



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Planning Commission

**FROM:** Steve Matarazzo, Interim CDD Director

**MEETING DATE:** May 22, 2014

**SUBJECT:** Consideration of Amendment to the Municipal Code Related to Occupancy Requirements for Second Units PGM C Section 23.80.060 (m)

**CEQA:** Class 1 Exemption: Permitting of Existing Facilities; and, Class 5 Exemption: Minor Alterations in Land Use Limitations

**RECOMMENDATION**

Approve code amendment to remove owner-occupancy requirements for those second units built prior to August 5, 1992 (Group 1 units identified in Housing Monitoring report of April 17, 2014, Attachment 2)

**BACKGROUND**

On April 17, 2014, the Planning Commission tentatively approved a use permit amendment for 547 Asilomar Avenue, allowing the second unit and primary house to be used without an owner occupying the primary house or the second unit. In order for that use permit to become effective, the City Attorney has determined that the municipal code will need to be amended. (See Agenda Report dated April 17, 2014, Attachment 3)

**DISCUSSION**

Staff recommends that municipal code section 23.80.060 (m) Occupancy of Second Units, be amended as follows: (Underlining indicates proposed, new language)

(m) Occupancy

- (1) The principal place of residence of the building site owner shall be either the second unit or the primary unit.
- (2) Occupancy of the unit not occupied as the principal place of residence by the owner shall meet at least one of the following criteria:
  - (a) Occupants shall qualify as no greater than a median income household as determined by the community development director. Rent charges shall not exceed 30 percent of median or below median income levels as determined annually by HUD.

**ITEM 7 b.**


- (b) No rent or other consideration is asked, required or paid as a condition of occupancy.
- (3) Occupancy of a second unit is limited to two persons.
- (4) The restrictions of subsections (1) and (2) shall not apply to second units constructed prior to August 5, 1992.

This type of code amendment would allow the type of property use supported by the Commission when it approved UPA 14-209 on April 17, 2014. The proposed amendment would potentially affect 39 second units constructed prior to August 5, 1992. All of the property owners of those units have been notified of this potential rule change.

**ATTACHMENTS**

- 1. Draft Resolution
- 2. Housing Monitoring Report, dated April 17, 2014
- 3. Staff Report Related to 547 Asilomar, dated April 17, 2014

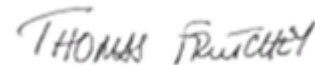
RESPECTFULLY SUBMITTED:



---

Steve Matarazzo  
Interim Director  
Community Development Department

REVIEWED BY:



---

Tom Frutchey, City Manager



## RESOLUTION NO. 14- \_\_\_\_

**RESOLUTION OF THE PACIFIC GROVE PLANNING COMMISSION APPROVING  
AN AMENDMENT TO THE MUNICIPAL CODE TO ELIMINATE THE OWNER-  
OCCUPANCY REQUIREMENT FOR A LIMITED NUMBER OF PROPERTIES  
WITH SECOND UNITS CONSTRUCTED PRIOR TO AUGUST 5, 1992**

**WHEREAS**, on April 17, 2014, the Planning Commission reviewed an application to eliminate the owner-occupancy requirement for a certain second unit and primary residence for a property located at 547 Asilomar Avenue, and found it to be a reasonable request by tentatively approving a related use permit amendment; and

**WHEREAS**, prior to the use permit amendment for said application to become effective, the City Attorney has determined that the municipal code needs to be amended to eliminate the owner-occupancy requirement for a limited number of second units in Pacific Grove, including the aforesaid property; and

**WHEREAS**, on May 22, 2014, the Planning Commission reviewed the staff report related to the proposed municipal code amendment, reading as set forth below; and recommends its adoption to the City Council. The Planning Commission further finds that the code amendment qualifies as a categorical exemption to the California Environmental Quality Act and recommends that a Notice of Exemption be filed following City Council adoption of the amendment.

Section 23.80.060 (m) of the Municipal Code is hereby amended to read: (Underlining indicates proposed amendment language.)

(m) Occupancy

- (1) The principal place of residence of the building site owner shall be either the second unit or the primary unit.
- (2) Occupancy of the unit not occupied as the principal place of residence by the owner shall meet at least one of the following criteria:
  - (a) Occupant(s) shall qualify as no greater than a median income household according to HUD income level guidelines, as determined by the community development director. Rent charges shall not exceed 30 percent of median or below median income levels as determined annually by HUD.
  - (b) No rent or other consideration is asked, required or paid as a condition of occupancy
  - (3) Occupancy of a second unit is limited to two persons.
  - (4) The restrictions set forth in subsections (1) and (2) above do not apply to second units constructed prior to August 5, 1992.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of Pacific Grove hereby approves said municipal code amendment and recommends its adoption by the City Council

**PASSED AND ADOPTED** BY THE PLANNING COMMISSION OF THE CITY OF PACIFIC GROVE this 22<sup>nd</sup> day of May 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

---

WILLIAM FREDRICKSON, Chair



## **City of Pacific Grove HOUSING MONITORING PROGRAM REPORT (2013)**

The goal of the housing monitoring program is to assess the availability of affordable housing in the City of Pacific Grove. Data gathered is used to develop, implement and update the City's Housing Element. As a result of City ordinances and policies over time, affordable housing is available to senior citizens, disabled individuals and low income homeowners on fixed incomes as they struggle to maintain permanent housing.

Since 1998 the Housing Division of the Community Development Department has been monitoring affordable housing units through the initial selection of tenants; updating annual changes in tenant income and rent increases; and certifying new tenants throughout the year as requested.

The private residential housing units subject to annual monitoring include: approved Second Units, approved Affordable Units, approved Registered Units and property owners who borrowed funds through Housing Rehabilitation Loan Program (HRLP) in Pacific Grove.

Monitored housing units can be described as follows:

- Second units – Rental units associated with residential properties (single-family dwellings) which are approved Second or Auxiliary Housing Units (61 properties)
- Affordable and Registered units - Rental units associated with residential properties which are approved/registered Affordable Units can be multifamily or mixed use dwellings (14 properties with a total of 65 affordable units including the Vista Point Senior Complex)
- Housing Rehabilitation Loan Program (HRLP) properties– Single family dwellings whereby eligible homeowners must use the property as their principal residence for the life of the loan. (29 Loans outstanding)

Each year staff verifies property ownership through the County Assessor's office. Self-certification forms are sent to all Second Unit property owners so they may certify by signature that they reside on the property. Owners of Groups Two (2) and Three (3) Second Units (see description on following pages) are also required to provide information applicable to other tenant occupancy requirements.

Owners of Affordable Units are sent verification forms, Annual HUD income limits (Attachment A), and a copies of the discretionary permit (or equivalent documentation describing terms and conditions of approval) which established the unit. Approved tenants also are sent verification forms. The verification forms are slightly different for each property, but request that the owner and tenant certify (by signature) that the tenant is income-eligible for the unit, and that rent increases have been limited to once annually and do not exceed the limits as specified in their

respective discretionary permits.

Homeowners under the HRLP are asked to complete owner occupancy certification forms and to supply proof of residency by submitting copies of utility bills. Staff also verifies current home owner insurance policy statements and current property tax bills.

If any property owner fails to provide owner occupancy certification, or if the information provided does not demonstrate compliance with a governing program ordinance or policy, staff conducts an investigation.

## **SECOND UNITS**

Second Unit approvals occurred at different time periods, and as time went on, additional occupancy requirements were added depending on the conditions of unit approval. Earlier auxiliary units were approved through issued conditional use permits, while later units were approved by resolution and required a deed restriction. The requirement that a property owner reside on the property remained the threshold condition of approval for all Second Units across time. For ease of understanding, the occupancy requirements are categorized in three groups.

**Group One** – Second Units approved between May 1983 and August 4, 1992. These secondary housing units (called auxiliary units) require that a property owner must occupy the property and have no additional occupancy requirements. The greatest number (39) of rental housing units fall in this category.

**Group Two** – Second Units approved between August 5, 1992 and June 30 2003. Like Group One, an owner must live on the property. However, occupancy of the unit not occupied by an owner shall meet at least one of the following criteria:

- a. One occupant shall be at least 60 years of age; or
- b. Occupant(s) shall qualify as lower or very low-income persons. Rent charges shall not exceed 30% of lower or very low income levels as determined annually by HUD<sup>1</sup> (see Attachment A); or
- c. One occupant shall fall into one of the following disability categories: visual impairment, hearing impairment, mobility impairment, developmentally disabled; or
- d. No rent or other consideration is asked, required or paid as a condition of occupancy.

**Group Three** – Second Units approved from July 1, 2003 to present. Like the other two groups, an owner must live on the property. The occupancy of the unit not occupied by an owner shall meet at least one of the following criteria:

- a. Occupant(s) shall qualify as no greater than a median income household according to HUD income level guidelines. Rent charges shall not exceed 30% of median or below median income levels as determined annually by HUD (see Attachment A).
- b. No rent or other consideration is asked, required or paid as a condition of occupancy.

---

<sup>1</sup> HUD-Department of Housing and Urban Development (Federal Agency)

The current governing Second Unit Ordinance (P.G.M.C. Chapter 23.80) however, does not go far enough to create affordable low income housing units because of the established income levels at the median level. According the City of Pacific Grove Housing Element 2007-2014 adopted in August 2011, it is recommended that amendments to the Second Unit Ordinance be addressed to both make the development of second units more attractive and to ensure that units are affordable to lower income households.

Second Units are monitored to determine whether a property is still owner occupied and to evaluate the occupancy of the second unit rental. The owner occupancy condition is met if the property owner resides in either the main residence or the second unit, and rental conditions could include determining renter income eligibility and rent rates.

**Results.** There are 61 approved secondary housing units. Of the approved second units, Group One includes 39 properties, Group Two includes 9 properties, and Group Three includes 13 properties.

#### Owner Occupancy Requirement.

As shown in Table 1, of the 39 property owners in Group 1 are held to one condition, that being the owner must occupy either the main house or the secondary housing unit. Ten property owners reported owner occupancy from a different mailing address. One owner sold the property because she could not meet the owner occupancy requirement. One owner is asking the Planning Commission to allow an exception to the owner occupancy requirement and one property owner purchased the property and wants a Transient Use License to rent both units. Of the 9 properties in Group 2, all 7 properties meet the owner occupancy requirement, 2 owners have out of town mailing addresses. Of the 13 approved properties in Group 3, all properties meet the owner occupancy requirement.

**Table 1 - Second Units-2013**

Type of Occupancy Requirements - Binding Ordinance or Code	Number of Approved Second Units	Owner lives on Property	1 Unit Provides housing for LI/DSBLD/SR
Pre Ord. 1848 (Prior to 1992) Group 1	39	29	
Ord. 1848 (1992- 2003) Group 2	9	7	5
Ord. 03-08 (2003 present) Group 3	13	13	10
<b>Total</b>	<b>61</b>	<b>49</b>	<b>15</b>

Rental Requirements. As mentioned earlier for Groups 2 and 3, a total of 22 property owners were required to provide information about the occupancy of the unit not occupied by the owner. Of those 22 properties, 15 provide rental housing to moderate-income, low-income, senior and or disabled tenants. Of those properties, 7 owners indicated that their second units are vacant or they use the unit for personal use and do not charge rent. Two property owners in Group 1 have challenged the owner occupancy requirement while a total of 10 owners reside elsewhere.

Several issues have developed in the monitoring process over the past few years. First, owners continue to challenge the owner occupancy requirement. Some owners are finding other ways

not to occupy their property by, for example, giving a fractional interest of the title to a tenant in order to then indicate that an “owner” on title resides at the property. One property owner sold her property due to the inability to comply with occupancy requirement. New owners must be informed of the conditions placed and properties and one owner has denied the disclosure of the conditions at the time of purchase.

**Fees.** The City began charging monitoring fees for second units approved in Group 2 and Group 3 in 2010. The fees collected in 2013 total \$381.

### **AFFORDABLE UNITS**

There are 13 properties throughout the City that have obtained various City approvals that resulted in the creation of 21 affordable housing units. The 21 units consist of 11 studio units and 10 one-bedroom units. The purpose of monitoring these properties is to determine compliance with:

- (1) Annual rent increase limits, and
- (2) Income eligibility requirements of the tenants.

In addition to the annual monitoring of these properties, all prospective tenants must be income-certified by the City’s Housing Division before moving in to an affordable unit. The City’s income-certification process consists of third-party verifications of all income sources, and a review of bank statements and tax returns.

**Results.** As shown in Table 2, these 13 properties potentially provide 21 affordable housing units throughout the City of Pacific Grove. During this monitoring period 16 units were rented housing a total of 20 tenants. All tenants meet the required income eligibility requirements because their income is certified by the City or County Housing Authority under Section 8 before occupancy. All rents charged were found to be within the appropriate ranges and have been increased only one time in a twelve-month period.

A total of 5 units are currently vacant. Two of the vacant units are located at Forest Hill Manor. The Housing Division began monitoring the Forest Hill Manor (FHM) affordable units in 2008. According to the staff at Forest Hill Manor, they have been unable to find tenants that meet the income criteria and can afford to pay the rent along with the additional \$800 service fees which FHM requires. Two owners continue to challenge the rental requirements and their properties remain vacant. Even with the median income level established for these later approved units and the flexibility of renting to an underserved group, such as elderly or disabled households, these owners requesting the option to rent to whomever they choose and to charge market rate rent. One owner is still taking referrals for his vacant unit.

The Vista Point Complex, located in the 700 block of Jewell Avenue provides 48 affordable units for seniors (62 years and older), plus a unit for an on-site custodian or property manager. These units are not monitored by the City through this monitoring program since they have extensive monitoring requirements required by various funding sources, and appropriate provisions in the ground lease with the City of Pacific Grove that guarantee continued affordability. These 48 apartments provide:

- 42 units at 50% of the area median income (AMI)
- 6 units at 60% of AMI
- 1 unit at 80% of AMI



Due to regular vacancies, the complex continues to accept applications for placement on a waiting list. The Housing Division also provides information and referral to Vista Point and receives updates throughout the year when applications are available to the waiting list for the complex.

**Table 2 - Affordable Units 2013**

	Type of Unit	Income Level Served and General Location of Unit	Current Rent/Month	Household Size
1	Studio	Low Income-1100 Blk Lighthouse Ave	\$825	1
2	Studio	Low Income-1100 Blk Lighthouse Ave	\$824	1
3	Studio	Low Income-1100 Blk Lighthouse Ave	\$850	1
4	Studio	Low Income-1100 Blk Lighthouse Ave	\$850	1
5	Studio	Low Income-1100 Blk Lighthouse Ave	\$825	1
6	Studio	Low Income-1100 Blk Lighthouse Ave	\$805	1
7	Studio	Very Low Income-400 Blk Lighthouse Ave	0	Vacant
8	Studio	Low Income-500 Blk Gibson Ave	0	Vacant
9	Studio	Low Income-500 Blk Gibson Ave	0	Vacant
10	Studio	Very Low Income-800 Blk 19 <sup>th</sup> St	Section 8	1
11	Studio	Very Low Income-900 Blk Cedar St	0	Vacant
12	1 BR	Very Low Income-100 Blk Pine Ave	Section 8	1
13	1 BR	Very Low Income-100 18 <sup>th</sup> St	\$612	2
14	1 BR	Moderate Income-500 Blk Pine Ave	\$995	1
15	1 BR	Moderate Income-500 Blk Pine Ave	\$995	1
16	1 BR	Low Income-500 Blk Pine Ave	\$995	1
17	1 BR	Low Income-100 Blk Evans	\$1,125	2
18	1 BR	Lower income-100 Blk 15 <sup>th</sup> St	\$723	1
19	1 BR	Lower Income-100 Blk 14 <sup>th</sup> St	\$815	1
20	1 BR	Very Low Income-1000 Blk Funston Ave	\$625	1
21	1 BR	Moderate Income-400 Blk Central Ave	0	Vacant

**Fees.** A condition of several of the discretionary permit approvals requires that the City collect monitoring fees. The fees help defray the cost of the staff time required to conduct the annual monitoring as well as the certification of each new tenant as a unit becomes available. The fees received to monitor Affordable Units totaled \$871.00.

Overall, the 2013 monitoring fees totaled \$1,252.00 and have been deposited into the Housing Program Fund.

### **HRLP PROPERTIES**

Monitored HRLP properties included those with outstanding loans owed to the City. In all cases, the owner must continue to occupy the property or the loan must be repaid. Additionally, the owner must maintain current active homeowners insurance and must be current in property tax payments. The housing staff monitors owner compliance annually.

The program also confirmed that of the 29 outstanding loans made low income homeowners, 2 properties are on the market, 1 property is in Probate and 1 property with a very small loan amount is facing foreclosure. Twenty five homes are still occupied by the original borrower. Over the past year, one loan paid off when borrower decided to take on a Reverse Mortgage. New Grant funding awarded by the State HCD CDBG program will allow the City to rehabilitate up to 10 properties.

**UNDOCUMENTED RENTAL UNITS**

A function of the Code Compliance Program is to address complaints from the public about questionable housing units. These complaints may come from a former tenant, a neighbor or other concerned citizen. These complaints are investigated because of the City's role in ensuring health and life safety. Typically a Building Inspector is asked to conduct an inspection. From 2012 to 2013, the Code Compliance Program investigated 13 properties based on allegations of undocumented dwelling units at a single family dwelling in the R-1. (See Table 3)

Whenever the issue of undocumented units is investigated by staff due to a complaint, all options are explored to help the property owner comply with the zoning code. Since the spring of 2013, PGMC § 23.64.360 Permitting of undocumented dwelling units has been used to help owners comply. Also, the PGMC §23.80.010 Second Units is considered to determine whether the property and the existing unit can comply under this section.

**Table 3- Undocumented Units Investigated by Code Compliance**

Start Date	Location	Type	Date Resolved	Status
7/24/12	Congress 800 block	Detached unit	5/29/13	Permitted Undocumented Unit
10/17/12	Park 200 block	Unit w/in SFD	11/7/12	Not eligible; unit not found
12/18/12	Cedar 200 block	Garage unit	9/17/13	Not eligible; unit removed
12/19/12	17 <sup>th</sup> 500 block	Detached unit	12/11/13	Permitted Undocumented Unit
1/3/13	Gibson 400 block	Garage unit	5/22/13	Not eligible; unit removed
6/18/13	Sunset 700	Unit w/in SFD	7/15/13	Not eligible; unit removed
6/18/13	18 <sup>th</sup> 100 block	Above garage unit		Owner out of state
7/11/13	Jewell 900 block	Above garage unit	1/10/14	Not eligible; unit removed
9/13/13	Crocker 200 block	3 attached to SFD		Pending PUU for 1 unit
10/2/13	Crocker 500 block	Unit w/in SFD	11/12/13	Not eligible unit removed
11/15/13	17 Mile 200 block	Triplex w/ addtl unit		Investigation pending
1/7/14	Patterson 1000 block	Detached bdrm		Not eligible; unit to be removed
2/20/14	8 <sup>th</sup> 200 block	Unit attached duplex		Not eligible; pending

Since the passing of the Undocumented Unit Permitting Ordinance in 2013, permits for 3 units have been approved to date, 2 permit applications are pending for a total of 5 permit applications, and 1 inquiry. (See Table 4)

**Table 4 – Undocumented Unit Permit Applications Processed**

Start Date	Location	Type	Resolve Date	Note
7/24/12	Congress 800 block	Detached unit	5/29/13	PUU approved
12/19/12	17 <sup>th</sup> 500 block	Detached unit	12/11/13	PUU approved
7/15/13	10 <sup>th</sup> 100 block	Detached unit	7/15/13	PUU approved
2/19/14	Bayview 800 block	Detached bedroom	Inquiry	Not eligible PUU
9/13/13	Crocker 200 block	3 attached to SFD		Pending PUU for 1 unit
3/4/14	Adobe 1000 block	Detached unit		Pending PUU 1 unit

**CONCLUSION**

The Housing Monitoring Program continues to account for the City's affordable housing stock in the review of occupancy requirements of all 74 properties (a total of 82 rental units) and 29 HRLP properties. Housing Division staff field calls throughout the year from citizens looking for affordable housing in the City of Pacific Grove. Staff also provides tenant income certifications as units turnover.

**Attachment:**

A – 2013 Income Guidelines for Housing Programs



## **AGENDA REPORT**

**TO:** Planning Commission  
**FROM:** Terri Schaeffer, Housing Program Coordinator  
**MEETING DATE:** April 17, 2014  
**SUBJECT:** 547 Asilomar Avenue  
**CEQA:** Exempt Project from CEQA Class 3.15303(a)

### **RECOMMENDATIONS**

Receive report and discuss revision of PGMC §23.80.060 (m) (1) Occupancy standards. Conditional approval of UPA 14-209 pending revision of PGMC §23.80.060 (m) (1) to allow waiver of the owner occupancy standard.

### **DISCUSSION**

The property located at 547 Asilomar Avenue was granted UP1973-86 in 1987 so that a new single family dwelling could be built on the same lot as an existing single family dwelling. The Planning Commission granted the Use Permit and the existing single family dwelling became an auxiliary unit on the property. The current owners purchased the property in 2001 and since have used the main single family dwelling as the second home for the two families who own the property and the auxiliary unit has been vacant or rented for transient use. The property owners have never used the property as their primary place of residence and were misinformed that the property could be used as a vacation rental property. Each year they have indicated through the Housing Monitoring that they use the property while retaining a residence elsewhere.

The property owners are requesting that the owner occupancy requirement be relaxed in circumstances such as theirs whereby they use the main house on the property as a vacation home for the owners and their families. The owners would like to rent the secondary unit to a permanent tenant who would act as caretaker of the property. The owners will accept all other conditions under §23.80.060 but request an exception to the owner occupancy requirement. The owners have used the residence regularly since they have owned the property but the property is not the principal place of residence. The property is owned by 2 families and has been improved and maintained like their principal place of residence. The owners ask the Occupancy requirement be waived as they will have a permanent tenant who will act as caretaker and only family members will use the property regularly while maintaining our principle place of residence elsewhere.

Staff has knowledge of multiple cases where this is reported. Until the Zoning Code can be changed to address these concerns this Use Permit Amendment appears to be the best avenue to address the issue on a case by case basis.

### **OPTIONS**

1. Approve Amended Use Permit UPA 14-209 based findings and conditions;

- ATTACHMENT 3**
- ITEM 7 b.**
2. Conditional approval UPA 14-209 pending revision of PGMC §23.80.060 (m) (1) to allow waiver of the owner occupancy standard ;
  3. Deny any action on this matter, citing findings.

**ATTACHMENTS**

1. UPA 14-209
2. Draft Deed Restriction
3. Draft Resolution

Respectfully submitted:



---

Terri C. Schaeffer  
Housing Program Coordinator