

**RESOLUTION NO. 2019-029**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA FINDING THE MINIMUM REQUIRMENTS ARE MET FOR RENT INCREASE APPLICATION RIA-2-18 (FILES NO. 2018-036)) FOR THE GATEWAY MARYMOUNT PROJECT AT 435 GATEWAY DRIVE (APN 009-540-110, 009-540-120, 009-540-130, 009-540-140, 009-540-150, 009-540-160, AND 009-540-170), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

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Initiated by: Mark Haesloop of the Law Offices of Mark Haesloop (“Applicant”).

**WHEREAS**, a rent increase application has been submitted to allow the property owner to increase rents pursuant to Pacifica Municipal Code Section 9-4.2455(e) for the site located at 435 Gateway Drive (APN 009-540-110, 009-540-120, 009-540-130, 009-540-140, 009-540-150, 009-540-160, and 009-540-170); and

**WHEREAS**, in 2008, the City approved an application for a Condominium Conversion and Final Subdivision Map subdividing the project into 170 individual condominiums plus three common parcels, and the Final Subdivision Map was recorded on August 22, 2014; and

**WHEREAS**, Pacifica Municipal Code Section 9-4.2455(e) requires Planning Commission review of rent increases for condominium conversions for which relocation has not taken place in accordance with three criteria: (1) prevailing rents for similar units; (2) the residential rent component of the Bay Area Cost of Living Index of the United States Department of Labor; and (3) the condition of the units; and

**WHEREAS**, the applicant previously sought a rent increase from the Planning Commission pursuant to Pacifica Municipal Code Section 9-4.2455(e) in 2017 and the Planning Commission adopted Resolution No. 976, finding the minimum requirements for a rent increase were met and that the project was exempt from CEQA; and

**WHEREAS**, the applicant proposes: (1) a rent increase of up to market rate for tenants that are in place as of the date of the Planning Commission’s adoption of a Resolution approving a rent increase; or for Below Market Rate (BMR) designated units, a rent increase of up to the applicable BMR rental maximum for tenants that are in place as of the date of the Planning Commission’s adoption of a Resolution approving a rent increase; (2) a rent increase of up to 10 percent for tenants who are over the age of 62 as of August 14, 2014, or those who have a disability; (3) for tenancies that commence after the date of the Planning Commission’s adoption of a Resolution approving a rent increase, the tenant may be charged market rate for the unit, or if applicable, maximum rent for designated BMR unit; and (4) removal of need for further application and approval by the Planning Commission of any rent increase; and

**WHEREAS**, the City and the applicant have entered into an agreement that outlines the applicant’s responsibilities and requirements of administration of the BMR rental units as required in Resolution No. 976 and the applicant has entered into a contract with HIP Housing Affordable Ventures, Inc. to provide affordability and compliance management services for the BMR rental units; and

**WHEREAS**, the Planning Commission considered existing rental rates of units within the property and considered prevailing rents for similar units and properties within Pacifica; and

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**WHEREAS**, the Planning Commission considered the residential rent component of the Bay Area Cost of Living Index of the United States Department of Labor at the public hearing; and

**WHEREAS**, the Planning Commission considered the condition of the property at the public hearing; and

**WHEREAS**, any rent increases require Planning Commission authorization per Pacifica Municipal Code Section 9-4.2455(e); and

**WHEREAS**, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on June 3, 2019, at which time it continued the hearing to a date unknown.

**WHEREAS**, Commissioners Berman and Clifford conducted a site inspection of the Marymount Gateway property to witness the condition of the units; the visit included inspections of three units and the general site with volunteering tenants, as well as inspections of vacant units with the Property Manager on July 8, 2019; and

**WHEREAS**, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on August 19, 2019, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference.

**NOW, THEREFORE BE IT RESOLVED** by the Planning Commission of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

**BE IT FURTHER RESOLVED**, that the Planning Commission of the City of Pacifica does hereby make the finding that the Project qualifies for a Class 1 Categorical Exemption and the "general rule" exemption pursuant to CEQA Guideline Section 15301 and 15061(b)(3), as described below:

CEQA Guidelines Section 15301, states in part:

**15301. Existing Facilities**

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

The proposed rent increase to an existing condominium complex would not involve an expansion of an existing use.

Additionally, none of the exceptions to application of a categorical exemption in Section 15300.2 of the CEQA Guidelines apply, as described below.

- Sec. 15300.2(a): There is no evidence in the record that the project will impact an environmental resource of hazardous or critical concern in an area designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies. The project site is an existing developed residential complex and is not located in a sensitive environmental area. Therefore, it will not have a significant impact on the environment.
- Sec. 15300.2(b): There is no evidence in the record that successive projects of the same type in the area will have a significant environmental impact. The project involves a proposed rent increase to an existing condominium complex. New development will not occur; therefore, the project will not have a significant impact on the environment either alone or cumulatively with other projects in the vicinity.
- Sec. 15300.2(c): There is no evidence in the record of any possibility that the project will have a significant effect on the environment due to unusual circumstances. The project site is developed; therefore, the site has no habitat value. Therefore, there are no unusual circumstances applicable to the project.
- Sec. 15300.2(d) through (f): The project is not proposed near a scenic highway, does not involve a current or former hazardous waste site, and, does not affect any historical resources. Therefore, the provisions of subsections (d) through (f) are not applicable to this project.

The project is consistent with the requirements for a Class 1 exemption and none of the exceptions to applying an exemption in Section 15300.2 apply; therefore, there is substantial evidence in the record to support a finding that the project is categorically exempt from CEQA.

In addition, the project qualifies for an exemption pursuant to CEQA Section 15061(b)(3) which states that the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The applicant's proposed rent increase request would not result in any physical modifications to the project site, and therefore, does not have the possibility to have a physical impact on the environment.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Pacifica does hereby make the following considerations for Rent Increase Application RIA-2-18:

*1. Prevailing Rents for Similar Units*

Two independent rental surveys were prepared by the City's consultant Laurin Associations. The April 2019 Rent Survey included research of 10 apartment developments (1,110 units) in the City of Pacifica and found the average market rate rents ranged from \$2,914 for a one-bedroom to \$3,761 for a two-bedroom/two bath unit. A July 2019 Rental Survey Supplement analyzed market rent of the multifamily developments closest in proximity to the Marymount Gateway, including Pacifica Park, Fairmont Apartments, and Eaves Pacifica. A rent comparability matrix was used to compare variables between the developments, such as unit size, age of the complex, unit amenities, and site amenities. Each amenity is provided a value that either increases or decreases the rent. The end result shows what the rents of the surrounding market rate comparables would be if they had similar amenities as the subject property. As shown above, the adjusted market rents, using only the closest three comparables, range from \$2,676 for a one-bedroom unit to

\$3,448 for a two-bedroom/two bath unit. Therefore, rents do trend slightly lower in the comparables immediately surrounding the subject, overall. The Comparable Weighted Current Market Rate Rents are provided in Table 1, below.

**TABLE 1  
 COMPARABLE WEIGHTED CURRENT MARKET RATE RENTS**

UNIT TYPE	CURRENT WEIGHTED AVERAGE RENTS
	MARKET RATE
1BR – 1BA - 750 sq ft	\$2,676
1BR – 1BA - 800 sq ft	\$2,774
2BR – 1BA - 900 sq ft	\$3,030
2BR – 2BA - 1,087 sq ft	\$3,448
Source: Laurin Associates, July 2019	

The affordability and compliance consultant is tasked with assisting the applicant in ensuring all rents in the BMR units do not exceed the maximum allowed.

2. *Residential Rent Component of the Bay Area Cost of Living Index of the United States Department of Labor*

The BMR and Cost of Living Review notes that the February 2019 San Francisco Area Consumer Price Index (CPI) documents that prices in the area increased by 3.5 percent from a year ago.

Over 2019, the index for all items less food and energy advanced 0.6 percent. Components contributing to the increase included shelter (0.4 percent) and apparel (6.4 percent). Partly offsetting the increases were price declines in medical care (-3.8 percent). The overall shelter index increased by 3.5 percent; the “Rent of Primary Residence” index increased by 4.6 percent from February 2018.

Although historic CPI is readily available, the “Rent of Primary Residence” portion of the Consumer Price Index is only available back to 2014. Since 2014, the “Rent of Primary Residence” has increased 34.2 percent, or on average 5.7 percent per year. Assuming a 5.7 percent increase per year, the “Rent of Primary Residence” has increased 62.7 percent since 2008 when the condominium conversion was approved. As approved in Resolution No. 976, the applicant has increased rents once at a rate of up to 12.5 percent, since 2008. Even with the proposed additional 12.5 percent increase, the units would be below the average increase of the “Rent of Primary Residence” component of the CPI.

3. *Condition of the Units*

The findings of Commissioner Berman’s and Commissioner Clifford’s July 8, 2019 site inspection were presented to the Planning Commission and entered into the record at the public hearing and detailed the current condition of the units. Tenants over the age of 62 or those who have a verifiable and documented disability are more likely to experience greater sensitivities to degraded living conditions, such as damaged stairs and facilities, mold, or excessive water damage.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Pacifica does hereby make the following limitations:

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- a) Effective on the date this Resolution becomes final, tenants renting units prior to the execution date of this Resolution may experience a rent increase of up to seven (7) percent or to current market rates as reflected in Table 1, whichever is less; twelve (12) months after the effective date of this Resolution a rent increase of seven (7) percent may be applied to the rental amount authorized in the prior year; twenty-four (24) months after the effective date of this Resolution a rent increase of seven (7) percent may be applied to the rental amount authorized in the prior year; and for BMR designated units a rent increase of the same schedule as the non-BMR tenants may be applied, provided that the rental amounts do not exceed the applicable BMR rental maximum. Nothing contained herein is intended to modify the regulations or procedures for rent increases as set forth in State law or the Pacifica Municipal Code; and
- b) New tenants, defined as those tenants who commence leases with the applicant after the effective date of this Resolution and are not eligible for occupation of a BMR designated unit, may be charged up to market rate for their unit. Rent increases on new tenants may be applied in accordance with the terms and schedule as follows: twelve (12) months after the effective date of this Resolution a rent increase of seven (7) percent may be applied to the rental amount authorized in the prior year; twenty-four (24) months after the effective date of this Resolution a rent increase of seven (7) percent may be applied to the rental amount authorized in the prior year; and
- c) Tenants who are over the age of 62 or who have verifiable and documented disability, may experience a rent increase of up to seven (7) percent or to current market rates as reflected in Table 1, whichever is less; twelve (12) months after the final of this Resolution a rent increase of three (3) percent may be applied to the rental amount authorized in the prior year; and
- d) The BMR units shall be managed in accordance with BMR rental unit administration requirements detailed in City of Pacifica Planning Commission Resolution No. 976, and as provided in the Below Market Rate Compliance Agreement between the Applicant and the City of Pacifica ("BMR Compliance Agreement"). The applicant is authorized to retain the services of a third party such as HIP Housing Affordable Ventures, Inc. in order for applicant to comply with the requirements of Resolution No. 976 and the BMR Compliance Agreement; and
- e) No tenant shall experience a rent increase that is not explicitly detailed in this Resolution without further application to and approval by the Planning Commission.
- f) In order to ascertain the condition of the units, a subcommittee of the Planning Commission shall conduct annual on-site inspections of the property, record their observations, and provide a written report to the Planning Commission. The Planning Commission may agendize a public hearing for the purpose of amending or revising the limitations listed in this Resolution based on new or updated findings relevant to the criteria listed in Pacifica Municipal Code 9-4.2455(e).

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Planning Commission of the City of Pacifica finds the project exempt from the California Environmental Quality Act; and finds that the minimum requirements of Pacifica Municipal Code Section 9-4.2455(e) have been satisfied for a rent

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increase, and therefore approves the application subject to the limitations described herein and in the staff report.

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Passed and adopted at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 19<sup>th</sup> day of August 2019.

AYES, Commissioners: Clifford, Kraske, Nibbelin, Berman, Bigstyk

NOES, Commissioners: Campbell

ABSENT, Commissioners: Rubinstein


ABSTAIN, Commissioners: None

  
Thomas Clifford, Chair

ATTEST:

  
Tina Wehrmeister, Planning Director

APPROVED AS TO FORM:

  
Michelle Kenyon, City Attorney