



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Community Development

Prepared by:
Alicia Giudice, Community Development Director
Don C. Jeppson, Chief Building Official

City Manager Approval:

TOPIC: REQUEST TO WAIVE THE BUILDING PERMIT FEES

SUBJECT: RESOLUTION DENYING THE REQUEST FOR WAIVER OF BUILDING PERMIT FEES FOR THE VIVALON HEALTHY AGING AFFORDABLE HOUSING PROJECT AT 999 THIRD STREET (PREVIOUSLY WHISTLESTOP) (APN: 011-265-01)

RECOMMENDATION:

Adopt resolution to deny the request for waiver of building permit fees.

BACKGROUND:

In [January 2020](#), the City Council adopted Resolution No. 14760, which established guidelines for the administration of the Affordable Housing Trust Fund (AHTF), with the intent of maximizing opportunity for development of affordable housing projects. The guidelines provide an opportunity to receive AHTF funding through a competitive process that begins with a Notice of Funding Availability (NOFA) or through a rolling application process.

On [March 23, 2020](#), the City Council approved a General Plan Amendment (GPA18-001), Zoning Text amendment (ZO18-003), and Use Permit (UP18-034) allowing development of a Research and Development building for BioMarin, and a 67-unit, 70-foot tall, six-story senior center and affordable senior housing building for Whistlestop/EDEN Housing on a 133,099 sq. ft. parcel.

On June 5, 2020, [the City issued a Notice of Funding Availability](#) (NOFA) for \$1.6 Million of initial funding to spur the creation of affordable family rental housing. The City received four (4) applications totaling \$3.25 million in funding requests, one of which was from Eden Housing requesting \$1.0 Million to help fund the senior housing project at 999 Third Street. On [October 5, 2020](#), the City Council approved funding for Eden Housing for the Whistlestop/Vivalon affordable housing project at 999 Third Street, in the form of a residual receipts loan of \$800,000. At the same time, the City Council approved a \$750,000 grant for Homeward Bound for a supportive housing project at 190 Mill Street.

On January 19, 2021, Eden Housing submitted an application for building permits to the City of San Rafael Community Development Department. The City began the plan review process and retained InterWest to provide plan review.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

On May 3, 2021, Eden Housing submitted a letter to the San Rafael City Clerk requesting a waiver for building permit fees associated with the above referenced application for the Vivalon Healthy Aging Affordable Housing Project at 999 Third Street. Eden cited the following as reasons for the requested fee waiver:

1. Prices in the lumber supply chain have significantly increased, by 230% over the last 12 months.
2. Commercial insurance estimates from insurance providers have more than doubled within the last year, amounting to an additional \$500,000 in cost.
3. Long-term lending rates are increasing and will have increased by more than 0.04% by the time construction begins.

The estimated building permit fees to provide plan review and building inspections, as required by the California Building Codes, total \$214,963, including third party plan review. As mentioned above the City is currently under contract for these services with InterWest, a professional codes service contractor.

ANALYSIS:

The applicant has submitted a request for a waiver of building permit fees pursuant to City Council Resolution No. 11025. The applicant has estimated total project costs (valuation) to be \$28.3 Million, and \$2.5 Million gap in their project funding. However, the \$2.5 Million gap includes building permit fees that were expected to be between \$1,132,000 and \$1,415,000. The requested fee waiver is for the full amount. However, as shown in Table 1 below, total building permit-related fees will be approximately \$561,844. Only \$214,963 (shown in bold) are eligible to be waived under City Council Resolution No. 11025.

TABLE 1 Building Permit Related Fees	
Fee Type	Fee
Building Permit	\$122,836
Plan Review	\$92,127
Fire Plan Check Fee	TBD
S.M.I.P.	\$7, 924
CA Green Building Fund	\$1,132
MEP Fees	\$375*
Plan Retention	TBD
Development Impact Fee (Res)	\$8,543
Development Impact Fee (Com)	\$2,400
General Plan Maintenance Fee	\$11,792
Long Range Planning Fee	\$31,814
Street Maintenance	\$282,900
Total Fees	\$561,844.28
*Does not include itemized fees	

California Building Codes require that, as part of the building permit process, project plans are reviewed for substantial compliance with the building codes and once a building permit is issued, inspections are conducted to ensure the work is in conformance with the codes and the approved plans. Building permit

fees are typically borne by the applicant and are intended to recover 100% cost of plan review and inspections. The applicant paid an initial plan review fee of \$92,127. The plan review work has already been contracted to InterWest. However, the applicant is requesting a fee waiver of both plan review fee and the building permit fee.

Fee waivers are intended to off-set development cost and create a path for development of affordable housing projects. The City has previously approved \$800,000 in funding for this affordable housing project to also off-set the cost of development. One of the criteria for receiving the funds is stated in the application forms *“Successful applicants will be responsible for all entitlements, construction and long-term management of the housing.”*

Fee waivers such as the one proposed by Eden have not been requested or granted by the City. The few exceptions include the following:

- In 2020, Homeward Bound was approved for a fee waiver of \$30,473.00. However, this project was associated with a state grant (SB2) that earmarked funding for planning projects that paved the way for affordable housing. This project was identified as a pilot project to receive a portion of the grant.
- In 2014, the City approved a significant reduction in traffic impact fees of \$254,500 for the San Rafael Corporate Center. The fee waiver was approved due to an unusually inflated valuation resulting from the unique plumbing and mechanical units needed for the BioMarin laboratory facilities. The reduction in impact fee resulted in an fee that was proportionate to the impact fee associated with a similarly sized building.

Fees waived for this project would be allocated from the AHTF. The intent of allocations from this fund is to maximize the opportunity for development of affordable housing projects. In 2020, the City received four (4) applications in response to a NOFA. Eden Housing/Vivalon was one of only two applicants who were awarded funding. While there may be an opportunity for additional allocation of funding through this fund, the City would want to release a NOFA and provide other applicants an opportunity to be considered for funding. For this reason, staff is recommending denial of the request for fee waiver.

FISCAL IMPACT:

Staff is recommending denial of the requested fee waiver and there is no fiscal impact associated with this action. However, if the fee waiver is approved, the total amount of the fee waiver (\$214,963) would need to be funded by the AHTF.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as proposed by staff denying the request for waiver of building permit fees.
2. Adopt the resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt the resolution to deny the request for waiver of building permit fees.

ATTACHMENTS:

1. Resolution
2. Eden Housing Correspondence
3. Public Hearing Notice

RESOLUTION NO.

RESOLUTION OF THE CITY OF SAN RAFAEL CITY COUNCIL DENYING THE REQUEST FOR WAIVER OF BUILDING PERMIT FEES FOR THE VIVALON HEALTHY AGING AFFORDABLE HOUSING PROJECT AT 999 THIRD STREET (PREVIOUSLY WHISTLESTOP) (APN: 011-265-01)

WHEREAS, Vivalon, formerly known as Whistlestop, has provided a full range of services and activities for seniors at the former Southern Pacific depot in downtown San Rafael for the past 44 years; and

WHEREAS, on March 23, 2020, the City Council approved a General Plan Amendment (GPA18-001), Zoning Text amendment (ZO18-003), and Use Permit (UP18-034) allowing development of a Research and Development building for BioMarin, and a 67-unit, 70-foot tall, six-story senior center and affordable senior housing building for Whistlestop/Vivalon/EDEN Housing on a 133,099 sq. ft. parcel; and

WHEREAS, on October 5, 2020, the City Council approved funding for Eden Housing for the Whistlestop/Vivalon affordable housing project at 999 Third Street, in the form of a residual receipts loan of \$800,000 with the understanding that applicant would be responsible for all entitlements, construction and long-term management of the housing; and

WHEREAS, on January 19, 2021, Eden Housing submitted an application for building permits to the City of San Rafael Community Development Department; and

WHEREAS, the estimated building permit fees to provide plan review and building inspections, as required by the California Building Codes, are \$214,963, and includes third party plan review currently under contract with InterWest, a professional codes service contractor; and

WHEREAS, the costs of conducting plan reviews, and inspections are offset by building permit fees; and

WHEREAS, the City recognizes the important role building codes, plan reviews and inspections have in protecting the public every day and in times of disaster, by guiding the safe construction of built environment through the California Building Codes, which include safeguards from natural disasters such as wildland fires, floods, and earthquakes; and

WHEREAS, City Council Resolution No. 11025 established a policy for evaluating requests for fee waivers for certain projects, including affordable housing projects; and

WHEREAS, on May 3, 2021, Eden Housing submitted a letter to the San Rafael City Clerk requesting a waiver for building permit fees associated with the above-referenced application for the Vivalon Healthy Aging Affordable Housing Project at 999 Third Street; and

WHEREAS, the funding awarded to Eden Housing on October 2020 was intended for development of an affordable housing project; and

WHEREAS, the requested fee waiver would need to be off-set by monies allocated for that purpose such as the Affordable Housing Trust Fund. While the City intends on releasing additional Notices of Funding Availability to support additional funding for affordable housing projects, a NOFA has not been released in 2021; and

WHEREAS, on July 19, 2021, the City Council held a duly noticed public hearing on the proposed project, accepting and considering all oral and written public testimony and the written report of the Department of Community Development; and

WHEREAS, the City Council finds that waiver of the building permit fees in this case is inappropriate because the applicant was previously awarded funding from the affordable housing trust fund with an understanding that they would be responsible for entitlements, construction and long-term management of the project; and

WHEREAS, the City Council further finds that the building permit fee estimate is significantly lower than what the applicant was expecting to pay, therefore the applicant's funding gap appears to be smaller than suggested in the request for the fee waiver;

NOW, THEREFORE BE IT RESOLVED that the San Rafael City Council does hereby deny the request for waiving the building permit fees associated with the Vivalon Health Aging Affordable Housing Project at 999 Third Street.

I, Lindsay Lara, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael City Council held on the 19th day of July 2021, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk



Lindsay Lara, City Clerk
City of San Rafael
1400 Fifth Ave, Rm. 209
San Rafael, CA 94901

May 3rd, 2021

Subj: Vivalon Health Aging Affordable Housing Project
Consideration of Fee Waiver Requests for Planning and Building Permits

Dear Ms. Clark,

I am writing on behalf of San Rafael Senior, L.P, an affiliate entity of Eden Housing, involved with the development and eventual construction of the 67-unit Vivalon Healthy Aging Campus that will be located at 999 3rd Street in downtown San Rafael. It will be a mixed-use new construction development that includes a health facility and senior center on the bottom two floors that will be owned and managed by Vivalon (formerly known as Whistlestop) and four floors of affordable senior housing above that will be owned by San Rafael Senior, L.P. and managed by Eden Housing.

In regards to the City Council's resolution No. 11025 (see attached) concerning consideration of a fee waiver request for planning and building permits, Eden Housing would like to request a waiver of the building permit fee. The Vivalon Healthy Aging Campus meets the following criteria for this building permit fee waiver request:

1. 100% of the project's 67 units are restricted to 25-50% AMI for at least 55 years, ensuring long-term affordability.
2. Vivalon, our non-profit partner, is a senior targeted community organization that provides services to lower income residents of San Rafael.

The building permit is valued as 4-5% of the entire valuation for the development. That would be 4-5% of \$28,300,000, therefore our building permit fee would approximately be between \$1,132,000 and \$1,415,000. The reasons we are requesting a waiver of the building permit fee are the following:

1. Prices in the lumber supply chain have soared over the last 12 months to a staggering increase of 230%. There is no ceiling in sight and we foresee a need to absorb subsequent increases in the approximate amount of \$1M.¹
2. Commercial insurance estimates from insurance providers have more than doubled within the last year amounting to an additional \$500,000 in cost with additional increases around 15% on the horizon for a wildfire ravaged California.²
3. Long-term lending rates are increasing and will have increased by more than 40 bps (.04%) by the time we begin construction. This will directly impact the amount of mortgage proceeds the property can raise for financing the project..

We would like to thank the City of San Rafael for their already generous loan of \$800,000 from their Housing Trust. These funds from the City's Housing Trust, coupled with a building permit fee waiver will help offset these anticipated cost increases and will ensure financial viability for this project. If we can

¹ [Lumber prices have soared 230% in the last year, pushing timber and homebuilding ETFs to record highs | Markets Insider \(businessinsider.com\)](#)

² [Commercial insurance rates set to continue rising in 2021 | Business Insurance](#)





close the gap on our financing for the project, we will be able to begin construction in 2022. We are also currently in our second round of plan check comments and expect permits to be ready by the end of the summer.

If you have any questions or require any more information please contact the project developer, Tamar Saunders, at tamar.saunders@edenhousing.org or cell phone (510) 861-6129.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Osgood", is written over the printed name.

Andrea Osgood
Vice President of Real Estate Development
Eden Housing

RESOLUTION NO. 11025

A RESOLUTION OF THE SAN RAFAEL CITY COUNCIL RESCINDING RESOLUTION NO. 10789 AND ESTABLISHING A POLICY FOR CONSIDERATION OF FEE WAIVER REQUESTS FOR PLANNING AND BUILDING PERMITS.

WHEREAS, on March 5, 2001 the San Rafael City Council adopted Resolution 10789 establishing criteria for consideration of Planning and Building permit fee waiver requests; and

WHEREAS, since that time waiver requests in the amount of \$17,860 have been granted by the City Council; and

WHEREAS, the City's permit revenues during calendar year 2001 have decreased approximately 20% from the previous year and from budget projections; and

WHEREAS, the City's General Plan contains policies encouraging fee waivers as an incentive for creation of affordable housing and establishment of day care facilities;

NOW, THEREFORE BE IT RESOLVED that the City Council of San Rafael rescinds Resolution No. 10789; and

FURTHER, BE IT RESOLVED that the City Council of San Rafael establishes its revised policy for the consideration of fee waiver requests as follows:

1. The City will consider requests for waiver of applicable fees for Planning and Building permits only, not including mitigation fees such as traffic impact and parkland dedication in-lieu fees.
2. The City will consider waiver of such fees for:
 - a) Child care facilities where it can be demonstrated that the waiver contributes to making such services more affordable to the general public,
 - b) Affordable housing units included in the City's Below Market Rate (BMR) housing program or where units are similarly restricted for long term affordability, based on the proportion of BMR to market-rate units within the application, or
 - c) Governmental agencies, non-profit or other community organizations which provide services which principally benefit lower income residents of San Rafael, up to a maximum waiver of \$2,000 per request. Demonstration of service to lower income residents shall be indicated by dedication of at least one half of the agency's operating budget for direct services or contributions to individuals or households earning less than 50% of County median income levels.
 - d) Consideration of fee waivers shall also be based upon the impact of such waivers on the General Fund.
 - e) Requests for waivers shall be made to the Director of Community Development and processed by assigned staff, consistent with the criteria listed above. Requests for fee waivers for affordable housing and day care facilities in excess of \$2,000 per request shall be forwarded to the City Council for consideration. Requests which are denied by staff may be appealed to the City Council for consideration, at no fee.

I, JEANNE M. LEONCINI, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on Monday, the eighteenth day of March, 2002, by the following vote, to wit:

AYES: COUNCILMEMBERS: Cohen, Heller, Miller, Phillips & Mayor Boro

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None


JEANNE M. LEONCINI, City Clerk

1025

**CITY OF SAN RAFAEL
NOTICE OF ONLINE PUBLIC HEARING**

You are invited to attend an online City Council hearing on the following project:

DATE/TIME/PLACE: **Monday July 19, 2021 at 7:00 P.M.**
***COVID-19 ADVISORY NOTICE:** Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and the Marin County March 16, 2020 Shelter in Place Order, the San Rafael City Council hearing **WILL NOT** be physically open to the public and the meeting will be streamed live to YouTube at: www.youtube.com/cityofsanrafael. Instructions on how to participate online, will be available on the YouTube channel.*

PROJECT: 999 Third Street – Request for waiver of building permit fees pursuant to City Council Resolution 11025. APN: 011-265-01 Biomarin Pharmaceutical, owner; EDEN Housing, applicant; File Nos.: P21-010.

This project qualifies for exemption from the provisions of the California Environmental Quality Act Guidelines pursuant to 15061(b)(3), which states that as a ‘general rule’ the California Environmental Quality Act (CEQA) applies only to projects which have the potential to cause a significant, physical environmental effects

WHAT WILL HAPPEN: You can comment on the project. City Staff will present the requested modifications to the project approval to the City Council. The City Council will hold a public hearing and may take action to approve, deny, or continue a decision on the requested modifications.

IF YOU CANNOT ATTEND: You can send written correspondence by email to city.clerk@cityofsanrafael.org, or by mail/hand delivery to the Office of the City Clerk, City of San Rafael, 1400 5th Ave., San Rafael, CA 94901.

FOR MORE INFORMATION: Contact **Don Jeppson** at Don.Jeppson@cityofsanrafael.org. You may also view the staff report after 5:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>.

SAN RAFAEL CITY COUNCIL
/s/ Lindsay Lara
Lindsay Lara
CITY CLERK

(Please publish in the Marin Independent Journal on Friday, July 9, 2021)