *supra* note 12, at 9.

²⁰⁶ *See id.*

existing segregation by discouraging neighboring nonwhites from integrating into the municipality.²⁰⁷

An FHA claim against a local government's resident preference is likely to succeed when the locality is significantly more homogenous than its surrounding region.²⁰⁸ In considering whether a local resident preference has a disparate impact, courts compare the demographics of the locality to the demographics of the surrounding region.²⁰⁹ In the FHA claim presented in *Langlois v. Abington Housing Authority*, the court borrowed a statistical test known as the "four-fifths rule," which is used by the Federal Equal Employment Opportunity Commission (EEOC), to measure disparate impact in employment practices.²¹⁰ According to the four-fifths rule, "[a] selection rate for any race . . . which is less than four-fifths . . . (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact."²¹¹ This test can be a useful guideline for local governments as they monitor their affordable housing programs; however, there is ultimately no bright-line statistical test for determining disparate impact.²¹² Other courts have used somewhat different tests.²¹³

Once a plaintiff has demonstrated that a local resident preference causes or perpetuates a disparate racial impact, courts take varying approaches in determining whether the disparate impact violates the FHA.²¹⁴ The minority of courts adhere to the multifactor test outlined in *Metropolitan Housing Development Corp. v. Village of Arlington Heights (Arlington Heights II)*.²¹⁵ Under this test, the plaintiff bears the burden of demonstrating that the government can achieve its objective through a less discriminatory alternative.²¹⁶ Most courts follow a prima facie approach, meaning that the local government must justify disparate im-

²⁰⁷ See *United States v. City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974); *United States v. Hous. Auth. of Chickasaw*, 504 F. Supp. 716, 730 (S.D. Ala. 1980).

²⁰⁸ See *Chickasaw*, 504 F. Supp. at 730.

²⁰⁹ See Gould, *supra* note 12, at 9.

²¹⁰ 234 F. Supp. 2d 33, 57 (D. Mass. 2002); see KORMAN, *supra* note 172, at 74–75 ("The rule is intended to gauge the discriminatory effect of selection from within an existing pool of qualified candidates.")

²¹¹ *Langlois*, 234 F. Supp. 2d at 57 (quoting 29 C.F.R. § 1607.4(D) (2002)).

²¹² See KORMAN, *supra* note 172, at 74.

²¹³ See, e.g., *Summerchase Ltd. P'ship v. City of Gonzales*, 970 F. Supp. 522, 528–30 (M.D. La. 1997) (comparing the absolute number of minorities receiving the benefit to the absolute number of minorities who were eligible).

²¹⁴ See *supra* notes 144–55 and accompanying text.

²¹⁵ See *id.*

²¹⁶ See *id.*

pacts by demonstrating that it has a compelling purpose and that no less discriminatory alternatives are available.²¹⁷ Regardless of which party bears the burden, a plaintiff would likely be successful in arguing that local zoning and planning policies contribute to the unaffordability of housing; simply removing the zoning and planning policies would be a less discriminatory alternative and would allow unregulated growth to create affordable housing opportunities for residents and nonresidents alike.²¹⁸ Such laissez-faire development would be highly undesirable for most local governments.²¹⁹

The risk that local resident preferences will create or perpetuate a disparate impact, coupled with the difficulty of defending such an occurrence, should convince local governments that it is necessary to extend preferences beyond only current residents.²²⁰ As with right-to-travel concerns, local governments would be wise to extend preferences to households that have a member who works in the jurisdiction.²²¹ Additionally, a locality could reduce the risk of a disparate impact by extending preferences to residents of a more diverse surrounding geographic area, such as a county.²²² Expanded preferences increase the ethnic diversity of the preferred applicant pool, thereby reducing the risk of creating or perpetuating a disparate racial impact.²²³

Finally, it may be possible to mitigate a discriminatory impact through the use of partial preferences. For example, a local government could require developers to grant preference to local residents in fifty percent of their affordable housing set-asides, rather than the entire stock.²²⁴ Additionally, developers could be required to grant local resident preferences only when filling initial vacancies.²²⁵ Selection of subsequent occupants could be based on income alone, without regard to residency.²²⁶ Both of these partial preferences would reduce the risk of creating or perpetuating discriminatory racial impacts.²²⁷

²¹⁷ See *id.*

²¹⁸ See Lerman, *supra* note 4, at 386–88.

²¹⁹ See *id.* at 387.

²²⁰ See KORMAN, *supra* note 172, at 77; Gould, *supra* note 12, at 9.

²²¹ See Gould, *supra* note 12, at 9.

²²² KORMAN, *supra* note 172, at 80; Gould, *supra* note 12, at 9.

²²³ See Gould, *supra* note 12, at 9.

²²⁴ KORMAN, *supra* note 172, at 79.

²²⁵ *Id.*

²²⁶ See *id.*

²²⁷ See *id.*

B. *Local Employee Preferences in Affordable Housing*

1. Right to Travel and Migration

Local employee preferences in affordable housing, by themselves, do not resemble any preferences that have ever been challenged as violating the right to travel and migration.²²⁸ Unlike residency preferences that risk preventing indigent nonresidents from migrating because they cannot afford to live in the jurisdiction—and consequently cannot receive preference in affordable housing—employee preferences are unlikely to offend the right to travel because employment is more easily attainable.²²⁹ Nonetheless, local employee preferences should be extended not just to persons currently employed in the jurisdiction, but also to persons who have offers of employment in the jurisdiction.²³⁰ The inclusiveness of such a preference would reduce the risk of deterring or penalizing nonresident migration, and would most likely receive deferential rational basis review if challenged.²³¹ A local government would have a variety of reasonable justifications for local employee preferences in affordable housing, including the desire to reduce traffic congestion, long commute times, noise, poor air quality, and other negative environmental impacts.²³² Preferences for employees in vital occupations could be justified by compelling public safety interests.²³³

2. Equal Protection Clause

It is extremely unlikely that a local employee preference would be overturned for violating the Equal Protection Clause on the basis of discriminatory effects.²³⁴ Not only would the discriminatory impact of employee preferences be less direct than resident preferences—which themselves probably could not sustain an equal protection claim—but the indirect racial impacts of employee preferences would make them an unlikely tool for bigoted legislators to use with the intention of exclud-

²²⁸ See, e.g., *Sosna v. Iowa*, 419 U.S. 393, 393 (1975); *Mem'l Hosp. v. Maricopa County*, 415 U.S. 250, 250 (1974).

²²⁹ See *Martinez v. Bynum*, 461 U.S. 321, 329 (1983).

²³⁰ See KORMAN, *supra* note 172, at 79–80; Gould, *supra* note 12, at 9.

²³¹ See *Martinez*, 461 U.S. at 328–29; *Sosna*, 419 U.S. at 419 (Marshall, J., dissenting).

²³² In *County Board of Arlington County v. Richards*, the Supreme Court used rational basis review to uphold a parking ordinance that favored local residents on similar grounds. 434 U.S. 5, 5 (1977) (per curiam).

²³³ See *Krzewinski v. Kugler*, 338 F. Supp. 492, 501 (D.N.J. 1972).

²³⁴ See *Pers. Adm'r v. Feeney*, 442 U.S. 256, 279 (1979).

ing a protected class.²³⁵ A court would be much more willing to find a violation of a civil rights statute, such as the FHA.²³⁶

3. Fair Housing Act

Though less direct than local resident preferences in segregated regions, local employee preferences also risk creating and perpetuating disparate racial impacts in violation of the FHA.²³⁷ Even if local employers have hiring practices that are nondiscriminatory, a jurisdiction's local employees can still be characterized by homogenous races or genders.²³⁸ Likewise, vital civic occupations, such as teachers, police officers, and firefighters, frequently have a racial or gender makeup that is not wholly representative of the area's demographics.²³⁹ In such cases, one or more groups may be able to challenge a local employee preference based on its disparate impacts.²⁴⁰ A challenger would have a persuasive argument that less discriminatory means are available to achieve the government's purpose.²⁴¹ Rather than giving preference to local employees in affordable housing, a government could provide low-interest loans and other fiscal inducements in exchange for employees' commitments to live in the jurisdiction, a practice that is already common in many cities.²⁴² Both multifactor and prima facie jurisdiction courts would have a difficult time ignoring such a less-discriminatory alternative.²⁴³

It is again imperative that local employee preferences be structured as broadly and inclusively as possible in order to avoid an FHA violation.²⁴⁴ In addition to expanding the preferred geographic employment area, a locality should also ensure that a broad swath of local employees is given preference.²⁴⁵ For instance, a preference for local teachers should be expanded to include all employees of the school district, in-

²³⁵ See *id.*

²³⁶ See *United States v. City of Black Jack*, 508 F.2d 1179, 1185 (8th Cir. 1974).

²³⁷ See *Davis v. N.Y. City Hous. Auth.*, 278 F.3d 64, 88 (2d Cir. 2002).

²³⁸ See Leslie McCall, *Sources of Racial Wage Inequality in Metropolitan Labor Markets: Racial, Ethnic, and Gender Differences*, 66 AM. SOC. REV. 520, 521–24 (2001) (discussing causes of racial concentration in cities).

²³⁹ See NORMA M. RICCUCCI, *MANAGING DIVERSITY IN PUBLIC SECTOR WORKFORCES* 36–37 (2002).

²⁴⁰ See *Davis*, 278 F.3d at 88; *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 936 (2nd Cir. 1988).

²⁴¹ See *Huntington Branch, NAACP*, 844 F.2d at 936.

²⁴² See *supra* notes 48–49 and accompanying text.

²⁴³ See *Huntington Branch, NAACP*, 844 F.2d at 936; *Arlington Heights II*, 558 F.2d 1283, 1290 (7th Cir. 1977).

²⁴⁴ See KORMAN, *supra* note 172, at 79–80; Gould, *supra* note 12, at 9.

²⁴⁵ See KORMAN, *supra* note 172, at 79–80.

cluding janitorial staff and other lower-wage earners.²⁴⁶ By increasing the diversity of preferred applicants, expanded employment preferences decrease the likelihood of creating or perpetuating disparate racial impacts.²⁴⁷

CONCLUSION

There is a growing trend of local governments allocating affordable housing set-asides in a manner that favors local residents and/or local employees. Such preferences are threatened by three chief legal principles. First, courts may view the preferences as a penalty on nonresidents' fundamental right to interstate travel and migration. Second, if the preferences are motivated by legislators' desire to exclude a protected class of persons, courts may conclude that the preferences violate the Equal Protection Clause. Finally, local resident and employee preferences can violate the Federal Fair Housing Act by creating or perpetuating discriminatory racial impacts. Such violations require no proof of discriminatory intent on behalf of legislators.

In order to avoid these legal risks, local governments should structure their affordable housing programs as broadly and inclusively as possible. By offering multiple methods for an applicant to receive preference—such as preferences based on bona fide residency, employment, and expanded geographic areas—and by limiting the scope and duration of the preferences, a local government would decrease the likelihood of penalizing nonresident migration while simultaneously decreasing the likelihood of creating or perpetuating discriminatory racial impacts.

²⁴⁶ *See id.*

²⁴⁷ *See id.* It is also possible that local employment preferences could be challenged for creating a disparate impact upon disabled persons, who are another class of persons protected by the FHA. 42 U.S.C. § 3605 (2000). A disabled person may not be physically able to work in any occupation, or may not meet the high standards for a vital civic occupation. Under such a challenge, it would be difficult for the local government to maintain that it was not a plaintiff's disability that disqualified her for the preference, but, rather, her employment status. A local government would probably be wiser to simply create a policy exemption for disabled persons under its local employee preference. *See* KORMAN, *supra* note 172, at 73–74. By also granting preference to disabled persons, a local government would avoid disparate disability impacts without significantly departing from the original intent of the preference. *See id.*

RESOLUTION NO. 2018- _____

APPROPRIATING \$15,000 FROM GENERAL FUND RESERVES TO THE CITY CLERK'S OFFICE FOR ELECTION SERVICES FOR THE NOVEMBER 2018 ELECTION FROM THE SAN JOAQUIN COUNTY REGISTRAR OF VOTERS

WHEREAS, The City Clerk's Office FY 2018/19 budget includes \$110,000 for elections services, and

WHEREAS, On May 1, 2018, the City Council adopted Resolution No. 2018-082 giving notice of a general municipal election to be held on November 6, 2018 and requesting that the Board of Supervisors of the County of San Joaquin order the consolidation of the City's election with the statewide election to be held that day and authorize the County's Registrar of Voters to provide all necessary election services to the City, and

WHEREAS, Council also adopted Resolution No. 2018-083 directing the City Clerk to submit a measure to the voters to adopt an ordinance imposing a cannabis business tax on the November 6th election, and The estimated cost of the County providing services for the City's election, including the election of three officers and one ballot measure, is \$170,000, and

WHEREAS, The County estimates that including a second ballot measure in the City's election would cost an additional \$15,000 thereby necessitating that Council approve an appropriation in that amount in order to fund elections services for the November 2018 election.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Tracy hereby approves an additional appropriation in the amount of \$15,000 from General Fund Reserves to the City Clerk's Office to fund election services from the County Registrar of Voters.

The foregoing Resolution was adopted by the Tracy City Council on the 8th day of August, 2018, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk

RESOLUTION NO. 2018- _____

ORDERING THE CITY CLERK TO SUBMIT TO THE VOTERS AN INITIATIVE REGARDING WORKFORCE AND SENIOR HOUSING AT THE NEXT GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE AND SETTING DATES AND RULES FOR SUBMITTING ARGUMENTS IN FAVOR AND AGAINST THE MEASURE AND REBUTTAL ARGUMENTS

WHEREAS, On June 25, 2018, proponents William Reeve, Gurcharan Takhar, and Grace Alvarez submitted signed petitions for the “Workforce and Senior Housing Attainment Initiative” (“Initiative Measure”) to the City Clerk’s Office of the City of Tracy, and

WHEREAS, On July 17, 2018 the Tracy City Council accepted a Certificate of Sufficiency of the Initiative Petition issued by the City Clerk finding that the petition was sufficient to qualify for the ballot, and

WHEREAS, Pursuant to Section 9215 of California Elections Code, the City Council is authorized to place initiative measures on the ballot to be considered at a general municipal election, and

WHEREAS, On May 1, 2018, the City called for a general municipal election to be held on November 6, 2018 and requested that the San Joaquin County Board of Supervisors consolidate the election with the statewide general election to be held that date via Resolution No. 2018-082, and

WHEREAS, The City Council desires to submit the Initiative Measure to the qualified voters of the City at the next General Municipal Election to be held on Tuesday, November 6, 2018;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TRACY AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Election. The City Council hereby orders the City Clerk to submit the Initiative Measure attached hereto as Exhibit A to the voters at the next General Municipal Election to be held on November 6, 2018.

Section 3. Ballot Label. The ballot label for the Initiative Measure shall be submitted for a “Yes” or “No” vote as follows:

Shall an ordinance be adopted exempting deed-restricted senior housing, attached homes or detached homes on 4,000 square foot or less lots located in areas identified on the attached map from the City's Growth Management Ordinance, including the implementation section establishing a lottery requirement prior to the sale of homes?	YES
	NO

Section 4. Full Text. The full text of the Initiative Measure, which is attached hereto as Exhibit "A" shall be printed in the sample ballot/voter information pamphlet for the November 6, 2018 election.

Section 5. Adoption of Initiative Measure. If a majority of qualified electors voting on such measure vote in favor of Initiative Measure, it shall be deemed ratified and shall read as provided in Exhibit "A."

Section 6. Filing with County. The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors and County Elections Department of the County of San Joaquin.

Section 7. Notice of Election. The City Clerk shall publish an updated Notice of Election

Section 8. Impartial Analysis. The City Attorney is directed to prepare an impartial analysis of the measure in accordance with Elections Code Section 9280, and file the analysis with the City Clerk on or before August 13, 2018 at 5:00pm

Section 9. Ballot Arguments. Arguments for or against the Initiative Measure shall comply with Sections 9282 and 9283 of the Elections Code and shall be submitted to the City Clerk on or before August 20, 2018 at 6:00 p.m. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials in accordance with Elections Code Section 9287. Pursuant to California Elections Code Section 9285, when the City Clerk has selected the arguments for and against the measure, which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument, which it seeks to rebut.

Section 10. Rebuttal Arguments. Rebuttal arguments shall be controlled by the provisions of Elections Code Section 9285. The deadline for filing rebuttal arguments shall be August 30, 2018 at 6:00 p.m.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption by a majority vote of the City Council.

The foregoing Resolution was adopted by the Tracy City Council on the 8th day of August, 2018, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Mayor

ATTEST:

City Clerk