NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, February 16, 2022, 6:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

The Council will not begin consideration of any item on this agenda later than 10:00 p.m. unless such consideration is approved. Any items on this agenda not considered this evening will be continued to a future meeting.

Copies of the agenda packet are available for review at the Pacific Grove Library, in the Finance Department, and electronically at www.cityofpacificgrove.org/agendas. The most effective method of communication with the City Council is by sending an email to citycouncil@cityofpacificgrove.org. In order to allow the City Council adequate time to review communication related to an agenda item, it is recommended that the communication be sent no later than 9:00 AM on the day prior to the City Council meeting.

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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MEETING INSTRUCTIONS

The public may also view the meeting on the Peninsula Channel 25.

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE: Councilmember Amelio

1. **APPROVAL OF AGENDA**

2. **PRESENTATIONS**

A. Boards, Committees, and Commissions Certificates
Reference: Bill Peake, Mayor
Recommended Action: Present certificates.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**

A. Report on Closed Session

B. Other

4. **GENERAL PUBLIC COMMENT**
General Public Comment must deal with matters subject to the jurisdiction of the City and the Council that are not on the Regular Agenda. This is the appropriate place to comment as to items on the Consent Agenda, only if you do not wish to have the item pulled for individual consideration by the Council. Comments from the public will be limited to three minutes and will not receive Council action. Comments regarding items on the Regular Agenda shall be heard prior to Council's consideration of such items at the time such items are called. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.

CONSENT AGENDA
The Consent Agenda deals with routine and non-controversial matters, and may include action on resolutions, ordinances, or other public hearings for which testimony is not anticipated. The vote on the Consent Agenda shall apply to each item that has not been removed. Any member of Council, staff, or the public may remove an item from the Consent Agenda for individual consideration. When items are pulled for discussion, they will be automatically placed at the end of their respective section within the Regular Agenda. One motion shall be made to adopt all non-removed items on the Consent Agenda.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**
Items pulled from this section will be placed under 12. Unfinished and Ongoing Business

A. Minutes of the January 19, 2022, City Council Special and Regular Meetings
Reference: Kerry Lindstrom, Deputy City Clerk
Recommended Action: Approve minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the February 2, 2022 Special and Regular Meeting

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

6. RESOLUTIONS

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. CalRecycle Grant Resolution

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Adopt a Resolution authorizing submittal of grant applications to the California Department of Resources Recycling and Recovery for grants the City may be eligible for independently or as part of a regional application in which Monterey Regional Waste Management District or another member City serves as lead.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

7. ORDINANCES

Items pulled from this section will be placed under 11. Public Hearings

A. Ordinance to Amend PGMC 23.80 - Accessory Dwelling Units

Reference: Alyson Hunter, AICP, CDD Director

Recommended Action: Hold second reading and adopt an ordinance to amend Chapter 23.80 of the PGMC pertaining to Accessory Dwelling Units (ADUs).

CEQA: Statutory Exemption, CEQA Guidelines 15282(h) - Adoption Regarding Second Units in a Single or Multi Family Residential Zone

8. REPORTS – INFORMATION ONLY

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Second Quarter Capital Improvement Budget Report

Reference: Tori Hannah, Administrative Services Director / Assistant City Manager

Recommended Action: Receive the report.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Check Register Report – January 2022

Reference: Tori Hannah, Administrative Services Director/Assistant City Manager

Recommended Action: Receive the report.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Core Revenue Report Status for January 2022

Reference: Tori Hannah, Administrative Services Director/Assistant City Manager

Recommended Action: Receive the Core Revenue Status Report for January 2022.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Ratification of New Local Emergency Actions

Reference: Ben Harvey, City Manager

Recommended Action: Receive report of emergency directives/modifications.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Contract Amendment with Rincon Consultants, Inc.

Reference: Joseph Sidor, Contract Planner

Recommended Action: Approve the Proposed Contract Amendment and Reimbursement Agreement with Rincon Consultants, Inc. based on the Scope of Work and Cost Estimate provided for preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) relating to a development project located at 1661 Sunset Drive.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Thomas Horvath Appointment to Administrative Enforcement Hearing Officer Panel

Reference: Bill Peake, Mayor

Recommended Action: Approve appointment of Thomas Horvath to Administrative Enforcement Hearing Officer Panel for a term ending January 31, 2024.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

Items pulled from this section will be placed under 13. New Business

A. Architectural Review Board Minutes: October 12, 2021

Reference: Laurel O'Halloran, Associate Planner

Recommended Action: Receive minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Planning Commission Meeting Minutes: November 4 and December 9, 2021 Meetings

Reference: Alyson Hunter, AICP, CDD Director

Recommended Action: Receive minutes

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

For public hearings involving a quasi-judicial determination by the Council, the proponent of an item may be given 10 minutes to speak and others in support of the proponent's position may be given three minutes each. A designated spokesperson for opposition to the item may be given 10 minutes to speak and all others in opposition may be given three minutes each. Very brief rebuttal and surrebuttal may be allowed in the sole discretion of the Council. In public hearings not involving a quasi-judicial determination by the Council, all persons may be given three minutes to speak on the matter. Public hearings on non-controversial matters or for which testimony is not anticipated may be placed on the Consent Agenda, but shall be removed if any person requests a staff presentation or wishes to be heard on the matter.

A. Vacation of Excess Right-of-Way on Sloat Avenue Pursuant to §§ 8300-8368 of the California Streets and Highways Code

Reference: Alyson Hunter, AICP, CDD Director

Recommended Action: Hold a public hearing and approve a resolution conditionally authorizing the vacation of excess right-of-way (ROW) for a portion of Sloat Avenue pursuant to Sections 8830-8368 of the California Streets and Highways Code.

CEQA: Environmental Impact Report

B. State Community Development Block Grant (CDBG) Program Application

Reference: Anastacia Wyatt, Senior Housing Program Manager

Recommended Action:

1. Conduct a Public Hearing on the State Community Development Block Grant (CDBG) Program to solicit public input on possible competitive and over the counter activities to be included in the application, and
2. Approve Housing staff to submit an application and resolution approving a funding application and the execution of a grant agreement and any amendments to the State CDBG Program.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Amendment to AP/UP 16-203 previously-approved AP/UP 16-203 (Council Resolution No. 18-030; September 5, 2018)

Reference: Joseph Sidor, Contract Senior Planner

Recommended Action: Approve Amendment (No. 21-0457) to the previously-approved AP/UP 16-203 (Council Resolution No. 18-030; September 5, 2018). The proposed Amendment is in substantial conformance with the original project, which demonstrated consistency with the General Plan and Zoning Ordinance.

CEQA: Environmental Impact Report

D. City Council Salary and Health Benefits ***This item was pulled from the 9/15 agenda and continued to a future meeting once all information is received.***

Reference: Jenny McAdams, Mayor Pro Tem and Amy Tomlinson, Councilmember

Recommended Action: Introduce and hold first reading of an ordinance to (1) amend the salary classification schedule to modify salary ranges for City Council Member and Mayor and (2) direct a summary of a proposed ordinance be published as approved by the City Attorney.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

12. UNFINISHED AND ONGOING BUSINESS

A. Annual Comprehensive Financial Report (ACFR) for the Fiscal Year Ending June 30, 2021 ***This item was continued from the January 19, 2021 meeting.***

Reference: Tori Hannah, Administrative Services Director/Assistant City Manager

Recommended Action:

- Receive the Annual Comprehensive Annual Financial Report, which includes the Auditor's Opinion on the City's financial statements, from the City's independent auditor, Chavan & Associates, LLP
- Receive the Transportation Safety and Investment Plan Account Fund (TAMC Measure X) Report, which includes the Auditor's Report by the City's independent auditor, Chavan & Associates, LLP
- Receive a status on improvements based on the auditor's recommendations that are being implemented, and provide any desired direction.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Cannabis Outreach Subcommittee Update

Reference: Joe Amelio, Luke Coletti, and Chaps Poduri, Councilmembers

Recommended Action: Receive report.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Special Events Calendar for Fiscal Year 2022-2023

Reference: Katie Clark, Recreation Manager

Recommended Action: 1. Approve the Special Event Calendar for Fiscal Year 2022-2023.
2. Approve 13 proposed special events as City Sponsored Events and waive fees for City Staff support and facility/equipment use.
3. Approve 9 proposed special events as Full Cost Recovery Events and do not approve the Legends of Autobahn event.
4. Return with Legends of Autobahn details after they have been developed and approved by staff to seek Council approval per the Recreation Board Recommendations.
5. Allow municipal code exceptions for the designated events to allow pets in the parks
6. Do not approve the Feast of Lanterns and the 5 additional events associated with the Feast. Event organizers shall begin discussions with community stakeholders, the DEI Task Force and others with the goal of bringing back a revised event for Fiscal Year 2023-2024 that reflects changes to address concerns and critiques expressed by the public, stakeholder groups, and a City advisory board regarding the event.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. Local Water Project Business Plan Peer Review

Reference: Daniel Gho, Public Works Director / Deputy City Manager; Tori Hannah, Administrative Services Director / Assistant City Manager

Recommended Action: Receive the Peer Review of Pacific Grove Local Water Project Business Plan prepared by DTA, validating the City's assumptions noted in the Business Plan, and authorize staff to being negotiations with CourseCo; and approve a loan repayment plan for the Sewer Fund Interfund Loan.

CEQA: Environmental Impact Report

E. Hybrid Meeting Update

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve staff recommendation to commence hybrid meetings by phases as outlined in the Discussion section of agenda report.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

F. Financial Report Subcommittee

Reference: Chaps Poduri, Councilmember and Bill Peake, Mayor

Recommended Action: Direct staff to implement Financial Report Subcommittee recommendations listed below.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

G. Monarch Resort Homekey Project

Reference: Bill Peake, Mayor

Recommended Action: Direct City Manager to begin public outreach on the Monarch Resort Homekey project no later than March 16, 2022.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

A. FY21/22 Street Rehabilitation Project – Ocean View Blvd

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action: Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

B. City of Pacific Grove Youth Commission

Reference: Jenny McAdams, Mayor Pro Tem

Recommended Action: Direct the City Manager to return with a draft ordinance and resolution to form a Youth Commission.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Removal of Library Fines and Forgiveness of Current Outstanding Overdue Fines

Reference: Jenny McAdams,

Recommended Action: Discuss and provide direction as to removal of library fines and forgiveness of current outstanding overdue fines. Direct the City Manager to return with a resolution and amendment to the Master Fee Schedule.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

NOTICE OF ADA COMPLIANCE: Pursuant to Title II of the Americans with Disabilities Act (Codified At 42 United States Code Section 12101 and 28 Code of Federal Regulations Part 35), and Section 504 of the Rehabilitation Act of 1973, the City of Pacific Grove does not discriminate on the basis of race, color, religion, national origin, ancestry, sex, disability, age or sexual orientation in the provision of any services, programs, or activities. The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of assisted listening devices will be available at this meeting. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Bill Peake, Mayor

MEETING DATE: February 16, 2022

SUBJECT: Boards, Committees, and Commissions Certificates

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Present certificates.

Attachments

Certificates

CERTIFICATE OF APPRECIATION

This certificate is awarded to

ROXANE VIRAY

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

ERIC FONFEREK

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

MARK CHAKWIN

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

BILL BLUHM

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

CHRIS PATTON

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben H

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

DEBBY BECK

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

DAVID LAWS

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

DAVID TERRY

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

JEANNE BYRNE

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

MIMI SHERIDAN

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

PETER NODZENSKI

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

THOM AKEMAN

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

TERRENCE COEN

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CERTIFICATE OF APPRECIATION

This certificate is awarded to

WILLY NELSON

for outstanding performance and lasting contributions to

CITY OF PACIFIC GROVE

February 16, 2022

Bill Peake

Bill Peake, Mayor

Ben Harvey, City Manager

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Sandra Kandell, City Clerk

MEETING DATE: February 16, 2022

SUBJECT: Minutes of the January 19, 2022, City Council Special and Regular Meetings

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes

DRAFT MEETING MINUTES

CITY COUNCIL

CLOSED SESSION MEETING AGENDA

Wednesday, January 19, 2022, 5:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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CALL TO ORDER
Mayor Peake called the meeting to order at 5:00 pm. Deputy City Clerk Lindstrom conducted roll call with the following Council present via Zoom: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.

APPROVAL OF

AGENDACLOSED

SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS
No public comment was received.

A. Conference with Labor Negotiators (Government Code Section 54957.6)City Negotiators: Mayor Bill Peake
Employee: City Manager Ben Harvey

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, January 19, 2022, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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CALL TO ORDER
Mayor Peake called the meeting to order at 6:00 pm. Deputy City Clerk conducted roll call with the following Council present via Zoom webinar: Mayor Peake, Councilmembers Amelio, Coletti, Poduri, and Tomlinson. Mayor Pro Tem McAdams arrived approximately at 6:05 pm and Councilmember Smith arrived approximately 6:45 pm. Mayor Pro Tem McAdams left the meeting at approximately 8:15 pm.

PLEDGE OF ALLEGIANCE: Councilmember Tomlinson

1. **APPROVAL OF AGENDA**
Action: Mayor Peake recommended moving item 13G to Ongoing Business item 12A

Action: Upon motion by Councilmember Amelio and seconded Mayor Pro Tem McAdams, the Council approved the agenda as amended.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, and Tomlinson.

NOES: None.
ABSENT: Councilmember Smith

2. **PRESENTATIONS**

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**

A. Report on Closed Session by Mayor Peake:
Conference with Labor Negotiators (Government Code Section 54957.6)
City Negotiators: Mayor Bill Peake
Employee: City Manager Ben Harvey

Mayor Peake reported, upon motion by Councilmember Poduri and seconded by Councilmember Amelio with a 5-2 vote, Mayor Peake and Councilmember Coletti voting no, Council voted to approve the City Manager temporary telecommuting agreement from December 20, 2021 to February 18, 2022.

B. Council and Staff made general announcements.

4. **GENERAL PUBLIC COMMENT**
Public comment was received from Barbara Mitchell, Jenny MacMurdo, Phuong Nguyen, Anthony Ciani, David Kong, Rebecca Lee, Janet Cohen, Gloria Dan Yuk-siu Ipson, Anne Oda, Sue Parris, Kim, Lisa Ciani, Carmelita Garcia, Inge Lorentzen Daumer.

CONSENT AGENDA

Action: Consent Agenda item 5B was pulled and considered as Regular Agenda item 12C.

Action: Consent Agenda item 6A was pulled and considered as Regular Agenda item 13A.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Amelio, Council approved the Consent Agenda as amended.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

A. Minutes of the December 15, 2021 City Council Regular and Special Meetings

Action: Approved minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the January 12, 2022 City Council Special Meeting ***This item was pulled and considered as Regular Agenda Item 12C.***

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

A. Application for State Project HOMEKEY Round 2 Funding ***This item was pulled and considered as Regular Agenda item 13A.***

Reference: Anastacia Wyatt, Housing Program Manager

Recommended Action:

1. Adopt a Resolution with the City as the lead applicant and SLI as the co-applicant, authorizing the submittal of an application to the California Department of Housing and Community Development (HCD) in the amount not to exceed $15,000,000 for the conversion of the Monarch Resort into a Homekey project.
2. Authorize the City Manager or her designee to execute a MOU with Shangri-La Industries memorializing roles and responsibilities.
3. Authorize the City Manager or her designee to execute agreement(s) and/ or implementing documents with Shangri La Industries and Step Up Second Street, Inc. to effectuate the implementation of a Homekey project in the City of Pacific Grove.
4. Authorize the City Manager or her designee to execute funding agreement and other implementing documents with the State of California Department of Housing Community Development.

CEQA: Statutory Exemption, CEQA Guidelines Section 15268, Ministerial Projects

7. **ORDINANCES**

A. Ordinance to Amend the City Salary Classification Schedule - Adding IT Support Specialist

Action: Held second reading and adopted Ordinance 22-001 to amend the salary classification schedule to add a salary for Information Technology Specialist and approve the amendment.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

8. **REPORTS – INFORMATION ONLY**

A. Monterey Salinas Transit Minutes of November 15, 2021

Action: Received minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Check Register Report – December 2021

Action: Received the report.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Core Revenue Report Status for December 2021

Action: Received the Core Revenue Status Report for December 2021.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. City Council Goals and Tactics - Update

Action: Received the report.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. Ratification of New Local Emergency Actions

Action: Received report of emergency directives/modifications.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Appointments to City Boards, Committees and Commissions

Action: Approved appointments to City Boards, Committees, and Commissions.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

A. Beautification and Natural Resource Commission Meeting Minutes: October 19, 2021

Action: Received minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Economic Development Commission Meeting Minutes: November 4, 2021

Action: Received minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Diversity, Equity, and Inclusion Task Force Minutes: 11-8-21

Action: Received minutes.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

A. Tree Appeal 718 Sunset Drive

Mayor Peake opened the public hearing and defined it as a Quasi-Judicial Hearing.

Councilmember Coletti reported ex parte communication, visiting 718 Sunset Drive and was given the opportunity to look at the tree. Councilmembers Poduri, Amelio, Smith, and Tomlinson also visited the site and had discussions with the applicant.

Public Works Director/Deputy City Manager Daniel Gho presented to Council.

Appellant Moe Ammar was allowed 15 minutes to present to Council.

Public comment was received from Ali Ammar, Anthony Ciani, Rebecca Lee, Nathan, Lisa Ciani, Abraham Ammar, and Bill Bluhm.

Appellant Moe Ammar was allowed the remainder of his 15 minutes to present to Council.

Mayor Peake closed the public hearing.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember McAdams, Council held a de novo public hearing for tree removal permit application 21-104, approved tree removal permit application 21-104 allowing the removal of the Monterey Pine supported by findings of high-risk criteria and safety risk, overturning the decision of the City Arborist and the Beautification and Natural ResourcesCommission (BNRC) for tree removal permit application 21-104 denying the removal of one Monterey Pine at 718 Sunset Drive, and provided direction to Public Works to plant two replacement 24-inch box trees.

Motion carried 7-0, by the following roll call vote:

AYES:	Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES:	None.
ABSENT:	None.

CEQA: Categorical Exemption, CEQA Guidelines Section 15304, Class 4, Minor Alterations to Land

12. UNFINISHED AND ONGOING BUSINESS

A. Elizabeth Hull Legal Services for ATC Project ***This item was pulled from the Regular Agenda***

Public comment received from Anthony Ciani, Lisa Ciani, and Inge Lorentzen Daumer.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Coletti, Council approved payment not to exceed $80,000 to Best Best & Krieger LLP for Elizabeth Hull legal services related to development/commercial real estate of the ATC Hotel and Commercial Project also including in the contract the ATC scope with an end date of July 2022 and discussed financial controls for Council approved item that do not have stated expenditure limits.

Motion carried 7-0, by the following roll call vote:

AYES:	Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES:	None.
ABSENT:	None.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Public Works Warehouse and Office Building Fire Replacement and Repair

Public comment received from Anthony Ciani.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Amelio, Council authorized an agreement with Jacob Construction & Design not to exceed $485,643 plus a 15% contingency for the replacement of the metal building and repairs to the administration office at the Public Works Corporation Yard.

Motion carried 6-0-1, by the following roll call vote:

AYES:	Mayor Peake, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES:	None.
ABSENT:	Mayor Pro Tem McAdams

CEQA: Categorical Exemption, CEQA Guidelines Section 15302, Class 2, Replacement or Reconstruction of Existing Structures and Facilities.

C. Minutes of the January 12, 2022 City Council Special Meeting ***This item was pulled from the Consent Agenda.***

Public comment received from Anthony Ciani and Lisa Ciani.

Action: Upon motion by Councilmember Tomlinson and Seconded by Mayor Peake, Council approved the minutes.

Motion carried 6-0-1, by the following roll call vote:

AYES:	Mayor Peake, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson
NOES:	None.
ABSENT:	Mayor Pro Tem McAdams

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

A. Application for State Project HOMEKEY Round 2 Funding ***This item was from the Consent Agenda***

Public comment was received from Roxane Wilson, Inge Lorentzen Daumer, and Tod Lipka

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Poduri, Council:

1. Adopted Resolutions 22-004 and 22-005 with the City as the lead applicant and SLI as the co-applicant, authorizing the submittal of an application to the California

Department of Housing andCommunity Development (HCD) in the amount not to exceed $15,000,000 for the conversion of the Monarch Resort into a Homekey project.
2. Authorized the City Manager to execute a MOU with Shangri-LaIndustries memorializing roles and responsibilities.
3. Authorized the City Manager to execute agreement(s) and/ or implementing documents with Shangri La Industries and Step Up Second Street, Inc. toeffectuate the implementation of a Homekey project in the City of Pacific Grove.
4. Authorized the City Manager to execute funding agreement and otherimplementing documents with the State of California Department of Housing Community Development.

Motion carried 6-0-1, by the following roll call vote:

AYES:	Mayor Peake, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson
NOES:	None.
ABSENT:	Mayor Pro Tem McAdams

CEQA: Statutory Exemption, CEQA Guidelines Section 15268, Ministerial Projects

B. Status of the City's MPWMD Water Allocation, Water Entitlement and City's Water Wait List Architectural Permits
Public comment was received from Hannah Bell, Anthony Ciani, Bill Bluhm, Kirstie Wilde, and Andy Miller.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Coletti, Council voted to implement a 90-day moratorium and return with an ordinance that adopts option 2C with a 5-year extension and another 5-year extension, the non-conformance catch up would apply, refunds would be granted for the 11 people that paid for the extensions, approximately $10,000, amount per owner to be indicated in the ordinance and stop adding to the water wait list.

Motion carried 6-0-1, by the following roll call vote:

AYES:	Mayor Peake, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson
NOES:	None.
ABSENT:	Mayor Pro Tem McAdams

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Smith, Council voted to adjourn the meeting.

Motion carried 6-0-1, by the following roll call vote:

AYES:	Mayor Peake, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson

NOES: None.

ABSENT: Mayor Pro Tem McAdams

C. Promissory Agreement for Payment of Water Entitlement for the PG Hotel, formerly known as the Hotel Durrell ***This item was continued to February 2, 2022.***

Reference: Laurel O'Halloran, Associate Planner

Recommended Action: Approve a promissory agreement for water entitlement for the Pacific Grove (PG) Hotel, formerly known as the Hotel Durrell, to be located at 157 Grand Avenue (APN 006-173-002)

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. Annual Comprehensive Financial Report (ACFR) for the Fiscal Year Ending June 30, 2021 ***This item was continued to February 2, 2022.***

Reference: Tori Hannah, Administrative Services Director/Assistant City Manager

Recommended Action:

- Receive the Annual Comprehensive Annual Financial Report, which includes the Auditor's Opinion on the City's financial statements, from the City's independent auditor, Chavan & Associates, LLP
- Receive the Transportation Safety and Investment Plan Account Fund (TAMC Measure X) Report, which includes the Auditor's Report by the City's independent auditor, Chavan & Associates, LLP
- Receive a status on improvements based on the auditor's recommendations that are being implemented, and provide any desired direction.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

E. CONCEPT REVIEW: ARPA Funding Public Outreach ***This item was continued to February 2, 2022 This item was continued to February 2, 2022.***

Reference: Ben Harvey, City Manager

Recommended Action: Review proposed public outreach approach and provide direction to staff.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

F. Leadership - Mastering Your Role as an Elected Official ***This item was continued to February 2, 2022.***

Reference: Bill Peake, Mayor

Recommended Action: Receive report and discuss.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

G. Council Liaison Role ***This item was continued to February 2, 2022.***

Reference: Nick Smith, Councilmember

Recommended Action: Review role and provide staff direction.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines

Section 15378

H. Elizabeth Hull Legal Services for ATC Project ***This item was pulled and considered as Regular Agenda item 12A.***

Reference: Bill Peake, Mayor

Recommended Action:

1. Approve payment not exceeding $100,000 to Best Best & Krieger LLP for Elizabeth Hull legal services related to development/commercial real estate of the ATC Hotel and Commercial Project.
2. Discuss financial controls for Council approved items that do not have stated expenditure limits.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT
Council adjourned the regular meeting at approximately 9:57 pm

Respectfully Submitted,

Kerry Lindstrom
Deputy City Clerk

Approved by Mayor: _____Date_____

Attest by City Manager: _____Date_____

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Sandra Kandell, City Clerk

MEETING DATE: February 16, 2022

SUBJECT: Minutes of the February 2, 2022 Special and Regular Meeting

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

CLOSED SESSION MEETING

Wednesday, February 2, 2022, 5:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

Join the Zoom Meeting to participate live at:
https://us02web.zoom.us/j/692219855

To participate telephonically, call any number below:

877 853 5247 (Toll Free)
888 788 0099 (Toll Free)
669 900 9128
699-219-2599

DRAFT

CALL TO ORDER

Mayor Peake called the meeting to order at 5:00 p.m. City Clerk Kandell conducted roll call with the following Council present via Zoom Meeting: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, and Tomlinson. Councilmember Smith was absent from this meeting.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Poduri and seconded by Mayor Pro Tem McAdams, the Council approved the agenda.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, , Poduri, and Tomlinson.
NOES: None.
ABSENT: Councilmember Smith.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

No public comment was received.

A. Conference with Labor Negotiators (Government Code Section 54957.6)
City Negotiators: Ben Harvey, City Manager, Tori Hannah, Assistant City Manager/AdministrativeServices Director, Leticia Livian, Human Resources Director, and Donna Williams, Liebert CassidyWhitmore, LLP
Employee Organization: Police Officers Association

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE
CITY COUNCIL
AMENDED REGULAR MEETING

Wednesday, February 2, 2022, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
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669 900 9128
669 219 2599

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CALL TO ORDER
Mayor Peake called the meeting to order at 6:00 p.m. City Clerk Kandell conducted roll call with the following Council present via Zoom Webinar: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri and Tomlinson. Mayor Pro Tem Smith joined the webinar meeting at 6:18 p.m.

A. Remote Teleconference - AB 361
Public comment was received from Lisa Ciani and Inge Lorentzen Daumer.

Action: Upon motion by Mayor Peake and seconded by Councilmember Amelio, the Council ratified Resolution No. 21-029 Emergency Teleconferencing authorizing remote teleconference meetings of all City legislative bodies for the following 30days in accord with the Ralph M. Brown Act.

Motion carried 7-0, by the following roll call vote:

AYES:	Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES:	None.
ABSENT:	None.

CEQA: Does not constitute a "Project" per California Environmental Quality Act GuidelinesSection 15378

PLEDGE OF ALLEGIANCE
Mayor Peake led the pledge of allegiance.

1. **APPROVAL OF AGENDA**
Action: Upon motion by Councilmember Amelio and seconded by May Pro Tem McAdams, the Council approved the agenda.

Motion carried 7-0, by the following roll call vote:

AYES:	Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES:	None.
ABSENT:	None.

2. **PRESENTATIONS**
A. Mayor's Proclamation Recognizing Moe Ammar's 29 Years of Service on the Pacific Grove Chamber of Commerce. Joe Shammas spoke on behalf of the Chamber

Action: Council received the proclamation.
CEQA: Does not constitute a "Project" per California Environmental Quality Act GuidelinesSection 15378

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
A. Report on Closed Session

Conference with Labor Negotiators (Government Code Section 54957.6)
City Negotiators: Ben Harvey, City Manager, Tori Hannah, Assistant City Manager/Administrative Services Director, Leticia Livian, Human Resources Director, and Donna Williams, Liebert Cassidy Whitmore, LLP
Employee Organization: Police Officers Association

City Attorney Dave Laredo reported staff provided background information, Council posed questions and identified topics for which future investigation will need to be reported back to Council. No action was taken other than to continue the discussion to a future unspecified date.

B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**
Public Comment was received from Inge Lorentzen Daumer, Joe Shammas, Lisa Ciani, Rebecca Lee, Kimberly Brown, and Carmelita Garcia.

CONSENT AGENDA
Action: Consent Agenda item 8C was pulled and considered as Regular Agenda item 12A. Consent Agenda item 6B was pulled and considered as Regular Agenda item 12B.

Action: Upon motion by Mayor Pro Tem McAdams and seconded by Councilmember

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Tomlinson, Council approved the Consent Agenda as amended.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

6. **RESOLUTIONS**

A. Adoption of a Resolution Approving the Property Tax Transfer Agreement with the County of Monterey Relating to the Mission Linen Property Annexation
Action: Adopted Resolution No. 22-006 and directed staff to submit to the Monterey County Local Agency Formation Commission (LAFCO) in support of the City's applicationto annex the Mission Linen property located at 801 Sunset Drive.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. City Manager Performance Evaluation Policy 000-27 ***This item was pulled and considered as Regular Agenda item 12B.***
Reference: Bill Peake, Mayor
Recommended Action: Adopt a Resolution to create City Manager Performance Evaluation Policy 000-27.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

A. Second Quarter Treasurer's Quarterly Report – Fiscal Year 2021-22
Action: Received the Report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Second Quarter Budget Report
Action: Received the report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Second Quarter Workers' Compensation Report ***This item was pulled and considered as Regular Agenda item 12A.***
Reference: Audrey Cray, Management Analyst
Action: Receive the report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

DRAFT

D. Second Quarter Purchase Order Report
Action: Received the Second Quarter Purchase Order Report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

E. Association of Monterey Bay Area Governments Minutes of December 8, 2021 and January 5, 2022
Action: Received minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. Monterey Regional Waste Management District Appointment
Action: Approved appointment of Mayor Peake to Monterey Regional Waste Management District Joint Powers Authority (MRWMD) Board of Directors serving until December 31, 2022.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Mary Ann Whitten Appointment to Library Board
Action: Approved appointment of Mary Ann Whitten to Library Board for aterm ending January 31, 2026.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

A. September Recreation Board Minutes
Action: Received September 2021 Recreation Board Meeting Minutes
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

A. DRAFT Adoption of a Resolution Conditionally Authorizing the Vacation of Excess Right-of-Way Located on Sloat Ave. ***This public hearing will be opened, public comment shall begin at the February 2, 2022, City Council meeting, but the hearing willthen be continued to the February 16, 2022 City Council meeting; the public hearing shall remain open -- but NOTE -- individual members of the public may choose to speak either at the February 2, 2022 meeting or the February 16, 2022 meeting, but no person shall be allowed to speak at more than one hearing date.***
No public comment was received.

Action: Upon motion by Councilmember Amelio and seconded by Mayor Peake, Council opened the public hearing and continued the item to the February 16, 2022, meeting.

Motion carried 6-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio,

DRAFT

Poduri, Smith, and Tomlinson.
NOES: Councilmember Coletti
ABSENT: None.

CEQA: Environmental Impact Report

B. Approval of Amendments to PGMC 23.80 - Accessory Dwelling Units (ADU)
Public comment was received from Inge Lorentzen Daumer, Rebecca Lee, and Anthony Ciani.

Action: Upon motion by Mayor Pro Tem McAdams and seconded by Councilmember Amelio , Council held first reading of an ordinance to amend PGMC 23.80 -Accessory Dwelling Units (ADUs) as recommended by the Planning Commission and directed publication of a summary as approved by the City Attorney.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

CEQA: Statutory Exemption, CEQA Guidelines 15282(h) - Adoption Regarding Second Units in a Single or Multi Family Residential Zone

12. **UNFINISHED AND ONGOING BUSINESS**

A. Second Quarter Workers' Compensation Report ***This item was pulled from the Consent Agenda.***
No public comment was received.

Action: Council received the report.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. City Manager Performance Evaluation Policy 000-27 ***This item was pulled from the Consent Agenda.***
Public comment was received from Lisa Ciani and Anthony Ciani.

Action: Upon motion by Councilmember Poduri and seconded by Mayor Pro Tem McAdams, Council adopted Resolution No. 22-007 to create City Manager Performance Evaluation Policy 000-27.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem McAdams, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

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CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

A. Promissory Agreement for Payment of Water Entitlement for the PG Hotel, formerly known as the Hotel Durrell ***This item was continued from the January 19, 2022 meeting.***
Public comment was received from Bob Leach, Inge Lorentzen Daumer, and Rebecca Lee.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Poduri, to approve a promissory agreement for water entitlement for the Pacific Grove (PG) Hotel, formerly known as the Hotel Durrell, to be located at 157 Grand Avenue (APN 006-173-002) – the motion was replaced with a substitute motion by Mayor Pro Tem McAdams.

Action: Upon motion by Mayor Pro Tem McAdams and seconded by Councilmember Coletti, to approve a promissory agreement for water entitlement for the Pacific Grove (PG) Hotel, formerly known as the Hotel Durrell, to be located at 157 Grand Avenue (APN 006-173-002) with four conditions 1) confirm the relative percentages of the collective parties, 2) execute the note in 90 days, 3) the 10% payment will be earmarked for repayment of the sewer fund, and 4) include a term of 48 months – the motion was replaced with a substitute motion by Councilmember Amelio.

Action: Upon motion by Councilmember Amelio to approve a promissory agreement for water entitlement for the Pacific Grove (PG) Hotel, formerly known as the Hotel Durrell, to be located at 157 Grand Avenue (APN 006-173-002) with one condition: confirm the relative percentages of the collective parties – the motion died for lack of a second.

Action: Upon amended motion by Mayor Pro Tem McAdams and seconded by Mayor Peake, Council approved a promissory agreement for water entitlement for the Pacific Grove (PG) Hotel, formerly known as the Hotel Durrell, to be located at 157 Grand Avenue (APN 006-173-002) with two conditions 1) confirm the relative percentages of the collective parties, and 2) the note is due and payable if and when the building permit should lapse.

Motion carried 4-3, by the following roll call vote:

AYES:	Mayor Peake, Mayor Pro Tem McAdams, Councilmembers, Coletti, and Tomlinson.
NOES:	Councilmembers Amelio, Poduri, and Smith.
ABSENT:	None.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. CONCEPT REVIEW: ARPA Funding Public Outreach ***This item was continued from the January 19, 2022 meeting.***
Public comment was received from Inge Lorentzen Daumer and Lisa Ciani.

DRAFT

Action: Council reviewed proposed public outreach approach and provided direction to staff.
CEQA: Does not constitute a "Project" per California Environmental Quality Act GuidelinesSection 15378

C. Leadership - Mastering Your Role as an Elected Official ***This item was continued fromthe January 19, 2022 meeting.***
Public comment was received from Andrew Gonzalez.

Action: Council received the report and discussed the item.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. Council Liaison Role ***This item was continued from the January 19, 2022 meeting.***
Public comment was received from Lisa Ciani and Inge Lorentzen Daumer.

Action: Council received report with no action taken.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT
Council adjourned the regular meeting at approximately 10:04 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____Date_____

Attest by City Manager: _____Date_____

DRAFT

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Daniel Gho, Public Works Director / Deputy City Manager
MEETING DATE:	February 16, 2022
SUBJECT:	CalRecycle Grant Resolution
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Adopt a Resolution authorizing submittal of grant applications to the California Department of Resources Recycling and Recovery for grants the City may be eligible for independently or as part of a regional application in which Monterey Regional Waste Management District or another member City serves as lead.

DISCUSSION

Public Resources Code sections 48000 et seq. authorizes the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs for qualifying jurisdictions. Grant Programs provided by CalRecycle include Beverage Container Recycling Grants, Household Hazardous Waste (HHW) Grants, Solid Waste Disposal and Site Cleanup Grants, among others.

The City Council approved Resolution 16-044, in July of 2016, which authorized staff to submit application(s) on behalf of the City to CalRecycle for all eligible grants. The resolution authorized grant submittal for a term of 5 years from the approval date, which has now lapsed.

The City is required to adopt a resolution authorizing the submittal of grant applications, in order to be eligible for competitive grant funding. Staff is also requesting that the resolution include language that states applications on behalf of the City may be submitted as part of a regional application in which Monterey Regional Waste Management District (MRWMD) or another member City serves as lead. This language allows for the City to be included in additional grant opportunities that benefit the City and region.

Recently CalRecycle decided to make funds available through a block grant titled "SB 1383 Local Assistance Grant Program (FY 21-22)." This is a non-competitive grant with a short deadline and the City of Pacific Grove is eligible to receive $21,398 based upon population. The funding was made available to help with various aspects of the law. The District has offered to act as a consultant and submit the application for its member jurisdictions. Funds would then be remitted to MRWMD to coordinate projects to help ensure the City complies with all aspects of SB 1383 with efficiency and consistency.

The SB 1383 Local Assistance Grant program is designed to assist local jurisdictions with implementation of regulations requirements associated with SB 1383, such as capacity planning, collection, edible food recovery, outreach, enforcement and other various items associated with 1383.

OPTIONS

Do not approve the resolution.

FINANCIAL IMPACT:

There is no fiscal impact by approving this Resolution. If the Resolution is not adopted, the City will be ineligible to receive competitive grant funds from CalRecycle, including the Local Assistance Grant Program. To continue to be eligible for the Local Assistance Grant Program this resolution needs to be submitted to the State by March 1, 2022.

All agreements will be presented to the City Council for final approval prior to execution by the City.

GOAL ALIGNMENT: Environmental Stewardship: Adopt and develop policies and ordinances that preserve and protect the environment.

Attachments

Resolution Cal Recycle

RESOLUTION NO. 22-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL CALRECYCLE GRANTS FOR WHICH CITY OF PACIFIC GROVE IS ELIGIBLE

FINDINGS

1. Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safetyand the environment; and

2. In furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

3. CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

1. The City of Pacific Grove is authorized to submit application(s) to CalRecycle for all grants for which the City of Pacific Grove is eligible or as part of a regional application in which Monterey Regional Waste Management District or another member City serves as lead.

2. The City Manager, or his/her designee, is hereby authorized and empowered to execute in the name of the City of Pacific Grove all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

3. These authorizations are effective for five (5) years from the date of adoption of this resolution; and

4. This Resolution shall take immediate effect upon its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 16th day of February 2022, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE, Mayor

ATTEST:

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO, City Attorney

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Alyson Hunter, AICP, CDD Director

MEETING DATE: February 16, 2022

SUBJECT: Ordinance to Amend PGMC 23.80 - Accessory Dwelling Units

CEQA: Statutory Exemption, CEQA Guidelines 15282(h) - Adoption Regarding Second Units in a Single or Multi Family Residential Zone

RECOMMENDATION

Hold second reading and adopt an ordinance to amend Chapter 23.80 of the PGMC pertaining to Accessory Dwelling Units (ADUs).

DISCUSSION

No substantive changes were made between the first and second readings. The City Clerk caused a summary of the ordinance to be published February 10, 2022.

At its meeting on February 2, 2022, the City Council received a recommendation from the Planning Commission on proposed amendments to the City's ADU Ordinance, Chapter 23.80. The amendments are intended to ensure the City's compliance with state housing laws as they pertain to the development of ADUs and Jr. ADUs.

OPTIONS

The Council could opt not to adopt the amendments as recommended by the Planning Commission.

FINANCIAL IMPACT:

This action will have no financial impact on the City's general fund.

GOAL ALIGNMENT: Increase Affordable Housing: Determine policies, projects and programs that will advance the effort to create new affordable housing in the City.

Attachments

Draft Ord

ORDINANCE NO. 22-___

AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING CHAPTER 23.80 OF THE PACIFIC GROVE MUNICIPAL CODE REGARDING ACCESSORY DWELLING UNITS

WHEREAS, Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) are a form of housing in the state of California and in the City of Pacific Grove (City); and

WHEREAS, the City has regulated ADUs since 1983 as set forth in Pacific Grove Municipal Code (PGMC) Chapter 23.80; and

WHEREAS, in 2017, in response to State law, the City Council amended Chapter 23.80 to reduce barriers, streamline approval, and further accommodate the development of ADUs; and

WHEREAS, the California State Legislature brought forward several bills in 2019 relating to the planning and permitting of ADUs and JADUs; and

WHEREAS, in October 2019, Governor Newsom signed numerous housing bills related to the development and regulation of ADUs and JADUs, which requires the City to make certain additional amendments to PGMC Chapter 23.80; and

WHEREAS, in 2020, in response to State law, the City Council further amended Chapter 23.80 to reduce barriers, streamline approval, and further accommodate the development of ADUs; and

WHEREAS, the new standards will facilitate the development of ADUs and JADUs within the City, and are necessary for maintaining orderly growth and development patterns; and

WHEREAS, additional new state laws took effect in December 2021 which continue to contain a clause providing that a local government's ordinance that does not comply with all provisions of the State law shall become null and void; and

WHEREAS, the City has determined that it is appropriate to further amend PGMC Chapter 23.80 again to comply with State law and to provide a more streamlined process for the development of ADUs and JADUs in an effort to provide additional affordable housing opportunities; and

WHEREAS, notice of a public hearing before the Planning Commission was published in the Monterey County Weekly on October 20, 2021, posted at City Hall by October 22, 2021; and

WHEREAS, this Ordinance amends PGMC Section 23.80, entitled "Accessory Dwelling Units"; and

WHEREAS, in the enactment of this Ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

WHEREAS, amendment of PGMC Section 23.80 pertaining to ADUs is statutorily exempt from review under the California Environmental Quality Act (CEQA) per Section 15282(h) of the CEQA Guidelines as it implements Government Code Sections 65852.1 and 65852.2 as set forth in Section 21080.17 of the Public Resources Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. Pacific Grove Municipal Code Chapter 23.80 shall be amended by deletion of all text shown in strikeout text (~~strikeout text~~) and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

Chapter 23.80
ACCESSORY DWELLING UNITS

Sections:

23.80.010 Purpose and intent.
23.80.020 Effect of nonconforming.
23.80.030 Definitions.
23.80.040 Approvals.
23.80.050 General ADU and JADU requirements.
23.80.060 Specific ADU ***and JADU*** requirements.
23.80.070 Fees and charges.
23.80.080 Nonconforming ADUs and discretionary approval.

23.80.010 Purpose and intent.

The purpose of this chapter is to allow and regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in compliance with California Government Code Sections 65852.2 and 65852.22, as may be amended.

23.80.020 Effect of nonconforming.

An ADU or JADU that conforms to the standards in this chapter will not be:

(a) Deemed to be inconsistent with the city's general plan and zoning designation for the lot on which the ADU or JADU is located.

(b) Deemed to exceed the allowable density for the lot on which the ADU or JADU is located.

(c) Considered in the application of any local ordinance, policy, or program to limit residential growth.

(d) Required to correct a nonconforming zoning condition, as defined in PGMC 23.80.030. This does not prevent the city from enforcing compliance with applicable building standards in accordance with Health and Safety Code Section 17980.12.

23.80.030 Definitions.
As used in this chapter, terms are defined as follows:

"Accessory Dwelling Unit" or "ADU" means an attached or a detached residential dwelling unit that provides complete independent living facilities ***and permanent provisions for living, sleeping, eating, cooking, sanitation, and connection to utilities*** for one or more persons and is located on a lot with a proposed or existing primary residence or multi-family residences and ***may include***~~. An accessory dwelling unit also includes~~ the following:

~~(1) An efficiency unit, as defined by Section 17958.1 of the California Health and Safety Code, as may be amended;~~

~~(2) A manufactured home, as defined by Section 18007 of the California Health and Safety Code, as may be amended.~~

(1) Detached: the unit is separated from the primary structure or structures.

(2) Attached: the unit is attached to the primary structure.

(3) Converted Existing Space: space (e.g. bedroom, attached garage, storage area, or an accessory structure) on the lot of primary residence(s) that is converted into an independent living unit.

(4) Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

(5) Manufactured Home.

(6) Efficiency Unit.

"Accessory structure" means a building or structure that is incidental to that of the main building on the same lot.

"Complete independent living facilities" means permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.

"Efficiency ~~kitchen~~ ***Unit*** means a ~~kitchen~~ ***unit*** that includes each of the following:

(1) ~~A cooking facility with appliances~~ ***Compliance with Section 17958.1 Health & Safety Code, as may be amended***;

(2) A food preparation counter or counters that are adequate for ~~the size of~~ the unit; and

(3) Food storage cabinets that are adequate for the ~~size of the~~ unit.

"Junior accessory dwelling unit" or "JADU" means a residential unit that:

(1) Is no more than 500 square feet in size;

(2) Is contained entirely within an existing or proposed single-family structure;

(3) Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure; and

(4) Includes an efficiency ~~kitchen~~ ***unit***, as defined in this chapter.

"Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

"Manufactured Home" means a unit as defined by Section 18007 of the California Health and Safety Code, as may be amended.

"Ministerial approval" means approval related to a building permit that does not require discretionary action or a hearing.

"Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

"Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the ADU or JADU.

"Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

"Public transit" means ~~a location, including, but not limited to, any~~ ***a*** fixed-route ***(***bus stop or other transit stop***)*** ~~with~~ transportation that ***charges set fees,*** runs on fixed routes, and is available to the public.

"Tandem parking" means ~~that~~ two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

23.80.040 Approvals.
The following approvals apply to ADUs and JADUs under this section:

(a) ~~Building Permit Only~~ ***Ministerial Approval***. ~~If an ADU or JADU~~ ***An ADU or JADU which*** complies with each of the general requirements in PGMC 23.80.050~~, it~~ is allowed with ~~only~~ a building permit ***and shall not require discretionary planning approval. The ADU/JADU project shall be reviewed in a ministerial and administrative manner, limited to only considering the project's compliance with the applicable objective standards.***

(1) ~~Converted on Single-Family Lot. Only one~~ ***One*** ADU and ***one*** JADU on a lot with a proposed or existing single-family dwelling~~. on it, where the ADU or JADU:~~

~~(A) Is either: within the space of a proposed single-family dwelling; within the existing space of an existing single-family dwelling; or within the existing space of an accessory structure, plus up to 150 additional square feet if the expansion is limited to accommodating ingress and egress;~~

~~(B) Has exterior access that is independent of that for the single-family dwelling; and~~

~~(C) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building and fire codes.~~

(2) Converted on a Single-Family Lot:

(A) Created within the existing space of an accessory structure.

(B) Has side and rear setbacks sufficient for fire and safety, as dictated by applicable building codes.

(C) An ADU created within an existing accessory structure may expand an additional 150 sq. ft. if expansion is limited to accommodating ingress and egress only.

(3) Attached ADU on Single-Family Lot:

(A) ***Shall not exceed 50% of the square footage of proposed or existing building, or 1,000 sq. ft., whichever is greater.***

(B) ***Setbacks same as (2)(B) above.***

(~~2~~***4***) ~~Limited~~ Detached on Single-Family Lot. ~~One detached, new-construction ADU on a lot with a proposed or existing single-family dwelling (in addition to any JADU that might otherwise be established on the lot under subsection (a)(1) of this section), if the detached ADU satisfies the following limitations:~~

(A) The side and rear yard setbacks are at least three ***(3)*** feet;

(B) The total maximum floor area is up to ~~1,000~~ ***1,200*** square feet; and

(C) The peak height above grade is 16 feet or less.

(~~3~~***5***) Converted on Multifamily Lot. Multiple ADUs within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted ADU complies with state building standards for dwellings. At least one converted ADU is allowed within an existing multifamily dwelling, or up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this subsection.

(~~4~~***6***) ~~Limited~~ Detached on Multi-family Lot. No more than two detached ADUs on a lot that has an existing multifamily dwelling if each detached ADU satisfies the following limitations:

(A) The side and rear yard setbacks are at least three feet (corner and exterior setbacks for the zoning district apply); and

(B) The total floor area is 800 square feet or smaller.

(7) Junior Accessory Dwelling Unit (JADU):

(A) ***Constructed entirely within an existing or proposed single-family structure.***

(B) ***Includes its own separate sanitation facilities or shares sanitation facilities with the existing or proposed single-family structure.***

(C) ***Includes an efficiency unit as defined in this chapter***

(b) Process and Timing.

(1) An ADU or JADU permit is considered and approved ministerially, without discretionary review or a hearing, if it meets the minimum standards above.

(2) The City must act on an application to create an ADU or JADU within 60 days from the date that the City receives a completed application, unless either:

(A) The applicant requests a delay, in which case the 60-day time period is tolled for the period of the requested delay; or

(B) In the case of a JADU and the application to create a JADU is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the JADU until the City acts on the permit application to create the new single-family dwelling, but the application to create the JADU will ~~still~~ be considered ministerially without discretionary review or a hearing.

23.80.050 General ADU and JADU requirements.
The following requirements apply to all ADUs and JADUs that are approved under PGMC 23.80.040(a):

(a) Zoning. An ADU or JADU subject only to a building permit under PGMC 23.80.040(a) may be created on a lot in any zone that allows residential uses.

(b) Fire Sprinklers. Fire sprinklers are required in an ADU if sprinklers are required in the primary residence.

(c) Rental Term. ***An ADU or JADU may be rented under the following conditions:***

(1) No ADU or JADU may be rented for a term ~~that is~~ less than 30 days; ***and***

(2) JADU – owner must reside in either the primary residence or the JADU per Government Code 65852.22, Subd. (a)(2), as may be amended.

(d) No Separate Conveyance. ~~An ADU or JADU may be rented, but~~ No ADU or JADU may be sold or otherwise conveyed separately from the lot and the primary dwelling (in the case of a single-family lot) or from the lot and all of the dwellings (in the case of a multifamily lot) ***unless allowed by Gov. Code, § 65852.26 (Qualified nonprofit corporation conveyance).***

(e) Septic System. If the ADU or JADU will connect to an on-site water-treatment system, the owner must include with the application a percolation test completed

within the last five years or, if the percolation test has been recertified, within the last 10 years.

(f) Each ADU or JADU shall have a separate address from the single or multi-family dwelling on the property.

(g) Each ADU or JADU shall have a separate exterior access independent of the existing or proposed single or multi-family dwelling.

23.80.060 Specific ADU *and JADU* requirements.

(a) Size.

(1) The total maximum floor area ~~is~~ ***may be*** up to ~~1,000~~ ***1,200*** square feet.

(2) The minimum size is 150 square feet ***to include efficiency unit***. ~~ADUs that meet these requirements shall be approved ministerially.~~

(3) ~~An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling, but may not exceed the size in subsection (a)(1) of this section~~ ***A JADU shall not exceed 500 square feet.***

(b) Height.

(1) A single-story, attached or detached ADU may not exceed 16 feet in height above grade, measured to the peak of the structure.

(2) A second story or two-story attached ADU addition may be permitted subject to an architectural permit and may not exceed the height of the zoning district.

(c) Passageway. No passageway, as defined in PGMC 23.80.030, is required for an ADU.

(d) Parking.

(1) Generally. Off-street parking is not required for an ADU ~~or JADU~~ located ~~less than~~ ***within*** one-half mile walking distance of public transit. If a property is not within one-half mile walking distance to a transit stop, one off-street parking space shall be provided and may be located in setback areas or as tandem parking, as defined in PGMC 23.80.030.

(2) No Replacement. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, those off-street parking spaces are not required to be replaced.

(3) No parking is required for a JADU.

(e) Architectural Requirements.

(1) Where the development of an ADU includes exterior alterations, additions, or construction of new structure, the ADU ~~shall~~ ***may, where feasible,*** incorporate the same or similar architectural features, building materials, including window style and materials, and roof slopes as the main dwelling unit or dwellings located on ***the subject property.*** ~~adjacent properties.~~

~~(f) Landscape Requirements. The site plan shall provide open space and landscaping that are useful for both the ADU and the principal single-family dwelling. Landscaping shall provide for the privacy and screening of adjacent properties.~~

(~~g~~***f***) Historical Protections. Historic review shall be required for properties listed on the California Register of Historic Resources.

(g) Tree Removal and Pruning. Tree permits for the removal and/or pruning of permit trees shall be required per PGMC Title 12, but shall in no way prohibit the development of a minimum 800 sq. ft. ADU.

(1) ***Applicants are encouraged to locate and design ADU and/or JADU additions so that the retention of native trees (Gowen cypress, Coast live oak, Monterey cypress, Shore pine, Torrey pine, and Monterey pine) can be accommodated whenever possible.***

(2) ***All trees in or within 100 yards of designated Monarch sanctuaries. (Pruning and removal of trees within the Monarch sanctuaries is prohibited between October 1 and May 1).***

(3) ***A Coastal Development Permit (CDP) may be required for tree removal in the Coastal zone.***

23.80.070 Fees and charges.

(a) Impact Fees.

(1) No impact fee is required for an ADU or JADU that is less than 750 square feet in size.

(2) Any impact fee that is required for an ADU that is 750 square feet or larger in size must be charged proportionately in relation to the square footage of the primary dwelling unit (e.g., the floor area of the primary dwelling,

divided by the floor area of the ADU, times the typical fee amount charged for a new dwelling). "Impact fee" here does not include any connection fee or capacity charge for water or sewer service.

(b) Utility Fees. Converted ADUs and JADUs on a single-family lot, created under PGMC 23.80.040(a)(1), are not required to have a new or separate utility connection directly between the ADU or JADU and the utility. Nor is a connection fee or capacity charge required unless the ADU or JADU is constructed with a new single-family home.

23.80.080 Nonconforming ADUs and discretionary approval.
Any proposed ADU or JADU that does not conform to the objective standards set forth in this chapter may be allowed by the city with a use permit, in accordance with the other provisions of this title.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 16th day of February, 2021, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____

BILL PEAKE, Mayor

ATTEST:
DATED: _____

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO, City Attorney

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Tori Hannah, Administrative Services Director / Assistant City Manager

MEETING DATE: February 16, 2022

SUBJECT: Second Quarter Capital Improvement Budget Report

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the report.

DISCUSSION

In Fiscal Year 19/20, the City added capital improvement budgetary updates to the Quarterly Budget Report. In response to recommendations received from the Council Finance Reporting Subcommittee, this information will now be presented in a separate report. This document will be produced on the same cycle as the City's other quarterly financial reports.

The attached report provides information on the Amended Budgets for each capital improvement project. This information is presented by fund and includes the year-to-date expenditures and project balances. At the close of the second quarter, 32% of all budgeted funds have been expended.

Additional enhancements to this report may take place in the new fiscal year.

OPTIONS

N/A

FINANCIAL IMPACT:

There is no financial impact associated with receiving this report.

GOAL ALIGNMENT: Facilitate Local Business Recovery: Review and revise existing policies and programs and develop a strategic plan to better serve existing businesses.

Attachments

CIP Report

FY 21/22 Capital Improvement Project Expenditure Report
Second Quarter - Fiscal Year 21/22

Project		Fund	Account	Project Name	Total Budget	Expenditures as of 12/31/21
CIP22-04	Museum Impvt	8	6021	PG Museum Window Replacement & Lead Abatement	40,000	-
CIP22-05	Museum Impvt	8	6021	PG Museum Fire Sprinkler & Head Replacement	12,000	-
CIP22-06	Museum Impvt	8	6021	PG Museum Roof Repair	40,000	-
		8 Total		***Museum Improvement Fund***	***92,000***	***-***
CIP20-22	Civic Center	14	6021	City Hall - Admin Services Flooring (Laminate & Bathrooms)	18,496	15,085
		14 Total		***Civic Center Fund***	***18,496***	***15,085***
CIP21-01	Measure X	17	6041	FY 20/21 Street Rehab on Lower Lighthouse Ave & Funston Ave [(1)]	282,759	442,854
CIP22-01	Measure X	17	6041	FY21/22 Street Rehabilitation	566,015	-
CIP22-02	Measure X	17	6041	FY21/22 Crack and Slurry Seal	50,000	-
		17 Total		***Measure X Fund***	***898,774***	***442,854***
CIP20-14	Reacreation Donation	25	6021	Heater - Youth Center	12,000	-
		25 Total		***Recreation Donation Fund***	***12,000***	***-***
CIP22-07	Chautauqua	26	6021	Chautauqua Hall Repair	18,654	-
		26 Total		***Chautauqua Hall Fund***	***18,654***	***-***
CIP22-09	Yount	41	6031	George Washington Park Mgmt Plan	46,000	16,383
		41 Total		***Yount Fund***	***46,000***	***16,383***
CIP20-19	Strong Disbursement	46	6021	Electric Vehicle Charging	158,775	75,000
CIP21-05	Strong Disbursement	46	6021	Park ADA Compliance Assessment and Transition Plan	50,000	-
CIP21-07	Strong Disbursement	46	6021	Police Department Server Room Improvements	12,000	-
CIP22-08	Strong Disbursement	46	6021	City Hall Downspout Replacement	26,500	-
CIP22-14	Strong Disbursement	46	6021	Gutter Replacement - PW Corp Yard	10,000	-
		46 Total		***Strong Disbursement Fund***	***257,275***	***75,000***
CIP22-01	RMRA (SB1)	47	6041	FY21/22 Street Rehabilitation	310,428	-
		47 Total		***RMRA (SB1) Fund***	***310,428***	***-***
CIP18-46	General Fund	63	6031	Tide Pool & Point Pinos	1,636,973	803,256
CIP22-01	General Fund	63	6041	FY21/22 Street Rehabilitation	300,000	30,030
CIP22-02	General Fund	63	6041	FY21/22 Crack and Slurry Seal	200,000	-
CIP22-15	General Fund	63	6021	Library Roof Repair	44,588	-
CIP22-17	General Fund	63	6031	Caledonia Park Children's Playground	6,173	-
CIP22-18	General Fund	63	6031	Jewell Park Gazebo Repair	20,000	-
CIP22-21	General Fund	63	6031	George Washington Park Children's Playground	25,000	-
TRC21-02	General Fund	63	6021	PW Fire and Reconstruction [(2)]	300,000	130,373
		63 Total		***General Fund Capital Improvements Fund***	***2,532,734***	***963,660***
CIP20-13	Sewer	76	6051	Main Sewer Line Imp (Ocean View w/Phase 4 Urban Diversion)	1,323,852	37,002
CIP21-01	Sewer	76	6051	FY 20/21 Street Rehab on Lower Lighthouse Ave & Funston Ave [(1)]	422,726	312,403
CIP22-01	Sewer	76	6051	FY21/22 Street Rehabilitation	400,000	77,023
CIP22-03	Sewer	76	6051	Phase 9 Sewer Improvements	500,000	11,580
		76 Total		***Sewer Fund***	***2,646,578***	***438,008***
CIP22-11	Golf Course	77	6021	HVAC Replacement Golf Course Clubhouse	25,000	
		77 Total		***Golf Course Fund***	***25,000***	***-***
CIP18-84	ASBS Grant	79	6026	ASBS Storm Water Capture and Diversion	523,818	447,198

FY 21/22 Capital Improvement Project Expenditure Report
Second Quarter - Fiscal Year 21/22

		79 Total		***ASBS Grant Fund***	***523,818***	***447,198***
CIP20-17	Mc Indoo	92	6031	Beach Access	21,469	2,100
CIP21-10	Mc Indoo	92	6031	Drinking Fountain at Lover's Point Park	25,057	
CIP22-13	Mc Indoo	92	6031	Replace Backstop - PG Municipal Ball Park	17,529	
		92 Total		***Mc Indoo Fund***	***64,055***	***2,100***
CIP20-25	Koo Estate	93	6042	Downtown Iconic Cypress Tree Moon Lighting	11,870	-
CIP22-10	Koo Estate	93	6031	Lover's Point Pier Repair	100,000	167
CIP22-13	Koo Estate	93	6031	Replace Backstop - PG Municipal Ball Park	7,000	
		93 Total		***Koo Estate Fund***	***118,870***	***167***
		Grand Total			**7,564,682**	**2,400,454**
		Overall Percentage of Budget Expended				**32%**

(1) This project is currently under an internal audit review. The combined Fiscal Year 21/22 remaining project budget is $705,485. The total multi-year budget allocated between the Sewer, Measure X, RMRA, and General Fund is $1,354,190. The total multi-year project costs prior to any adjustments is $1,403,962. The overall net project difference is $47,772. These additional overall costs reflects preliminary design costs that were incurred prior to the initiation and award of the construction contract. From an accounting standpoint, these costs should be considered as part of the full cost of the project. While final review is still pending, a budget amendment may be needed to appropriate additional funds to cover these costs, as well as realign the approved project budget between the Sewer Fund and the Measure X Fund to correspond with the appropriate classification of expenditures. Any updates will be included as part of the mid-year process. There are sufficient funds within the Measure X Fund to cover any additional appropriations needed.

(2) On January 19, 2022, the City approved a contract of $485,643 for construction and design of this project, with a 15% contingency. A formal amendment of the budget is planned to reflect this change as part of the mid-year process.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Tori Hannah, Administrative Services Director/Assistant City Manager

MEETING DATE: February 16, 2022

SUBJECT: Check Register Report – January 2022

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the report.

DISCUSSION

The check register is a detailed account of monthly expenditures. It provides budgetary insight and promotes transparency. It is an excellent counterpart to the City's monthly Core Revenue Report; and is a practice followed by many other local jurisdictions.

The check register is produced from the City's financial system. The report groups the checks by the respective city fund and vendor. The check register includes the check number, the check issue date, the name of the vendor, and a description of the purchase and the amount of the check.

Attached is the check register report for January 2022.

The monthly total is provided on the last page of the report.

OPTIONS

N/A – This is an informational report only.

FINANCIAL IMPACT:

There is no fiscal impact. This is informational only.

GOAL ALIGNMENT: Financial Stability: Develop a strategic plan to better address current and future City expenditure and revenue needs.

Attachments

Check Register_January 2022

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	100996 V	10/14/21	2796	VICTORY TOYOTA	301	5227	VEH REPAIR	0.00	-258.35
101	101615	01/07/22	6411	QUADIENT LEASING US	101	5225	MAIL MACHINE	0.00	4.70
101	101615	01/07/22	6411	QUADIENT LEASING US	421	5225	MAIL MACHINE	0.00	4.72
101	101615	01/07/22	6411	QUADIENT LEASING US	401	5225	MAIL MACHINE	0.00	7.85
101	101615	01/07/22	6411	QUADIENT LEASING US	131	5225	MAIL MACHINE	0.00	9.42
101	101615	01/07/22	6411	QUADIENT LEASING US	201	5225	MAIL MACHINE	0.00	14.12
101	101615	01/07/22	6411	QUADIENT LEASING US	121	5225	MAIL MACHINE	0.00	14.12
101	101615	01/07/22	6411	QUADIENT LEASING US	501	5225	MAIL MACHINE	0.00	36.09
101	101615	01/07/22	6411	QUADIENT LEASING US	301	5225	MAIL MACHINE	0.00	62.77
TOTAL CHECK								0.00	153.79
101	101616	01/07/22	8890	4LEAF	201	5201	BUILDING SERVICES	0.00	59,754.84
101	101616	01/07/22	8890	4LEAF	505	5201	TRAFFICE ENG SERVIC	0.00	112.50
101	101616	01/07/22	8890	4LEAF	201	5201	BUILDING SERVICES	0.00	1,300.43
TOTAL CHECK								0.00	61,167.77
101	101617	01/07/22	6216	MONTEREY BAY TREEWO	513	5201	12/13 TO 12/24/2021	0.00	3,100.00
101	101618	01/07/22	5931	ALLSTAR PAINTING &	503	5223	CMO-ROOF REPAIR	0.00	4,587.90
101	101619	01/07/22	4488	ALTERNATOR STARTER	503	5227	UNIT # 59	0.00	266.44
101	101620	01/07/22	4965	ALVAREZ TECHNOLOGY	133	5201	HANDS ON SUPPORT CO	0.00	5,137.50
101	101621	01/07/22	3905	AMERICAN LOCK & KEY	503	5223		0.00	35.00
101	101621	01/07/22	3905	AMERICAN LOCK & KEY	503	5223	5-410	0.00	13.66
TOTAL CHECK								0.00	48.66
101	101622	01/07/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	92.36
101	101624	01/07/22	9539	ASHLEY LOSZAK	01	214	DAMAGE DEPOSIT REFU	0.00	189.00
101	101625	01/07/22	6154	AT&T	421	5212	REC ALARM	0.00	53.42
101	101625	01/07/22	6154	AT&T	133	5212	ADMIN ALARM	0.00	53.44
TOTAL CHECK								0.00	106.86
101	101626	01/07/22	5363	AT&T CALNET 3	133	5212	ADMIN	0.00	22.91
101	101628	01/07/22	5378	CA BUILDING STANDAR	01	231	OCT - DEC 2021	0.00	189.00
101	101629	01/07/22	395	CA DEPT OF CONSERVA	01	219	SMIP OCT-DEC 2021	0.00	388.78
101	101630	01/07/22	399	CA DEPT OF INDUSTRI	401	5223	BUILDING	0.00	125.00
101	101632	01/07/22	7532	CHAVAN & ASSOCIATES	131	5201	AUDIT AND ACCOUNTIN	0.00	8,550.00
101	101633	01/07/22	9541	CHUCK TREMPER	01	4201	REUND TREE PERMIT	0.00	90.00
101	101635	01/07/22	5171	COMCAST	133	5206	INTERNET REC	0.00	100.01
101	101635	01/07/22	5171	COMCAST	133	5206	TV SERVICE-CH	0.00	4.02
TOTAL CHECK								0.00	104.03

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101636	01/07/22	622	CHOMP	301	5291	BLOOD DRAW FEE	0.00	27.00
101	101638	01/07/22	3970	ALHAMBRA & SIERRA S	351	5291	DEC 2021 WATER SERV	0.00	136.59
101	101639	01/07/22	4173	FASTENAL	503	5223	1730/N95REPIRATORBK	0.00	45.24
101	101639	01/07/22	4173	FASTENAL	502	5309	12-18VLILONBATTCHRG	0.00	250.11
TOTAL CHECK								0.00	295.35
101	101640	01/07/22	592	FOREST HILL ACE HAR	503	5223	PERKINS PARK	0.00	25.00
101	101640	01/07/22	592	FOREST HILL ACE HAR	503	5223	CHAUTAUQUA HALL	0.00	30.43
101	101640	01/07/22	592	FOREST HILL ACE HAR	503	5227	UNIT 51	0.00	14.33
101	101640	01/07/22	592	FOREST HILL ACE HAR	503	5227	UNIT 51	0.00	15.20
101	101640	01/07/22	592	FOREST HILL ACE HAR	401	5223	LIBRARY	0.00	17.14
TOTAL CHECK								0.00	102.10
101	101641	01/07/22	7884	GARDAWORLD	131	5205	JANUARY 2022	0.00	66.66
101	101642	01/07/22	9540	GOHAIWAN LLC	01	4203	128 FUNSTON AVE	0.00	112.00
101	101643	01/07/22	1105	GRANITE ROCK COMPAN	505	5309	150R-3/8" RAP 15 DI	0.00	684.86
101	101645	01/07/22	3409	GREEN RUBBER-KENNED	502	5309	SUPPLIES	0.00	29.38
101	101646	01/07/22	1138	GROVE MARKET	421	5361	WINTER CAMP SESSION	0.00	9.17
101	101646	01/07/22	1138	GROVE MARKET	421	5361	WINTER CAMP SESSION	0.00	17.64
TOTAL CHECK								0.00	26.81
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	503	5223		0.00	39.65
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	503	5223		0.00	76.59
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	401	5223		0.00	7.11
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	503	5223		0.00	18.29
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	503	5223		0.00	21.62
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	505	5309		0.00	4.96
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	505	5309		0.00	444.89
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	513	5309		0.00	488.35
TOTAL CHECK								0.00	1,101.46
101	101648	01/07/22	4321	HOME DEPOT CREDIT S	503	5223	PERKINS PARK	0.00	48.34
101	101649	01/07/22	1323	INNOVATIVE INTERFAC	401	5201	CONTRACT SERVICES	0.00	2,520.00
101	101650	01/07/22	7433	IPS GROUP, INC	301	5224	PARKING METTER MAIN	0.00	148.08
101	101650	01/07/22	7433	IPS GROUP, INC	301	5224	METER REPAIRS	0.00	1,580.94
TOTAL CHECK								0.00	1,729.02
101	101651	01/07/22	3521	KIMBALL MIDWEST	502	5309	MECH STOCK	0.00	48.94
101	101651	01/07/22	3521	KIMBALL MIDWEST	502	5309	MECH STOCK	0.00	49.47
101	101651	01/07/22	3521	KIMBALL MIDWEST	502	5309	MECH STOCK	0.00	121.67
TOTAL CHECK								0.00	220.08
101	101653	01/07/22	1565	DIANNE LYLE	421	5208	AFRO-LATIN JAZZ DAN	0.00	1,210.30

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FUND - 01 - GENERAL FUND

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101	101654	01/07/22	1568	M & S BUILDING SUPP	503	5223	MEMORIAL BENCH	0.00	175.96
101	101655	01/07/22	1638	MONTEREY PEACE OFFI	301	5215	RANGE RENTAL TRAINI	0.00	630.00
101	101656	01/07/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	35.87
101	101656	01/07/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	51.09
101	101656	01/07/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	54.35
101	101656	01/07/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	21.74
101	101656	01/07/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	329.42
TOTAL CHECK								0.00	492.47
101	101657	01/07/22	3443	MONTEREY BAY PEST C	503	5223	2100 SUNSET DR.	0.00	490.00
101	101662	01/07/22	1801	MONTEREY TIRE SERVI	301	5227	UNIT# 3	0.00	133.94
101	101662	01/07/22	1801	MONTEREY TIRE SERVI	301	5227	UNIT #6	0.00	267.89
TOTAL CHECK								0.00	401.83
101	101663	01/07/22	1802	CITY OF MONTEREY	351	5201	JANUARY 2022	0.00	226,572.93
101	101663	01/07/22	1802	CITY OF MONTEREY	351	5227	NOV 2021 REPAIR COS	0.00	378.75
TOTAL CHECK								0.00	226,951.68
101	101665	01/07/22	7417	MP EXPRESS	301	5301	NOTICE TO APPEAR PR	0.00	662.29
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	401	5301	LIBRARY SUPPLIES	0.00	24.43
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	51.99
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	102.46
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	133	5301	OFFICE SUPPLIES	0.00	107.01
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	401	5301	LIBRARY SUPPLIES	0.00	119.51
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	6.02
101	101666	01/07/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	10.86
TOTAL CHECK								0.00	422.28
101	101667	01/07/22	2024	PACIFIC GAS & ELECT	421	5222	RECREATION	0.00	272.39
101	101668	01/07/22	9529	PROTELESIS	133	5201	SOFTWARE ASSURANCE	0.00	2,332.20
101	101668	01/07/22	9529	PROTELESIS	133	5201	PHONE SYSTEM SUPPOR	0.00	3,476.00
TOTAL CHECK								0.00	5,808.20
101	101669	01/07/22	8429	PURE JANITORIAL LLC	411	5201	FY21/22 JANITORIAL	0.00	2,224.00
101	101671	01/07/22	2276	BECKS SHOES AND REP	502	5309	ARLON MOORE SHOES	0.00	171.25
101	101672	01/07/22	6520	RINCON CONSULTANTS,	201	5201	CONTRACT SERVICES	0.00	990.00
101	101672	01/07/22	6520	RINCON CONSULTANTS,	201	5201	CONTRACT SERVICES	0.00	2,261.25
TOTAL CHECK								0.00	3,251.25
101	101673	01/07/22	2371	SAFETY-KLEEN SYSTEM	502	5309	PARTS	0.00	323.28
101	101674	01/07/22	2448	SENTRY ALARM SYSTEM	503	5223	GOLF LINKS	0.00	150.00
101	101675	01/07/22	8097	SEQUENTIAL	503	5223	RECREATION BUILDING	0.00	125.00

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FUND - 01 - GENERAL FUND

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101	101675	01/07/22	8097	SEQUENTIAL	503	5223	YOUTH CENTER	0.00	150.00
101	101675	01/07/22	8097	SEQUENTIAL	503	5223	COMMUNITY CENTER	0.00	175.00
TOTAL CHECK								0.00	450.00
101	101676	01/07/22	2541	SPCA OF MONTEREY CO	301	5201	ANIMAL SHELTER	0.00	664.00
101	101678	01/07/22	2707	TRUCKSIS ENTERPRISE	301	5291	BUSINESS CARDS/SHUM	0.00	48.07
101	101679	01/07/22	5252	ULINE	301	5306	TRAINING ROOM FURNI	0.00	5,766.76
101	101680	01/07/22	2786	VERIZON WIRELESS	351	5212	FIRE	0.00	64.19
101	101680	01/07/22	2786	VERIZON WIRELESS	401	5212	LIB	0.00	76.02
101	101680	01/07/22	2786	VERIZON WIRELESS	421	5212	REC	0.00	91.87
101	101680	01/07/22	2786	VERIZON WIRELESS	201	5212	CDD	0.00	102.39
101	101680	01/07/22	2786	VERIZON WIRELESS	131	5212	FIN	0.00	20.04
101	101680	01/07/22	2786	VERIZON WIRELESS	121	5212	CM	0.00	26.87
101	101680	01/07/22	2786	VERIZON WIRELESS	133	5212	IT	0.00	38.01
101	101680	01/07/22	2786	VERIZON WIRELESS	133	5212	ADMIN	0.00	51.35
101	101680	01/07/22	2786	VERIZON WIRELESS	501	5212	PW	0.00	131.34
101	101680	01/07/22	2786	VERIZON WIRELESS	301	5212	PD	0.00	136.42
101	101680	01/07/22	2786	VERIZON WIRELESS	501	5212	PW	0.00	526.04
TOTAL CHECK								0.00	1,264.54
101	101682	01/07/22	9305	WATSONVILLE FORD	503	5227	UNIT 59	0.00	90.90
101	101682	01/07/22	9305	WATSONVILLE FORD	503	5227	UNIT 58	0.00	-17.48
101	101682	01/07/22	9305	WATSONVILLE FORD	505	5227	UNIT 17	0.00	-17.48
101	101682	01/07/22	9305	WATSONVILLE FORD	501	5227	UNIT #1	0.00	-17.48
101	101682	01/07/22	9305	WATSONVILLE FORD	503	5227	UNIT 51	0.00	155.97
TOTAL CHECK								0.00	194.43
101	101683	01/07/22	1204	WINNERS AWARDS & EN	513	5309	MEMORIAL TREE PROGR	0.00	289.51
101	101683	01/07/22	1204	WINNERS AWARDS & EN	513	5309	MEMORIAL TREE PROGR	0.00	289.51
TOTAL CHECK								0.00	579.02
101	101684	01/07/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	66.43
101	101684	01/07/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	66.43
101	101684	01/07/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	66.43
101	101684	01/07/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	66.43
TOTAL CHECK								0.00	265.72
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	71.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	73.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	73.79
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	73.79

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101687	01/07/22	1694	MISSION UNIFORM SER	421	5305	LINEN AND UNIFORM C	0.00	63.45
101	101687	01/07/22	1694	MISSION UNIFORM SER	421	5305	LINEN AND UNIFORM C	0.00	63.45
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	11.99
101	101687	01/07/22	1694	MISSION UNIFORM SER	351	5291	LINEN AND UNIFORM C	0.00	11.07
101	101687	01/07/22	1694	MISSION UNIFORM SER	351	5291	LINEN AND UNIFORM C	0.00	11.07
101	101687	01/07/22	1694	MISSION UNIFORM SER	421	5305	LINEN AND UNIFORM C	0.00	11.66
101	101687	01/07/22	1694	MISSION UNIFORM SER	421	5305	LINEN AND UNIFORM C	0.00	11.66
TOTAL CHECK								0.00	1,183.72
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	7.83
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	8.25
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	9.86
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	9.98
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	10.86
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	10.86
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	10.86
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	13.04
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	14.97
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	401	5223	LIBRARY	0.00	15.20
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	17.39
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	18.48
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	3.03
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	3.03
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	3.25
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	3.68
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	4.98
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	4.99
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	5.43
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	5.43
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	6.07
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	6.50
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	505	5309	STREET	0.00	1.67
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	30.44
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	31.53
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	301	5227	PD	0.00	6.50
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5227	B&G TRUCK 51	0.00	18.48
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	301	5227	PD	0.00	18.48
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	501	5309	ADMIN	0.00	7.17
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	301	5227	PD	0.00	37.81
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	32.60
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	351	5223	B&G FIRE DEPT.	0.00	37.37

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	49.52
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	52.66
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	65.85
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	73.20
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	401	5223	LIBRARY	0.00	84.76
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5223	B&G	0.00	103.27
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	503	5227	B&G TRUCK 51	0.00	4.99
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	301	5227	PD	0.00	6.08
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	505	5309	STRET	0.00	16.30
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	505	5309	STREET	0.00	18.01
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	505	5309	STREET	0.00	18.20
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	505	5309	STREET	0.00	22.22
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	505	5309	STREET	0.00	39.12
TOTAL CHECK								0.00	970.20
101	101693	01/14/22	2952	AFLAC	01	202	DED:5291 AFLAC P/T	0.00	69.24
101	101693	01/14/22	2952	AFLAC	01	202	DED:5200 AFLAC PREM	0.00	717.32
101	101693	01/14/22	2952	AFLAC	01	202	DED:5201 AFLAC P/T	0.00	1,776.62
TOTAL CHECK								0.00	2,563.18
101	101694	01/14/22	2935	CALIF LAW ENFORCMEN	01	202	DED:3200 LTD PD	0.00	514.50
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:531 HEALTH	0.00	350.62
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:109 HEALTH	0.00	507.91
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:118 HEALTH	0.00	674.50
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:115 HEALTH	0.00	701.23
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:2074 HEALTH	0.00	811.50
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:2072 HEALTH	0.00	862.50
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:120 HEALTH	0.00	1,015.82
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:1 HEALTH	0.00	1,057.01
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:2225 HEALTH INS	0.00	1,057.01
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:0563 HEALTH FAM	0.00	1,114.18
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:2 HEALTH	0.00	1,473.34
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:533 HEALTH	0.00	1,823.20
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:110 HEALTH	0.00	2,031.62
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:2071 HEALTH	0.00	2,397.00
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:103 HEALTH	0.00	2,454.34
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:102 HEALTH	0.00	2,748.24
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:104 HEALTH	0.00	3,506.15
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:105 HEALTH	0.00	3,646.40
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:106 HEALTH	0.00	3,699.57
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:2073 HEALTH FAM	0.00	4,438.00
101	101695	01/14/22	1	CALPERS HEALTH	01	202	DED:100 HEALTH	0.00	6,342.12
TOTAL CHECK								0.00	42,712.26
101	101696	01/14/22	2939	CALPERS LONG TERM C	01	202	DED:6000 LTC	0.00	94.89
101	101697	01/14/22	3134	CITY OF PACIFIC GRO	01	202	DED:3300 AFLAC DEP	0.00	100.00
101	101697	01/14/22	3134	CITY OF PACIFIC GRO	01	202	DED:3301 AFLAC MED	0.00	2,578.02
TOTAL CHECK								0.00	2,678.02
101	101698	01/14/22	3393	EFT	01	202	DED:*FM MEDICARE	0.00	9,899.12

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101698	01/14/22	3393	EFT	01	202	DED:*SCA STATE TAX	0.00	14,551.59
101	101698	01/14/22	3393	EFT	01	202	DED:*FT FEDERAL TX	0.00	38,163.40
TOTAL CHECK								0.00	62,614.11
101	101699	01/14/22	2937	FORT DEARBORN LIFE	01	202	DED:3500 LIFE INS	0.00	1,092.00
101	101700	01/14/22	2946	PACIFIC GROVE CITY	01	202	DED:7003 ASSOC DUES	0.00	23.75
101	101700	01/14/22	2946	PACIFIC GROVE CITY	01	202	DED:7000 ASSOC DUES	0.00	783.75
TOTAL CHECK								0.00	807.50
101	101701	01/14/22	2938	MASS MUTUAL (457 PL	01	202	DED:3999 ROTH IRA	0.00	965.38
101	101701	01/14/22	2938	MASS MUTUAL (457 PL	01	202	DED:4000 DEF COMP	0.00	13,986.57
TOTAL CHECK								0.00	14,951.95
101	101702	01/14/22	2936	MTRY COUNTY DEPT OF	01	202	DED:0023 GARNISH	0.00	236.30
101	101703	01/14/22	2949	PACIFIC GROVE MANAG	01	202	DED:7203 ASSOC DUES	0.00	25.00
101	101704	01/14/22	2051	CITY OF PACIFIC GRO	01	202	DED:1006 WORK COMP	0.00	8.52
101	101704	01/14/22	2051	CITY OF PACIFIC GRO	01	202	DED:1009 WORK COMP	0.00	63.85
101	101704	01/14/22	2051	CITY OF PACIFIC GRO	01	202	DED:1005 WORK COMP	0.00	1,183.92
101	101704	01/14/22	2051	CITY OF PACIFIC GRO	01	202	DED:1010 WORK COMP	0.00	2,884.83
101	101704	01/14/22	2051	CITY OF PACIFIC GRO	01	202	DED:1003 WORK COMP	0.00	6,183.40
TOTAL CHECK								0.00	10,324.52
101	101705	01/14/22	2052	CITY OF PACIFIC GRO	01	202	DED:7510 PERS REIMB	0.00	44.13
101	101706	01/14/22	2053	CITY OF PACIFIC GRO	01	202	DED:2101 DENTAL	0.00	75.80
101	101706	01/14/22	2053	CITY OF PACIFIC GRO	01	202	DED:201 DENTAL	0.00	187.95
101	101706	01/14/22	2053	CITY OF PACIFIC GRO	01	202	DED:202 DENTAL	0.00	189.64
101	101706	01/14/22	2053	CITY OF PACIFIC GRO	01	202	DED:2102 DENTAL	0.00	225.54
101	101706	01/14/22	2053	CITY OF PACIFIC GRO	01	202	DED:200 DENTAL	0.00	606.40
101	101706	01/14/22	2053	CITY OF PACIFIC GRO	01	202	DED:2103 DENTAL FAM	0.00	663.74
TOTAL CHECK								0.00	1,949.07
101	101707	01/14/22	2054	CITY OF PACIFIC GRO	01	202	DED:0005 SUTA	0.00	123.92
101	101708	01/14/22	2133	PERS	01	202	DED:0025 PERS RT MS	0.00	-3.38
101	101708	01/14/22	2133	PERS	01	202	DED:0004 SURV BEN	0.00	82.77
101	101708	01/14/22	2133	PERS	01	202	DED:0022 PERS SP MS	0.00	181.78
101	101708	01/14/22	2133	PERS	01	202	DED:08 PERS OTHER	0.00	380.57
101	101708	01/14/22	2133	PERS	01	202	DED:0018 PERS SP SF	0.00	784.15
101	101708	01/14/22	2133	PERS	01	202	DED:0009 PERS OTHER	0.00	1,199.49
101	101708	01/14/22	2133	PERS	01	202	DED:07 PERS CITY	0.00	5,857.97
101	101708	01/14/22	2133	PERS	01	202	DED:0002 PERS	0.00	6,144.50
101	101708	01/14/22	2133	PERS	01	202	DED:0017 PERS RG SF	0.00	6,534.35
101	101708	01/14/22	2133	PERS	01	202	DED:0011 PERS ER SF	0.00	7,391.68
101	101708	01/14/22	2133	PERS	01	202	DED:0021 PERS REG M	0.00	7,435.41
101	101708	01/14/22	2133	PERS	01	202	DED:0020 PERS ER M3	0.00	8,561.32
101	101708	01/14/22	2133	PERS	01	202	DED:01 PERS	0.00	11,574.44
101	101708	01/14/22	2133	PERS	01	202	DED:0006 PERS CITY	0.00	12,674.46
TOTAL CHECK								0.00	68,799.51

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101709	01/14/22	2943	POLICE OFFICERS ASS	01	202	DED:7204 ASSOC DUES	0.00	7.00
101	101709	01/14/22	2943	POLICE OFFICERS ASS	01	202	DED:7205 ASSOC DUES	0.00	881.04
TOTAL CHECK								0.00	888.04
101	101710	01/14/22	2940	LEGAL SHIELD	01	202	DED:6100 LEGAL SVC	0.00	14.95
101	101711	01/14/22	7956	STATE DISABILITY TA	01	202	DED:0026 SDI	0.00	3,800.23
101	101712	01/14/22	3227	SHERIFF OF MONTEREY	01	202	DED:0014 WAGE ORDER	0.00	449.15
101	101713	01/14/22	8352	TRANSAMERICA EMPLOY	01	202	DED:5202 TRANSAMERI	0.00	627.08
101	101714	01/14/22	4177	UNION BANK OF CALIF	01	202	DED:4005 PARS-457	0.00	616.58
101	101715	01/14/22	632	VISION SERVICE PLAN	01	202	DED:2502 VISION	0.00	27.92
101	101715	01/14/22	632	VISION SERVICE PLAN	01	202	DED:302 VISION	0.00	60.00
101	101715	01/14/22	632	VISION SERVICE PLAN	01	202	DED:301 VISION	0.00	75.00
101	101715	01/14/22	632	VISION SERVICE PLAN	01	202	DED:300 VISION	0.00	216.38
101	101715	01/14/22	632	VISION SERVICE PLAN	01	202	DED:2503 VISION FAM	0.00	285.01
TOTAL CHECK								0.00	664.31
101	101718	01/18/22	4943	US BANK	121	5291	FRATI CC DEC 2021	0.00	11.95
101	101718	01/18/22	4943	US BANK	133	5212	KHASIMI CC DEC 2021	0.00	288.48
101	101718	01/18/22	4943	US BANK	301	5215	MADALONE CC DEC 202	0.00	198.40
101	101718	01/18/22	4943	US BANK	501	5261	GHO CC DEC 2021	0.00	15.96
101	101718	01/18/22	4943	US BANK	301	5261	FRANCIS CC DEC 2021	0.00	65.00
101	101718	01/18/22	4943	US BANK	133	5229	KHASIMI CC DEC 2021	0.00	35.98
101	101718	01/18/22	4943	US BANK	133	5224	KHASIMI CC DEC 2021	0.00	29.26
101	101718	01/18/22	4943	US BANK	133	5224	KHASIMI CC DEC 2021	0.00	32.35
101	101718	01/18/22	4943	US BANK	133	5224	KHASIMI CC DEC 2021	0.00	61.95
101	101718	01/18/22	4943	US BANK	131	5291	FRATI CC DEC 2021	0.00	38.05
101	101718	01/18/22	4943	US BANK	501	5291	GHO CC DEC 2021	0.00	52.50
101	101718	01/18/22	4943	US BANK	301	5291	PD TRAVEL CC DEC 20	0.00	61.44
101	101718	01/18/22	4943	US BANK	401	5301	GODWIN CC DEC 2021	0.00	15.97
101	101718	01/18/22	4943	US BANK	301	5301	PD TRAVEL CC DEC 20	0.00	41.25
101	101718	01/18/22	4943	US BANK	301	5301	PD TRAVEL CC DEC 20	0.00	65.82
101	101718	01/18/22	4943	US BANK	301	5301	PD TRAVEL CC DEC 20	0.00	170.11
101	101718	01/18/22	4943	US BANK	301	5291	FRANCIS CC DEC 2021	0.00	150.25
101	101718	01/18/22	4943	US BANK	121	5291	LIVIAN CC DEC 2021	0.00	217.50
101	101718	01/18/22	4943	US BANK	133	5224	KHASIMI CC DEC 2021	0.00	152.52
101	101718	01/18/22	4943	US BANK	121	5261	HARVEY CC DEC 2021	0.00	175.65
101	101718	01/18/22	4943	US BANK	121	5261	LIVIAN CC DEC 2021	0.00	225.00
101	101718	01/18/22	4943	US BANK	301	5215	MADALONE CC DEC 202	0.00	19.97
101	101718	01/18/22	4943	US BANK	301	5215	MADALONE CC DEC 202	0.00	24.95
101	101718	01/18/22	4943	US BANK	301	5215	MADALONE CC DEC 202	0.00	48.00
101	101718	01/18/22	4943	US BANK	121	5215	HARVEY CC DEC 2021	0.00	53.80
101	101718	01/18/22	4943	US BANK	121	5217	LINDSTROM CC DEC 20	0.00	84.32
101	101718	01/18/22	4943	US BANK	121	5215	KANDELL CC DEC 2021	0.00	75.00
101	101718	01/18/22	4943	US BANK	201	5215	WYATT CC DEC 2021	0.00	150.00
101	101718	01/18/22	4943	US BANK	401	5223	GHO CC DEC 2021	0.00	118.47
101	101718	01/18/22	4943	US BANK	401	5223	GODWIN CC DEC 2021	0.00	149.66

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101	101718	01/18/22	4943	US BANK	301	5275	SANTOS CC DEC 2021	0.00	129.81
101	101718	01/18/22	4943	US BANK	131	5261	HANNAH CC DEC 2021	0.00	110.00
101	101718	01/18/22	4943	US BANK	131	5261	HANNAH CC DEC 2021	0.00	130.00
101	101718	01/18/22	4943	US BANK	301	5291	FRANCIS CC DEC 2021	0.00	108.16
101	101718	01/18/22	4943	US BANK	301	5291	FRANCIS CC DEC 2021	0.00	117.89
101	101718	01/18/22	4943	US BANK	131	5291	HANNAH CC DEC 2021	0.00	119.85
101	101718	01/18/22	4943	US BANK	131	5291	HANNAH CC DEC 2021	0.00	150.00
101	101718	01/18/22	4943	US BANK	301	5301	FRANCIS CC DEC 2021	0.00	119.40
101	101718	01/18/22	4943	US BANK	301	5301	PD TRAVEL CC DEC 20	0.00	125.16
101	101718	01/18/22	4943	US BANK	301	5227	FRANCIS CC DEC 2021	0.00	948.92
101	101718	01/18/22	4943	US BANK	301	5261	FRANCIS CC DEC 2021	0.00	808.86
101	101718	01/18/22	4943	US BANK	401	5303	WEIRICK CC DEC 2021	0.00	716.18
101	101718	01/18/22	4943	US BANK	133	5307	KHASIMI CC DEC 2021	0.00	467.31
101	101718	01/18/22	4943	US BANK	133	5307	KHASIMI CC DEC 2021	0.00	592.68
101	101718	01/18/22	4943	US BANK	421	5309	CLARK CC DEC 2021	0.00	352.23
101	101718	01/18/22	4943	US BANK	501	5309	GHO CC DEC 2021	0.00	442.84
101	101718	01/18/22	4943	US BANK	131	5215	LAGASCA CC DEC 2021	0.00	-338.13
101	101718	01/18/22	4943	US BANK	131	5215	LAGASCA CC DEC 2021	0.00	-250.00
101	101718	01/18/22	4943	US BANK	301	5215	PD TRAVEL CC DEC 20	0.00	305.00
101	101718	01/18/22	4943	US BANK	301	5215	PD TRAVEL CC DEC 20	0.00	353.60
101	101718	01/18/22	4943	US BANK	401	5215	GODWIN CC DEC 2021	0.00	372.48
101	101718	01/18/22	4943	US BANK	301	5215	FRANCIS CC DEC 2021	0.00	750.00
101	101718	01/18/22	4943	US BANK	121	5215	LINDSTROM CC DEC 20	0.00	1,231.86
101	101718	01/18/22	4943	US BANK	121	5202	LIVIAN CC DEC 2021	0.00	840.00
101	101718	01/18/22	4943	US BANK	121	5202	LIVIAN CC DEC 2021	0.00	1,200.00
101	101718	01/18/22	4943	US BANK	503	5223	GHO CC DEC 2021	0.00	363.55
101	101718	01/18/22	4943	US BANK	121	5303	LIVIAN CC DEC 2021	0.00	9.77
101	101718	01/18/22	4943	US BANK	501	5301	GHO CC DEC 2021	0.00	8.73
101	101718	01/18/22	4943	US BANK	301	5301	FRANCIS CC DEC 2021	0.00	9.77
101	101718	01/18/22	4943	US BANK	401	5301	WEIRICK CC DEC 2021	0.00	67.48
101	101718	01/18/22	4943	US BANK	301	5291	FRANCIS CC DEC 2021	0.00	15.31
101	101718	01/18/22	4943	US BANK	133	5229	KHASIMI CC DEC 2021	0.00	14.99
101	101718	01/18/22	4943	US BANK	133	5229	KHASIMI CC DEC 2021	0.00	450.00
101	101718	01/18/22	4943	US BANK	133	5307	KHASIMI CC DEC 2021	0.00	1,279.53
101	101718	01/18/22	4943	US BANK	421	5361	CLARK CC DEC 2021	0.00	780.99
101	101718	01/18/22	4943	US BANK	131	5221	HANNAH CC DEC 2021	0.00	275.00
101	101718	01/18/22	4943	US BANK	121	5236	LINDSTROM CC DEC 20	0.00	278.99
TOTAL CHECK								0.00	16,287.77
101	101719	01/21/22	7755	ALLSAFE	301	5223	SIDE DOOR ACCESS CA	0.00	175.00
101	101720	01/21/22	4965	ALVAREZ TECHNOLOGY	133	5201	IT SUPPORT FEBURARY	0.00	450.00
101	101721	01/21/22	106	AMERICAN SUPPLY COM	351	5305	FIRE DEPT SUPPLIES	0.00	73.08
101	101721	01/21/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	899.12
101	101721	01/21/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	1,024.43
101	101721	01/21/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	2,522.67
TOTAL CHECK								0.00	4,519.30
101	101722	01/21/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	92.36
101	101722	01/21/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	101.60
TOTAL CHECK								0.00	193.96

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101723	01/21/22	6154	AT&T	421	5212	RECREATION	0.00	33.78
101	101723	01/21/22	6154	AT&T	133	5212	ADMIN ALARM	0.00	33.78
TOTAL CHECK								0.00	67.56
101	101724	01/21/22	5363	AT&T CALNET 3	133	5206	INTERNET - LIBRARY	0.00	176.52
101	101724	01/21/22	5363	AT&T CALNET 3	133	5212	PHONES	0.00	2,142.50
TOTAL CHECK								0.00	2,319.02
101	101726	01/21/22	213	BAKER & TAYLOR COMP	401	5301	LIBRARY SUPPLIES	0.00	61.45
101	101726	01/21/22	213	BAKER & TAYLOR COMP	401	5301	LIBRARY SUPPLIES	0.00	116.71
101	101726	01/21/22	213	BAKER & TAYLOR COMP	401	5301	LIBRARY SUPPLIES	0.00	143.73
101	101726	01/21/22	213	BAKER & TAYLOR COMP	401	5301	LIBRARY SUPPLIES	0.00	154.81
101	101726	01/21/22	213	BAKER & TAYLOR COMP	401	5303	BOOKS AND MATERIALS	0.00	1,446.28
101	101726	01/21/22	213	BAKER & TAYLOR COMP	401	5301	LIBRARY SUPPLIES	0.00	8.75
TOTAL CHECK								0.00	1,931.73
101	101728	01/21/22	5303	VERIZON BUSINESS	301	5206	VERIZON PORT ACCESS	0.00	580.49
101	101729	01/21/22	3501	CALTRONICS BUSINESS	133	5224	KONICA WINDOWS UPGR	0.00	254.48
101	101730	01/21/22	522	CDW GOVERNMENT INC	133	5229	VMW CARBON BLACK EP	0.00	2,000.00
101	101731	01/21/22	1040	CENGAGE LEARNING/GA	401	5303	BOOKS & MATERIALS	0.00	171.33
101	101731	01/21/22	1040	CENGAGE LEARNING/GA	401	5303	BOOKS & MATERIALS	0.00	27.83
TOTAL CHECK								0.00	199.16
101	101732	01/21/22	5198	CODE PUBLISHING, IN	121	5201	CODE UPDATES	0.00	208.50
101	101733	01/21/22	6309	COLANTUONO, HIGHSMI	111	5205	CDTFA TRANSACTIONS	0.00	150.00
101	101733	01/21/22	6309	COLANTUONO, HIGHSMI	111	5205	LEGAL SERVICES PG&E	0.00	150.98
TOTAL CHECK								0.00	300.98
101	101734	01/21/22	5171	COMCAST	133	5206	INTERNET PW	0.00	225.56
101	101735	01/21/22	696	CSC OF SALINAS	505	5227	UNIT 26	0.00	12.99
101	101737	01/21/22	3451	DE LAY & LAREDO	111	5203	DEC 2021 LEGAL SERV	0.00	200.20
101	101737	01/21/22	3451	DE LAY & LAREDO	111	5203	GENERAL LEGAL FEES	0.00	35,095.00
101	101737	01/21/22	3451	DE LAY & LAREDO	201	5205	DEC 2021 LEGAL SERV	0.00	2,659.80
TOTAL CHECK								0.00	37,955.00
101	101738	01/21/22	779	DEMCO	401	5223	BLDG	0.00	4,081.21
101	101739	01/21/22	9395	DLT SOLUTIONS, LLC	133	5229	SYTEMS MGMT SOFTWAR	0.00	2,392.16
101	101740	01/21/22	3970	ALHAMBRA & SIERRA S	421	5201	WATER SERVICE	0.00	53.89
101	101740	01/21/22	3970	ALHAMBRA & SIERRA S	421	5201	WATER SERVICE	0.00	62.33
101	101740	01/21/22	3970	ALHAMBRA & SIERRA S	421	5201	WATER SERVICE	0.00	64.33
101	101740	01/21/22	3970	ALHAMBRA & SIERRA S	421	5201	WATER SERVICE	0.00	64.82
101	101740	01/21/22	3970	ALHAMBRA & SIERRA S	421	5201	WATER SERVICE	0.00	74.82
TOTAL CHECK								0.00	320.19

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101	101741	01/21/22	904	ENGINEERED FIRE SYS	351	5201	PLAN REVIEW DEC 202	0.00	350.00
101	101741	01/21/22	904	ENGINEERED FIRE SYS	351	5201	PLAN REVIEW NOV 202	0.00	950.00
TOTAL CHECK								0.00	1,300.00
101	101743	01/21/22	7127	GACHINA LANDSCAPE M	503	5201	JANUARY 2022	0.00	763.00
101	101744	01/21/22	8975	HEIHACHIRO TAKARABE	421	5208	TAI CHI DEC 2021	0.00	42.00
101	101745	01/21/22	8993	HR & ASSOCIATES	225	5201	ATC PLANNING SERVIC	0.00	2,712.50
101	101746	01/21/22	1300	IBM CORPORATION	301	5201	MAAS360 DEVICES	0.00	23.15
101	101747	01/21/22	3521	KIMBALL MIDWEST	502	5309	3/8 DR REVERSIBLE R	0.00	61.68
101	101747	01/21/22	3521	KIMBALL MIDWEST	502	5309	MECH STOCK	0.00	253.16
TOTAL CHECK								0.00	314.84
101	101750	01/21/22	7450	MACEE FLORES	301	5215	EDUCATION REIMBURS	0.00	754.90
101	101751	01/21/22	9428	MCA DIRECT	121	5303	WALL CALENDAR	0.00	14.89
101	101752	01/21/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	74.70
101	101752	01/21/22	3304	MIDWEST TAPE	401	5303	BOOKS & MATERIALS	0.00	32.61
TOTAL CHECK								0.00	107.31
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	503	5223	B&G	0.00	140.52
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	301	5227	PD	0.00	54.09
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	301	5227	PD	0.00	63.42
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE UNIT 6414	0.00	69.74
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE 6424	0.00	79.42
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	503	5227	B&G	0.00	90.65
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE 6494	0.00	127.50
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	503	5227	B&G	0.00	-4.70
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	501	5227	PW ADMIN	0.00	10.26
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	301	5227	PD	0.00	31.71
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	503	5223	B&G	0.00	-140.52
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	502	5309	MECH	0.00	14.13
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE UNIT 6414	0.00	16.75
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	502	5309	MECH	0.00	20.52
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	502	5309	MECH	0.00	20.52
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE 6494	0.00	20.52
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	501	5227	PW ADMIN	0.00	20.84
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE #6424	0.00	21.72
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	351	5227	FIRE #6424	0.00	22.83
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	505	5227	STREETS 12	0.00	27.95
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	505	5226	STREETS	0.00	48.85
TOTAL CHECK								0.00	756.72
101	101756	01/21/22	3443	MONTEREY BAY PEST C	503	5223	600 PINE AVE.	0.00	180.00
101	101756	01/21/22	3443	MONTEREY BAY PEST C	503	5223	2100 SUNSET MONTHLY	0.00	490.00
TOTAL CHECK								0.00	670.00

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101757	01/21/22	1756	MONTEREY COUNTY EHB	421	5309	HEALTH PERMIT	0.00	167.00
101	101757	01/21/22	1756	MONTEREY COUNTY EHB	501	5291	HEALTH PERMIT	0.00	35.00
TOTAL CHECK								0.00	202.00
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	101	5221	PUB NOTICE ELECTION	0.00	290.16
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	101	5221	PUBLIC RES. NO 21-0	0.00	380.84
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	201	5221	PH-ATC CC 01-12-22	0.00	616.60
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	121	5221	2ND READ IT POSITIO	0.00	108.81
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	121	5221	MEA CLASS	0.00	108.81
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	131	5221	2ND READ BUDGET ADO	0.00	108.81
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	121	5221	2ND READ MINIMUM WA	0.00	108.81
101	101758	01/21/22	3807	MONTEREY COUNTY WEE	101	5221	CALL FOR ELECTION	0.00	2,708.60
TOTAL CHECK								0.00	4,431.44
101	101759 V	01/21/22	1780	CITY OF MONTEREY LI	401	5201	CONTRACT SERVICES	0.00	-24.99
101	101759	01/21/22	1780	CITY OF MONTEREY LI	401	5201	CONTRACT SERVICES	0.00	24.99
TOTAL CHECK								0.00	0.00
101	101761	01/21/22	7681	MONTEREY PENINSULA	505	5309	PARKING METERS GR-0	0.00	650.00
101	101762	01/21/22	7417	MP EXPRESS	301	5301	PARKING CITATIONS	0.00	2,583.64
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	311.35
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	514.30
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	55.04
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	121	5301	OFFICE SUPPLIES	0.00	59.46
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	121	5301	OFFICE SUPPLIES	0.00	63.38
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	401	5301	LIBRARY SUPPLIES	0.00	67.57
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	75.94
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	130.41
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	133.66
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	10.86
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	17.39
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	17.70
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	21.74
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	23.37
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	23.48
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	29.47
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	47.38
101	101764	01/21/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	47.86
TOTAL CHECK								0.00	1,650.36
101	101765	01/21/22	5567	OVERDRIVE, INC.	401	5303	BOOKS & MATERIALS	0.00	20.93
101	101766	01/21/22	2024	PACIFIC GAS & ELECT	505	5222	GOLF STREETS	0.00	55.72
101	101766	01/21/22	2024	PACIFIC GAS & ELECT	411	5802	MUSEUM	0.00	270.67
TOTAL CHECK								0.00	326.39
101	101767	01/21/22	2062	PACIFIC WEST WATER	131	5301	OFFICE SUPPLIES	0.00	42.85
101	101767	01/21/22	2062	PACIFIC WEST WATER	201	5301	OFFICE SUPPLIES	0.00	42.85
TOTAL CHECK								0.00	85.70

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101	101768	01/21/22	3042	PEAK ENTERPRISES	401	5303	BOOKS & MATERIALS	0.00	1,125.90
101	101770	01/21/22	2219	PURE WATER	501	5309	WATER SERVICE	0.00	19.25
101	101770	01/21/22	2219	PURE WATER	502	5309	WATER SERVICE	0.00	19.25
101	101770	01/21/22	2219	PURE WATER	503	5309	WATER SERVICE	0.00	19.25
101	101770	01/21/22	2219	PURE WATER	505	5309	WATER SERVICE	0.00	19.25
TOTAL CHECK								0.00	77.00
101	101771	01/21/22	2448	SENTRY ALARM SYSTEM	503	5223	GOLF COURSE CART ST	0.00	885.42
101	101772	01/21/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	13.75
101	101772	01/21/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	30.30
101	101772	01/21/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	48.93
101	101772	01/21/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	130.47
101	101772	01/21/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	513.05
TOTAL CHECK								0.00	736.50
101	101773	01/21/22	1768	STURDY OIL COMPANY	505	5311	STRT	0.00	374.29
101	101773	01/21/22	1768	STURDY OIL COMPANY	503	5311	B&G	0.00	748.57
101	101773	01/21/22	1768	STURDY OIL COMPANY	01	111		0.00	2,661.38
101	101773	01/21/22	1768	STURDY OIL COMPANY	301	5311	PD	0.00	1,070.05
TOTAL CHECK								0.00	4,854.29
101	101774	01/21/22	2993	SUPERION, LLC	131	5201	CONSULTING, PROJ MG	0.00	180.00
101	101775	01/21/22	1758	THE MONTEREY COUNTY	201	5221	PH-ATC CC 1-12-27	0.00	1,146.98
101	101776	01/21/22	2680	TOPE'S TREE SERVICE	513	5201	FY21/22 TREE MAINT.	0.00	720.00
101	101777	01/21/22	8379	TRANSUNION RISK AND	301	5201	4170441/TLO	0.00	75.00
101	101779	01/21/22	7867	UPS	301	5221	UPS SHIPPING	0.00	12.00
101	101781	01/21/22	2772	VALLEY SAW & GARDEN	505	5291		0.00	1,669.93
101	101782	01/21/22	2786	VERIZON WIRELESS	301	5206	VERIZON WIRELESS MO	0.00	511.42
101	101784	01/21/22	2800	ROXANE VIRAY	301	5123	FEBRUARY 2022	0.00	150.00
101	101785	01/21/22	9305	WATSONVILLE FORD	503	5227	UNIT 54	0.00	59.28
101	101786	01/21/22	8136	WELLS FARGO VENDOR	501	5225	01/17/22 - 02/16/22	0.00	147.32
101	101786	01/21/22	8136	WELLS FARGO VENDOR	401	5225	01/17/22 - 02/16/22	0.00	164.74
101	101786	01/21/22	8136	WELLS FARGO VENDOR	301	5225	01/17/22 - 02/16/22	0.00	173.65
101	101786	01/21/22	8136	WELLS FARGO VENDOR	131	5225	01/17/22 - 02/16/22	0.00	173.65
101	101786	01/21/22	8136	WELLS FARGO VENDOR	121	5225	01/17/22 - 02/16/22	0.00	174.71
101	101786	01/21/22	8136	WELLS FARGO VENDOR	201	5225	01/17/22 - 02/16/22	0.00	205.51
TOTAL CHECK								0.00	1,039.58
101	101788	01/21/22	2894	WILSON'S PLUMBING &	503	5223	YOUTH CENTER	0.00	1,049.66
101	101788	01/21/22	2894	WILSON'S PLUMBING &	503	5223	YOUTH CENTER	0.00	4,984.72
TOTAL CHECK								0.00	6,034.38

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101790	01/21/22	2928	ZEE MEDICAL SERVICE	501	5291	EYEWASH SERVICE	0.00	90.00
101	101791	01/20/22	2133	PERS	01	202	PPE 12/25/21 SANTOS	0.00	428.59
101	101792	01/21/22	1782	CITY OF MONTEREY LI	401	5201	CONTRACT SERVICES	0.00	24.99
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	139 GRAND AVE	0.00	53.54
101	101793	01/27/22	438	CALIFORNIA AMERICAN	351	5222	643 HYDRANTS HYDT	0.00	35.51
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	748 LIGHTHSE IRRG	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST IRRIG	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	800 LIGHTHSE PLANTE	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	792 LIGHTHSE IRRIG	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	582 LIGHTHSE IRRIG	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	765 LIGHTHSE IRRIG	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	2100 SUNSET DRIVE	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	840 LIGHTHSE PLANTE	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	850 LIGHTHSE PLANTE	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	882 LIGHTHSE PLANTE	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	106 7TH ST PARK	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	131	5222	308 16TH ST.	0.00	37.85
101	101793	01/27/22	438	CALIFORNIA AMERICAN	351	5222	600 PINE AVE FIRE	0.00	43.73
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	CENTRAL 4 IN FIRE	0.00	43.73
101	101793	01/27/22	438	CALIFORNIA AMERICAN	411	5222	165 FOREST AVE FIRE	0.00	43.73
101	101793	01/27/22	438	CALIFORNIA AMERICAN	201	5222	304 16TH ST FIRE	0.00	81.40
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	515 JUNIPERO	0.00	230.66
101	101793	01/27/22	438	CALIFORNIA AMERICAN	351	5222	600 PINE	0.00	232.19
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	263 GROVE ACRES	0.00	263.95
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	863 OCEANVIEW IRRG	0.00	273.74
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	1051 OCEANVIEW IRRG	0.00	273.74
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	707 OCEANVIEW-NAIAD	0.00	273.74
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	114 CALEDONIA PK	0.00	288.68
101	101793	01/27/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST	0.00	289.52
101	101793	01/27/22	438	CALIFORNIA AMERICAN	201	5222	304 16TH ST BDOM-FI	0.00	291.34
101	101793	01/27/22	438	CALIFORNIA AMERICAN	301	5222	580 PINE	0.00	307.15
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	930 SINEX	0.00	326.69
101	101793	01/27/22	438	CALIFORNIA AMERICAN	401	5222	550 CENTRAL	0.00	356.37
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	391 OCEANVW-BERWICK	0.00	543.95
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	B & G 15%	0.00	60.04
101	101793	01/27/22	438	CALIFORNIA AMERICAN	501	5222	SUNSET-CORPYARD18%	0.00	72.05
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	610 OCEANVW IRRIGPK	0.00	1,028.73
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	620 OCEANVIEW/BATH	0.00	1,123.40
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	616 OCEANVW-SWIM PL	0.00	1,197.50
101	101793	01/27/22	438	CALIFORNIA AMERICAN	501	5222	MECH 5%	0.00	20.01
101	101793	01/27/22	438	CALIFORNIA AMERICAN	201	5222	300 FOREST FIRE-50%	0.00	21.86
101	101793	01/27/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST FIRE-50%	0.00	21.87
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	585 LAUREL	0.00	89.18
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	130 LIGHTHOUSE IRRI	0.00	89.18
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	1025 MORSE-PLATT PK	0.00	89.18
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	165 FOREST-MUSEUM	0.00	139.78
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	611 CENTRAL AVE	0.00	144.35
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	980 PIEDMONT BALL P	0.00	171.84

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	100 OCEANVW IRRIG	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	196 OCEANVW IRRIG	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	150 FOREST-JEWELL P	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	429 LIGHTHOUSE IRRG	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST AVE	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	711 OCEANVIEW IRRG	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	230 17-MILE DRIVE	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	503	5222	619 OCEANVIEW IRRIG	0.00	171.84
101	101793	01/27/22	438	CALIFORNIA AMERICAN	421	5222	616 OCEANVIEW IRRG	0.00	171.84
TOTAL CHECK								0.00	10,501.97
101	101794	01/28/22	2952	AFLAC	01	202	DED:5291 AFLAC P/T	0.00	69.24
101	101794	01/28/22	2952	AFLAC	01	202	DED:5200 AFLAC PREM	0.00	717.32
101	101794	01/28/22	2952	AFLAC	01	202	DED:5201 AFLAC P/T	0.00	1,776.62
TOTAL CHECK								0.00	2,563.18
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:531 HEALTH	0.00	350.62
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:109 HEALTH	0.00	507.91
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:115 HEALTH	0.00	701.23
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:2074 HEALTH	0.00	811.50
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:2072 HEALTH	0.00	862.50
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:120 HEALTH	0.00	1,015.82
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:2225 HEALTH INS	0.00	1,057.01
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:1 HEALTH	0.00	1,057.01
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:0563 HEALTH FAM	0.00	1,114.18
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:118 HEALTH	0.00	1,148.70
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:2 HEALTH	0.00	1,473.34
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:533 HEALTH	0.00	1,823.20
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:110 HEALTH	0.00	2,031.62
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:2071 HEALTH	0.00	2,397.00
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:103 HEALTH	0.00	2,454.34
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:102 HEALTH	0.00	2,748.24
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:104 HEALTH	0.00	3,506.15
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:105 HEALTH	0.00	3,646.40
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:106 HEALTH	0.00	3,699.57
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:2073 HEALTH FAM	0.00	4,438.00
101	101795	01/28/22	1	CALPERS HEALTH	01	202	DED:100 HEALTH	0.00	6,342.12
TOTAL CHECK								0.00	43,186.46
101	101796	01/28/22	2939	CALPERS LONG TERM C	01	202	DED:6000 LTC	0.00	94.89
101	101797	01/28/22	3134	CITY OF PACIFIC GRO	01	202	DED:3300 AFLAC DEP	0.00	290.10
101	101797	01/28/22	3134	CITY OF PACIFIC GRO	01	202	DED:3301 AFLAC MED	0.00	2,578.02
TOTAL CHECK								0.00	2,868.12
101	101798	01/28/22	3393	EFT	01	202	DED:*FM MEDICARE	0.00	9,639.68
101	101798	01/28/22	3393	EFT	01	202	DED:*SCA STATE TAX	0.00	13,568.55
101	101798	01/28/22	3393	EFT	01	202	DED:*FT FEDERAL TX	0.00	35,584.34
TOTAL CHECK								0.00	58,792.57
101	101799	01/28/22	2946	PACIFIC GROVE CITY	01	202	DED:7000 ASSOC DUES	0.00	783.75
101	101799	01/28/22	2946	PACIFIC GROVE CITY	01	202	DED:7003 ASSOC DUES	0.00	23.75

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
TOTAL CHECK								0.00	807.50
101	101800	01/28/22	2938	MASS MUTUAL (457 PL	01	202	DED:3999 ROTH IRA	0.00	765.00
101	101800	01/28/22	2938	MASS MUTUAL (457 PL	01	202	DED:4000 DEF COMP	0.00	13,811.57
TOTAL CHECK								0.00	14,576.57
101	101801	01/28/22	2936	MTRY COUNTY DEPT OF	01	202	DED:0023 GARNISH	0.00	236.30
101	101802	01/28/22	2949	PACIFIC GROVE MANAG	01	202	DED:7203 ASSOC DUES	0.00	20.00
101	101803	01/28/22	2051	CITY OF PACIFIC GRO	01	202	DED:1005 WORK COMP	0.00	1,177.95
101	101803	01/28/22	2051	CITY OF PACIFIC GRO	01	202	DED:1010 WORK COMP	0.00	2,865.48
101	101803	01/28/22	2051	CITY OF PACIFIC GRO	01	202	DED:1003 WORK COMP	0.00	5,860.19
101	101803	01/28/22	2051	CITY OF PACIFIC GRO	01	202	DED:1006 WORK COMP	0.00	11.02
101	101803	01/28/22	2051	CITY OF PACIFIC GRO	01	202	DED:1009 WORK COMP	0.00	62.15
TOTAL CHECK								0.00	9,976.79
101	101804	01/28/22	2052	CITY OF PACIFIC GRO	01	202	DED:7510 PERS REIMB	0.00	44.13
101	101805	01/28/22	2053	CITY OF PACIFIC GRO	01	202	DED:2101 DENTAL	0.00	75.80
101	101805	01/28/22	2053	CITY OF PACIFIC GRO	01	202	DED:2102 DENTAL	0.00	150.36
101	101805	01/28/22	2053	CITY OF PACIFIC GRO	01	202	DED:201 DENTAL	0.00	187.95
101	101805	01/28/22	2053	CITY OF PACIFIC GRO	01	202	DED:202 DENTAL	0.00	189.64
101	101805	01/28/22	2053	CITY OF PACIFIC GRO	01	202	DED:200 DENTAL	0.00	606.40
101	101805	01/28/22	2053	CITY OF PACIFIC GRO	01	202	DED:2103 DENTAL FAM	0.00	663.74
TOTAL CHECK								0.00	1,873.89
101	101806	01/28/22	2054	CITY OF PACIFIC GRO	01	202	DED:0005 SUTA	0.00	121.10
101	101807	01/28/22	2133	PERS	01	202	DED:0004 SURV BEN	0.00	82.77
101	101807	01/28/22	2133	PERS	01	202	DED:0022 PERS SP MS	0.00	113.35
101	101807	01/28/22	2133	PERS	01	202	DED:08 PERS OTHER	0.00	382.52
101	101807	01/28/22	2133	PERS	01	202	DED:0018 PERS SP SF	0.00	531.66
101	101807	01/28/22	2133	PERS	01	202	DED:0009 PERS OTHER	0.00	995.98
101	101807	01/28/22	2133	PERS	01	202	DED:07 PERS CITY	0.00	5,901.46
101	101807	01/28/22	2133	PERS	01	202	DED:0002 PERS	0.00	6,144.50
101	101807	01/28/22	2133	PERS	01	202	DED:0017 PERS RG SF	0.00	6,534.35
101	101807	01/28/22	2133	PERS	01	202	DED:0011 PERS ER SF	0.00	7,136.68
101	101807	01/28/22	2133	PERS	01	202	DED:0021 PERS REG M	0.00	7,319.28
101	101807	01/28/22	2133	PERS	01	202	DED:0020 PERS ER M3	0.00	8,416.00
101	101807	01/28/22	2133	PERS	01	202	DED:01 PERS	0.00	11,644.43
101	101807	01/28/22	2133	PERS	01	202	DED:0006 PERS CITY	0.00	12,323.23
101	101807	01/28/22	2133	PERS	01	202	DED:15 PERS-RETRO	0.00	16.85
101	101807	01/28/22	2133	PERS	01	202	DED:0025 PERS RT MS	0.00	51.95
TOTAL CHECK								0.00	67,595.01
101	101808	01/28/22	2943	POLICE OFFICERS ASS	01	202	DED:7205 ASSOC DUES	0.00	881.04
101	101809	01/28/22	7956	STATE DISABILITY TA	01	202	DED:0026 SDI	0.00	3,707.59
101	101810	01/28/22	3227	SHERIFF OF MONTEREY	01	202	DED:0014 WAGE ORDER	0.00	555.29

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101811	01/28/22	8352	TRANSAMERICA EMPLOY	01	202	DED:5202 TRANSAMERI	0.00	627.08
101	101812	01/28/22	4177	UNION BANK OF CALIF	01	202	DED:4005 PARS-457	0.00	647.83
101	101813	01/28/22	632	VISION SERVICE PLAN	01	202	DED:301 VISION	0.00	75.00
101	101813	01/28/22	632	VISION SERVICE PLAN	01	202	DED:300 VISION	0.00	216.38
101	101813	01/28/22	632	VISION SERVICE PLAN	01	202	DED:2503 VISION FAM	0.00	285.01
101	101813	01/28/22	632	VISION SERVICE PLAN	01	202	DED:2502 VISION	0.00	41.88
101	101813	01/28/22	632	VISION SERVICE PLAN	01	202	DED:302 VISION	0.00	60.00
TOTAL CHECK								0.00	678.27
101	101814	01/27/22	3393	EFT	01	202	4TH QTR 21 - HARV A	0.00	39.92
101	101815	01/27/22	2133	PERS	131	5145	JAN 2022 UAL	0.00	10,250.00
101	101815	01/27/22	2133	PERS	401	5145	JAN 2022 UAL	0.00	10,333.33
101	101815	01/27/22	2133	PERS	201	5145	JAN 2022 UAL	0.00	12,333.33
101	101815	01/27/22	2133	PERS	505	5145	JAN 2022 UAL	0.00	16,583.33
101	101815	01/27/22	2133	PERS	351	5145	JAN 2022 UAL	0.00	88,862.58
101	101815	01/27/22	2133	PERS	301	5145	JAN 2022 UAL	0.00	105,500.00
101	101815	01/27/22	2133	PERS	101	5145	JAN 2022 UAL	0.00	416.68
101	101815	01/27/22	2133	PERS	133	5145	JAN 2022 UAL	0.00	2,333.33
101	101815	01/27/22	2133	PERS	502	5145	JAN 2022 UAL	0.00	2,583.33
101	101815	01/27/22	2133	PERS	501	5145	JAN 2022 UAL	0.00	3,166.67
101	101815	01/27/22	2133	PERS	421	5145	JAN 2022 UAL	0.00	4,833.33
101	101815	01/27/22	2133	PERS	121	5145	JAN 2022 UAL	0.00	8,916.67
101	101815	01/27/22	2133	PERS	503	5145	JAN 2022 UAL	0.00	9,083.33
101	101815	01/27/22	2133	PERS	513	5145	JAN 2022 UAL	0.00	250.00
TOTAL CHECK								0.00	275,445.91
101	101816	01/28/22	2133	PERS	01	202	PPE 1/8/2022	0.00	31.16
101	101817	01/31/22	2939	CALPERS LONG TERM C	01	202	1/1/2022 TO 1/15/20	0.00	49.37
101	101817	01/31/22	2939	CALPERS LONG TERM C	01	202	12/16 TO 12/31/2021	0.00	49.37
TOTAL CHECK								0.00	98.74
101	V1072022	01/07/22	3835	REPUBLIC ELEVATOR,	411	5223	DOS 12/2/2021 CAR 1	0.00	814.21
101	V1072022	01/07/22	3835	REPUBLIC ELEVATOR,	503	5223	QTR 1/01/22 - 3/31/	0.00	1,363.05
TOTAL CHECK								0.00	2,177.26
101	V1072023	01/07/22	2987	HARRIS & ASSOCIATES	201	5201	PROF CONSULTANT SER	0.00	13,950.00
101	V1212022	01/21/22	7708	BENJAMIN JENNINGS H	121	5428	CELL PHONE 12/21-1/	0.00	213.55
TOTAL CASH ACCOUNT								0.00	1,186,794.35
TOTAL FUND								0.00	1,186,794.35

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 12 - FIRE EMERG EQUIP FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101627	01/07/22	3400	BOUND TREE MEDICAL,	355	5309	DIPHEN CAPSULES	0.00	25.29
101	101627	01/07/22	3400	BOUND TREE MEDICAL,	355	5309	CPR MASKS/SURFACE W	0.00	200.45
101	101627	01/07/22	3400	BOUND TREE MEDICAL,	355	5309	SURFACE WIPES	0.00	119.58
TOTAL CHECK								0.00	345.32
101	101727	01/21/22	3400	BOUND TREE MEDICAL,	355	5309	WIPES	0.00	948.14
101	101727	01/21/22	3400	BOUND TREE MEDICAL,	355	5309	MEDICAL SUPPLIES	0.00	906.04
101	101727	01/21/22	3400	BOUND TREE MEDICAL,	355	5309	IBUPROFEN/ASPRIN	0.00	21.07
101	101727	01/21/22	3400	BOUND TREE MEDICAL,	355	5309	MEDICAL SUPPLIES	0.00	39.23
TOTAL CHECK								0.00	1,914.48
TOTAL CASH ACCOUNT								0.00	2,259.80
TOTAL FUND								0.00	2,259.80

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 15 - HOUSING FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101658	01/07/22	3807	MONTEREY COUNTY WEE	202	5221	CDBG PRE-APPLICATIO	0.00	217.62
101	101677	01/07/22	1758	THE MONTEREY COUNTY	202	5221	CDBG PROGRAM 2-16-2	0.00	448.61
101	101815	01/27/22	2133	PERS	204	5145	JAN 2022 UAL	0.00	833.33
TOTAL CASH ACCOUNT								0.00	1,499.56
TOTAL FUND								0.00	1,499.56

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 18 - GAS TAX FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101637	01/07/22	3566	DAVE'S REPAIR SERVI	508	5276	FUEL HOSE & FILTER	0.00	407.36
101	101637	01/07/22	3566	DAVE'S REPAIR SERVI	508	5276	CERTIFICATION/TESTI	0.00	4,300.00
TOTAL CHECK								0.00	4,707.36
101	101667	01/07/22	2024	PACIFIC GAS & ELECT	508	5222	PW	0.00	6,620.55
101	101760	01/21/22	1786	MONTEREY PENINSULA	508	5201	POTHOLE 3 LOCATIONS	0.00	4,975.00
101	101773	01/21/22	1768	STURDY OIL COMPANY	508	5311	STRT	0.00	374.29
101	101793	01/27/22	438	CALIFORNIA AMERICAN	508	5222	ST FUND 50%	0.00	200.11
101	101815	01/27/22	2133	PERS	508	5145	JAN 2022 UAL	0.00	1,666.67
TOTAL CASH ACCOUNT								0.00	18,543.98
TOTAL FUND								0.00	18,543.98

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 27 - LIGHTHOUSE MAINT.& IMPV.

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101626	01/07/22	5363	AT&T CALNET 3	413	5212	LIGHTHOUSE	0.00	22.91
101	101674	01/07/22	2448	SENTRY ALARM SYSTEM	413	5223	POINT PINOS LH	0.00	160.11
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	413	5223	DISCOUNT	0.00	-157.53
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	413	5223	LIGHTHOUSE	0.00	2.15
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	413	5223	LIGHTHOUSE	0.00	3.03
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	413	5223	LIGHTHOUSE	0.00	24.71
TOTAL CHECK								0.00	-127.64
101	101793	01/27/22	438	CALIFORNIA AMERICAN	413	5222	90 ASILOMAR	0.00	46.93
TOTAL CASH ACCOUNT								0.00	102.31
TOTAL FUND								0.00	102.31

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 41 - YOUNT INCOME FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101815	01/27/22	2133	PERS	510	5145	JAN 2022 UAL	0.00	166.67
TOTAL CASH ACCOUNT								0.00	166.67
TOTAL FUND								0.00	166.67

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 43 - SLESF FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101742	01/21/22	9033	ENTERPRISE FM TRUST	304	5225	LEASED VEHICLES	0.00	2,125.60
101	101783	01/21/22	9004	VICTORY TACTICAL GE	304	5275	HELMETS	0.00	1,030.45
TOTAL CASH ACCOUNT								0.00	3,156.05
TOTAL FUND								0.00	3,156.05

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 46 - STRONG DISBURSEMENT FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101775	01/21/22	1758	THE MONTEREY COUNTY	461	6021	ADA//CIP21-05	0.00	307.57
TOTAL CASH ACCOUNT								0.00	307.57
TOTAL FUND								0.00	307.57

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 63 - CAPITAL IMPROV PROJ FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101661	01/07/22	1786	MONTEREY PENINSULA	631	6031	FY21/22 POINT PINOS	0.00	142,443.00
101	101670	01/07/22	2241	R & S ERECTION OF M	631	6021	GARAGE DOOR REPLACE	0.00	8,632.56
101	101725	01/21/22	4036	AURUM CONSULTING EN	631	6021	PW YARD ELECTRICAL	0.00	1,625.00
101	101787	01/21/22	9401	WILLIAMS SCOTSMAN,	631	6021	TRC 21-02	0.00	1,219.85
101	101789	01/21/22	9325	ZANDER DESIGN	631	6031	CIP 18-46	0.00	11,456.90
TOTAL CASH ACCOUNT								0.00	165,377.31
TOTAL FUND								0.00	165,377.31

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 70 - EMP BENEFIT FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101691	01/11/22	632	VISION SERVICE PLAN	703	5123	JAN 2022 RET & CHGS	0.00	195.21
101	101692	01/11/22	8211	STANDARD INSURANCE	703	5123	JAN 2021 PREMIUMS	0.00	2,572.07
101	101716	01/13/22	1	CALPERS HEALTH	703	5123	JAN 2022 RET & CHGS	0.00	10,486.79
101	101816	01/28/22	2133	PERS	703	5123	FEE	0.00	200.00
TOTAL CASH ACCOUNT								0.00	13,454.07
TOTAL FUND								0.00	13,454.07

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 71 - WORKERS COMP FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101815	01/27/22	2133	PERS	701	5145	JAN 2022 UAL	0.00	583.33
TOTAL CASH ACCOUNT								0.00	583.33
TOTAL FUND								0.00	583.33

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 72 - LIABILITY INS FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101737	01/21/22	3451	DE LAY & LAREDO	702	5201	DEC 2021 LEGAL SERV	0.00	8,193.20
101	101815	01/27/22	2133	PERS	702	5145	JAN 2022 UAL	0.00	416.67
TOTAL CASH ACCOUNT								0.00	8,609.87
TOTAL FUND								0.00	8,609.87

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 74 - LOCAL WATER PROJECT

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101664	01/07/22	9294	MOTOR CONTROLS INC.	741	5201	MODEM SERVICE	0.00	650.00
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	741	5201	WATER PLANT (LWP)	0.00	76.10
101	101736	01/21/22	5959	STATE WATER RESOURC	741	5802	D1501021-550-0	0.00	157,809.88
101	101736	01/21/22	5959	STATE WATER RESOURC	741	5801	D1501021-550-0	0.00	48,638.40
TOTAL CHECK								0.00	206,448.28
101	101766	01/21/22	2024	PACIFIC GAS & ELECT	741	5222	LWP	0.00	2,534.85
101	101769	01/21/22	7716	PERC WATER CORPORAT	741	5201	LWP O&M	0.00	23,265.29
101	101793	01/27/22	438	CALIFORNIA AMERICAN	741	5222	1313 OCEAN VIEW BLV	0.00	840.74
TOTAL CASH ACCOUNT								0.00	233,815.26
TOTAL FUND								0.00	233,815.26

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 75 - CEMETERY FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101615	01/07/22	6411	QUADIENT LEASING US	601	5225	MAIL MACHINE	0.00	3.22
101	101623	01/07/22	156	ASCO PACIFIC INCORP	601	5351	STOCK VASES-CEMETER	0.00	504.22
101	101631	01/07/22	8796	CEMSITES	601	5291	LOGO DEED INVOICES	0.00	700.00
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	601	5309		0.00	73.16
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	601	5309		0.00	28.66
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	601	5309		0.00	28.66
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	601	5309		0.00	43.00
TOTAL CHECK								0.00	173.48
101	101652	01/07/22	8118	LLORIN-VELASQUEZ CO	601	5201	DECEMBER 2021	0.00	2,625.00
101	101662	01/07/22	1801	MONTEREY TIRE SERVI	601	5226	LOOSE CART	0.00	38.93
101	101662	01/07/22	1801	MONTEREY TIRE SERVI	601	5226	LOOSE CART	0.00	241.56
TOTAL CHECK								0.00	280.49
101	101680	01/07/22	2786	VERIZON WIRELESS	601	5212	CEM	0.00	20.02
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	71.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	73.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	71.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	71.80
TOTAL CHECK								0.00	337.20
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	601	5309	CEMETERY	0.00	69.58
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	601	5309	CEMETERY	0.00	134.81
TOTAL CHECK								0.00	204.39
101	101748	01/21/22	9545	LAURIE HUGHES	75	4481	REFUND OVER PAYMENT	0.00	1,677.00
101	101749	01/21/22	1568	M & S BUILDING SUPP	601	5309	RETURNED CONCRETE 8	0.00	-51.13
101	101749	01/21/22	1568	M & S BUILDING SUPP	601	5309	CONCRETE 80# PREMIX	0.00	51.13
101	101749	01/21/22	1568	M & S BUILDING SUPP	601	5309	MORTAR 60# PREMIXED	0.00	60.50
TOTAL CHECK								0.00	60.50
101	101753	01/21/22	9544	MISSION MORTUARY	601	5309	BLACK LINER DOMED L	0.00	322.00
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	601	5227	CEM	0.00	215.72
101	101770	01/21/22	2219	PURE WATER	601	5309	WATER SERVICE	0.00	19.25
101	101773	01/21/22	1768	STURDY OIL COMPANY	601	5311	CEM	0.00	137.77
101	101793	01/27/22	438	CALIFORNIA AMERICAN	601	5222	1254 DELMONTECEM70%	0.00	202.98
101	101793	01/27/22	438	CALIFORNIA AMERICAN	601	5222	CEM 4%	0.00	16.01
TOTAL CHECK								0.00	218.99

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 75 - CEMETERY FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101815	01/27/22	2133	PERS	601	5145	JAN 2022 UAL	0.00	1,166.67
TOTAL CASH ACCOUNT								0.00	8,665.92
TOTAL FUND								0.00	8,665.92

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 76 - SEWER FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101625	01/07/22	6154	AT&T	611	5212	SEWER ALARM	0.00	53.44
101	101625	01/07/22	6154	AT&T	611	5212	SEWER ALARM	0.00	53.44
101	101625	01/07/22	6154	AT&T	611	5212	SEWER ALARM	0.00	53.44
TOTAL CHECK								0.00	160.32
101	101634	01/07/22	590	COAST COUNTIES TRUC	611	5227	UNIT 44	0.00	1,424.75
101	101644	01/07/22	3378	DON CHAPIN CO., INC	612	6051	CIP 22-01	0.00	1,937.50
101	101647	01/07/22	1199	HAYWARD LUMBER COMP	611	5309		0.00	165.27
101	101659	01/07/22	1798	MONTEREY ONE WATER	611	5201	3RD QTR GREASE/STOR	0.00	2,604.36
101	101660	01/07/22	9292	MONTEREY ONE WATER	611	5201	ANNUAL LIFT STATION	0.00	19,075.50
101	101681	01/07/22	6777	WALLACE GROUP	612	6051	CARRY FORWARD- CONS	0.00	460.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	71.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	71.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	12.00
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	73.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	71.80
101	101687	01/07/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	12.00
TOTAL CHECK								0.00	337.20
101	101690	01/07/22	2034	PACIFIC GROVE HARDW	611	5309	SEWER	0.00	10.86
101	101718	01/18/22	4943	US BANK	611	5309	GHO CC DEC 2021	0.00	783.00
101	101723	01/21/22	6154	AT&T	611	5212	SEWER ALARM	0.00	33.78
101	101723	01/21/22	6154	AT&T	611	5212	SEWER ALARM	0.00	33.78
101	101723	01/21/22	6154	AT&T	611	5212	SEWER ALARM	0.00	33.78
TOTAL CHECK								0.00	101.34
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	611	5227	SEWER 47	0.00	35.88
101	101755	01/21/22	1714	MONTEREY AUTO SUPPL	611	5223	SEWER	0.00	20.52
TOTAL CHECK								0.00	56.40
101	101763	01/21/22	1896	NEILL ENGINEERS COR	611	5201	RETAINER JANUARY 20	0.00	1,000.00
101	101766	01/21/22	2024	PACIFIC GAS & ELECT	611	5222	PW	0.00	58.68
101	101766	01/21/22	2024	PACIFIC GAS & ELECT	611	5222	PW	0.00	52.62
TOTAL CHECK								0.00	111.30
101	101770	01/21/22	2219	PURE WATER	611	5309	WATER SERVICE	0.00	19.25
101	101773	01/21/22	1768	STURDY OIL COMPANY	611	5311	SEWER	0.00	514.34
101	101780	01/21/22	2759	USABLUEBOOK	611	5309	SIGNET INTERGRAL FL	0.00	1,468.98

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 76 - SEWER FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101793	01/27/22	438	CALIFORNIA AMERICAN	611	5222	100 OCEANVW IRRIG	0.00	35.93
101	101793	01/27/22	438	CALIFORNIA AMERICAN	611	5222	SEWER 8%	0.00	32.03
101	101793	01/27/22	438	CALIFORNIA AMERICAN	611	5222	1273 CRESPI POND 50	0.00	57.78
TOTAL CHECK								0.00	125.74
101	101815	01/27/22	2133	PERS	611	5145	JAN 2022 UAL	0.00	9,250.00
TOTAL CASH ACCOUNT								0.00	39,606.11
TOTAL FUND								0.00	39,606.11

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 77 - GOLF FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101778	01/21/22	7381	UMPQUA BANK	622	5801	INTEREST OWING	0.00	43,687.17
101	101778	01/21/22	7381	UMPQUA BANK	622	5802	PRINCIPAL	0.00	92,361.29
TOTAL CHECK								0.00	136,048.46
101	101793	01/27/22	438	CALIFORNIA AMERICAN	621	5222	1254 DELMONTEGOLF30	0.00	86.99
101	101793	01/27/22	438	CALIFORNIA AMERICAN	621	5222	77 ASILOMAR FIRE SV	0.00	81.40
101	101793	01/27/22	438	CALIFORNIA AMERICAN	625	5222	77 ASILOMAR GOLF HS	0.00	1,841.71
101	101793	01/27/22	438	CALIFORNIA AMERICAN	621	5222	1273 CRESPI POND 50	0.00	57.78
TOTAL CHECK								0.00	2,067.88
TOTAL CASH ACCOUNT								0.00	138,116.34
TOTAL FUND								0.00	138,116.34

SELECTION CRITERIA: transact.yr='22' and transact.period='7'
ACCOUNTING PERIOD: 8/22

FUND - 86 - CEMETERY ENDOWMENT FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	101748	01/21/22	9545	LAURIE HUGHES	86	4480	REFUND OVER PAYMENT	0.00	72.00
TOTAL CASH ACCOUNT								0.00	72.00
TOTAL FUND								0.00	72.00
TOTAL REPORT								0.00	1,821,130.50

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Tori Hannah, Administrative Services Director/Assistant City Manager

MEETING DATE: February 16, 2022

SUBJECT: Core Revenue Report Status for January 2022

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the Core Revenue Status Report for January 2022

DISCUSSION

The City of Pacific Grove's General Fund revenues are primarily derived from Property Tax, Transient Occupancy Tax, and Sales and Use Tax revenues. In the Fiscal Year 21/22 Adopted Budget, it was estimated the City would receive $17.2 million or 64% of the General Fund revenues from these three tax sources.

Details on the budgeted amounts and revenues to date for the current fiscal year are included in Attachment 1.

Additional information related to the City's revenues and expenditures will be provided as part of the mid-year budget process and the five-year forecast. This information is anticipated to be presented at a Council Meeting in early March.

OPTIONS

N/A – this is informational only.

FINANCIAL IMPACT:

There is no fiscal impact associated with receiving this report.

GOAL ALIGNMENT: Financial Stability: Develop a strategic plan to better address current and future City expenditure and revenue needs.

Attachments

Core Revenue Report - January 2022

Attachment 1
Core Revenue Report
January 2022

The following tables include the FY21/22 budget and year to date revenues. The receipts represent funds received to date.

PROPERTY TAX

Property Tax is the first largest source of the General Fund revenue. The City typically receives property tax payments in December, April, and June. Unlike other tax revenues, property taxes were not impacted by COVID-19. The City will receive its first two property tax payments for FY21/22 in December 2021 and April 2022, with an additional minor payment to be received in June 2022. The following table presents FY21/22 budget, and revenues received to date.

Property Tax	Amended Budget	YTD Receipts	% of Amended Budget
FY21/22	8,418,000	4,877,380	57.9%

TRANSIENT OCCUPANCY TAX (TOT)

Transient Occupancy Tax (TOT) is the General Fund's second largest source of revenue which the City receives on a monthly basis. Unlike property taxes, TOT was significantly impacted by COVID-19. The following table presents FY21/22 budget and revenues received to date. While revenues have not reached their levels prior to COVID-19, the Fiscal Year 21/22 revenues are recovering at a steady rate. A budget amendment will be requested at mid-year to reflect the increased performance.

Transient Occupancy Tax	Amended Budget	YTD Receipts	% of Amended Budget
FY21/22	4,703,000	3,267,989	69.5%

The City receives transient occupancy tax in the month following the stay. The revenues received in January is for December TOT Revenue.

The following table shows a monthly breakdown of TOT revenues when compared to the same month last year. The reduction in the 2020/21 TOT in December and January may primarily resulted from temporary COVID-19 restrictions. Also noted is the decline in the March 2019/20 TOT, due to COVID-19 pandemic.

Lodging Period	2019/20	2020/21	2021/22	Net Difference
July	839,162	289,435	673,475	384,040
August	807,047	340,019	730,578	390,559
September	608,652	327,958	578,129	250,171
October	588,842	347,103	475,290	128,187
November	485,652	216,516	431,862	215,346
December	364,933	90,066	378,655	288,589
January	372,122	109,118		
February	409,906	205,512		
March	145,558	334,004		
April	22,362	379,613		
May	56,465	428,612		
June	151,029	518,002		
	4,851,730	3,585,958	3,267,989	1,656,892
January 2022 TOT Payments are anticipated to be received late February 2022				

SALES AND USE TAX

Sales and Use tax is the third largest source of the City's General Fund revenues. The City receives a 1% Bradley Burns Tax and a 1% Measure U Transactions and Use Tax.

The impact of COVID-19 on the Sales and Use tax revenues has been less significant when compared to TOT. The following table presents FY21/22 budget and revenues received to date.

Sales and Use Tax	Amended Budget	YTD Receipts	% of Amended Budget
FY21/22	4,109,000	1,732,867	42.2%

In FY19/20, the City received sales tax monthly; however, two payments were advances, which were based on estimated sales, prior period tax receipts, adjustments, and current distributions. This was followed by a true-up within each quarter. Due to this methodology, the advance monthly tax contributions were not truly representative of actual performance.

In FY20/21, the State changed its tax collection methodology. The State now calculates a factor for each agency based on how the agency's sales tax performed last year to the statewide total, and then applies that factor to the total statewide prepayments they received for that month. If statewide prepayments are tracking higher than the agency's local sales, this could inflate the two advances. Additionally, the higher advances could also represent audit cases or late payments that they also processed during that month. This new methodology contributes to higher advance payments, with a lower true-up amount.

The impact of COVID-19 on the Sales and Use tax revenues has been less significant when compared to TOT. The following table presents FY21/22 budget and revenues received to date.

Tax Return Period	2019/20	2020/21	2021/22	Net Difference
July Advance	373,338	358,945	303,144	(55,801)
August Advance	439,453	427,105	507,200	80,095
September True-up	376,610	243,269	287,224	43,955
October Advance	297,095	343,188	311,118	(32,070)
November Advance	323,622	333,869	324,181	(9,688)
December True-up	496,186	302,359		
January Advance	244,631	281,830		
February Advance	322,132	339,550		
March True-up	171,312	239,864		
April Advance	241,956	314,606		
May Advance	398,893	395,212		
June True-Up	240,350	481,058		
	3,925,578	4,060,855	1,732,867	26,491
December 2021 payments are anticipated to be received in late February as the State pays the City two months in arrears				
(1) The October Fiscal Year 19/20 amount includes an annual sales tax payment of $50,983. This represents an annual				
remittance for select businesses that are within the shared taxing jurisdictions of Monterey and Pacific Grove.				

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Ben Harvey, City Manager

MEETING DATE: February 16, 2022

SUBJECT: Ratification of New Local Emergency Actions

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive report of emergency directives/modifications.

DISCUSSION

The City Manager during this Local Emergency is authorized to directly mitigate effects of the Local Emergency to protect life or property.

This report apprises the City Council of emergency directives taken under the continuing local emergency proclaimed by Resolution 20-007. This report fulfills the City Council's review obligation under that Resolution and Government Code 8630. This agenda item also enables ratification of select actions taken since the City Council's last review.

City expenditures for legal services related to COVID-19 issues (specifically to related to COVID 19-COM (Communications); COVID 19-TRN (Training); COVID 19-LAW (Legal Support); and COVID-19 (Other)) are eligible for State and Federal Emergency Service reimbursement, including but not limited to FEMA or other emergency grant funding.

Actions not subject to Ratification. Since the time of the revised Monterey County Shelter in Place Order issued Friday, April 3, 2020, the City Manager has taken the following new or modified actions pursuant to the Emergency Proclamation:

- None to report at this time.

No action is necessary with respect to the above new or modified measures, as each is responsive to requirements of the revised Monterey County Shelter in Place Order falling within the regular management discretion of the City Manager.

Actions subject to Ratification. Certain mitigation measures that have been enacted by the City Manager in response to the Monterey County Shelter in Place Order issued Friday, May 8, 2020, and in accord with Council's Local Emergency under Article 19, subparagraph l, of the Pacific Grove City Charter, and Chapter 3.20 of the Pacific Grove Municipal Code (PGMC), are subject to ratification. Any mitigation measures that qualify are subject to ratification as required by Government Code 8630

and City Council Resolution 20-007, and are listed below:

1. None to report at this time.

Discussion of Circumstances Needing Emergency Response. The discussion part of this item allows comment on circumstances which may benefit from further or different emergency responses. Matters identified will be referred to the City Manager for appropriate consideration in accord with the Emergency Management System protocols set by PGMC Chapter 3.20. These delegate exclusive emergency management response authority to the City Manager.

CEQA Exemption. Actions taken to prevent or mitigate an emergency are exempt from CEQA pursuant to section 15260 of the CEQA Guidelines.

OPTIONS

Actions not subject to ratification are reported for information only.

FINANCIAL IMPACT:

There is no financial impact in receiving the report.

GOAL ALIGNMENT: Not Applicable.

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Joseph Sidor, Contract Planner
MEETING DATE: February 16, 2022
SUBJECT: Contract Amendment with Rincon Consultants, Inc.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION
Approve the Proposed Contract Amendment and Reimbursement Agreement with Rincon Consultants, Inc. based on the Scope of Work and Cost Estimate provided for preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) relating to a development project located at 1661 Sunset Drive.

DISCUSSION
BACKGROUND
On August 12, 2021, at a noticed public hearing, the Planning Commission received testimony and approved an Architectural Permit, Coastal Development Permit, and Parcel Merger (AP/CDP/PM 19-0645) and certified the Initial Study and Mitigated Negative Declaration for the demolition of an existing home, the merger of two (2) parcels and the development of a new single-family residence. The Planning Commission's agenda report can be viewed on the City's website. The home proposed and approved for demolition had previously been determined, through the City's Initial Historic Screening (IHS) process, to be ineligible for the City's Historic Resources Inventory (HRI) and, therefore, not a historic resource. Prior to the Planning Commission public hearing, an attorney representing a neighbor submitted a letter which included a historic assessment prepared by a local architectural historian, Kent Seavey, that contradicted the previous report utilized for the IHS process. Additionally, the neighbor filed an appeal within the appeal period following the Commission's action on August 12th.

Per Section 15064(g) of the CEQA Guidelines, *after application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.*

Given that two (2) local, notable expert architectural historians provided opposing expert opinions on the historicity of the home in question, the Community Development Dept. (CDD) determined that an EIR needed to be prepared. Based on this determination, on November 17, 2021, CDD brought before the City Council a contract with Rincon Consultants, Inc. to prepare a Focused EIR for the project at

1661 Sunset Drive. The City Council approved the contract.

After approval of the contract for a Focused EIR, the applicant (Elstob Family Investments LP) decided to retain rather than demolish the existing on-site structures. Due to this change of project scope which is anticipated to eliminate a potential significant and unavoidable impact, CDD determined that a Focused EIR is no longer required and requested Rincon Consultants, Inc. submit a scope of work and cost estimate (attached) to revise the previously-prepared Initial Study-Mitigated Negative Declaration (IS-MND). Following completion of the revised IS-MND, this project will be returned to the Planning Commission with the revised CEQA document for final action on the permits. As a result of the amended project, the neighbor's appeal will be nullified.

The draft Professional Services contract and Reimbursement Agreement are attached.

OPTIONS

The Council could provide alternative direction to Staff.

FINANCIAL IMPACT:

Given that the costs associated with the preparation of the revised IS-MND will be born by the applicant, there is no financial impact on the City.

GOAL ALIGNMENT: Not Applicable.

Attachments

Draft Contract, Scope, and Cost Estimate

Reimbursement Agreement

CITY OF PACIFIC GROVE AGREEMENT FOR PROFESSIONAL SERVICES (OVER $40,000)[1]

This Professional Services Agreement ("Agreement") is made by and between the City of Pacific Grove, a political subdivision of the State of California (hereinafter "City") and Rincon Consultants, Inc., (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: Preparation of a revised (biological and cultural resources) initial study/mitigated negative declaration for the 1661 Sunset Drive project, Pacific Grove, California.

2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of **$ 58,841.00.**[1]

3. **TERM OF AGREEMENT.** The term of this Agreement is from December 1, 2021, to December 31, 2022, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last, and CONTRACTOR may not commence work before City signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
Exhibit A: Scope Amendment Request for the 1661 Sunset Drive Project, Pacific Grove, California (dated January 14, 2022)

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the City, or immediate family of an employee of the City.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

[1] Approved by the Pacific Grove City Council on _____.

6. **PAYMENT CONDITIONS.**

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONTRACTOR may submit such invoice monthly or at the completion of each phase of the project, as provided on page 6 of the proposal, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the City Auditor-Controller for payment. The City Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel.

7. **TERMINATION.**

7.01. During the term of this Agreement, the City may terminate the Agreement, with or without cause, by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, CONTRACTOR shall cease immediately all work in progress.

7.02. CONTRACTOR may terminate this Agreement at any time upon thirty (30) days' written notice of termination to City.

7.03. If either CONTRACTOR or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either CONTRACTOR or City may terminate this Agreement immediately upon written notice.

7.04. Upon termination of this Agreement by either CONTRACTOR or City, all property belonging exclusively to City which is in CONTRACTOR's possession shall be returned to City. CONTRACTOR shall furnish to City a final invoice for work performed and expenses incurred by CONTRACTOR, prepared as set forth in Section 6 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 6 of this Agreement.

8. **INDEMNIFICATION.**

8.01. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACTOR shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death to the extent caused by CONTRACTOR's negligence, negligent acts, errors or omissions.

❑ Exemption/Modification (Justification attached; subject to approval).

9. **INSURANCE.**

9.01. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products/Completed Operations, with minimum limits: $1,000,000 per Occurrence; $2,000,000 General Aggregate; $2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If CONTRACTOR maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

❑ Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than $1,000,000 per occurrence.

❑ Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than $1,000,000 each person, $1,000,000 each accident and $1,000,000 each disease.

❑ Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than $1,000,000 per claim and $2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

❑ Exemption/Modification (Justification attached; subject to approval).

9.02. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

CONTRACTOR shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONTRACTOR shall forthwith obtain and submit proof of substitute insurance. Should CONTRACTOR fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at CONTRACTOR's sole cost and expense.

Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that

such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured **is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

CONTRACTOR shall provide to City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Agreement by the City, CONTRACTOR shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

10. **RECORDS AND CONFIDENTIALITY.**

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the City or prepared in connection with the performance of this Agreement, unless City specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02. City Records. When this Agreement expires or terminates, CONTRACTOR shall return to City any City records which CONTRACTOR used or received from City to perform services under this Agreement.

10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and City rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The City shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of $10,000, the parties to this Agreement may be subject, at the request of

the City or as part of any audit of the City, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05. Royalties and Inventions. City shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of City.

11. **NON-DISCRIMINATION**. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the City pursuant to a contract with the state or federal government in which the City is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, City will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the City. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the City's and CONTRACTOR'S contract administrators at the addresses listed below:

FOR CITY:	**FOR CONTRACTOR:**
Alyson Hunter, AICP, Community Development Dir.	Megan Jones, Principal
Name and Title	Name and Title
300 Forest Avenue Pacific Grove, CA 93950	2511 Garden Road, Suite C-250 Monterey, CA 93940
Address	Address

(831) 648-3127	(831) 333-0310
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

15.01. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the City and the CONTRACTOR.

15.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the City and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.04. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

15.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute. Contractor and the CITY hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

15.06. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the City. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the City. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the City and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12. Non-exclusive Agreement. This Agreement is non-exclusive and both City and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13. Construction of Agreement. The City and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15. Authority. Any individual executing this Agreement on behalf of the City or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16. Integration. This Agreement, including the exhibits any documents incorporated by reference, represent the entire Agreement between the City and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the City and the CONTRACTOR as of the effective date of this Agreement, which is the date that the City signs the Agreement.

15.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

15.18 Severability. If any of the provisions contained in the Contract are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Contract for any cause. If a part of this Contract is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

This space is left blank, intentionally.

IN WITNESS WHEREOF, City and CONTRACTOR have executed this Agreement as of the day and year written below.

CITY OF PACIFIC GROVE

By: _____
City Mayor

Date: _____

By: _____
Department Head

Date: _____

Approved as to Form

By: _____
City Attorney

Date: _____

[2]

Approved as to Fiscal Provisions

By: _____
Finance

Date: _____

Approved as to Liability Provisions [3]

By: _____
Risk Management

Date: _____

CONTRACTOR

Rincon Consultants, Inc.
Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-President)*

_____
Name and Title

Date: _____

By: _____
(Signature of Secretary, Asst. Secretary, CFO, or Asst. Treasurer)*

_____
Name and Title

Date: _____

City Agreement Number: _____.

[2] Approval by Finance necessary only if financial questions or issues raised in Council approval of agreement.

[3] Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

January 14,2022
Project No: 21-11891

Alyson Hunter, Senior Planner
City of Pacific Grove
Community Development Department
300 Forest Avenue, 2nd Floor
Pacific Grove, California 93950
via email: ahunter@cityofpacificgrove.org

Subject: Scope Amendment Request for the 1661 Sunset Drive Project, Pacific Grove, California

Dear Ms. Hunter:

The purpose of this letter is to request an amendment to the December 1, 2021 contract scope of work and budget between Rincon Consultants, Inc. (Rincon) and the City of Pacific Grove (city) for the proposed 1661 Sunset Drive Project. The current scope of work includes preparation of a Focused EIR. Per City direction provided during the January 5, 2022 project kickoff meeting, the applicant intends to retain the existing on-site structures, which is anticipated to eliminate a potential significant and unavoidable impact. Therefore, based on City direction, this amendment includes the preparation of a revised Initial Study-Mitigated Negative Declaration (IS-MND) for the project. The tasks associated with preparation of a revised IS-MND are outlined below, and are intended to replace the existing tasks associated with the Focused EIR scope of work.

Scope of Work

Task 1: Cultural Resources Peer Reviews[1]

Task 1.1: Historical Resources Peer Review and Evaluation

A historic resources evaluation was prepared by Anthony Kirk in December of 2018, which included an evaluation of the existing on-site residence. The City received a comment letter from Kent Seavey in August 2021 that included a peer review of the 2018 report. The Seavey letter provided several comments, including the suggestion that a potentially historic adobe studio was located on the project site, but was not evaluated. A Rincon qualified architectural historian will review the December 2018 report completed by Anthony Kirk and the August 2021 Kent Seavey letter, to identify potential deficiencies in the original report and update the historic analysis accordingly. An update/response memorandum will be prepared to address deficiencies, if any, from the original report and to strengthen the cultural resources analysis defensibility for the EIR. The memorandum will also serve to address concerns outlined in the Seavey letter, where appropriate. Additional analysis is anticipated to include an evaluation of the adobe structure and preparation California Department of Parks and Recreation

[1] This scope of work for this task is the same as under the current (Focused EIR) contract.

(DPR) forms for the site. The memorandum will also make recommendations related to impacts to historical resources and mitigation measures. Should the analysis of additional structures (beyond the adobe structure) be required, a change order would be necessary.

Task 1.2: Archaeological Resources Peer Review and Evaluation

A Phase I archaeological resources assessment was prepared by Patricia Paramoure Archaeological Consulting in June 2020 and a Phase II resource evaluation was prepared by Patricia Paramoure and Charles Mikulik in March 2021. Rincon proposes to complete a peer review of these documents focused on the adequacy of analysis and soundness of conclusions of the reports and on the sufficiency of the reports to support CEQA analysis. A response memorandum will be prepared outlining any concerns and recommending revisions and/or additional work to resolve identified concerns. If deemed necessary and at the discretion of the City, Rincon can submit a scope augmentation to conduct additional work needed to fully address archaeological resources.

Task 2: Administrative Draft Initial Study

The applicant has revised the project description to retain the existing buildings on parcel APN 007-041-033 and transfer the existing water meter to the proposed new single-family residence on APN 007-041-033. Based on this revised project description and public comments received, Rincon will update the existing IS-MND. This will include revisions to the *Description of the Project* and known environmental issue areas of concern, *Biological Resources* and *Cultural Resources*. In addition, other sections of the IS-MND will be updated and bolstered where needed, to address prior public comment and improve defensibility. This scope of work assumes that all issue areas will be less than significant or less than significant with mitigation, and that preparation of an Environmental Impact Report will not be warranted. The revised IS-MND will be prepared in accordance with the most recent CEQA Statutes and Guidelines. The following describes our approach to revising the IS-MND:

Project Description. The Draft IS-MND project description will be revised to reflect the retention of the existing buildings located on the project site and the transfer of the existing water meter to the new development. The project description will also be bolstered to provide project background information, including prior public review and hearing (i.e., opportunities for input), and to explain the difference between proposed project design features and mitigation measures (per prior comments on the IS-MND).

Aesthetics. This analysis will contain a qualitative discussion of long-term visual impacts including changes to visual character and alteration of views, that may occur as a result of the retention of the existing buildings on site. Applicable design guidelines will also be described. Mitigation for the maintenance of the buildings may be proposed to reduce impacts to the surrounding visual character.

Biological Resources. Rincon conducted a peer review of the Biological Evaluation prepared for the project site in June 2020 and concluded that additional evaluation of impacts to biological resources would be necessary to sufficiently support the CEQA analysis. Rincon will use the existing Biological Evaluation to provide background information on the project site and support the biological resources analysis. In addition, to confirm no new special-status species have been recorded in the project vicinity Rincon will prepare a desktop literature and agency database review. Rincon will review project plans, aerial imagery, agency databases (i.e., California Department of Fish and Wildlife's *California Natural Diversity Database*, California Native Plant Society's *Inventory of Rare and Endangered Plants*,

and U.S. Fish and Wildlife Service's *Information for Planning and Conservation* database) as well as other relevant background information for context and understanding of the biological concerns related to the project.

Upon completion of the desktop analysis, Rincon will recommend any additional species-specific or protocol level studies necessary. The biological resources analysis will rely on information in the existing studies in lieu of a reconnaissance site visit and will not include seasonally timed or protocol surveys for rare plants or wildlife and does not include a formal jurisdictional delineation. This scope of work assumes no project disturbance will occur within a stream channel and no permits from the California Department of Fish and Wildlife or the Regional Water Quality Control Board will be required. The impact analysis will be based on habitat assessment for species known to occur in the region. Rincon will utilize the findings of the literature review and desktop analysis to update the existing Initial Study with a bolstered impacts analysis and recommended enforceable, non-deferral mitigation measures to reduce impacts to biological resources resulting from the proposed project to a less than significant level.

Cultural Resources**.** Rincon understands the project site contains a potential historical resource and an archaeological resource. Using the previous cultural resources documentation prepared for the project, the peer reviews included under Task 1 above, as well as AB 52 consultation conducted by the City as part of the prior IS-MND, Rincon will identify potential impacts related to the preservation of the historical resource on site and impacts to archaeological resources associated with development of the second parcel, and present mitigation measures that could reduce impacts to the extent feasible. Mitigation measures related to the maintenance of the existing buildings to remain on site will also be developed to reduce significant impacts to existing resources, if necessary. If Task 1 identifies that additional work is necessary, such additional work (whether completed by Rincon or another firm) will be incorporated into the Initial Study section.

Hydrology and Water Quality. The hydrology and water quality analysis will evaluate potential impacts relating to hydrological conditions and flooding, as well as potential impacts to surface and groundwater quality. Rincon will revise the existing IS-MND analysis to account for increased impervious surfaces on the project site and further address potential impacts from increased impervious surfaces to the surrounding area.

Noise. The noise analysis will include evaluations of temporary impacts associated with project construction and long-term impacts associated with operation of the project. The analysis of temporary noise and vibration impacts associated with construction will be based on typical construction noise and vibration levels and standard noise and vibration attenuation factors. Noise and vibration levels associated with construction activities will be quantified and projected at the nearest noise-sensitive land uses and compared to applicable thresholds.

Population and Housing. This analysis will consider the potential for future use of APN 007-041-033 as a residence, to address prior public comments on the IS-MND.

Utilities and Service Systems. The revised project description includes the transfer of the existing water meter to the proposed new residence. This analysis will address California American Water requirements for the transfer of the water meter and if necessary, water supply requirements for the existing buildings. The evaluations of service systems will involve contact with the service providers.

Cumulative Impacts. The IS-MND will include a discussion of cumulative impacts, relying on a list of past, present, and reasonably foreseeable projects in the vicinity.

Rincon will submit an electronic copy of the Administrative Draft IS-MND in Word format.

Task 3: Public Review Draft Initial Study

Rincon will respond to one round of consolidated City comments on the Administrative Draft IS-MND. This document will be submitted in Microsoft Word with revisions shown in track changes. Upon receipt of any final comments on the revisions, Rincon will prepare a Draft IS-MND for publication. Any comments at this stage will be limited to minor typographical or formatting edits, if any. The Public Draft IS-MND will be submitted in PDF format. No hard copies will be provided. This scope of work does not include formatting the document to meet accessibility requirements.

Rincon will prepare a Notice of Intent (NOI) to Adopt an Initial Study. Rincon will transmit the NOI and other required forms of the Initial Study electronically to the City. It is our understanding that the City will transmit the NOI and other required forms to the State Clearinghouse. We assume that the City will be responsible for mailing copies and notices to the County Clerk; responsible agencies, if any; neighboring or nearby property owners or residents; and other interested parties. It is also assumed that City will be responsible for other noticing required under CEQA or City procedures, including posting at the site or newspaper ads. However, Rincon can assist with these tasks for an additional fee on a time and materials basis.

Task 4: Final Initial Study and MMRP

Upon receipt of public comments on the Draft IS-MND, Rincon will prepare draft response to comments and an Administrative Final IS-MND for review by City staff. This scope of work assumes that up to three comment letters will be received, including one lengthy (over twenty pages) and/or substantive letter, that can be adequately responded to in a maximum of 60 professional staff hours. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period.

Upon receipt of comments on the Administrative Final IS-MND, we will incorporate changes and prepare the Final IS-MND. This task will also include preparation of the Mitigation Monitoring and Reporting Program (MMRP), which will include a list of mitigation measures, monitoring timing, and responsibility. One electronic copy of the Final Initial Study (PDF) will be provided. If the project is approved, Rincon will prepare a Notice of Determination (NOD) for the City to file with the County Clerk. The City or applicant will be responsible for payment of County Clerk and California Department of Fish & Wildlife (CDFW) CEQA fees.

Task 5: Meetings and Public Hearings

During preparation of the Initial Study, key Rincon staff will attend up to two virtual meetings with staff (one hour in length each). These meetings would be scheduled at the discretion of the City. Rincon's Project Manager and/or Principal-in-Charge will also attend and present the conclusions of the Initial Study at one virtual Planning Commission and one virtual City Council hearing.

Project Management

This task includes management and coordination through the duration of the IS-MND, including coordination with City staff; project oversight; budget and schedule management; and project accounting including billing and accounts receivable efforts.

Assumptions

Rincon assumes the following:

- The City will conduct appropriate notification to all responsible agencies and to the public
- One round of consolidated City comments will be provided on each deliverable
- No project disturbance will occur within a stream channel and no permits from CDFW or RWQCB will be required
- The Initial Study will rely on AB 52 consultation already completed by the City for the previous IS-MND
- One lengthy (over 20 pages) and substantive letter will be submitted by from Wanger Jones Helsley PC (or other law firm representing the neighbors), and up to two additional short (under two pages) and non-substantive letters will be submitted, which can be adequately responded to in a maximum of 60 professional staff hours
- The City will be responsible for payment of the County Clerk and California Department of Fish and Wildlife filing fees
- Rincon will not provide hard copies of any deliverables

Estimated Timeline

Rincon has an excellent reputation for adhering to schedules and meeting milestones. Based on our project understanding and the analysis required Rincon proposes to adhere to a schedule that allows for completion of the environmental review process in approximately three to four months depending on timing of our receipt of a complete and stable project description and plan set, City review times, and number and complexity of public comments.

1. Cultural Resources Peer Reviews. Rincon will perform peer reviews within three weeks of authorization to proceed, project kickoff, and receipt of technical reports from the City and applicant. We assume the technical reports will require up to three weeks for revisions.
2. Administrative Draft Initial Study. Rincon will submit the Administrative Draft Initial Study within eight weeks of receipt of a complete and stable project description, plan set, and revised technical reports from the City and applicant.
3. Public Review Draft Initial Study. Revisions to address City comments will be provided within three weeks and submitted to the City in track changes. Upon approval of revisions, the Public Draft IS-MND will be provided in PDF format in one week.
4. Final Initial Study and MMRP. The Administrative Final IS-MND and MMRP will be completed within approximately three to six weeks of receipt of all public comments, depending on the

number and complexity of public comments received. We will submit the Final IS-MND and MMRP within two weeks of receipt of City comments on the draft responses.

Cost

Rincon can complete the proposed work program for a cost not to exceed **$51,375,** a reduction of $32,856 from the originally proposed Focused EIR cost of $84,231. The revised cost is in addition to the work already completed for this project, including the January 5, 2022 kick-off meeting and project management tasks. When added to the work in progress balance of $2,116, the total revised budget would be **$53,491**. We also recommend including an approximately 10 percent contingency (or $5,350), only to be released upon City approval. A breakdown of our cost by task is summarized in the table on the next page. All services would be provided on a time and expense reimbursement basis and will be billed in accordance with our standard fee schedule for professional services.

If you have any questions regarding this request, please do not hesitate to contact us.

Sincerely,
Rincon Consultants, Inc.

Leslie Trejo, MUP
Project Manager
Phone: 510-984-6155
Email: ltrejo@rinconconsultants.com

Megan Jones, MPP
Principal-in-Charge
Phone: 831-920-5424
Email: mjones@rinconconsultants.com

1661 Sunset Drive IS-MND Cost Estimate

	Rate	Hours	Labor Budget	Total Budget
Task 1: Cultural Resources Peer Reviews		68.00	12,104.00	12,104.00
Principal I	250.00	8.00	2,000.00	
Supervisor Archaeologist I	215.00	22.00	4,730.00	
Archaeologist IV	164.00	12.00	1,968.00	
Archaeologist II	135.00	20.00	2,700.00	
GIS/CADD Specialist II	135.00	2.00	270.00	
Technical Editor	120.00	2.00	240.00	
Production Specialist I	98.00	2.00	196.00	
Task 2: Administrative Draft Initial Study		93.00	13,516.00	13,516.00
Principal I	250.00	5.00	1,250.00	
Supervisor Archaeologist I	215.00	3.00	645.00	
Senior Biologist II	195.00	3.00	585.00	
Archaeologist IV	164.00	4.00	656.00	
Planner IV	164.00	12.00	1,968.00	
Biologist III	152.00	12.00	1,824.00	
Archaeologist II	135.00	8.00	1,080.00	
GIS/CADD Specialist II	135.00	8.00	1,080.00	
Planner I	120.00	30.00	3,600.00	
Technical Editor	120.00	2.00	240.00	
Production Specialist I	98.00	6.00	588.00	
Task 3: Public Review Draft Initial Study		28.00	4,402.00	4,402.00
Principal I	250.00	3.00	750.00	
Senior Archaeologist II	195.00	4.00	780.00	
Biologist IV	164.00	2.00	328.00	
Planner IV	164.00	7.00	1,148.00	
Planner I	120.00	10.00	1,200.00	
Production Specialist I	98.00	2.00	196.00	
Task 4: Finial Initial Study and MMRP		78.00	12,874.00	12,874.00
Principal I	250.00	9.00	2,250.00	
Supervisor Archaeologist I	215.00	4.00	860.00	
Senior Biologist II	195.00	8.00	1,560.00	
Archaeologist IV	164.00	10.00	1,640.00	
Planner IV	164.00	21.00	3,444.00	
Planner I	120.00	24.00	2,880.00	
Technical Editor	120.00	2.00	240.00	
Task 5: Meetings and Public Hearings		17.00	3,355.00	3,355.00
Principal I	250.00	6.00	1,500.00	
Supervisor Archaeologist I	215.00	1.00	215.00	
Planner IV	164.00	10.00	1,640.00	
Project Management		26.00	5,124.00	5,124.00
Principal I	250.00	10.00	2,500.00	
Planner IV	164.00	16.00	2,624.00	
Project Total		**310.00**	**51,375.00**	**51,375.00**

REIMBURSEMENT AGREEMENT
FOR CONSULTANT PLANNING SERVICES FOR THE 1661 SUNSET DRIVE PROJECT

PREAMBLE

This Reimbursement Agreement ("Agreement") is by and between Elstob Family Investments LP, a California limited partnership ("Elstob Family Investments") and the City of Pacific Grove, California, a chartered California municipal corporation ("City"). Elstob Family Investments may also be referred to as "Applicant." City and Applicant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

A. The Applicant desires to redevelop various parcels collectively referred to as 1661 SUNSET DRIVE; Assessor's Parcel Numbers 007-041-033, 007-041-034, and 007-041-035 (Proposed Project).

B. The City will incur various costs and expenses including preparation of a revised Initial Study and Mitigated Negative Declaration (revised IS/MND) for the Proposed Project. The City has retained an Environmental Planning consultant, Rincon Consultants Inc., to assist in the analysis of environmental clearance documents for conformance to the California Environmental Quality Act (CEQA), the preparation of a revised IS/MND and attendant notifications, reports and presentations, and attendance at relevant meetings, associated with the Proposed Project.

C. Applicant is willing to reimburse City for Eligible Costs to be incurred by City in connection with the utilization of Rincon Consultants, Inc. to provide environmental review in compliance with CEQA on the 1661 Sunset Drive site(s), as set forth herein.

In consideration of the recitals and mutual promises contained herein, the Parties agree as follows:

AGREEMENT PROVISIONS

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide for payment by Applicant of all Eligible Costs (defined below) directly or indirectly incurred by City in connection with the Proposed Project.

2. REIMBURSEMENT OBLIGATION

A. The Applicant shall reimburse the City for Planning fees associated with the preparation of a revised IS/MND, notifications and presentation preparation of the Proposed Project, including Planning Consultant and/or dedicated staff fees and costs incurred in connection with the review of Planning Applications for the Proposed Project (collectively, the "Eligible Costs") in accordance with this Agreement.

B. The total amount of Eligible Costs is estimated to be $58,841 including a 10 percent contingency fee. This includes reimbursement for contract expenses, fees and direct consultant costs associated with contract or project management. All direct City staff costs will be billed at the fully-burdened hourly rate, which is determined annually by the City. City agrees to use its best efforts to stay within the Estimated Budget. In the event that additional services are required that would exceed the Estimated Budget, City shall give the Applicant 10 business days' advance written notice prior to authorizing any work that would cause the Eligible Costs to exceed the Estimated Budget, which notice shall document the budget for additional services that would exceed the Estimated Budget ("Additional Budget"). If City and Applicant cannot agree to the scope and cost of said additional services in writing, this Agreement may be terminated or extended pursuant to Section 7. Applicant shall provide an amount to cover additional costs prior to the commencement of additional services, unless the Parties agree to an alternate funding allocation as part of the review and approval of the scope and cost of said additional services.

3. PAYMENT OF ELIGIBLE COSTS

A. Upon execution of this Agreement, Applicant shall deposit with City the sum equivalent to $58,841 in cash or other immediately available funds ("Payment"). The Payment will be retained as a "Deposit" in satisfaction of Applicant's obligation to pay Applicant's Share of Eligible Costs.

B. If the City provides notice pursuant to Section 2.B of this Agreement that services are required that would cause the Eligible Costs to exceed the Estimated Budget, the Applicant shall deposit with City the sum equivalent to [Additional Budget] in cash or other immediately available funds ("Additional Payment") in satisfaction of Applicant's obligation to pay Eligible Costs. Upon mutual agreement of the City and Applicant, the Applicant may provide the Additional Payments in accordance with Section 3.A.

C. City shall withdraw from the Payment and Additional Payment, if any, as necessary to cover the Eligible Costs. On a monthly basis, City shall provide written notice to all Applicant documenting: (1) the amount of Eligible Costs

incurred to date; (2) the amount of Payments and Additional Payments, if any, that the City has used to pay Eligible Costs incurred to date; and (3) the remaining balance of the Applicant's Payment and Additional Payments, if any.

D. The Applicant makes this commitment without regard to the City's ultimate decision whether to approve the Proposed Project.

4. REFUND OF UNEXPENDED BALANCE

A. In the event this Agreement is terminated as provided in Section 6 below, City shall return to each Applicant within 45 days following the effective date of termination that portion of the Payment or Additional Payment, if any that has not been expended or committed by City as provided herein. If unexpended funds are returned and the City is invoiced for any direct costs that were completed prior to the date of termination, the Applicant shall be billed for those costs.

B. Any unexpended funds shall be returned to the Applicant within 45 days after (1) the City approves or denies all relevant planning applications associated with the Proposed Project. City shall provide copies of invoices and other documents to verify final costs for services.

5. NO COMMITMENT AS TO FUTURE APPROVALS

Nothing in this Agreement shall be construed as a commitment to grant or issue any preliminary or final approvals in connection with the Proposed Project. Each Applicant acknowledges and agrees that nothing in this Agreement limits City's discretion, in any manner, with respect to any aspect of the Proposed Project. Each Applicant agrees that it shall remain obligated to pay Applicant's Share of all Eligible Costs, regardless of whether any aspect of the Proposed Project is approved.

6. TERM; TERMINATION OF AGREEMENT

A. The term of this Agreement shall be from the Effective Date until the date the services identified in Recital B have been fully performed and paid for, unless terminated earlier.

B. Any Party may terminate this Agreement without cause by giving the other Parties written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than ten (10) calendar days after all Parties receive such notice. No Applicant shall have an obligation to pay any Eligible Costs incurred on or after the effective date of the termination, but shall remain responsible for any Eligible Costs incurred prior to the effective date of the termination.

C. In the event of termination of this Agreement, City shall prepare a statement for all services rendered by City. City will refund any unexpended balance of Applicant's funds to Applicant in accordance with Section 4 of this Agreement.

7. APPLICANT STANDING

Applicant is a California LP. Applicant shall maintain limited partnership existence and good standing in its jurisdiction of registration and maintain qualification in each jurisdiction in which it is required under applicable law. Applicant shall maintain in force all licenses, approvals, and agreements, the loss of which could have a Material Adverse Effect. Applicant shall provide to City a Certificate of Good Standing or Certificate of Existence from the appropriate authority, submitted within ten days upon request by City certifying that Applicant is in good standing as a limited partnership in the State of California.

8. ASSIGNMENT

An Applicant may assign its interest in this Agreement with the prior written notice and consent of City.

9. INTEGRATED DOCUMENT

This Agreement represents the entire agreement between City and Applicant. No other understanding, agreements, conversations, or otherwise, with any representative of any Party prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon any Party.

10. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

11. WAIVER

Waiver of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

12. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Pacific Grove
Attention: Alyson Hunter, AICP, Director Community Development Dept.
300 Forest Avenue
Pacific Grove, California 93950
Phone: 831-648-3192
Fax: 831-648-3184
Email: ahunter@cityofpacificgrove.org

to Elstob Family Investments addressed as follows:

Elstob Family Investments, LP
Attention: Mark Elstob
415 Crocker Avenue
Pacific Grove, California 93950
Phone: 831-655-9858
Email: melstob@romarcoproperties.com

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

13. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

14. LAW GOVERNING CONTRACT AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by any Party shall be vested in the state courts of the County of Monterey, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

15. COUNTERPARTS AND SIGNATURES

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

[Signatures on following pages]

CITY OF PACIFIC GROVE, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

Dated: _____

_____
DAVID C. LAREDO
City Attorney

ATTEST:

_____
SANDRA KANDELL
City Clerk

_____
BEN HARVEY
City Manager
300 Forest Avenue
Pacific Grove, CA 93950
Telephone: (831) 648-3106
Fax: (831) 657-9361

"CITY"

ELSTOB FAMILY INVESTMENTS, LP
a California limited partnership

Dated: _____

By: _____
(Signature)

Name: Mark Elstob

Title: General Partner

By: _____
(Signature)

Name: _____

Title: _____

Local Address: 415 Crocker Avenue
Pacific Grove, CA 93950

Email Address: melstob@romarcoproperties.com

Telephone: (925) 915-9338

Fax: _____

"ELSTOB FAMILY INVESTMENTS"

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Bill Peake, Mayor
MEETING DATE:	February 16, 2022
SUBJECT:	Thomas Horvath Appointment to Administrative Enforcement Hearing Officer Panel
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION
Approve appointment of Thomas Horvath to Administrative Enforcement Hearing Officer Panel for a term ending January 31, 2024.

DISCUSSION
Boards, commissions, and committees (committees) play a vital role in city government and provide opportunities for residents to become engaged in civic activities and work to improve local governance.

Mayoral appointments to City committees must be confirmed by Council (Charter Article 26). Further regulations and policy regarding appointments can be found in PGMC Chapter 3.02 and Policy 000-5.

Terms are 2 years for non-Charter committees.

OPTIONS
N/A

FINANCIAL IMPACT:
There is no fiscal impact.

GOAL ALIGNMENT: Not Applicable.

Attachments

Redacted App

CITY OF PACIFIC GROVE
www.ci.pacific-grove.ca.us

Application for Appointment to a Public Board, Commission, or Committee

Persons interested in being appointed to serve on a board, commission, or committee of the City of Pacific Grove are invited to complete the following application.

Name: Thomas Horvath			
Street Address: [redacted]			
City: Pacific Grove		**State:** CA	**ZIP Code:** 93950
Residence Telephone Number: [redacted]	**Work Telephone Number:**	**E-Mail Address:** [redacted]	

Name of Board, Commission, or Committee on which you would like to serve:
Administrative Enforcement Hearing Officer Panel

Brief Description of Background and Qualifications (Additional Information May Be Attached on Separate Sheets): ATTACHMENT OF A RESUME IS DESIRABLE.

I have been working in higher education administration for almost 10 years now, with an additional six years in other leadership roles in higher education. I bring experience in the health and safety area (having served as Health and Safety Officer or with similar responsibilities at the State University New York College at Oneonta, University Koblenz-Landau in Landau Germany, and now at Cal State Monterey Bay). I have extensive experience in shared governance structures at the above institutions, including chaired roles.
I have an eye for detail, and would bring additional strong analytical skills to the panel.
I have compleed a certificate program in Crisis Leadership through the Harvard Kennedy School (2021).
My schedule is flexible enough to meet demands of the Panel.
I believe in making local government accesible to the citizens and finding pragmatic solutions to problems.
I am attaching my Curriculum Vita in full (and realize many sections are not relevant to the position).

I would be happy to discuss any of these qualifications at your convenience.

I hereby certify that I am a registered voter of the City of Pacific Grove (not required for EDC appointees)

Signature of Applicant:	**Date:** 27 Jan 2022

FOR CITY USE ONLY

Appointed to: _____

Date of Appointment: _____ ***Expiration:*** _____

Date of Reappointment: _____ ***End of Term:*** _____

Date Certification of Appreciation Awarded: _____

CURRICULUM VITAE
Thomas Horvath

CONTACT INFORMATION

College of Science
California State University Monterey Bay
Seaside CA 93955-8001
USA

Email: [redacted]
Ph: [redacted]

Career Summary/Values

More than 15 years of leadership in higher education convince me that a College's greatest asset is its people, and investing in faculty and staff strengthens the institution. A dean can leverage budgets, hiring, and curricular leadership to enhance student learning and promote research and professional development for faculty and staff. I value evidence-based decision making and continuous improvement within a shared governance structure. With an eye toward service-oriented leadership through an inclusive lens, I remain committed to supporting student access to educational opportunities, a global/international perspective, and a sound foundation in the liberal arts.

EDUCATION

1992 - 1997	Ph.D. in Aquatic Biology, University of Notre Dame
1990 - 1992	B.Sc. in Biology/German (minor Chemistry), University of Indianapolis
1987 – 1990	Indiana University Northwest; Purdue University Calumet

LEADESHIP EXPERIENCES & ACCOMPLISHMENTS:

2018 – present: Associate Dean, College of Science, California State University Monterey Bay

Duties and Responsibilities:

- Support the Dean in all aspects of College leadership.
- Manage enrollment processes for the College through data- and evidence-based measures
- Curriculum management, including internal and external review processes, curricular changes and new program development.
- Appropriate administrator for issues related to College staff, including oversight of annual evaluations for lecturers and staff.
- Support the College on student success initiatives, including advising, improving retention and graduation rates, and grant-writing in support of College-level programs.

Key Accomplishments to date:

- Equity-minded assessment to faculty workload
- Increased graduation and retention rates, especially among URM student groups.
- On-time evaluation of all faculty and staff, in accordance to CBAs.

- Initiated a shared governance document for the College.
- Managed creation of 3 new departments within the College.
- Revised budget and management processes for HSI STEM grant.
- Managed on-site access and use of science buildings during COVID-related remote work transition.
- Developed a new B.S. in Agricultural Crop and Soil Science and managing a proposed B.S. in Mechatronics Engineering, including articulations with community colleges and international partner universities.
- Contributed to initial phases of a feasibility study for a new science building.
- Strengthened relationships with international partner universities.
- Developing the College's new Strategic Plan

Pandemic Responses (Cal State Monterey Bay remains in remote teaching mode):

- Managing access to all science facilities on campus
- Coordinating faculty needs – data gathering and response to specific needs
- Created an approval process to get researchers back in their labs (this process is now adopted throughout the university)
- Altered the lecturer evaluation process (while staying within the letter of the CBA) to better capture the invisible labor involved with teaching in remote mode

2013 -2018: Faculty Manager, Faculty of Natural and Environmental Sciences
University Koblenz-Landau, Landau Germany

The Faculty of Natural and Environmental Sciences has 21 research groups organized into four Institutes (Natural Science Teaching, Environmental Sciences, Mathematics, Sport Science). The Faculty has over 140 employees and brings in annually around 4 million Euros in external grants. The Faculty Manager provides management support for the Dean, and indirectly for the Chancellor, with a focus on the administrative effectiveness of the Faculty. It is a direct report to the Dean, although the Dean is a term-elected position from the Faculty Council. The Faculty Manger builds the basis for the Dean's Management Team and is the contact point in the Faculty for the central administration.

Duties and Responsibilities:

- Managed the processes of admittance into the doctoral program and conferral of doctoral degree
- Coordinated the semester offerings of the Faculty so as to allow students to graduate on time
- Supported the assessment and program review processes of the bachelor and master degree programs, including implementation of the quality assurance plan
- Oversaw the distribution of the Faculty financial resources (approx. 450,000 € in operating funds, 700,000€ in supplementary funds)
- Supported the central administration on all matters pertaining to teaching, research and internationalization within the Faculty
- Contact point for the construction of a new laboratory building
- Coordinated re-accreditation processes for non-teaching degrees
- Supported the strategic planning process for the Faculty

- Coordinated the committee structure of the Faculty
- International marketing efforts for new major programs

Key accomplishments:

- Restructured the distribution of financial resources among research groups to reflect scientific output
- Dedication of new laboratory building slated for fall 2018
- Increased international application and intakes in the master programs – 40%
- Developed international research opportunities, developed MOUs with partner universities and initiated discussion of EU joint master programs
- Co-coordinated the successful accreditation of the newly conceived bachelor program Humans and the Environment – Psychology, Communication, Economics, a first of its kind cross-Faculty degree; marketing strategy and recruitment of inaugural class resulted in maximum enrollment
- Created and maintained a database of institutional statistics that supported all Institutes and openly provided data for the Faculty leadership

2006 - 2012 Director of Environmental Sciences, State University New York at Oneonta. Oneonta NY

Duties and Responsibilities:

- Coordinated the curriculum which involved 5 departmental offerings
- Represented the Program both internally (Divisional, Council of Chairs, College Senate, New Student Orientation) and externally
- Oversaw the college's highest profile endowed lecture series – The Cornell-Gladstone-Hanlon-Kaufmann Lecture in Environmental Education and Communication, including maintaining communication with the endower and his family
- Responsible for recruitment and retention of students, enrollment management, hiring and supervision of new faculty, budget management
- Curriculum assessments and curricular development, including forming a plan to create a new academic department
- Fund raising through grant writing and alumni solicitations

Key accomplishments:

- 60% increase in student enrollment
- Inclusion of three new departments (Philosophy, Sociology, Political Science)
- Created Program bi-laws
- Involvement of Program in Project Kaleidoscope, a multi-university consortium addressing how best to incorporate interdisciplinarity in college curricula
- Advocated and hired the only faculty specifically for the Program
- Initiated a new endowment for student scholarships through intensive fund raising and coordinated efforts with the Office of College Advancement
- Developed partnership with the University of Cologne, which saw four students accepted in their International Master of Environmental Science

- Revised curriculum and directly involved students in the Program development by giving them representation in “department” meetings

ACADEMIC POSITIONS HELD:

2011 - 2013 Professor of Biology, State University New York at Oneonta. Oneonta NY
2007 - 2011 Associate Professor of Biology, State University New York at Oneonta. Oneonta NY
2001 - 2007 Assistant Professor of Biology, State University New York at Oneonta. Oneonta NY
1999 - 2001 Adjunct Lecturer, Purdue University North Central

PROFESSIONAL POSITIONS HELD:

1999 - 2001 Ecologist/Statistician, US Geological Survey
1997 - 1999 Postdoctoral research, Max Planck Institute for Limnology’s River Station

PROFESSIONAL DEVELOPMENT

- Certificate of completion for the Crisis Leadership in Higher Education Program, John F. Kennedy School of Government at Harvard University, Executive Education, March 2021 (Online)
- ACAD Dean’s Institute 2021 (Online)
- CCAS New Deans Workshop - December 2020 (Online)
- Dialogues Across Differences – an internal group leading dialogues on issues of race and equity among campus organizations
- CCAS Dean Discussions – 2020 National discussions on COVID response topics facing deans of Arts and Sciences.
- Cal State’s Quality Teaching and Learning Program – Introduction to Teaching Online
- Diversity and Inclusion Training, 2019 CSUMB Office of Inclusive Excellence, Certificate program with workshops throughout the year (e.g., DACA Ally Training; Recognizing Microaggression, Power, Privilege, and Oppression)
- CSU Student Success Analytics – 2019 throughout the year, Certificate program involving weekly data discussions and a team project (Tackling the sophomore slump at CSUMB).
- Moving Beyond Bias – 2019 (https://movingbeyondbias.org/)
- Positive Psychology and Leadership – 2017 Certificate program that included both academic and industry leaders in the Pfalz, Germany region. Weekly assignments, journaling, and occasional weekend group sessions applying strategies based on Kim Cameron’s Practicing Positive Leadership (creating a positive climate, positive relationships, positive communication, and positive meaning)
- Negotiation styles for the management of interpersonal conflicts seminar (Peace Academy of Rhineland-Pfalz 2017)
- Erasmus+ IV Joint International Week (2017 – Tallinn Estonia)
- DAAD (German Academic Exchange Service) certificates: Legal aspects of international cooperation (2016); Introduction to internationalization for managers (2016); Accreditation of academic programs with double degrees

(2016); Developing international academic programs with double degrees (2015)

ACADEMIC AWARDS, FELLOWSHIPS and GRANTS

• *US Dept of Education*: HSI-STEM: Research-based interventions to increase STEM degree attainment (managing Co-PI)	$5,622,466	2015-2020
• *Deutsche Forschungsgemeinschaft (DFG)*: International cooperative research: Crayfish plague in North America	3,620 €	2014
• *Fulbright Scholar* – Specialist Program, University of Pécs, Hungary.		2010
• Hungarian National Academy of Sciences External member		Since 2008
• Richard Siegfried Junior Faculty Prize for Academic Excellence		2004
• National Languages Honor Society		Since 2003
• Research Fellowship, Max Planck Institute for Limnology's River Station, Germany		1997-1999
• Navarri Fellowship, Department of Biological Sciences, University of Notre Dame		1996-1997
• National Biological Honors Society		Since 1989
• *Otsego County Conservation Association (OCCA)*: Continued monitoring of zebra mussel veligers, and development of food web models for Otsego Lake	$12,500	2009-2011
• Internal SUNY grants	$15,200	2001-2009
• *Mid-Atlantic Panel on Aquatic Invasive Species*: Current and projected distribution of the invasive rusty crayfish, *Orconectes rusticus*, in the Upper Susquehanna River basin.	$6,910	2008-2009
• *NSF*: Interactive case-study teaching with large classroom response systems in large biology classes. (Senior Personnel – not involved with submission)	$399,354	2007-2008
• *NSF MRI*: Acquisition of laboratory equipment for long-term water quality and watershed management projects.	$115,269	2004-2006
• *US EPA Challenge Grant*: Assessing the threat of zebra mussel dispersal within the Upper Susquehanna River basin and prevention of further dispersal by public education.	$25,400	2003

COURSES TAUGHT

Undergraduate Courses (Bachelors)	Graduate Courses (Masters)
General Biology (Majors, Nonmajors, Honors)[1,3]	Topics in Limnology: Biology of Meiofauna; Aquatic Invasive Species[1]
Introduction to Environmental Pollution[1]	Experimental Stream Ecology[1]

Aquatic Pollution (Ecotoxicology)[1]
Limnology[1]
Stream Ecology[1]
Environmental Monitoring[1]
Environmental Sustainability[1]
First-Year Experience[1]
Lake Monitoring[1]
Bioassessment and Biocriteria[1]
Advanced Limnology[1,2]
Field Ecology[2]
Scientific Writing Workshop for Doctoral Students[3]

[1]State University New York at Oneonta, [2]University of Koblenz-Landau, [3]University of Maryland University College Europe (US Army Facility Kaiserslautern)

UNIVERSITY SERVICE

CSUMB
- Campus Repopulation Workgroups
  - Health & Safety
  - Curriculum Instruction
- President's Committee on Equity and Inclusion
  - Training Subcommittee
- Strategic Enrollment Management
  - Recruitment subcommittee
- Otter Promise:
  - Holistic Wellness
  - Student-centered Scheduling
- Campus Safety Committee
- Skelly-trained officer (impartial reviewer of disciplinary actions)
- Institutional Assessment and Research Feedback Group
- Search committees: Assoc Dean of Advising; Registrar; Science education postoc
- Exploratory task force for departmentalization
- Search Committees: Associate Dean College of Arts, Humanities, and Social Sciences (Chair); Registrar; Associate Dean University College.

Koblenz-Landau
- Commission for Quality Assurance and Development in Teaching
- University Senator
- *ad hoc* Committee for Internationalization
- Faculty Council
- Doctoral Committee
- Committee for Teaching and Learning
- Committee for Research

SUNY
- Faculty College Senator – Vice-Chair/Alternate Presiding Officer
- Committee on Administrative Review - (Served as Chair)
- Presidential Advisory Committee on Sustainability (founding member)
- Energy and Sustainability Taskforce
- Graduate Committee (campus and state system)
- Curriculum Committee
- Intercollegiate Athletic Board
- Divisional Dean's Council

- Council of Chairs
- Search committee for Dean of Social Sciences
- Chair of Promotion & Review Committee (Department)
- Biological Field Station Committee
- Faculty Search Committees (also as Chair) and *ad hoc* committees
- Faculty Union (UUP): Health and Safety Officer, Secretary, State Delegate

PEER-REVIEWED PUBLICATIONS (*indicates student co-author)

19 Jungkunst, H., J. Goepel, T. Horvath, S. Ott, M. Brunn. Resubmission. Global soil carbon-climate interactions: a review of ecozonal features. WIREs Climate Change.

18 Jungkunst, H., J. Goepel, T. Horvath, S. Ott, M. Brunn. 2021. New uses for old tools: Reviving Holdridge Life Zones in soil carbon persistence research. Journal of Plant Nutrition and Soil Science. 184:5-11.

17 Panteleit, J., T. Horvath, J. Jussila, J. Makkonen, W. Perry, R. Schulz, K. Theissinger, and A. Schrimpf. 2019. Invasive rusty crayfish (*Faxonius rusticus*) populations in North America are infected with the crayfish plague disease agent (*Aphanomyces astaci*). Freshwater Science. 38(2):425-433.

16 Bischoff, P.B. and T. G. Horvath. 2011. Abundances of naked amoebae and macroflagellates in Central New York lakes: Possible effects by zebra mussels. Acta Protozologica. 50:23–31.

15 Lundeberg, M.A., H. Kang, B. Wolter, R. delMas, N. Armstrong, B. Borsari, N. Boury, P. Brickman, K. Hannam, C. Heinz, T. Horvath, M. Knabb, T. Platt, N. Rice, B. Rogers, J. Sharp, E. Ribbens, K. Maier, M. Deschryver, R. Hagley, T. Goulet, C.F. Herreid. 2011. Context matters: Increasing understanding with interactive clicker case studies. Educational Technology Research and Development. 59(5): 645-671.

14 Associate author. Kang et al. 2011. Gender differences in student performance in large lecture classrooms using personal response systems (“clickers”) with narrative case studies. Learning, Media and Technology. 9: 1-24.

13 Associate author. Wolter, B.H.K., M.A. Lundberg, H. Kang and C.F. Herreid. 2011. Students’ perceptions of using personal response systems (“clickers”) with cases in science. Journal of College Science Teaching 40(4):14-19.

12 Horvath, T.G. and L. Crane* 2010. Hydrodynamic forces affect larval zebra mussel (*Dreissena polymorpha*) mortality in a laboratory setting. Aquatic Invasion 5(4):379-385.

11 Horvath, T.G. 2008. Economically viable strategy for prevention of invasive species introduction: Case study of Otsego Lake, New York. Aquatic Invasions 3(1):3-9.

10 Horvath, T. 2005. A killer lake. Journal of College Science Teaching October:18-21.

9 Horvath, T.G. 2004. Retention of particulate matter by macrophytes in a first-order stream. Aquatic Botany 78(1):27-36.

8 Cronin, G., D.M. Lodge, M.E. Hay, M. Miller, A. Hill, T. Horvath, R. Bolser, N. Lindquist, and M. Wahl. 2002. Crayfish feeding preferences for freshwater macrophytes: the influence of plant structure and chemistry. Journal of Crustacean Biology 22(4): 708–718.

7 Horvath, T.G., R.L. Whitman, and L.L. Last. 2001. Establishment of two invasive crustaceans (Copepoda: Harpacticoida) in the nearshore sands of Lake Michigan. Canadian Journal of Fisheries and Aquatic Sciences 58:1261-1264.

6 Lewis, K.M., J.L. Feder, T.G. Horvath and G.A. Lamberti. 2000. Heterozygosity and fitness: No strong association in Great Lakes populations of zebra mussel, *Dreissena polymorpha*. (Pallas). Malacologia 42:113-122.

5 Horvath, T.G., K.M. Martin, and G.A. Lamberti. 1999. Effect of zebra mussels, *Dreissena polymorpha*, on stream macroinvertebrates. American Midland Naturalist 142:340-347.

4 Horvath, T.G. and G.A. Lamberti. 1999. Limitation of zebra mussel recruitment in streams by veliger mortality. Freshwater Biology 42:69-76.

3 Horvath, T.G. and G.A. Lamberti. 1999. Recruitment and growth of zebra mussels (*Dreissena polymorpha*) in coupled lake-stream systems. Archiv für Hydrobiologie 145/2:197-217.

2 Horvath, T.G. and G.A. Lamberti. 1997. Drifting macrophytes as a mechanism for zebra mussel (*Dreissena polymorpha*) invasion of lake-outlet streams. American Midland Naturalist 138:29-36.

1 Horvath, T.G., G.A. Lamberti, D.M. Lodge, and W.L. Perry. 1996. Zebra mussel dispersal in lake-stream systems: source-sink dynamics? Journal of the North American Benthological Society 15:564-575.

OTHER PUBLICATIONS (* indicates peer-review process)

16 Jungkunst, H., T. Horvath, S. Erasmi, J.P. Krueger, K.H.M. Meuer, K. Schuetzenmeister, T. Guillaume, T. Scholten, F. Baumann, P.-M. Schleuss, J.-S. He, P. Kuehn, J. Henkner, T. Kaetterer, and J. Schneider. 2019. Regionally diverse land-use driven feedback from soils to the climate system. pp 61-129 In: Soil and Climate. Lal, R and B.A. Stewart (ed.) CRC Press, Boca Raton.

15 Cox, E., J. Marxsen, and T. Horvath. 2011. Primary producers. pp. 99-130 In: Central European Stream Ecosystems: The Long-Term Study of the Breitenbach. Wagner, R. et al. (ed.) Wiley Blackwell Publishers, Weinheim, Germany.

14 Horvath, T. 2009. Human movements: Consequences to global biogeography. Chapter in Leung, Hendley, Compton and Haley (editors) Imagining Globalization: Language, Identities and Boundaries. Palgrave MacMillan.

13* Horvath, T. 2009. Cross-Dressing Salmon: Survival of the Sneaky - The National Center for Case Study Teaching in Science Case Collection (http://www.sciencecases.org/sneaky_salmon/prelude.asp)

12* Horvath, T. 2009. Not Necessarily on Purpose: Domestication and Speciation in the Canidae Family - The National Center for Case Study Teaching in Science Case Collection (http://www.sciencecases.org/dog_evolution/prelude.asp)

11* Rogers, W. and T. Horvath. 2008. Life: The Final Frontier - The National Center for Case Study Teaching in Science Case Collection (http://www.sciencecases.org/life/prelude.asp)

10* Horvath, T. 2005. Killer Lakes - The National Center for Case Study Teaching in Science Case Collection (http://www.sciencecases.org/lake_nyos_a/lake_nyos_a.asp)

9 J. Caddick, J. Christmas, V. Clark, R. Fernald, S. Foti, L. Goldblatt, D. Heicher, T. Horvath, R. Klauda, L. Moss, T. Shaw, T. Sinnott, J. Thompson, K. Wakefield, B. Watson. 2003. Zebra Mussels (*Dreissena polymorpha*) in the Chesapeake Bay Watershed: A Regional Management Plan. Prepared by: The Regional *Dreissena polymorpha* Working Group (15 authors).

8 Horvath, T. 2004. Principles of monitoring design. Pages 4-11 in Becker Nevers and Whitman, Lake Monitoring Field Manual. US Geological Survey Publication.

7 Whitman, R.L., M.B. Nevers, L.L. Last, T.G. Horvath, M.L. Goodrich, S.M. Mahoney, and J.A. Nefczyk. , Status and trends of selected inland lakes of the Great Lakes Cluster national parks. 2002. NPS Midwest Region. 310 pages.

6 Horvath, T.G., R.L. Whitman, L.L. Last, M.B. Nevers. 2000. Evaluation of beach nourishment activities on bottom fauna and yellow perch in near shore areas of Mt. Baldy, 1996-1998. USGS Report.

5 Whitman, R.L, T.G. Horvath, M.L. Goodrich, M.B. Nevers. 2000. Characterization of *E. coli* levels at 63rd Street beach.

4 Whitman, R.L, T.G. Horvath, L.L. Last M.L. Goodrich, M.B. Nevers. 2000. The effects of shooting range lead shot on the sand-dwelling animals in the near shore waters of Lake Michigan. USGS Report.

3 Horvath, T.G. 1997. Dispersal and ecological impact of zebra mussels, *Dreissena polymorpha* (Pallas), in coupled lake-stream systems. Ph.D. Dissertation, University of Notre Dame, Notre Dame, Indiana, USA. 201 pages.

2 Horvath, T.G., G.A. Lamberti, W.L. Perry, and D.M. Lodge. 1994. Impact of zebra mussels on unionid clams of the St. Joseph River system in Indiana. Report submitted to Division of Fish and Wildlife Nongame Program, Indiana Department of Natural Resources. 30 pages.

1 Harding, J.M., T.G. Horvath, and G.A. Lamberti. 1993. Establishment of a monitoring network for zebra mussels in streams of Indiana Dunes National Lakeshore. Technical report submitted to the Research Division of Indiana Dunes National Lakeshore. 29 pages.

PRESENTED PAPERS (* indicates student co-presenters)

Horvath, T. and A. Bartlett. 2021. Crisis Leadership: A workshop with 47 participants at the CCAS Annual meeting in Portland.

Horvath, T. T. Sumter, and A. Lawson. 2021. Multiple Stable States in the Higher Education Landscape: What Can a Dean's Office Expect? CCAS Annual meeting in Portland.

Horvath, T. 2011. Human-Mediated and Natural Dispersal of Invasive Species: Implications for Watershed-Scale Management Practices. 14th World Lake Conference, Austin Texas.

*Crane, L. and T. Horvath 2008. Hydrodynamic Force Impacts on Zebra Mussel (*Dreissena polymorpha*) veligers. Northeast Natural History Conference, Albany NY, and Student Research Day, SUNY – Oneonta.

Horvath, T.G., A.J. *Healy, and B.S. *Hayes. 2006. Autecology of *Canthocamptus staphylinoides* (Harpacticoida) in nearshore sediments of Otsego Lake, New York. American Society of Limnology and Oceanography Annual summer meeting, Victoria, BC.

*Bury, B., and T. Horvath. 2006. Update on crayfish in the West Branch Delaware River. Northeast Natural History Conference, Albany NY, and Student Research Day, SUNY – Oneonta.

Horvath, T.G., and *Gray, M. S. 2005. Zebra Mussels in the Susquehanna River Basin: Spatial Distribution and Policy Actions. New England Association of Environmental Biologists annual meeting, Lake George NY.

Horvath, T.G. 2005. Harpacticoids in Lake Ontario's nearshore sediments: A cooperative project with the US Geological Survey. Presented at the Faculty Research Show SUNY-Oneonta.

Horvath, T.G. 2004. Temporal and spatial variations in nearshore meiofauna from Otsego Lake, New York, USA. International Society of Limnology's 29th Congress, Lahti Finland.

Gray, M. S., Horvath, T.G., and Ingmire, S. 2004. Natural and human-mediated dispersal of zebra mussel from Eaton Brook Reservoir, Madison County, NY. Mid Atlantic Chapter of the Ecological Society of America Conference on Sustainable Landscapes.

Gray, M. S., Horvath, T.G., and Ingmire, S. 2004. Natural and human-mediated dispersal of zebra mussel from Eaton Brook Reservoir, Madison County, NY. American Institute for Biological Sciences Annual Meeting, Washington DC.

Bischoff, P.J., and Horvath, T.G. 2004. Trophic relationships among bacteria, gymnamoebae (protozoans) and harpacticoids in the sediments of Otsego Lake. Presented at the Faculty Research Show SUNY-Oneonta.

Gray, M. S., Horvath, T.G., and Ingmire, S. 2004. Natural and human-mediated dispersal of zebra mussel from Eaton Brook Reservoir, Madison County, NY. New York State Federation of Lake Associations meeting. Hamilton NY.

Gray, M. S., Horvath, T.G., and Ingmire, S. 2003. Natural and human-mediated dispersal of zebra mussel from Eaton Brook Reservoir, Madison County, NY. Presented at the 28th annual Biological Sciences Research Symposium Binghamton University.

Horvath, T.G. 2003. Downstream dispersal of zebra mussels in a nearby coupled lake-stream system: A new spin on limiting factors. Presented at the Faculty Research Show SUNY-Oneonta.

Cornwell, M.D. and Horvath, T.G. 2002. Recolonization of azoic sediments by meiofauna in the hydropsammon of Otsego Lake, New York. Presented at the 27th annual Biological Sciences Research Symposium Binghamton University.

Horvath, T.G., and Cornwell, M.D. 2002. Meiofauna recolonization dynamics in three distinct zones near the shoreline of Otsego Lake, New York. 50th Annual Meeting of the North American Benthological Society. Pittsburg, Pennsylvania.

Cornwell, M.D. and Horvath, T.G. 2002. Recolonization of azoic sediments by meiofauna in the hydropsammon of Otsego Lake, New York. 50th Annual Meeting of the North American Benthological Society. Pittsburg, Pennsylvania.

Horvath T.G., and Cornwell, M.D. 2002. Meiofauna recolonization dynamics in three distinct nearshore zones of Otsego Lake, New York. Northeast Natural History Conference. Albany, New York.

Horvath, T.G. 2002. Disturbing animals in the sands or Benthic invertebrates, don't hold the meio. Presented at the Faculty Research Show SUNY-Oneonta.

Horvath, T.G. 2001. Invading species dominate the harpacticoid fauna in nearshore sands of southern Lake Michigan. Presented at the 26th annual Biological Sciences Research Symposium Binghamton University.

Horvath, T.G., E.J.Oberdick, L.L.Last, and R.L.Whitman. 2001. Invading species dominate the harpacticoid fauna in nearshore sands of southern Lake Michigan. 49th Annual Meeting of the North American Benthological Society. LaCrosse, Wisconsin.

Horvath, T.G., R.L. Whitman, L.L. Last, and M.B. Nevers. 2001. Benthic invertebrate community from the nearshore sands of southern Lake Michigan: changes in community composition. 44th Annual Meeting of the International Association of Great Lakes Research. Green Bay, Wisconsin.

Horvath, T.G. 2001. Zebra mussel colonization of lake-outlet streams. New York State Federation of Lake Associations. Hamilton, New York.

Horvath, T.G., R.L. Whitman, M.L. Goodrich, L.L. Last, and M.B. Nevers. 2000. Assessing and monitoring the inland lakes of the Great Lakes cluster national parks using benthic invertebrates. 48th Annual Meeting of the North American Benthological Society. Keystone, Colorado.

Horvath T.G. and Callies, K. 1999. Microbial decomposition of riparian vegetation along the Breitenbach: colonization dynamics of aquatic hyphomycetes. 47th Annual Meeting of the North American Benthological Society. Duluth, Minnesota.

Lamberti, G.A., D.M. Lodge, T.G. Horvath, W.L. Perry, and A.H. Fullerton. 1997. Sources and sinks: Dispersal and impacts of exotic species in coupled lake-stream systems. 45th Annual Meeting of the North American Benthological Society. San Marcos, Texas.

Johnson, L.E., T.G. Horvath, G.A. Lamberti, and D.M. Lodge. 1997. Mechanisms of the geographical spread of zebra mussels over different spatial scales. Annual Meeting of the American Society of Limnology and Oceanography. Sante Fe, New Mexico.

Horvath, T.G., G.A. Lamberti, and D.M. Lodge. 1996. Zebra mussel recruitment in a lake-outlet stream: comparison of larval and adult dispersal. 44th Annual Meeting of the North American Benthological Society. Kalispell, Montana.

Horvath, T.G., G.A. Lamberti, and D.M. Lodge. 1996. Comparison of zebra mussel recruitment in a lake and its outlet stream. Sixth International Zebra Mussel and Aquatic Nuisance Organisms Conference. Dearborne, Michigan.

Lamberti, G.A., T.G. Horvath, W.L. Perry, and D.M. Lodge. 1995. Dispersal and limiting factors for zebra mussels in streams. 43rd Annual Meeting of the North American Benthological Society. Keystone, Colorado.

Horvath, T.G., G.A. Lamberti, and D.M. Lodge. 1995. Factors influencing zebra mussel distribution in a lake-outlet stream. Fifth International Zebra Mussel and Aquatic Nuisance Organisms Conference. Toronto, Ontario.

Horvath, T.G. 1995. Factors limiting zebra mussel distribution in a lake-outlet stream. Midwest Ecology and Evolution Conference, Michigan State University.

Horvath, T.G., W.L. Perry, G.A. Lamberti, and D.M. Lodge. 1995. Zebra mussel dispersal in the St. Joseph River basin (Indiana-Michigan): lakes as sources for downstream dispersal. Environmental Chemistry Conference, University of Notre Dame.

Horvath, T.G., W.L. Perry, G.A. Lamberti, and D.M. Lodge. 1994. Zebra mussel dispersal in the St. Joseph River basin (Indiana-Michigan): lakes as sources for downstream dispersal. Fourth International Zebra Mussel and Aquatic Nuisance Organisms Conference. Madison, Wisconsin.

Cronin, G., D. Lodge, M. Hay, N. Lindquist, M. Wohlenberg, R. Bolser, A. Hill, T. Horvath, and M. Wahl. 1994. Plant preference by freshwater specialist herbivores: Selection of enemy-free space? 42nd Annual Meeting of the North American Benthological Society. Orlando, Florida.

Lamberti, G.A., D.M. Lodge, T.G. Horvath, W.L. Perry, P.M. Charlebois, and J.D. Yount. 1994. Influence of exotic invertebrates in stream ecosystems: Zebra mussels and rusty crayfish in Indiana and Michigan. 42nd Annual Meeting of the North American Benthological Society. Orlando, Florida.

Horvath, T.G. 1995. Zebra mussel distribution in a lake and its outflowing stream. Midwest Ecology and Evolution Conference, Bowling Green State University.

INVITED SEMINARS and PUBLIC OUTREACH

Reopening full scientific operations; Invited panelist on BioRAFT webinar (2021)

Protecting lakes from invasive species through boat inspections. Lake Summit, Cazenovia Lake, (2008).

They're here to stay: Zebra mussel impacts on Otsego Lake and its residents. Otsego County Conservation Association (OCCA) fundraising event (2008).

Dreissenid mussels in riverine systems. American Water Works Association, Henderson NV 3 (2008).

Passing the torch: Careful it's hot. Last Lecture Series at Oneonta (2008).

Zebra mussels: How they got here and what to expect. OCCA (2007)

Zebra mussels of Otsego County. Oneonta Rotary Club (2007)

State of dreissenid mussels in the Susquehanna River basin. Pennsylvania Sea Grant. (2007).

Plants and animals of mass destruction: Invasive species. Hartwick College Tri-Beta Biological Honor Society (2005).

Human movements: Consequences for global biogeography. Presented at Center for Social Science Research Borders and Boundaries in an Age of Globalization (2005).

Too late for not in my backyard: Biological invasion of zebra mussels in the Upper Susquehanna River basin. Richard Siegfried Lecture (2005)

Global climate change: Causes & consequences, science & speculation. Carson Lecture (2003).

Biological invasions: Zebra mussels, coming to a lake near you? Presented to the Delaware-Otsego Audubon Society (2003).

Everything you ever wanted to know about lakes. Panel presentation, New York State Federation of Lake Associations (2003).

Life's sign posts are not always written in English. Presented to the International Language Honor Society (2003).

Animals of mass destruction: An exotic species threat now in our midst. SUNY College at Oneonta Faculty Convivium (2002).

Current and projected distribution of zebra mussels in the Chesapeake Bay watershed. Workshop on invasive species management sponsored by Maryland Sea Grant and Chesapeake Bay Program (2002).

Considering connectivity of disparate ecosystems within a watershed. Given at SUNY-Binghamton (2001).

Zebra mussels and the threat to the Chesapeake Bay. Given at the Living Resources Subcommittee of the Chesapeake Bay Program meeting (2001).

Please pass the salt: Marine and brackish harpacticoids in Lake Michigan. Given at Duke Marine Laboratory (2000).

Linking the terrestrial and aquatic habitat: Macrophytes along a headwater stream. Given at Minnesota State University (2000).

The European invasion that sparked a war: an exotic mollusk, zebra mussel (*Dreissena polymorpha*), in Lake Michigan and its consequences. Given at Benedictine University (2000).

Determining sources of nutrient loadings and proposed monitoring program for Crystal Lake. Given to the Crystal Lake Association, Ludington Michigan (1999).

Linkages between ecosystems and how they affect species dispersal and processes in streams. Given at Dublin University Trinity College, Dublin (1999).

Role of macrophytes in the Breitenbach: Physical and microbial processes. Given at the Max Planck Institute for Limnology, River Station-Schlitz (1999).

Effects of flowing water on recruitment of *Dreissena polymorpha*. Given at Institute of Freshwater Ecology and Inland Fisheries, Berlin (1998).

Dispersal of zebra mussels through streams in southern Michigan. Given at Hillsdale College, Michigan (1997).

Zebra mussels in an unexpected habitat-Small streams in North America. Given at the Max Planck Institute for Limnology, River Station-Schlitz (1997).

PROFESSIONAL MEMBERSHIP and ACTIVITY

Council of Colleges of Arts and Sciences
American Conference of Academic Deans
Association of American Colleges & Universities

<u>Past Discipline-specific Societies</u>

Society for Freshwater Science (formally North American Benthological Society)

- Public Information and Publicity Committee member (2002-2005)
- International and Intersociety Interactions Committee member (1998-1999)

International Society of Limnology (SIL)

- Working Group on Aquatic Invasive Species (2004-2015)

American Society of Limnology and Oceanography
German Limnology Society

REVIEWING ACTIVITIES

Manuscripts

- Aquatic Botany; Aquatic Invasions; Archiv für Hydrobiologie; Biological Invasions; Canadian Journal of Fisheries and Aquatic Sciences; Ecological Applications; Ecotoxicology and Environmental Safety; Freshwater Biology; Hydrobiologia;

Journal of Great Lakes Research; Journal of the North American Benthological Society; Lake and Reservoir Management; Limnology and Oceanography; Marine Biology; Polish Journal of Environmental Studies; Wetlands

Textbooks

- Discover Biology, 3rd & 4th Edition; Essentials of Biology, 1st Edition; Biology: Science for Life, 2nd Edition; What is Life?, 1st Edition; Biology: How Life Works, 1st Edition

Grant Proposals

- Sea Grant; NSF, Field Station Infrastructure

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Laurel O'Halloran, Associate Planner

MEETING DATE: February 16, 2022

SUBJECT: Architectural Review Board Minutes: October 12, 2021

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

October Minutes

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NOTICE OF MEETING

CITY OF PACIFIC GROVE

ARCHITECTURAL REVIEW BOARD

REGULAR MEETING MINUTES

Tuesday, October 12, 2021, 3:00 P.M.

Held via Zoom – City Hall – 300 Forest Avenue, Pacific Grove, CA

DRAFT MINUTES

1. **CALL TO ORDER & ROLL CALL**
Chair Gunby, Vice-Chair Coen, Member Wells, Member Gaino (joined at 5:14)

2. **APPROVAL OF THE AGENDA**
On a motion by Member Wells, seconded by Member Coen, the Board voted 3-0-2 (Two absences, Gaino joined at 5:14) to approve the Agenda and continue Item 8G to the December 14, 2021 meeting due to the story pole and netting not installed.

3. **BOARD AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
Laurel O'Halloran introduced Contract Planner Alec Barton and announced the City Council approved Hunter Eldridge, Architect, as the new ARB member. He will be attending the December 14, 2021, meeting**.**

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Council Member Poduri was absent

5. **GENERAL PUBLIC COMMENT**
Lisa Ciani spoke wanting an update of the Archaeological Resource review and Tribal Monitoring protocol review.

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

7. REPORTS REQUIRING ACTION

A. ARB August 10, 2021, Draft Minutes

Reference: Laurel O'Halloran, Associate Planner

Recommended Action: Approve the minutes of the ARB's August 10, 2021, meeting as presented.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

On a motion by Chair Gunby, seconded by Vice Chair Coen, the Board voted 3-0-2 (Two absences) to approve the draft minutes.

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Motion passed.

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Election of Secretary

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

Recommended Action: Staff recommends the Architectural Review Board (ARB) elect a Secretary for a one-year term in accordance with the Pacific Grove Municipal Code (PGMC) § 3.02.050(b), Members.

Reference: Laurel O'Halloran, Associate Planner

On a motion by Member Wells to nominate Member Gaino, seconded by Chair Gunby, the Board voted 4-0-1(One absence)

Motion passed.

B. Architectural Permit (AP) No. 21-0270 for 241 Chestnut Street

Zoning District/General Plan Designation: Residential District (R-1) / Medium Density Residential (12.1 du/acre)

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

Recommended Action: Approve the Architectural Permit subject to the recommended findings, conditions of approval, Class 1, section 15301(e), Existing Facilities CEQA exemption.

Reference: Laurel O'Halloran, Associate Planner

Laurel O'Halloran, Associate Planner, provided a staff report.

Jun Sillano, the project architect, spoke and answered Board members questions.

The Chair opened the floor to public comment.

The following members of the public spoke on the item:

Lisa Ciani

The Chair closed the floor to public comment.

The Board discussed the item.

On a motion by Member Wells, seconded by Member Gaino, the Board voted 3-0-2 (Two

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absences, Chair Gunby had technical difficulties and was absent for the vote) to approve the project, subject to findings, conditions of approval, and a Class 1 CEQA exemption.

Motion passed.

C. Architectural Permit (AP) No. 21-0175 for 256 Crocker Avenue APN 006-392-020

Zoning District/General Plan Designation: R-1-B-3 Low Density 4.4 Du/ac

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

Recommended Action: Approve the Architectural Permit 21-0175 subject to the recommended findings, conditions of approval, Class 1, section 15301(e), Existing Facilities CEQA exemption.

Reference: Laurel O'Halloran, Associate Planner

Laurel O'Halloran, Associate Planner, provided a staff report.

Steven Krebbs, the project architect, spoke and answered Board members questions.

The Chair opened the floor to public comment.

The following members of the public spoke on the item:

David Huff
Inge Lorentzen Daumer
Lisa Ciani

The Chair closed the floor to public comment.

The Board discussed the item.

On a motion by Member Wells, seconded by Member Gaino, the Board voted 4-0-1 (One absence) to continue the project to the December 14, 2021, ARB meeting to address the deck with the neighbors to consider downsizing and shifting, the neighbors cypress tree and to address smaller inconsistencies in the façade.

Motion passed.

D. Architectural Permit, Use Permit and Coastal Development Permit (AP/UP/CDP 21-0294) for a property located at 711 Ocean View Boulevard

Zoning District/General Plan Designation: R-3-PGB/Medium-High Density Residential

Coastal Zone: Yes

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

Recommended Action: Staff recommends that the Architectural Review Board (ARB)

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recommend approval to the Planning Commission (PC) of the proposed Architectural Permit, Use Permit, and Coastal Development Permit (AP/UP/CDP 21-0294), subject to required Findings, Conditions of Approval, and a Class 1 CEQA Exemption prepared for the project.

Reference: Alec Barton, AICP, Contract Planner

Alec Barton, Contract Planner, provided a staff report.

Jeanne Byrne, the project architect, spoke and answered the Board's questions.

The Chair opened the floor to public comment.

The following members of the public spoke on the item:

Inge Lorentzen Daumer
Therese Schenk-McDonald
Lisa Ciani
Anthony Ciani

The Chair closed the floor to public comment.

The Board discussed the item.

On a motion by Member Wells, seconded by Member Coen, the Board voted 4-0-1 (Eldridge absent) to recommend approval of the item to the Planning Commission.

Motion passed.

E. Architectural Permit (AP), Administrative Use Permit (AUP) & Variance (VAR) 21-0355 for 806 19th St (APN 006-653-038)

Zoning District/General Plan Designation: R-1 / Medium Density Residential (7.3 du/ac)

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

Recommended Action: Staff recommends that the Architectural Review Board review the project and forward a recommendation of approval for AP/AUP/VAR 21-0355 to the Planning Commission, subject to findings, conditions of approval, and a Class 1 CEQA exemption.

Reference: Alex Othon, Assistant Planner

Alex Othon, Assistant Planner, provided a staff report.

Allen Robinson, the project architect, spoke and answered the Board's questions.

The Chair opened the floor to public comment.

The following members of the public spoke on the item:

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Inge Lorentzen Daumer

The Chair closed the floor to public comment.

The Board discussed the item.

On a motion by Member Coen, seconded by Member Wells, the Board voted 4-0-1 (Eldridge absent) to approve the item subject to findings, conditions of approval, and a Class 1 CEQA exemption.

Motion passed.

F. Architectural Permit (AP) 21-0390 for 1169 Forest Ave (APN 006-713-019)

Zoning District/General Plan Designation: C-FH / Commercial Forest-Hill

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Staff recommends that the Architectural Review Board approve AP 21-0390, subject to findings, conditions of approval, and a Class 3 CEQA exemption.

Reference: Alex Othon, Assistant Planner

Alex Othon, Assistant Planner, provided a staff report.

The project applicant, Sal Rona, answered the Boards questions.

The Chair opened the floor to public comment.

The Chair closed the floor to public comment.

The Board discussed the item.

On a motion by Member Wells, seconded by Member Coen, the Board voted 4-0-1 (Eldridge absent) to approve the project, subject to findings, conditions of approval, and a Class 3 CEQA exemption.

Motion passed.

G. Architectural Permit (AP) No. 21-0322 for 1022 Balboa Avenue, APN 006-026-010

Zoning District/General Plan Designation: Residential District (R-1) / Medium Density Residential (7.3 du/acre)

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

Recommended Action: Approve the Architectural Permit 21-0322 subject to the recommended findings, conditions of approval, Class 1, section 15301(e), Existing Facilities CEQA exemption.

Reference: Laurel O'Halloran, Associate Planner

THIS ITEM WAS CONTINUED TO THE DECEMBER 14, 2021, ARB MEETING

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9. **CONTINUED AND ONGOING BUSINESS**

A. Architectural Permit (AP) and Administrative Use Permit (AUP) No. 19-0655 for 1152 Forest (APN: 077-651-022)

Zoning District/General Plan Designation: Forest Hill Commercial

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Approve the Architectural Permit and an Administrative Use Permit subject to the recommended findings, conditions of approval, and Class 3, Sections 15303(b) and (c), Existing Facilities CEQA exemption.

Reference: Laurel O'Halloran, Associate Planner

Laurel O'Halloran, Associate Planner, provided a staff report.

Mahesh Konduru, the owner, spoke and answered Board members questions.

The Chair opened the floor to public comment.

The following members of the public spoke on the item:

Inge Lorentzen Daumer

The Chair closed the floor to public comment.

The Board discussed the item.

On a motion by Chair Gunby, seconded by Member Gaino, the Board voted 4-0-1 (One absence) to approve the carwash portion of the project, subject to findings, conditions of approval, and a Class 3 CEQA exemption and continue the duplex portion of the project to the December 14, 2021, ARB meeting to address the interior and exterior design.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING - December 14, 2021**

13. **ADJOURNMENT 5:15**

APPROVED BY ARCHITECTURAL REVIEW BOARD

DocuSigned by:
Valerie Gaino
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12/20/2021

Valerie Gaino, Secretary Date

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Alyson Hunter, AICP, Community Development Director

MEETING DATE: February 16, 2022

SUBJECT: Planning Commission Meeting Minutes: November 4 and December 9, 2021 Meetings

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

Approved PC Minutes 11-04-21

Approved PC Minutes 12-09-21

NOTICE OF MEETING

CITY OF PACIFIC GROVE

PLANNING COMMISSION

SPECIAL MEETING

Thursday, November 4, 2021, 6:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

MEETING MINUTES

This meeting was held via Zoom.

1. **CALL TO ORDER & ROLL CALL – 6:00 pm.**

Commissioners Present: Chair Lilley, Aeschliman, Sawyer, Bluhm, Chakwin, Byrne, Murphy

2. **APPROVAL OF AGENDA**

On a motion by Commissioner Byrne, seconded by Commissioner Aeschliman, the agenda was approved as presented (7-0-0)

3. **COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)**

Commissioner Chakwin thanked the City for holding the Housing Study Session
Director Hunter introduced Joe Sidor, contract Senior Planner
Director Hunter offered suggestions to help Commissioners find the PC meeting Zoom links
Director Hunter announced that Alex Othon has been promoted to Associate Planner

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Councilmember Coletti provided several updates on actions taken by the Council

5. **GENERAL PUBLIC COMMENT –** the following members of the public provided comment:

Anthony Ciani
David Blaskovich
Joaquin
Lisa Ciani
Inge Lorentzen Daumer
Mark Richards

Moe Ammar
Peter Mounteer

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

7. REPORTS REQUIRING ACTION

A. Minutes from the October 14, 2021 Planning Commission Meeting

Reference: Alex Othon, Assistant Planner

Recommended Action: Staff recommends the Planning Commission review and adopt the meeting minutes from the October 14, 2021, Planning Commission meeting.

CEQA: Does not constitute a "Project" per CEQA Guidelines Section 15378

On a motion by Byrne, seconded by Bluhm, the consent agenda is approved with minor corrections to the minutes. (7-0-0)

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Architectural Permit (AP), Administrative Use Permit (AUP) & Variance (VAR) 21-0355 for 806 19th St (APN 006-653-038)

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class 1, Existing Facilities

Recommended Action: Staff recommends that the Planning Commission approve for AP/AUP/VAR 21-0355 subject to findings, conditions of approval, and a Class 1 CEQA exemption.

Reference: Alex Othon, Assistant Planner

After receiving an oral report from staff, the Chair asked for a brief presentation by the applicant. The architect for the project, Allen Robinson, provided information and answered questions. The Chair then opened the hearing to public comment. The following people provided comment on the project:

Anthony Ciani
Inge Lorentzen Daumer
Lisa Ciani

After deliberation on the item, a motion to approve the project was made by Commissioner Byrne, seconded by Commissioner Chakwin and unanimously approved. (7-0-0)

B. Architectural Permit, Use Permit and Coastal Development Permit (AP/UP/CDP) 21-0294 for House Remodel at 711 Ocean View Boulevard (APN: 006- 073-008)

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class 1, Existing Facilities

Recommended Action: Approval of the Combined Development Permit (Architectural Permit, Use Permit, Coastal Development Permit - AP/UP/CDP 21-0294) for 711 Ocean View Boulevard (006-073-008), subject to findings and conditions; and a Class 1 CEQA Exemption (Existing Facilities)

Reference: Joseph Sidor, Contract Planner

Commissioner Byrne recused as she is the architect for the project. Commissioner Chakwin disclosed *ex parte* communication with the owner. Planner Sidor provided an oral report and answered questions of the Commissioners. Jeanne Byrne provided a brief presentation and answered questions. Chair Lilley opened the public comment period and the following members of the public provided comments:

Anthony Ciani
Lisa Ciani
Inge Lorentzen Daumer

After deliberation, a motion to approve the project is made by Commissioner Chakwin, seconded by Commissioner Bluhm. The motion passes on a 6-0-1 vote with Byrne recused.

The Chair called a 10-minute break at 7:43 pm. The meeting reconvened at 7:53 pm.

9. CONTINUED AND ONGOING BUSINESS

A. Subdivision for Condominium and Use Permit for 520 Lighthouse Ave (File TTM/UP 21-0141); APN 006-178-009. This item was continued from the October 14, 2021, Planning Commission meeting.

CEQA: Categorical Exemption, CEQA Guidelines Section 15332, Class 32, In-Fill Development Projects

Recommended Action: Deny the tentative tract map (TTM) and Use Permit (UP) due to inconsistency with Chapter 23.45 of the Pacific Grove Municipal Code (PGMC).

Reference: Alyson Hunter, AICP, Director

Chair Lilley disclosed *ex parte* communication with Dan Silverie (owner) and Rodney Romius (project foreman); Commissioner Byrne disclosed *ex parte* communication with the original architect and previous owner. Director Hunter provided an oral report and answered questions. Tony Lombardo, on behalf of the applicant, provided a presentation and answered Commissioner questions. The Chair then opened the item for public comment and the following individuals provided comments on the item:

Moe Ammar
Peter Mounteer
Mark Richards
Alex Lorca
Greg Zimmerman Lisa Ciani
Anthony Ciani
Inge Lorentzen Daumer
Phil Johnson
Victoria Arroyo
Dan Silverie

The Chair closed the public hearing portion of the item. After deliberating on the item and noting that, since findings and conditions of approval were not included due to the staff recommendation of denial, and that the item would need to be continued, **a motion was made by Commissioner Byrne to reflect an intent to approve the project subject to findings and conditions of approval that would be brought back for the Commission's consideration at its December 9, 2021, meeting. This motion was seconded by Commissioner Chakwin and unanimously approved (7-0-0).**

B. Provide a Recommendation to the City Council on Amendments to PGMC 23.80 - Accessory Dwelling Units. This Item was Continued from the Commission's 7-08-21, Meeting.

CEQA: Statutory Exemption, CEQA Guidelines 15282(h) - Adoption Regarding Second Units in a Single- or Multi-Family Residential Zone

Recommended Action: Receive the draft amendments to PGMC 23.80 and recommend that the City Council approve as presented.

Reference: Alyson Hunter, AICP, Director

Secretary Sawyer walked the Commission through the draft Ordinance and explained proposed changes. The Chair asked for public comment. The following individual addressed the Commission:

Anthony Ciani

The Chair closed public comment and returned the item to the Commission for discussion. **On a motion by Commissioner Byrne and a second by Commissioner Murphy, the Commission unanimously recommended approval of the proposed amendment to the City Council. (7-0-0)**

10. **NEW BUSINESS - None**

11. **PRESENTATIONS - None**

12. **NEXT MEETING – November 18 (Special Meeting) and December 9, 2021 (Regular Meeting)**

13. **ADJOURNMENT – 9:53 by Chair Lilley**

NOTICE OF MEETING

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, December 9, 2021, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

This meeting was held via Zoom webinar.

1. **CALL TO ORDER & ROLL CALL** – Chair Lilley called the meeting to order at 6:00 pm. Commissioners Present: Aeschliman, Bluhm, Chakwin, Murphy, Sawyer, Chair Lilley. Absent: Byrne

2. **APPROVAL OF AGENDA** – **On a motion by Vice Chair Chakwin, seconded by Commissioner Bluhm, the agenda was unanimously approved on a roll call vote. (6-0-1, Byrne absent)**

3. **COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
   A. Vice Chair Chakwin expressed his appreciation for fellow Commissioners and wished all a happy holiday season;
   B. Commissioner Murphy provided an update on the activities of the Housing Advisory Group;
   C. Commissioner Sawyer announced that she attended an APA webinar on SB 9;
   D. Chair Lilley thanked Vice Chair Chakwin for his service chairing the ATC meetings and commended the Commissioners, staff, and public for the hard work on the ATC project.
   E. Director Hunter noted that the Commission's November 18th denial of the ATC project has been both appealed by the applicant and called-up by the City Council. A hearing date has not yet been determined.

4. **COUNCIL LIAISON ANNOUNCEMENTS**
   Council Member Coletti updated the Commission on the Council's discussion regarding potential ballot measures moving forward and mentioned the appeal/call-up of the ATC project.

5. **GENERAL PUBLIC COMMENT –** the following individuals provided public comment:

   Anthony Ciani
   Inge Lorentzen Daumer
   Lisa Ciani

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY - None

7. REPORTS REQUIRING ACTION

   A. Approval of the Minutes of the PC's November 18, 2021, Special Meeting
   Reference: Alyson Hunter, AICP, CDD Director

Recommended Action: Approve the minutes of the Planning Commission's November 18, 2021, Special Meeting as presented.

CEQA: Does not constitute a "Project" per CEQA Guidelines Section 15378

On a motion by Commissioner Aeschliman, seconded by Commissioner Murphy, the consent agenda was unanimously approved. (6-0-1, Byrne absent)

REGULAR AGENDA

8. PUBLIC HEARINGS

A. Approve the Tent. Tract Map and Use Permit (21-0141) for Condominiums at 520 Lighthouse Ave. This item was continued from the November 4, 2021, meeting.

From: Alyson Hunter, AICP, CDD Director

CEQA: Categorically Exempt per CEQA Guidelines Sections 15301k and 15332

Recommended Action: Approve the Tentative Tract Map and Use Permit based on findings, conditions of approval, and Class 1 and 32 CEQA exemptions for *Existing Facilities* and *In-Fill Development*, respectively.

Reference: Alyson Hunter, AICP, CDD Director

After receiving an oral report by Director Hunter and testimony from the applicant's counsel, Tony Lombardo, Chair Lilley opened the public hearing and the following individuals provided public comment:

Alex Lorca
Inge Lorentzen Daumer
Lisa Ciani
Anthony Ciani

Chair Lilley closed the public hearing portion of the meeting and returned the item to the Commission for deliberation. **After discussing the details of the project, a motion to approve with an amendment to the title on the permit to read "Tentative Tract Map and Use Permit (TTM/UP) 21-0141 for Ten (10) Condominiums and Mixed-Use Project" was made by Vice Chair Chakwin, seconded by Commissioner Bluhm, and unanimously approved. (6-0-1, Byrne absent)**

9. CONTINUED AND ONGOING BUSINESS

A. Receive an Oral Report on Activities of the Planning Commission's Ordinance and Policy Subcommittee

From: Alyson Hunter, AICP, CDD Director

CEQA: Does not constitute a "Project" per CEQA Guidelines Section 15378

Recommended Action: Receive an oral report from Chair Lilley on the activities of the Planning Commission's Ordinance and Policy Subcommittee and provide direction to the subcommittee.

Reference: Alyson Hunter, AICP, CDD Director

The Subcommittee did not have a report to provide at this meeting.

B. Receive an Oral Report on Activities of the Planning Commission's Planning Subcommittee and Renew the Subcommittee

From: Alyson Hunter, AICP, CDD Director

CEQA: Does not constitute a "Project" per CEQA Guidelines Section 15378

Recommended Action: Receive an oral report on the activities of the subcommittee from Chair Lilley and provide direction on next steps, including renewing the subcommittee's membership and mandate, if so desired by the Commission.

Reference: Alyson Hunter, AICP, CDD Director

The Subcommittee did not have a report to provide at this meeting. The following individuals provided public comment:

Anthony Ciani

On a motion by Commissioner Sawyer, seconded by Vice Chair Chakwin, the Commission unanimously renewed the Subcommittee for another six (6) months and agreed to appoint a new membership in February. (6-0-1, Byrne absent)

10. **NEW BUSINESS** - None

11. **PRESENTATIONS** - None

12. **NEXT MEETING -** January 13, 2022

13. **ADJOURNMENT** – By order of the Chair, the meeting was adjourned at 7:24 pm.

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Rob Mullane, AICP, Contract Planner
MEETING DATE:	February 16, 2022
SUBJECT:	Vacation of Excess Right-of-Way on Sloat Avenue Pursuant to §§ 8300-8368 of the California Streets and Highways Code
CEQA:	Environmental Impact Report

RECOMMENDATION

Hold a public hearing and approve a resolution authorizing the vacation of excess right-of-way (ROW) for a portion of Sloat Avenue pursuant to Sections 8830-8368 of the California Streets and Highways Code.

DISCUSSION

On January 12, 2022, the City Council approved the planning permits for the American Tin Cannery Hotel and Commercial development (together, the "ATC Development"), certified the associated Environmental Impact Report (EIR), and adopted a resolution declaring the City's intent to vacate excess ROW on Sloat Avenue. Upon adoption of a resolution declaring the intent to vacate excess ROW, a subsequent resolution authorizing the vacation action is required. A resolution authorizing the vacation of excess ROW has been prepared and is included as Attachment 1. This item was continued from the City Council's meeting of February 2, 2022, at which time, the public hearing was opened and then continued to this evening's meeting.

The vacation of public road ROWs is governed by California Streets and Highways Code (CSHC) Sections 8300 through 8368. The project proposes to utilize a portion of the Sloat Avenue ROW between Eardley and Dewey Avenues for hotel purposes. Under the CSHC, the vacation of a public road ROW is a two-step process, both of which require public hearings and action by resolution of the City Council. In the first step, the City Council must pass a resolution of intent to vacate the ROW. The resolution of intent states the City's intention to vacate the ROW and sets a hearing date for the consideration of the ROW vacation itself.

In the second step, the City Council must pass a resolution authorizing the vacation of excess ROW. It is this second step that is now before the City Council for action. The ATC Development project includes use of the segment of Sloat Avenue between Eardley and Dewey Avenues for hotel uses and development. As noted in Resolution 22-___, the ATC Development has received City approval of the requisite planning permits; however, the project must receive the associated building permits before the subject section of Sloat Avenue would no longer be needed and considered excess ROW.

The City and the ATC project developer are in negotiations on a real property agreement that would

compensate the City for the fair market value of ROW, and the vacation of the excess ROW is contingent upon the City Council's approval of the real property agreement.

Resolution 22-___ includes Exhibits A and B, both of which refer to "Sloats Avenue," rather than "Sloat Avenue." The name of the street as shown on 1909 map filed for this area of Pacific Grove is Sloats Avenue. Over time, the "s" in Sloats has been dropped in common usage, and this street is currently known as Sloat Avenue.

Environmental Review under CEQA
Pursuant to the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) (SCH # 2019110152) was prepared for this project, including the proposed uses and development within the Sloat Avenue ROW. The City Council certified the project's EIR on January 12, 2022. No additional CEQA analysis is required for the authorization of vacation of excess ROW.

Recommended Motion
It is recommended the City Council adopt the resolution attached to this agenda report as Attachment 1. The recommended motion is as follows:

1. **I MOVE THAT THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADOPT RESOLUTION NO. 22-___, CONDITIONALLY AUTHORIZING THE VACATION OF EXCESS RIGHT-OF-WAY LOCATED ON SLOAT AVENUE, EXCEPTING AND RESERVING RIGHTS FOR EXISTING AND PROPOSED PUBLIC UTILITY FACILITIES.**

OPTIONS
The Council may decide not to vacate the subject portion of the Sloat Ave. ROW.

FINANCIAL IMPACT:
There is no financial impact to the City relating to the proposed vacation as the revenue from the existing parking meters is included in the fair market purchase price and all utility and street improvements needed for the approved hotel project will be borne by the project developer as indicated in the project's conditions of approval.

GOAL ALIGNMENT: Not Applicable.

Attachments

Resolution to Vacate

RESOLUTION NO. 22-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE, CALIFORNIA CONDITIONALLY AUTHORIZING THE VACATION OF EXCESS RIGHT-OF-WAY LOCATED ON SLOAT AVENUE, EXCEPTING AND RESERVING RIGHTS FOR EXISTING AND PROPOSED PUBLIC UTILITY FACILITIES

WHEREAS, the City of Pacific Grove ("City") passed Resolution No. 22-003 on January 12, 2022, declaring its intention to vacate the excess public right-of-way easement on the real property located on Sloat Avenue (the "Excess Right-of-Way"), which is approximately 26,778 square feet and adjacent to the proposed American Tin Cannery Hotel and Commercial development (together, the "ATC Development"); and

WHEREAS, the proposed adjacent ATC Development includes certain development and uses on a portion of the Excess Right-of-Way which the City will no longer need to maintain once the ATC Development is approved and constructed; and

WHEREAS, the City certified an Environmental Impact Report (EIR) on January 12, 2022, for the ATC Development (SCH #2019110152) and made the requisite CEQA findings for the certification of the EIR. The EIR evaluated the environmental impacts of the project including the development and uses of the subject Excess Right-Of-Way, and as such, no additional CEQA review is required; and

WHEREAS, on October 28, 2021 and November 18, 2021, the Planning Commission conducted a duly-noticed public hearing on the ATC Development and reviewed the vacation for conformity with the General Plan in accordance with Government Code Section 65402; and

WHEREAS, on January 12, 2022, the City Council heard an appeal of the Planning Commission's decision on the ATC Development and reviewed the vacation for conformity with the General Plan in accordance with Government Code Section 65402. The City Council found the vacation of the subject Excess Right-of-Way to be in conformance with the City's General Plan; and

WHEREAS, Division 9, Part 3, Chapter 3 of the Streets and Highways Code of the State of California, allows the City Council to adopt a resolution vacating excess street right-of-ways that are no longer required for street purposes, excepting and reserving rights for existing and proposed public utility facilities; and

WHEREAS, the Excess Right-of-Way described in both legal and map form in Exhibits A and B, is no longer needed for street purposes should the ATC Development receive all necessary Planning entitlements and Building Permits as well as approvals for any associated relocation or rerouting of existing public and private utilities; and

WHEREAS, the City Council has duly considered the staff report and public comments, if any, and desires to vacate the Excess Right-of-Way.

NOW THEREFORE, BE IT FOUND, DETERMINED, AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE, MONTEREY COUNTY, CALIFORNIA, AS FOLLOWS:

SECTION 1. The Recitals of this Resolution are true and correct and are hereby incorporated into this Resolution as though fully set forth herein.

SECTION 2. The City Council hereby elects to proceed under and pursuant to the provision of Division 9, Part 3, Chapter 3 of the Streets and Highways Code of the State of California, and in particular, Sections 8324 thereof, and hereby orders the vacation of the Excess Right-of-Way described in Exhibit A, and shown on the plot labeled Exhibit B, attached hereto.

SECTION 3. This resolution shall take effect only upon, and the vacation of the Excess Right-of-Way is conditioned upon and shall not be effective until, the occurrence of all of the following:

a. Developer of the ATC Development has submitted a plan or plans for utility relocation and maintenance (including the temporary protection or provision for utility connection to adjacent properties throughout the course of construction) of existing public and private utilities, including but not limited to fiber optics owned by the Monterey Bay Aquarium Foundation, which is approved by the City and the appropriate utility; and
b. The City and Developer have entered into a legally binding Disposition and Development Agreement for the conveyance of the City's interest in the land underlying the existing easement. If the City and Developer do not enter into such Disposition and Development Agreement this Resolution will be null and void; and
c. The City has to its reasonable satisfaction determined that the existing rights of the property owners on the south side of the Excess Right-of-Way, including the right to access, use, and develop their parcels now and in the future, consistent with state and local law, have been maintained or an alternative arrangement has been made consistent with the terms of the Disposition and Development Agreement.
d. Pursuant to that Disposition and Development Agreement the City's interest in the land underlying the Excess Right-of-Way has been conveyed from the City to the Developer; and
e. This resolution has been recorded by the City Clerk with the Monterey County Recorder following the Close of Escrow, as that term is defined in the Disposition and Development Agreement, and the City's interest in the underlying property has been quit claimed from the City to the Developer.

SECTION 4. That from and after the date this resolution is recorded, the Excess Right-of-Way is vacated and no longer constitutes a public right-of-way.

SECTION 5. The Mayor shall sign and the City Clerk shall attest to the passage of this Resolution.

PASSED, APPROVED, AND ADOPTED this 16th day of February, 2022.

AYES:

NOES:

ABSENT:

APPROVED:

_____
Bill Peake, Mayor

ATTEST:

_____
Sandra Kandell, City Clerk

APPROVED AS TO FORM:

_____
David C. Laredo, City Attorney

Exhibit A

EXHIBIT "A"
SLOATS AVENUE
LEGAL DESCRIPTION

Certain real property situate in the City of Pacific Grove, County of Monterey, State of California, described as follows:

Being a portion of that certain street shown as Sloats Avenue on that certain map filed on August 17, 1909 as Volume 2 Cities and Towns at Page 21 of said County, more particularly described as follows:

Being all that right of way of Sloats Avenue lying between Eardley Avenue and Dewey Avenue.

Containing an area of 0.61 acres, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof

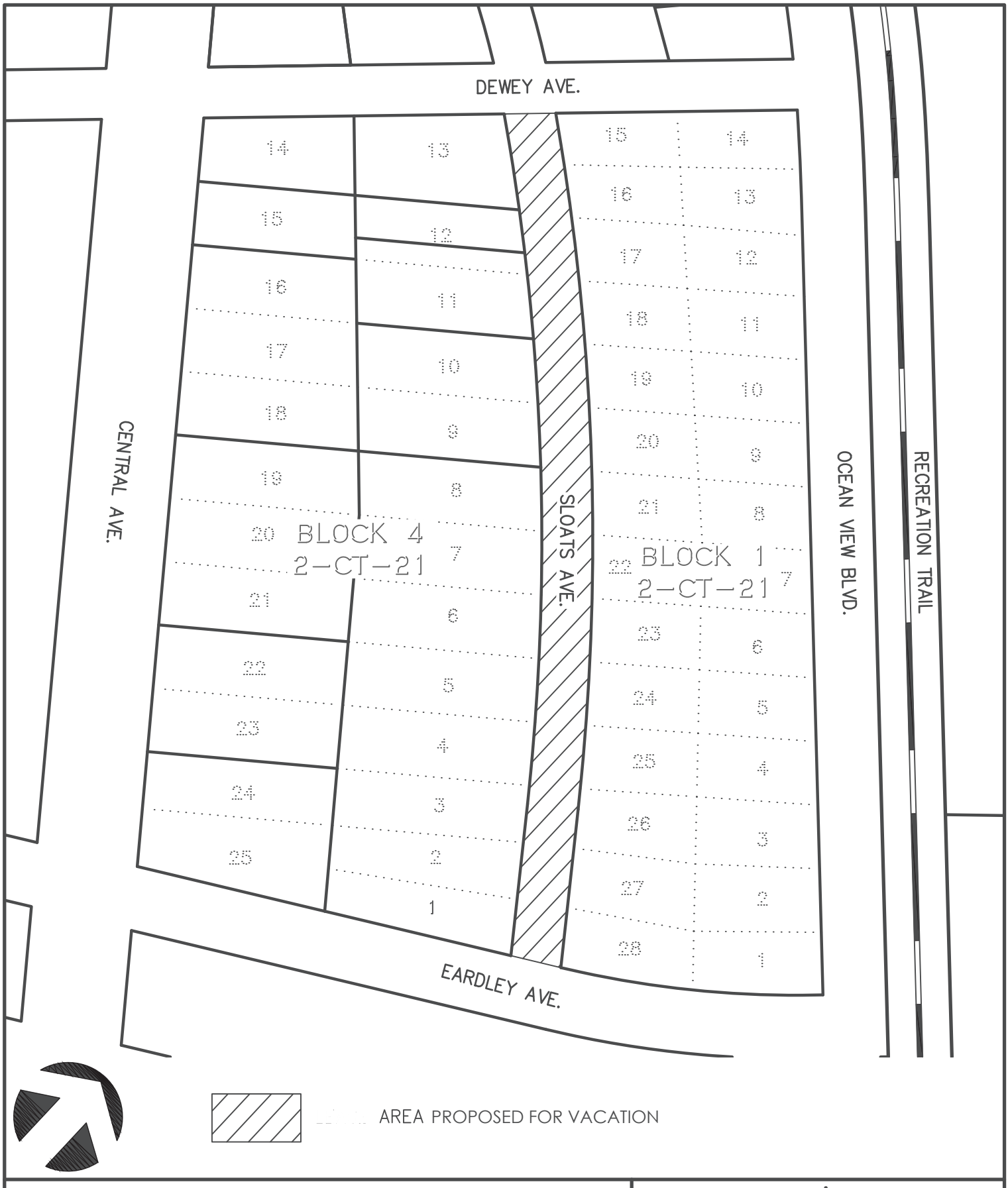
END OF DESCRIPTION

PREPARED BY:
WHITSON ENGINEERS

RICHARD P. WEBER P.L.S.
L.S. NO. 8002
Job No.: 3400.00



Exhibit B



PLAT TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "B"

SLOAT AVENUE AREA PROPOSED TO BE VACATED

PACIFIC GROVE, CALIFORNIA

Whitson ENGINEERS

Civil Engineering + Land Surveying
6 Harris Court
Monterey, CA 93940
831.649.5225
whitsonengineers.com

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Anastacia Wyatt, Senior Housing Program Manager

MEETING DATE: February 16, 2022

SUBJECT: State Community Development Block Grant (CDBG) Program Application

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Conduct a Public Hearing on the State Community Development Block Grant (CDBG) Program to solicit public input on possible competitive and over the counter activities to be included in the application, and
2. Approve Housing staff to submit an application and resolution approving a funding application and the execution of a grant agreement and any amendments to the State CDBG Program.

DISCUSSION

Vista Point Apartments

Vista Point Apartments (the Project) is a 49-unit affordable housing development for seniors located in Pacific Grove, California. Vista Point was placed in service in May 2006 and the Project was built on land owned by and leased from the City of Pacific Grove.The Property is owned by Jewell Avenue Associates (the Partnership), a California limited partnership, which was formed in September 2002 to acquire, construct, develop, own, and operate the Project.The Partnership is controlled by its general partner, Vista Point LLC, whose sole member, Eden South Bay Inc., is under the control of the board of directors Eden Housing, Inc. (EHI), a nonprofit public benefit corporation. Property management and accounting of the Project is contracted with Eden Housing Management, Inc (EHMI), an affiliate of Eden Housing. Additionally, resident services are contracted with Eden Housing Resident Services, Inc. (EHRSI).

Project Affordability

The Project participates in the low-income housing tax credit program under Section 42 of the Internal Revenue Code as modified by the State of California. Additionally, the project was financed with funds from CalHFA, HCD Home program, an AHP Loan through MUFG Union Bank and an Eden Housing loan. The Project is also supported by a HAP contract with the Housing Authority of the County of Monterey for 38 project-based vouchers. The Project's affordability requirements are regulated by CalHFA, HOME and TCAC.

Application Scope

Vista Point Apartments is a beautiful property that has been well-maintained but does have a need for a

multitude of capital projects.The multi-family housing development consists of three stories and the scope of work consists of painting the 1st, 2nd, and 3rd Floor corridors and painting site spaces and offices including: restrooms, kitchen, front desk, trash rooms, and the managers office. In addition, the stoves and refrigerators need replacement in the residential units. Costs will include taxes and recycling fees. Additional capital needs include new benches in shared open space on the property, landscape and irrigation improvements and conversion of electric to HVAC systems to improve energy efficiency to have a positive impact on the environment and reduce energy costs and efficiency.

Application

City staff worked directly with HCD staff on the draft application and to determine the best uses of spending the additional Program Income by July 31, 2023. Additional CDBG funding from a 2017 grant in the amount of $500,000 has not been spent due to the amount of Program Income on hand. This application will help the City spend down dollars within the July 31, 2023 deadline and benefit low-income seniors in the community. It will also allow the 2017 grant funds in the amount of $500,000 to be spent on owner occupied housing rehabilitation activities. In total, the City has approximately $1,000,000 in CDBG funding that must be spent by July 31, 2023.

The Attached Resolution is in the required State CDBG format. Applicants are required to use this resolution in content and form.

OPTIONS

The City must spend the CDBG program income funding prior to July 31, 2023 or lose the funding. The City could choose to allow the state to take back the $500,000 in program income funding and the City would lose the ability to spend these dollars in the City.

FINANCIAL IMPACT:

Submitting the application for program income funds to the state CDBG program would ensure the City's program income dollars stay in the City and are spent on eligible CDBG programs that can be expended in the allotted state timeframe with a deadline of July 31, 2023. Submitting this application would also allow for the 2017 grant funds to be expended on owner-occupied housing rehabilitation.

GOAL ALIGNMENT: Increase Affordable Housing: Determine policies, projects and programs that will advance the effort to create new affordable housing in the City.

Attachments

CDBG Application Resolution

CDBG Application Power Point

Resolution of the City of Pacific Grove

Applicants are required to use this Resolution in content and form.

RESOLUTION NO.__

A RESOLUTION APPROVING AN APPLICATION FOR FUNDING AND THE EXECUTION OF A GRANT AGREEMENT AND ANY AMENDMENTS THERETO FROM THE 2020-2021 FUNDING YEAR OF THE STATE CDBG PROGRAM

BE IT RESOLVED by the **City Council** of the **City of Pacific Grove** as follows:

SECTION 1:

The City Council has reviewed and hereby approves the submission to the State of California of one or more "program income only" application(s) in the aggregate amount, not to exceed, of $500,000 for the following CDBG activities, pursuant to the January 2021 CDBG NOFA:

List activities and amounts

Examples:

Multi-Family Rehabilitation $ 500,000

SECTION 2:

The City hereby approves the use of Program Income in an amount not to exceed $500,000 for the CDBG activities described in Section 1.

SECTION 3:

The City acknowledges compliance with all state and federal public participation requirements in the development of its application(s).

SECTION 4:

The City hereby authorizes and directs the City Manager, or designee*, to execute and deliver all applications and act on the City's behalf in all matters pertaining to all such applications.

SECTION 5:

If an application is approved, the City Manager, or designee, is authorized to enter into, execute and deliver the grant agreement (*i.e*., Standard Agreement) and any and all subsequent amendments thereto with the State of California for the purposes of the grant.

SECTION 6:

If an application is approved, the City Manager, or designee, is authorized to sign and submit Funds Requests and all required reporting forms and other documentation as may be required by the State of California from time to time in connection with the grant.

PASSED AND ADOPTED at a regular meeting of the **City Council** of the **City** of Pacific Grove held on February 16, 2021 by the following vote:

Instruction: Fill in all four vote-count fields below. If none, indicate "0" for that field.

AYES: _____ NOES: _____
ABSENT: _____ ABSTAIN: _____

_____
Bill Peake, Mayor of the City of Pacific Grove
State of California

STATE OF CALIFORNIA
City of Pacific Grove

I, Sandra Kandell, City Clerk of the City of Pacific Grove, State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council on this 16th day of February, 2022.

Sandra Kandell_____
Name, City Clerk of the City of
Pacific Grove
State of California

By: _____
Sandra Kandell, City Clerk of the City of Pacific Grove

APPROVED AS TO FORM:

_____

DAVID C. LAREDO, City Attorney

CDBG Program Income Application and Public Hearing

Vista Point Senior Housing Improvements

February 16, 2022, City Council

City of Pacific Grove

City Council Action

- Conduct a Public Hearing on the State Community Development Block Grant (CDBG) Program.
- Approve Application submittal to the State CDBG Program



Public Noticing

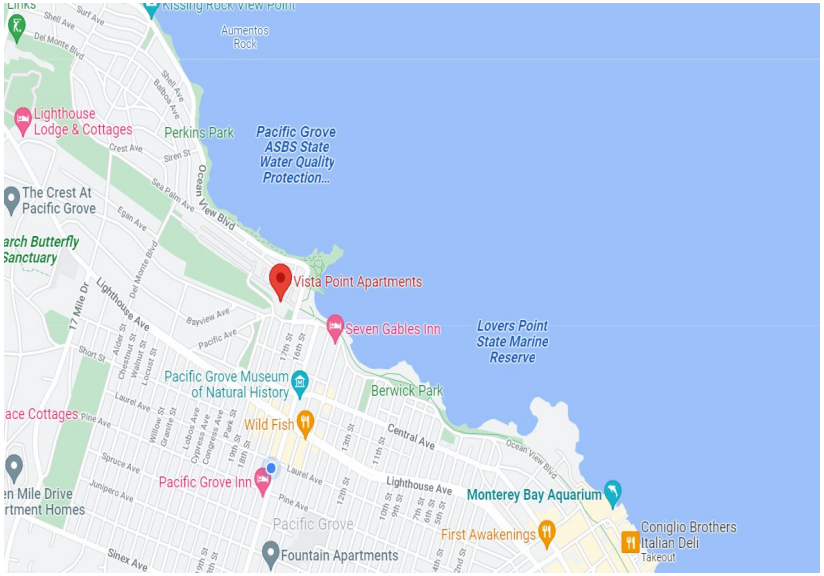
- The Public Notice for CDBG funding was published in the following papers:
  - *Monterey Herald* on December 27, 2021
  - The *Weekly* on December 23, 2021
  - The noticing exceeded the 30-day requirement.

- The City of Pacific Grove has approximately $500,000 in CDBG Program Income that must be expended by July 31, 2023.



Program Income Application -Vista Point Senior Housing

- Vista Point is a 49-unit affordable housing development for seniors
- Opened in May 2006
- Was built on land owned by and leased from the City of Pacific Grove.



Property Management and Resident Services

- Property management and accounting of the Project is contracted with Eden Housing Management, Inc (EHMI), an affiliate of Eden Housing.

- Resident services are contracted with Eden Housing Resident Services, Inc. (EHRSI).

Project Affordability

- The Project is supported by a contract with the Housing Authority of the County of Monterey for 38 project-based voucher contracts for a term of 20 years.

Unit Type and Number of units	Affordability Area Median Income
8 studios	45%
18-one bedroom	50%
15, one-bedroom	60%
4, two-bedroom	50%
3, two-bedroom	60%
1 manager	
49 total units	

Application Scope

The multi-family housing development consists of three stories and the scope of work consists of:

- Painting interior common areas
- Painting restrooms, kitchen, front desk, trash rooms, and the managers office.
- Appliances will be replaced
- New outside benches
- Landscape and irrigation improvements; and
- Conversion of electric to HVAC systems to improve energy efficiency and reduce energy costs

Application

- City staff worked directly with HCD staff on the draft application and to determine the best uses of spending the additional Program Income by July 31, 2023

Questions?

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Joseph Sidor, Contract Senior Planner
MEETING DATE:	February 16, 2022
SUBJECT:	Amendment to AP/UP 16-203 previously-approved AP/UP 16-203 (Council Resolution No. 18-030; September 5, 2018)
CEQA:	Environmental Impact Report

RECOMMENDATION

Approve Amendment (No. 21-0457) to the previously-approved AP/UP 16-203 (Council Resolution No. 18-030; September 5, 2018). The proposed Amendment is in substantial conformance with the original project, which demonstrated consistency with the General Plan and Zoning Ordinance.

DISCUSSION

PROJECT DESCRIPTION

The proposed project is located on the southerly side of Central Ave. between Grand and Fountain Avenues. Amendment Application No. 21-0457, also referred to as Pacific Grove Hotel (formerly referred to as Hotel Durell), would modify the previously-approved Architectural Permit and Use Permit Application No. AP/UP 16-203 which proposed to demolish an existing 17,500 square foot building and 26 space asphalt parking lot, and build a 116-room hotel with a total gross floor area of 76,182 square feet, as well as subsurface and off-site parking. The hotel will include the standard high-end lodging amenities including restaurant, gym, spa, meeting room, etc. Vehicular access would allow entrance from and exit onto Fountain Avenue. The subject site is not located in the City's coastal zone.

This Amendment would:

1. Reduce the number of guest rooms from 116 to 102 (i.e., net decrease of 14 guest rooms), ranging in size from 305 to 908 square feet;
2. Increase the guest room interior ceiling height from 8 feet to 9 feet while maintaining the overall main structure height at 40 feet (certain roof appurtenances would exceed 40 feet in height - see below for additional detail);
3. Delete Condition No. 4 regarding off-site parking;
4. Revise Condition No. 12 to allow 2 specific uses on the roof; and
5. Allow certain roof appurtenances to slightly exceed the previously-approved height exceptions.

Project elements that would remain the same as currently approved include building coverage, total gross floor area, and exterior colors and materials.

SURROUNDING LAND USES AND SETTING

The project site is located in the City's commercial downtown and is surrounded by the Pacific Grove Museum of Natural History to the west, Jewell Park to the northwest, the Holman Building on the south and the Pacific Grove Library to the north. Commercial buildings are located on the east side of the project site.

The site is designated *Commercial* in the General Plan and zoned *C-1-T* which allows for a variety of uses including hotels, commercial retail, restaurants and on-site parking. The *C-1-T Light Commercial and Hotel* zoning district was created through an approval of Ordinance 1951 by a public vote of Pacific Grove citizens on June 7, 1994. The site is also located in a Parking District created in 1962 which was established by Resolution 4272 for public convenience and necessity and serves the downtown commercial area.

REVIEW OF PROPOSED PROJECT AMENDMENTS
A detailed explanation of the proposed amendments follows:

1. Reduction in Number of Guest Rooms
The applicant's goal in requesting these modifications is to provide the community of Pacific Grove with a higher quality hotel than originally proposed by replacing outdated design features. By reducing the room count, the width of the guest rooms may be expanded from 12' to 13'- 9" which is the current minimum standard for luxury hotels. This reduction in the number of guest rooms will also result in the need for less water. The details of water use can be viewed in the Promissory Agreement documents approved by the City Council on February 2, 2022.

2. Increase Guest Room Ceiling Height
Increasing the ceiling height allows the hotel to meet the current 4-star or better rating. The result of these modifications would be the construction of a higher-end luxury boutique hotel that would allow higher occupancy rates without increasing the building footprint or square footage.

3. Off-Site Parking (previous Condition No. 4)
As amended, the project eliminates the previously proposed surface parking lot across from the hotel on Fountain Avenue and proposes to accommodate all required parking spaces on-site. As currently approved, the hotel would provide a total of 93 spaces (51 on-site, 14 dedicated Holman spaces, and 28 off-site).

The proposed amendment would increase the total number of parking spaces from 93 to 112 (98 on-site and 14 dedicated Holman spaces), while eliminating the need for the 28 off-site spaces on a surface lot across Fountain Avenue, resulting in a net increase of 19 parking spaces and eliminating the requirement for Condition No. 4.

The number of on-site spaces would be increased by 47 through the use of mechanical lifts in the valet parking area on the ground floor of the hotel. Valets will no longer need to cross Fountain Avenue to park or return vehicles to guests, thereby increasing employee safety and guest convenience. Elimination of the surface lot also improves aesthetics (i.e., reduces visual impacts) in a shopping and dining district of the City. Also, potential impacts to guest vehicles would be reduced. See additional detail below under **Conditions of Approval**.

4. Allowed Roof Activities
Condition No. 12 (Roof Top) would be amended to allow 2 specific uses on the roof. As amended, the following activities would be allowed on the rooftop: small yoga classes in the morning or at sunset not exceeding 10 guests and 1 instructor; a small garden for the hotel restaurant chef to grow organic herbs and plants; and routine maintenance and repair. No other activities would be allowed on the rooftop,

and no amplified sound(s) would be allowed at any time. The original intent was to eliminate the potential for noisy activities on the roof such as from a bar or pool area. The proposed uses are passive and would not generate sounds above limited conversation and instruction.

5. Roof Appurtenances and Height Exceptions
As amended, certain roof appurtenances would slightly exceed the previously-approved height exceptions. Per Pacific Grove Municipal Code (PGMC) section 23.64.120, roof appurtenances may be permitted in excess of height limits provided a use permit is first obtained in each case. The City Council approved such a use permit in 2018, and this amendment would modify that previous approval.

The original design included approval for certain roof appurtenances to exceed to the height limit of 40 feet. Gables and parapets facing Central Avenue were previously approved at approximately 40'- 4"; elevator and stair towers were previously approved at 40'- 8" and 42'- 2"; and a chimney was previously approved at 43' – 8". As amended, the gables and parapets facing Central Avenue would increase to approximately 43'- 0" and 43'- 4", respectively; the elevator and stair towers would increase to 43'- 8" and 45'- 2"; a gable facing Fountain Avenue would increase to 41'- 5"; a gable facing Grand Avenue would increase to 42'- 0"; a decorative tower would increase to 42'- 9"; and the chimney would increase to 46'- 8". All of these increases are directly related to the proposed increase of the ceiling heights in the guest rooms.

Conditions of Approval
In addition to the scope changes identified above, conditions of approval would be deleted, added, or modified to reflect the amended project scope and changes to standard condition language.

<u>The following condition of approval is proposed for deletion</u>:
Previous *Condition of Approval No. 4: Deed Restriction. Prior to Building Permit submittal, record a deed restriction on the lot directly adjacent to the subject site located on Fountain Ave and Ricketts Row (APN 006-174-011; 006-174-012; 006-174-003)**, also known as the Fountain Parking Lot,** requiring the lot's exclusive use for off-site parking for the use of Hotel Durell for the duration of AP/UP 16-203.*

- As amended, the project eliminates the requirement for off-site parking. Therefore, this condition of approval may be deleted because all required parking spaces will now be accommodated on-site. The change also reduces potential impacts identified in the EIR related to auto and pedestrian traffic on Fountain Avenue.

<u>The following conditions of approval are proposed to be added</u>:
New *Condition of Approval No. 4: Operational Permit. As amended, AP/UP 21-0457 shall become the operational permit and all conditions of approval shall be cleared under this amendment.*

- This condition confirms that the amendment, upon approval by the City Council, is the operational permit for development of the project and clearing of conditions of approval.

New *Condition of Approval No. 14: Cultural and/or Archaeological Artifacts. If such artifacts are unexpectedly discovered during ground disturbing activities, work shall be halted until the item(s) can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation will be formulated, with the approval of the lead agency, and implemented prior to recommencement of work.*

- This current standard condition adds protection for the unexpected discovery of cultural artifacts to ensure they are treated with respect and dignity.

<u>Thefollowing conditions of approval are proposed to be modified to conform to current standard condition language, City practice, and/or to reflect the amended project information(if applicable, the</u>

previous condition no. is provided in parentheses):

Condition of Approval No. 1: Permit Expiration
Updated to conform to current City practice of allowing a two-year timeframe for submitting a building permit application.

Condition of Approval No. 2: Conformance to Plans
Updated to reflect the current plan set and current department name.

Condition of Approval No. 5: Valet Parking
Updated to remove the 2nd sentence which is not relevant to the condition.

Condition of Approval No. 6: Employee Parking
Revised to reflect the requirement for hotel employees to use the City's Municipal parking lots.

Condition of Approval No. 11: Pedestrian Safety
Revised to allow the City flexibility in scheduling and funding the intersection improvements within the Capital Improvement Plan.

Condition of Approval No. 12: Roof Top (see below for additional detail)
Revised to reflect the activities allowed under the amended project.

Condition of Approval No. 13: Archaeology
Updated to conform to current standard condition language.

Condition of Approval No. 15 (14): Tribal Consultation
Updated to conform to current standard condition language.

Condition of Approval No. 16 (15): Terms and Conditions
Updated to reflect the current condition language and current department name.

Condition of Approval No. 17 (16): Public Works, Fire, and Building
Updated to reflect the current condition language and current division name.

Condition of Approval No. 19 (18): Building Plans
Updated to reflect the current division name.

Condition of Approval No. 20 (19): Indemnification
Updated to conform to current City practice.

Condition of Approval No. 22 (21): Bulbouts
Revised to include a requirement for construction prior to issuance of a Certificate of Occupancy.

Condition of Approval No. 23 (22): Trip Reduction Measures
Updated to reflect the amended project scope (i.e., elimination of the Fountain Street surface parking lot).

No changes are proposed to be made to the following conditions of approval (if applicable, previous condition no. is provided in parentheses): Condition Nos. 3, 7, 8, 9, 10, 18 (17), and 21 (20).

General Plan Goals and Policies

The Pacific Grove General Plan provides a framework for future growth and development within the City. The Land Use Element includes goals and polices that call for the orderly, well-planned, and balanced development consistent with the historic nature of Pacific Grove, the capacity of the City's infrastructure, and ability to assimilate new growth.

The subject site is designated *Commercial* in the City's General Plan. Specific General Plan Land Use Policies relevant to the proposed project include the following:

Chapter 2 - Land Use
Policy 2: Ensure that new development is compatible with adjacent existing development.
Policy 3: Balance a property owner's ability to develop with the desirability of maintaining neighborhood character.
Program T: Provide for expanded uses for the former Holman's block such as mixed commercial/residential use and /or transient visitor services (*i.e.* hotel/restaurant/shops).
Policy 12: Promote and maintain a healthy local economy while preserving the local community character.
Policy 14: Promote Pacific Grove businesses and industries.
Policy 16: Attract and retain a variety of businesses and services in the community.
Policy 18: Support hotel development in the former Holman's Block of the downtown, as allowed by adoption of an initiative measure by city voters in June 1994.

The Council approved the hotel on September 5, 2018. The proposed amendments are in substantial conformance with the previously-approved permits, and continues to support the General Plan policies and programs.

Land Use and Zoning Code Regulations
The City of Pacific Grove Zoning Code designates the parcel as *Light Commercial/Hotel/Condominium (C-1-T)*. The *C-1-T* zoning district was enacted by citizen initiative approved in 1994. The intent of the *C-1-T* district as described by the initiative is as follows:
It is the intent of the people of the city of Pacific Grove in enacting the ordinance codified in this chapter to establish a zone district in the City's downtown area where hotel use is permitted, as are all other uses listed in the C-1 district of this code, as said district may be from time to time amended by the council. The people have determined that the area of downtown defined by subsection (b) (2) of this section is appropriate for hotel development. Further, except as modified by this chapter, all provisions of the motel/hotel ballot measure enacted by the people at the June 3, 1986, special municipal election, as set out in Chapter 23.52 PGMC, shall remain unchanged and in full force and effect.

As amended, the proposed hotel main structure conforms to the required 40-foot height, the proposed setbacks meet the zoning district requirements and the site coverage maximum is not exceeded.

Amendment Permit Processing
The proposed project is an Amendment to both an Architectural Permit and Use Permit (AP and UP). Per section 23.72.020, the Pacific Grove Zoning Code permits concurrent permit processing to allow for a clear permitting and decision-making path. Because the City Council was the final review authority for the original project, this amendment returns to Council for consideration.

BACKGROUND

Public Meetings and Hearings
The original project was brought before a variety of committees and boards, as summarized below. Each public meeting/hearing was noticed in conformance with PGMC Section 23.86.

EIR Scoping Meeting - April 4, 2017
Site Plan Review Committee - January 11, 2017
Architectural Review Board - March 27, 2018
Planning Commission - April 5, April 19, and May 17, 2018
City Council Call Up - June 6, 2018
City Council - September 5, 2018

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15162, when an EIR has been certified, no subsequent EIR shall be prepared for the project unless the agency determines that substantial changes are proposed or substantial changes occur with respect to the circumstances under which the project is undertaken. In this case, no new information has been presented to warrant further environmental review, and none of the conditions described in Section 15162 calling for preparation of a subsequent EIR or negative declaration have occurred.

Pursuant to Section 15162 of the CEQA Guidelines, a project does not require a subsequent EIR if the following conditions apply:
1) No substantial changes are proposed in the project which will require major revisions to the previous EIR due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified impacts;
2) No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and
3) No new information of substantial importance has been provided which was not known at the time of the previous EIR.

As amended, the project is consistent with the previously-certified final Environmental Impact Report (EIR) for the Hotel Durell Project, and would reduce potential impacts related to traffic, parking, and water use.

GOAL ALIGNMENT

The project aligns with Goal 6 Revitalize Downtown. The subject site is currently developed with a single-story commercial building and 26-space parking lot. The 1994 General Plan and approved Zoning District allow a hotel use. The form and scale of the project are in conformance with the General Plan and zoning district. The project furthers many General Plan goals that are in alignment with this goal.

OPTIONS

1. Deny the proposed amendment.
2. Direct the applicant to revise the proposed amendment subject to Council direction.

FINANCIAL IMPACT:

As amended, the proposed project would generate additional Transient Occupancy Tax (TOT). Unlike property taxes, 100% of the TOT goes directly to the City's General Fund and is available to fund a wide variety of services and projects for public benefit. In addition, sales tax would be generated by the hotel restaurant and a portion of the increased property tax would accrue to the City.

The developer has provided the following five-year estimate of Gross Revenues from lodging, along

with the City's estimated TOT revenues.

2024: $9,591,937 at 12% TOT = $1,151,032
2025: $10,702,583 at 12% TOT = $1,284,310
2026: $11,687,108 at 12% TOT = $1,402,453
2027: $12,324,612 at 12% TOT = $1,478,953
2028: $12,570,825 at 12% TOT = $1,508,499

FIVE YEAR TOT ESTIMATE = $6,825,247

GOAL ALIGNMENT: See Goal Alignment within Discussion section.

Attachments

Draft Resolution
Plan Set
Council Resolution No. 18-030
Application and Letter
Link to Final EIR for Hotel Durell Project

RESOLUTION NO. 22-

AMENDMENT (PERMIT # 21-0457) OF ARCHITECTURAL PERMIT AND USE PERMIT AP AND UP #16-203 TO DEMOLISH THE EXISTING 17,500 SQUARE FOOT BUILDING AND BUILD A 102 GUEST ROOM, 76,182 SQUARE FOOT HOTEL PURSUANT TO PGMC §23.31.020

FACTS

1. The subject site (i.e., the hotel site) is located at 157 Grand Avenue, Pacific Grove, 93950 APN 006-173-002.
2. The subject site has a designation of Light Commercial/ Hotel/Condominium District on the adopted City of Pacific Grove General Plan Land Use Map.
3. The project site is located in the C-I-T zoning district. The C-1-T zoning district was created through an approval of Ordinance 1951 by a public vote of Pacific Grove citizens on June 7, 1994.
4. The property is located in the Downtown Pacific Grove Business District per Chapter 6.50 of the City's Municipal Code, the 1961 Downtown Parking District and the Area of Special Biological Significance.
5. The subject site (i.e., the hotel site) is approximately 0.77 acres (33,875 square feet).
6. As amended, the proposed project provides 98 on-site valet parking spaces using car lifts for 84 of the spaces. The proposed project is also providing 14 spaces at the back of the hotel to meet a condition of the Holman Building approval. Those spaces are open to the public. In total, the amended project will provide 112 parking spaces, a net increase of 19 parking spaces over the previously-approved project.
7. This amendment eliminates the use of 28 off-site spaces, located on a lot directly across Fountain Avenue (APNs 006-174-003, 006-174-011, and 006-174-012).
8. Employee parking will be restricted to the Lighthouse Theatre Municipal Parking Lot. Employees shall not be allowed to park in the hotel parking lot or on nearby streets.
9. The proposed amended project is adjacent to the Natural History Museum and the Public Library.
10. A Phase 1 Historic Report prepared by qualified historian Richard Brandi determined the existing structure to be ineligible for the City's Historic Resources Inventory.
11. On October 15, 2015, the City Council passed and adopted Resolution 15-056, which concluded the structure not to be historic.
12. An Environmental Impact Report (EIR) was prepared for this project and circulated on August 31, 2017 through October 26, 2017 (SCH#2017031045); no significant unavoidable impacts were identified. As amended, the project remains consistent with the analysis and conclusions of the previously-certified final EIR.
13. On February 2, 2022, the City Council approved a Promissory Agreement for the water entitlement for the Pacific Grove Hotel, formerly known as the Hotel Durrell, to be located at 157 Grand Avenue.

FINDINGS

Architectural Permit Findings

1. As amended, the proposed development will meet the development regulations set forth in the C-1-T zoning district including setbacks and height requirements;
2. As amended, the architecture and general appearance of the completed project is compatible with the neighborhood because the proposed exterior fits the contexts with the size, scale and proportions of the existing commercial structures in the downtown;
3. As amended, the completed project will neither be detrimental to the orderly and harmonious development of the City nor impair the desirability of investment or occupation in the neighborhood because the project will be improving the subject property and the downtown fabric by replacing a surface level parking lot and single-story building with a multi-story building; conforms to the General Plan Commercial Downtown and C-I-T zoning standards; and will improve the downtown's walkability and vibrancy; and
4. On October 15, 2015, the City Council passed and adopted Resolution 15-056 which concluded the structure not to be historic, and therefore does not qualify for historic designation as defined by the California Environmental Quality Act (CEQA).

Use Permit Findings

1. As amended, the proposed use is allowed in the C-1-T zoning district with a use permit per Pacific Grove Municipal Code (PGMC) 23.31.040;
2. As amended, the proposed structure and parking are consistent with the Pacific Grove Zoning Code with regards to height, setbacks, parking, and coverage in the C-1-T zoning district. As previously approved, certain roof appurtenance features will exceed the maximum allowed height of 40 feet as amended and shown on the approved plans for "Pacific Grove Hotel" dated **January 31, 2022** by RRM Design Group on file with CDD (i.e., plan sheets A.2 and A.3). The building coverage, total gross floor area, and exterior colors and materials would remain as previously approved;
3. As amended, the proposed use is consistent with the General Plan Commercial Downtown designation;
4. The establishment, maintenance or operation of the use will not, under the circumstances of this particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
5. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;
6. As amended, the location, size, and design of the proposed development are compatible with the existing and future land uses in the vicinity because the proposed structure complements the downtown character of the neighborhood improves the economic viability of the downtown; and

7. In approving the permit amendment, the following conditions of approval are imposed and deemed reasonable and necessary to ensure that the approval will be in compliance with the findings cited above.

CONDITIONS OF APPROVAL

1. **Permit Expiration.** This permit amendment shall expire and be null and void if a building permit has not been applied for within two (2) years from and after the date of approval. Application for extension of this approval must be made prior to the expiration date.

2. **Conformance to Plans.** Development of the site shall conform to the approved plans for the "Pacific Grove Hotel" (AP/UP Amendment 21-0457) dated January 31, 2022, on file with the Community Development Department and to the Building Code, with the exception of any subsequently approved changes.

3. **Construction Compliance.** All construction shall occur in general compliance with the proposal as set forth in the application, subject to any special conditions of approval herein. Any deviation from approvals must be reviewed and approved by staff, and may require **City Council** approval.

4. **Operational Permit.** As amended, AP/UP 21-0457 shall become the operational permit and all conditions of approval shall be cleared under this amendment

5. **Valet Parking.** All parking provided for the hotel shall be free of charge valet.

6. **Employee Parking.** Employee parking will be restricted to the Lighthouse Theatre Municipal Parking Lot. Employees shall not be allowed to park in the hotel parking lot or on nearby streets.

7. **During-Construction Pollution Prevention (a).** During construction, the developer shall employ storm water best management practices (BMPs) for erosion and sediment control, prevention of non-storm water discharges, and implement good housekeeping and construction waste management practices to protect the storm drainage system and water quality as required by City Code Section 9.30.130(c), the City Phase II NPDES Permit, State Water Resources Control Board (SWRCB) Construction General Permit (CGP), and the Monterey Regional Storm Water Management Program (MRSWMP). Plans for during-construction storm water management and BMPs, such as a Storm Water Pollution Prevention Plan (SWPPP), shall be submitted to the City and subject to review and approval of the Public Works/Community Development Director and Building Official prior to issuance of a grading and/or building permit.

8. **During-Construction Pollution Prevention (b).** Construction activities subject to BMP requirements shall continuously employ measures to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality, contamination, or unauthorized discharge of pollutants.

9. **During-Construction Pollution Prevention (c).** Whenever construction activity is being done contrary to and in violation of PGMC Chapter 9.30, the Public Works/Community Development Director may order construction activity to stop by posting a written notice on the premises. All persons shall immediately stop such work unless or until the Public

Works Director authorizes removing the stop work order and allows construction activity to proceed.

10. **Farmers Market.** No construction/demolition activity shall occur on Mondays, between the hours of noon and 6:00 p.m., along Central Avenue and the northerly portion of Grand Avenue that may cause an adverse effect on Farmers Market set up, operation or breakdown.

11. **Pedestrian safety.** The Applicant shall pay for 25% of the cost for design and construction of the complete reconfiguration of the intersection of Central Avenue and Fountain Avenue to provide an All-Way Stop intersection as identified in the Mitigation Measures of the Environmental Impact Report. The intersection redesign shall be consistent with the guidelines described in the "Pedestrian Safety Report" prepared for the City by the Institute of Transportation Studies dated November 2008.

    The Applicant shall pay 25% of the cost for design and construction of the reconfiguration of the intersection of Central Avenue and Grand Avenue to accommodate a new raised pavement crosswalk across the intersection on the south side of Central Avenue. The final project landscape plan for landscaping within the public right-of-way shall be designed to incorporate the new raised pavement crosswalk.

    All plans for construction of improvements within the public right-of-way shall be reviewed and approved by the City Engineer. All improvements within the public right-of-way shall conform to ADA requirements, including curb ramps, bulb-outs and raised pavement crosswalks. All public works construction shall conform to City and State Standards and standard engineering practices. Prior to the City granting a Certificate of Occupancy, the Applicant shall deposit 25% of the estimated cost of improvements into a bond or escrow account.

12. **Roof top.** The following activities shall be allowed on the rooftop: small yoga classes in the morning and/or at sunset not exceeding 10 guests and 1 instructor; a small garden for the hotel restaurant chef to grow organic herbs and plants; and routine maintenance and repair. No other activities shall be allowed on the rooftop and no amplified sound(s) would be allowed at any time.

13. **Archeology and Inadvertent Discovery.** When human remains or other cultural artifacts are exposed, the Health and Safety Code § 7050.5 requires that no further excavation or disturbance occurs in the area and that the county coroner is called so that the coroner can verify that the remains are not subject to medical jurisprudence. Within 24 hours of notification, the coroner calls the Native American Heritage Commission if the remains are known or thought to be Native American. The Native American Heritage Commission selects the Most Likely Descendant from a rotating list of MLDs. The MLD has 24 hours to respond. All work will halt with a 50-yard radius until an osteologist can examine the remains, and a treatment plan for any said remains has been provided according to the Most Likely Descendant.

14. **Cultural and/or Archaeological Artifacts.** If such artifacts are unexpectedly discovered during ground disturbing activities, work shall be halted until the item(s) can be evaluated by a qualified professional archaeologist. If the find is determined to be significant,

appropriate mitigation will be formulated, with the approval of the lead agency, and implemented prior to recommencement of work.

15. **Tribal Consultation.** Both a tribal monitor and an archeologist will be on-site during ground disturbance. If any archaeological or paleontological resources are found, the project applicant and/or its contractor shall cease all work within 25 feet of the discovery and notify the Community Development Department (CDD) Director. The City and the project applicant shall consider mitigation in consultation with the tribal monitor and project archeologist.

    The applicant shall contract separately with either the Ohlone-Costanoan Esselen Nation (OCEN) or the Esselen Tribe of Monterey County (Esselen) for monitoring services during ground disturbing activities. An executed contract shall be provided to CDD-Planning prior to issuance of a building permit for demolition, grading, trenching, and any other ground disturbance.

16. **Terms and Conditions**. These terms and conditions shall run with the land and bind to all future owners and possessors of the subject property, unless amended. Amendments to this permit may be achieved only if an application is made and approved, pursuant to the Zoning Code.

17. **Public Works, Fire and Building.** Review and approval by the Public Works, Fire and Building Departments/Division are required prior to issuance of a building permit. Work taking place in the public right-of-way shall require an encroachment permit prior to issuance of the building permit.

18. **Stormwater Treatment Measure:** The storm water treatment measures shall be maintained by the property owner in perpetuity and City staff shall be allowed access to inspect all storm water treatment measures on an annual basis.

19. **Building Plans:** All conditions of approval for the Planning permit(s) shall be printed on a full-size plan sheet and included with the construction plan set submitted to the Building Division.

20. **Indemnification.** The applicant agrees to an Indemnification Condition, which is attached to the Amendment application and incorporated herein by reference.

21. **Agreement.** The applicant and the hotel owner consent to the proposed conditions.

22. **Bulbouts.** The applicant shall pay for design and construction of five street/sidewalk bulbouts. Three shall be on Fountain Street and two shall be on Grand Avenue. Bulbout designs shall receive approval from the Public Works Department before installation, and be constructed prior to the City granting a Certificate of Occupancy.

23. **Trip Reduction Measures.** The Applicant, and any successor-in-interest as a continuing obligation during operation of the hotel, shall: (1) pay the full cost of monthly bus passes (31-day basic GoPasses) to enable employees to commute to work via Monterey-Salinas Transit; (2) provide, on site, ten (10) bicycles in good maintenance and repair for exclusive no-cost use by patrons; (3) install and maintain two (2) electric car supercharging stations in the parking garage; (4) designate two (2) employee carpool spaces in the hotel parking area; (5) pay (shared with other Pacific Grove lodging establishments, if possible) the full cost to extend into Pacific Grove then existing airport

shuttle routes that provide access from the Monterey Regional Airport to Cannery Row or Monterey hotels; (6) participate in Go831, the regional ride sharing program operated by TAMC.

DETERMINATION OF CONSISTENCY WITH FINAL EIR

1. As amended, the project is consistent with the previously-certified final EIR for the Hotel Durell Project (AP/UP 16-203, certified by the City Council on September 5, 2018 (Council Resolution No. 18-030). Pursuant to Section 15162 of the CEQA Guidelines, the Council has reviewed the project, considered the final EIR, and finds that the project does not require a subsequent EIR based on the following:

   a) No substantial changes are proposed in the project which will require major revisions to the previous EIR due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified impacts;

   b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and

   c) No new information of substantial importance has been provided which was not known at the time of the previous EIR.

2. The following facts remain as certified by the City Council on September 5, 2018:

   a) The final EIR was completed in compliance with CEQA;

   b) The final EIR was presented to the City Council, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project;

   c) The final EIR reflects the lead agency's independent judgment and analysis; and

   d) The custodian for these documents shall be the City Clerk for the City of Pacific Grove found at 300 Forest Avenue, Pacific Grove, California 93950.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

1. Determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.

2. Authorizes APPROVAL of this Amendment (Application No. 21-0457) to Architectural Permit and Use Permit AP/UP 16-203 to demolish the existing 17,500 square foot building and to construct a 102-room hotel with amenities of approximately 76,182 square feet with on-site parking.

3. Attachments are hereby approved as exhibits to this Resolution, which by this reference are incorporated as set forth in its entirety, including the Indemnification Condition.

4. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 16TH day of February, 2022, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____

BILL PEAKE, Mayor

ATTEST:

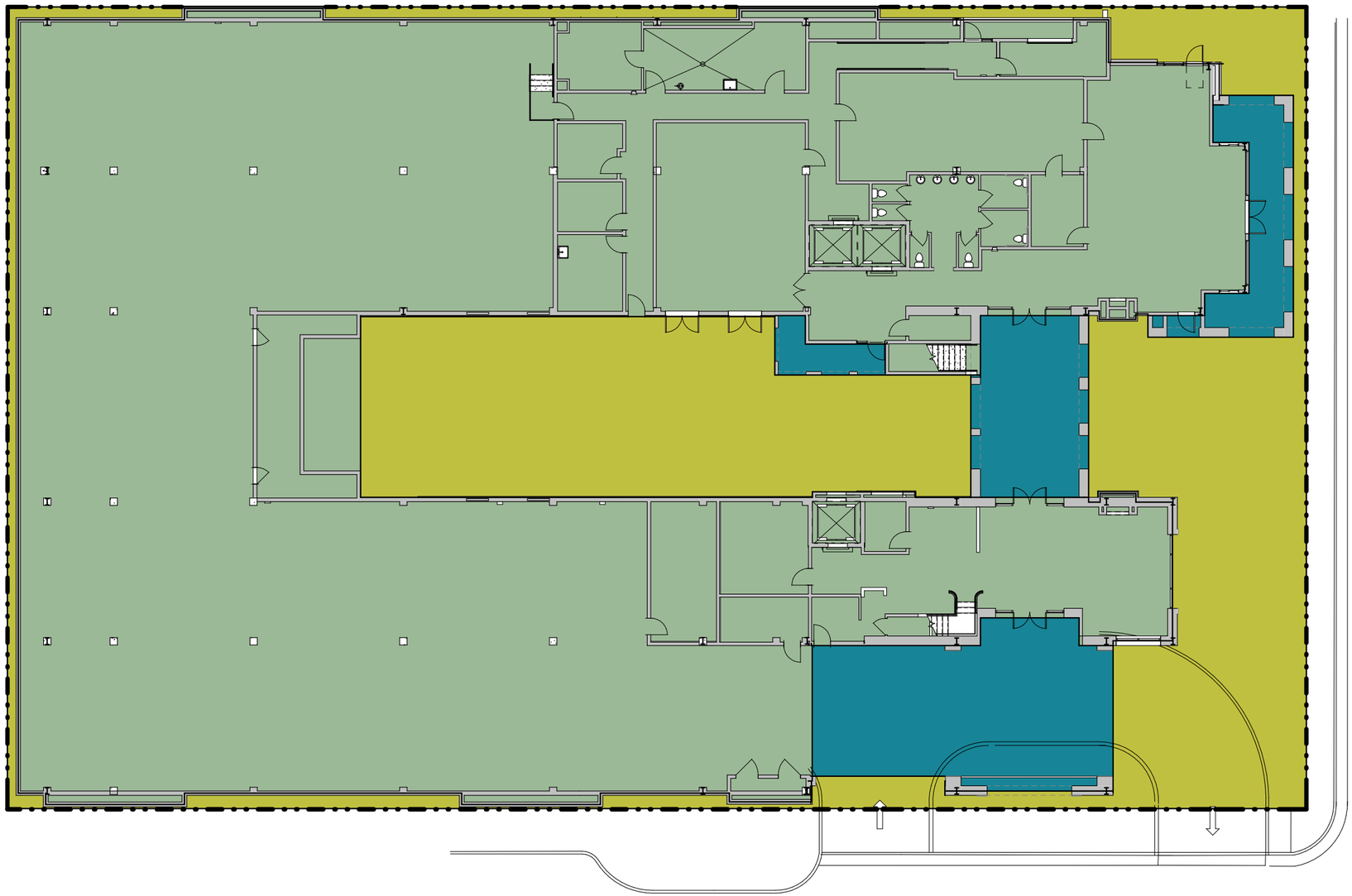
_____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____

DAVID C. LAREDO, City Attorney



LOT COVERAGE

LOT AREA:	33,849 SF	
ALLOWED COVERAGE: (PER 23.31.040)	25,406 SF	(75%)
PROPOSED BUILDING FOOTPRINT (IMPERMEABLE):	23,332 SF	(69.0%)
PROPOSED COVERED EXTERIOR (PERMEABLE):	2,768 SF	(8.2%)
PROPOSED LANDSCAPE (PERMEABLE):	7,750 SF	(22.9%)

SITE COVERAGE

BUILDING FOOTPRINT (IMPERMEABLE)

COVERED (PERMEABLE)

LANDSCAPE (PERMEABLE)

rrm design group

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SITE COVERAGE

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD-1



Rentable Area Legend

- ADMIN. OFFICE
- BAGGAGE
- CIRCULATION/PUBLIC
- ENGINEERING
- HOUSE KEEPING
- INFRASTRUCTURE
- LOBBY
- LOCKER
- PARKING
- RESTAURANT
- STAFF BREAK
- SUPPORT/BOH

Name	Gross Area
ADMIN. OFFICE	880 SF
BAGGAGE	112 SF
ENGINEERING	278 SF
GYM	798 SF
HOSPITALITY	694 SF
HOUSE KEEPING	1426 SF
INFRASTRUCTURE	100 SF
LOBBY	914 SF
LOCKER	456 SF
PARKING	12677 SF
RESTAURANT	3615 SF
SPA	849 SF
STAFF BREAK	436 SF

PARKING REQUIRED:

102 GUESTROOMS	(1/4)	25.5
708 SF MEETING	(1/150)	4.7
1,045 SF KITCHEN	(1/300)	3.5
1,190 SF DINING (INT)	(1/50)	23.8
342 SF DINING (EXT)	(1/50)	6.8
HOLMAN SPACES		14
TOTAL		**103**

PARKING PROVIDED:

MECH. PARKING	84
SURFACE PARKING:	14
HOLMAN SPACES:	14
TOTAL	**112**

rrm design group

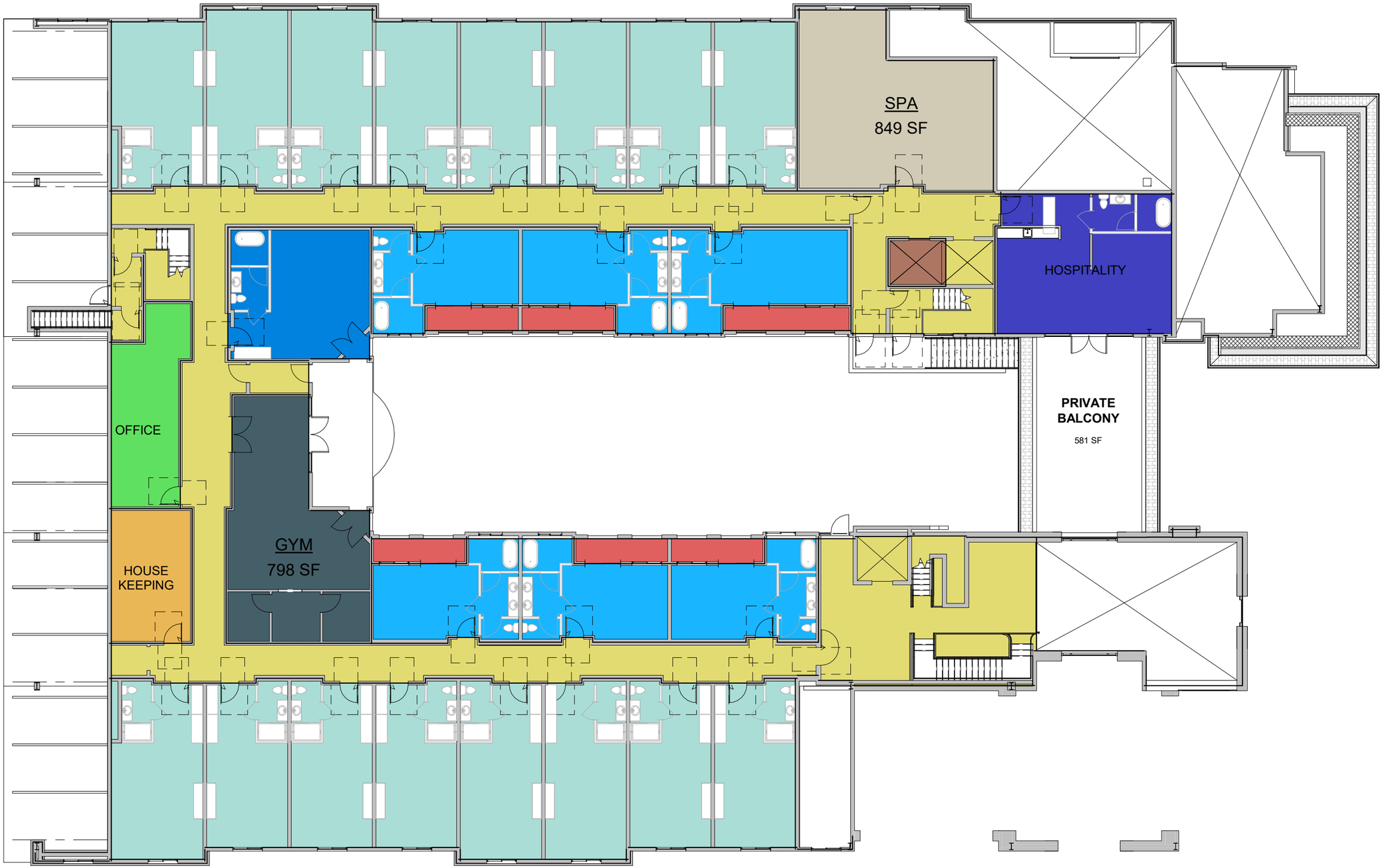
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GROUND FLOOR PLAN

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD-2



Rentable Area Legend

- ADMIN. OFFICE
- BALCONY
- CIRCULATION/PUBLIC
- GYM
- HOSPITALITY
- HOUSE KEEPING
- ROOM TYPE A
- ROOM TYPE B
- ROOM TYPE C
- SPA
- SUPPORT/BOH

ROOM COUNT

SECOND FLOOR	
STANDARD ROOMS	23
SUITE	1
TOTAL	24
THIRD FLOOR	
STANDARD ROOMS	35
SUITES	5
TOTAL	40
FOURTH FLOOR	
STANDARD ROOMS	34
SUITES	4
TOTAL	38
TOTALS	
STANDARD ROOMS	92
SUITES	9
GRAND TOTAL	102

02-SECOND FLOOR - UPDATE

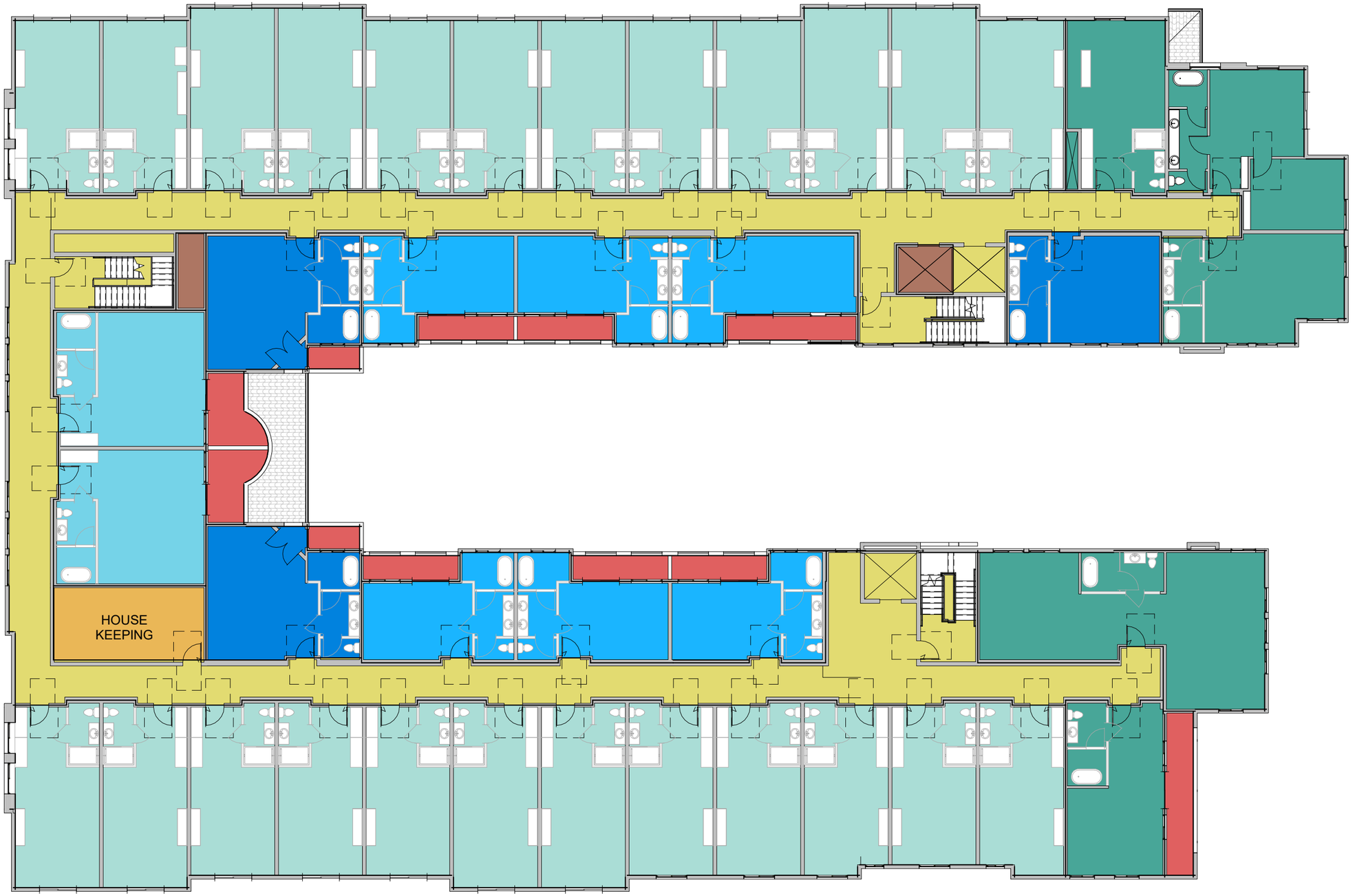
1/16" = 1'-0"

rrm design group

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SECOND FLOOR
0123-02-CO19 - PACIFIC GROVE HOTEL
FEBRUARY 7, 2022

SD-3



Rentable Area Legend

- BALCONY
- CIRCULATION/PUBLIC
- HOUSE KEEPING
- ROOM TYPE A
- ROOM TYPE B
- ROOM TYPE C
- ROOM TYPE E
- SUITES
- SUPPORT/BOH

ROOM COUNT

SECOND FLOOR	
STANDARD ROOMS	23
SUITE	1
TOTAL	24

THIRD FLOOR	
STANDARD ROOMS	35
SUITES	5
TOTAL	40

FOURTH FLOOR	
STANDARD ROOMS	34
SUITES	4
TOTAL	38

TOTALS	
STANDARD ROOMS	92
SUITES	9
GRAND TOTAL	102

03-THIRD FLOOR

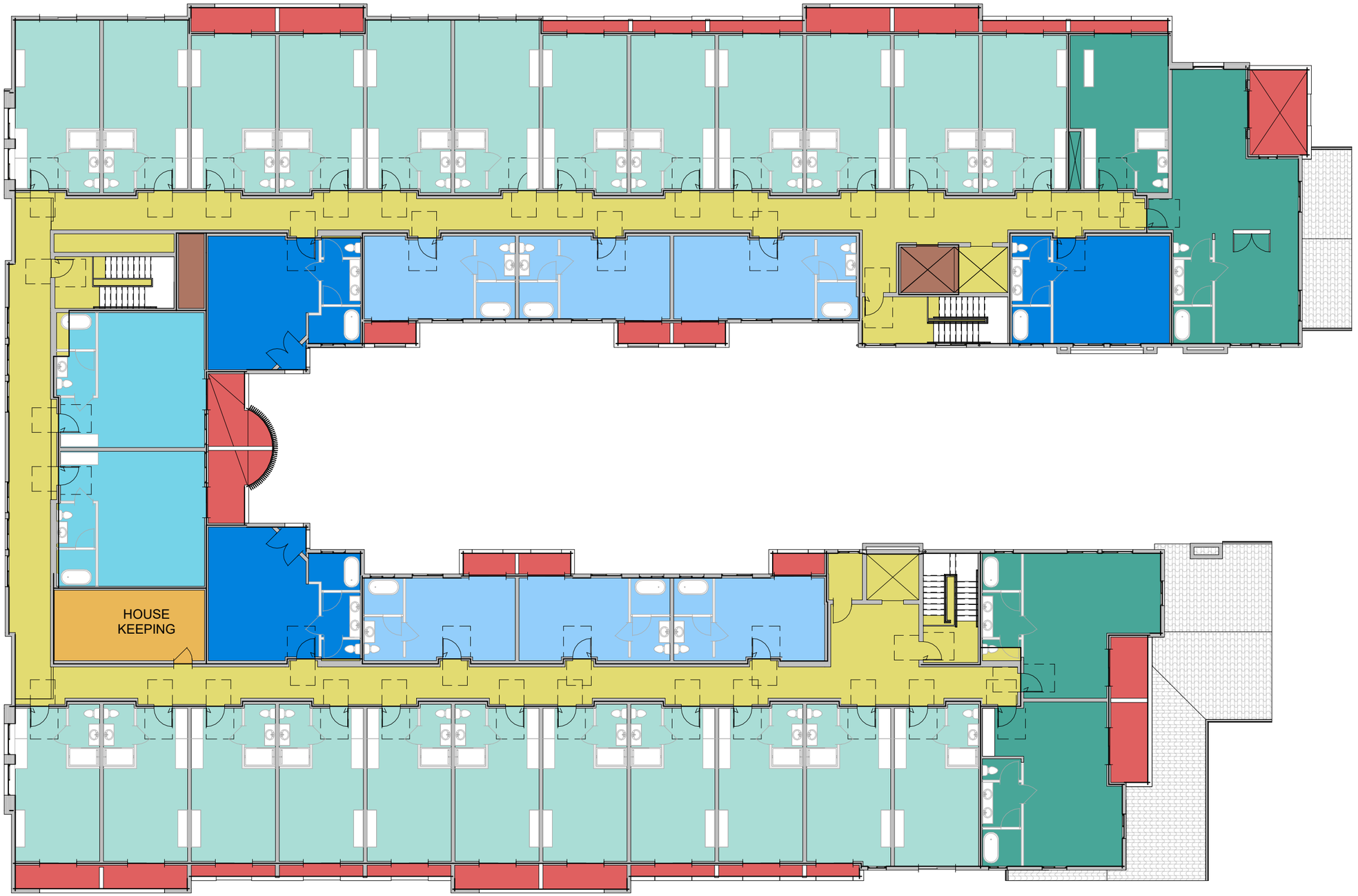
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rrm design group

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THIRD FLOOR
0123-02-CO19 - PACIFIC GROVE HOTEL
FEBRUARY 7, 2022

SD-4



04-FOURTH FLOOR

1/16" = 1'-0"

Rentable Area Legend

- BALCONY
- CIRCULATION/PUBLIC
- HOUSE KEEPING
- ROOM TYPE A
- ROOM TYPE C
- ROOM TYPE D
- ROOM TYPE E
- SUITES
- SUPPORT/BOH

ROOM COUNT

SECOND FLOOR	
STANDARD ROOMS	23
SUITE	1
TOTAL	24

THIRD FLOOR	
STANDARD ROOMS	35
SUITES	5
TOTAL	40

FOURTH FLOOR	
STANDARD ROOMS	34
SUITES	4
TOTAL	38

TOTALS	
STANDARD ROOMS	92
SUITES	9
GRAND TOTAL	102

rrm design group

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FOURTH FLOOR
0123-02-CO19 - PACIFIC GROVE HOTEL
FEBRUARY 7, 2022

SD-5



CENTRAL ELEVATION

1/16" = 1'-0"



FOUNTAIN ELEVATION

1/16" = 1'-0"

rrm design group

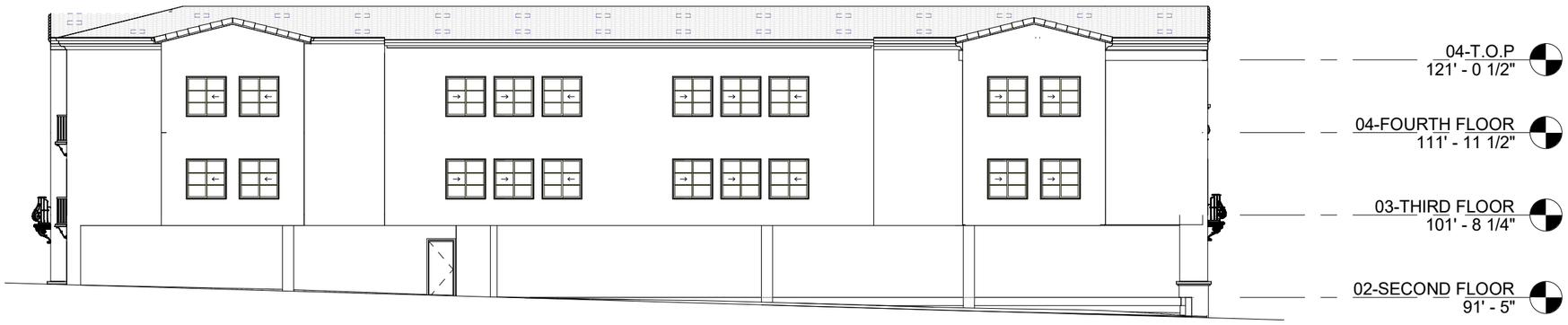
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EXTERIOR BUILDING ELEVATIONS

0123-02-CO19 - PACIFIC GROVE HOTEL

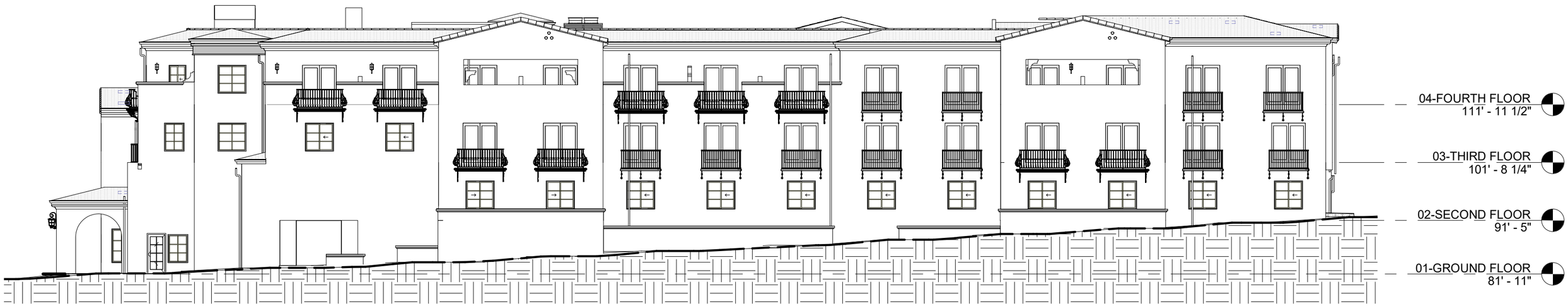
FEBRUARY 7, 2022

SD-6



HOLMAN ELEVATION

1/16" = 1'-0"



GRAND ELEVATION

1/16" = 1'-0"

rrm design group

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EXTERIOR BUILDING ELEVATIONS

0123-02-CO19 - PACIFIC GROVE HOTEL

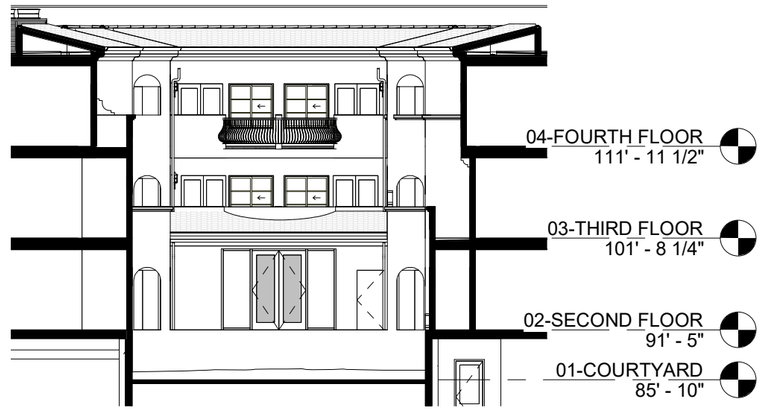
FEBRUARY 7, 2022

SD-7



COURTYARD ELEVATION

1/16" = 1'-0"



COURTYARD ELEVATION

1/16" = 1'-0"

rrm design group

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EXTERIOR BUILDING ELEVATIONS

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD- 8



COURTYARD ELEVATION

1/16" = 1'-0"

rrm design group

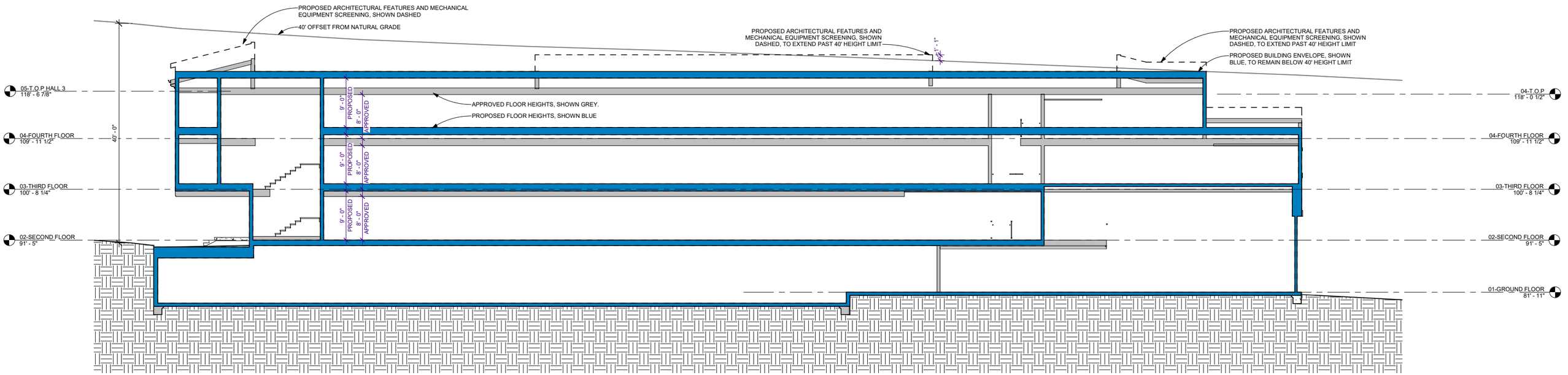
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EXTERIOR BUILDING ELEVATIONS

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD-9



BUILDING HEIGHT

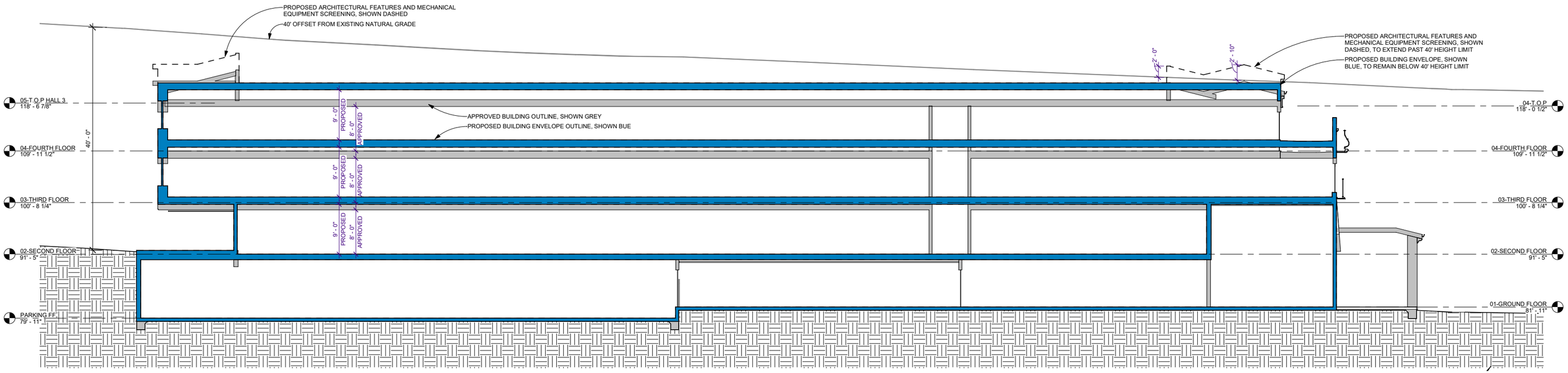
0123-02-CO19 - PACIFIC GROVE HOTEL

JANUARY 31, 2022

SD-10

rrm design group

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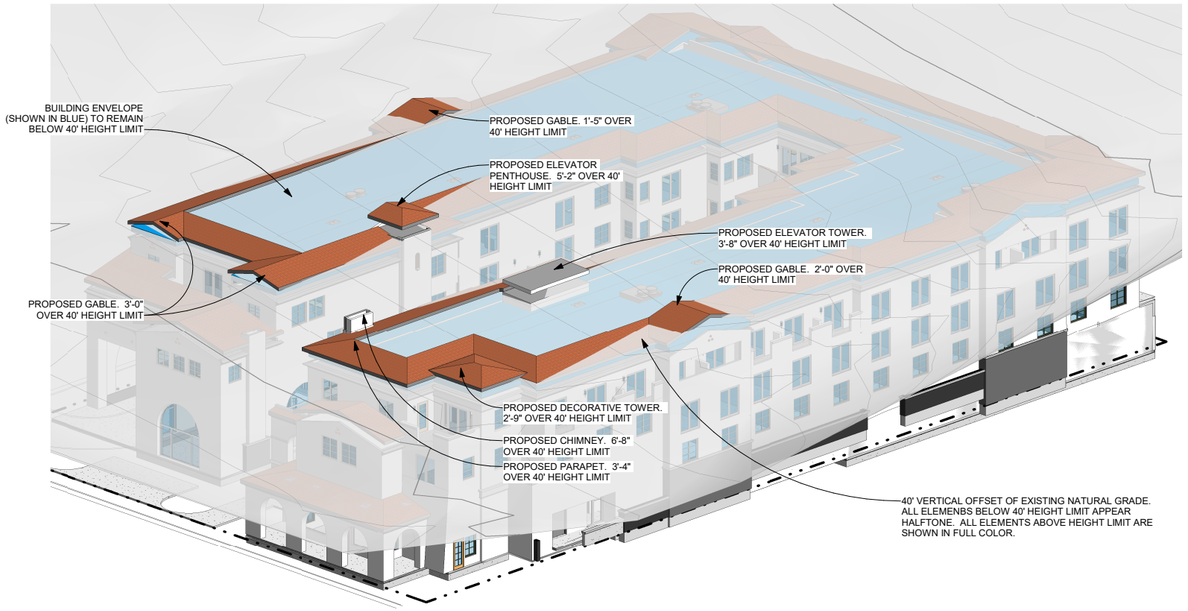
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BUIDLING HEIGHT

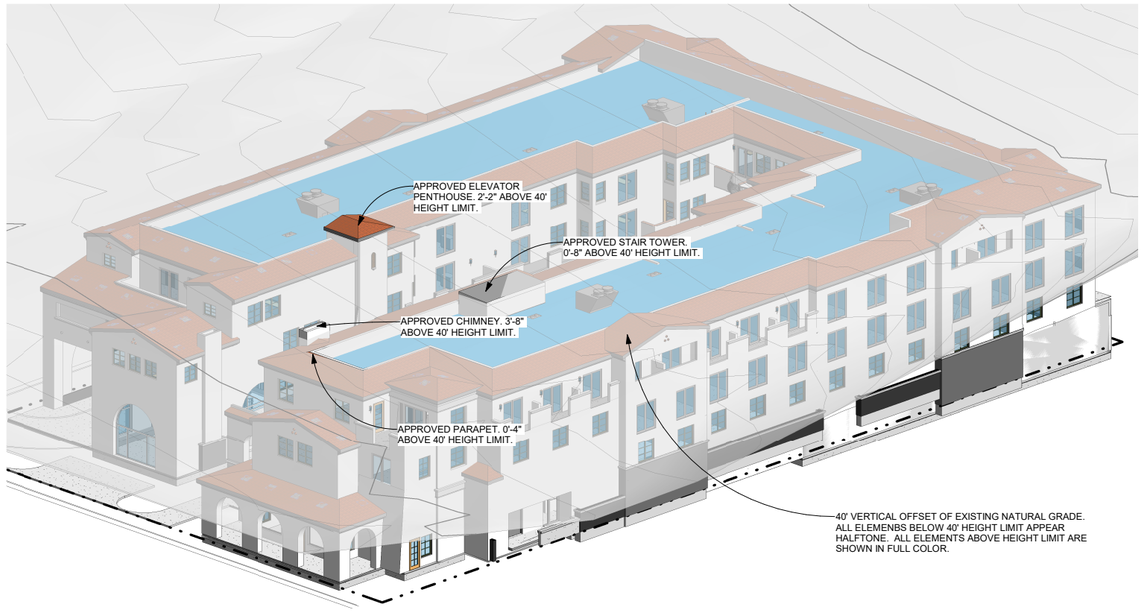
0123-02-CO19 - PACIFIC GROVE HOTEL

JANUARY 31, 2022

SD-11



2 A.4 CITY EXHIBIT - 3D PROPOSED



1 A.4 CITY EXHIBIT - 3D APPROVED

rrm design group

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BUIDLING HEIGHT - ISOMETRIC

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD-12



RESTAURANT AND PLAZA PERSPECTIVE
CORNER OF GRAND AVE. AND CENTRAL AVE.

rrm design group

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EXTERIOR RENDER
0123-02-CO19 - PACIFIC GROVE HOTEL
FEBRUARY 7, 2022

SD-13



*CENTRAL AVENUE STREETS TREES NOT SHOWN FOR ARCHITECTURAL CLARITY (SEE LANDSCAPE PLAN SHEET L.1)

HOTEL ENTRY PERSPECTIVE

CORNER OF CENTRAL AVE. AND FOUNTAIN AVE.

rrm design group

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EXTERIOR RENDER

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD-14



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INTERIOR RENDER

0123-02-CO19 - PACIFIC GROVE HOTEL

FEBRUARY 7, 2022

SD-15

RESOLUTION NO. 18-030

ARCHITECTURAL PERMIT AND USE PERMIT AP AND UP #16-203 TO DEMOLISH THE EXISTING 17,500 SQUARE FOOT BUILDING AND BUILD A 116 GUEST ROOM, 76,182 SQUARE FOOT HOTEL PURSUANT TO PGMC §23.31.020

FACTS

1. The subject site is located at 157 Grand Avenue, Pacific Grove, 93950 APN 006-173-001.

2. The subject site has a designation of Light Commercial/ Hotel/Condominium District on the adopted City of Pacific Grove General Plan Land Use Map.

3. The project site is located in the C-I-T zoning district. The C-1-T zoning district was created through an approval of Ordinance 1951 by a public vote of Pacific Grove citizens on June 7, 1994.

4. The property is located in the Downtown Pacific Grove Business District per Chapter 6.50 of the Pacific Grove Municipal Code (PGMC), the 1961 Downtown Parking District and the Area of Special Biological Significance.

5. The subject site is approximately 0.77 acres (33,875 square feet).

6. The proposed project provides 79 valet parking spaces; 51 spaces on-site, and 28 off-site spaces, located on a lot directly across Fountain Avenue, (APN 006-174-011). The proposed project is also providing 14 spaces at the back of the hotel to meet a condition of the Holman Building approval. Those spaces are open to the public.

7. The proposed project is adjacent to the Natural History Museum and the Public Library.

8. A Phase 1 Historic Report prepared by qualified historian Richard Brandi determined the existing structure to be ineligible for the City's Historic Resources Inventory.

9. On October 15, 2015, the City Council passed and adopted Resolution 15-056, which concluded the structure not to be historic.

10. An Environmental Impact Report (EIR) was prepared for this project and circulated on August 31, 2017 through October 26, 2017; no significant unavoidable impacts were identified.

11. The proposal requires additional potable water and the project was added to the City's water waitlist.

FINDINGS

Architectural Permit Findings

1. The proposed development will meet the development regulations set forth in the C-1-T zoning district including setbacks and height requirements;

2. The architecture and general appearance of the completed project is compatible with the neighborhood because the proposed exterior fits within the context and style of the existing commercial and civic structures in the immediate vicinity and within the downtown;

3. The completed project will neither be detrimental to the orderly and harmonious development of the City, nor impair the desirability of investment or occupation in the neighborhood because the project will be improving the subject property and the downtown fabric by replacing a surface level parking lot and single-story building with a multi-story building; it conforms to the General Plan Commercial Downtown and C-I-T zoning standards; and it will improve the downtown's walkability and vibrancy; and

4. On October 15, 2015, the City Council passed and adopted Resolution 15-056 which concluded the structure not to be historic, and therefore does not qualify for historic designation as defined by the California Environmental Quality Act (CEQA).

Use Permit Findings

1. The proposed use is allowed in the C-1-T zoning district with a use permit per PGMC § 23.31.040;
2. The proposed structure and parking is consistent with the City Zoning Code with regards to height, floor area ratio, setbacks, parking, and site coverage in the C-1-T zoning district;
3. The proposed use is consistent with the General Plan Commercial Downtown designation;
4. The establishment, maintenance or operation of the use will not, under the circumstances of this particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
5. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;
6. The location, size, and design of the proposed development are compatible with the existing uses in the vicinity because the proposed structure complements the civic character of the neighborhood and improves the economic viability of the downtown; and
7. In approving the permit, the following conditions of approval are imposed and deemed reasonable and necessary to ensure that the approval will be in compliance with the findings cited above.

CONDITIONS OF APPROVAL

1. **Permit Expiration.** This permit shall expire and be null and void if a building permit has not been applied for within one (1) year from and after the date of approval. Application for extension of this approval must be made prior to the expiration date.

2. **Conformance to Plans.** Development of the site shall conform to approved plans for "Hotel Durell" dated **August 3,** 2018 by RRM Design Group on file with CEDD and to the City's Building Code, with the exception of any subsequently-approved changes.

3. **Construction Compliance.** All construction must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions of approval herein. Any deviation from approvals must be reviewed and approved by staff and may require **City Council** approval.

4. **Deed Restriction**. Prior to Building Permit submittal, a deed restriction shall be recorded on the lot directly adjacent to the subject site located on Fountain Ave and Ricketts Row (APN 006-174-011; 006-174-012; 006-174-003), also known as the Fountain Street Parking Lot, requiring the lot's exclusive use for off-site parking for the use of Hotel Durell for the duration of AP/UP 16-203.

5. **Valet Parking**: All parking provided for the hotel shall be free of charge valet. This condition was added after the Planning Commission hearing with the concurrence of the Owner.

6. **Employee Parking.** Annually, the applicant shall secure 12 passes for the City's Municipal parking lot and shall endeavor to use all means at its disposal to ensure hotel employees park in those spaces. The employees may park in the hotel's Fountain Street Lot during nighttime hours and during periods of low hotel patronage. The parking passes are valid for use at any of the City's Municipal Parking Lots.

7. **During-Construction Pollution Prevention (a):** During construction, the developer shall employ storm water best management practices (BMPs) for erosion and sediment control, prevention of non-storm water discharges, and implement good housekeeping and construction waste management practices to protect the storm drainage system and water quality as required by City Code Section 9.30.130(c), the City Phase II NPDES Permit, State Water Resources Control Board (SWRCB) Construction General Permit (CGP), and the Monterey Regional Storm Water Management Program (MRSWMP). Plans for during-construction storm water management and BMPs, such as a Storm Water Pollution Prevention Plan (SWPPP), shall be submitted to the City and subject to review and approval of the Public Works/Community Development Director and Building Official prior to issuance of a grading and/or building permit.

8. **During-Construction Pollution Prevention (b)**. Construction activities subject to BMP requirements shall continuously employ measures to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality, contamination, or unauthorized discharge of pollutants.

9. **During-Construction Pollution Prevention (c).** Whenever construction activity is being done contrary to and in violation of PGMC Chapter 9.30, the Public Works/Community Development Director may order construction activity stop by posting a written notice on the premises. All persons shall immediately stop such work unless or until the Public Works Director authorizes removing the stop work order and allows construction activity to proceed.

10. **Farmers Market**. No construction/demolition activity shall occur on Mondays between the hours of noon and 6:00 p.m. along Central Avenue and the northerly portion of Grand Avenue that may cause an adverse effect on Farmers Market set up, operation or breakdown.

11. **Pedestrian safety.** The Applicant shall pay for 25% of the cost for design and construction of the complete reconfiguration of the intersection of Central Avenue and Fountain Avenue to provide an All-Way Stop intersection as identified in the Mitigation Measures of the Environmental Impact Report. The intersection redesign shall be consistent with the guidelines described in the "Pedestrian Safety Report" Prepared for the City by the Institute of Transportation Studies dated November dated November 2008.

    The Applicant shall pay 25% of the cost for design and construction of the reconfiguration of the intersection of Central Ave, and Grand Ave. to accommodate a new raised pavement crosswalk across the intersection on the south side of Central Ave. The final project landscape plan for landscaping within the public right-of-way shall be designed to incorporate the new raised pavement crosswalk.

    All plans for construction of improvements within the public right-of-way shall be reviewed and approved by the City Engineer prior to the City granting a Certificate of Occupancy. All improvements within the public right-of-way shall conform to ADA requirements, including curb ramps, bulb-outs and raised pavement crosswalks. All public works construction shall conform to City and State Standards and standard engineering practices.

12. **Roof top.** No activities shall be allowed on the rooftop, other than routine maintenance and repair.

13. **Archeology.** If archaeological resources or human remains are discovered during construction, work shall be halted within 50 meters of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated, with the concurrence of City staff, and implemented.

14. **Tribal Consultation.** Both a Tribal Monitor and an Archeologist will be on-site during ground disturbance. If any archaeological or paleontological resources are found, the project applicant and/or its contractor shall cease all work within 25 feet of the discovery and notify the Community and Economic Development Department (CEDD) Director. The City and the project applicant shall consider mitigation in consultation with the Ohlone/Costanoan-Esselen Nation and project archeologist.

15. **Terms and Conditions.** These terms and conditions shall run with the land, and it is the intention of the CEDD Director and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions, unless amended. Amendments to this permit may be achieved only if an application is made and approved, pursuant to the City's Zoning Code.

16. **Public Works, Fire and Building.** Review and approval by the Public Works, Fire and Building Departments are required prior to issuance of a building permit. Work taking place in the public right-of-way shall require an encroachment permit prior to issuance of the building permit.

17. **Stormwater Treatment Measure.** The storm water treatment measures shall be maintained by the property owner in perpetuity and City staff shall be allowed access to inspect all storm water treatment measures on an annual basis.

18. **Building Plans.** All conditions of approval for the Planning permit(s) shall be printed on a full-size sheet and included with the construction plan set submitted to the Building Department.

19. **Indemnification.** The applicant agrees to an Indemnification Condition, which is attached to this Resolution and incorporated by reference.

20. **Agreement.** The applicant and the hotel owner consent to the proposed conditions.

21. **Bulbouts.** The Applicant shall pay for design and construction of five street/sidewalk bulbouts. Three shall be on Fountain Street and two shall be on Grand Avenue. Bulbout designs shall receive approval from the Public Works Department before installation.

22. **Trip Reduction Measures.** The Applicant, and any successor-in-interest as a continuing obligation during operation of the hotel, shall: (1) pay the full cost of monthly bus passes (31-day basic GoPasses) to enable employees to commute to work via Monterey-Salinas

Transit; (2) provide, on site, ten (10) bicycles in good maintenance and repair for exclusive no-cost use by patrons; (3) install and maintain two (2) electric car super-charging stations in the parking garage; (4) designate two (2) employee carpool spaces in the Fountain Street Parking Lot; (5) pay (shared with other Pacific Grove lodging establishments, if possible) the full cost to extend into Pacific Grove then existing airport shuttle routes that provide access from the Monterey Regional Airport to Cannery Row or Monterey hotels; (6) participate in Go831, the regional ride sharing program operated by TAMC.

FINAL EIR FINDINGS AND CERTIFICATION

1. The final EIR has been completed in compliance with CEQA;

2. The final EIR was presented to the City Council, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and

3. The final EIR reflects the lead agency's independent judgment and analysis.

4. The custodian for these documents shall be the City Clerk for the City of Pacific Grove found at 300 Forest Avenue, Pacific Grove, California 93950

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

1. Determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.

2. Authorizes APPROVAL of Architectural Permit and Use Permit AP/UP 16-203 to demolish the existing 17,500 square foot building and to construct a 116 room hotel of approximately 76,182 square feet with on and off-site parking.

3. Attachments are hereby approved as exhibits to this Resolution, which by this reference are incorporated as set forth in its entirety, including the Indemnification Condition, and the legal instrument referred to as the Reaffirmation Agreement, which provides the City with evidentiary proof that the Fountain Street Lot is part of this hotel proposal.

4. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 5th day of September 2018, by the following votes:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Garfield, Huitt, and Peake.
NOES: None.
ABSENT: None.
ABSTAIN: Councilmember Smith.

APPROVED:

Bill Kampe

BILL KAMPE, Mayor

ATTEST:

Sandra Kandell

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

INDEMNIFICATION CONDITION

In consideration for City review and approval of application in this matter, the Owner/Applicant shall indemnify, defend, protect and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnitees"), using counsel approved in writing by the City, from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements which may accrue against Indemnitees by reason of the City's approval of the request and application in this matter. Indemnification shall include, but shall not be limited to any action, or proceeding brought to attack, set aside, void, annul, limit, or inhibit the approval of the application referenced above, and shall expressly include causes of action under the California Environmental Quality Act (CEQA), or the National Environmental Policy Act (NEPA).

The obligation to indemnify shall include, but not be limited to, all costs relating to preparing administrative records, investigations, responses to discovery, retention of experts, and other costs, including attorney's fees or obligations related to this matter, including actions brought by the Owner/Applicant and also extend to any expense incurred in establishing the City's right to indemnification. City expenses shall be paid by Owner/Applicant upon City request notwithstanding final disposition of the matter has not yet occurred. If the City is later determined to not be entitled to indemnification, the City shall repay amounts so advanced.

This indemnification condition is the Owner/Applicant's inducement to the City to process and approve the application, which approval would otherwise be withheld by City due to its concern for liability or expense that may result from performance of the City's duties. Should any dispute arise regarding interpretation of this condition, the prevailing party shall recover all reasonable costs incurred, including court costs, attorney fees and related expenses. Recovery of expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

This indemnification condition shall not require the Owner/Applicant to indemnify the City or other Indemnities: (a) to the extent that an obligation is actually paid by an insurer pursuant to an insurance policy; (b) in connection with any remuneration paid to the City, if it shall be finally adjudged that such remuneration was in violation of law; or (c) on account of the City's misconduct if such misconduct shall be finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful.

Any permit or other approval given by the City to the Owner/Applicant Guarantor shall be valid only so long as this indemnification condition is given full force and effect. If this indemnification condition is revoked, the permit or other approval of the City shall then become null and void.

CITY OF PACIFIC GROVE

Community Development Department – Planning Division
300 Forest Avenue, Pacific Grove, CA 93950
Tel: 831.648.3190 • Fax: 831.648.3184 • www.cityofpacificgrove.org

Permit Application

21-0457.

Application # AP/UP Amend.
Date: 12/14/21
Total Fees: $3,898.70

APPLICANT/OWNER:

Project Address: 157 Grand Ave. **APN:** 006-174-011, 012, 003

Project Description: Hotel Pacific Grove (Formerly Hotel Durell) approved for a 116-room full-service hotel and 28-offsite parking spaces.

Will the project create, add, or replace impervious surface? ☐ Yes ☑ No

Will the project impact any tree(s) on site? ☐ Yes ☑ No

Applicant
Name: West River Hotels, LLC
Phone: 916 798-3649
Email: Robert@westriverhotels.com
Mailing Address: 2347 Loch Way
El Dorado Hills, CA 95762

Owner
Name: Belvnus LP et al/ROHNERT PARK R1, LP
Phone: 510 853-2100
Email: belvnus@yahoo.com
Mailing Address: P.O. Box 2106
Monterey, CA 93942

PLANNING STAFF USE ONLY:

Permit Request:

☐ CRD: Counter Determination	☐ SP: Sign Permit	☐ IHS: Initial Historic Screening	☐ VAR: Variance
☐ AP: Architectural Permit	☐ UP: Use Permit	☐ HPP: Historic Preservation	☐ MMP: Mitigation Monitoring
☐ AAP: Administrative AP	☐ AUP: Administrative UP	☐ A: Appeal	☐ Water Entitlement
☐ ADC: Arch Design Change	☐ CDP: Coastal Dev. Permit	☐ TPD: Tree Permit W/ Dev't	☑ Other: AP/UP Amend.
☐ ASP: Admin Sign Permit	☐ LLA: Lot Line Adjustment	☐ CDP Waiver/Admin. CDP	☐ Other:

CEQA Determination:
☑ Exempt
☐ Initial Study & Mitigated Negative Declaration
☐ Environmental Impact Report

Review Authority:
☐ Staff ☐ HRC
☐ ZA ☐ PC
☐ SPRC ☑ CC
☐ ARB ☐ _____

Active Permits:
☐ Active Planning Permit
☐ Active Building Permit
☐ Active Code Violation
Permit #: _____

Overlay Zones:
☐ Butterfly Zone
☑ Area of Special Biological Significance (ASBS)
☐ Environmentally Sensitive Habitat Area (ESHA)

Property Information
Lot: Parcel 2
Block: Vol. 23, Par Pg 48
Tract: —
ZC: C-1-T
GP: Downtown Comm.
Lot Size: .78 acres hotel 33,877 sf

☐ Historic Resources Inventory ☐ Archaeologically Sensitive Area ☐ CDP Appeal Jurisdiction

Staff Use Only:
Received by: AH
Assigned to: AH

Application # AP/UP Amend.

INDEMNIFICATION CONDITION

In consideration for City review and approval of application in this matter, the Owner/Applicant shall indemnify, defend, protect and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnitees"), using counsel approved in writing by the City, from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements which may accrue against Indemnitees by reason of the City's processing, approval or denial of the request and application in this matter. Indemnification shall include, but shall not be limited to any action, or proceeding brought to attack, set aside, void, annul, limit, or inhibit the approval of the application referenced above, and shall expressly include causes of action under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), or the CA Coastal Act.

The obligation to indemnify shall include, but not be limited to, all costs relating to preparing administrative records, investigations, responses to discovery, retention of experts, and other costs, including attorney's fees or obligations related to this matter, including actions brought by the Owner/Applicant and also extend to any expense incurred in establishing the City's right to indemnification. City expenses shall be paid by Owner/Applicant upon City request notwithstanding final disposition of the matter has not yet occurred. If the City is later determined to not be entitled to indemnification, the City shall repay amounts so advanced.

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Owner/Applicant represents it (and any subsidiary) is (a) duly formed and organized, (b) validly existing and in good standing under state law, and (c) has all necessary power to execute and deliver this document and perform its obligations. Owner/Applicant also represents it is authorized to enter into this agreement by all requisite partnership, corporate or other action, and its terms are a valid and legally binding obligation. Neither execution nor delivery of this document nor performance of its obligations will violate any law or provision of any agreement, articles of incorporation, by-laws or other organizational or governing documents relating to Owner/Applicant, nor conflict with any court order relating to Owner/Applicant.

Applicant Signature: Robert Jeal WEST RIVER HOTELS, LLC **Date:** 4-11-21

Owner Signature (Required): _____ **Date:** _____

Application # AP/UP Amend.

INDEMNIFICATION CONDITION

In consideration for City review and approval of application in this matter, the Owner/Applicant shall indemnify, defend, protect and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnitees"), using counsel approved in writing by the City, from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements which may accrue against Indemnitees by reason of the City's processing, approval or denial of the request and application in this matter. Indemnification shall include, but shall not be limited to any action, or proceeding brought to attack, set aside, void, annul, limit, or inhibit the approval of the application referenced above, and shall expressly include causes of action under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), or the CA Coastal Act.

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Applicant Signature: Robert Jacobs WEST RIVER HOTELS, LLC **Date:** 11-11-21

Owner Signature (Required): [signature] **Date:** 12/9/21

CITY OF PACIFIC GROVE

Community Development Department – Planning Division
300 Forest Avenue, Pacific Grove, CA 93950
Tel: 831.648.3190 • Fax: 831.648.3184 • www.cityofpacificgrove.org

Application # AP/UP Amend.

Planning Permit Fee Calculation

Permit	Select	Fee
Architectural Permit – Single Family	☐	$3,184
Administrative Architectural Permit	☐	$1,533
Architectural Design Change	☐	$1,533
Counter Review & Determination – no new square footage	☐	$221
Counter Review & Determination – new square footage	☐	$894
Initial Historic Screening	☐	$471
Sign Permit	☐	$2,339
Administrative Sign Permit	☐	$894
Use Permit and Amendments – Single Family	☐	$1,911
Major Administrative Use Permit	☐	$1,252
Minor Administrative Use Permit	☐	$1,235
Variance and Amendment	☐	$2,659
Coastal Development Permit (base fee for single-family <1,500 sf; see adopted fee schedule for additional permit fees)	☐	$2,244
CDP Waiver/Admin. CDP	☐	$2,244
Historic Preservation Permit	☐	$1,811
Initial Study (ND/MND)	☐	$6,429
Tree Permit with Development	☐	$284
Appeal	☐	25% of base permit fee or $1,090 whichever is greater plus noticing costs
Other Commercial Use Permit Amendments	☑	$3,117

Additional Fees

General Plan Update Fee	5% of Permit Fee	☑	$155.85
CEQA Exemption Fee	$290	☐	
Butterfly Buffer Zone	5% of Permit Fee	☐	
Area of Special Biological Significance	5% of Permit Fee	☑	$155.85
Environmentally Sensitive Habitat Area	15% of Permit Fee	☐	
Noticing – Mailings	$0.55 *(# of Mailings)	☐	
Noticing – Herald Ad	$364	☑	$364
Stormwater Fee	Varies	☐	
County filing fee	Varies	☑	$51.00
File maintenance fee	Varies	☑	$55.00
Other	Varies	☐	
Other	Varies	☐	

Total Fees: $3,898.70

WEST RIVER INC.
real estate

December 8, 2021

TO: **CITY OF PACIFIC GROVE**
PLANNING DEPARTMENT
C/O: ALYSON HUNTER, PLANNING DIRECTOR

FROM: **ROBERT LEACH**
WEST RIVER HOTELS, LLC

RE: **AP/UP AMENDMENT & MINOR MODIFICATIONS**
FOR HOTEL PACIFIC GROVE
157 GRAND AVE.

West River Hotels, developer, in conjunction with the property ownership wish to request a Use Permit Amendment and make the following "minor modifications" to the entitled hotel project. Pursuant to COA #2 The design and exterior plans for the hotel will substantially conform to the approved hotel design. The modifications are being requested to provide the community with a higher quality hotel than originally proposed and replace outdated design features that have changed over time.
In order to accomplish these goals, we are proposing the following changes:

AP/USE PERMIT

(1) Pursuant to City code 23.64.120 Height Limits – chimneys, flagpoles, clock towers,

Chimneys, cupolas, flagpoles, monuments, water tanks, clock towers and similar structures and mechanical appurtenances may be permitted in excess of height limits provided a use permit is first obtained in each case. No portion of a chimney which extends above the height limit in any R district shall have an area over 20 square feet at any cross-section, nor a height more than two feet above the applicable limit. Wireless communications facilities concealed as such structures are subject to height limits and design standards as specified in the Wireless Design Manual. [Ord. 20-001 § 2 (Exh. A), 2020; Ord. 1307 N.S. § 4, 1982; Ord. 210 N.S. § 11-141(1)(b)(1), 1952].

With the requested modifications listed below the original height limited for the four-story structure has <u>not</u> exceeded the 40' limit for the four hotel floors. However, certain mechanical appurtenances such as HVAC units, vents, safety railing, and utility structures such as emergency stairwell access, parapet screens, elevator overrun, exceed the height limit in less than 10 percent of the roof area.

It is common place in most jurisdictions to not factor appurtenances in the height calculations. City of Pacific acknowledges that common practice in their City code. We are requesting a Use Permit which is allowed pursuant to City code section 23.64.120. The change will have no impact with regards to the project EIR. (See Exhibit "A")

MINOR MODIFICATIONS:

(2) The room count has been reduced from 116 rooms to 102 rooms. By reducing the room count we are able to expand the width of the hotel rooms from 12' to 13'9" which is a modern-day minimum standard for upscale and luxury hotels. The change will reduce the overall impacts of the project per the EIR. (See Exhibit B)

(3) The ceiling heights will be changed from 8' to 9' still keeping the overall fourth floor ceiling height under the approved 40' limit. Again, the change represents a normal height in modern-day hotel construction and would allow the hotel to meet a 4-star or better rating. All room heights are below the 40' height limit. The change will have no impact with regards to the project EIR. (See Exhibit "C")

(4) The use of an off-site parking lot for 28-parking spaces will be eliminated and Condition of Approval #4 requiring a deed restriction on an off-site parcel shall be removed. With the use of parking lifts 100% of the required 79 parking spaces will be on-site at the hotel. Valet's will no longer need to cross streets back and forth to return vehicles to guests. The public will not be subjected to the visual of a parking lot in the middle of their shopping and dining district. The guest vehicles will no longer be subject to the weather, theft, or break-ins in an open-air parking lot. The change will reduce the overall impacts of the project per the EIR. (See Exhibit "D")

(5) Finally, Condition of Approval #12 restricts any roof top activities other than routine maintenance and repairs. The intent was to eliminate any potential noise or rowdiness which could occur if a pool and pool bar were installed on the rooftop. We would request that the condition be modified to allow two passive uses. First, the rooftop could be used for small yoga classes (6-10 guests) in the morning or at sunset. The beauty of the vista and soul reinvigoration compliments our wellness spa and is part of the experience we want to share with guests to Pacific Grove. Second, we would like permission for a small rooftop garden for our chef to grow organic herbs and plants for our restaurant. (See Exhibit "E-1" and "E-2")

The requested Use Permit and Minor Modifications have no negative impact on the existing EIR for the project and create no negative impacts for the community. In fact, by lowering the room count any impacts would be reduced including water use. With minor modifications in the room widths and heights the City of Pacific is getting a first-class hotel not an older version of a hotel/motel room. Parking lifts are contemporary and commonly used at hotels in the region like The Clement Hotel in Monterey. In return, the guests to the region get better service, weather protection for their vehicles and security.

Our goal is to build for the City of Pacific Grove and the community one of the best hotels in the region. We don't plan to build the biggest hotel, but our guestrooms and amenities will be at a 4 to 5-star standard.

Respectfully submitted,

Robert Leach
President
West River Hotel, LLC
A Subsidiary of West River Inc.

Link to the Final Environmental Impact Report for the Hotel Durell Project (SCH#2017031045) - Pacific Grove, CA (cityofpacificgrove.org)

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Jenny McAdams, Mayor Pro Tem and Amy Tomlinson, Councilmember
MEETING DATE:	February 16, 2022
SUBJECT:	City Council Salary and Health Benefits ***This item was pulled from the 9/15 agenda and continued to a future meeting once all information is received.***
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Introduce and hold first reading of an ordinance to (1) amend the salary classification schedule to modify salary ranges for City Council Member and Mayor and (2) direct a summary of a proposed ordinance be published as approved by the City Attorney.

DISCUSSION

At the October 6, 2021 City Council meeting, a discussion was convened regarding City Council Salary and Health Benefits. From that discussion, a City Council Subcommittee (the Subcommittee), comprised of Council Members McAdams and Tomlinson, was appointed to further research City Council salary and total compensation plans and return with proposals for City Council review by January 2022. Since the time of the October 6, 2021 City Council meeting, the Subcommittee has been meeting with City staff in an effort to hone its recommendations.

The result of the Subcommittee's efforts is a proposed ordinance that seeks to increase the City Council salary from $420/month to $624/month, and the Mayor salary from $700/month to $1337/month (48.6% and 91% increases, respectively). In addition, the proposed ordinance seeks to provide the City Council with the option to participate in the City's health benefit program at a City monthly contribution level tied to those received by City Department Heads (the City currently provides up to $1700.00/month plus $149.00 PEMHCA for employee + 2 dependents or more for Department Head level).

Any change to the salary and health benefits of the City Council may not take effect until following the next General Election when at least one (1) of the sitting City Council Members is up for election (November 2022). Should the City Council decide to adopt the proposed ordinance, salary increases, and health benefits may take effect following the November 2022 General Election, and may cost the City as much as an additional $13,182 for the remainder of Fiscal Year 22-23, or less, depending on the City Council's optional participation level.

OPTIONS

1. Take no action.
2. Propose alternate direction.

FINANCIAL IMPACT:

Any change to the salary and health benefits of the City Council may not take effect until following the next General Election when at least one (1) of the sitting City Council Members is up for election (November 2022). Salary increases and health benefits that may take place after the November 2022 General Election may cost the City up to an additional $13,182 for the remainder of Fiscal Year 22-23, depending on the optional City Council Member participation level. The annual cost for the change in salary and benefits is estimated to be up to $22,849, depending on the participation level.

GOAL ALIGNMENT: Not Applicable.

Attachments

City Council Salary and Health Benefit Ordinance

ORDINANCE NO. 22 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADJUSTING COMPENSATION FOR THE MAYOR AND MEMBERS OF THE CITY COUNCIL

FINDINGS

1. The City of Pacific Grove desires to provide salary and compensation to the Mayor and Members of the City Council in accordance with California law, the City Charter and Council Policy. State law provides establishment of city council salaries must be by ordinance, not resolution.

2. Article 11 of the City Charter provides: "The Mayor may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by State Law for General Law cities of comparable size to Pacific Grove."

3. Article 12 of the City Charter provides: "The Councilmembers may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by the State Law for General Law cities of comparable size to Pacific Grove."

4. The City adopted Policy No. 000-11, a Policy Governing Council Benefits, to address Council Member compensation and benefits. This Policy provides "Council has established compensation at $700.00/month for the Mayor and at $420.00/month for Council Members. (Ordinance No. 98-24)."

5. City Policy No. 000-11 further provides "In addition to salary, elected officials are eligible to participate in the State of California Public Employees' Retirement System (PERS) and, if a member of PERS, may participate in the City's medical insurance program, which is provided through the retirement systems."

6. California Government Code section 36516 allows the City Council to periodically adjust compensation for its Mayor and Members of Council, by ordinance, in an amount not to exceed five percent (5%) per year since the last salary adjustment. The Attorney General has ruled this maximum increase must be applied once, without compounding.

7. State law does not allow for automatic increases in Council Member compensation. Any increase cannot not take effect for Council Members until after one or more Council Members begins a new term of office.

8. Consistent with the City Charter, State law and Council policy, the City now desires to adjust compensation for the Mayor and for Members of the Council.

9. In enacting this Ordinance the City followed guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. Enactment of this ordinance does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an administrative activity that will not result in direct or indirect physical changes in the environment pursuant Section 15378.

ORDINANCE

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. Findings.

The Findings of the City Council set forth above are incorporated into this Ordinance as an integral part as if set forth in full.

SECTION 2. Mayor and Council Member Compensation & Benefits.

A. Compensation for the Mayor shall be set at $1337 per month.

B. Compensation for each Council Member shall be set at $624 per month.

C. The Mayor and Members of Council shall be entitled to enroll in City health and welfare plans by complying with annual open enrollment procedures. Benefits shall be set at levels allowed for City Department Heads.

D. Amounts paid by the City for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary under this section, provided the same benefits are available and paid by the city for its employees. Determination of permissible health and welfare benefits, and provisions for reimbursement, may be set or modified by resolution.

E. Amounts paid by the City to reimburse the Mayor or any Council Member for actual and necessary expenses shall not be included for purposes of determining salary pursuant to this section. Determination of permissible expenses and provisions for reimbursement may be set or modified by resolution.

F. The Mayor or any Council Member may waive any or all compensation permitted by this section.

SECTION 3. Implementation

Each City Policy shall be amended to conform to the provisions of this Ordinance. The City Manager is directed to execute all documents and to perform all other acts necessary City to implement this Ordinance.

SECTION 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any specific portion thereof.

SECTION 5. Effective Date

This Ordinance shall take effect thirty (30) days from its adoption; however, the any change to compensation or benefits provided for the Mayor or for any Council Member authorized in Section 2 shall not take effect until January 1, 2023 which date is subsequent to terms commencing for Members of the City Council elected in the General Election to be held in November 2022.

SECTION 6. Publication

The City Clerk shall certify to the adoption of this Ordinance and cause a summary of it, as approved by the City Attorney, to be published once within fifteen (15) days of adoption in a newspaper of general circulation for the City of Pacific Grove, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this _____ day of February __, 2022, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE
Mayor

ATTEST:

_____
SANDRA KANDELL
City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO
City Attorney

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CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Tori Hannah, Administrative Services Director/Assistant City Manager

MEETING DATE: February 16, 2022

SUBJECT: Annual Comprehensive Financial Report (ACFR) for the Fiscal Year Ending June 30, 2021 ***This item was continued from the January 19, 2021 meeting.***

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

- Receive the Annual Comprehensive Annual Financial Report, which includes the Auditor's Opinion on the City's financial statements, from the City's independent auditor, Chavan & Associates, LLP
- Receive the Transportation Safety and Investment Plan Account Fund (TAMC Measure X) Report, which includes the Auditor's Report by the City's independent auditor, Chavan & Associates, LLP
- Receive a status on improvements based on the auditor's recommendations that are being implemented, and provide any desired direction.

DISCUSSION

The City contracted with Chavan & Associates, LLP, a firm of licensed certified public accountants, to audit the City of Pacific Grove's financial statements for the fiscal year ending June 30, 2021. The goal of the independent audit is to provide reasonable assurance that the basic financial statements are free from material misstatement. The Independent Auditor's Report which is included on page 20 of the Annual Comprehensive Financial Report (ACFR), indicates that the financial statements are presented fairly, in all material respects, the financial position of the City. This "unmodified" opinion is the optimal opinion to receive from an external auditor. Fiscal Year 20/21, represents the twelfth consecutive year the City has earned this opinion.

In Fiscal Year 20/21, the name of the City's financial report was changed from Comprehensive Annual Financial Report (CAFR) to the (ACFR) to reflect Governmental Accounting Standards Board (GASB) Statement No. 98. This Statement is in response to an increasing awareness that the report's former acronym, when pronounced aloud, sounds the same as a derogatory term that was historically used in South Africa. The Fiscal Year 20/21 ACFR can be accessed through this link.

The Government Finance Officers Association (GFOA) of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting for the City's ACFR for

the fiscal year ended June 30, 2020. This represents the fourth year that the City has received this prestigious award. A Certificate of Achievement is valid for a period of one year only. Staff believes that the Fiscal Year 20/21 ACFR continues to meet the program requirements and the City will be submitting the attached ACFR to GFOA for consideration of another certificate.

The auditors deemed that it was unnecessary to perform a Single Audit in Fiscal Year 20/21. A Single Audit is required when the City receives $750,000 or more in federal grant funding. Due to the receipt of ARPA funds, the City will be required to complete a Single Audit in Fiscal Year 21/22.

A general overview of the audit will be provided by Sheldon Chavan, a partner of the audit firm and lead for the City. Specific topics of the presentation will include:

- Overview of City-wide financial performance
    - Governmental Funds, including the General Fund
    - Business-Type or Enterprise Funds
    - Pension and Other Post-Employment Benefit (OPEB) obligations

Addition information can be found in the ACFR, while select highlights pertaining to the General Fund and Capital Improvement Fund are listed below.

Fund Balance

- The General Fund's year-end balance increased from $9.8 million to $10 million. The $193,914 increase primarily reflects the better than anticipated revenues, net of cost-savings initiatives that were implemented due to COVID-19. The unassigned fund balance was $9.9 million or 44% of total General Fund expenditures, prior to transfers.

- The City's financial statements consolidate several minor funds with the General Fund for financial statement reporting purposes. This differs from the budgetary presentation. The budgetary General Fund Balance is $9.4 million, with approximately $567,000 attributed to minor sub-funds. This amount aligns with the General Fund beginning fund balance that was referenced on the Fiscal Year 21/22 budget amendment ordinances. The separate unassigned General Fund balance is approximately 41.9% of the General Fund expenditures, prior to transfers.

- The unassigned General Fund balance, from both a budgetary and financial statement perspective is above the City's policy level, which targets a minimum unassigned fund balance at 35% of operating expenditures and debt service.

- The Capital Improvement Fund's year-end balance was $220,023. This amount represents funds that were earmarked for capital projects that were carried forward into the next fiscal year.

Revenues and Expenditures

- General Fund revenues for this fiscal year were $23.4 million. This represents an increase in revenues of $11,421 million when compared to the prior year. This was largely attributed to reductions in transient occupancy taxes, net of increased performance in various other tax categories, as well as Charges for Services.

- General Fund expenses for this fiscal year were $22.5 million, prior to transfers. This was a decrease of $397,315 when compared to the prior year expenditures. This difference is primarily due to cost-containment efforts to assist with revenue shortfalls; and the carry-forward of executed contracts and purchase orders.

- The net general fund transfers for Fiscal Year 20/21 was $628,881. This includes transfers-out of approximately $500,000 to support capital improvements, $210,000 for emergency

communication services, and $50,000 to support the City's Small Business Grant Program. This was offset by transfers from the Coronavirus Relief or CARES Act Funds to the General Fund in the amount of $131,119 to cover pandemic-related expenditures.

The City's independent auditor provides a Management Letter which includes updates on prior year audit recommendations. These recommendations included conducting a physical inventory of capital assets and performing TOT audits. Staff initiated the process of conducting a physical inventory of capital assets in Fiscal Year 19/20; however due to COVID-19 and limited resources, additional time is needed. The City also entered into an agreement with HdL Companies to perform transient occupancy tax audits. The audit program was initiated in this fiscal year. Nine lodging establishments were selected for the first audit cycle.

A copy of the Transportation Safety and Investment Plan Account Fund (TAMC - Measure X), which includes the Independent Auditors Report is attached for reference. The independent auditor's statement that confirms the City is compliant with the Measure X Maintenance of Effort requirements is included on Page 6 of the TAMC Audit Report.

OPTIONS

- Receive Report

FINANCIAL IMPACT:

There is no fiscal impact associated with receiving this report.

GOAL ALIGNMENT: Financial Stability: Develop a strategic plan to better address current and future City expenditure and revenue needs.

Attachments

TAMC Audit Report
Powerpoint Presentation

CITY OF PACIFIC GROVE

TRANSPORTATION SAFETY AND INVESTMENT PLAN ACCOUNT FUND

WITH INDEPENDENT AUDITORS' REPORT

JUNE 30, 2021

* * *

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FINANCIAL SECTION

INDEPENDENT AUDITORS' REPORT

City Council
City of Pacific Grove
Pacific Grove, California

Report on the Financial Statements
We have audited the accompanying financial statements of the City of Pacific Grove Transportation Safety and Investment Plan Account Fund, as of and for the fiscal year ended June 30, 2021, and the related notes to the financial statements, as listed in the table of contents.

Management's Responsibility for the Financial Statements
Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility
Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards contained in *Government Auditing Standards,* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion
In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the City's Transportation Safety and Investment Plan Account Fund, as of June 30, 2021, and the changes in financial position thereof for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter
As discussed in Note 1, the financial statements present only the Transportation Safety and Investment Plan Account Fund and do not purport to, and do not, present fairly the financial position of the City of Pacific Grove, as of June 30, 2021, the changes in its financial position, or, where applicable, its cash flows for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Other Matters
Other Information
Our audit was conducted for the purpose of forming an opinion on the Transportation Safety and Investment Plan Account Fund financial statements that collectively comprise the City of Pacific Grove Transportation Safety and Investment Plan Account Fund financial statements. The accompanying supplemental information – Schedule of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual on page 8 is presented for purposes of additional analysis and is not a required part of the basic financial statements. The supplemental schedule is the responsibility of management and was derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the City's Transportation Safety and Investment Plan Account Fund financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the supplemental schedule – Schedule of Revenues, Expenditures and Changes in Fund Balance – Budget and Actual is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by *Government Auditing Standards*
In accordance with *Government Auditing Standards*, we have also issued our report dated December 14, 2021, on our consideration of the City of Pacific Grove Traffic Safety and Investment Plan Account Fund's internal control over financial reporting and on our tests of its compliance with the requirements described in the TAMC's Ordinance No. 2016-01 and in the Agreement between TAMC and the City and other matters for the fiscal year ended June 30, 2021. The purpose of that report is solely to report our opinion on compliance and to describe the scope of our testing of internal control over financial reporting and the results of that testing, and not to provide an opinion on the effectiveness of the City of Pacific Grove Traffic Safety and Investment Plan Account Fund's internal control over financial reporting. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City of Pacific Grove Traffic Safety and Investment Plan Account Fund's compliance.

C & A LLP

December 14, 2021
Morgan Hill, California

ASSETS	
Cash and investments	$ 805,738
Taxes receivable	191,188
Total assets	$ 996,926
LIABILITIES AND FUND BALANCE	
Liabilities:	
Accounts payable	$ 1,188
Fund Balance:	
Restricted	995,738
Total Liabilities and Fund balance	$ 996,926

The accompanying notes are an integral part of these financial statements

REVENUES		
Transportation Safety and Investment Plan Account revenue	$	657,027
Investment earnings		(114)
Total Revenues		656,913
EXPENDITURES		
Capital outlay		548,796
Total Expenditures		548,796
Net Change in Fund Balance		108,117
Fund Balance Beginning		887,621
Fund Balance Ending	$	995,738

The accompanying notes are an integral part of these financial statements

NOTE 1 – SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting
The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. The Transportation Safety and Investment Plan Account Fund of the City of Pacific Grove (the City) is a governmental fund type. Governmental funds are accounted for using a current financial resources measurement focus. The application of this measurement focus provides that, in general, only current assets and current liabilities are present on the balance sheet. Operating statements of these funds present revenues and expenditures.

The modified accrual basis of accounting is used for the Transportation Safety and Investment Plan Account Fund. Under the modified accrual basis of accounting, revenues are recognized when they become susceptible to accrual (i.e., both measurable and available). Measurable means that the amount of the transaction can be determined. Available means the funds are collectible within the current period or soon enough thereafter to be used to pay liabilities of the current period. For this purpose, the City considers revenues to be available if they are collected within 60 days of the end of the current fiscal period.

Expenditures of governmental funds are generally recognized when the related fund liability is incurred.

Reporting Entity
The Transportation Safety and Investment Plan Account Fund from the Transportation Agency for Monterey County was approved on November 8, 2016. The revenue from the sales tax measure will be used to fund transportation safety and mobility projects in Monterey County. Expenditures are restricted to road improvements, pothole repairs, street and road maintenance, traffic deduction and regional safety, mobility and walkability.

The Transportation Safety and Investment Plan Fund financial statements and related accounting policies of the City conform with generally accepted accounting principles applicable to governments in the United States of America. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles.

The financial statements present only the Transportation Safety and Investment Plan Account Fund and do not purport to, and do not present, the City's financial position and changes in financial position. The City of Pacific Grove's basic financial statements are available from the Finance Department at City's address and website.

NOTE 2 – CASH DEPOSITS

The City follows the practice of pooling cash and investments for all funds (including the Transportation Safety and Investment Plan Account Fund) under its direct daily control. Interest earned on pooled cash and investments is allocated periodically to the various funds based on average cash balances. Detailed disclosure regarding the City's investments of cash is included in the notes to City's basic financial statements.

NOTE 3 – MAINTENANCE OF EFFORT

The Measure X Master Programs Funding Agreement between the City of Pacific Grove and the Transportation Agency for Monterey County, as amended, requires that the City must expend each fiscal year from its general fund for street and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151 ("Maintenance of Effort"). This baseline amount will be indexed annually to the Engineering News Record construction index.

The following eligible expenditures were made:

Fiscal year ended June 30:	
2010	$326,756
2011	$396,862
2012	$720,604
Total	$1,444,222
Three-year average	$481,407
Fiscal year ended June 30, 2017	$912,274
Maintenance of effort baseline	$912,274
Engineering News Record construction index FY 2019/20	1.37%
Engineering News Record construction index FY 2020/21	1.27%
Index-adjusted maintenance of effort requirement	$936,458
Current year eligible expenditures	$1,388,634
Compliant (Yes or No)	Yes

Total expenditures from the general fund for street and highway purposes for the fiscal year ended June 30, 2021 was $1,388,634. The City was in compliance with the Maintenance of Effort requirement of the Measure X Master Programs Funding Agreement between the City of Pacific Grove and the Transportation Agency for Monterey County.

SUPPLEMENTARY INFORMATION

	Budgeted Amounts		Actual Amounts	Variance with Final Budget Positive (Negative)
	Original	Final		
REVENUES				
Transportation Safety and Investment Plan Account Revenue	$ 552,500	$ 568,593	$ 657,027	$ 88,434
Interest	6,000	4,724	(114)	(4,838)
Total Revenues	558,500	573,317	656,913	83,596
EXPENDITURES				
Capital outlay	676,530	1,457,282	548,796	908,486
Total Expenditures	676,530	1,457,282	548,796	908,486
Net Change in Fund Balance	(118,030)	(883,965)	108,117	992,082
Fund Balance Beginning	887,621	887,621	887,621	-
Fund Balance Ending	$ 769,591	$ 3,656	$ 995,738	$ 992,082

The City employs budget control by object codes and by individual appropriation accounts. Budgets are prepared on the modified accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America as prescribed by the Governmental Accounting Standards Board. The budgets are revised during the year by the City Council to provide for revised priorities. Expenditures cannot legally exceed appropriations by major object code. The originally adopted and final revised budgets for the Measure X Special Revenue Fund are presented as Required Supplementary Information. The basis of budgeting is the same as GAAP.

OTHER INDEPENDENT AUDITORS REPORTS

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENT PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

City Council
City of Pacific Grove
Pacific Grove, California

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the Transportation Safety and Investment Plan Account Fund (Measure X Fund) of City of Pacific Grove (the "City") as of and for the year ended June 30, 2021, and the related notes to the financial statements, which collectively comprise City of Pacific Grove's Measure X Fund financial statements, and have issued our report thereon dated December 14, 2021.

Internal Control over Financial Reporting
In planning and performing our audit, we considered the City of Pacific Grove's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City of Pacific Grove's internal control. Accordingly, we do not express an opinion on the effectiveness of the City of Pacific Grove's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees in the normal course of performing their assigned functions, to prevent, or detect and correct misstatement on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the City's financial statement will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters
As part of obtaining reasonable assurance about whether the City of Pacific Grove's Measure X Fund financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

C & A LLP

December 14, 2021
Morgan Hill, California

INDEPENDENT AUDITORS' REPORT ON COMPLIANCE WITH TAMC ORDINANCE NO. 2016-01 AND THE MEASURE X MASTER PROGRAMS FUNDING AGREEMENT

City Council
City of Pacific Grove
Pacific Grove, California

We have audited the City of Pacific Grove's (the "City") Transportation Safety and Investment Plan Account Fund's (the City's Measure X Fund) compliance with the types of compliance requirements described in the Transportation Agency's for Monterey County's (TAMC) Ordinance No. 2016-01 and the Measure X Master Programs Funding Agreement (the Agreement) between TAMC and the City, applicable for the fiscal year ended June 30, 2021.

Management's Responsibility
Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to the Transportation Safety and Investment Plan Account Fund.

Auditor's Responsibility
Our responsibility is to express an opinion on the City's compliance based on our audit in accordance with the compliance requirements described in the Transportation Agency for Monterey County's (TAMC) Ordinance No. 2016-01 and in the Measure X Master Programs Funding Agreement (the Agreement) between TAMC and the City. The Measure X Master Programs Funding Agreement requires that the independent auditor shall perform at least the following tasks: (1) determine whether the recipient expended all Measure X funds received in compliance with Measure X, the Measure X Investment Plan, and the Policies & Project Descriptions, as they may be adopted or amended by TAMC from time to time, and the Agreement, (2) determine whether the Measure X revenues received and expended were accounted for and tracked in its own separate budget and fund titled "Transportation Safety & Investment Plan Account" and were not be comingled with any other funds and that the accounting system provides adequate internal controls and audit trails to facilitate an annual compliance audit for each fund type and the respective usage and application of said funds, and (3) determine whether the City met the Maintenance of Effort requirements imposed by Measure X and State law. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the compliance requirements referred to above that could have a direct and material effect on the state laws and regulations applicable to the City occurred. An audit includes examining, on a test basis, evidence about the City's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance. However, our audit does not provide a legal determination of the City's compliance.

Opinion on Compliance with the TAMC Ordinance No. 2016-01
In our opinion, the funds allocated to and received by the City's Measure X Fund, complied, in all material respects, with the compliance requirements referred to above that are applicable in accordance to the compliance requirements described in the Transportation Agency for Monterey County's (TAMC) Ordinance No. 2016-01 and in the Measure X Master Programs Funding Agreement between TAMC and the City for the fiscal year ended June 30, 2021.

Purpose of this Report

The purpose of this report is solely to report our opinion on compliance with the TAMC Ordinance No. 2016-01 and to describe the scope of our testing over compliance and the results of that testing. This report is intended solely for the information and use of City Council, management of the Transportation Agency for Monterey County and for filing with the appropriate regulatory agencies and is not intended to be and should not be used by anyone other than these specified parties.

C & A LLP

December 14, 2021
Morgan Hill, California

FINDINGS AND RECOMMENDATIONS

None reported.

None reported.

City of Pacific Grove

JUNE 30, 2021 AUDIT RESULTS

Chavan and Associates, llp
Certified Public Accountants

Audit Standards

- **AICPA's Statements on Auditing Standards**
- **GAO/GAGAS**
  - **We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States**



Audit Objective/Responsibilities

Objective

- To express an opinion on the financial statements based on our audit.

Responsibilities

- Plan and perform the audit to obtain ***reasonable assurance*** about whether the financial statements are free from material misstatement.



Audit Objective/Responsibilities

Responsibilities Contiued

- An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements.
- The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error.
- In making those risk assessments, the auditor considers internal control relevant to the City's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but ***not for the purpose of expressing an opinion on the effectiveness of the City's internal control***.



Audit Process

1. Audit Planning & Preparation
2. Audit Execution
3. Audit Reporting
4. Follow-up

Statement of Net Position

	Governmental Activities		Business-Type Activities	
	2021	2020	2021	2020
Assets				
Current and other assets	$ 30,015,890	$ 32,762,848	$ 6,085,460	$ 9,369,126
Capital assets	38,024,265	32,694,311	29,355,241	25,598,202
Total Assets	$ 68,040,155	$ 65,457,159	$ 35,440,701	$ 34,967,328
Deferred Outflows of Resources	$ 9,279,898	$ 8,420,059	$ 362,466	$ 352,196
Liabilities				
Current and other liabilities	$ 12,729,323	$ 13,998,603	$ 622,052	$ 1,057,239
Noncurrent liabilities	59,315,063	56,608,294	9,334,463	9,597,479
Total Liabilities	$ 72,044,386	$ 70,606,897	$ 9,956,515	$ 10,654,718
Deferred Inflows of Resources	$ 2,331,427	$ 3,766,328	$ 91,975	$ 150,217
Net Position				
Net investment in capital assets	$ 37,925,984	$ 32,572,615	$ 21,623,880	$ 17,471,699
Restricted	7,628,868	8,377,320	296,448	296,448
Unrestricted	(42,610,612)	(41,445,942)	3,834,349	6,746,442
Total Net Position	$ 2,944,240	$ (496,007)	$ 25,754,677	$ 24,514,589

Pensions

	Fiscal Year						
	2015	2016	2017	2018	2019	2020	2021
Proportion of Net Pension Liability	0.3730%	0.3824%	0.3994%	0.3977%	0.4118%	0.4169%	0.4226%
Proportionate Share of Net Pension Liability	$23,123,343	$26,535,640	$34,564,209	$39,440,944	$39,679,281	$42,724,135	$45,982,402
Covered Payroll	$ 5,543,503	$ 5,714,952	$ 6,248,635	$ 5,873,761	$ 7,328,064	$ 8,029,195	$ 8,120,599
Net Pension Liability as a % of Covered Payroll	**417.13%**	**464.32%**	**553.15%**	**671.48%**	**541.47%**	**532.11%**	**566.24%**
Plan's Fiduciary Net Position as a % of the TPL	**81.99%**	**78.40%**	**74.06%**	**73.31%**	**75.26%**	**75.26%**	**75.10%**

OPEB

	2018	2019	2020	2021
Total OPEB liability				
Service cost	$ 194,311	$ 168,509	$ 162,418	$ 227,721
Interest	119,338	139,246	150,001	149,231
Administrative expense	-	-	1,112	-
Changes of benefit terms	-	-	(10,980)	-
Differences between expected and actual experience	-	-	7,390	-
Changes of assumptions	(415,636)	(152,945)	172,969	814,841
Benefit payments	(171,120)	(168,800)	(156,858)	(162,898)
Net change in Total OPEB Liability	(273,107)	(13,990)	326,052	1,028,895
Total OPEB Liability - beginning	4,078,542	3,805,435	3,791,445	4,117,497
Total OPEB Liability - ending	$ 3,805,435	$ 3,791,445	$ 4,117,497	$ 5,146,392

Audit Results

No Exceptions in Audit Opinions

No Material Weaknesses

No Disagreements with Management

No Significant Passed on Adjustments



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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Joe Amelio, Councilmember, Luke Coletti, Councilmember, Chaps Poduri, Councilmember
MEETING DATE:	February 16, 2022
SUBJECT:	Cannabis Outreach Subcommittee Update
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION
Receive report.

DISCUSSION
At its September 16, 2020 meeting, the City Council adopted Ordinance 20-022, which authorized the sale of Cannabis within Pacific Grove. The ordinance was immediately challenged by a citizens' referendum entitled "Referendum Against An Ordinance Passed by the City Council, Ordinance 20-022."

At its December 16, 2020 meeting, the City Council received a status report indicating the referendum failed by 3 out of the required 1,069 signatures necessary to qualify for the ballot. Therefore, Ordinance 20-022 did not ultimately require a vote of the people to become effective.

At its January 20, 2021 meeting, the City Council adopted Ordinance 21-003, which repealed Ordinance 20-022, thus repealing authorization for the sale of Cannabis within Pacific Grove.

At its June 16, 2021 meeting, the City Council formed a Cannabis Outreach Subcommittee, comprised of Councilmembers Amelio, Coletti, and Poduri, to provide input and direction to the City Manager for commencing a Cannabis outreach program.

The Subcommittee met twice and concluded that instead of pursuing public outreach for another Council ordinance (subject to referendum), Pacific Grove voters should first decide on whether a single recreational Cannabis dispensary is to be allowed. At its December 1, 2021 meeting, the City Council directed staff to return with two ballot measures for the November 8, 2022 General Election, asking voters to approve: (a) a recreational Cannabis dispensary and (b) a Cannabis tax.

The Subcommittee's six-month term expired on December 16, 2021. The Council may wish to form another Cannabis Outreach Subcommittee once the results of the November 8, 2022 election are certified.

OPTIONS

1. Do nothing.
2. Have staff provide a timeline for the November 8, 2022, ballot measures

FINANCIAL IMPACT:

There is no fiscal impact in receiving the report.

GOAL ALIGNMENT: Not Applicable.

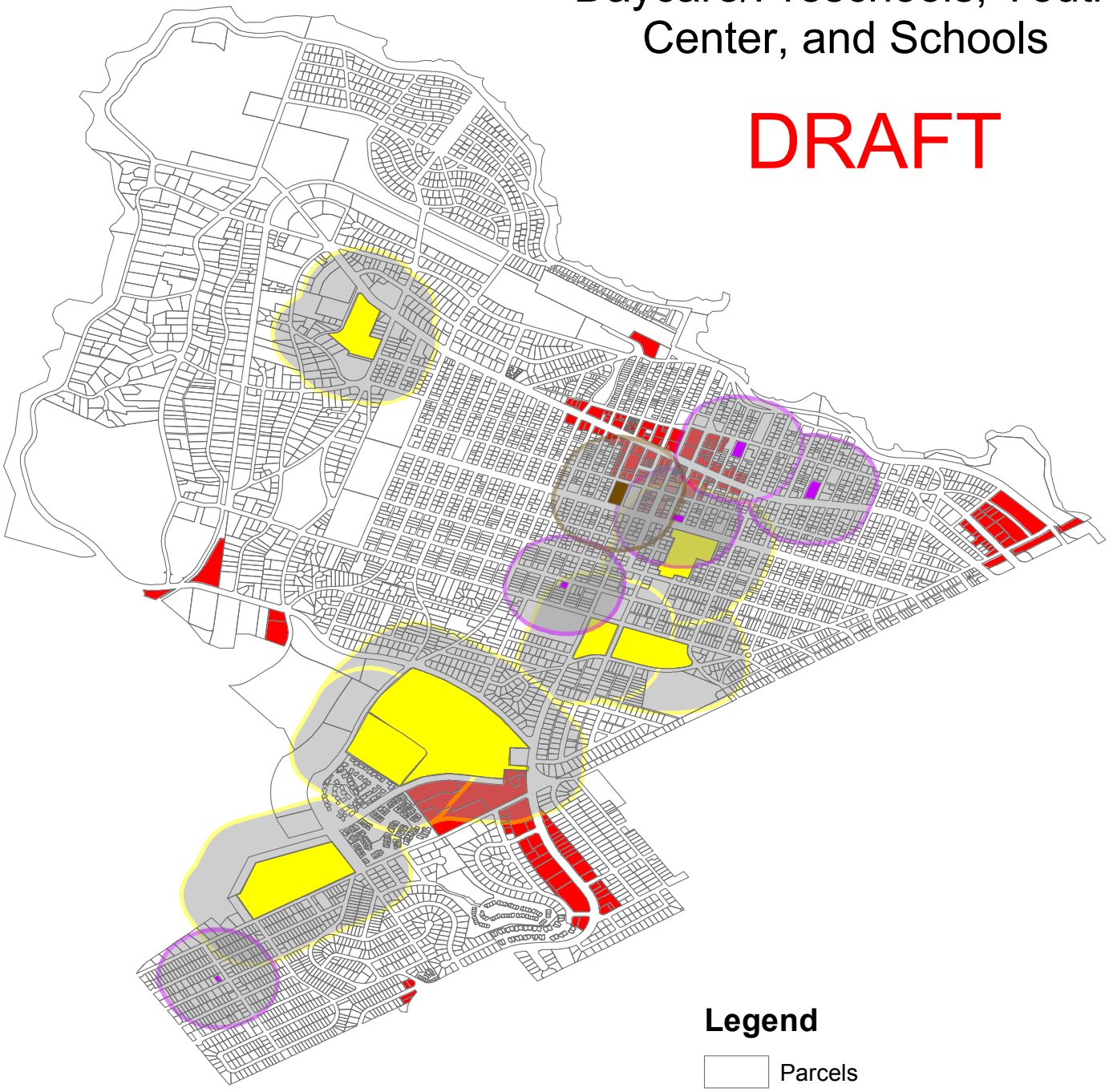
Attachments

Att 1 Map re 600 ft Radius

Att 2 Cal Cities Regs

Map showing 600-foot radius around existing licensed Daycare/Preschools, Youth Center, and Schools

DRAFT



Legend

- Parcels
- Pacific Grove Youth Center
- Pacific Grove Youth Center Buffer 600'
- Day Cares
- Day Care Buffer 600'
- Schools
- School Buffer 600'
- Commercial Zone

0 1,200 Feet

LEAGUE OF CALIFORNIA CITIES

Seed to Sale:

A Guide to Regulating Cannabis in California Cities

SEPTEMBER 2021



The League of California Cities gratefully acknowledges the contributions of the 2019–2021 Cannabis Regulation Committee members for their hard work and dedication in drafting this Guide:

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PART 1 | Introduction and Overview

California, as recognized by the United States Supreme Court, has been a pioneer in cannabis regulation.[1] In 1913, California was one of the first states to prohibit the sale and possession of cannabis.[2] At the time, the legislation referred to the drug as "loco-weed."[3] Eighty-three years later in 1996, California became the first state to authorize the use of "marijuana" for medicinal purposes.[4] Today, the adult use of cannabis for non-medicinal purposes has been decriminalized in California. The State licenses the commercial cannabis businesses, and the industry is regulated from seed to sale. In 2020, it is estimated that cannabis sales in the State hit $4.4 billion.

In that same pioneering spirit, the Cannabis Regulation Committee (Committee) of the League of California Cities City Attorneys Department is pleased to present the first edition of Seed to Sale: A Guide to Regulating Cannabis in California Cities (Guide), which is intended to assist municipal attorneys in addressing legal issues related to cannabis regulation. Cannabis issues are particularly challenging for local government due to the lack of legal precedent and constantly evolving laws. For this reason, it is important that municipal attorneys stay abreast of current cases and precedent from other legal fields that can be applied to advise clients and offer solutions as cannabis issues arise. To that end, the Committee offers this Guide as a comprehensive and practical compilation of city attorney experience from throughout California.



The Guide is a starting point for approaching cannabis regulation questions. It is a useful tool to learn about the historical development of cannabis law, understand its current status, and consider practical approaches and tips to handle regulation issues. After this introduction, Part Two provides a historical overview of cannabis law and the regulatory framework at the federal and state level. Part Three presents the Committee's perspective on regulating cannabis in cities. Part Four examines cannabis-related finance and taxation. Finally, Part Five outlines enforcement tools available for cities.

The Guide will help municipal attorneys better understand the intersectionality of cannabis issues with other relevant fields such as land use, environmental law, taxation, and public health and safety, among others. Equally important, the Guide can be used as a reference to analyze regulation options at the administrative, civil, and criminal levels, to achieve particular goals within a city.

1 *Gonzales v. Raich* (2005) 545 U.S. 1, 5.
2 *Ibid.*
3 Stats. 1913, ch. 342, §6 ("The possession of a pipe or pipes used for smoking ... extracts, tinctures, or other narcotic preparations of hemp, or loco-weed, their preparations or compounds... is hereby made a misdemeanor ....").
4 *Gonzales v. Raich, supra,* 545 U.S. at p. 5; Cal. Health and Saf. Code, § 11362.5.

Before you get started, we have one editorial note: Throughout history, the plant with the scientific name of Cannabis Sativa L. has been given many nicknames, some intentionally threatening, others simply amusing. In modern law, the terms "cannabis" and "marijuana" are most widely used, and are often interchangeable. For purposes of this Guide, "cannabis" is the preferred terminology. First, the term cannabis is currently preferred in California law. Second, it is now widely understood that the term "marijuana" has a negative, xenophobic, and racist connotation, stemming back to anti-immigration sentiments beginning in the 20th century. Due to the negative connotation of the word marijuana, the term "cannabis" will be used in this Guide, unless there is a specific reference otherwise (e.g. in the name of a legislative act, or in a quotation or statute).

We hope you find the publication useful in your city's involvement with cannabis issues. The League of California Cities intends to update this guide periodically to reflect the latest developments in cannabis regulation.

Cannabis Regulation Committee
League of California Cities
City Attorneys Department
September 2021

PART 2 | Regulatory Framework

I. EARLY FEDERAL REGULATION

The Federal Government first attempted to regulate the national drug market in 1906 by imposing labeling regulations on medications and prohibiting the manufacture or shipment of any adulterated or misbranded drug in interstate commerce.[5] Subsequent federal drug regulations were generally found in revenue laws, like the Harrison Narcotics Act of 1914, which required producers, distributors, and purchasers of narcotics—specifically cocaine and opiates—to register with the Federal Government, pay taxes, and comply with prescription regulations.[6]

In 1937, when accounts arose of the addictive qualities and physiological effects of "marihuana," the Federal Government enacted the Marihuana Tax Act.[7] Like the Harrison Act, the Marihuana Tax Act did not prohibit cannabis outright, but required those who import, produce, sell, or deal in the drug to register with the government, pay prohibitively expensive taxes, and comply with burdensome administrative requirements for prescriptions.[8] As a result, even though the Marihuana Tax Act did not declare the drug illegal, it had the practical effect of curtailing the cannabis trade.[9]



II. FEDERAL CONTROLLED SUBSTANCES ACT (CSA)

In the 1970s, federal drug policy underwent a significant transformation. Shortly after taking office, President Nixon declared a national "war on drugs" and Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970.[10] The legislation consolidated various drug laws on the books into a comprehensive statute, provided uniform regulation to prevent diversion into illegal channels, and strengthened law enforcement tools against illegal drug trafficking.[11]

Title II of the Comprehensive Drug Abuse Prevention and Control Act is the Controlled Substances Act (CSA). The CSA categorizes all controlled substances into five schedules based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body.[12] Cannabis, or "marihuana" as it is

5 *Gonzales v. Raich* (2005) 545 U.S. 1, 10-11.
6 *Ibid.*
7 *Id.* at p. 11.
8 *Ibid.*
9 *Ibid.*
10 21 U.S.C. § 801 et seq.; *Gonzales v. Raich, supra,* 545 U.S. at p. 10.
11 *Gonzales v. Raich, supra*, 545 U.S. at p. 10.
12 21 U.S.C. §§ 811, 812.

termed in the CSA, is classified as a Schedule I drug, which means the federal government views cannabis as having high potential for abuse, no accepted medical use, and not safe for use in medically supervised treatment.[13] Because the CSA classifies cannabis as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of cannabis is a federal criminal offense, with the sole exception being its use as part of a preapproved research study.[14]

Despite considerable efforts to change the policy, cannabis remains a Schedule I drug.[15] Moreover, the CSA does not recognize a medical necessity defense to its cannabis prohibitions.[16] Accordingly, the manufacture, distribution, or possession of cannabis, even for medicinal purposes, is prohibited under federal law.

The CSA remains enforceable in California, even though these cannabis activities are now allowed by State law. The courts have found that the CSA's cannabis regulations are a valid exercise of Congress' authority under the Commerce Clause, even as applied to purely local cannabis activities allowed by State law.[17] Courts have also upheld enforcement of the CSA's cannabis regulations against a variety of other legal challenges.[18]

At the same time, the CSA explicitly contemplates that states can adopt their own controlled substance regulations, so long as there is not "a positive conflict between [the CSA]... and that state law so that the two cannot consistently stand together."[19] Indeed, several courts have held that the CSA does not preempt recent California laws allowing cannabis activity.[20] Notably, one court has held that the CSA does not preempt a municipal ordinance requiring medicinal cannabis dispensaries[21] to obtain permits.[22] Another court ruled that, because medicinal cannabis use remains illegal under federal law, the Americans with Disabilities Act of 1990 (ADA) does not protect against discrimination on the basis of medicinal cannabis use, even if that use is in accordance with state law explicitly authorizing such use.[23]

Nevertheless, for many years, the federal government has not been prosecuting cannabis crimes in states where cannabis is legal and the activity is done in accordance with state law. This is

13 21 U.S.C. §§ 812, subd. (b)(1) and (c).

14 *Gonzales v. Raich*, *supra,* 545 U.S. at p. 14, citing 21 U.S.C. §§ 823(f), 841(a)(1), 844(a); see also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 490.

15 *Gonzales v. Raich*, *supra,* 545 U.S. at p. 15; see *Americans for Safe Access v Drug Enforcement Admin.* (D.C. Cir. 2013) 706 F.3d 438, 453 (denial of petition to review the DEA's decision to maintain cannabis as a Schedule I drug.).

16 *United States v. Oakland Cannabis Buyers' Coop., supra,* 532 U.S. 483, 491; but see *Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 858-860.

17 *Gonzales v. Raich, supra,* 545 U.S. at p. 29.

18 *Oklevueha Native Amer. Church of Haw., Inc. v. Lynch* (9th Cir. 2016) 828 F.3d 1012 (Religious Freedom Restoration Act, American Indian Religious Freedom Act, Free Exercise Clause, Equal Protection Clause). See also *Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850 [Substantive Due Process, Tenth Amendment]; *Marin Alliance for Medical Marijuana v. Holder* (N.D. Cal. 2011) 866 F.Supp.2d 1142 (Substantive Due Process, Tenth Amendment, Equal Protection, Commerce Clause); *Sacramento Nonprofit Collective v. Holder* (E.D. Cal. 2012) 855 F.Supp.2d 1100 (Commerce Clause, Tenth Amendment, Ninth Amendment, Equal Protection).

19 21 U.S.C. § 903; *Gonzales v. Oregon* (2006) 546 U.S. 243, 251.

20 *Kirby v. City. of Fresno* (2015) 242 Cal.App.4th 940, 963 (no preemption of MMPA's prohibition of arrests); *Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal.App.4th 734, 756 (no preemption of CUA's or MMPA's marijuana decriminalization provisions); *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 818 (no preemption of MMPA's identification card program); *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355 (no preemption of right to return of impounded marijuana under CUA or MMPA). But see *Conejo Wellness Ctr., Inc. v City of Agoura Hills* (2013) 214 Cal.App.4th 1534, 1558, fn. 5 (authorization of medical marijuana activity is likely subject to federal preemption).

21 It should be noted that as of the publication of this Guide, the term "storefront retail" is a more modern term for what used to be known as "dispensary."

22 *City of Palm Springs v Luna Crest, Inc.* (2016) 245 Cal.App.4th 879, 884-886.

23 *James v City of Costa Mesa* (9th Cir 2012) 700 F3d 394.

due in large part to: (1) Department of Justice (DOJ) memoranda—most notably the "Cole Memo"[24]—providing policy guidance to federal prosecutors and law enforcement on where to focus enforcement efforts; and (2) the "Rohrabacher-Farr Amendment."

1. The Cole Memo told federal prosecutors in states that had legalized cannabis they should use their prosecutorial discretion to focus not on businesses that comply with state regulations, but on illicit enterprises that create harms, like operating with dangerous drug cartels, use of firearms, and distribution to minors. The assumed directive from this memo was that, if a state has legalized cannabis and put in place its own regulatory system, the DOJ should leave those operating within that system alone.

2. The federal budget also contains a provision known as the Rohrabacher-Farr[25] Amendment, which prevents the Justice Department from using any resources to prosecute state-compliant medicinal cannabis operations in states that have legalized medicinal cannabis. In 2016, the Ninth Circuit Court of Appeal confirmed that while this amendment is in place the DOJ could not spend federal funds to prosecute individuals engaged in conduct permitted by state medicinal cannabis laws.[26] This amendment is a restriction on the use of federal funds and does not provide immunity from prosecution for federal drug crimes.[27]

The Rohrabacher-Farr amendment must be renewed annually with the federal budget. Historically, the Rohrabacher-Farr amendment has received bi-partisan support for its inclusion in the federal budget.

In 2018, then-Attorney General Jeff Sessions released his own guidance memorandum (Sessions Memo) on the subject of federal prosecution of cannabis activity and in doing so rescinded the Cole Memo.[28] While the Sessions Memo removed any perceived safe harbor that may have existed for state-authorized cannabis activity, the Sessions Memo does not direct U.S. Attorneys to prosecute cannabis-related crimes. Essentially, the Sessions Memo removed any de-prioritization for cannabis crimes and reminded U.S. Attorneys that they can use their normal prosecutorial discretion. At the time of writing this Guide, the Biden Administration and current Attorney General, Merrick Garland, have not released updated guidance on federal prosecution of cannabis activity. Nevertheless, California has not seen an uptick of federal enforcement of cannabis activities conducted in compliance with state law since the issuance of the Sessions Memo. The drafters of this Guide have seen nothing at this time to suggest that United States Attorneys in California will prioritize prosecuting state-authorized cannabis activity over the more serious and dangerous crimes they are charged with enforcing.

24 James M. Cole, Deputy Attorney General, U.S. Department of Justice, Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (August 29, 2013), available at http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

25 Also referred to more recently as the Rohrabacher-Blumenaeur Amendment.

26 *U.S. v. McIntosh* (2016) 833 F.3d 1163. The California defendants in this case ran four medical marijuana dispensaries in Los Angeles and had nine outdoor cannabis grows in San Francisco and Los Angeles. It appears that the San Francisco U.S. Attorney's office attempted to prosecute this case, and not the Los Angeles office.

27 *Id.* at p. 1180, fn. 5.

28 Jeffrey B. Sessions, Attorney General, U.S. Department of Justice, Memorandum for All United States Attorneys: Marijuana Enforcement (January 4, 2018), available at: https://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement.



III. CALIFORNIA UNIFORM CONTROLLED SUBSTANCES ACT (UCSA)

The State has the power to regulate controlled substances in the interest of the public health and welfare.[29] Furthermore, Congress expressly provided that the federal CSA does not preempt state regulation of controlled substances like the California Uniform Controlled Substances Act (UCSA).[30] Thus, in 1972, shortly after the enactment of the CSA, the State of California consolidated its narcotics laws under the UCSA.[31] Chapter 6, Article 2 of the UCSA set forth criminal prohibitions and punishments for the possession, cultivation, transportation, and distribution of cannabis.[32]

Only 24 years later, the cannabis regulations in the UCSA would undergo a significant transformation when California voters approved the Compassionate Use Act of 1996.

IV. COMPASSIONATE USE ACT OF 1996 (CUA)

The Compassionate Use Act of 1996 (CUA) was approved by California voters through Proposition 215. The CUA is codified at Health & Safety Code section 11362.5. It provides that certain state criminal laws relating to the possession and cultivation of cannabis "shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician."[33] Thus, qualified patients (or their primary caregiver) may possess and cultivate any amount of cannabis reasonably necessary for the patient's current medical condition.[34] However, the CUA is very limited in scope.

First, the CUA only applies to qualified patients, and their primary caregiver, who have obtained the written or oral recommendation of a physician *before* cultivating or possessing cannabis, not after.[35] A primary caregiver is a defined term with different components.[36] A person does not qualify as a primary caregiver merely by having a patient

29 *Robinson v. California* (1962) 370 U.S. 660, 664.

30 21 U.S.C. § 903. ("No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the filed in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.")

31 Cal. Health & Saf. Code, § 11000, et seq.

32 Cal. Health & Saf. Code, § 11357 et seq. See, e.g., Cal. Health & Saf. Code, §§ 11357 [possession of cannabis is a misdemeanor], 11358 [cultivation of cannabis is a felony], 11359 [possession with intent to sell any amount of cannabis is a felony], 11360 [transporting, selling, or giving away cannabis in California is a felony; under 28.5 grams is a misdemeanor], 11361 [selling or distributing cannabis to minors, or using a minor to transport, sell, or give away cannabis, is a felony].

33 Health & Saf. Code, § 11362.5, subd. (d).

34 *People v. Kelly* (2010) 47 Cal.4th 1008, 1013 (citing *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

35 *People v. Rigo* (1999) 69 Cal.App.4th 409.

36 Health & Saf. Code, § 11362.5, subd. (e).

designate him or her as such or by the provision of medicinal cannabis itself.[37]

Second, the CUA is narrowly drafted to limit cannabis use for *the patient's* own personal medical purposes.[38] While a primary caregiver could care for and cultivate more than one patient's cannabis, the CUA does not allow patients and their caregivers to "pool talents, efforts, and money to create a stockpile of marijuana that is to be collectively distributed." [39] The CUA does not authorize, or even mention, medicinal cannabis dispensaries. Collectives and cooperatives were only authorized years later in the Medical Marijuana Program Act (MMPA).

Third, the CUA does not decriminalize all medicinal cannabis-related conduct; it grants a defendant a limited immunity from prosecution, allowing for a motion to set aside an indictment or information prior to trial.[40] Such decriminalization only applies to cultivation and possession. The CUA does not provide a defense to other cannabis-related conduct, such as transportation[41] or sale.[42] Because the CUA does not actually "legalize" cannabis, but only determines that no punishment will be imposed on certain cannabis offenses under state law, the CUA is not preempted by the federal CSA.[43]

The modest and narrow immunity provisions of the CUA, while groundbreaking for its time, limited its effect on other issues. Despite the language of the findings and declarations evincing an intent to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes," courts held that the CUA did not create "a broad right to use marijuana without hindrance or inconvenience."[44] The CUA does not require an employer to accommodate an employee's use of medicinal cannabis.[45]

Notably, more recently enacted California laws authorizing various cannabis activities—such as the Medical Marijuana Program Act in 2003 (MMPA), the Control, Regulate and Tax Adult Use of Marijuana Act in 2016 (AUMA), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act in 2017 (MAUCRSA), discussed below—may have rendered complete reliance on the CUA as a defense to cannabis-related charges somewhat unnecessary.

V. MEDICAL MARIJUANA PROGRAM ACT (MMPA)

In 2003, the California Legislature passed the MMPA[46] to "implement a plan to provide for the safe and affordable distribution of marijuana to all patients in need of medical marijuana," as

37 *Ibid.* See also *People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1016 ("Individuals operating a marijuana-buying cooperative do not, by providing medical patients with medicinal marijuana, consistently assume responsibility for the health of those patients.").

38 *People v Urziceanu* (2005) 132 Cal.App.4th 747, 768.

39 *Ibid.*

40 *People v. Mower* (2002) 28 Cal.4th 457, 480. See also *People v. Kelly, supra,* 47 Cal.4th 1008, 1014; *Ross v. Raging Wire Telecommunications* (2008) 42 Cal.4th 920, 926.

41 *People v. Young* (2001) 92 Ca.App.4th 229, 235-237; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550-1551 (the CUA only provides an implied defense to transportation of cannabis when "the quantity transported and the method, timing and distance of the transportation are reasonably related to the patient's current medical needs.").

42 *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1152; *People ex rel. Lungren v. Peron, supra,* 59 Cal.App.4th 1383, 1389-1390.

43 *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.

44 *Ross v. Raging Wire Telecommunications, Inc., supra,* 42 Cal.4th at p. 928.

45 *Id.* at p. 931.

46 Health & Saf. Code, § 11362.7 et seq.

expressed by the voters in the CUA.[47] The MMPA's intent was to:

a. Clarify the scope of the CUA and facilitate the prompt identification of qualified patients and their designated primary caregivers to avoid unnecessary arrests and provide needed guidance to law enforcement officers;

b. Promote uniform and consistent application of the CUA;

c. Enhance the access of patients and caregivers to medicinal cannabis through collective, cooperative cultivation projects; and

d. Address additional issues not included within the CUA.[48]

The MMPA creates a voluntary program for issuing identification cards to qualified patients and their primary caregivers. Under the MMPA, the California Department of Health Services is required to establish and maintain a program under which qualified applicants may apply for a California identification card, to be annually renewed, identifying them as qualified for exemptions. County health departments are mandated to operate the program under state protocols. The program is also designed to provide law enforcement with a method to immediately verify the validity of identification cards.[49]

The MMPA expressly immunizes qualified persons with identification cards who transport or possess cannabis for their personal medicinal use.[50] Qualified caregivers (and those who provide assistance to the patient or caregivers) who transport, process, administer, deliver, or give away cannabis for medicinal purposes to qualified patients or other caregivers are also expressly immunized under the statute.[51] In contrast to MAUCRSA, which restricts adult-use cannabis to persons age 21 and up, the MMPA does not include an age restriction. Therefore, persons ages 18-20 may be qualified patients and, therefore, obtain medicinal cannabis. In addition, minors may obtain medicinal cannabis with parental consent.[52]

Section 11362.775 of the MMPA also provided that qualified persons with valid identification cards, and their designated primary caregivers, who associate "collectively or cooperatively" to cultivate cannabis for medicinal purposes, could not be subject to state criminal law sanctions, including for the sale of cannabis, solely on that basis.[53] However, in January 2019, MAUCRSA repealed Section 11362.775; accordingly, today collectives and cooperatives are subject to the same state and local licensing and permitting provisions as any other license or permit applicant.

47 Health & Saf. Code § 11362.5, subd. (b)(1)(C).
48 Stats. 2003, Ch. 875, §1, subd. (b)–(c).
49 Health & Saf. Code, §§ 11362.71, 11362.72.
50 Health & Saf. Code § 11362.765, subd. (b)(1)–(2).
51 Health & Saf. Code § 11362.765, subd. (b)(2)–(3).
52 Health & Saf. Code § 11362.7, subd. (e).
53 Former Health & Saf. Code, § 11362.775. Courts of appeal reached varying conclusions regarding whether former Health & Safety Code, section 11362.775 immunized the sale and distribution of medicinal cannabis or whether it protected only collective cultivation. (Compare In People ex rel *Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512 [holding that the statute protects group activity only to cultivate cannabis for medicinal purposes; it does not immunize dispensing or selling cannabis] with *People v. Jackson* (2012) 210 Cal. App.4th 525 [expressly rejecting the *Joseph* court's interpretation].)

While the MMPA also established limits on the quantity of cannabis that qualified persons and primary caregivers could possess, the California Supreme Court struck down the quantitative limitations holding that the Legislature did not have the authority to amend the initiated state statute in that manner.[54] Nevertheless, the section was not removed from the MMPA.[55]

The first published decision following the MMPA's passage found that the MMPA "represent[ed] a dramatic change in the prohibitions on the use, distribution, and cultivation of marijuana for persons who are qualified patients or primary caregivers…"[56] Despite this broad pronouncement regarding the MMPA's purpose, the California Supreme Court has narrowly interpreted the additional immunities conferred by the MMPA.[57]

VI. CALIFORNIA ATTORNEY GENERAL GUIDELINES

The MMPA required the Attorney General to "develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under the [CUA]."[58] The Attorney General adopted such guidelines in August 2008 (2008 Guidelines).[59] The purpose of the 2008 Guidelines was to: (1) ensure that cannabis grown for medicinal purposes remains secure and does not find its way to nonpatients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medicinal cannabis under California law. Although the 2008 Guidelines are not binding, many courts have afforded them great weight and have relied on them in resolving medicinal cannabis issues.[60] The 2008 Guidelines were also helpful in articulating the appropriate degree of local regulation of medicinal cannabis dispensaries, a novel land use that proliferated throughout the state after the adoption of the CUA and MMPA.

On August 6, 2019, the Attorney General released updated "Guidelines for the Security and Non-Diversion of Cannabis Grown for Medicinal Use" (2019 Guidelines).[61] The 2019 Guidelines provide a helpful summary of applicable law, with compliance and enforcement recommendations for individual qualified persons and primary caregivers, as well as for collectives and cooperatives, which under MAURCSA, are required to obtain state licenses to operate.

54 *People v. Kelly* (2010) 47 Cal.4th 1008, 1043-1049.

55 *Id.* at pp. 1047-1048.

56 *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785.

57 See *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 744 (acknowledging MMPA's "limited reach" and holding that it did not preempt local zoning regulations). See also, *People v. Mentch* (2008) 45 Cal.4th 274, 290 (while MMPA does convey additional immunities against cultivation and possession-for-sale charges to specific groups of people, it does so only for specific actions).

58 Health & Saf. Code § 11362.81, subd. (d).

59 California Office of the Attorney General, Atty. General Brown Issues Medical Marijuana Guidelines for Law Enforcement and Patients (August 25, 2008), available at https://oag.ca.gov/news/press-releases/atty-general-brown-issues-medical-marijuana-guidelines-law-enforcement-and.

60 *See e.g.*, *People v. Hochanadel* (2009) 176 Cal.App.4th 997.

61 *See* California Office of the Attorney General, Guidelines for the Security and Non-Diversion of Cannabis Grown for Medicinal Use (2019), available at: https://oag.ca.gov/system/files/attachments/press-docs/MEDICINAL%20CANNABIS%20Guidelines.pdf.

VII. CONTROL REGULATE AND TAX ADULT USE OF MARIJUANA ACT (PROPOSITION 64 OR AUMA)

On November 8, 2016, California voters approved Proposition 64, the initiative known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). Unlike the earlier cannabis legalization framework in Colorado, AUMA did not modify the California Constitution; instead, it enacted and modified a variety of state statutes.[62]

Section 3 of the ballot initiative set forth its 27 distinct purposes, which can be a guiding resource in understanding the voters' intent.[63] The statements of purpose and intent generally relate to state regulation, local control, taxation, public safety, public health, and enforcement.[64] In addition to reducing criminal penalties for cannabis-related offenses,[65] and providing funding for cannabis-related research and social programs,[66] AUMA established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedicinal cannabis and cannabis products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of cannabis.[67]

A. State Agencies

AUMA created a complex regulatory and licensing scheme for commercial cannabis activities, designating three main licensing authorities and providing several other state agencies with specific authority and responsibilities related to



cannabis. This regulatory scheme was in effect until July 12, 2021, when the Governor signed AB 141, consolidating the three existing agencies charged with licensing of commercial cannabis under AUMA and creating the Department of Cannabis Control. A summary of AB 141 and the Department of Cannabis Control (DCC) may be found in Section IX of Part II of this Guide.

1. Licensing Authorities

The three agencies charged with licensing of commercial cannabis under AUMA were the Bureau of Cannabis Control, within the California Department of Consumer Affairs; the California Department of Food and Agriculture; and the California Department of Public Health.[68] Each of the three licensing authorities was charged with making reasonable rules and regulations to

62 See e.g., Health & Saf. Code, § 11362.1 et seq.; Bus. & Prof. Code, § 26000 et seq.

63 Proposition 64, section 3 (Nov. 9, 2016), available at: https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf

64 Proposition 64, section 3, subd. (a) – (aa) (Nov. 9, 2016), available at: https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf.

65 Health & Saf. Code, § 11357 et seq.

66 Rev. & Tax. Code, § 34019.

67 AUMA uses the term "marijuana"; the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), effective June 27, 2017 and discussed in Chapter Six, incorporated many of AUMA's provisions; MAUCRSA also substituted the term "cannabis" for "marijuana." This chapter uses the term "marijuana" when referring to specific aspects of AUMA; it uses the term "cannabis" for generic reference

68 Bus. & Prof. Code, § 26012.

implement, administer, and enforce their respective duties.[69, 70]

a. Bureau of Cannabis Control (Bureau)

The Bureau was the lead agency tasked with regulating commercial cannabis licenses for medicinal and adult-use cannabis.[71] AUMA gave the Bureau exclusive authority for creating, issuing, denying, renewing, disciplining, suspending, or revoking state licenses for transportation, storage unrelated to manufacturing activities, and distribution and sale of cannabis and cannabis products.[72]

b. California Department of Food and Agriculture (CDFA)

CDFA was responsible for licensing the commercial cultivation of cannabis.[73] CDFA was also responsible for the track-and-trace system, which tracks the movement of cannabis and cannabis products throughout the distribution chain in California. CalCannabis Cultivation Licensing, a division of CDFA, was organized into two branches: the Licensing Branch and Compliance and Enforcement Branch.

CDFA's licensing included conditions from the California Department of Fish and Wildlife (CDFW) and the State Water Resources Control Board (SWRCB) related to the individual and cumulative effects of water diversion and the discharge associated with cultivation.[74]

c. California Department of Public Health (CDPH)

The California Department of Public Health was responsible for licensing and regulating all commercial cannabis manufacturing in California.[75] This included ensuring commercial cannabis manufacturers operate safe, sanitary workplaces and follow good manufacturing practices to produce products that are free of contaminants, meet product guidelines, and are properly packaged and labeled.

2. Marijuana Control Appeals Panel

AUMA created the Marijuana Control Appeals Panel, which is responsible for hearing appeals of any decision by state cannabis licensing authorities relating to any penalty assessment or the issuing, denying, transferring, conditioning, suspending, or revoking of a cannabis license.[76] The Panel's review is based on a "substantial evidence" standard;[77] the Panel's decision may be reviewed in court.[78] To implement its mandate, the Panel has adopted regulations, which can be found online.[79]

69 Bus. & Prof. Code, § 26013.
70 The DCC is expected to post consolidated regulations of the three former agencies in early 2022 at cannabis.ca.gov.
71 The Bureau was originally called the Bureau of Medical Marijuana, then renamed the Bureau of Marijuana Control by AUMA, and finally acquired its current title of Bureau of Cannabis Control under MAUCRSA. (See Bus. & Prof. Code, § 26010, subd. (a).)
72 MAUCRSA subsequently transferred to the Bureau licensing authority as to microbusinesses and testing. (See Bus. & Prof. Code, § 26012, subd. (a)(1).)
73 Bus. & Prof. Code, § 26012, subd. (a)(2).
74 Bus. & Prof. Code, § 26060(c).
75 AUMA initially delegated licenses for testing to CDPH the authority as to testing; MAUCRSA moved the testing to the Bureau. (Cal. Bus. & Prof. Code, §26012, subd. (a)(3).)
76 Bus. & Prof. Code, §26040 et seq.
77 Bus. & Prof. Code, § 26043.
78 Bus. & Prof. Code, § 26045.
79 https://www.ccap.ca.gov/laws_regs/ccr_6000_6018_code.pdf

3. California Department of Pesticide Regulation (CDPR).

CDPR is responsible for developing guidelines for the use of pesticides in the cultivation of cannabis and residue in harvested cannabis.[80] This included coordination with CDFA. In practice, CDPR focuses on three main areas: (1) providing statewide guidance on the use of pesticides in the cultivation of cannabis, and residue in harvested cannabis; (2) providing guidance to the Bureau on testing for pesticides; and (3) requiring that pesticides being applied to cannabis comply with food and agriculture standards. Pesticide products can be legally used on cannabis in California, provided they meet certain criteria approved by CDPR. The criteria can be found online.[81] CDPR will continue its work, coordinating with DCC after the consolidation of the licensing agencies.

4. Other State Agencies

State agencies — including, but not limited to the State Board of Forestry and Fire Protection (Cal Fire), the California Department of Fish and Wildlife (CDFW), and the State Water Resources Control Board (SWRCB), the California regional water quality control boards (Water Boards), and state law enforcement agencies — are required to address environmental impacts of cannabis cultivation and coordinate, when appropriate, with cities and counties in enforcement efforts.[82]

5. Cannabis Advisory Committee

The Bureau was charged with creating a committee to advise the then-existing licensing authorities (the Bureau, CDPH, and CDFA) on the development of regulations that help protect public health and safety, and reduce the illegal market for cannabis.[83] State statutes dictated that members of the Committee must include, among others, representatives of local agencies.[84]

The Committee is required to publish an annual public report describing its activities including, but not limited to, the recommendations the Committee made to the licensing authorities during the immediately preceding calendar year and whether those recommendations were implemented by the licensing agencies.[85] The Committee's annual report was published on the Bureau's website: bcc.ca.gov, and will be transitioned to the new DCC website cannabis.ca.gov.

B. Types of Licenses under AUMA

Under AUMA, there are 19 types of cannabis-related licenses.[86] This list was revised and expanded under MAUCRSA and is discussed in more detail below.

80 Bus. & Prof. Code, §§ 26060, subds. (b) and (e), renumbered and modified as Bus. & Prof. Code, §§ 26060, subds. (d) and (g) by MAUCRSA. SWRCB has regulatory authority for adopting principles and guidelines for diversion and use of water for cannabis cultivation, in consultation with CDFW. (Cal. Wat. Code, §13149.) SWRCB has primary enforcement but is required to notify the CDFA of any enforcement action taken for violations. (Wat. Code, § 13149.)

81 https://www.cdpr.ca.gov/docs/cannabis/certain_criteria.pdf

82 Bus. & Prof. Code, § 26066.

83 Bus. & Prof. Code, § 26014, subd. (a).

84 Bus. & Prof. Code, § 26014, subd. (b).

85 Bus. & Prof. Code, § 26014, subd. (c).

86 MAUCRSA added License Type 1C, Cultivation, Specialty cottage, Small (Bus. & Prof. Code, § 26050), MAUCRSA also authorized each licensing authority to create additional licenses. (Bus. & Prof. Code, § 26012, subd. (b).)



C. Local Control and Regulation

1. Personal Use of Cannabis

AUMA legalized persons age 21 or older smoking or ingesting cannabis or cannabis-related products under California law.[87] AUMA also provided that a person age 21 or older has a right to plant, cultivate, harvest, dry, or process up to six living cannabis plants, subject to reasonable local regulation.[88] Although a city cannot prohibit these activities inside a private residence or accessory structure that is fully enclosed, secured, and located at a private residence,[89] cities can ban these activities when done outdoors, even upon the grounds of a private residence.[90] Generally speaking, cannabis cannot be smoked or ingested in public.

AUMA also legalized a person's ability to possess, process, transport, purchase, obtain, or give away to persons over 21 years of age or older, no more than 28.5 grams of cannabis that is not in the form of concentrated cannabis. (Concentrated cannabis is restricted to eight grams.)[91] Similarly, a person may possess, transport, purchase, obtain, use, manufacture, or give away cannabis accessories to persons 21 years of age or older.[92]

However, AUMA preserved and enumerated several restrictions on the manner and places in which cannabis may be consumed or handled.[93]

2. Local Regulations

AUMA does not supersede or limit the authority of a city to adopt and enforce local ordinances regulating commercial cannabis-related activities and cannabis-related businesses.[94] Regulation through local ordinance is allowed for, but is not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke. A city may also completely ban commercial cannabis activity. Furthermore, a licensing authority must not approve a state license if such approval would violate a city's ordinance or regulation adopted consistent with state law.[95]

87 Health & Saf. Code, § 11362.1, subd. (a)(4).
88 Health & Saf. Code, §§ 11362.1, subd. (a)(3), 11362.2, subd. (a)(1).
89 Health & Saf. Code § 11362.2, subd. (b)(2).
90 Health & Saf. Code § 11362.2, subd. (b)(3).
91 Health & Saf. Code, § 11362.1, subds. (a)(1)–(2). Essentially, individuals at least 21 years old are able to "gift" cannabis as long as both parties are at least 21 years old and there is no compensation exchanged
92 Health & Saf. Code, § 11362.1, subd. (a)(5). Similarly, individuals over 21 are able to "gift" cannabis products as long as both parties are at least 21 years old and there is no compensation exchanged
93 Health & Saf. Code, § 11362.45.
94 Bus. & Prof. Code, § 26200, subd. (a).
95 Bus. & Prof. Code § 26055, subd. (e) under AUMA; MAUCRSA renumbered this provision to Bus. & Prof. Code, § 26055, subd. (d) and expanded the provision.

AUMA distinguishes between the authority to regulate or ban the transportation of commercial cannabis through a jurisdiction and the authority to regulate or ban the delivery of commercial cannabis inside a jurisdiction.[96] The Bureau adopted California Code of Regulations, title 16, section 5416, subdivision (d), allowing delivery statewide; most recently, the litigation challenging this regulation as violative of AUMA was dismissed as not ripe for adjudication because the court found the Bureau's regulation did not conflict with a city's right to control or ban delivery.[97]

3. Locational Restrictions

AUMA restricts the location of commercial cannabis businesses.[98] These restrictions are incorporated into MAUCRSA and discussed in more detail below.

4. Authority to Conduct Law Enforcement Activity and Local Enforcement Related to Cannabis.

AUMA does not supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.[99] Also, it does not require a licensing authority to undertake such enforcement activities.[100] Thus, a local jurisdiction should conduct enforcement of its own laws and requirements.

5. Authority to Allow or Restrict Business Activity Related to On-Site Cannabis Consumption.

Under AUMA, the Bureau was authorized to issue a state temporary event license to a licensee authorizing onsite cannabis sales at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction, provided that the activities comply with certain requirements.[101] These events tend to be large-scale gatherings, often with thousands of people in attendance. It is important to note that the Bureau was only authorized to issue a state license for these events if the local jurisdiction authorizes such events.[102] However, it was unclear whether the Bureau could issue a state license if the event was held on state land located within a local jurisdiction. In practice, the Bureau had required local authorization even when the event was held on state land (e.g., California State Fair located in Sacramento).

AUMA authorizes local jurisdictions to allow businesses where the public can smoke, vape, or ingest cannabis or cannabis-related products on premises, if specific conditions are met.[103] Specifically, the business must comply with the following: (1) access to the area where cannabis consumption is allowed must be restricted to persons 21 years of age or older; (2) cannabis consumption must not be visible from any public place or non-age-restricted area; and (3) sale or consumption of alcohol or tobacco is not

96 Bus. & Prof. Code, §§ 26080, 26090.

97 Order, *County of Santa Cruz v. Bureau of Cannabis Control* (Super. Ct. Fresno County, 2019, No. 19CECG01224) (Nov. 17, 2020) ("With judicial estoppel principles in mind, the court wishes to make clear that it is persuaded by, agrees with and adopts the BCC's argument that Regulation 5416(d) is not inconsistent with and does not preempt plaintiffs' local ordinances regarding adult-use cannabis delivery, nor does it preclude plaintiffs from enforcing such ordinances. On the basis of that conclusion, the court finds that this matter is not ripe for adjudication, and dismisses the action as to all plaintiffs.")

98 Bus. & Prof. Code, § 26054, subd. (b).

99 Bus. & Prof Code, § 26200, subd. (a).

100 Bus. & Prof Code, § 26200, subd. (b).

101 Bus. & Prof. Code, § 26200, subd. (e)(1).

102 Bus. & Prof Code, § 26200, subd. (e)(1)(D).

103 Bus. Prof. Code, § 26200, subd. (g).

allowed on the premises. The law also authorizes local jurisdictions to issue temporary licenses to nonprofit entities primarily providing certain products to low-income persons, subject to various conditions.[104]

> **PRACTICE TIP:** *There is no state license category for cannabis consumption businesses. Some cities locally license and permit cannabis consumption as an accessory use to a cannabis retail business. Some cities license and permit cannabis consumption as a stand-alone business. Either way, in order for the business to receive a license from the state, in drafting a cannabis licensing ordinance, the city should identify the consumption business category in the context of a state license category (e.g. retail with consumption permitted).*

6. Authority to Enforce State Laws and Regulations.

A city attorney has the authority to bring a civil action against a person engaging in commercial cannabis activity without a license required under state law, and each day may be considered a separate violation. The penalties collected under such action may be used to reimburse the city attorney for costs associated with bringing the action with the remainder to be deposited into the state's general fund.

In the regulation of state-licensed facilities located within a city, a city has the authority to enforce the regulations of the licensing authority if the licensing authority delegates that authority to the city.[105] A complete discussion on enforcement is found later in this Guide.

7. Coordination with the State.

A city had a duty to notify the Bureau upon revocation of any local license, permit, or authorization for a licensee to engage in commercial cannabis activity within the city. Within 10 days of notification, the Bureau was required to inform the relevant licensing authority to begin a process to determine whether a license issued to the licensee should be suspended or revoked.[106] This same notification process remains in place under the DCC.

D. Taxation

AUMA imposes state taxes on the commercial cultivation and sale of both medicinal and nonmedicinal cannabis.[107] This state tax is in addition to any tax imposed by a city, county, or city and county.[108] However, because a city may impose a sales tax only with voter approval and because medicinal cannabis, like any medicinal product, is not subject to a sales tax, many cities have imposed fees or taxes on the gross receipts of cannabis businesses.

104 Bus. & Prof. Code, § 26070.5.
105 Bus. & Prof. Code, § 26200, subd. (d).
106 Bus. & Prof. Code, § 26200, subd. (c).
107 Rev. & Tax Code, § 34100 et seq.
108 Rev. & Tax. Code, § 34021.

Revenues collected from the state retail excise tax and state tax on cultivation, in addition to specified fines on businesses or individuals who violate regulations, are deposited in the California Marijuana Tax Fund.[109] Funds generated from taxes and fines are used to compensate state agencies for any regulatory costs not covered by license fees.[110] In addition, a portion of revenues is meant to be allocated to youth programs, environmental clean-up efforts associated with illegal grows, and programs designed to reduce driving under the influence of alcohol, cannabis or other drugs, among other things.[111]

The following chart describes the current taxes on cannabis.[112]

VIII. MEDICINAL AND ADULT USE OF CANNABIS REGULATION AND SAFETY ACT (MAUCRSA)

In 2015, California enacted the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643) (MMRSA). MMRSA established a statewide regulatory scheme for the medicinal cannabis industry, including licenses for cultivation, manufacturing, testing, transportation, and distribution. State licensing was expected to commence in 2018, but before that could happen, California voters approved AUMA to allow the use of cannabis for non-medicinal purposes in 2016. As a result, MMRSA did not last long enough for most of its provisions to take effect.

Type of Tax	Type of Cannabis Taxed	Rate of Taxation
State tax on cultivation[113]	Both medicinal and nonmedicinal	$9.25 per ounce of dried cannabis flowers and $2.75 per ounce of dried cannabis leaves
State retail excise tax[114]	Both medicinal and nonmedicinal	15% of gross receipts
Existing state and local sales tax[115]	Nonmedicinal only[116]	Rates vary across the state
Existing state and local use tax[117]	Nonmedicinal only[118]	Rates vary across the state

109 Rev. & Tax Code, § 34018.
110 Rev. & Tax. Code, § 34019.
111 Rev. & Tax. Code, §§ 34019, 34012, (a)(1)–(2), 34011 (a).
112 A city may still enact various fees under Proposition 26 (2010) related to cannabis activities, e.g., regulatory fees.
113 Rev. & Tax Code, § 34012, subd. (a)(1)–(2).
114 Rev. & Tax Code, § 34011, subd. (a)(1).
115 Rev. & Tax Code, § 6051.
116 Rev. & Tax Code, § 34011, subd. (f).
117 Rev. & Tax Code, § 6202.
118 Rev. & Tax Code, § 6202.

On June 27, 2017, California adopted SB 94, which includes not only the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA[119]), but also modifies a variety of statutes in the Fish & Game Code, Food & Agriculture Code, Health & Safety Code, and Vehicle Code. MAUCRSA repeals MMRSA,[120] while combining and harmonizing many of its provisions with AUMA.

Prior to MAUCRSA, the applicable statutes used the terms "marijuana" and "medical marijuana." MAUCRSA renames these terms as cannabis and medicinal cannabis.[121] Thus, the Bureau of Marijuana Control and the Marijuana Control Appeals Board, each created by AUMA, became the Bureau of Cannabis Control (Bureau) and the Cannabis Control Appeals Board. Similar changes were made throughout various California Codes to make applicable statutes consistently refer to cannabis rather than marijuana.



A. State Licensing

MAUCRSA eliminates AUMA's requirement that a licensee be a California resident. MAUCRSA adds another license type (Type 1C) to those delineated by AUMA, and allowed the Bureau to add additional license types,[122] an authority it has exercised.[123] The current types of licenses are:

(1) Type 1 — Cultivation; Specialty outdoor; Small.
(2) Type 1A — Cultivation; Specialty indoor; Small.
(3) Type 1B — Cultivation; Specialty mixed-light; Small.
(4) Type 1C — Cultivation; Specialty cottage; Small.
(5) Type 2 — Cultivation; Outdoor; Small.
(6) Type 2A — Cultivation; Indoor; Small.
(7) Type 2B — Cultivation; Mixed-light; Small.
(8) Type 3 — Cultivation; Outdoor; Medium.
(9) Type 3A — Cultivation; Indoor; Medium.
(10) Type 3B — Cultivation; Mixed-light; Medium.
(11) Type 4 — Cultivation; Nursery.
(12) Type 5 — Cultivation; Outdoor; Large.
(13) Type 5A — Cultivation; Indoor; Large.
(14) Type 5B — Cultivation; Mixed-light; Large.
(15) Type 6 — Manufacturer 1.
(16) Type 7 — Manufacturer 2.
(17) Type 8 — Testing laboratory.
(18) Type 10 — Retailer.
(19) Type 11 — Distributor.
(20) Type 12 — Microbusiness.
(21) Type 13 — Distributor (transport only).
(22) Type 14 — Event Organizer.

119 Bus. & Prof. Code, § 22000 et seq.
120 MMRSA, later modified to be the Medical Cannabis Safety and Regulation Act (MCRSA), related solely to medical cannabis. Since repealed by MAUCRSA, MMRSA/MCRSA is not discussed here.
121 One reason why SB 94 modified a broad range of statutes was to implement this change in terminology.
122 Bus. & Prof. Code, § 26050.
123 The Bureau has added Types 13 and 14. (See e.g. Cal. Code Regs., tit. 16, § 5014.)

A state license is valid for one year from the date of issuance and may be renewed annually. Each license, except for testing labs, are designated with an "A", indicating adult commercial use, or with an "M", indicating medicinal use. A testing lab license may test both adult commercial and medicinal cannabis; its license is not marked with an A or M.[124] There are differences between an A and an M license; an A-licensee may not sell to persons under the age of 21 nor allow persons under the age of 21 on the licensed premises.[125] An M-licensee may allow any person age 18 and over on the premises, and may sell to any person age 18 and over, if such person possesses a valid government-issued identification card and either a valid physician's recommendation or a valid county-issued identification card.[126] With a few exceptions, discussed below, a licensee may hold multiple licenses. However, each licensed premises must be separate and distinct.[127] No alcohol or tobacco may be sold on the licensed premises.[128]

As discussed earlier, authority for issuing licenses was divided among the Bureau, the California Department of Public Health (CDPH), and the California Department of Food and Agriculture (CDFA). The Bureau issued licenses under Types 8 through 14, the CDPH issued licenses under Types 6 and 7, and the CDFA issued licenses under Types 1-5. The DCC became the sole licensing authority as of July 12, 2021.[129]

Various restrictions exist on different types of licenses. For example, license types 5, 5A, or 5B cannot be issued until January 1, 2023.[130] Furthermore, a holder of license type 5, 5A, or 5B may not also hold license type 8, 11, or 12.[131] A type 8 licensee may not hold any other type of license and may not employ anyone who works at another licensed cannabis business, unless it is also a type 8 business.[132]

1. Coordination with the State

Under MAUCRSA, a city was required to provide to the Bureau the city's ordinances or regulations relating to commercial cannabis activity, and the name and contact information for the person designated to serve as the contact for the Bureau in regard to cannabis activity within the city. If no contact was provided, the Bureau assumed the contact was the clerk of the legislative body.[133] The city should also provide the Bureau with any changes to the contact person or to the city's ordinances or regulations.[134] These obligations on a City remain after the July 2021 consolidation of agencies, and the City is obligated to send its ordinances and regulations to the DCC.

When an application for a cannabis license is received by the State (the Bureau under MAUCRSA and currently the DCC), the state agency is required to notify the city in which the business proposes to operate, unless the applicant provides evidence of compliance with the city's ordinances

124 Bus. & Prof. Code, § 26050.
125 Bus. & Prof. Code, § 26140, subd. (a).
126 Bus. & Prof. Code, § 26140, subd. (c).
127 Bus. & Prof. Code, § 26053, subd. (c).
128 Bus. & Prof. Code, § 26054, subd. (a).
129 Bus. & Prof. Code, § 26012.
130 Bus. & Prof. Code, § 26061, subd. (c).
131 Bus. & Prof. Code, § 26061, subd. (d).
132 Bus. & Prof. Code, § 26053, subd. (b).
133 Bus. & Prof. Code, § 26055, subd. (f)(1).
134 Bus. & Prof. Code, § 26055, subd. (f)(2).

or regulations. The city has 60 days in which to respond, indicating whether the proposed business complies with the jurisdiction's ordinances and regulations. No response from the city creates a rebuttable presumption that the applicant complies with the city's ordinances and regulations.[135] Even after the 60-day period passes, the city may notify the state agency in writing that the applicant or licensee does not comply with the local ordinances or regulations, and the licensing authority may no longer presume compliance and may begin disciplinary proceedings.[136] The state agency may not issue a license to a cannabis business if the business would violate local ordinances or regulations.[137]

In addition, under MAUCRSA, if the city revoked a local license, permit, or authorization for a licensee to operate a commercial cannabis business, the city must notify the Bureau, and within 10 days of the notice, the Bureau notified the CDFA or CDPH, if that agency issued the license. As of July 12, 2021, the DCC will begin a suspension or revocation process within 60 days of being informed by the city.[138]

Most cannabis-related licenses require local authorization as a pre-condition to obtaining the desired state license. This requirement provides cities with significant power and discretion to determine the cannabis landscape within their borders. Likewise, it requires city attorneys to be well-versed in the relevant and complex cannabis laws and regulations governing each type of license.

PRACTICE TIP: *Cities should designate one staff contact person responsible for responding to licensing inquiries from the DCC, and provide that contact information to the DCC. The two-step (local and state) licensing process works best when there is frequent and open communication on licensing matters between state and city.*

B. Local Control and Regulation

Cities retain the authority to adopt and enforce ordinances regulating or prohibiting cannabis businesses, including local zoning and land use requirements and business license requirements.[139] Similarly, local law enforcement retains the authority to enforce local zoning requirements and ordinances.[140] State standards constitute the minimum requirements as to health and safety, environmental protection, testing, security, food safety, and worker protections; a city may establish additional standards, requirements, and regulations.[141]

1. Locational Restrictions

Under state law, there are restrictions on the location of cannabis businesses. A cannabis business cannot be within a 600-foot radius of an existing:

- School providing instruction in kindergarten or any grades 1 through 12;

135 Bus. & Prof. Code, § 26200, subd. (g)(2)(D).
136 Bus. & Prof. Code, § 26200, subd. (g)(2)(E).
137 Bus. & Prof. Code, § 26200, subd. (g)(1).
138 Bus. & Prof. Code, § 26200, subd. (d).
139 Bus. & Prof. Code, § 26200, subd. (a)(1).
140 Bus. & Prof. Code, § 26200, subd. (a)(2).
141 Bus. & Prof. Code, § 26201.



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- Day care center, as defined by Health & Safety Code section 1596.76; or
- Youth center, as defined by Health & Safety Code section 11353.1(e)(2).[142]

The 600 feet is measured as a straight line between the property line of the cannabis business and the closest property line of the lot on which the cannabis business will be located, without accounting for any intervening buildings.[143]

However, a city has the discretion to reduce the 600-foot restriction.[144]

C. Advertising

MAUCRSA imposes various restrictions on the advertising of cannabis. For example, a licensee may not advertise on a billboard located on an interstate highway or on a state highway that crosses the California border. [145] A licensee may not advertise or market cannabis or cannabis products within 1000 feet of a day care center, a school providing instruction in kindergarten or any grades 1 through 12, a playground, or a youth center. [146]

D. Transportation and Delivery

Delivery and transport of commercial cannabis remains an issue. A local jurisdiction cannot ban the transport of cannabis on public roads.[147] However, the delivery of cannabis must comply with local law.[148]

IX. JULY 2021 CONSOLIDATION OF CANNABIS PROGRAMS INTO THE DEPARTMENT OF CANNABIS CONTROL

As this Guide was going to the publisher, on July 12, 2021, AB 141 was signed into law, as part of the Budget Act of 2021. Four days later, SB 160 was signed into law, making revisions and additions to AB 141. These bills went into effect immediately and amended numerous sections of the California Health and Safety Code, most importantly establishing the Department of Cannabis Control (DCC) within the Business, Consumer Services and Housing Agency. The powers, duties, functions, responsibilities, regulations, and jurisdiction for commercial cannabis activities previously divided among the Bureau of Cannabis Control, the Department of Food and Agriculture and the

142 Bus. & Prof. Code, § 26054, subd. (b).
143 Health & Saf. Code, § 11362.768, subd. (c).
144 Bus. & Prof. Code, § 26054(b) ("A premise licensed under this division may not be located within a 600-foot radius ...unless a ... local jurisdiction specifies a different radius."). See also Cal. Code Regs., tit. 16, § 5026, subd. (b).
145 Bus & Prof. Code, § 26162, subd. (d).
146 Bus. & Prof. Code, § 26200, subd. (g).
147 Bus. & Prof. Code, § 26080, subd. (b).
148 Bus. & Prof. Code, § 26090, subd. (e).

Department of Public Health were transferred to the newly created DCC.[149]

The majority of the changes made by AB 141 and SB 160 involve consolidating the regulations of the three previous licensing agencies into the same title of the California Code of Regulations, making it simpler for businesses, local governments, and the public to understand the law. A new central DCC website was established at https://cannabis.ca.gov. There are a few substantive changes due to the passage of this new legislation, but for the most part, these do not affect a city's local control over commercial cannabis activity within its jurisdiction, as established under AUMA and MAUCRSA. The key substantive changes under AB 141 and SB 160 include:

- The definition of "commercial cannabis activity" has been revised to include acting as a cannabis event organizer for temporary cannabis events.[150]
- "Manufacturer" has been removed from the definitions section; however, the Type 6 and Type 7 licensee categories of "Manufacturer 1" and "Manufacturer 2" remain.[151]
- The definition of "manufacture" has been revised to include to package or label.[152]
- The provision in MAUCRSA that provided a licensing authority could issue a provisional license until January 1, 2022, has been changed. The DCC may issue provisional licenses until June 30, 2022, with new requirements and documentation for applicants for a provisional license that include cultivation. Provisional licenses may be issued until June 30, 2023, to a local equity license applicant that includes cultivation activities, with certain requirements. No provisional licenses shall be renewed after January 1, 2025, and no provisional license is effective after January 1, 2026. The legislature also expressed its intent that no further exemptions from annual licenses be adopted, and any licenses issued after January 1, 2025, shall be issued in compliance with all relevant environmental laws.[153]
- MAUCRSA, for purposes of the California Cannabis Equity Act, defines local equity program as a program adopted or operated by a local jurisdiction that focuses on inclusion and support of individuals and communities who were negatively or disproportionately affected by cannabis criminalization. MAUCRSA required the former Bureau of Cannabis Control to administer a grant program to assist local jurisdictions with the development of local equity programs. Under MAUCRSA the bureau was authorized to enter into an agreement with the Governor's Office of Business and Economic Development (GO-Biz) to administer the program. Under the new legislation, GO-Biz is required to administer the grant program.[154]
- The disciplinary procedures of MAUCRSA have been revised to allow the DCC to suspend, prior to a hearing, a license that has been procured by fraud, misrepresentation, deceit, or material misstatement of fact under

149 Bus. & Prof. Code, §§ 26010, 26010.7
150 Bus. & Prof. Code, § 26001, subd. (j).
151 Bus. & Prof. Code, §§ 26001, 26050, subds. (a)(15)–(16).
152 Bus. & Prof. Code, § 26001, subd. (ah).
153 Bus. & Prof. Code, § 26050.2.
154 Bus. & Prof. Code, § 26244.

specified conditions, including an opportunity for a post-suspension hearing pursuant to the Administrative Procedure Act. In addition, the procedures for recovery of the DCC's costs for investigation and enforcement of disciplinary proceedings have been clarified. Further, the Superior Court is now vested with the authority to enjoin violations of Division 10 of the Business and Professions Code upon petition by the DCC, and to order restitution to victims of violations and reimbursement of the DCC's expenses related to such injunctions.[155]

- The DCC has been given authorization to establish regulations governing the designation, amount and exchange of trade samples of cannabis and cannabis products by and between licensees.[156]

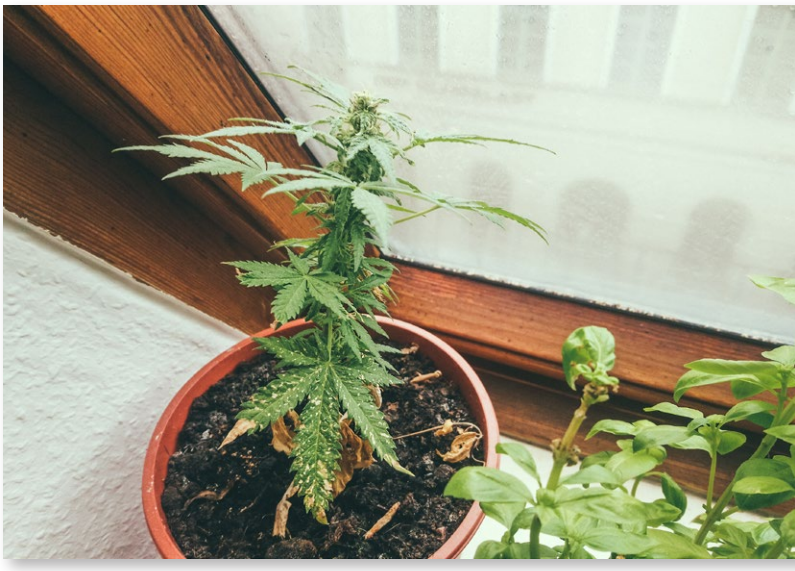
The full text of AB 141 and SB 160 may be found here: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB141

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB160

155 Bus. & Prof. Code, §§ 26031–26031.2.
156 Bus. & Prof. Code, § 26153.1.

PART 3 | Regulating Cannabis in Cities

State cannabis law is designed to balance decriminalization of certain personal cannabis-related conduct with the intent to "[a]llow local governments to reasonably regulate the cultivation of nonmedical marijuana for personal use by adults 21 years and older through zoning and other local laws, and only ban outdoor cultivation as set forth in this Act."[157] This Part discusses the various aspects of cannabis regulation in cities.



I. MUNICIPAL AUTHORITY TO REGULATE CANNABIS GENERALLY

Municipal authority in the regulation of cannabis is generally derived from the California Constitution's grant of police powers.[158] For charter cities, such power is coupled with the Constitution's grant of municipal affairs authority.[159]

A. The Effect of State Law

The California Constitution limits cities' exercise of police power only to impose local laws that do not conflict with "general" or state laws.[160] A local law conflicts with state law if it either (1) duplicates, (2) contradicts, or (3) enters a field which has been fully occupied by state law, whether expressly or by legislative implication.[161] Local legislation that conflicts with the general laws of the state is said to be "preempted" and is void.[162] However, charter cities are exempt from this restriction in regard to "municipal affairs."[163]

Currently, state law fully occupies some fields, such as cannabis-related personal conduct, as described below. In many other fields, however, state law expressly permits local control. For example, municipal land use and business license regulations are expressly permitted by MAUCRSA. When enacting any cannabis-related regulations, cities will need to analyze each regulation for state law preemption.

157 Proposition 64, Section 3, subd. (m) (Nov. 9, 2016), available at: https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf.

158 Cal. Const. art. XI, § 7 ("A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.").

159 Cal. Const. art. XI, § 5 ("It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.").

160 Cal Const art XI, §7.

161 *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1; *Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885; *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 396.

162 *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290; *People ex rel Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484.

163 Cal. Const. art. XI, §5; *Johnson v. Bradley* (1992) 4 C4th 389, 397; *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61, superseded by statute on other grounds as stated in *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850.

B. The Effect of Federal Law

Although California has enacted substantial regulations to legitimize cannabis in recent years, cities should remain cognizant of the fact that it remains illegal under federal law.[164] Despite considerable efforts to change the Controlled Substances Act (CSA), cannabis remains a Schedule I drug.[165] Moreover, the CSA does not recognize a medicinal necessity defense to its cannabis prohibitions.[166] Accordingly, the manufacture, distribution, or possession of cannabis, even for medicinal purposes, is prohibited under federal law. The courts have found that the CSA's cannabis regulations are a valid exercise of Congress' authority under the Commerce Clause, even as applied to purely local cannabis activities allowed by state law.[167] Courts have also upheld enforcement of the CSA's cannabis regulations against a variety of other legal challenges.[168]

Nevertheless, the CSA also explicitly contemplates that states would adopt their own controlled substance regulations "unless there is a positive conflict between that provision of [the CSA] and that state law so that the two cannot consistently stand together."[169] Indeed, several courts have held that the CSA does not preempt recent California laws allowing cannabis activity.[170] Similarly, one court has held that the CSA does not preempt a municipal ordinance requiring medicinal cannabis dispensaries[171] to obtain permits.[172] Another case ruled that because medicinal cannabis use remains illegal under federal law, the Americans with Disabilities Act of 1990 does not protect against discrimination on the basis of medicinal cannabis use, even if that use is in accordance with state law explicitly authorizing such use.[173]

II. REGULATION OF CANNABIS-RELATED PERSONAL CONDUCT

As discussed in more detail earlier in this Guide, the majority of AUMA was incorporated into MAUCRSA; however, the operative sections of AUMA governing personal cannabis use remained unchanged.

A. Personal Conduct Authorized

1. Medicinal Cannabis

Even though AUMA and MAUCRSA were enacted later, the CUA is still the touchstone on medicinal-cannabis-related personal conduct. The CUA provides that certain state criminal laws relating to

164 Given the status of cannabis under federal law, there is an unresolved question of the effect of California Government Code section 37100, which allows cities to pass local laws that are "not in conflict" with state or federal law.

165 *Gonzales v. Raich* (2005) 545 U.S. 1, 15. See *Americans for Safe Access v. Drug Enforcement Admin.* (D.C. Cir. 2013) 706 F.3d 438, 453 (denial of petition to review the DEA's decision to maintain cannabis as a Schedule I drug.).

166 *United States v. Oakland Cannabis Buyers' Co-op.* (2001) 532 U.S. 483, 491; but see *Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 858-860.

167 *Gonzales v Raich, supra,* 545 U.S. at p. 29.

168 *Oklevueha Native Amer. Church of Haw., Inc. v. Lynch* (9th Cir. 2016) 828 F.3d 1012 (Religious Freedom Restoration Act, American Indian Religious Freedom Act, Free Exercise Clause, Equal Protection Clause). See also *Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850 [Substantive Due Process, Tenth Amendment]; *Marin Alliance for Medical Marijuana v. Holder* (N.D. Cal. 2011) 866 F.Supp.2d 1142 (Substantive Due Process, Tenth Amendment, Equal Protection, Commerce Clause); *Sacramento Nonprofit Collective v. Holder* (E.D. Cal. 2012) 855 F.Supp.2d 1100 (Commerce Clause, Tenth Amendment, Ninth Amendment, Equal Protection).

169 21 U.S.C. § 903; *Gonzales v. Oregon* (2006) 546 U.S. 243, 251.

170 *Kirby v. City of Fresno* (2015) 242 Cal.App.4th 940, 963 (no preemption of MMPA's prohibition of arrests); *Qualified Patients Assn. v. City of Anaheim* (2010) 187 Cal.App.4th 734, 756 (no preemption of CUA's or MMPA's marijuana decriminalization provisions); *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 818 (no preemption of MMPA's identification card program); *City of Garden Grove v Superior Court* (2007) 157 Cal.App.4th 355 (no preemption of right to return of impounded marijuana under CUA or MMPA). But see *Conejo Wellness Ctr., Inc. v City of Agoura Hills* (2013) 214 Cal.App.4th 1534, 1558, fn. 5 (authorization of medical marijuana activity is likely subject to federal preemption).

171 It should be noted that as of the publication of this Guide, the term "storefront retail" is a more modern term for what used to be known as "dispensary."

172 *City of Palm Springs v. Luna Crest, Inc.* (2016) 245 Cal.App.4th 879, 884-886.

173 *James v. City of Costa Mesa* (9th Cir. 2012) 700 F.3d 394.

the possession and cultivation of cannabis "shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates cannabis for the personal medicinal purposes of the patient upon the written or oral recommendation or approval of a physician."[174] This allows a qualified patient (or their primary caregiver) to possess and cultivate any amount of cannabis reasonably necessary for their current medical condition.[175] For additional details on the scope of the CUA, see Part I of this Guide.

However, it does not preempt local ordinances regulating or banning the cultivation of medicinal cannabis.[176] And it does not preempt local ordinances that completely and permanently banned medicinal cannabis dispensaries that were later allowed under the Medical Marijuana Program Act.[177]

2. Non-Medicinal Cannabis

In 2016, AUMA made it expressly legal for those age 21 and older to:

- Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of cannabis,[178] or not more than 8 grams of concentrated cannabis, including as contained in cannabis products;
- Possess, plant, cultivate, harvest, dry, or process up to six living cannabis plants and possess the cannabis produced by the plants; and
- Smoke or ingest cannabis or cannabis products.[179]

However, personal use and consumption is not unfettered. For example, cannabis in excess of 28.5 grams that is produced by plants kept pursuant to the personal cultivation provision of the Act must be kept in a locked space on the grounds of a private residence that is not visible from a public place.[180] In addition, state law prohibits the following:

- Smoking or ingesting cannabis or cannabis products in public, except as authorized locally (for example in cannabis consumption lounges);
- Smoking cannabis or cannabis products where smoking tobacco is prohibited;
- Smoking cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present, with certain exceptions;
- Possessing an open container of cannabis or cannabis products while driving, operating, or riding in a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation;
- Possessing, smoking, or ingesting cannabis or cannabis products on the grounds of a school,

174 Health & Saf. Code, § 11362.5, subd. (d).
175 *People v. Kelly* (2010) 47 Cal.4th 1008, 1013 (citing *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.).
176 *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 969-970; *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975; *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704.
177 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729.
178 This equates to just under an ounce.
179 Health & Saf. Code, § 11362.1, subd. (a).
180 Health & Saf. Code, § 11362.1, subd. (a)(2).

day care center, or youth center while children are present; and

- Smoking or ingesting cannabis or cannabis products while driving or riding in a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation, with certain exceptions.[181]

With the notable exception of cannabis cultivation, as discussed below, cities cannot regulate the personal cannabis-related conduct that is expressly authorized by AUMA.[182] However, AUMA expressly provides that cities may regulate or prohibit any cannabis-related personal conduct within a government owned, leased, or occupied building.[183] Additionally, AUMA maintained the rights and obligations of cities, as public employers, to maintain drug-free workplaces, to prohibit cannabis activity in the workplace, and to implement policies prohibiting cannabis use by employees and prospective employees.[184]

B. Cannabis Cultivation for Personal Use

Cities have flexibility to regulate cannabis cultivation for personal use. Cities may reasonably regulate, but not ban, indoor cannabis cultivation in a private residence for personal use. Cities may regulate or ban outdoor cannabis cultivation for personal use on the grounds of a private residence.[185] Personal use cannabis cultivation in a fully enclosed, secure, accessory structure on the grounds of a private residence may be reasonably regulated, but not banned.[186] AUMA defines "private residence" as "a house, an apartment unit, a mobile home, or other similar dwelling."[187]

State law limits personal cannabis cultivation to six plants, and requires that the plants and any cannabis produced by the plants, exceeding the allowable 28.5 grams, be stored in a locked space not visible from a public place.[188] Only six plants may be cultivated in or on the grounds of a private residence at one time.[189]

Within these parameters, cities may consider additional, reasonable regulations of cannabis cultivation for personal use. No appellate court has yet opined on the permissible scope of "reasonable regulations." To date, only one trial court has ruled on a challenge to municipal regulation of personal cannabis cultivation.[190] The court found that the local regulations outlining permit eligibility requirements were "arbitrary and capricious" because they excluded "certain persons from doing what state law specifically allows them to do," i.e. cultivate six cannabis plants within a single residence.[191] Additionally, the court found the local regulations on permitting, use of residential space, and inspections were unreasonable because they did not have a nexus to the activity being regulated, personal cultivation of six cannabis plants.[192] Until appellate judicial guidance is provided, cities may

181 Health & Saf. Code, § 11362.3.
182 Health & Saf. Code, § 11362.1, subd. (a).
183 Health & Saf. Code, § 11362.45, subd. (g).
184 Health & Saf. Code, § 11362.45, subd. (f).
Health & Saf. Code, §§ 11362.1, subd. (a)(3), 11362.2.
185 Health & Saf. Code, § 11362.2, subd. (b).
186 Health & Saf. Code, § 11362.2, subd. (b)(2).
187 Health & Saf. Code, § 11362.2, subd. (b)(5).
188 Health & Saf. Code, § 11362.2, subd. (a)(2).
189 Health & Saf. Code, § 11362.2, subd. (a)(3).
190 *Harris v. City of Fontana* (Super. Ct. San Bernardino County, 2018, No. CIVDS 1710586).
191 *Id.* at p. 7.
192 *Id.* at pp. 7-9.



consider adopting reasonable, rationally-related public health, safety, and welfare regulations furthering their Constitutional police powers and the authority given by the voters in AUMA.[193]

> **PRACTICE TIP:** *In crafting reasonable regulations on personal cannabis cultivation, cities should consider the breadth and scope of desired regulations, being careful to establish the rational connection to regulating personal cultivation of small amounts of cannabis plants. Regulations may require coordination with multiple city departments regarding permitting, permissible locations for personal cultivation, compliance with safety codes and standards, accessory structure requirements, environmental standards, as well as safety and nuisance standards, and outdoor inspections. Regulatory needs will vary according to the environment and the will of each city. Cities should be mindful of the types of regulations found to be unreasonable in Harris v. City of Fontana when determining how best to approach this type of regulation.*

Until the permissible scope of reasonable local regulation is delimited by a published court opinion, restrained regulations that do not conflict with the broad permission granted to individuals by AUMA are likely to be upheld. Aggressive local regulations, such as those limiting who can obtain a permit or requiring payment of any delinquent, preexisting administrative citation fines, may be at a greater risk of being struck down.

> **PRACTICE TIP:** *Given the lack of court guidance on this issue, a severability clause should be included in any local regulatory ordinance imposing regulations of cannabis cultivation for personal use.*

III. REGULATION OF COMMERCIAL CANNABIS ACTIVITY

Cities may prohibit or regulate commercial cannabis activity within their jurisdictions.[194] The scope and type of regulation may vary depending on the nature and character of the city and the will of its residents. A city may allow and regulate all types of cannabis businesses, only certain types of cannabis businesses, or may ban any or all commercial cannabis activity. Local regulations may be stricter than the minimum state standards.[195] One of the main tenets of AUMA was local control—cities that want to permit commercial cannabis activity may

193 Cal. Const., art. XI, § 7; *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, (2013) 56 Cal.4th 729, 737-38; Health & Saf. Code, § 11362.2, subd. (b).

194 Bus. & Prof. Code, §§ 26200, 26201. See also Proposition 64, Section 3, subds. (c), (d) (Nov. 9, 2016), available at: https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf.

195 Bus. & Prof. Code, § 26201.

do so on their own terms and cities that want to prohibit these uses are free to do so as well.

Commercial cannabis activity is also regulated extensively by state law, which includes a detailed licensing scheme. Generally, proof of local authorization is required before an applicant may be issued a state license for commercial cannabis activity.[196] Cities are required to provide copies of commercial cannabis ordinances to the state, along with a contact person who can verify local compliance by an applicant.[197] The local jurisdiction must provide a response to an inquiry by the state licensing agency (now consolidated under the Department of Cannabis Control) within 60 business days, or the licensing authority will make a rebuttable presumption that the application complies with local regulations.[198]

A. Land Use Considerations

Prior to the adoption of AUMA and MAUCRSA, many cities used planning and zoning regulations to prohibit or regulate cannabis activity. The California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*[199] that the CUA and MMPA do not preempt local ordinances that completely and permanently ban medicinal cannabis facilities.[200] In reaching this conclusion, the court recognized that the local police power, which derives from California Constitution, article XI, § 7, "includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed."[201] The court concluded that the CUA and MMPA neither expressly nor impliedly preempt local zoning authority.[202] Instead, the CUA and MMPA both have a very limited and specific reach.[203] *Inland Empire* reasoned that the MMPA immunizes only "the cooperative or collective cultivation and distribution of medical marijuana by and to qualified patients and their designated caregivers from prohibitions that would otherwise apply under state law" but does "not thereby *mandate* that local governments authorize, allow, or accommodate the existence of such facilities."[204]

Subsequently, the court in *Maral v. City of Live Oak*[205] held that neither the CUA nor MMPA preempts a city's police power to prohibit medicinal cannabis cultivation. In so holding, the *Maral* court relied heavily on the reasoning and analysis of the Supreme Court's decision in *Inland Empire*. *Maral* confirmed that there is "no right—and certainly no constitutional right—to cultivate medical marijuana."[206] The *Maral* plaintiffs made several other arguments against a cultivation ban, including claims of violation of equal protection of disabled persons, procedural and Ralph M. Brown Act[207] "irregularities" in the adoption of

196 Bus. & Prof. Code, § 26055, subd. (d).
197 Bus. & Prof. Code, § 26055, subd. (f)-(g).
198 Bus. & Prof. Code, § 26055, subd. (g)(2)(D)-(F).
199 (2013) 56 Cal.4th 729 (hereinafter *Inland Empire*).
200 Only medical cannabis was authorized at the time of this case.
201 *Inland Empire, supra*, 56 Cal.4th at p. 738.
202 *Id.* at p. 742.
203 *Id.* at p. 762.
204 *Id.* at p. 759 (italics in original).
205 (2013) 221 Cal.App.4th 975 (hereinafter *Maral*).
206 *Id.* at 984.
207 Gov. Code, § 54950 et seq.

the ordinance, and "negative impact" to "long-cherished property rights." The court rejected all of these claims as "undeveloped" arguments, which the court felt it did not need to address.[208]

In *Kirby v. County of Fresno*[209] the court upheld the part of a county ordinance banning medicinal cannabis dispensaries and banning the personal cultivation or storage of medicinal cannabis within the county. The court also upheld a component of the ordinance that limited the use of medicinal cannabis to qualified patients at their personal residences only. In reaching these holdings, the court relied on *Inland Empire* and *Maral*, and it also conducted an independent analysis of the text of the CUA and MMPA. The court found there is no right to cultivate medicinal cannabis and that municipalities may enact land use regulations restricting or banning cultivation. The court further concluded that a patient does not have a right to obtain or use medicinal cannabis but that the CUA and MMPA provide a defense to possession or use when a person is faced with arrest or criminal prosecution. However, the court struck down the criminal penalty portions of the county ordinance, finding that the component of the ordinance making its violations a misdemeanor was preempted by California's extensive statutory scheme relating to cannabis.

Together, *Inland Empire, Maral,* and *Kirby* supported a municipality's authority to regulate or to ban both medicinal cannabis dispensaries and medicinal cannabis cultivation pre-AUMA (a concept that is continued in AUMA and MAUCRSA). These principles do not abrogate the medicinal cannabis defense in a prosecution under state criminal law, however, as local land use authority cannot nullify a statutory defense to violations of state law.[210]

In addition to *Inland Empire, Maral,* and *Kirby,* the following opinions have upheld local zoning bans or restrictions on medicinal cannabis establishments:

- *County of Los Angeles v. Hill*[211] rejected a claim that the CUA and MMPA preempted a conditional use permit requirement and locational restrictions for medicinal cannabis dispensaries;
- *Browne v. County of Tehama*[212] upheld a rural county ordinance regulating cannabis cultivation;
- *County of Tulare v. Nunes*[213] upheld a zoning ordinance that restricted the location of medicinal cannabis collectives and cooperatives; ruling that limitations on the quantity of cultivation do not render an ordinance unconstitutional in a context other than criminal prosecution;
- *Conejo Wellness Ctr., Inc. v. City of Agoura Hills*[214] held that neither the CUA nor the MMPA preempted a local ban on medicinal cannabis dispensaries; and
- *City of Monterey v. Carrnshimba*[215] affirmed summary judgment against a medicinal cannabis dispensary and held that a dispensary

208 *Maral*, *supra,* 221 Cal.App.4th at p. 984.
209 (2015) 242 Cal.App.4th 940 (hereinafter *Kirby*).
210 *People v. Ahmed* (2018) 25 Cal.App.5th 136, 143.
211 (2011) 192 Cal.App.4th 861.
212 (2013) 213 Cal.App.4th 704.
213 (2013) 215 Cal.App.4th 1188.
214 (2013) 214 Cal.App.4th 1534.
215 (2013) 215 Cal.App.4th 1068.

was not a listed use in the city's planning ordinance and thus was presumptively banned; the court rejected the claim that a dispensary fell within preexisting land use classifications for personal services, retail sales, and pharmacies and medical supplies.

In addition, many medicinal cannabis advocates have unsuccessfully challenged local bans, regulations, and permitting schemes on equal protection, due process, and other constitutional grounds.[216]

In *Safe Life Caregivers v. City of Los Angeles*[217] the court found that an initiative measure banning medicinal cannabis businesses did not have to comply with either (1) the state's minimal procedural requirements for zoning ordinances in Government Code section 65804 (which requires compliance with the public hearing requirements of Government Code section 65854) or (2) the city's charter requirements for passage of an ordinance (because it was passed by the electorate and not by the city council). The measure also provided explicit immunity from prosecution of nuisance violations for medicinal cannabis businesses that fell within certain limited categories and complied with a set of regulations. The court held that the measure did not unlawfully grant, in violation of substantive and procedural requirements, a variance or a conditional use permit, nor did the initiative grant any type of land use right; it merely provided limited immunity under certain conditions.



Finally, the court reviewed the MMRSA and held that it did not preempt local regulation.[218]

NOTE: *It is important to remember that all of the foregoing cases arose prior to the adoption of AUMA and MAUCRSA, and accordingly, some of the holdings may be affected. Under MAUCRSA, cities may no longer prohibit indoor personal cultivation, although it may impose reasonable restrictions. See Part 3, Section II of this Guide regarding Regulation of Cannabis-Related Personal Conduct. Nevertheless, these cases illustrate the evolution of local land use and regulatory authority for cannabis uses in California, which ultimately became a critical element of AUMA. These cases also discuss many relevant topics that are helpful to practitioners, including local police power, preemption, zoning ordinance adoption, disabled access, conflicts of law, torts, as well as many*

216 *Maral, supra,* 221 Cal.App.4th at p. 984 (rejecting various constitutional challenges to city's cultivation ban); *County of Tulare v. Nunes, supra,* 215 Cal. App.4th at p. 1204 (county's public safety concerns constituted rational basis for differential treatment of medical cannabis dispensaries); *Conejo Wellness Ctr., Inc. supra,* 214 Cal.App.4th at p. 1560 (rejecting substantive due process, procedural due process, and right to privacy challenges to dispensary ban); 420 Caregivers, *LLC v. City of Los Angeles* (2012) 219 Cal.App.4th 1316 (rejecting due process and right to privacy challenges to ordinance restricting medical cannabis dispensaries); and *County of Los Angeles v. Hill* 192 Cal.App.4th at 874 (zoning requirements for medical cannabis dispensaries did not violate Equal Protection Clause because dispensaries created unique public safety concerns and were not similarly situated to pharmacies). See also *The Kind & Compassionate v. City of Long Beach* (2016) 2 Cal.App.5th 116 (ban on dispensaries did not violate state or federal laws protecting disabled persons, did not constitute civil rights violation under 42 USC §1983, and did not violate various state tort laws).

217 (2016) 243 Cal.App.4th 1029.

218 *Safe Life Caregivers v City of Los Angeles*, *surpa,* 243 Cal.App.4th at pp. 1045-1049.

cannabis-specific topics. Accordingly, this body of case law remains relevant and helpful, even after adoption of AUMA.

With the adoption of both AUMA and MAUCRSA, cities' ability to adopt land use ordinances and other business license ordinances to regulate both medicinal and adult-use cannabis uses was reaffirmed.[219] In *City of Vallejo v. NCORP4*,[220] the court recognized that both prior state law and AUMA do not preempt cities ability to allow, restrict, limit, or prohibit commercial cannabis land uses, and upheld the city's ordinance limiting allowed medicinal cannabis dispensaries to those that previously paid local business taxes. Notwithstanding the foregoing, practitioners should familiarize themselves with the following sections from MAUCRSA that affect local regulation of cannabis uses:

- **Personal cannabis cultivation:** Cities may reasonably regulate but may not prohibit personal cultivation. See Local Regulation of Cannabis Cultivation for Personal Use above.
- **Cannabis consumption lounges:** In addition to any local regulations, cannabis consumption lounges must meet certain state criteria related to access and ensuring consumption is not visible from public areas.[221]
- **Buffer Zone:** Cannabis dispensaries may not be located within 600 feet of schools, youth centers, and day care centers, unless a city has adopted a local ordinance providing otherwise.[222]
- **Delivery:** Cities can ban or regulate deliveries within their borders.[223] However, cities cannot prevent a delivery service from using public roads to pass through its jurisdiction.[224]

B. Local Ordinances

1. Distinguishing Between Business and Land Use Regulation

Whether cities should adopt a land use ordinance or a business license ordinance, or both, to regulate cannabis uses and activities depends upon the goals the city is trying to achieve. If a city's goal is to address land use impacts associated with cannabis uses, such as limiting the location or odor, then the city will need to follow both state and local law for adopting ordinances that regulate the land use impacts of cannabis activities. For example, local operating regulations may encompass industry-specific standards, public safety risks, quality of life concerns, and other factors unique to the locale. If a city's goal is to address the concerns of the business aspect of cannabis activities, such as who may engage in commercial cannabis activities, then the city may regulate the cannabis activity through its general police powers. For example, cities may consider permit or business license requirements, including objective standards for applications, approvals, denials, renewals, and licensing revocations, as well terms of security, odor, inspections, notices of violations, levels of penalties, and an appeals process.

219 Bus. & Prof. Code, § 26200, subd. (a)-(b).
220 (2017) 15 Cal.App.5th 1078.
221 Bus. & Prof. Code, § 26200, subd. (g).
222 Bus. & Prof. Code, § 26054, subd. (b). Cf. Health & Saf. Code, § 11362.768.
223 Bus. & Prof. Code, § 26200.
224 Bus. & Prof. Code, § 26090, subd. (e).

PRACTICE TIP: *A city that incorporates most regulatory provisions in the business regulations should still identify in its zoning ordinance the zones where the various commercial cannabis uses are permitted.*

PRACTICE TIP: *Many cities historically regulated cannabis operations through conditional use permits authorized under the zoning ordinance. The conditional use permit gave cities the ability to impose conditions on the use to prevent any secondary impacts. Remember that a conditional use permit runs with the land and is not tied to a particular operator. A regulatory business license tied to the operator should be required in cities that want to maintain control of who operates a commercial cannabis business.*

2. California Environmental Quality Act (CEQA)

In adopting an ordinance that regulates or prohibits cannabis uses, cities should consider the application of the California Environmental Quality Act[225] (CEQA). Depending upon the circumstances, the adoption of these types of ordinances may be supported by a finding that the ordinance is either not a "project" under CEQA or exempt from CEQA. Otherwise, an environmental document may be required.

Cannabis regulations are not a "project" subject to CEQA if they "will not result in a direct or reasonably foreseeable indirect physical change in the environment"[226] or if they will not have "the potential for causing a significant effect on the environment."[227] However, in *Union of Med. Marijuana Patients, Inc. v. City of San Diego*,[228] the California Supreme Court held that an ordinance amending zoning regulations to allow up to four medicinal cannabis dispensaries in each council district at specific locations with a conditional use permit qualifies as a "project" under CEQA.[229] The Court found that the regulations could, potentially, result in indirect physical changes in the environment by permitting the establishment of a sizeable number of a new type of business that could foreseeably result in new retail construction to accommodate the businesses and by changing patterns of vehicle traffic.

MAUCRSA had provided a statutory exemption for "the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity."[230] However, that exemption expired by operation of law on June 30, 2021.[231]

If an ordinance is subject to CEQA, and not exempt, an environmental document may be required. The scope of the environmental review will depend on the type of activity the city is authorizing under the ordinance. By way of example, cultivation activities can require analysis into water use, pesticide use,

225 Pub. Res. Code, § 21000 et seq.
226 Cal. Code Regs., tit. 14, § 15060, subd. (c)(2).
227 Cal. Code Regs., tit. 14, § 1561, subd. (b)(3).
228 (2019) 7 Cal.5th 117.
229 Cf. *Union of Med. Marijuana Patients v City of Upland* (2016) 245 Cal.App.4th 1265 [ordinance banning mobile dispensaries, adopted in 2013, is not a "project" under CEQA partly because of speculative nature of plaintiffs' claims of environmental consequences].
Bus. and Prof. Code § 26055(h).
Bus. and Prof. Code § 26055(h).
230 Bus. & Prof. Code, § 26055, subd. (h).
231 Bus. & Prof. Code, § 26055, subd. (h).

drainage, and other environmental considerations. Retail operations, on the other hand, may be more similar to all other permitted retail operations in the city's commercial zones and may not generate any unusual impacts to the environment.

3. Social Equity Issues

In adopting local ordinances, cities may also want to consider social equity concerns. The California Legislature has found that cannabis prohibition has had a "devastating impact on communities across California," with individuals who have cannabis convictions encountering greater difficulties in accessing capital, business space, technical support, and regulatory compliance assistance.[232] Furthermore, these impacts from cannabis convictions have had a disproportionate impact on Black and Latinx people, even though people of all races used or sold cannabis at the same rates during the cannabis prohibition.[233] *The California Cannabis Equity Act of 2018*[234] is intended to ameliorate these adverse impacts by providing assistance to those individuals and communities that have been negatively impacted. The Act was amended in July 2021 when the three state licensing agencies were consolidated under the DCC. Under the Act, the DCC may provide technical assistance for local equity programs, which includes providing grant funding to eligible local jurisdictions upon appropriation of funds by the Legislature, through the Governor's Office of Business and Economic Development (GO-Biz).[235]

Any local jurisdiction that allows for commercial cannabis activity may implement a local equity program. A "local equity program" is defined as "a program adopted by a local jurisdiction that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization as evidenced by the local jurisdiction's equity assessment."[236] An "equity assessment" may include a review of rates related to local cannabis arrests and convictions, consideration of how the local jurisdiction's cannabis policies have impacted communities and populations within its jurisdiction, and other information of how the War on Drugs has impacted communities within its jurisdictions.[237] First the Bureau, and now the DCC, publishes a list of local jurisdictions that have adopted local equity programs and a list of model local equity ordinances developed by advocacy groups and experts.[238] Although the California Cannabis Equity Act of 2018 provides that the state may assist local jurisdictions with the implementation of local equity programs, a local jurisdiction allowing for cannabis-related use and activities is not required to implement a local equity program.

232 Sen. Bill 1294 (2017-2018 Reg. Sess.) § 2, subd. (b).
233 Sen. Bill 1294 (2017-2018 Reg. Sess.) § 2, subd. (c).
234 Bus. & Prof. Code, § 26240 et seq.
235 Bus. & Prof. Code, § 26242, subd. (a).
236 Bus. & Prof. Code, § 26240, subd. (e).
237 Bus. & Prof. Code, § 26240, subd. (b).
238 Bus. & Prof. Code, § 26246, subd. (b). The list is available at https://cannabis.ca.gov/local-equity-information/.



PRACTICE TIP: *It is important to remember that local equity programs are intended to mitigate the adverse impacts caused by a city's cannabis-related policies. For example, a city that prohibited all cannabis-related use and activities until AUMA was passed will have different social equity considerations compared to a city that allowed for uses and activities related to medicinal cannabis following the adoption of Proposition 215. Practitioners should be mindful of their own city's historic practices when researching and borrowing from other cities' social equity programs.*

PRACTICE TIP: *Equity programs can be quite varied. In jurisdictions that have merit-based or competitive business selection processes, some cities have given more weight to, or otherwise favored, applicants in communities that have been historically and disproportionately impacted by the criminalization of cannabis activities. Cities can also consider creating a more even playing field in the selection process by allowing potential operators to participate in a selection process before having secured a physical location for the business. For many, the cost of securing and leasing a business location and holding that location for many months during a long selection process can be too expensive. This leaves only well-capitalized and well-established businesses able to compete for the licenses, which can in turn perpetuate the historical social inequities that AUMA aimed to reverse. Social equity can come in many forms and can be incorporated into many aspects of a business selection process.*

C. Commercial Cannabis Cultivation

Commercial cannabis cultivation is regulated statewide through Chapter 6 of Division 10 of the Business and Professions Code, and through regulations originally promulgated by the California Department of Food and Agriculture (CDFA), in California Code of Regulations, Title 3, Division 8, Chapter 1. Cultivation is defined as "any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis."[239] Cultivation may occur in a variety of ways, including indoor, outdoor, mixed light, nursery, and special cottage cultivation operations, each subject to specific state licensing and regulatory requirements.[240] The type of commercial cultivation license required generally depends on the square footage of the canopy size[241] and the type of light

239 Bus. & Prof. Code, § 26001, subd. (l).; Cal. Code Regs., tit. 3, § 8000, subd. (h).

240 Bus. & Prof. Code, § 26060, subd. (a).

241 "Canopy" is the area of a cultivation site containing mature plants, measured in square feet, including the surface area of any shelving system for mature plants. (Cal. Code Regs., tit. 3, §8000, subd. (f).)

used in cultivation.[242] State law prohibits large cultivation site licenses until January 1, 2023.[243] Large sites include those greater than one acre for outdoor sites with no artificial light, indoor sites using exclusively artificial light greater than 22,000 square feet, and mixed light sites greater than 22,000 square feet.[244]

Commercial cultivators are subject to strict, statewide, water supply and irrigation requirements,[245] as well as restrictions on marketing cannabis as organic and properly designating the county of origin.[246] State license applicants must submit a diagram of the property proposed for cultivation, a detailed cultivation plan, a pest management and pesticide plan, and a cannabis waste plan.[247] Additionally, state-licensed cannabis cultivators must comply with weighing, packaging, labeling, and track and trace regulations.[248]

Cities have broad discretionary authority in the regulation of commercial cannabis cultivation. Accordingly, cities may regulate local licensing, traditional public safety measures, environmental measures, and zoning and land use and development standard regulations (lighting, hours of operation, noise, odor, etc.). Some areas of particular regulation are identified in state law, including land conversion, building and fire standards, grading, electricity, water usage and quality, habitat protection, and other environmental concerns.[249] Cities may enact further regulations to ameliorate odors, excessive noise, unsanitary conditions, pesticide exposure, security concerns, including background checks, and local environmental impacts.

D. Commercial Cannabis Manufacturing

Commercial cannabis manufacturing is regulated in state law by Chapter 13 of Division 10 of the Business and Professions Code, and by California Code of Regulations, Title 17, Division 1, Chapter 13. Cannabis manufacturers create "cannabis products," defined as "cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients."[250]

Cannabis manufacturers must obtain a state license, the type of which depends, in part, on whether the manufacturer uses volatile solvents, non-volatile solvents, or no solvents.[251] Manufacturers are subject to detailed state regulatory requirements, including:[252]

- Security regulations

242 Bus. & Prof. Code, § 26061; Cal. Code Regs., tit. 3, §§ 8200, 8201.

243 Bus. & Prof. Code, § 26061, subd. (c).

244 Bus. & Prof. Code, § 26061, subd. (c). But note, CDFA by implication, allows a licensee to hold multiple licenses for small operations for a single site but only one medium license for a single site. For example, a licensee wishing to cultivate 82,000 square feet indoors may hold nine Type 2A licenses. (See Cal. Code Regs, tit. 3, § 8209.) The California Growers Association filed suit in 2018 to challenge this regulation but dropped the lawsuit in 2019. https://mjbizdaily.com/wp-content/uploads/2019/01/CGA-suit-over-license-stacking-dismissed.pdf.

245 Bus. & Prof. Code, § 2060.1; Cal. Code Regs., tit. 3, § 8107.

246 Bus. & Prof. Code, §§ 26062.5, 26063.

247 Cal. Code Regs., tit. 3, §§ 8105, 8106, 8108, 8307, 8308.

248 Cal. Code Regs., tit. 3, §§ 8212, 8213, 8402–8406.

249 Bus. & Prof. Code, § 26066.

250 Bus. & Prof. Code, § 26001, subd. (i); Health & Saf. Code, § 11018.1; Cal. Code Regs., tit. 13, § 40100, subd. (j).

251 Bus. & Prof. Code, § 26130, subd. (a); Cal. Code Regs., tit.17, § 40118.

252 *See generally*, Cal. Code Regs., tit. 17, §§ 40200–40272, 40300–40505, 40550.

- Extraction regulations[253]
- Product quality control regulations
- Grounds, building, and premises regulations designed to ensure quality control and safety
- Equipment regulations
- Personnel procedures promoting cleanliness
- Raw material safety regulations
- Manufacturing protocols
- Record keeping
- Labeling and packaging regulations
- Inspection requirements

Like other commercial cannabis businesses, cannabis manufacturers must comply with all local ordinances and regulations in order to obtain a state license.[254] In addition to land use and zoning requirements, cities may enact health, safety, and welfare regulations for local cannabis manufacturers.[255] Such regulations may include, for example, (1) land use and zoning regulation imposition of development standards; (2) business permits or licenses; (3) regulatory inspections; (4) a limit on the number of permitted manufacturing businesses (5) restricted hours of operation; (6) proof of landlord authorization; (7) notice to surrounding property owners; (8) insurance and indemnity; (9) facility and equipment requirements; (10) safety requirements; (11) specific requirements on the use of compressed gases and other manufacturing techniques; (12) building and perimeter security requirements; (13) background checks that go above and beyond that required under state law; and (14) signage requirements or restrictions. Cities may also consider different requirements for manufacturers operating under different types of state licenses, calculated to apply the most stringent regulations to those manufacturing operations posing the greatest public safety risk.

There are several different manufacturing license types.[256] For example, Type N is for manufacturers that produce cannabis products, other than extracts or concentrates that are produced through extraction. As an example, a Type N license can be for a manufacturer who merely uses an already-produced extract and infuses the extract into a food or beverage.

253 Notably, no volatile solvent cannabis extraction or closed loop extraction may occur in an area zoned as residential. (Cal. Code Regs., tit. 17, §§ 40222, subd. (c), 40225, subd. (g).)
254 Bus. & Prof. Code, § 26055.
255 Bus. & Prof. Code, §§ 26200, 26201; Proposition 64, Section 3, subd. (c), (d) (Nov. 9, 2016), available at: https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf.
256 Cal. Code Regs., tit. 17, §40118.

PRACTICE TIP: *"Manufacturing" with a Type N Manufacturing license is somewhat of a misnomer and can be confusing to city staff or city councilmembers. Technically, merely mixing an extract into a food or beverage is considered "manufacturing." Therefore, it may be important for cities to distinguish between manufacturers who are merely infusing products (taking a cannabis extract and mixing in brownie mix, for example), and those who are using a more comprehensive manufacturing operation to extract the THC from other cannabinoids. Due to the fact that infusion may have fewer impacts on surrounding areas, cities can consider allowing infusion in more populated zones, like general commercial districts, and extraction in less populated zones, like industrial districts.*

E. Commercial Cannabis Testing

Commercial cannabis and cannabis products are subject to state-imposed testing requirements, and shall not be sold commercially without being tested by a licensed laboratory.[257] A person that holds a state testing laboratory license is prohibited from obtaining a license for any other commercial cannabis activity, and is prohibited from employing anyone who is also employed by another licensee that does not hold a state testing laboratory license.[258]

All cannabis testing laboratories must be certified to test for a variety of substances in cannabis and cannabis products, and must follow accepted laboratory testing guidelines.[259] Testing laboratories must provide a certificate of analysis for each representative cannabis sample analyzed,[260] and are responsible for quality assurance,[261] proficiency testing,[262] and audits.[263]

In addition to traditional land use and zoning requirements, cities may consider the following when regulating cannabis testing laboratories: business permits, regulatory inspections, notice to surrounding property owners, landlord authorization, insurance and indemnity, proof of all laboratory certifications and accreditations, building and perimeter security requirements, operating procedures and security requirements for delivery of cannabis and cannabis products for testing, restricted hours of operation or restricted hours for accepting cannabis deliveries for testing, background checks, and signage requirements or restrictions.

PRACTICE TIP: *Cities may want to consider allowing testing facilities in various zones within their city, as secondary effects may be minimal. The use functions much like any other medicinal testing facility or laboratory.*

F. Commercial Cannabis Distribution

Distribution plays a vital role in the commercial cannabis system. Distribution is defined as the

257 Bus. & Prof. Code, § 26100, subd. (a).
258 Bus. & Prof. Code, § 26053, subd. (b).
259 Cal. Code Regs., tit. 16, §§ 5701, 5702, 5712–5725.
260 Cal. Code Regs., tit. 16, § 5726.
261 Cal. Code Regs., tit. 16, § 5729–5730.
262 Cal. Code Regs., tit. 16, § 5733–5734.
263 Cal. Code Regs., tit. 16, § 5735.

"procurement, sale, and transport of cannabis and cannabis products between licensees."[264]

A distributor can hold a Type 11[265] or Type 13 license.[266] A Type 11 license allows a distributor to transport cannabis between licensed cannabis premises; to package, re-package, label, and re-label cannabis for retail sale; transport a cannabis goods batch to a testing lab while also ensuring the proper retrieval and documentation of batch samples;[267] transfer untested cannabis goods, or untested immature cannabis plants or seeds to specified licenses; and to store certain packaged cannabis goods.[268] A Type 13 license allows a distributor to engage in transport only.[269] In addition, a microbusiness (Type 12 license) can act as a distributor for self-distribution of its own commercial cannabis products.[270]

All distributors must comply with minimum security and transportation safety requirements for the commercial distribution of cannabis and cannabis products, which relate to the following:

- Comprehensive general liability insurance;
- Restrictions on who may be a driver or passenger in the transport vehicle;
- Restrictions on the vehicle itself — each vehicle must have a valid motor carrier permit pursuant to Vehicle Code section 34620;
- Inventory accounting;
- Records of tax payments, testing, etc.; and
- Shipping manifest.[271]

In addition to state law, a distributor must also comply with any local ordinances.[272] However, a city cannot prevent the transportation of cannabis or cannabis products on public roads by a licensee acting in compliance with Division 10 of the Business and Professions Code.[273] Therefore, a city cannot prevent a distributor's transport vehicle from traveling through its jurisdiction on public roads simply because the distributor is transporting cannabis products, but can regulate or ban distribution facilities within its boundaries.[274] Some types of regulations that a city may adopt include zoning regulations to ensure that the distribution facilities are located in a commercial/industrial center, as well as health and safety regulations relating to security, vehicle, and storage requirements.

G. Commercial Cannabis Retail

Commercial cannabis retail operations are regulated statewide through Chapter 7 of Division 10 of the Business and Professions Code, and through regulations in the California Code of Regulations, Title 16, Division 42.

264 Bus. & Prof. Code, § 26001, subd. (r).
265 Bus. & Prof. Code, §§ 26050, subd. (a)(19)
266 Cal. Code Regs. tit. 16, § 5315.
267 If the batch passes, the distributor may transport the cannabis good to a licensed retailed or a licensed distributor. However, if the batch fails and cannot be remediated, the distributor must destroy the batch. (Cal. Code Regs. tit. 16, §5306(e).)
268 Cal. Code Regs. tit. 16, §§ 5300–5314.
269 Cal. Code Regs. tit. 16, § 5315.
270 Bus. & Prof. Code, § 26070, subd. (a)(3)(A).
271 Cal. Code Regs., tit. 16, §§ 5300–5315; Bus. & Prof. Code, § 26070.
272 Bus. & Prof. Code, § 26055.
273 Bus. & Prof. Code, § 26080, subd. (b).
274 Bus. & Prof. Code, § 26055.

A commercial cannabis business that engages in the retail sale and delivery of cannabis or cannabis products to customers must obtain a state "Retailer" license, which is a Type 10 license.[275]

The term retailer includes both medicinal retailers as well as adult-use retailers. A license may be an A-designation (for adult-use) or an M-designation (for medicinal). Dispensaries that previously operated under the collective or cooperative model for medicinal cannabis have been phased out under the regulatory scheme promulgated by MAUCRSA.[276] State law provides two distinct types of retailers: storefront (formerly known as "dispensaries") and non-storefront. Each is discussed further below.

All retailers must comply with minimum security and transportation safety requirements for the commercial delivery of cannabis and cannabis products established in the California Code of Regulations, Title 16, Division 42 as well as those requirements identified in Division 10 of the Business and Professions Code.[277]

A retailer must have a licensed premises, which is a physical location from which commercial cannabis activities are conducted, however, a retailer's premises may be closed to the public, such that the retailer conducts sales exclusively by delivery.[278]

All licensed retail premises must not be located within a 600-foot radius of a school, day care center, or youth center that is in existence at the time the license is issued, unless a licensing



authority or a local jurisdiction specifies a different radius.[279]

1. Storefront Retail (Formerly, "Dispensaries")

The Bureau promulgated regulations for all retailers, which include a variety of requirements such as security, packaging, labeling, and operation of a retail business.[280] Local jurisdictions may also regulate or prohibit retail businesses.[281] Like other commercial cannabis activity, a local jurisdiction may regulate commercial cannabis retail businesses within its jurisdiction through its police power.[282]

275 Bus. & Prof. Code, § 26055.
276 Health & Saf. Code, § 11362.775.
277 Cal. Code Regs., tit. 16, § 5300 et seq.; Bus. & Prof. Code, § 26070.
278 Bus. & Prof. Code, § 26070, subd. (a)(1).
279 Bus. & Prof. Code, § 26054, subd. (b).
280 Cal. Code Regs., tit. 16, §§ 5400–5427.
281 Bus. & Prof. Code, § 26055.
282 Cal. Const., art. XI, § 7. See also *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 737–38.

PRACTICE TIP: *For retail facilities, many cities have adopted zoning regulations to identify appropriate commercial zones, development standards, and limitations on the number of retail facilities per zone. In addition to zoning regulations, a city may adopt regulations pertaining to retail operations to address health and safety concerns. Some examples of regulations that address health and safety concerns include limiting hours of operation, security requirements, storage, and restrictions on customer accessibility.*

PRACTICE TIP: *Since cannabis businesses often operate as cash-based businesses, security is a critical component of successful retail cannabis regulations. Cannabis products can also create an odor. In commercial districts, regulations should be in place to ensure that odor does not seep into adjacent commercial tenant spaces.*

2. Consumption Lounges

Some store-front retailers may want to offer consumption lounges where the consumer may ingest, smoke, or vape the cannabis products on site. There is no separate state license category for on-site consumption. Business and Professions Code section 26200, subdivision (g) provides that, notwithstanding Health and Safety Code section 1362.3, subdivision (a), a local jurisdiction may allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under this division, if all of the following are met:

a. Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age and older;

b. Cannabis consumption is not visible from any public place or nonage-restricted area; and

c. Sale or consumption of alcohol or tobacco is not allowed on the premises.

A store-front retailer that offers consumption on site is different from a temporary cannabis event licensee that offers consumption pursuant to California Code of Regulations section 5603. However, the above-identified criteria apply to both types of consumption, in addition to other state and local regulations relating to retailers and temporary cannabis events.

PRACTICE TIP: *Consumption lounges are increasing in popularity, as they offer the public a safe place to consume or smoke cannabis and allow retail operators an opportunity to distinguish themselves from other retailers. As interest in consumption lounges increase, it is important to make sure that city regulations clearly indicate whether on-site consumption is allowed and under what conditions.*

3. Prohibition on Free Cannabis Goods

A licensed retailer is prohibited from providing free cannabis goods to any person. However, a licensee who holds an M-Retailer license, an M-Retailer Non-storefront license, or an M-Microbusiness license that is authorized for retail sales may provide free medicinal cannabis goods, or donate cannabis goods and the use of equipment, if certain criteria are met.[283] As of July 12, 2021, trade samples

283 Cal. Code Regs., tit. 16, § 5411, subds. (b) and (c).

between licensees may be permitted under new regulations.[284]

4. Non-Storefront Retail

A non-storefront retailer licensee is authorized to conduct retail sales exclusively by delivery.[285] A non-storefront retailer is required to comply with all regulations relating to retail storefronts, except for those provisions relating to public access to the licensed premises and the retail area, as the non-storefront retail facility is closed to the public.[286]

5. Cannabis Deliveries

Licensed store-front retailers, non-storefront retailers, and microbusinesses can engage in delivery of cannabis and cannabis products.[287] Deliveries are included as a type of commercial cannabis activity under Business and Professions Code section 26070.5.

The Bureau adopted minimum security and transportation safety requirements for the commercial delivery of cannabis and cannabis products.[288] These regulations specify, among other things, requirements for delivery employees, technological platforms for delivery, authorized delivery locations, delivery vehicle requirements, allowed cannabis goods carried during delivery, delivery request receipts, and delivery routes.

Some general requirements relating to the delivery vehicle include, but are not limited to, the following: the vehicle cannot have any markings or other indications on the exterior that can indicate it is used for cannabis delivery;[289] the cannabis goods need to be locked in a fully enclosed box or container that is separate from the vehicle and secured to the vehicle;[290] the delivery vehicle needs to have a dedicated Global Positioning System (GPS) used for the delivery vehicle only;[291] and any vehicle used by a licensed retailer for delivery is subject to inspection by the state.[292] Other regulations provide that the delivery driver cannot carry cannabis goods in the delivery vehicle with a value in excess of $5,000 at any time.[293] Additionally, the delivery driver must be at least 21 years of age, must deliver to a physical address in California, and cannot deliver cannabis goods to an address on publicly owned land or in a building leased or owned by a public agency.[294]

Under AUMA, cities can ban or regulate deliveries within their borders.[295] However, cities cannot prevent a delivery service from using public roads to pass through their jurisdiction.[296]

On January 25, 2019, the Bureau promulgated Regulation 5416 (d), which provides that a delivery employee may deliver to any jurisdiction within California provided that such delivery is conducted in compliance with all regulations in Division 42

284 Cal. Bus. & Prof. Code, § 26153.1.
285 Cal. Code Regs., tit. 16, § 5414.
286 Cal. Code Regs., tit. 16, § 5414; Bus. & Prof. Code, §§ 26012, 26070.
287 Bus. & Prof. Code, § 26090, subd. (a).
288 Bus. & Prof. Code, § 26070; 16 Cal. Code Regs. §§ 5400-5427.
289 Cal. Code Regs., tit. 16, § 5417, subd. (a).
290 Cal. Code Regs., tit. 16, § 5417, subd. (b).
291 Cal. Code Regs., tit. 16, § 5417, subd. (d).
292 Cal. Code Regs., tit. 16, § 5417, subd. (f).
293 Cal. Code Regs., tit. 16, § 5418, subd. (a).
294 Cal. Code Regs., tit. 16, §§ 5415, subd. (b); 5416, subds. (a) and (c).
295 Bus. & Prof. Code, § 26200.
296 Bus. & Prof. Code, § 26090, subd. (e).

of Title 16 of the California Code of Regulations.[297] Regulation 5416 (d) can arguably be interpreted to mean that delivery of cannabis goods is authorized in any city within California, regardless of whether the city regulates or bans deliveries within its borders.

However, in April 2019, a number of cities and the County of Santa Cruz filed a complaint against the Bureau challenging Regulation 5416 (d) and seeking judicial declarations that, among other things, the Bureau exceeded its authority in promulgating Regulation 5416 (d) and has no authority to preempt local control over commercial cannabis activities.[298] In an order dated November 17, 2020, the trial court concluded that the issue was not ripe for decision because Regulation 5416(d) does not command local jurisdictions to do anything or preclude them from doing anything. Although the Bureau had taken a contrary position in a separate lawsuit, in this case the Bureau argued that Regulation 5416 (d) did not preempt local ordinances regulating deliveries. Concluding that the Bureau was not judicially estopped from arguing such a contrary position, the trial court agreed with the Bureau that Regulation 5416 (d) does not preempt or conflict with any local ordinances regulating or banning deliveries, nor does it preclude the plaintiffs from enforcing such ordinances. As such, the matter was not ripe for adjudication.

H. Cannabis Microbusinesses

A microbusiness is a business that engages in multiple areas of commercial cannabis activity. In order to hold a microbusiness license, a licensee must engage in at least three of the following commercial cannabis activities: cultivation, manufacturing, distribution, and retail sale.[299] A microbusiness (Type 12 License) can be issued for a microbusiness that conducts cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer under this division, provided such licensee can demonstrate compliance with all requirements imposed by this division on licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the licensee engages in such activities.[300]

There were two different licensing authorities for a microbusiness prior to July 2021: the Bureau and the CDFA. With the passage of AB 141, all cannabis licensing authority rests with the DCC. The Bureau and the CDFA had each established a process by which an applicant for a microbusiness license can demonstrate compliance with all the requirements for the activities that will be conducted under the license.

A holder of a microbusiness license shall comply with the following:

a. A holder of a microbusiness license engaged in cultivation shall comply with all the rules and requirements applicable to the cultivation license type suitable for the cultivation activities of the licensee.

b. A holder of a microbusiness license engaged in manufacturing shall comply with all the rules

297 Cal. Code Regs., tit. 16, § 5416, subd. (d).

298 Order, *County of Santa Cruz v. Bureau of Cannabis Control* (Super. Ct. Fresno County, 2019, No. 19CECG01224) (Nov. 17, 2020) ("With judicial estoppel principles in mind, the court wishes tonmake clear that it is persuaded by, agrees with and adopts the BCC's argument that Regulation 5416(d) is not inconsistent with and does not preempt plaintiffs' local ordinances regarding adult-use cannabis delivery, nor does it preclude plaintiffs from enforcing such ordinances. On the basis of that conclusion, the court finds that this matter is not ripe for adjudication, and dismisses the action as to all plaintiffs.")

299 Cal. Code Regs., tit. 16, § 5500, subd. (a).

300 Bus. & Prof. Code, §§ 26001 subd. (aj); 26050, subd. (a)(20).

and requirements applicable to a Manufacturer 1 license in Division 1 of Title 17 of the California Code of Regulations.

c. A holder of a microbusiness license engaged in distribution shall comply with all the rules and requirements applicable to a distributor license.

d. A holder of a microbusiness license engaged in retail sale shall comply with all the rules and requirements applicable to a retailer license, or a non-storefront retailer license if retail sales are conducted by delivery only.

All cultivation, manufacturing, distribution, and retail activities performed by a licensee under a microbusiness license shall occur on the same licensed premises.[301] However, areas of the licensed premises for manufacturing and cultivation shall be separated from the distribution and retail areas by a wall and all doors between the areas shall remain closed when not in use.[302]

A microbusiness licensee must comply with all the security rules and requirements applicable to the corresponding license type suitable for the activities allowed pursuant to that license.[303] Suspension or revocation of a microbusiness licensee shall affect all commercial cannabis activities allowed pursuant to that license.[304]

Like other commercial cannabis activities, a local jurisdiction may regulate cannabis microbusinesses within its jurisdiction through its police power.[305]

I. Temporary Cannabis Events

A temporary cannabis event is an event where either the sale or consumption of cannabis will occur over a short period of time, and at a temporary location. A temporary cannabis event cannot exceed more than 4 consecutive days.[306] "A temporary cannabis event may only be held at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding a temporary cannabis event."[307] The location of a temporary cannabis event cannot be on premises licensed for the sale of alcohol or tobacco.[308]

> **Practice Tip:** *"Premises" is defined as "the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted."[309] If the temporary cannabis event is part of a larger event, such as a street fair, the premises for the temporary cannabis event may not be the same as the premises for the larger event. Thus, alcohol could be served at the location where the larger event is occurring, unless a local ordinance provides otherwise.*

301 Cal. Code Regs., tit. 16, § 5500, subd. (d).
302 Cal. Code Regs., tit. 16, § 5500, subd. (h).
303 Cal. Code Regs., tit. 16, § 5500, subd. (g).
304 Cal. Code Regs., tit. 16, § 5500, subd. (i).
305 Cal. Const., art. XI, § 7. See also *Inland Empire, supra,* 56 Cal. 4th at pp. 737-38.
306 Cal. Code Regs. tit. 16, § 5601, subd. (d).
307 Bus. & Prof. Code, § 26200, subd. (e)(1); see also Cal. Code Reg. tit. 16, § 5601 subd. (f).
308 Cal. Code Regs. tit. 16, §§ 5601, subd. (g); 5602, subd. (f); 5603, subd. (c).
309 Bus. &. Prof. Code, § 26001, subd. (ap).

To organize a temporary cannabis event, the organizer must first obtain a cannabis event organizer license and then a temporary cannabis event license.[310] The cannabis event organizer license regulates the organizer only and is an annual license.[311] The temporary cannabis event license regulates the event itself, including by specifying when and where the onsite sale and consumption of cannabis goods is authorized.[312] Only a licensed retailer (whether storefront or non-storefront) or licensed microbusiness may sell cannabis at a temporary cannabis event.[313] A licensed cannabis event organizer may not sell cannabis goods unless the organizer also holds a retailer, non-storefront retailer, or microbusiness license.[314] Mobile sales are prohibited at a temporary cannabis event.[315]

Cannabis consumption at a temporary cannabis event is restricted to persons at least 21 years of age or older. Onsite consumption must comply with any local regulations, including any smoking pollution control regulations.[316]

Informational or educational cannabis events where there are no sales or consumption of cannabis goods do not require a state cannabis license.[317]

J. Cannabidiol (CBD)

State and federal cannabidiol (CBD) law has recently gone through some significant changes with the passage of AUMA in California and the Federal Agriculture Improvement Act of 2018[318] (2018 Farm Bill).

CBD can be extracted from both cannabis and hemp plants. Cannabis CBD is extracted from cannabis, which is generally grown and consumed for its intoxicating properties. Cannabis plants are those that contain more than 0.3% tetrahydrocannabinol (THC).[319]

Hemp CBD is sourced from industrial hemp plants, which are grown primarily for their fiber and seeds. Hemp plants are distinguished from cannabis plants in that hemp must contain no more than 0.3% THC.[320]

At the state level, cannabis CBD is regulated by the CDPH, Manufactured Cannabis Safety Branch (MCSB).[321] A business wishing to manufacture and sell cannabis CBD products, including edibles, must obtain state commercial cannabis licenses prior to operation.

310 Cal. Code Regs. tit. 16, §§ 5600, subd. (a); 5601, subd. (b).
311 See Cal. Code Regs. tit. 16, § 5600.
312 Cal. Code Regs. tit. 16, § 5601, subd. (b).
313 Bus. & Prof. Code, § 26200, subd. (e)(2)(B); Cal. Code Reg. tit. 16, § 5602, subd. (c).
314 Bus. & Prof. Code, § 26200, subd. (e)(2)(B); Cal. Code Reg. tit. 16, § 5600, subd. (c).
315 Cal. Code Regs. tit. 16, § 5602, subd. (c)(2).
316 Cal. Code Regs. tit. 16, § 5603, subd. (e); see also Bus. & Prof. Code, § 26200, subd. (e)(5).
317 Cal. Code Regs. tit. 16, §5604.
318 Pub. L. No. 115-334 (Dec. 20, 2018) 132 Stat 4490.
319 Health & Saf. Code, § 11018, subd. (a).
320 Health & Saf. Code, § 11018.5, subd. (a); 2018 Farm Bill, § 10113.
321 Bus. Prof. Code, § 26012, subd. (a)(3).

Industrial hemp is expressly excluded from the state's definition of cannabis. For this reason, Hemp CBD is largely unregulated. Since the hemp CBD products in topical and ingestible forms are often sold and marketed for health and wellness benefits, these products fall under the purview of the Federal Drug Administration (FDA) and CDPH, Food & Drug Branch (FDB) as a food, drug, or cosmetic. California law does not currently provide any requirements for the manufacturing, processing, or selling of non-food industrial hemp or hemp products.

Neither cannabis nor hemp CBD products are permitted as food additives. The FDB adopts federal law and policy pertaining to food, drugs, and cosmetics. The FDB concludes that CBD is, as a Schedule I drug, prohibited in conventional foods, drugs, and cosmetics. Therefore, the FDB found that CBD products derived from industrial hemp are likewise prohibited in food and drug retail within the state – this applies to human and animal foods. Industrial hemp CBD products are not approved in California as a "food, food ingredient, food additive, or dietary supplement."

The FDB goes even further, maintaining that the state prohibition extends to the sale of topical creams and other products, because these items are typically marketed for their CBD content and therapeutic value. While enforcement has not been aggressive, the FDA has issued warning letters to companies selling CBD products stating that a company, by placing an unapproved new drug in the stream of commerce, is engaged in illegal activity. A product is a "drug" if its intended use is the "diagnosis, cure, mitigation, treatment, or prevention of disease," which is largely determined by a company's claims about the value of active ingredients (e.g. CBD) on its product labels and website.



The FDA has been sympathetic to CBD health benefit claims, and therefore has authorized clinical investigations to substantiate claims supporting CBD's therapeutic value in the interests of consumer protection and public safety. The FDA has approved one CBD drug for the treatment of seizures. Because the FDA has recognized CBD as a pharmaceutical drug authorized for clinical investigations, any commercial product containing CBD and marketed for its therapeutic value would need to undergo the FDA's rigorous drug approvals or else it will be treated by the federal government, and by the state FDB, as an illegal, unapproved new drug.

The law on industrial hemp cultivation is similarly being developed. In 2019, the California legislature passed Senate Bill (SB) 1409, which relaxes industrial hemp cultivation regulations. Nevertheless, if the FDB continues to follow federal policy on hemp, that SB 1409 has no impact on CDB's use in edible or topical products. Also, the 2018 Farm Bill allows hemp cultivation broadly, not simply pilot programs for studying market interest in hemp-derived products. It explicitly allows hemp-derived products to be transferred across state

lines for commercial or other purposes. It also puts no restrictions on the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law.

Nevertheless, the CBD extracted from industrial hemp remains largely unregulated and to the extent that the FDA and FDB have taken positions, those positions are not well-known. Unregulated CBD sales have proliferated throughout California, creating practical and regulatory challenges for cities. The FDA reports that it will continue to focus on supporting scientific testing and approval of drugs that are derived from cannabis. The FDA also reports that it will solicit input on how to make legal pathways for the lawful marketing of these products and continue to protect and promote the public health. The drafters of this guide recommend checking the FDA's website at fda.gov for the most up-to-date information on the FDA's position CBD. These positions will inform the state FDB. The most up to date information from the state FBD can be found at cdph.ca.gov.

PART 4 | Finance and Taxation

Cannabis operations impose financial challenges and benefits on both operators and regulators alike. The goal is to strike a balance that raises revenue (or, at minimum, defrays the cost of regulation) without driving operators out of business or otherwise deterring compliance, thereby indirectly perpetuating the illegal market. This chapter discusses financial tools for regulators, including the imposition of fees and taxes on cannabis operations, as well as laws affecting operators' access to banking solutions.



I. FEES AND COSTS

A. Cost to Cities

The costs incurred by cities from cannabis operations may vary greatly depending on the unique local regulations of each jurisdiction. These costs may include costs associated with the processing and issuance of permits, initial and ongoing inspection costs, enforcement costs (including implementation of track-and-trace programs), and in some cases, costs associated with the use of public property.

B. Fees

Imposition of fees is one means of cost recovery attendant to local regulation. Under the California Constitution, fees are distinct from taxes as an exercise of local police powers to advance a regulatory purpose or recover costs for a benefit conferred or a service provided by a local agency. Taxes, however, are generally imposed for revenue purposes.[322]

1. The Distinction Between Fees and Taxes

The constitutional distinction between taxes and fees was clarified with the adoption of Proposition 26 in 2010, which defined local agency taxes under the California Constitution as:

. . . [A]ny levy, charge, or exaction of any kind imposed by a local government, except the following:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

322 See *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874, 879–880; *California Building Industry Association* v. *State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1046.

3. A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

6. A charge imposed as a condition of property development.

7. Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.[323]

This definitional distinction is important because taxes are subject to approval by the electorate, while certain types of fees can be adopted without voter approval.[324]

However, Proposition 26 imposes a burden on local government agencies to demonstrate "by a preponderance of the evidence" that:

- A fee is not a tax;
- The amount of the fee is no more than necessary to cover the reasonable costs of the governmental activity; and
- The manner in which those costs are allocated to a payor bears a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.[325]

There is some debate as to whether the foregoing burden applies to all seven fees and charges set forth in subsection (e) of section 1 of Article XIII C of the California Constitution, or to just the first three enumerated fees.[326]

2. Fees and Local Cannabis Regulation

a. Regulatory Fees

Fees "imposed for the reasonable regulatory costs to a local government" are undoubtedly one of the most commonly employed charges in the regulation of cannabis operations. To impose a regulatory fee a local agency must first establish a lawful regulatory process for the cannabis facilities in its jurisdiction.[327] Consequently, the validity of any city fees will be constrained by the unique regulatory program of that city. Depending on the scope of a city's regulatory scheme, appropriate fees could include recovery of the reasonable costs for:

- Review and processing of permit applications, including associated noticing and hearings;

323 Cal. Const. art. XIII C, § 1, subd. (e).

324 See Cal. Const. art. XIII C, § 2. See also *Johnson* v. *County of Mendocino* (2018) 25 Cal.App.5th 1017, 1032–1033 (construing Proposition 26, which amended section 3 of Article XIII C of the California Constitution, to hold that a charge on the gross receipts of commercial cannabis activities was a tax and not a fee).

325 Cal. Const. art. XIII C, §1, subd. (e).

326 See League of California Cities, *Propositions 26 and 218 Implementation Guide* (2019), pp. 77–78, available at https://www.calcities.org/detail-pages/resource/propositions-26-and-218-implementation-guide-may-2019 (opining that the burden applies only to three of the seven exceptions that mention the "reasonable cost requirement").

327 See generally *Newhall County Water Dist.* v. *Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1449, holding that a water district could not impose conservation rates on a water retailer for groundwater that it did not supply.

- Investigation of prospective applicants;
- Inspections of the premises, products, equipment, and personnel involved in the operation;
- Review of the tracing and tracking of cannabis and cannabis products, including any license or access fees to intellectual property employed in the process;
- Auditing transactional records; and
- Reasonably anticipated costs for administrative enforcement of the agency's regulations.

Proposition 26 is generally perceived as having eliminated an agency's ability to impose a regulatory fee directed at mitigating the adverse impacts of the regulated product or business.[328] However, agencies may be able to impose such impact fees as part of a land use approval. (See discussion of Fees Imposed as a Condition of Property Development below.)

In determining whether a regulatory fee satisfies Proposition 26's constraints, it is not normally necessary to finely calibrate the fee to each individual subject to the fee. Instead, the fee is measured collectively. Proposition 26 should be satisfied if the fee does not "exceed the reasonable cost of regulation with the generated surplus used for general revenue collection."[329]

Practice Tip: *It is critical to create and maintain detailed records showing how the costs of the regulatory program were determined, and how those costs were spread among the fee payors. Determining a reasonable estimate of costs may prove challenging when establishing a new regulatory program with no prior history for such things as anticipated enforcement costs. You may want to look to the experience of other more established regulatory schemes in similar jurisdictions to gather evidence about likely costs.*

b. Fees Imposed as a Condition of Property Development

Proposition 26 recognizes the longstanding ability of cities to impose fees as a condition of property development.[330] If a cannabis operation must obtain a land use permit, the governing agency has an additional opportunity to recover fees. Development fees include the costs of reviewing and processing the application for the proposed project, and the costs to mitigate the adverse impacts of the proposed project and to provide for public facilities and services.[331] Development fees afford local agencies a means to recover funds necessary to mitigate impacts to natural resources and public facilities caused by the cultivation, manufacturing, and processing of cannabis and cannabis products, such as impacts on water supplies and infrastructure, transportation, air quality, and farmland.

328 See League of California Cities, *Proposition 26 and 218 Implementation Guide* (2019), pp. 69, available at https://www.calcities.org/detail-pages/resource/propositions-26-and-218-implementation-guide-may-2019.

329 *Griffith* v. *City of Santa Cruz* (2012) 207 Cal.App.4th 982, 997.

330 Cal. Const. art. XIII C, §1, subd. (e)(6).

331 See *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1504 (affirmed in part, reversed in part); *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 325; Cal. Gov. Code §§ 66000 et. seq.

In order to pass constitutional muster, development fees that are imposed as a condition of development must have a logical "nexus" between the impacts of the development and the purpose for which the fee is imposed,[332] as well as "rough proportionality" in "nature and extent to the impact of the proposed development."[333]

Additionally, the Mitigation Fee Act[334] places further restrictions on the imposition and use of development fees. Pursuant to the Act, an agency imposing the fee must:

1. Identify the purpose of the fee.

2. Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

3. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

4. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.[335]

If the fee is imposed as a condition of approval, "the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed."[336] The funds must be deposited in a separate account.[337] The Act sets forth various noticing and reporting requirements, procedures for adopting fees, and provides for return of the collected funds if a date is not timely set for the commencement of the mitigation on which the funds are to be spent.[338]

c. Fees for Use of Government Property

Some cities allow the use of their facilities, such as fairgrounds, for cannabis events. Under Proposition 26, fees charged for use of government property are one of the exceptions to the general rule that any levy, charge, or exaction is a tax.[339] Historically, this type of fee has not been limited to recovery of an agency's costs, allowing the agency to charge whatever the market would bear.[340] Whether Proposition 26 changed the common law is subject to debate.[341]

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332 *Nollan* v. *California Coastal Commission* (1987) 483 U.S. 825, 837.

333 *Dolan* v. *City of Tigard* (1994) 512 U.S. 374, 391; see also *Koontz* v. *St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 612 (applying the "*Nollan*/*Dollan* test" to ad hoc, in-lieu fees to mitigate environmental impacts).

334 Gov. Code, §§ 66000 et. seq.

335 Gov. Code, § 66001, subd. (a).

336 Gov. Code, § 66001, subd. (b).

337 Gov. Code, §§ 66001, subd. (c), 66006, subd. (a).

338 Gov. Code, §§ 66001, 66006, 66016–66019.

339 Cal. Const. Art. XIIIC, § 1, subd. (e)(4).

340 *City of Oakland v Burns* (1956) 46 Cal.2d 401, 407. See also *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal. 5th 1, 18 (budget transfer from enterprise fund to general fund that exceeded costs of services incurred by utility from other city departments was not a tax).

341 See League of California Cities, Proposition 26 and 218 Implementation Guide (2019), pp. 77-78, available at https://www.cacities.org/Prop218andProp26.



d. Property-Related Fees

Proposition 218 as adopted by the voters in 1996 created special rules for fees "imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service."[342] In the context of cannabis regulation, property-related fees can arise for water irrigation charges related to cultivation. In this regard, the courts have drawn a distinction between delivery of water and regulation of groundwater. While charges for supplying water through an established connection are property-related service fees,[343] charges on groundwater pumping for the purpose of "the conservation of limited groundwater stores, and remediation of the adverse effects of groundwater extraction," are not considered property-related, but regulatory.[344]

Practice Tip: *When enacting fees related to water use by cannabis cultivators, it is important to build a clear record of the purpose for the fee. If the charge is for regulating the use of the water to avoid adverse impacts on water supplies, rather than on merely supplying the water, then the fee should not be subject to the onerous procedural requirements that apply to property-related fees.*

While property-related water, sewer, and refuse collection fees are subject to the substantive and majority protest requirements of Proposition 218, those fees are exempt from the voter-approval requirement that applies to all other property-related fees.[345] Procedurally, before adopting a property-related fee, a local agency must:

- Identify the parcels on which a fee or charge is proposed;[346]
- Calculate the amount of the proposed fee or charge on each parcel in light of cost-justification requirements of article XIII D, section 6, subsection b of the California Constitution;[347]
- Provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel on which the fee or charge is proposed;[348] and

342 Cal. Const. Art. XIII D, § 2, subd. (e).
343 *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216.
344 *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1208.
345 Cal. Const., art. XIIID, §6, subd. (c).
346 Cal. Const., Art. XIIID, §6, subd. (a)(1).
347 Cal. Const., art XIIID, §6, subd. (a)(1).
348 Cal. Const., art. XIIID, §6, subd. (a)(1).

- Conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee.[349]

At the public hearing, "[i]f written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge."[350]

Property-related fees *other than water, sewer, or refuse charges* must then be approved by a majority of property owners or two-thirds of registered voters.[351]

Substantively, property-related fees must meet the following requirements:

- Revenue derived from the fee or charge must not exceed the funds required to provide the property-related service;
- Revenue from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed;
- The amount of the fee or charge imposed on any parcel or person must not exceed the proportional cost of the service attributable to the parcel on which it is imposed;
- The fee or charge may not be imposed for service unless the service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not allowed. Stand-by charges must be classified as assessments and must not be imposed without compliance with the proportionality requirements and property-owner mailed ballot protest proceedings for assessments; and
- No fee or charge may be imposed for general governmental service, where the service is available to the public in substantially the same manner as to property owners (e.g., police, fire, ambulance, or library services).[352]

For additional information on the imposition of fees see: League of California Cities, *Propositions 26 and 218 Implementation Guide* (2019), pp. 53 – 98 (Chapter 4, Fees); *The California Municipal Law Handbook* (Cal CEB) §§ 5.161 – 5.181, 10.238 – 10.253.4, 10.418(3).

II. TAXES

A. State Taxes

1. Sales and Use Tax

The general California sales and use tax on all tangible retail goods, including cannabis and cannabis products, is 7.25%. Cities may impose their own sales taxes, subject to the Bradley-Burns Uniform Local Sales and Use Tax Law,[353] resulting in total sales taxes of between 9 and 11%. The retail sales of medicinal cannabis, medicinal cannabis concentrate, edible medicinal cannabis products, and topical medicinal cannabis are exempt from these sales and use taxes when the customer provides a valid Medical Cannabis Identification Card (MCIC) indicating they are a qualified patient (or the primary caregiver for a

349 Cal. Const., art. XIIID, §6, subd. (b).
350 Cal. Const., art. XIII D, § 6, subd. (a)(2).
351 See Cal. Const., art. XIII D, §6, subd. (c).
352 Cal. Const. art. XIII D, §6, subd. (b).
353 Rev. & Tax. Code, § 7200 et seq.

qualified patient), and a valid government-issued identification card.[354] Cannabis retailers, cultivators, manufacturers, and distributors making sales must register with the California Department of Tax and Fee Administration (CDTFA) for a seller's permit to report and pay any sales and use tax due to the CDTFA.

2. Cannabis Excise Tax

State law also establishes two statewide taxes specific to cannabis. The first is a cannabis excise tax that is imposed upon the purchaser of cannabis or cannabis products at the rate of 15% of the average market price of any retail sale by a cannabis retailer.[355] The average market price for an arm's-length transaction is defined as the wholesale cost of the product plus a mark-up, which is determined by the CDTFA on a biannual basis in six-month intervals. In a non-arm's-length transaction, the average market price is defined as the cannabis retailer's gross receipts from the sale.[356]

The cannabis excise tax does not apply to medicinal cannabis or medicinal cannabis products donated for no consideration to qualified patients.[357] Retailers are responsible for collecting the cannabis excise tax from purchasers at the time of the retail sale and for paying the tax to the distributor.[358]

3. Cannabis Cultivation Tax

The second statewide cannabis-specific tax is a cultivation tax that is imposed on all cultivators.[359] The cannabis cultivation tax is imposed at the following rates: (1) cannabis flowers are $9.25 per dry-weight ounce,[360] (2) cannabis leaves are $2.75 per dry-weight ounce,[361] and (3) fresh cannabis plants are $1.29 per ounce.[362] The CDTFA is required to annually adjust the cannabis cultivation tax rates for inflation.[363]

The cultivation tax applies to all harvested cannabis that enters the commercial market. All cannabis removed from a cultivator's premises are presumed taxable, except for plant waste or medicinal cannabis or medicinal cannabis products designated for donation.[364] The tax does not apply to cannabis cultivated for personal use, or cultivated by a qualified patient or primary caregiver in accordance with the CUA.[365]

Cultivators are responsible for paying the cultivation tax to the distributor or to the manufacturer if the first transfer or sale of unprocessed cannabis is to a manufacturer. Manufacturers that collect the cultivation tax are required to pay the tax to the

354 Rev. & Tax. Code, §34011, subd. (f).
355 Rev. & Tax. Code, §34011, subd. (a)(1). See also Cal. Code of Regs., tit. 18, § 3700. Rev. & Tax. Code, § 34010, subd. (b)(1).
356 Rev. & Tax. Code, § 34010, subd. (b)(2).
357 Rev. & Tax. Code, § 34011, subd. (g).
358 Rev. & Tax. Code, § 34011, subd. (b).
359 Rev. & Tax. Code, § 34012.
360 Rev. & Tax. Code, § 34012, subd. (a)(1). See also Cal. Code of Regs., tit. 18, § 3700.
361 Rev. & Tax. Code, § 34012, subd. (a)(2). See also Cal. Code of Regs., tit. 18, § 3700.
362 Rev. & Tax. Code, § 34012, subd. (c); Cal. Code of Regs., tit. 18, § 3700.
363 Rev. & Tax. Code, § 34012, subd. (k). Rev. & Tax. Code, § 34012, subd. (a).
364 Rev. & Tax. Code, § 34012, subd. (i).
365 Rev. & Tax. Code, § 34012, subd. (j). Rev. & Tax. Code, § 34012, subd. (h). Rev. & Tax. Code, § 34012, subd. (h)(2).

distributor. The distributor, which must register with the CDTFA for a cannabis tax permit, reports and pays the cultivation tax and cannabis excise tax to the CDTFA.

B. Local Taxes

For general guidance on implementing new taxes, see League of California Cities, *Propositions 26 and 218 Implementation Guide* (2019), pp. 16-25; *The California Municipal Law Handbook* (Cal CEB) §§ 5.96 – 5.123, 10.244

Cities have employed a wide range of tax strategies, including:

1. Percent of Gross Sales

Many cities have opted to tax cannabis businesses by implementing a voter-approved tax on a percentage of gross sales receipts. The approved tax rates range from 2 to 20%. Some cities tax different segments of the industry at different rates, often levying higher rates on retailers and lower rates on, for example, cannabis testing labs. This is not a consumer sales tax and is a tax levied on the business.

> **PRACTICE TIP:** *Because this local tax will be placed on top of the state's 15% excise tax, a city may opt to propose these tax rates as "up to" those maximum amounts (or even with explicit ballot language authorizing tax rate decreases below a set maximum tax rate without returning to the voters), with initial rates set lower. The purpose would be to give law-abiding operators an opportunity to establish themselves and compete with entrenched illegal market dealers. The trend among cities is to decrease taxes in order to lessen the financial burden on legitimate businesses, so that they can better compete with the illegal market.*

2. Dollar Per Square Foot of Business Space

This method is mostly used for cultivators. Rates appear to range from $1 to $25 per square foot, with initial rates often set lower. Several cities tax indoor growers more than outdoor growers. Others set gradually decreasing rates based on size – e.g., $10 per square foot for the first 5,000 square feet and gradually dropping to $2 per square foot for space beyond 40,000 square feet.

3. Miscellaneous

Depending on the segment of the industry, cities have charged annual flat rates, dollar amounts per vehicle of a distributor's fleet, and dollar amounts per gram of oil or piece of edible produced. They have also set "tax floors" – i.e., a minimum tax that is imposed, regardless of gross sales, whether a business makes a profit or suffers a loss. As a policy matter, some cities tax medicinal cannabis purveyors at significantly lower rates than adult-use cannabis operators.

> **PRACTICE TIP:** *Mix and match. None of the above strategies are mutually exclusive. Whichever the city employs, the key is to strike a balance so that taxes are not so high that they deter operators from doing business legitimately and encourage them to continue in the illegal market.*

4. Development Agreements

Because it can take months and be very expensive to get tax measures on a ballot, some cities opt to

let cannabis businesses open before taxes are in place to give local operators a competitive edge. In such instances, also as a way to "test the waters," some cities have entered into development agreements (with corresponding annual development fees) with cannabis businesses.

> **PRACTICE TIP:** *While the potential for revenue may be appealing, a development agreement provides the holder a vested right to continue the operation for the term of the agreement. Approval of a development agreement is also a legislative act that can be the subject of a referendum. Cities should carefully consider the risks and benefits before granting a long-term, contractual right to operate a cannabis business. A less risky practice is to follow the business and land use regulation models discussed earlier in this Guide. Additionally, whether development agreements are merely placeholders until a tax measure can be approved or permanent solutions, cities should note that entering into a development agreement in lieu of a formal tax measure could expose them to liability for violating Proposition 218, which requires voter approval for all new taxes.*

III. BANKING

It is commonly believed that banks and other financial institutions are *prohibited* from doing business with the cannabis industry. Technically, this is not the case. As a practical matter, however, financial institutions refuse to work with cannabis businesses directly to avoid the burdensome duties and risks associated with doing so. As described



further below, this refusal creates a de facto ban on banking that prevents the complete legitimization of the cannabis industry, and places a significant burden on cannabis businesses and the cities that seek to collect tax and fee revenue from them.

A. Federal Law

Federal law pertaining to cannabis banking includes the Currency and Foreign Transactions Reporting Act of 1970, which is commonly referred to as the Bank Secrecy Act (BSA),[366] as well as guidance by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN), which administers the BSA.

1. The Bank Secrecy Act

The BSA requires U.S. financial institutions to assist U.S. government agencies in detecting and preventing money laundering. Specifically, the Act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000[367]

366 31 U.S.C. § 5311, et seq.
367 31 U.S.C. § 5313; 31 C.F.R. § 1020.315

and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities like the sale of Schedule I drugs.[368]

2. FinCEN Guidance

In 2014, FinCEN issued guidance (FinCEN Guidance) regarding "BSA Expectations Regarding Marijuana-Related Businesses."[369] This guidance included establishing best practices for customer due diligence, a Suspicious Activity Report (SAR) filing structure, and ways to identify business red flags. The FinCEN Guidance provided that, in assessing the risk of providing services to a cannabis-related business, institutions should conduct extensive customer due diligence that includes verifying state licenses, reviewing license applications and other documentation, understanding the expected activity of the business, and performing ongoing monitoring for suspicious activity.

Financial institutions must also file a SAR on any activity involving a cannabis business. Generally, BSA regulations require the filing of a SAR when a financial institution knows, suspects, or has reason to suspect that a transaction: (1) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (2) is designed to evade regulations promulgated under the BSA; or (3) lacks a business or apparent lawful purpose. Since federal law prohibits the distribution and sale of cannabis, this means a SAR must be filed for every activity with a cannabis business, regardless of state law.

With this in mind, the FinCEN Guidance established a three-tier SAR reporting regime for cannabis businesses that denotes the type of activity involved:

1. "Marijuana Limited" SAR Filing. This report is used when the institution reasonably believes that the cannabis business is consistent with state law and does not violate any of the eight Department of Justice (DOJ) priorities set forth in the Cole Memo,[370] such as sales to minors;

2. "Marijuana Priority" SAR Filing. This report is used when the institution reasonably believes that the cannabis business has violated one of the Cole Memo DOJ priorities, or the business is not in full compliance with state law requirements; and

3. "Marijuana Termination" SAR Filing. This report is used when the institution deems it necessary to terminate the relationship with the cannabis business "in order to maintain an effective anti-money laundering compliance program."

Furthermore, the FinCEN Guidance also provides a long list of "red flags" that indicate that a cannabis business may be engaged in activity that implicates the Cole Memo priorities or violates state law. These signs may be circumstances that include: the business receiving substantially more revenue

368 31 U.S.C. § 5313-5316; 31 C.F.R. § 1020.320.

369 U.S. Department of the Treasury, Financial Crimes Enforcement Network, FIN-2014-G001 (February 14, 2014), available at https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf.

370 James M. Cole, Deputy Attorney General, U.S. Department of Justice, Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (August 29, 2013), available at http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf. The *Cole Memo* provided a safe harbor from prosecution — including to financial institutions serving the cannabis industry, upon which the FinCEN Guidance is based — provided if federal priorities were met or protected. On January 4, 2018, then-Attorney-General Jeff Sessions announced the rescission of the *Cole Memo*. Over a year later, on January 31, 2019, FinCEN issued a statement noting "FinCEN's February 2014 guidance remains in place." Letter from Drew Maloney, Assistant Sec'y for Legislative Affairs, FinCEN, to Representative Denny Heck (Jan. 31, 2018). See discussion of Federal Controlled Substances Act for more information on the Cole Memo and federal enforcement.

than may reasonably be expected, rapid deposits of cash followed by immediate cash withdrawals, the business has been subject to an enforcement action, or a purported non-profit business is making excessive payments to its managers or employees. These red flags, the FinCEN Guidance provides, may indicate a need for additional due diligence.

Finally, the FinCEN Guidance reminds financial institutions that they must file currency transaction reports for cannabis businesses the same as they would for other businesses. This means, for instance, that banks need to file reports on the receipt of withdrawal by any person of more than $10,000 in cash per day.

B. Legislative Fixes and Alternative Solutions

Given the added burden of cannabis-specific customer due diligence and heightened risk of criminal violations of the BSA/AML by failing to report possible breaches of the DOJ's priorities in the Cole Memo, most federally chartered banks will simply refuse to serve cannabis-related businesses. While the Congressional Cannabis Caucus supports federal legislation to both remove cannabis from Schedule I of the Controlled Substances Act and provide a safe haven for financial institutions to do business with the cannabis industry in states that have legalized medicinal or adult-use cannabis, certainty remains elusive on the federal level.

To get around this obstacle, California has conducted research into the heavier reliance on credit unions, the establishment of a state-chartered bank that would bypass the Federal Reserve,[371] and the development of cryptocurrencies. Private entrepreneurs have also developed "closed-loop" app solutions for the industry, but by and large, cannabis in California still remains a predominantly cash-based business, resulting in extreme challenges for cities when it comes time to collect taxes and fees.

IV. FEE AND TAX COLLECTION CONSIDERATIONS

Transparent communication is key to providing cannabis businesses the assurance that their fees and taxes will be secure upon payment. Cities have experienced that cannabis fees and taxes are often paid in cash, creating a significant safety and security concern for both the cannabis business and the city in which it is located. This concern has prompted cities to implement a fee and tax collection program aimed at mitigating security risks without compromising convenience, security, and logistical ease.

Some practical issues with fee and tax collection include:

- Transportation and security risks, like armed robbery and accompanying violence; and
- Time and place of fee and tax collection.

PRACTICE TIP: *Prudent practice includes providing a direct contact to set up individualized appointments for the collection of fees and taxes. The individual appointments should be coordinated with the finance department and police department for additional security.*

371 This approach has been generally unsuccessful in other jurisdictions and most recently suffered a setback at the Tenth Circuit Court of Appeals. See *Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City* (10th Cir. 2017) 861 F.3d 1052 (reversing and remanding trial court's order with instructions to dismiss credit union's complaint filed to order the Federal Reserve to issue a "master account" to the credit union for the purpose of serving the banking needs of the cannabis industry in Colorado).

PRACTICE TIP: *Since many financial institutions are wary of potentially violating federal anti-money laundering and other laws related to engaging in transactions with the proceeds from cannabis businesses, cities should keep meticulous records of cannabis fee and tax revenues in the event of a bank or other governmental audit.*

PRACTICE TIP: *Check with the risk management department of your city's financial institution before adopting fees or taxes for which the city will be collecting money from cannabis businesses. After adoption of AUMA, some risk management departments of banks have issued guidance on whether the bank will accept funds that have derived from fees and taxes from cannabis businesses.*

PART 5 | Enforcement Tools

Both AUMA and MAUCRSA included language intended to preserve a municipality's ability to regulate commercial cannabis activity within its jurisdictional boundaries. A city "has a constitutional right to 'make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.'" Consistent with this constitutional principle the statute states:

> This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.[372]

Therefore, a commercial cannabis business may be regulated or completely prohibited by a city.

Cities may consider a variety of options and tools when enforcement against unlawful cannabis operations is necessary.[373] Potential enforcement tools include civil injunctions, criminal enforcement, and administrative enforcement. Each city may evaluate the most appropriate tool or tools for the situation.



I. CIVIL ENFORCEMENT

A. Civil Injunction

Cities may consider seeking injunctions to close unauthorized cannabis operations. State law authorizes courts to issue temporary restraining orders, and preliminary and permanent injunctions. Section 527(a) states, "A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor."

The traditional test for issuance of a preliminary injunction requires the court to weigh two interrelated factors: (1) the likelihood that the moving party will prevail on the merits; and (2) the relative interim harm to the parties from the issuance or non-issuance of the injunction.[374] The court evaluates the two factors on a sliding scale, such that "if the party seeking the injunction can

372 Bus. & Prof. Code, § 26200, subd. (a).
Code Civ. Proc., §§ 526, 527.
Code Civ. Proc., § 527(a) (Emphasis added.).

373 See Appendix 1 regarding selection of defendants in cannabis enforcement.

374 *White v. Davis* (2003) 30 Cal.4th 528, 554; *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286; *Butt v. Sup. Court* (1992) 4 Cal.4th 668, 677-78.

make a sufficiently strong showing of likelihood of successes on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor."[375]

Where a city seeks to enjoin the violation of a law and the city is likely to prevail on the merits, courts generally are to presume that public harm will result if an injunction is not issued.[376] No showing of actual harm is required.[377]

In extreme circumstances when the cannabis operator fails to comply with the injunction, it could be enforced through contempt or the appointment of a receiver.[378]

B. Nuisance Per Se and Cannabis Law

A nuisance per se exists whenever "a legislative body with appropriate jurisdiction, in the exercise of the police power, expressly declares a particular object or substance, activity, or circumstance, to be a nuisance."[379] A nuisance may be established and enjoined through state or local law.

The role of the court in an action to enjoin nuisance activity is limited to determining whether a statutory or regulatory violation exists. Where the Legislature has determined a particular condition or activity is a nuisance, it would be a usurpation of the legislative power for a court to arbitrarily deny enforcement. The function of the courts in such circumstances is limited to determining whether a statutory violation in fact exists, and whether the statute is constitutionally valid.[380]

Accordingly, a nuisance per se arises whenever an activity occurs that a city or the state has expressly declared to be a nuisance. Stated differently, the only element a city must satisfy for a cannabis business to be a nuisance per se is that the business engaged in an activity declared to be a nuisance under state or local law.

As discussed in Part 2 of this Guide, the development of California's cannabis law supports enforcement through nuisance injunctions, as earlier case law confirmed local land use authority over cannabis activity. Additionally, under state law, a commercial cannabis business may be regulated or completely prohibited by a city.[381]

1. Establishing Nuisance Through Violation of Municipal Code

Commercial cannabis businesses may be specifically prohibited throughout a city and thus constitute a prohibited land use in the city. A city ordinance may provide that any violation of the zoning code is deemed a public nuisance,[382] and that any such violations may be remedied by the city through whatever civil remedies are available, including a civil action for injunctive relief. Violations of municipal laws prohibiting cannabis businesses

375 *Common Cause of California v. Bd. of Supervisors of Los Angeles County* (1989) 49 Cal.3d 432, 447; *King v. Meese* (1987) 43 Cal.3d 1217, 1227 ("[T]he more likely it is that [the moving parties] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue".).

376 *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72.

377 *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1166.

378 *See* Code Civ. Proc., §§ 527, 564-570; Health & Saf. Code, § 11573.

379 *Beck Development Co. v. Southern Pacific Transportation Co*. (1996) 44 Cal.App.4th 1160, 1206; *City of Claremont v. Kruse, supra*, 177 Cal.App.4th at pp. 1163-1164.

380 *City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 100; See also *Beck Development Co. v. Southern Pacific Transportation Co., supra,* 44 Cal.App.4th at p. 1207 ("[W]here the law expressly declares something to be a nuisance, then no inquiry beyond its existence need be made...").

381 Bus. & Prof. Code, § 26200, subd. (a).

382 Many municipal ordinances may be enforced civilly without designating cannabis activities as a specific nuisance per se.

have been upheld as nuisances per se subject to abatement by injunction.[383]

In *City of Claremont v. Kruse,*[384] the court affirmed a trial court's permanent injunction that enjoined the operation of a cannabis distribution facility anywhere within the City of Claremont.[385] The court analyzed whether there was express or implied preemption by the CUA or MMPA that would prevent local regulations, such as bans, from restricting the establishment of cannabis dispensaries.[386] The court found that neither the CUA nor the MMPA expressly or impliedly preempts local laws in any way.[387]

Kruse followed the holding in *City of Corona v. Naulls* (2008).[388] In *Naulls*, the court affirmed the issuance of a preliminary injunction to shut down a medicinal cannabis dispensary that was operating without any zoning designation. The *Naulls* court held that "where a particular use of land is not expressly enumerated in a city's municipal code as constituting a *permissible* use, it follows that such use is *impermissible*."[389] Accordingly, the court held that the cannabis dispensary was "a nuisance per se, subject to abatement in accordance with the City's municipal code."[390]

In *County of Los Angeles v. Hill,*[391] the court confirmed that local governments have the ability to regulate the establishment of cannabis dispensaries. There the court stated, "If there was ever any doubt about the Legislature's intention to allow local governments to regulate marijuana dispensaries, and we do not believe there was, the newly enacted section 11362.768, has made clear that local governments may regulate dispensaries."[392] Thus, a city has the power to restrict not only where a cannabis business may operate (i.e. the location of a dispensary), but also whether it may operate at all.

Although the foregoing cases were decided prior to the passage of AUMA, they still provide legal authority for local regulations relating to commercial cannabis. The opinions in *Naulls*, *Kruse,* and *Hill* support enforcement by enjoining unlawful cannabis businesses. An injunction to prohibit the continuing nuisance is an appropriate enforcement tool, and a city is likely to prevail on the merits of its public nuisance claim based on violations of local law.

> **PRACTICE TIP:** *An ordinance may expressly declare some or all commercial cannabis activity to be unlawful. For example, one ordinance provides as follows: "It shall be unlawful for any person or entity to own, manage, conduct, or operate … any commercial cannabis activity or to participate as a … employee, contractor, agent or volunteer, or in any other manner or capacity, in any commercial cannabis activity."*

383 *Kruse, supra,* 177 Cal.App.4th at pp. 1158, 1163-1166; *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, 428, 432-433.
384 (2009) 177 Cal.App.4th 1153 (hereinafter *Kruse*).
385 *Kruse, supra*, 177 Cal.App.4th at p. 1158.
386 *Id.* at pp. 1172-1176.
387 *Id.* at p. 1176.
388 166 Cal.App.4th 418 (hereinafter *Naulls*).
389 *Naulls, supra,* 166 Cal.App.4th at p. 433 (emphases in original).
390 *Ibid.*
391 (2011) 192 Cal.App.4th 861 (hereinafter *Hill*).
392 *Hill, supra,* 192 Cal.App.4th at p. 868.

PRACTICE TIP: *Review your city's municipal code for additional violations that may be alleged in the complaint in addition to the cannabis ordinance. Often building code, electrical code, property maintenance, business license, or zoning violations are present, which may also be alleged in the complaint.*

2. Establishing Nuisance through Violation of State Law

A nuisance per se supporting an injunction may also be established through violations of state law. Civil Code section 3479 and Health and Safety Code section 11570 both expressly declare particular activities to be a nuisance, and may be used for a nuisance per se claim.[393] Compliance with state and local cannabis law is required in order to lawfully engage in commercial cannabis activities.[394] A defendant business may raise compliance with state and local law as an affirmative defense in a nuisance action.

a. Civil Code section 3479

Civil Code section 3479, describes a nuisance, in pertinent part, as: "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property...." Accordingly, showing that a cannabis business engaged in the "the illegal sale of controlled substances" is all that is required for a nuisance per se claim based on Civil Code section 3479.[395] Cannabis remains a Schedule I controlled substance.[396] Unless properly licensed and allowed by state and local authorities, the sale of cannabis is illegal.[397] Thus, a cannabis business engaged in the illegal sale of cannabis is a nuisance per se subject to abatement and injunction.[398]

b. Health and Safety Code section 11570

The California Drug Abatement Act[399] allows cities to remove occupants from any building or place where any illegal drug activity occurs. Every building or place used for the purpose of drug activity is expressly declared a nuisance.[400] "Cannabis" is listed as a controlled substance under Health and Safety Code section 11054, subdivision (d)(13).

Accordingly, evidence that a cannabis business used a building or place "for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance" is all that is required for a nuisance per se claim based on Health and Safety Code section 11570.[401]

The sale of cannabis is illegal when not conducted in conformance with state and local law.[402] In

393 *People ex rel. Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512, 1524; *Lew v. Sup.Ct.* (1993) 20 Cal.App.4th 866, 871-872.
394 Health & Saf. Code, §§ 11358, 11359, 11360.
395 *People ex rel. Trutanich v. Joseph, supra*, 204 Cal.App.4th at p. 1524 (sale of marijuana constitutes a nuisance per se under Civil Code § 3479).
396 Health & Saf. Code, §§ 11007, 11054, subd. (d)(13).
397 Health & Saf. Code, § 11360; Civ. Code, § 3482.
398 Code Civ. Proc., § 731.
399 Health & Saf. Code, §§ 11570–11587.
400 Health & Saf. Code, § 11570.
401 *Lew v. Superior Court* (1993) 20 Cal.App.4th 866, 871 (property being used to sell and distribute drugs is a nuisance per se under Health and Saf. Code, § 11570); *People ex rel. Trutanich v. Joseph, supra*, 204 Cal.App.4th at p. 1524.
402 Health & Saf. Code, § 11360.



People ex rel. Trutanich v. Joseph, the court affirmed the trial court's entry of judgment against a defendant dispensary owner after the trial court granted a motion for summary judgment and a motion for permanent injunctive relief for violations of the narcotics abatement law.[403] The court observed that:

> Plaintiff presented admissible evidence that [the marijuana dispensary's] premises were used 'for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away a[] controlled substance,' in violation of section 11570. Such violations constitute nuisances per se under Civil Code section 3479.[404]

The Court affirmed summary judgment of a permanent injunction against the defendant without placing any burden on the city to prove the defendant's non-compliance with the CUA or the MMPA. *Joseph* also held that "Section 11362.775 … does not cover dispensing or selling marijuana."[405] Thus, a city is likely to prevail on the merits of a nuisance per se claim against a dispensary, whether based on local law, Civil Code section 3479 or Health and Safety Code section 11570.

In addition to injunctive relief, the Drug Abatement Act provides for unique remedies, including civil penalties up to $25,000,[406] attorney's fees, costs of investigation, vacated and boarded against entry for up to one year,[407] a lien on the property, for the lien to be enforced through the sale of the property,[408] among others.

> **PRACTICE TIP:** *The Drug Abatement Act is particularly useful to compel the cooperation of a property owner where the property is occupied by a tenant. The potential liability of the property owner (a $25,000 fine, attorney's fees that can be liened, closure of the building for a year preventing re-renting, and possible sale of the fixtures and property itself) is often enough to cause the property owner to collaborate with the City to eject the dispensary in order to avoid these severe remedies.*

a. Business and Professions Code sections 17200 et seq.

Known as the Unfair Competition Law,[409] Business and Professions Code sections 17200 et seq. authorizes certain remedies to address repeated

403 *People ex rel. Trutanich v. Joseph*, *supra,* 204 Cal.App.4th p. 1512; Health & Saf. Code, § 11570 et seq.
404 *People ex rel. Trutanich v. Joseph, supra,* 204 Cal.App.4th at p. 1524.
405 *Id.* at p. 1523.
406 Health & Saf. Code, § 11573.5, subd. (b).
407 Health & Saf. Code, § 11573.5, subd. (b).
408 Health & Saf. Code, § 11585.
409 See *Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 394.

violations of state and local regulations, so long as they are a part of a "business practice."[410]

An action under the Unfair Competition Law is usually brought by the Attorney General or a district attorney; but a city attorney may bring such an action if the city has a population greater than 750,000 or if the city attorney obtains the consent of the district attorney.[411]

b. Business and Professions Code section 26038

MAUCRSA imposes civil penalties for unlicensed commercial cannabis activity "of up to three times the amount of the license fee for each violation, and the court may order the destruction of cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code."[412] This penalty is payable to the city,[413] and a separate penalty may be assessed for each day a violation persists.[414]

II. CRIMINAL ENFORCEMENT

Criminal enforcement is an important function of local government and should be considered alongside administrative and civil enforcement as an option to achieve code compliance in a given case. Criminal enforcement requires different focus and resources than civil enforcement. Criminal enforcement often requires schedule flexibility and a consistent presence in court. Whether to criminally prosecute a code violation raises the question of the goals of criminal prosecution. In general, there are three goals: (1) abatement of the violation, (2) punishment, and (3) deterrence. While abatement is generally the primary goal, the other goals may be equally important in the context of cannabis prosecutions. Punishment commensurate with the crime can be appropriate, and imposition of punishment will deter future criminal activity.

The criminal enforcement portion of this chapter will introduce the substantive law and provide practice tips. It is not possible to cover every issue that will confront a city attorney in a criminal prosecution. This section will attempt to provide some legal background and practical guidance specific to cannabis. For additional information on criminal code enforcement, see Cal. Municipal Law Handbook (Cal CEB 2019) Code Enforcement, Chapter 12 and for information on criminal law generally, see California Criminal Law Procedure and Practice (Cal CEB 2019).

A. Prosecution of Municipal Code Violations

City attorneys have the authority to prosecute misdemeanor criminal cases to enforce city ordinances in the name of the People of the State of California.[415] Accordingly, this section will focus on the criminal laws most likely to be enforced by a city attorney, namely, municipal codes. Certain categories of violations are typical of cannabis-related activity. Most commonly, criminal cannabis activity implicates a city's cannabis ordinance and zoning regulations. Commercial cannabis activity, such as an illegal dispensary or cultivation operation, also implicates a city's business license requirements and property maintenance requirements. Establishment or operation of an

410 See *People v. McKale* (1979) 25 Cal.3d 626, 632.
411 Bus. & Prof. Code, § 17204.
412 Bus. & Prof. Code, § 26038, subd. (a).
413 Bus. & Prof. Code, § 26038, subd. (b).
414 Bus. & Prof. Code, § 26038, subd. (a).
415 Gov. Code, § 36900, subd. (a).

unlawful commercial cannabis business often entails routine code enforcement violations, such as building or public nuisance violations. While a single act may constitute a violation of several ordinances, keep in mind the prohibition on multiple punishments.[416]

A violation of a city ordinance is a misdemeanor, unless it is made an infraction by ordinance.[417] Violations of ordinances that are otherwise misdemeanors can generally also be charged as or reduced to infractions in the discretion of the prosecuting attorney.

A misdemeanor is punishable by six months in jail, a $1,000 fine, or both, unless otherwise provided in an ordinance.[418] An infraction violation of an ordinance is punishable by a $100 fine, with fines increasing upon repeated violations.[419]

Where the unlawful cannabis activity is highly profitable, misdemeanor prosecutions are generally considered to be more effective than infraction prosecutions given the increased penalties for misdemeanors and the possibility of jail time. The minor punishment involved in infraction prosecutions may cause the fines to be viewed simply as a "cost of doing business." Note that if the prosecuting attorney elects to proceed as a misdemeanor, the case will be more complex, time-consuming, and costly for the city. When charged with a misdemeanor, a defendant has the right to an attorney and a jury trial.[420]

For further discussion regarding criminal enforcement of misdemeanors see Appendix I.

B. Prosecutions of State Law Violations

In general, state law misdemeanors must be prosecuted by the district attorney unless a city attorney is authorized to bring prosecutions by the district attorney.[421] However, county district attorney's offices are often reluctant to prosecute cannabis crimes, since the consumption of cannabis has become normalized in many jurors' minds. Nevertheless, state law prosecutions may be more viable in the more egregious cases that may interest prosecutors.

C. Criminal Investigations

Even though district attorneys may not be eager to prosecute state law cannabis crimes, the suspected violations may still be the basis of a criminal investigation by peace officers. Peace officers have unique resources, training, experience, and expertise to handle cannabis enforcement efforts. This is especially the case with illegal cannabis cultivation sites, which can be dangerous.

One criminal investigation tool that law enforcement agencies can employ is their access to power usage records to identify suspected illegal cannabis cultivation sites.[422] That information can also be used by the law enforcement agency to obtain a criminal search warrant. The benefit of a criminal search warrant is that peace officers can seize any controlled substances and paraphernalia

416 Pen. Code, § 654.
417 Gov. Code, § 36900, subd. (a).
418 Pen. Code, § 19.
419 Gov. Code, § 36900.
420 Pen. Code, § 17, subd. (d)(1).
421 Gov. Code, § 41803.5, subd. (a).
422 Gov. Code, §6254.16.

that are discovered.[423] In addition, any amount of growing or harvested cannabis in excess of two pounds, or the amount a medicinal cannabis patient or designated caregiver is authorized to possess, may be destroyed without a court order if certain requirements are satisfied.[424]

Once the search is conducted, not only can state law be enforced, but municipal code violations can be addressed too. And enforcement is not limited to the criminal prosecution—violations discovered through the execution of a search warrant may also be addressed through the civil and administrative processes.

> **PRACTICE TIP:** *One strategy employed by some cities is to execute criminal search warrants on suspected illegal cannabis cultivation sites with peace officers and building inspectors. If an illegal grow is discovered, the plants and equipment may be seized and destroyed, and violators can be issued administrative penalty citations. More egregious cases (e.g. large-scale industrial grows, networks of residential grow houses) can be addressed with civil lawsuits or criminal prosecution.*

III. ADMINISTRATIVE ENFORCEMENT

A. Administrative Fines

Cities may adopt an ordinance that makes violation of any ordinance in its municipal code subject to an administrative fine or penalty.[425] Such an ordinance must establish administrative procedures that govern the imposition, enforcement, collection, and review by the city of those administrative fines.

The maximum allowable administrative fines for violations that would otherwise be infractions are: $100 for the first violation; $200 for the second violation that occurs within one year of the first; $500 for each additional violation that occurs within one year of the first.[426] An administrative order to pay the fine may be appealed de novo before the Superior Court or by a writ petition under Code of Civil Procedure section 1094.5.[427]

In addition to the general authority to adopt administrative fines and penalties, state law now provides an additional tool against illegal cultivation of cannabis. Cities may adopt an ordinance that immediately imposes an administrative fine for the violation of "building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements, if the violation exists as a result of, or to facilitate, the unlicensed cultivation of cannabis.[428] However, a city must allow for a reasonable amount of time to correct or remedy the violation if: (1) a tenant possesses the property that is subject to the fine, (2) the property owner can provide evidence that the rental lease agreement prohibits the cultivation of cannabis, (3) the landlord did not know the tenant was illegally cultivating cannabis, and (4) the landlord was not given actual notice of the unlicensed cannabis cultivation

423 Health & Saf. Code, § 11472
424 Health & Saf. Code, §11479.
425 Gov. Code, § 53069.4, subd. (a)(1).
426 Gov. Code, §§ 53069.4, subd. (a)(1), 36900, subd. (b). But see *County of Los Angeles v. City of Los Angeles* (1963) 219 Cal.App.2d 838, 844 (So long as penalty in validly enacted city ordinance does not exceed any maximum limits that are prescribed by its charter, as a freeholders' charter, or Government Code section 36901 as to other cities which are governed by the general laws, than the penalty that is provided in the ordinance prevails.)
427 *Martin v. Riverside County Dept. of Code Enforcement* (2008) 166 Cal.App.4th 1406, 1411.
428 Gov. Code, § 53069.4, subd. (a)(2)(B).

through a complaint, property inspection, or other information.[429]

This additional tool can be helpful for cities dealing with the proliferation of cannabis grow operations in residential neighborhoods. Previously, cities could impose administrative fines for violations of local ordinances pertaining to building, plumbing, electrical, or other similar structural issues that created no immediate danger to health or safety only after providing a reasonable time to cure the violations. Now, no opportunity to cure violations related to the unlicensed cultivation of cannabis is required unless all three criteria in Government Code section 53069.4, subdivision (a)(2)(C) are satisfied.

Given the strictly monetary nature of administrative fines as an enforcement tool, and the high value of each cannabis plant that is cultivated, cities may find that even repeated imposition of such fines against illegal cannabis businesses may fail to achieve compliance or closure. Cities may find that recalcitrant illegal operators are willing to pay the fine as the "cost of doing business" or simply ignore the process altogether, necessitating more extreme measures. In addition, it is sometimes difficult to identify the person who is actually cultivating the cannabis plants because they may only be at the location sporadically and often do not have identification.



PRACTICE TIP: *A strategy some cities have adopted to combat illegal cannabis cultivation with administrative fines is to specify that each plant cultivated in excess of the number allowed represents a separate violation, meaning each grow may result in hundreds of fines. Cities can also impose higher fine amounts if they classify the offence as a misdemeanor, which avoids the fine limits set by state law for "violations that would otherwise be infractions." Charter cities may also argue that increased penalty amounts are authorized under the municipal affairs doctrine. In addition, ordinances can be crafted to make the owner on title to the property liable for the fines. This makes it more likely that an offender can be identified and deters property owners from allowing someone else to illegally grow cannabis on their property.*

429 Gov. Code, § 53069.4, subd. (a)(2)(C).
As mentioned earlier in this Guide, some personal cultivation is permitted under the AUMA.
Although Government Code section 53069.4 defines "local agency" by reference to the Government Code section 54951 (the Brown Act), which includes "city, whether general law or chartered," case law supports the argument that charter cities may impose different penalties. See *Los Angeles County v. City of Los Angeles* (1963) 219 Cal.App.2d 838, 844 ("So long as such penalty does not exceed any maximum limits prescribed by its charter ... the penalty provided in the ordinance prevails.").

Even with the proper administrative fines ordinance, the availability of administrative appeal rights, including seeking writ relief, could make this particular tool more cumbersome than other enforcement options. An ordinance with increased fine amounts will result in raising the stakes in the administrative appeals, and it will correspondingly increase the legal scrutiny of the process. The administrative appeals process should be carefully constructed and carried out to ensure that the enforcement efforts will withstand the litigation.

B. Administrative Abatement

1. Inspection Warrants

Cities may seek an inspection warrant to inspect a facility suspected of harboring unlicensed commercial cannabis activity for zoning or building and safety code violations.[430] Inspection warrants issue upon the finding that either reasonable legislative or administrative standards for inspection are satisfied, or there is reason to believe the facility is out of compliance.[431] Refusal to permit an inspection pursuant to an inspection warrant is a misdemeanor.[432]

Inspection warrants can be an effective tool for cities to uncover a variety of potential violations at unlawful cannabis facilities. Once a violation is discovered, cities may then pursue abatement, through summary means if warranted. This assumes that the city has, by ordinance, declared the violation to be a nuisance, as it is broadly authorized to do under state law.[433]

As with other remedies, inspection warrants can be combined with other approaches, such as administrative fines, if building code violations are discovered, which are subject to increased fines.[434]

2. Abatement Warrants

An abatement warrant is an inspection warrant, as described above, that allows city staff to execute an abatement order that the city issued through its own administrative abatement procedures. There is no express statutory law regarding the issuance of abatement warrants; however, case law has clearly established that abatement warrants are properly issued pursuant to the statutory construct delineated for inspection warrants in the Code of Civil Procedure.[435]

A city should carefully follow the procedures in its municipal code that authorize the city to abate. Following those procedures ensures the city complies with due process. The proposed abatement warrant should describe the city's anticipated abatement actions with as much specificity as possible.

> **PRACTICE TIP:** *When seeking an inspection warrant or an inspection and abatement warrant be sure to identify all the city personnel that will be present during the inspection conducted under the warrant such as fire, police, building official, etc.*

430 Civ. Proc. Code, § 1822.50, et seq.
431 Civ. Proc. Code, § 1822.52.
432 Civ. Proc. Code, § 1822.57.
433 Gov. Code, § 38771.
434 Gov. Code, § 36900, subd. (c).
435 *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 246; *Gleaves v. Waters* (1985) 175 Cal.App.3d 413, 420.

3. Summary Abatement

In addition to generally declaring zoning and other municipal code violations to constitute a nuisance per se, cities should expressly declare that unlicensed commercial cannabis activity constitutes a nuisance or that any operation in violation of its regulations is a public nuisance subject to abatement.

Summary abatement is an emergency abatement done without an abatement warrant or any administrative due process. Cities may establish procedures for the summary abatement of commercial cannabis facilities that constitute a nuisance and may attach liens against such facilities to account for abatement expenses.[436] While summary abatement may be considered an inherent power of a city, ideally each city should have a code provision authorizing summary abatement.

Summary nuisance abatement is authorized in emergency situations involving the physical safety of the populace.[437] It is also justified in situations involving exigent circumstances such as the destruction of evidence. Cities must be cautioned, however, that while they have broad authority to declare certain activity to be a nuisance, ultimately such a declaration may have to survive judicial scrutiny, even in the realm of unlawful cannabis activity.[438]

If the circumstances warrant summary abatement, the question is what abatement acts are appropriate to address the violation. Cities should limit summary abatement to alleviating only imminently dangerous conditions. Summary abatement may include disposal of cannabis, the boarding up of property, or other alternative measures discussed later in this chapter.

Whenever a city exercises its summary abatement powers, due process requires that a city must provide the party responsible for the nuisance with a post-abatement hearing to contest the validity of the summary abatement. While many cities have a code provision authorizing summary abatement, most do not have clear procedures outlining the notice and hearing procedures to occur after completion of summary abatement.

Nuisance abatement procedures may also provide for the imposition of special assessments on unlicensed commercial cannabis facilities that constitute a nuisance.[439] Cities may provide that the prevailing party at nuisance abatement proceedings are entitled to collect attorneys' fees.[440]

C. Notice and Order to Vacate (Also Known As, Red-Tagging)

If a city's code enforcement officials determine that a commercial cannabis business is in violation of local or state building codes, and such violation(s) render the structure unsafe for human occupancy, then "red-tagging" may be warranted. Red-tagging is not specifically defined in state law, or in all local

436 Gov. Code, § 38773.

437 *Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 718–19.

438 *Allen v. Cty. of Lake* (N.D. Cal. 2014) 71 F.Supp.3d 1044, 1052 ("The Ordinance does declare that the violations at issue in this case 'constitute [] an immediate threat or danger to the health, safety and welfare of the public and may, therefore, be summarily abated . . . .' County of Lake Ordinance No. 2997 § 72.8. But mere declaration of an immediate threat does not make it so. Further, the other provisions of the Ordinance belie the claim that any outdoor growth whatsoever constitutes an emergency. For example, the Ordinance allows a private resident to grow indoors as many plants as can fit in an area of 100 square feet. It also allows up to six mature plants or twelve immature plants outdoors on parcels greater than one acre. ... The apparent arbitrariness of the Ordinance's razor-thin distinction between emergency violations and permissible growth delegitimizes the Ordinance's summary abatement provision, and, consequently, Defendants' argument that the exigency exception applies.") (internal citations omitted).

439 Gov. Code, § 38773.5, subd. (a).

440 Gov. Code, § 38773, subd. (b).

ordinances, but is generally understood to refer to a notice and order to vacate, and is often paired with an order to repair or demolish, as a means of abating the nuisance caused by the unsafe condition of the building.

The authority to red-tag is derived from both state and local law, with the latter based on cities' well-established police power to enact and enforce ordinances to protect the public health, safety, and welfare of their residents.[441] Standards relating to fire and life safety, structural safety, and access compliance are governed by the California Building Standards Code,[442] which applies to all occupancies in California, along with local amendments adopted by state agencies and ordinances implemented by local jurisdictions' governing bodies. In addition to setting forth notice requirements, Section 116.1 of the Building Code provides that structures that are "dangerous to human life or the public welfare or that involve illegal or improper occupancy or inadequate maintenance, shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe." (Emphasis added.) While this language does not expressly authorize local building officials to vacate a structure, it provides broad authority to order that structures be made safe, as deemed necessary.

The determination of whether a building is unsafe under California Building Code section 116.1 is within the discretion of the building official. Common conditions of a commercial cannabis business that may render it unsafe are unpermitted construction (especially unpermitted electrical modifications that pose an increased fire hazard), and ingress and egress blockages (including unapproved security doors that prevent emergency egress).

A red tag may also be issued in connection with revocation of a certificate of occupancy. California Building Code section 110.4 authorizes the building official to suspend or revoke a certificate of occupancy "where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code." California Building Code section 110.1 provides that no building may be used or occupied until the building has a certificate of occupancy, meaning that upon revocation of a certificate of occupancy a building must be vacated. Further, Section 116.1 of the Building Code provides that structures that "involve illegal or improper occupancy…shall be…made safe, as the building official deems necessary and as provided for in this section."

Statutory authority applicable to red-tagging unsafe structures can also be found in the Health and Safety Code. An enforcement agency is authorized to "institute appropriate action or proceeding to prevent, restrain, correct, or abate the [Building Code] violation or nuisance," with less than 30 days' notice if deemed necessary, in situations involving "an immediate threat to the health and safety of the public or occupants of a structure."[443] Whenever the enforcement agency has determined, after inspection, that the building is substandard, it is authorized to commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building.[444] Note that this provision expressly authorizes an order to vacate.

441 Cal. Const., art. XI, § 7.
442 Cal. Code Regs., tit. 24.
443 Health & Saf. Code, § 17980, subd. (a).
444 Health & Saf. Code, § 17980, subd. (c)(1).



Cities should also rely on their own applicable municipal code provisions when ordering that properties determined to be unsafe be vacated and secured. A city may adopt distinct red tagging procedures in its nuisance abatement ordinance or amend the aforementioned California Building Code authorities and procedures. Having an ordinance that makes failure to comply with an order to vacate a property deemed to be unsafe a misdemeanor can be a potent enforcement tool.

Whatever code sections are relied upon in issuing a notice of violation and order to vacate, it is important to ensure due process is afforded, even in an emergency situation.[445]

PRACTICE TIP: *Cities should not rely solely on notice requirements in the California Building Code (§§116.3-116.4) to ensure due process is afforded in the red-tagging process. Supplemental procedures, including hearing and appeal rights, should be enacted and followed.*

PRACTICE TIP: *The Fire Marshal, as the Fire Code official, also has authority to "red tag" a building and order it vacated under California Fire Code section 110, if the conditions are deemed unsafe due to "hazardous conditions that present imminent danger" to persons in the building. These may include conditions such as unsafe exposed electrical wiring, overloaded electrical outlets and extension cords, large accumulations of combustible materials, and lack of ingress and egress. In a civil injunction/nuisance action, Courts place great weight on the declaration of a Fire Marshal when the Fire Marshal outlines the life safety conditions they observed that could cause imminent harm.*

D. Disconnection of Utilities

Cities may also consider alternative tools to gain compliance or prohibit unlawful cannabis business operations. One such tool may be the disconnection of utility services. Some cities, which have their own utilities department with water or power may consider turning off an unlawful cannabis business' utility services if the city has a local ordinance providing such authority. However, some businesses may bring in generators or seek power from other sources to stay open. State law also authorizes disconnection of utilities "in case of emergency where necessary to eliminate an immediate hazard to life or property" or where the utility connection has been made without the required certificate of occupancy.[446] As with any administrative provision in the California Building

445 *Wyss v. City of Hoquiam* (9th Cir. 2004) 111 Fed.Appx. 449, 451 (holding when immediate action is necessary to protect the public interest, such as when an unsafe nuisance is present, a hearing is not necessary prior to the exercise of police power as long as adequate post-deprivation procedural safeguards exist). See also *Soranno's Gasco, Inc. v. Morgan* (9th Cir. 1989) 874 F.2d 1310, 1318.

446 California Building Code, § 112.3.

Code, the authority to disconnect utilities can be amended or supplemented by ordinance.

> **PRACTICE TIP:** *An ordinance expressly authorizing this enforcement tool is advisable to provide notice to the utility subscriber. In other contexts, California law is clear that notice must be provided prior to turning off a utility service.*[447]

E. Permit Modification, Suspension, or Revocation

Cities that allow and regulate commercial cannabis businesses typically issue licenses or permits, subject to requirements and restrictions specified by ordinance. Such requirements should be considered an essential part of an effective regulatory and enforcement system governing commercial cannabis activity at the local level, and are clearly within cities' inherent authority, as recognized by MAUCRSA.[448]

Cities seeking to enforce their local license or permit requirements by modifying, suspending, or revoking the authorization based on non-compliance with those requirements should have an ordinance that establishes the process for doing so. In accordance with principles of due process, the ordinance should provide for notice regarding the nature of the violation and grounds for the proposed action (e.g., additional conditions, a monetary penalty, suspension, or revocation of the license), and afford an opportunity for a hearing. Depending on the severity or frequency of the violation(s), cities may be justified in seeking revocation, rather than a lesser form of discipline against the cannabis licensee. Absent a clear abuse of discretion, courts will generally defer to the city's discretion regarding the level of punishment imposed.[449]

Aside from local cannabis licenses or permits, it may be possible and prudent to revoke, suspend, or modify other city approvals, licenses, or permits. For example, the operation of a non-compliant cannabis business by a tenant may be a basis to take action against the business license or a conditional use permit for the property. A property owner may decide to take action to eject a tenant or otherwise cooperate with the city's efforts in order to avoid the revocation, suspension, or modification. Depending on the level of involvement or culpability of the property owner for the illegal activity, these may be additional means of placing pressure on a bad actor.

> **PRACTICE TIP:** *While cities are afforded broad discretion in determining the appropriate penalty for license violations, a decision to impose severe discipline is more likely to be upheld if preceded by unsuccessful attempts to gain compliance or other aggravating factors. For instance, if the totality of circumstances includes warning*

447 Pub. Util. Code, §§ 10010, 10010.1 (notice required by a public utility prior to termination of light, heat, water, or power for a delinquent account). But see *Goldin v. Public Utilities Commission* (1979) 23 Cal.3d 638, 664 (addressing discontinuation of telephone service involving illegal activity, without notice to the subscriber, upon a finding of probable cause by a magistrate; ". . . the rule should provide at the least that in order to justify summary action the magistrate must find that there is probable cause to believe not only that the subject telephone facilities have been or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to public health, safety, or welfare will result.").

448 Bus. & Prof. Code, § 26200, subds. (a)–(b) (providing in part that MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under MAUCRSA, including "business license requirements," nor to supersede or limit existing local authority to enforce "local license, permit, or other authorization requirements.")

449 *Coe v. City of San Diego* (2016) 3 Cal.App.5th 772, 790 ("In reviewing the severity of the discipline imposed, we look to the correctness of the agency's decision rather than that of the trial court. The penalty imposed by an administrative body will not be disturbed in mandamus proceedings unless an abuse of discretion is demonstrated." (Citations omitted.))

letters, or attempts by the cannabis business licensee to avoid detection of violations, it is unlikely a court would deem revocation an abuse of discretion.[450] *Cities should generally avoid "accumulating" violations in order to impose a more severe penalty than applicable to a first offense under governing regulations. In a case involving an ABC licensee, Walsh v. Kirby,*[451] *this practice was found to violate both applicable statutory authority and due process. The court stated, "Petitioner complains of a practice whereby the department accumulated evidence of recurring sales of distilled spirits below established minimum retail prices, each sale constituting a different but essentially identical violation, before it filed its accusation charging the licensee with the whole series of violations and assessing concomitant cumulative penalties. Such practice, petitioner contends among other things, constitutes an arbitrary exercise of the statutory grant of authority and offends due process limitations. We agree and annul the imposition of cumulative penalties in the instant circumstances." The Walsh court noted, however, that it expressed no view on whether such a practice "would be arbitrary if exercised against a licensee who, the record would show, was a habitual offender and unwilling to conform."*[452]

F. State Law Administrative Enforcement

Each of California's three licensing agencies (Bureau of Cannabis Control, California Department of Food and Agriculture and California Department of Public Health) were empowered to issue a citation to a licensee or unlicensed person for any violation of MAUCRSA or its implementing regulations, however, after July 12, 2021, the DCC is the enforcement agency.[453] MAUCRSA establishes the basic elements of the associated administrative process, including provisions requiring the licensing authority to follow specified notice and hearing requirements, and consider certain factors in assessing administrative fines. The potential fines are steep: up to $5,000 per violation by a licensee and up to $30,000 per violation by an unlicensed operator. Additionally, any person engaging in commercial cannabis activity without a license is subject to civil penalties of up to three times the amount of the license fee for each violation, and the court may order the destruction of cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code.[454]

This enforcement mechanism has the potential to be a highly effective tool against illicit cannabis business and non-compliant licensees. Its actual effectiveness, however, will depend on the state's resources to issue and follow through on citations as part of a broader enforcement strategy. That strategy has included coordination with local law enforcement as well as other state entities, such as the California Department of Tax and Fee Administration (CDTFA), in various enforcement efforts. The state may likewise seek to partner with local authorities in exercising its citation authority under Business and Professions Code section 26031.5.

450 *Id.* at p. 790.
451 (1974) 13 Cal.3d 95, 98.
452 *Walsh v. Kirby* (1974) 13 Cal.3d 95, 105, fn. 14.
453 Bus. & Prof. Code, § 26031.5.
454 Bus. & Prof. Code, § 26038.

APPENDIX I | Criminal Enforcement of Misdemeanors

FIELD CITATION VERSUS COMPLAINT FOR ARREST WARRANT

There are generally two ways to file a misdemeanor case and bring the defendant into court: issuance of a citation or the filing of a long-form criminal complaint.

Issuance of Citation	Long-Form Criminal Complaint
◆ Offense must have been viewed in the presence of the officer.[455]	◆ Offenses do not need to be committed in officers' presence and complaint may be employed when the property owner or business owner/entity are the defendants.[458]
◆ California law limits who can be arrested and booked, rather than immediately issued a citation and released.[456]	◆ Preparation of long-form complaint can assist the prosecuting attorney in identifying issues and making certain tactical decisions, including who to charge, what violations to charge, and how many counts to allege, etc.
◆ A defendant may be arrested where: "There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested."[457]	

In general, the method of initiating the case tends to depend on the target of the investigation, with citations being issued in-person to violators found at the location and complaints being used for other defendants.

IDENTIFICATION AND SELECTION OF DEFENDANTS

A key to permanently abating illegal activity is to prosecute those that are most directly and ultimately responsible for the criminal activity. As such, it is critical to tailor the approach of the prosecution to the defendants who are responsible for the illegal activity.

◆ **Business Entity Defendants** Warrants may be used to obtain business records that may disclose the owners or operators. Obtaining and executing search warrants require the participation and cooperation of law enforcement, which cities will have to varying degrees. An inspection warrant can be a useful evidence gathering tool where there is insufficient evidence to obtain a warrant or where law enforcement is not leading the investigation.[459]

455 Pen. Code, § 836.5, subd. (a).
456 Pen. Code, § 853.6, subd. (i).
457 Pen. Code, § 853.6, subd. (i)(7).
458 Pen. Code, § 740. See also Pen. Code, §§ 948–949 (authority to file complaints in superior court), 950, 952 (form of complaint).
459 See Civ. Proc. Code, §§ 1822.50, et seq.

- **Property Owner** – A property owner may have an interest in the cannabis activity or may simply be allowing the illegal activity to occur. Often property owners collect above-market rent in exchange for allowing the illegal activity to continue. Before filing a criminal complaint against a property owner with no other ascertainable connection to the illegal activity, it is necessary to first put the property owner on notice.460

- **Employees** – Prosecution of only employees may lead to an illegal business reopening, with new employees being hired who are unaware of prior arrests.

RESOLUTION OF CRIMINAL PROSECUTION

The primary advantage of a misdemeanor prosecution is placing the defendant on one, two, or three years of summary probation subject to specific terms and conditions related to the violation committed.[461] Because defendants often reoffend, reducing misdemeanors to infractions is not recommended. Pursuing a misdemeanor plea ensures probation is possible. Conditions of probation may include orders to abate outstanding violations and to prevent the recurrence of violations. At a minimum, every probation includes the condition that the defendant must "obey all laws."

A defendant who violates a condition of probation is subject to the revocation of his or her probation, and to the imposition of additional sanctions. If the defendant violates any term or condition of probation at any time during the probationary period, the defendant may be rearrested, have additional fines imposed, or have additional conditions placed upon the probation.[462] Though jail time is not common, jail time may be imposed by a court where a defendant's actions are egregious or where the defendant has repeatedly violated terms and conditions of probation imposed by the court.

460 See *People v. Greene* (1968) 264 Cal.App.2d 774, 778 (landowner can be criminally charged for the condition of his or her property, and a municipality can demand affirmative acts to remedy the condition of the premises).

461 Pen. Code, § 1203, subd. (a).

462 Pen. Code, § 1203.2.

Glossary

AUMA: Adult Use of Marijuana Act, adopted by California voters as Proposition 64 effective November 9, 2016.

BSA: Bank Secrecy Act. The BSA requires US financial institutions to assist federal agencies to detect and prevent money laundering.

Bureau or BCC: Bureau of Cannabis Control, formerly Bureau of Marijuana Control, formerly Bureau of Medical Marijuana Regulation. The Bureau is within the Department of Consumer Affairs (DCA). The Bureau governs all state licenses relating to commercial cannabis other than those governed by CDPH and CDFA. (Bus. & Prof. Code §26012.)

CBD: Cannabidiol, an extract from cannabis plants.

CDD: Customer Due Diligence. FinCEN's guidelines under the BSA include best practices for CDD.

CDFA: California Department of Food & Agriculture. CDFA governs state licenses for commercial cultivation of cannabis. (Bus. & Prof. Code §26012.)

CDFTA: California Department of Tax and Fee Administration. CDFTA determines certain tax rates relating to commercial cannabis. Cannabis retailers, cultivators, manufactures, and distributors must also register with CDTFA.

CDFW: California Department of Fish & Wildlife. CDFW provides input to CDFA on conditions relating to the cultivation of cannabis. (Bus. & Prof. Code §26060(c).)

CDPH: California Department of Public Health. CDPH governs state licenses for commercial manufacturing of cannabis. (Bus. & Prof. Code §26012.)

CEQA: California Environmental Quality Act. (Public Resources Code §§21000 et seq.)

CSA: Controlled Substances Act (21 USC §§810 et seq.)

CUA: Compassionate Use Act of 1996 adopted by California voters as Proposition 215 effective November 6, 1996. (Health & Safety Code §§11362.5 et seq.)

DCA: Department of Consumer Affairs. The Bureau is within DCA.

DCC: Department of Cannabis Control, created by AB 141 in July 2021.

DPR: Department of Pesticide Regulation. DPR helps develop guidelines for the use of pesticides in the cultivation of cannabis and residue in harvested cannabis.

Day Care Center: "[A] child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers, and includes child care centers licensed pursuant to Section 1596.951." (Health & Safety Code §1596.76.) Certain locational restrictions relate to day care centers.

FDA: US Food and Drug Administration. The FDA regulates CBD and THC if used as a food or drug additive for humans and animals.

FDB: Food and Drug Branch, within the California Department of Public Health. FDB regulates the topical and ingestible forms of hemp-based CBD.

FinCEN: Financial Crimes Enforcement Network, within the US Department of the Treasury. FInCEN has issued guidelines relating to cannabis-related financial transactions.

Hemp: Hemp and cannabis are the same plants, with hemp plant defined as having less than 0.3% THC. (Health & Safety Code §11018.5(a).)

MAUCRSA: Medicinal and Adult-Use Cannabis Regulation and Safety Act, effective June 27, 2017.

MCSB: Manufactured Cannabis Safety Branch, within the California Department of Public Health. MCSB regulates the manufacture of cannabis.

MMIC: Medical Marijuana Identification Card. An MMIC indicates the holder is a qualified patient or the primary caregiver for a qualified patient and is exempt from sales and use taxes since the cannabis is for medicinal use. (Rev. & Tax. Code §34011(a)(1).)

MMPA: Medical Marijuana Program Act (Health & Safety Code §§11362.7 et seq.), aka SB 420, effective January 1, 2004.

MMRSA: Medical Marijuana Regulation and Safety Act. MMRSA was enacted in 2015 but was repealed by MAUCRSA.

SARs: Suspicious Activity Reports. A US financial institution must issue a SARs for certain types of financial transactions.

SWRCB: State Water Resources Control Board. SWRCB provides input to CDFA on conditions relating to the cultivation of cannabis. (Bus. & Prof. Code §26060(c).)

THC: Tetrahydrocannabinol, an extract from cannabis plants.

UCSA: Uniform Controlled Substances Act (California Health & Safety Code §§11000 et seq.), effective January 1, 1973.

Youth Center: "[A]ny public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities." (Health & Safety Code §11353.1(c)(2).) Certain locational restrictions relate to youth centers.



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CITY OF PACIFIC GROVE
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AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Katie Clark, Recreation Manager

MEETING DATE: February 16, 2022

SUBJECT: Special Events Calendar for Fiscal Year 2022-2023

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Approve the Special Event Calendar for Fiscal Year 2022-2023
2. Approve 13 proposed special events as City Sponsored Events and waive fees for City Staff support and facility/equipment use
3. Approve 9 proposed special events as Full Cost Recovery Events and do not approve the Legends of Autobahn event
4. Return with Legends of Autobahn details after they have been developed and approved by staff to seek Council approval per the Recreation Board Recommendations
5. Allow municipal code exceptions for the designated events to allow pets in the parks
6. Do not approve the Feast of Lanterns and the 5 additional events associated with the Feast. Event organizers shall begin discussions with community stakeholders, the DEI Task Force and others with the goal of bringing back a revised event for Fiscal Year 2023-2024 that reflects changes to address concerns and critiques expressed by the public, stakeholder groups, and a City advisory board regarding the event

DISCUSSION

At the beginning of each calendar year, the Recreation Board reviews the list of proposed Special Events scheduled to occur during the upcoming fiscal year (July – June) and approves the level of support required for each event. The Recreation Board reviewed the proposed 2022-2023 Special Events Calendar and staff recommendations at the Recreation Board meeting held on January 31, 2022. The Recreation Board recommends that the Council approve these events as classified pursuant to Council Policy No. 900-1, except for the Legends of the Autobahn until more details are provided regarding that specific event. They also recommend allowing exceptions to Municipal Code 14.08.030 to allow pets in the parks for the designated events.

As the COVID-19 pandemic continues, event organizers have been asked to submit applications with the understanding that City Staff will continue to monitor and adhere to all State of California and Monterey County guidelines as they relate to organized events. Staff will work with event organizers if cancelations, postponements or modifications need to be made as event dates draw near.

The proposed Special Event Calendar for the fiscal year 2022-2023 consists of a total

of 23 events which is one more event than appeared on the 2021-2022 Special Events Calendar. The costs and overview associated with each event can be found within Attachment 1.

CITY COUNCIL POLICY #900-1: SPECIAL EVENTS

Policy 900-1-Special Events, provides guidance for conducting special events in the City and ensures an appropriate balance between the number and scope of these events in relation to the ability to accommodate such events in City neighborhoods and facilities.

In alignment of the Policy, all authorized Special Events are to be classified as either,

City Sponsored Events: Those that include traditional events that are primarily hosted by the Chamber of Commerce, the School District, or the City and shall receive full City Support or,

Special Events: Events that require exclusive use of City property and require support from Police, Fire and / or Public Works. Special Events will be deemed full cost recovery.

CLASSIFICATIONS

City Sponsored: All costs associated with these events including staffing and equipment/facility use are proposed to be waived, with an increased emphasis of utilizing volunteers whenever possible.

City Sponsored Events Include: 4th of July Downtown event, Feast of Lanterns & the 5 associated events, National Night Out, P.G. Concours Auto Rally, Walk with Pride, Butterfly Parade, Butterfly Days, P.G.H.S. Homecoming Parade, Trick or Treat Pacific Grove, Veterans Day Ceremony, Holiday Tree Lighting, Holiday Parade of Lights, Stillwell's Holiday in the Park, and the Chamber's Good Old Days events.

Feast of Lanterns & associated events: In consideration of ongoing community dialogue and expressed concerns, as well as numerous discussions at the Diversity, Equality and Inclusion Task force, the City does not recommend the Feast of Lanterns or the 5 events associated with the Feast of Lanterns, including the pet parade, for fiscal year 2022/23. Event organizers should begin discussions with community stakeholders, the DEI Task Force, City staff and other interested parties to address concerns that have been expressed over the last few years.

Full Cost Recovery Events: Events are billed at the full cost recovery rates for staff support and facility/equipment use. Most of these events consist of a variety of fundraisers, races, walks and car shows.

Full Cost Recover Events Include: Pacific Grove Moto Bike Night, Pacific Grove Treffen 23 VW Cruise, Celebration of our Lady of Fatima, Classic Kick-Off Car Show, Little Car Show, Legends of the Autobahn, AIM for Awareness Walk & Rally, BSIM Monterey Bay Half Marathon & Pacific Grove Lighthouse 5K/By the Bay 3K, Rudolph Run 1K & 5K Walk/Run, and BSIM By the Bay 3K.

Legends of the Autobahn: It is anticipated that this event will be held on the front nine of the Pacific Grove Golf Course. Event organizers are working out the event details with the golf course management team. Once these plans are finalized and approved by City staff a new report will be brought to Council for approval.

MUNICIPAL CODE EXCEPTIONS

As a way of increasing the experience for event participants the following events: Feast of Lanterns Pet Parade, Stillwell's Holiday in the Park, and Good Old Days are seeking a concession of Municipal Code 14.08.030 - Dogs Prohibited in Public Parks, to allow animals in parks during their events. In past years, these and similar events have conducted temporary petting zoos, pony rides, and dogs in the park as entertainment features.

OPTIONS

1. Take no action
2. Provide alternate direction

FINANCIAL IMPACT:

Of the 23 listed special events,13 events are being proposed as City Sponsored Events, and thereby would be subsidized by the City of Pacific Grove for staffing and event operation costs. The other 10 event requests would be billed at the full cost recovery rate.

In the past, the staffing costs for Public Works, Recreation, Police, and Fire services to provide setup and breakdown of equipment, manage crowd and traffic control and assist with event operations have become very costly. The total estimated costs of personnel support for 2022-2023 events will be $101,687 with $56,651 being allocated toward City Sponsored events. Additionally, it is anticipated that revenues of roughly $73,294 would be collected by Full Cost Recovery Events through fees associated with the use of City parks, facilities, equipment and staff reimbursements. To successfully operate the 23 noted special events, it will cost the City an approximately $28,000. Funding to support the City sponsored events has been allocated through the respective department staffing and operations budgets.

The impacts of the continuing COVID-19 pandemic have caused significant constraints to the City's overall budget. It is anticipated that City staffing and requested resources may be limited throughout the 2022-2023 fiscal year. City staff will continue working with event organizers to lessen the City's costs associated with these events by using volunteers, community groups and high school students seeking community service hours. The total economic impact and benefits in the form of increased Transient Occupancy and Sales taxes are not known, but special events traditionally have made a positive impact to the City's economy. Many of these events attract participants and visitors from outside the peninsula. Many of these same people return to participate in other Pacific Grove event(s). Additionally, the local non-profits who volunteer and support these events also benefit financially.

GOAL ALIGNMENT: Not Applicable.

Attachments

Calendar and Cost Breakdown

Policy 900-1

City of Pacific Grove

2022-2023 Special Events Calendar

#	Event	Organization	Day	Date	Time	Location
1	4th of July Celebration	Chamber of Commerce	Monday	July 4, 2022	11:00 AM	Downtown
2	Pacific Grove Moto Bike Night	Chamber of Commerce	Thursday	July 7, 2022	5:00 PM	Downtown (Lighthouse Ave)
3	Pacific Grove Treffen 2 VW Cruise	Chamber of Commerce	Wednesday	July 20, 2022	5:00 PM	Downtown (Lighthouse Ave)
4	~~Feast of Lanterns Week~~	~~Feast of Lanterns~~	~~All Week~~	~~July 23-30, 2022~~	~~Varies~~	~~Varies~~
5	~~Pet Parade~~	~~Feast of Lanterns/PG Rec~~	~~Friday~~	~~July 29, 2022~~	~~2:00 PM~~	~~Lighthouse Ave & Caledonia Park~~
6	National Night Out	City of Pacific Grove	Tuesday	August 2, 2022	5:00 PM	Caledonia Park
7	Celebration of Our Lady of Fatima	Lady of Fatima Society	Sat / Sun	August 13-14, 2022	Varies	Downtown (Lighthouse Ave)
8	Classic Kick-Off Car Show & Cruise	Chamber of Commerce	Tuesday	August 16, 2022	3:00 PM	Downtown (Lighthouse Ave)
9	Little Car Show	Marina Motorsports	Wednesday	August 11, 2022	10:00 AM	Downtown (Lighthouse Ave)
10	Legends of the Autobahn	Chamber of Commerce	Thursday	August 18, 2022	9:00 AM	Pacific Grove Golf Links
11	PG Concours Auto Rally	PG Rotary Club	Friday	August 19, 2022	12:00 PM	Downtown| Chautauqua Hall
12	AIM for Awareness Walk & Rally	AIM Youth Mental Health	Sunday	September 11, 2022	1:00 PM	Lover's Point Park
13	Walk With Pride	PG Pride	Saturday	September 17, 2022	9:00 AM	Recreation Trail
14	Butterfly Parade	PG Unified School District	Saturday	October 2, 2022	10:30 AM	Downtown (Lighthouse Ave)
15	Butterfly Days	PG Heritage Society	Fri/Sat/Sun	Sep 30-Oct 2, 2022	Varies	Downtown |Chautauqua Hall
16	PGHS Homecoming Parade	PGUSD	Friday	Late Oct (TBD)	3:15 PM	Downtown
17	Trick or Treat Pacific Grove	City of Pacific Grove	TBD	TBD	TBD	TBD
18	Veterans Day Ceremony	City of Pacific Grove	Friday	November 11, 2022	TBD	TBD
19	BSIM 3K/5K & Mty Bay Half Marathon	Big Sur International	Sat / Sun	November 12-13, 2022	Varies	Lover's Point | Ocean View
20	Holiday Tree Lighting Ceremony	City of Pacific Grove	Monday	November 28, 2022	6:00 PM	Jewell Park
21	Holiday Parade of Lights	Chamber of Commerce	Thursday	December 1, 2022	6:00 PM	Downtown (Lighthouse Ave)
22	Stillwell's Holiday in the Park	Chamber of Commerce	Saturday	December 3, 2022	10:00 AM	Caledonia Park
23	Rudolph Run 1K & 5K Walk/Run	Arthritis Research Coalition	Saturday	December 10, 2022	7:30 AM	Lover's Point | Ocean View
24	By The Bay 3K	Big Sur International	Saturday	April 29, 2023	6:00 AM	Lover's Point | Ocean View
25	Good Old Days	Chamber of Commerce	Fri-Sun	May 5-7, 2023	Varies	Downtown | Jewell Park

City Sponsored - 15	Full Cost Recovery (F. C. R.) - 10	~~Not recommended event~~

2022-2023 Special Events Budget Estimate

	Event Name	Staff Costs								Total Staff Costs
		Public Works		Police		Fire		Recreation		
		Hrs	Costs	Hrs	Costs	Hrs	Costs	Hrs	Costs	
1	4th of July Celebration	12	$1,080.00		$ -		$ -	23	$530.00	$1,610.00
2	Pacific Grove Moto Bike Night	18	1,860.36	51	7,749.18		$ -			$9,609.54
3	Pacific Grove Treffen 2 VW Cruise	12	$1,080.00	6	$ 978.00		$ -			$2,058.00
4	~~Feast of Lanterns Week~~	~~175~~	~~$15,750.00~~	~~70~~	~~$11,550.00~~	~~5~~	~~$1,000.00~~	~~50~~	~~$1,150.00~~	~~$29,450.00~~
5	~~Pet Parade~~									~~$0.00~~
6	National Night Out	4	$360.00					4	$92.00	$452.00
7	Celebration of Our Lady of Fatima			4	$660.00					$660.00
8	Classic Kick-Off Car Show & Cruise	6	$584.64	8	$1,282.16					$1,866.80
9	Little Car Show	6	$ 584.64	11	$ 1,757.72		$ -			$2,342.36
10	Legends of Autobahn	4	$ 360.00	15	$ 2,475.00		$ -		$ -	$2,835.00
11	PG Concours Auto Rally	18	$ 1,620.00	15	$ 2,475.00		$ -		$ -	$4,095.00
12	AIM for Awareness Walk & Rally	4	$360.00	3	$495.00					$855.00
13	Walk With Pride	2	$180.00	2	$180.00		$ -		$ -	$360.00
14	Butterfly Parade	50	$4,500.00					15	$345.00	$4,845.00
15	Butterfly Days									$0.00
16	PGHS Homecoming Parade	4	$ 360.00	6	$ 1,080.00		$ -		$ -	$1,440.00
17	Trick or Treat Pacific Grove	8	$720.00		$ -		$ -	15	$ 345.00	$1,065.00
18	Veterans Day Ceremony	4	$ 360.00		$ -		$ -	12	$ 276.00	$636.00
19	BSIM 3K/5K & Mty Bay Half Marathon	80	$ 7,200.00	30	$ 4,950.00		$ -	15	$ 345.00	$12,495.00
20	Holiday Tree Lighting Ceremony	2	$180.00					8	$184.00	$364.00
21	Holiday Parade of Lights	70	$ 6,300.00	8	$ 1,320.00		$ -	10	$ 230.00	$7,850.00
22	Stillwell's Holiday in the Park	25	$ 2,250.00		$ -		$ -	18	$ 414.00	$2,664.00
23	Rudolph Run 1K & 5K Walk/Run	30	$ 2,700.00	15	$ 2,475.00		$ -		$ -	$5,175.00
24	By The Bay 3K	50	$4,500.00	16	$2,640.00					$7,140.00
25	Good Old Days	250	$22,500.00	45	$7,425.00	5	$1,000.00	15	$ 345.00	$31,270.00

15	City Sponsored
10	Full Cost Recovery (F. C. R.)

Total Staff Costs	$101,687.70
City Sponsored	**$56,651.00**
Full Cost Recovery	**$45,036.70**
Usage Fees	**$28,526.92**
TOTAL Costs	**-$28,124.08**

**All estimates are based on projected hours & resources submitted in application by event organizers.*

**Employee costs are based on Fully Burdened Rates for employees as listed in event applications.*

CITY OF PACIFIC GROVE
CITY COUNCIL POLICY

SUBJECT	POLICY NO.	EFFECTIVE DATE	PAGE NO.
Special Events	900-1	February 16, 2011	1 of 3

PURPOSE

The intent of this policy is to provide guidance for the conduct of special events in the City and ensure an appropriate balance between the number and scope of special events with the ability of City neighborhoods and facilities to adequately handle such events.

POLICY

I. General

The City shall have the discretion to limit the number of special events in any calendar year.

All special events will be limited to those activities that benefit Pacific Grove residents or businesses.

Most special events are either one-time or annual. Certain special events, such as the Farmers' Market, are periodic and ongoing.

The Council reserves the right to take actions creating exceptions to this policy in the event of special circumstances.

II. Types of Special Events

The City will create an annual calendar of special events. Events included in the annual calendar shall have first priority for the scheduled locations and times. Requests for inclusion in the annual calendar shall be submitted to the City by September 31 for any event to be held during the following fiscal year.

The City will also consider the approval of events on an as-proposed basis. Such events will not be approved if they conflict with already approved events. Events requiring City Council approval are those that:

- Require City sponsorship or other City support;
- Preclude others from using an entire outdoor public facility (e.g., Caledonia Park);
- Are likely to have a significant impact on substantial numbers of residents or businesses (e.g., closure of multiple or high-traffic streets for a significant amount of time, as determined by the City Manager; or
- Have other characteristics that warrant public consideration by the Council.

More limited events may be approved by staff. A neighborhood event, requiring closure only of a neighborhood street, for example, would not require Council approval. In these cases, those persons incurring the costs of the street closure are the same persons benefiting from the event.

III. Information Required

Each application for special events shall contain the following information:

A. A description of the proposed event.
B. A statement of the purpose of the event and its benefits to the City.
C. The name of the sponsoring organization.
D. The date, location, and time (to include preparation and clean up) of the event. In the case of a race or parade, a map of the proposed route shall be submitted.
E. An estimate of the number of participants and/or spectators.
F. A description of City facilities, support, and personnel required.
G. A list of personnel to be provided by the sponsor.
H. A description of parking arrangements for the event.
I. If electronic sound amplification equipment will be used, an application for the necessary permit shall be made as required by Chapter 11.94 of the Pacific Grove Municipal Code.
J. A description of the proposed recycling program for plastics, glass, paper, and aluminum during the event.
K. A listing of accommodations provided by the sponsor pursuant to the Americans with Disabilities Act.
L. A listing of fees proposed to be charged, commercial sales, commercial filming, and the service or sale of food and/or alcohol.

III. Conditions of Permit

Once the Council approves an application, the sponsoring organization shall comply with the following conditions:

A. At least 30 days prior to the event, furnish the City with a certificate of insurance in an amount not less than $2 million naming the City of Pacific Grove as an additional insured. Such insurance shall be primary to any City insurance, and the City must have at least ten days' notice of cancellation.

B. The sponsoring organization shall reimburse the City for all direct and incidental expenses for the use of the City personnel and facilities. The sponsor has the option of using volunteers or other non-City personnel for some functions (e.g., placing barricades, emptying public trash cans, etc.) Other functions (e.g., Police security) require City personnel. The City has the absolute discretion to determine the number of personnel who will be provided for a particular event.

C. The sponsor is responsible for all sign removal, litter control, clean-up activities, and for providing necessary containers and personnel for recycling activities, as determined by the City.

D. The sponsor shall provide portable restroom facilities if deemed necessary by the City.

E. The sponsor shall be advised that the sponsor is responsible for determining what, if any, accommodations are required of sponsor pursuant to the American with Disabilities Act.

F. An approved Special Event Application is required for all groups and shall be in the possession of the sponsor or representative at the event.

G. The City will review applications and additional approvals may be deemed necessary.

H. If amplification is to be used a deposit of $500 will need to be paid along with the application fee. If it is determined that amplification exceeds allowable levels or has locations have not been preapproved by City Staff then the deposit may not be returned.

The City of Pacific Grove reserves the right to revoke permissions for an event at any time.

IV. Permitted Events

The Council established the following classification of events to be used in determining the events scheduled for each calendar year: Special Events and City Sponsored Events.

Special Events: These are Special Events that require exclusive use of City property and require support from Police, Fire and / or Public Works. Special Events will be deemed full cost recovery

City Sponsored Events: These events include traditional events that are primarily hosted by the Chamber of Commerce, the School District, or the City and shall receive full City Support. These events will be noted annually on the Special Events Calendar for approval by the City Council.

V. Scheduling of Events

All activities approved are authorized for the subsequent year only and, continued Council approval should not be assumed. Activities may be discontinued if they become too large or if they create problems that would substantially disrupt the peace and quiet of a neighborhood.

Should the City receive requests for more activities than may be accommodated, the City will establish an appropriate random drawing type of system or other suitable method for determining those activities to be approved.

Adopted: April 16, 1986-Resolution No. 5705
Amended: January 7, 1987-Resolution No. 5787
Amended: February 5, 1992-Resolution No. 6238
Amended: March 3, 1993-Resolution No. 6331
Amended: November 15, 1995-Resolution No. 6489
Amended: November 5, 1997-Resolution No. 7-057
Amended: June 2, 2010-Resolution No. 10-044
Amended: February 16, 2011-Resolution No. 11-012
Amended: October 17, 2018 – Resolution 18-037

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Daniel Gho, Public Works Director / Deputy City Manager; Tori Hannah, Administrative Services Director / Assistant City Manager
MEETING DATE:	February 16, 2022
SUBJECT:	Local Water Project Business Plan Peer Review
CEQA:	Environmental Impact Report

RECOMMENDATION

Receive the Peer Review of Pacific Grove Local Water Project Business Plan prepared by DTA, validating the City's assumptions noted in the Business Plan, and authorize staff to being negotiations with CourseCo; and approve a loan repayment plan for the Sewer Fund Interfund Loan.

DISCUSSION

The Local Water Project (The Plant) is owned by the City of Pacific Grove, who orchestrated the financing and construction of the treatment plant. The Plant is operated and maintained under contract by a third-party vendor, PercWater. The Plant was constructed to ensure long term vitality of the Pacific Grove Golf Links and El Carmelo Cemetery by replacing the potable water source with recycled water for irrigation purposes.

Making the switch to recycled water significantly reduced the City's demand for potable water (approximately 95 acre feet annually), allowed for the repurposing of an abandoned City facility (the former sewer treatment plant at 1313 Oceanview Blvd.), and created a recycled water source for other City facilities and 3rd party customers. To this end, the plant can produce up to .25 Million Gallons of water daily and 125 acre feet annually.

To construct the plant, the City secured $2.4 million in grants and $5.2 million in low-interest loans from the State of California. Total construction cost was $7.6 million. With the reduction in potable water use created by switching the irrigation of the golf course and cemetery over to recycled water, the State allowed the City to sell entitlement water. It was determined that 47.88 acre feet were eligible for entitlement sale, with a price established by the City Council.

The Plant currently operates at a loss. On average, sales of recycled water have totaled approximately $535,000 annually, while The Plant operation and debt service costs total $740,000. Changes to the contract operation of The Plant would not likely yield significant savings, and additional customers of significant scope are not foreseeable at the current time. Water entitlements are recorded as an asset in the City's General Fund. The corresponding entitlement sales, which are currently deposited in the City's General Fund, could be transferred to the plant's enterprise fund to assist with bridge funding; however this resource is finite and there is no guarantee of annual sales. From a sustainability

perspective, long-term solutions are needed to not only cover operating costs, but also identified capital improvements. A repayment plan also needs to be established for the $600,000 Sewer Fund Interfund Loan.

One potential solution that would allow The Plant to be self-sufficient would be to increase or "ramp-up" the rates charged to all customers to allow for full recovery of operating costs and plan for capital improvements. This includes increasing the rates for the LWP's largest customer – CourseCo., who operates the Pacific Grove Municipal Golf Links through a City contract. One-time water entitlement sales could be used to repay the Sewer Fund Interfund Loan to avoid an additional impact to the rate structure; and/or could be used to supplement rates during the ramp-up period.

City staff presented potential adjustments to the CourseCo lease at the City Council's August 4, 2021 closed session meeting, to receive authorization to begin negotiations with CourseCo, in an attempt to balance Plant expenditures with increased revenues. The City Council directed staff to retain a third party vendor to review Plant expenditures and revenues and evaluate a break even cost analysis.

At the October 20, 2021 City Council Meeting, the City approved an agreement with DTA to evaluate Plant revenues and expenditures; and conduct a break even cost analysis. Other options presented included initiating a rate study or working with a CPA firm to conduct an Agreed Upon Procedures Review. Staff worked with DTA to review the Draft Local Water Project Business Plan (Attachment 1), as well as the information included in the report. DTA presented the peer review memo to City staff for review dated January 7, 2022 (Attachment 2). It also included updated information for actual revenues and expenditures for Fiscal Year 20/21 to assist in evaluating operations. For consistency purposes, the Draft Local Water Project Business Plan includes the original information from August 4, 2021; and an updated Scenario IV to reflect the actual Fiscal Year 20/21 data. This provides an additional data point for assessing LWP operations, as well as reflects operating levels under drought conditions. The primary difference between the City's and the DTA's scenario, is that the City is assuming water entitlements will be used to assist in supplementing a ramp-up of rates, as well as a loan repayment source.

DTA has determined after review of the City's Business Plan and rate analysis that the City's analysis of revenues and costs, debt service and available fund balances on an annual basis is rational, supportable and is consistent with industry practice. The City's financial model follows closely with the recommendations of American Water Works Association (AWWA) Manual of Water Supply Practices. Furthermore, DTA has determined that to achieve a sustained, breakeven operation, City must impose steep increases in early years to reach a rate level of over $0.03 per gallon with modest increases thereafter.

With these validations, Staff requests the Council authorize negotiations to begin with CourseCo, using the breakeven cost analysis presented in the DTA memo as a basis for the discussions. Any updates regarding negotiations and proposed adjustments to the lease will be provided to Council in closed session.

Staff is also recommending using the proceeds from the $625,187 promissory note to repay the Sewer Fund Interfund Loan. This note is anticipated to be paid in Fiscal Year 22/23. The use of an alternate repayment source would provide the LWP with a "fresh start". The interest rate on the loan would be based on the percentage earned by the City's investment portfolio from the time the funds were transferred to the LWP Fund to the time of the repayment. The principal would be repaid upon receipt of the promissory note; and interest would be paid to the Sewer Fund at the close of each quarter, with a retroactive payment made for the periods that have elapsed. This would make the Sewer Fund "whole" by restoring all amounts owed to the Sewer Fund, as well as providing an equivalent amount of interest

earnings. Approval of the loan terms will also allow the City to formally book the repayment plan and disclose it in the upcoming audited financial statements.

Council may also request that staff update the scenarios included on Page 14 of the Business Plan to reflect the Fiscal Year 20/21 actual amounts; or the complete plan to assist with decision-making. The original plan was not revised to maintain consistency with the peer review process.

OPTIONS

1. Provide alternate direction
2. Request staff to update the complete LWP Business Plan and related scenarios to reflect the Fiscal Year 20/21 actual amounts.

FINANCIAL IMPACT:

There is no fiscal impact by receiving this report. Any potential lease adjustments, the development of a repayment plan, or amendments to the budget will be brought back to the City Council at a later date.

GOAL ALIGNMENT: Financial Stability: Develop a strategic plan to better address current and future City expenditure and revenue needs.

Attachments

Local Water Project Business Plan

DTA memo

PACIFIC GROVE LOCAL WATER PROJECT BUSINESS PLAN

CITY HALL

300 FOREST AVENUE

PACIFIC GROVE CA 93950

WWW.CITYOFPACIFICGROVE.ORG



CITY OF PACIFIC GROVE

1313 OCEAN VIEW BOULEVARD

PACIFIC GROVE, CA 93950

Prepared by

Daniel Gho: Public Works Director

Tori Hannah: Administrative Services Director

July 21, 2021

(Includes the original Scenario IV and a revision to reflect FY 20/21 Actual revenues and expenditures)

Executive Summary

The Local Water Project (The Plant) is owned by the City of Pacific Grove, who orchestrated the financing and construction of the treatment plant. The Plant is operated and maintained under contracted by a third-party vendor, PercWater. The Plant was constructed to ensure long term vitality of the Pacific Grove Golf Links and El Carmelo Cemetery by replacing the potable water source with recycled water for irrigation purposes.

Making the switch to recycled water significantly reduced the City's demand for potable water (approximately 95 acre feet annually), allowed for the repurposing of an abandoned City facility (the former sewer treatment plant at 1313 Oceanview Blvd.), and created a recycled water source for other City facilities and 3rd party customers. To this end, the plant can produce up to .25 Million Gallons of water daily and 125 acre feet annually.

To construct the plant, the City secured $2.4 million in grants and $5.2 million in low-interest loans from the State of California. Total construction cost was $7.6 million. With the reduction in potable water use created by switching the irrigation of the golf course and cemetery over to recycled water, the State allowed the City to sell entitlement water. It was determined that 47.88 acre feet were eligible for entitlement sale, with a price established by the City Council. Currently, the established price for entitlement water is $175k/acre foot, a price that is available through the end of December, 2021.

The Plant currently operates at a loss. On average, sales of recycled water have totaled approximately $510,000 annually, while The Plant operation and debt service costs total $740,000 (1). Changes to the contract operation of The Plant would not likely yield significant savings, and additional customers of significant scope are not forseeable at the current time. Entitlement water sales, which currently are deposited to the City's General Fund, could be deposited instead to the plant's enterprise fund. But water entitlement sales do not yield a consistent and steady stream of income. While there has been at least one significant sale of entitlement water (promissory note in the amount of approximately $600k), and another potential promissory note (pending City Council review and approval) of approximately $1.2 million on the horizon, it is not sufficient to supplement long-term operations, or use as set aside funds for identified capital improvements.

One potential solution that would allow The Plant to be self-sufficient would be to increase the rates charged to all customers to allow for full recovery of operating costs and plan for capital improvements. This includes increasing the rates for the LWP's largest customer – CourseCo., who operates the Pacific Grove Municipal Golf Links through a City contract; and the city-owned Cemetery.

(1) This amount reflects the prior year and FY 20/21 budgeted revenues and expenditures. The preliminary revenues are trending approximately $65,000 higher than anticipated, while expenditure accruals are still pending.

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    b. CalAm Water Company Rate Schedule

    c. Sample Operating Statement, Scenario IV

    d. Revised Sample Operating Statement, Scenario IV

    (Reflects Fiscal Year 20/21 Actual revenues and expenditures, with updates to consumption in the forecast years to reflect the revised three-year average)

THE BUSINESS

Description of Business

The City of Pacific Grove (City) has developed the Pacific Grove Local Water Project (PGLWP). The primary purpose of the project is to produce and distribute high quality recycled water to replace potable water used for non-potable water demands. The PGLWP consisted of the construction of a sewer diversion structure, a 0.25 million gallons per day satellite recycled water treatment plant (SRWTP), waste pump station and force main pipeline, recycled water pump station, approximately 0.50 miles (2,800 linear feet (LF)) of 8-inch pipeline to convey recycled water to existing irrigation systems, connections to two public restroom for toilet flushing, and onsite retrofits required for the use of recycled water and 1,100 feet of 1-inch diameter potable water pipeline. The project can serve up to 125 acre-feet per year (AFY) of recycled water primarily to the City of Pacific Grove Golf Links, Point Pinos Lighthouse and El Carmelo Cemetery. The predominant use of recycled water is for landscape irrigation. Irrigation occurs primarily at night to maximize water management efficiency and minimize public contact.

Competition

The City of Pacific Grove is located on the tip of the Monterey Peninsula on the Central California Coast. The region is dependent on local rainfall for replenishment of its water supplies. Rainfall patterns have resulted in severe droughts. Near coastal groundwater pumping has resulted in increasing total dissolved solids concentrations, seawater intrusion and overdraft of the local aquifers. Diversions and pumping of the under drain of the Carmel River has put critical riparian habitat, as well as federal and state listed endangered and threatened species, at risk.

The City's water purveyor, California American Water Company (CAW), is now subject to pumping restrictions pursuant to State Water Resourced Control Board (SWRCB) Order 95-10, the related issuance of a Cease and Desist Order (CDO) by the SWRCB (Order WR2009-0060), and their reduced pumping of the Seaside Groundwater Basin (SGWB), mandated by its adjudication.

The PGLWP has replaced City irrigation and other demands, that was once met with potable sources, with non-potable supplies creating a new water supply offset up to 125 AFY of potable water. The potable water offset would assist CAW in meeting its obligations to find a replacement to its use of water from the Carmel River and reduce pumping in the SGWB. The PGLWP can reduce the operational production of CAW's up to 125 AFY. The current Cal Am cost for water and delivery for irrigation uses is approximately .029 per gallon, when all surcharges, fees, and taxes are included. The PGLWP is selling reclaimed water at .0173 per gallon, or $5,637 per acre foot.

Marketing / Customers

Sites may use recycled water for a variety of uses approved by the State Department of Public Health. These include but are not limited to: landscape irrigation; agricultural irrigation; construction uses such as dust control, soil compaction, and backfill consolidation; commercial/industrial purposes such as cooling towers, boiler feed, air conditioning, commercial laundries, commercial car washes, concrete mixing, process rinsing and textile dying; landscape impoundments such as fountains and water features; and toilet and urinal flushing in non-residential facilities.

The PGLWP is sized to serve up to 125 acre-feet per year (AFY) of recycled water, mostly to the City of Pacific Grove Golf Links, Point Pinos Lighthouse landscaping and El Carmelo Cemetery. Additionally, the PGLWP provides reclaimed water for construction truck fill and toilet flushing at Crespi Pond bathroom and the golf course restroom on the 5th hole of the links (toilet flushing included in golf totals). The City of Pacific Grove is the responsible party for the distribution and use of the recycled water at the customer sites.

Below is a summary of water sold since the plant began operations:

Acre Feet of Water Sold per Calendar Year			
Location	**2018**	**2019**	**2020 (Jan - Dec)**
Golf Course	80.23	77.09	72.13
Cemetery/ Lighthouse	14.28	17.1	19.17
Truck Fill	1.3	1.52	2.07
Total	95.81	95.71	93.37

The project was sized to deliver up to 125 Acre feet of reclaimed water annually, and as noted above there are numerous uses for reclaimed water, but the challenge is increasing the volume of reclaimed water sales, to maximize the plants capacity, and produce the 125 acre feet. The City is constrained by steep capital costs associated with extending underground infrastructure to expand reclaimed water use to additional sites.

To efficiently expand the PGLWP end users would have to be within proximity of the golf course to keep infrastructure delivery costs down. The golf course has reclaimed pipe running within its 65 acres of turf. Parks that could realize the use of reclaimed water would be Perkins Park, Lovers Point Park and Caledonia Park. Expansion to these parks would only generate an additional 5-6 acre feet of reclaimed water sales annually, but the reduction of potable water for irrigation and not having to rely on the potable source to irrigate these parks has significant environmental and sustainability aspects. Additionally, the potable offset with any expansion, may generate an increase of potable water entitlements.

Location	Distance to connect	Cost of expansion @ $100 L.F	Estimated revenues annually
Lovers Point Park	1100 Linear Feet	$110,000	$15,641
Caledonia Park	549 Linear Feet	$54,900	$11,731
Perkins Park	2900 Linear Feet	$290,000	$10,167

At a potential base price of .024 the expansion of the LWP may produce an additional $37,500 annually; or $48,500 at the estimated plant recovery rate of $.0310. The cost of expansions noted in the table above are only estimates, but a significant expense would need to be approved to initiate the expansion. That cost is estimated at $454,900 for the potential expansion of the service area. Grant opportunities to pursue this effort could also be explored.

In addition to the infrastructure improvements, approvals will have to be granted by the Central Coast Regional Water Board and also by the State Water Resource Control Board, Department of Drinking Water. This approval would come after the completion of a cross connect test and a report specifying the validate of the test to ensure that there are no cross connections of the reclaimed water supply with the potable supply at the noted locations.

Operating Procedures

The City completed construction of the LWP via a design-build contract in January of 2018. The primary purpose of the Project is to produce and distribute high quality recycled water to replace potable water used for non-potable irrigation and toilet flushing demands. The LWP consists of a 0.25 million gallon per day Water Recycling Facility with an annual production capacity of 125 acre-feet per year.

In November of 2017, the City entered into an agreement with PercWater for operations and maintenance of the LWP. The high level scope of the agreement is to provide operations, maintenance, and management of the treatment plant. The operator is also tasked with providing all monitoring, reporting and State compliance. The agreement has a fixed cost for operations at $214,968 per year for a five-year period, with an annual increase tied to the Rider Levett Bucknall Quarterly Construction Cost Report local to Los Angeles. Additionally, there is a charge per acre foot of treated water set at $196.00 per acre foot of all influent.

The Asset Management Agreement is effective for a five-year period. Upon completion of the five-year period, the City may choose to renegotiate and implement a contract extension, if this is the desired approach. PercWater has been meeting the requirements of the Operations and Maintenance Agreement and is a suitable partner to the City for the operations of the plant.

Personnel

To properly manage and operate the plant, PercWater is required to staff the facility at least 6 hours a day during weekdays, and two hours per day on the weekends and holidays, with operators possessing at least a Grade III wastewater certificate. Their team consists of two onsite employees that rotate shifts, an Area Operations Manager that completes all reporting requirements and provides management to the onsite employees, and the Vice President of Operations.

Insurances

PercWater is required to maintain and require all of its subcontractors, consultants and other agents to maintain insurances noted within the agreement also. The required insurances include:

1. Workers Compensation and Employer Liability Insurance
2. General Liability Insurance
3. Automobile Liability Insurance
4. Pollution Liability Insurance
5. Professional Liability/Error & Omissions Insurance
6. Standards for Insurance Companies and Documentation

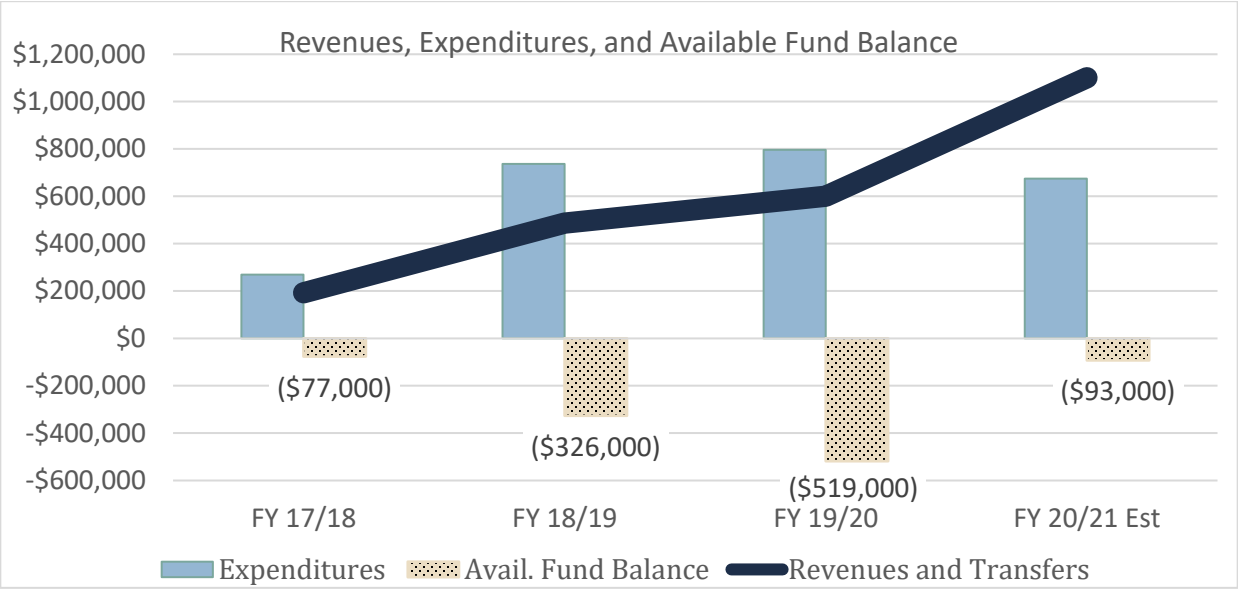
FINANCIAL DATA

Current Financial Condition

The Local Water Project initiated operations in the middle of Fiscal Year 17/18. In the first year of operations, there were remaining project expenditures of approximately $76,500 that were not covered by the State Water Resources Loan. These costs were paid through a transfer from the General Fund in Fiscal Year 19/20. In the first two full years of operations, operational costs continued to exceed operating revenues. The average operational deficit, net of transfers was approximately $260,000. This amount is reduced to $230,000 when the Fiscal Year 20/21 estimates are included in the calculation.

In Fiscal Year 20/21, the City approved a $600,000 loan from the Sewer Fund to the Local Water Project to assist in covering the negative fund balance. This 2021 LWP Interfund Loan was intended to supplement the current deficit fund balance and to allow time to assess the LWP operations and develop a financial sustainability plan. The addition of an unanticipated prior period utility payment is estimated to create a negative fund balance of $93,000 at the end of Fiscal Year 20/21.

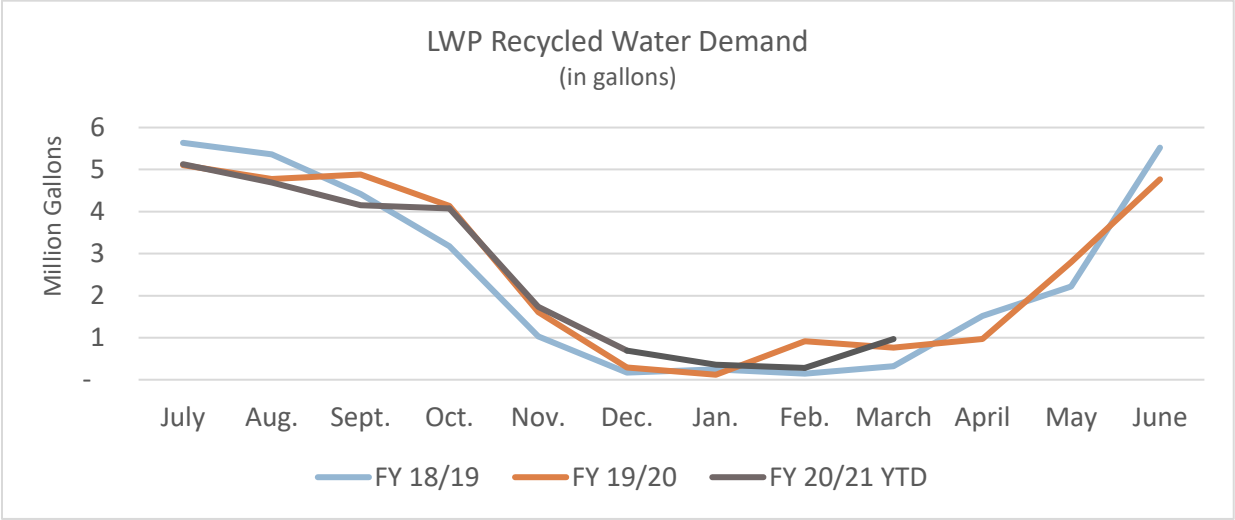
An overview of the operating trends is presented in the chart below.



The additional information included in this document provides a foundation to assist in evaluating fiscal sustainability options, as well as sample recommendations.

Cash Flow

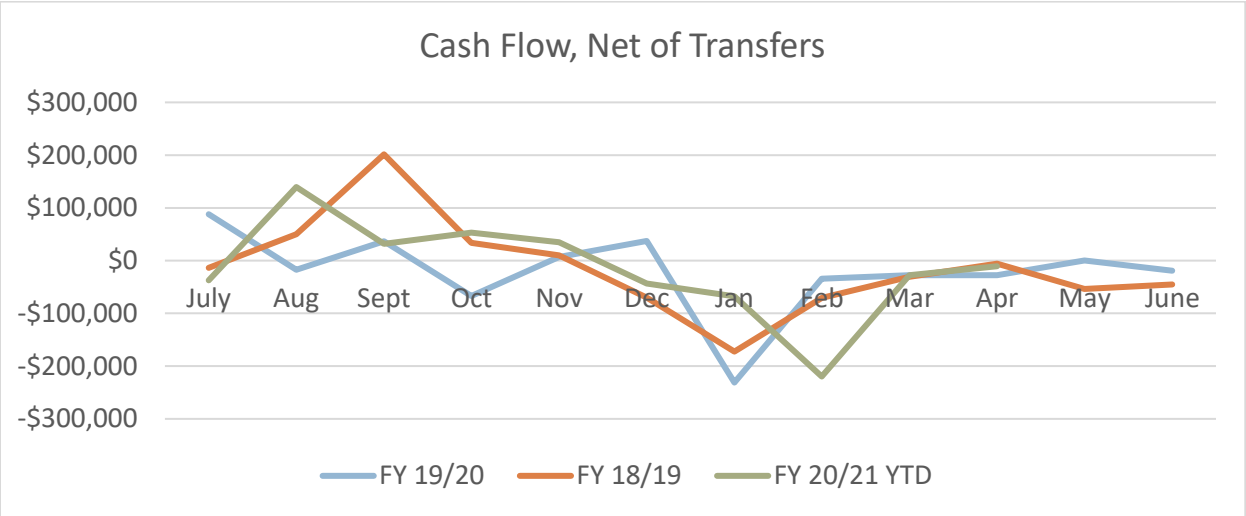
The Local Water Project has uneven cash receipting patterns. Recycled water is consumed on a seasonal basis, with demand peaking in summer months and declining in winter or rainy seasons. An overview of consumption trends is presented in the subsequent chart.



The Local Water Project's revenue receipting patterns is similar to demand trends; however an annual debt service payment of approximately $206,448 is payable in February. In addition to a

reduction in recycled water sales during winter months, this payment contributes to the temporary decline in operating cash. Water sales are billed to external customers in the month following consumption, while cash for internal customers, such as the Cemetery and City are transferred at the point of invoice. Revenues from external customers are typically received within 30 days of billing. The chart listed below represents the Local Water Project's cash receipting trends. Any supplementary loans or transfers have been excluded to illustrate the typical cash flow patterns.

The chart identifies the seasonal troughs which are fairly consistent within the three-year period. The average lowest points within the period is approximately $250,000.



Debt

California State Water Resources Revolving Loan

To construct the project, the City received an $2.4 million California Prop 13, Safe and Reliable Water Sources construction grant and a $5.2 million 1% State Revolving Fund Loan. The term of the loan is from November 17, 2015 to February 1, 2048, with an annual repayment of $206,448.28.

2021 LWP Interfund Loan

In Fiscal Year 20/21, the City approved a loan from the Sewer Fund to the Local Water Project for $600,000. This loan was initiated to assist in covering the deficit fund balance, while providing additional time to review operating solutions.

An overview of recommended repayment strategies and terms are provided in the Recommendations section of this document.

Capital Equipment

There are numerous pieces of equipment associated with the operations of the LWP, some pieces are minor and will not require significant capital to repair or replace. These pieces of equipment are typically flowmeters, smaller pumps, compressors, and control panels.

The major pieces of equipment, which will require replacement or major maintenance and /or repair include the reuse pump station, the screens, UV disinfection, membranes, and permeate pumps.

During the first three full years of operations, there has not been a need to purchase capital equipment. The initial project documents included an Estimated Costs for the Major Maintenance, Repair and Replacement Schedule for the 0.25 MGD facility over a 30-year timeframe. This information is included in the Appendix. In addition to recovering operating costs through a new rate structure, funds for major purchases should also be incorporated into the rate. While debt financing could be considered for significant capital improvements, it is also typical to pay for planned costs through an equipment reserve. The use of financing could also be initially challenging due to debt service coverage ratios that may be required by lenders.

The base engineer's estimate is provided, along with an estimate of the costs adjusted by a 2% CPI for the outlying years.

Capital Replacement and Membranes										
Replacement Interval	Assumed Purchase Year		Membrane Replacement Costs [1]		Capital Expenditure		Total		Adjusted for current dollars at est. 2.0% CPI [2]
1-5	FY 22/23	YR 5			$ 90,750		$ 90,750		$ 104,243
6-10	FY 27/28	YR 10	42,500		619,468		661,968		839,535
11-15			95,000		1,220,558		1,315,558		1,842,099
16-20					1,477,698		1,477,698		2,284,491
21-25			95,000		662,203		757,203		1,292,460
26-30			95,000		1,134,573		1,229,573		2,317,180
			$ 327,500		$ 5,205,250		$ 5,532,750		$ 8,680,008

(1) Membrane costs allocated to be in alignment with capital expenditures.
(2) Capital equipment estimate of $5,205,249 in 2015 dollars, with annual contribution of $173,508

The engineer estimated that an annual accrual of $173,508 the 30-year term totaling $5,205,249 for capital expenditures should be reserved. This amount was represented in 2015 dollars. When this amount is adjusted for inflation, the annual contribution to support capital expenditures and membrane replacements is $289,344 or an average of both rates at approximately $237,000.

Recycled Water Rates

The current rate for recycled water is 0.0173. The break-even rate for the last fiscal years is presented below. The first table includes the cost recovery rate for operating expenditures and debt service. The second table calculates the average cost per gallon using expenditures for the three fiscal years, along with the average capital equipment and membrane costs in 2015 dollars; and the average costs inflated by a 2% CPI over the forecast period.

Cost per Gallon Based on Actual and Estimated Costs			
	FY 18/19	FY 19/20	FY 20/21 Est.
Expenditures	$737,088	$795,819	$675,000
Gallons sold	29,741,422	31,126,940	30,434,000
Avg. Cost per gallon	$0.0248	$0.0256	$0.0222

Avg. Cost per Gallon (CPG) with Capital and Significant Equipment Replacement Costs			
	FY 18/19	FY 19/20	FY 20/21 Est.
CPG with avg. capital costs at $184,000	$0.0310	$0.0315	$0.0282
CPG with avg. capital costs at $232,000	$0.0326	$0.0330	$0.0298

Based on the current and estimated demand, the average cost per gallon is $0.024 when considering only operating costs. When the capital costs are included in the calculation, the average three-year rate is approximately $0.0310. This would increase the rates included in the forecast period by approximately 40% to cover operational costs; or 79% to establish a reserve for capital equipment purchases. The estimated California American Water Company rate per gallon is approximately $0.0290, when surcharges, fees, and taxes are included. This calculation was based on the Cal Am online bill estimation tool, with similar estimates calculated internally and by the Golf Course lessee. A copy of the rate schedule is included in the Appendix.

The current lease agreement for the City's golf course caps the amount the Local Water Project can charge for recycled water. This limitation prohibits full-cost recovery. An increase in demand could assist in funding fixed costs, while variable amounts, such as chemicals and utilities would

increase with consumption. Based on the three-year data, the current demand, and customer base may not be sufficient to yield significant economies of scale. This is largely due to the amount of fixed costs, which include an annual debt service payment of $206,448; and the base operator costs of $214,968 which are adjusted for inflation.

Alternatives

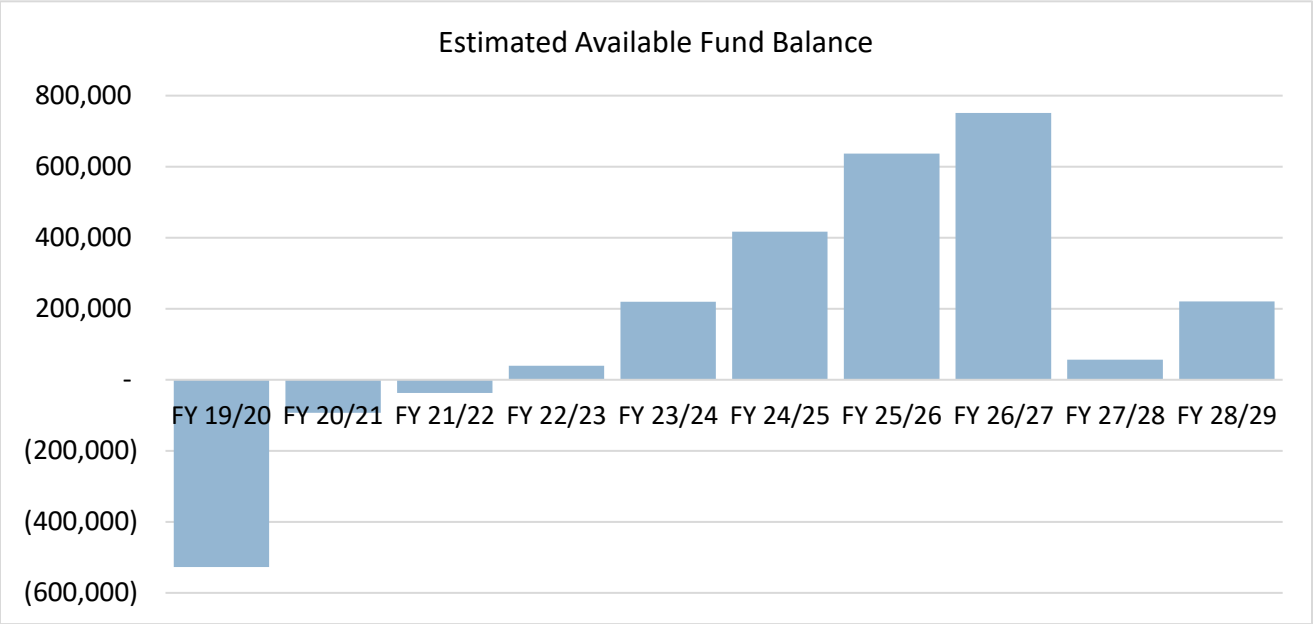
Multiple scenarios were evaluated when reviewing sustainability options for the Local Water Project. The assumptions included an average increase in operating costs of 3%, debt service remaining constant, and increases greater than 2%, being phased-in over the eight-year period.

All scenarios rely on water entitlement sales to assist in repaying the 2021 Temporary Loan or to supplement operating costs through Fiscal Year 25/26. Scenarios I-VI also rely on the use of proceeds from a $625,187 promissory note. Scenarios I, IV, and V are primarily provided for illustration purposes only. They have been included in the analysis to show the potential impact when all or a portion of a potential $1.2 million promissory note is incorporated into the estimates. These three scenarios would not be considered a viable option until an adequate agreement is reached with the developer. An overview is presented below:

	Impact of Alternate Scenarios through Fiscal Year 28/29						
	Eight-Year Increase	Average Increase	Water Entitlement Sales	Promissory Note Water Entitlement	Flat Charge	Projected FY 28/29 rate per gallon	Ending Fund Balance FY 28/29
Scenario I	16%	2.0%	$650,000	$1,853,187	-	0.0202	($630,837)
Scenario II	16%	2.0%	1,025,000	625,187	$1,496,000	0.0202	25,505
Scenario III	16%	2.0%	600,000	625,187	$2,000,000	0.0202	99,087
Scenario IV	55%	6.9%	350,000	1,853,187	-	0.0292	499,010
Scenario V	61%	7.6%	350,000	1,239,187	-	0.0305	402,585
Scenario VI	66%	8.3%	625,000	625,187	-	0.0320	220,188
Scenario VII	70%	8.8%	1,000,000	-	-	0.0332	99,113

A sample financial statement for Scenario VI is included in the Appendix, while an overview of the projected fund balance is presented in the chart on the subsequent page. The chart illustrates the effect of the increased rates on the estimated available fund balance, and the use of equipment reserves to fund capital improvements in Fiscal Year 27/28. In Fiscal Year 28/29, the chart also

identifies the beginning of the fund balance replenishment process. These funds would be used to support cash flow and future improvements.



RECOMMENDATIONS

Debt Repayment Plan

A debt repayment plan needs to be established to repay the Sewer Fund for the $600,000 loan to the Local Water Project.

To assist with fiscal sustainability, consideration may be given to applying the proceeds from a $625,187 water entitlement promissory note to cover the loan repayment. This would provide the Local Water Project with a "fresh start". The annual interest could be established based on the average interest rate that is equivalent to City's investment portfolio. This could be charged annually against the outstanding loan balance. This would provide the Sewer Fund with the amount of interest that it would have earned if the $600,000 was retained in the Sewer Fund. The principal could be repaid to the Sewer Fund when the proceeds from the promissory note are received. It is estimated that this would be take place in Fiscal Year 22/23.

The use of operating cash or an increase in rates beyond the forecasted amount to fund the 2021 LWP Interfund Loan is not recommended due to the increase burden on ratepayers.

If there are concerns that the promissory note would not be fulfilled, the City could elect one of the following alternatives:

- Allocate 100% of all prospective water entitlement sales to the Local Water Project. In most forecast scenarios, approximately 50-70% of the entitlement sales are allocated to the LWP fund, with the balance retained in the General Fund. While this could be an option, there is still some uncertainty as to whether the water entitlement sales will continue to perform at their current level.

- Work with the City's auditors and legal staff to confirm the implications of a longer-term loan from the General Fund's Strategic Opportunities Reserve. This could be a ten-year loan with interest equivalent to the average rate within the City's debt portfolio, the City's investment portfolio, or the current market rate.

Rate Structure and On-Going Operations

A financial plan needs to be established to assist the Local Water Project in becoming self-sufficient. Scenario VI, establishes a rate structure that ramps-up over a two-year period to cover operating costs, as well as begins to set aside funds for the recommended capital purchases through Fiscal Year 27/28. This scenario also includes a variable water rate that is applicable to all customers, rather than a fixed component, cap, or a surcharge. The rate could be adjusted based on cost recovery needs, as well as support any changing capital purchases.

While the Business Plan includes a multi-year forecast, a procedure for rate increases would also need to be established to reflect any significant variations from the Plan estimates. Updates on an annual basis may be difficult to calculate due to lead times, as well as fluctuations that may occur within a single year. An alternative would be to establish a three-year rate schedule that is based on the forecast. This would provide customers with the opportunity to incorporate the new rates into their operating budgets, as well as assist the City with budgetary planning. Future rate adjustments could be based on rolling three-year or historical consumption trends, with financial updates based on more current cost recovery needs.

The implementation of a rate increase would require a change in the contract with the current Golf Course lease. The information related to preliminary discussions with the lessee will be presented outside of this Business Plan.

Reserves

A cash flow reserve should be established at approximately $250,000 to assist the Local Water Project in becoming independent. While pooled cash would be available to supplement short-term cash flow needs, it isn't viable as a long-term solution.

A capital reserve should also be established to retain funds to pay for projected capital improvements and major maintenance costs. Scenario IV presents a plan to support these costs through the forecast period.

Similar capital-intensive entities have established rate stabilization funds to assist in smoothing rates when there is less demand, as well as emergency reserves to support unanticipated costs. These additional reserves could be considered once the Local Water Project's finances have been stabilized.

Appendix

California American Water Company Rate Schedule

The Local Water Project is considered Division 2, with a 4” meter

APPLICABILITY
Applicable to all water furnished on a metered basis to non-residential customers in the service areas defined below.

TERRITORY
The incorporated cities of Monterey, Pacific Grove, Carmel-by-the-Sea, Del Rey Oaks, Sand City, a portion of Seaside, Hidden Hills and Ryan Ranch subdivisions, Bishop subdivision including the area known as Laguna Seca Ranch Estates and vicinity and certain unincorporated areas in the County of Monterey.

RATES

Quantity Rates:

Non-Residential Customers:	**Base Rate Per 100 gal (CGL)**	
Division 1	$1.9329	(I)
Division 2	$2.1745	|
Division 3	$2.4161	|
Division 4	$4.8322	(I)

Service charge: General Metered:

	Per Meter Per Month	
For 5/8 x 3/4-inch meter	$25.27	(I)
For 3/4-inch meter	$37.90	|
For 1-inch meter	$63.16	|
For 1-1/2-inch meter	$126.33	|
For 2-inch meter	$202.12	|
For 3-inch meter	$378.98	|
For 4-inch meter	$631.63	|
For 6-inch meter	$1,262.26	|
For 8-inch meter	$2,021.22	(I)

The Meter Charge is a readiness-to-serve charge which is applicable to all metered service and to which is added the charge for water used computed at the Quantity Rate.

DEFINITIONS: (T)

1. WATER FACTOR - "Water Factor" shall mean a rating of water efficiency established by the U.S Environmental Protection Agency and the U.S. Department of Energy through the Energy Star Program. The Water Factor is the number of gallons per cycle per cubic foot that the Clothes Washer uses. The lower the Water Factor, the more efficient the washer is. So, if a Clothes Washer uses 30 gallons per cycle and has a tub volume of 3.0 cubic feet, then the Water Factor is 10.0.
2. WATER EFFICIENT ICE MACHINE – "Water Efficient Ice Machine" shall mean a commercial ice machine that meets or exceeds Energy Star standards for air-cooled ice machines.
3. SUPPLEMENTAL IRRIGATION SYSTEM – "Supplemental irrigation system" shall mean irrigation systems other than natural precipitation.
4. WATER BUDGET FEATURE – "Water budget feature" shall mean percent up/down adjust feature such as a button or dial on an irrigation controller that permits the user to increase or decrease the runtimes or application rate as for each zone by a prescribed amount or percent, by means of one adjustment without modifying the settings for that individual zone.
5. GEAR DRIVE ROTOR SPRINKLERS – "Gear drive rotor sprinklers" shall mean Irrigation sprinklers with high uniformity rates and lower precipitation rates than conventional sprinkler heads or impact rotors resulting in more efficient irrigation.
6. MULTI STREAM, MULTI TRAJECTORY ROTATING SPRINKLERS (MSMTR) – "Multi stream, multi trajectory rotating sprinklers" shall mean slowly turning irrigation sprinklers distributing water in a number of individual streams of varying trajectories with lower precipitation rates and higher uniformity than traditional fixed spray head sprinklers.
7. HIGH EFFICIENCY FIXED SPRAY NOZZLES – "High efficiency fixed spray nozzles" shall mean precision irrigation spray nozzles with larger and more uniform droplet size resulting in better wind resistance, lower precipitation rates and higher irrigation efficiency.
8. DRIP IRRIGATION - "Drip Irrigation" shall mean a low pressure, low volume watering system that applies water slowly to plants, near or at ground level, to minimize runoff and loss to evaporation. The term "Drip Irrigation" shall have the same meaning as "Micro Irrigation" and "Trickle Irrigation."
9. SUB SURFACE LOW VOLUME EMITTERS – "Sub surface low volume emitters" shall mean drip or low volume, low pressure irrigation systems that deliver a low flow of water at or near the root zone of plants - measured in gallons per hour versus gallons per minute.

DEFINITIONS (Continued):

10. LOW VOLUME IRRIGATION – "Low volume irrigation" shall mean drip, low volume or Micro Spray Irrigation, includes Low volume fixed spray nozzles. (T)
11. Best Management Practices - "BMP" as referenced in Section V of the Settlement attached to D.13-07-041. (T)
12. Customer Classification Conservation Base Rate – "CCCBR". the "Customer Class Conservation Base Rate" ("CCCBR") is defined as the low block or division quantity rate from each billing customer classification under conservation rates, and is determined as the rate necessary to equal the billing classification revenue requirement given the defined rate design parameters. (T)

SPECIAL CONDITIONS:

General Items:

1. The boundaries in which the above rates apply are as set forth in the Preliminary Statement and delineated on the Tariff Service Area Maps filed as a part of these tariff schedules.
2. This non-residential rate design shall remain in effect and until ordered otherwise by the Commission.
3. Abbreviations as used in this tariff are defined above.
4. Non-residential customers billed under this tariff shall be placed into one of four divisions for billing purposes. The determination of under which Division each individual customer shall be billed will be based on the following:
    a. Division 1: Customers that are indoor/outdoor Rate BMP-compliant and have outdoor landscape irrigation of no more than 10% of total parcel size covered by the meter (or meters) meant to serve such parcel, and excluding from the total parcel size for purposes of the 10% calculation areas of natural, non-irrigated open space. Meters designated as irrigation only meters will not be included in Division 1 regardless of the 10% parcel size allowance noted above.
    b. Division 2: Customers that are indoor/outdoor Rate BMP-compliant and have a business where the watering is essential to the product of the business (nurseries), golf courses and government parks, ball fields, and cemeteries.
    c. Division 3: Customers that are indoor/outdoor Rate BMP-compliant and have outdoor landscape irrigation exceeding the 10% parcel limit for Division 1, as well all Rate BMP-compliant irrigation meters, as previously noted in Special Condition 6 (a).
    d. Division 4: Customers that are not in compliance with Rate BMPs.
5. Upon approval of the tariff all customers who respond to the request to provide self-certified Rate BMP information will be appropriately categorized into Division 1, 2, 3 or 4 immediately so that all bills issued under the new tariff reflect the provision of a completed survey.
6. Customers that are subsequently found to be non Rate BMP compliant will be given 30 days from the date of notification to achieve compliance as noted in the non-compliance letter.
7. All Del Monte Forest golf courses served with emergency potable water from the connection at the Viscaino tank will be assigned an emergency allocation of 30 AF/year. Any potable use within this allotment will be billed at customer Division 1 rates. Usage above the annual allotment would be billed at customer Division 2 rates.

SPECIAL CONDITIONS (Continued):
General Items:

8. Rate BMP Compliant will be defined as follows:

   a. Indoor Usage
      i. Showerheads – Rain Bars, or Body Spray Nozzles shall be designed and manufactured to emit a maximum of 2.0 gallons per minute GPM.
      ii. Public Washbasins shall emit a maximum of 0.5 GPM.
      iii. Public Washbasins equipped with automatic shut off devices or sensor faucets shall operate with a maximum flow rate of 0.25 gallons per cycle.
      iv. Private Washbasins (e.g.; Washbasins in hotel or motel guest rooms and hospital patient rooms) shall emit a maximum of 1.5 GPM.
      v. All other sinks shall be restricted to flow at a maximum of 1.5 GPM.
      vi. Ultra low flow toilets (1.6 gallons per flush ("GPF")), High Efficiency Toilets (1.28 GPF) or Ultra High Efficiency Toilets (0.8 GPF). All toilets replaced after December 31, 2014 will have to be High Efficiency or Ultra High Efficiency
      vii. Water efficient urinals designed to flush with a maximum of 0.5 GPF. Includes High Efficiency Urinals (0.5 GPF), pint urinals (0.125 GPF), or waterless urinals.
      viii. Water Efficient (1.6 GPM) Pre-Rinse spray valves (as applicable), Medical and laboratory photographic, and/or X-Ray processing systems must recirculate water used in the rinse process.
      ix. All Visitor-Serving Facilities must use Water Efficient Ice Machines
      x. All Clothes Washers must be rated with a Water Factor of 5.0 or below. There is an exception when the existing appliance was purchased between December 31, 2005 and December 31, 2012, and rates a Water Factor of 5.1-6.0.
      xi. Visitor-serving, Public, and Quasi-Public facilities must display placards or decals promoting water awareness and the need for conservation in visible locations in restrooms, kitchens, and dining areas.
      xii. Visitor-serving facilities must offer towel and linen reuse programs by providing written notice in the rooms.
      xiii. Restaurants must provide written notice that drinking water is available only upon request. Notices must be placed on tables and/or menus. Drinking water will not be provided from the Monterey Peninsula Water Resource System, unless specifically requested.

   b. Outdoor Usage
      i. All supplemental irrigation systems require the use of an automated irrigation controller, which must include a water budget feature and may include products, which rely on soil or weather sensors to adjust irrigation schedules.
      ii. Turf grass areas that receive supplemental irrigation must be watered with gear drive rotor sprinklers, multi stream, multi trajectory rotating sprinklers, high efficiency fixed spray nozzles or sub surface low volume emitters.
      iii. Low volume irrigation is encouraged for landscaped areas containing trees, shrubs and groundcover. The use of standard fixed spray nozzles will not be allowed in landscape beds measuring 3' or less.
      iv. All automated irrigation controllers must include sensors, or devices that interrupt, or delay a scheduled irrigation event due to rainfall that equals or exceeds an established threshold.
      v. Hoses, used to hand water landscaped areas must be equipped with a positive shut off device.

SPECIAL CONDITIONS (Continued):
General Items

9. Every meter will be categorized and issued a single bill unless a customer requests that a single consolidated bill be provided and then only if the system is capable of doing so without loss of any necessary data or delays in billing. (T)

10. **Moratorium:** In portions of the Monterey Service Area served, in whole or part, by Carmel River diversions, and subject to the following conditions and restrictions, California-American Water Company shall deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use: (T)

    a. California-American Water Company shall not deny such requests or prohibit such increased use where all necessary written approvals for project construction and connection to California-American Water Company's system had been obtained prior to October 20, 2009;

    b. California-American Water Company shall not deny the installation of additional meters at an existing service provided that the additional metering does not result in an increase in water use.

    c. This special condition does not authorize California-American Water Company to deny service to:

        i. the area served by the Carmel Area Wastewater District Water Entitlement pursuant to Monterey Peninsula Water Management District Ordinances 39 and 109 and Rule 23.5, prior to January 1, 2017 ;

        ii. the area served by the Sand City Water Entitlement pursuant to Monterey Peninsula Water Management District Ordinance 132 and Rule 23.6;

        iii. Security National Guaranty, Inc. under its frontloading agreement;

        iv. a connection or increased use where an authorized official of the State Water Resources Control Board has given written approval.

SPECIAL CONDITIONS (Continued):
General Items

10. **Moratorium(Continued):** In portions of the Monterey Service Area served, in whole or part, by Carmel River diversions, and subject to the following conditions and restrictions, California-American Water Company shall deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use: (T)

    d. California-American Water Company shall not deny a request for new service or prohibit the increased use of water at an existing service address if an authorized official of the State Water Resources Control Board has given written approval for such service or increased use.

    e. This special condition shall expire at the filing by California-American Water Company of a Tier 1 advice letter with the Commission transmitting the written concurrence of the Deputy Director of Water Rights of the State Water Resources Control Board with California-American Water Company's finding that a permanent supply of water is ready to serve as a replacement for the unlawful diversions of Carmel River water

11. Customers that have heretofore been billed as mixed use customers prior to March 1, 2017 will now be reclassified into either a multi-residential or non-residential classification. Those prior mixed use customers with a large number of individual dwelling units on large parcels will be classified as a multi-residential customer after March 1, 2017 and be billed under the same methodology as all other multi-residential customers, which is based on a block use allowance per dwelling unit. All other former mixed use customers will be billed under the divisional billing parameters and rates for non-residential customers. (T)

SPECIAL CONDITIONS (Continued):
Fees and Surcharges

1. All bills are subject to the reimbursement fee set forth in Schedule No.UF.

2. A surcharge is included on each bill to collect franchise taxes and/or business license fees paid to various municipalities. The amount collected is based on a percentage of the gross revenues of each bill. The percentages are as follows:
   Franchise Fees: Ryan Ranch 1.00%, City of Pacific Grove 2.00%, City of Carmel-by-the-Sea 2.00%, City of Seaside 1.00%, City of Del Rey Oaks Franchise Fee 2.00%, City of Monterey 1.00%, and unincorporated areas of Monterey County 1.00%.
   Business Fees: City of Del Rey Oaks 0.11% and City of Sand City 0.12%.

   Per D.18-12-021 a three-year conservation budget of $2,298,500 for 2018-2020 for Monterey Service Area. Effective November 23, 2020, the Conservation Surcharge will be removed from customer bill.

3. Per Advice Letter 1230-B, a surcharge of $1.81 for the Customer Assistance Program (CAP) Balancing Account will be collected from all non-customer assistance program water and wastewater customers (C) (C)

4. Per Advice Letter 1152, a fee of 8.325%, imposed by the Monterey Peninsula Water Management District (MPWMD), will be assessed against the customer's monthly base bill to fund MPWMD's environmental mitigation, water supply, and conservation programs, as well as other activities. The fee will remain in effect until otherwise directed by the Commission. This fee is applicable to customers in the Monterey Main, Bishop, Hidden Hills and Ryan Ranch areas.

6. Per Advice Letter 1199, the balance of the 2017 Non-Residential WRAM/MCBA is $2,762,923 as of December 31, 2017. The surcharge is shown in the table below and will remain effective until December 2021.

Non-Residential		
Monterey Main, Hidden Hills, Ryan Ranch, & Bishop Systems:	Surcharge per 100 gal	Months
Division 1	$0.1363	18
Division 2	$0.1533	18
Division 3	$0.1703	18
Division 4	$0.3407	18

SPECIAL CONDITIONS (Continued):
Fees and Surcharges

7. In accordance with Decision 16-12-003, the WRAM/MCBA balance through 2014 for the Monterey Service Area shall be recovered over five years with interest at the 90-day commercial paper rate. The surcharge is shown in the table below and will remain effective for 60 months upon approval of Advice Letter 1146-A, ending February 28, 2022.

Meter Size	Meter Surcharge
For 5/8" x 3/4" meter	$4.21
For 3/4" meter	$8.42
For 1" meter	$12.63
For 1-1/2" meter	$21.05
For 2" meter	$33.68
For 3" meter	$63.15
For 4" meter	$102.25
For 6" meter	$210.50
For 8" meter	$336.80

8. Per Advice Letter 1322, the under-collected balance in the Monterey Service Area Consolidated Expense Balancing Account will be recovered through a quantity-based surcharge of $0.0669 per 100 gallons over 12 months effective March 18, 2021. This total amount will be recovered from all classes of customers except Chualar customers. (C) (C) (C)

9. Per D.18-12-021 a meter based bill credit for the 2018 Excess Non-Plant Accumulated Deferred Income Tax will be refunded to customers over the 24-month period beginning October 17, 2019.

Meter Size	Refunds by Meter Equivalents
5/8 x 3/4	$1.47
3/4	$2.21
1	$3.68
1 1/2	$7.35
2	$11.77
3	$22.06
4	$36.77
6	$73.54
8	$117.66
10	$169.14

10. Per Advice Letter 1265-A, the net under-collected balance of the 2018 Non-Residential WRAM/MCBA is $106,180, including interest. D.18-12-021 raises the cap on WRAM/MCBA surcharges to 15% of the authorized revenue requirement. Rates will be established through a separate Tier 1 filing to update the tariff language and surcharge based upon the then current authorized amortization.

SPECIAL CONDITIONS (Continued):
Fees and Surcharges:

11. Per Advice Letter 1291-A, the net under-collected balance of the 2019 residential WRAM/MCBA is $982,007, including interest. D. 18-12-021 raises the cap on WRAM/MCBA surcharges to 15% of the authorized revenue requirement. Rates will be established through a separate Tier 1 filing to update the tariff language and surcharge based upon the then current authorized amortization.

12. Per D.18-12-021 a meter-based bill credit for the 2018 Excess Plant Related Accumulated Deferred Income Tax will be refunded to customers over the 12-month periods beginning January 21, 2020.

Meter Size	Refunds by Meter Equivalents
5/8-inch meter	$0.30
3/4-inch meter	$0.45
1-inch meter	$0.75
1-1/2-inch meter	$1.51
2-inch meter	$2.41
3-inch meter	$4.52
4-inch meter	$7.53
6-inch meter	$15.05
8-inch meter	$24.08
10-inch meter	$34.62

13. Per Advice Letter 1311, a surcharge is applied to each bill to offset increases in purchased water costs imposed by Monterey Peninsula Water Management District (MPWMD). The offset results in a needed increase of $405,474 or 0.53%. The surcharge of $0.2011 per cgl is added to the quantity charge beginning October 21, 2020.

14. Per D.18-12-021 a meter-based bill credit for the 2019 Excess Plant Related Accumulated Deferred Income Tax will be refunded to customers over the 12-months periods beginning November 1, 2020. (C)

Meter Size	Refunds by Meter Equivalents
5/8x3/4inch meter	$0.21
3/4-inch meter	$0.32
1-inch meter	$0.53
1-1/2-inch meter	$1.07
2-inch meter	$1.70
3-inch meter	$3.20
4-inch meter	$5.33
6-inch meter	$10.66
8-inch meter	$17.05
10-inch meter	$24.51

SPECIAL CONDITIONS

Fees & Surcharges: (continued):

1. Per Decision (D.) 19-12-048, intervenor compensation paid to the Surfrider Foundation will be recovered through a meter surcharge for six billing cycles upon approval of Advice letter 1295. The total amount of $441,448.05 will be recovered from all classes of metered customers.

Meter Size	Surcharge
5/8 x 3/4	$1.21
3/4	$1.82
1	$3.03
1 1/2	$6.07
2	$9.71
3	$18.20
4	$30.34
6	$60.68
8	$97.09
10	$139.57
12	$200.25

(N)

2. Per Decision 19-12-049, intervenor compensation paid to the Salinas Valley Water Coalition will be recovered through a meter surcharge for six billing cycles upon approval of Advice Letter 1302. The total amount of $496,798.25 will be recovered from all classes of metered customers.

Meter Size	Surcharge
5/8 x 3/4	$1.64
3/4	$2.46
1	$4.10
1 1/2	$8.20
2	$13.12
3	$24.60
4	$41.01
6	$82.01
8	$131.22
10	$188.62
12	$270.63

(N)

SPECIAL CONDITIONS:
Fees & Surcharges (continued):

3. Per Decision 20-02-060, intervenor compensation paid to Landwatch Monterey County will be recovered through a meter surcharge for three billing cycles upon approval of Advice Letter 1313. The total amount of $107,231.63 will be recovered from all classes of metered customers. (P)

Meter Size	Surcharge
5/8 x 3/4	$0.59
3/4	$0.88
1	$1.47
1 1/2	$2.94
2	$4.70
3	$8.81
4	$14.68
6	$29.37
8	$46.99
10	$67.54
12	$96.91

(P)

4. Per Decision 20-02-058, intervenor compensation paid to the Planning and Conservation League Foundation will be recovered through a meter surcharge for four billing cycles upon approval of Advice Letter 1314. The total amount of $215,019.80 will be recovered from all classes of metered customers. (N)

Meter Size	Surcharge
5/8 x 3/4	$1.18
3/4	$1.77
1	$2.95
1 1/2	$5.90
2	$9.45
3	$17.71
4	$29.52
6	$59.04
8	$94.46
10	$135.78
12	$194.82

(N)

SPECIAL CONDITIONS (N)
Fees & Surcharges (Continued):

5. Per Decision 20-08-040, intervenor compensation paid to Public Water Now will be recovered through a meter surcharge for 8 billing cycles upon approval of Advice Letter 1321. The total amount of $10,095 will be recovered from all classes of metered customers.

Meter Size	Surcharge
5/8 x 3/4	$0.02
3/4	$0.03
1	$0.05
1 1/2	$0.10
2	$0.16
3	$0.30
4	$0.49
6	$0.99
8	$1.58
10	$2.27
12	$3.25

(N)

Engineer’s Estimated Capital Purchases

Estimated Major Maintenance, Repair, and Replacement Schedule (Proposal Form 16)

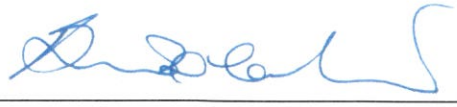
The Estimated Costs for the Major Maintenance, Repair and Replacement Schedule for the 0.25 MGD facility (excluding membrane replacements), in 2015 US dollars are:

Year	Activity/Equipment	Price
1-5	Capital Expenditure	$90,750
6-10	Capital Expenditure	$619,468
11-15	Capital Expenditure	$1,220,558
16-20	Capital Expenditure	$1,477,698
21-25	Capital Expenditure	$662,203
26-30	Capital Expenditure	$1,134,573
	Total	**$5,205,249**

An annual accrual of $173,508 (in 2015 US dollars) for the 30 year term totaling $5,205,249 should be reserved.

PERC Water Corporation
Name of Proposer

Brian Cullen
Name of Designated Signatory



Signature

President
Title

Estimated Membrane Replacement Schedule (Proposal Form 17)

The Estimated Annual Membrane Replacement Costs for the 0.25 MGD facility, in 2015 US dollars are:

Year	Activity/Equipment	Number of Modules	% of Total Modules	Price
1-4	Membrane modules are under warranty	0	0	$0
5-8		1	50%	$42,500
9-17		1	50%	$95,000
18-26		1	50%	$95,000
27-34		1	50%	$95,000
			34 yr Total	**$327,500**

Assumptions:
The Koch Membrane System warranty is defined as follows:
During the first 48 months after the initiation of Warranty, KMS will replace the failed membrane row(s) free of charge. (Shipped FCA Manufacturer facility) Commencing after 48 months from the initiation of warranty any membrane modules or rows that must be repaired, replaced or added hereunder shall be replaced on a pro-rated price basis.
It is due to this warranty the cost for membrane replacement for the first 4 years is zero. And further if a module or row needs replacement between years 5-8 the replacement cost shall be pro-rated per the Koch Warranty.

PERC Water Corporation
Name of Proposer

Brian Cullen
Name of Designated Signatory



Signature

President
Title

Draft Financial Statements

Scenario VI - Original

	Cost per gallon	Cost per gallon $ 0.01721	Cost per gallon 0.0207 20.0%	Cost per gallon 0.0248 20.0%	Cost per gallon 0.0258 4.0%
	Year 2 FY 19/20	Year 3 FY 20/21	Year 4 FY 21/22	Year 5 FY 22/23	Year 6 FY 23/24
Beginning Fund Balance	(326,361)	(527,571)	(93,219)	(37,261)	39,210
Revenues					
Reclaimed Water	524,041	536,000	642,901	771,481	802,340
Interest Earned	421	800	9,721	421	392
Other	-	-	-	-	-
	524,462	536,800	652,622	771,902	802,732
Expenses					
Contract Services	356,606	327,000	336,810	346,914	357,322
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	206,168	140,000	144,200	148,526	152,982
Internal Service Charges	4,357	5,000	4,356	4,356	4,356
Indirect Costs	28,600	24,000	25,200	25,830	26,476
Equipment Repair	-	-	-	-	-
Misc. Expense	-	-	-	-	-
	595,731	496,000	510,566	525,626	541,135
Net operating difference	(71,269)	40,800	142,056	246,276	261,597
Non-Operating					
Capital Outlay				**(104,243)**	
One-time water entitlement sales		**-**	**125,000**	**750,187**	**125,000**
Loan Proceeds - Sewer Loan		**600,000**		**-**	
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan		**-**	**(4,650)**	**(609,300)**	
Interfund Transfers	76,507	-	-	-	-
	(129,941)	393,552	(86,098)	(169,804)	(81,448)
Net Operating Difference	(201,210)	434,352	55,958	76,471	180,149
Ending Fund Balance	(527,571)	(93,219)	(37,261)	39,210	219,359
Fund Balance Allocation					
Unassigned	(527,571)	(93,219)	(37,261)	-	
Cash Flow	-	-	-	39,210	219,359
Capital Equip. Reserve	-	-	-	-	-
	(527,571)	(93,219)	(37,261)	39,210	219,359

Scenario VI - Original

	Cost per gallon 0.0268 4.0% Year 7 FY 24/25	Cost per gallon 0.0279 4.0% Year 8 FY 25/26	Cost per gallon 0.0290 4.0% Year 9 FY 26/27	Cost per gallon 0.0304 5.0% Year 10 FY 27/28	Cost per gallon 0.0320 5.0% Year 11 FY 28/29
Beginning Fund Balance	219,359	417,432	636,504	751,637	56,647
Revenues					
Reclaimed Water	834,434	867,811	902,524	947,650	995,032
Interest Earned	2,194	6,261	9,548	11,275	850
Other	-	-	-	-	-
	836,627	874,073	912,071	958,924	995,882
Expenses					
Contract Services	368,041	379,083	390,455	402,169	414,234
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	157,571	162,298	167,167	172,182	177,348
Internal Service Charges	4,356	4,356	4,356	4,356	4,356
Indirect Costs	27,138	27,816	28,511	29,224	29,955
Equipment Repair	-	-	-	-	-
Misc. Expense	-	-	-	-	-
	557,106	573,553	590,490	607,931	625,893
Net operating difference	279,521	300,520	321,581	350,993	369,989
Non-Operating					
Capital Outlay				**(839,535)**	
One-time water entitleme	**125,000**	**125,000**	**-**	**-**	**-**
Loan Proceeds - Sewer Loa					
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan					
Interfund Transfers	-	-	-	-	-
	(81,448)	(81,448)	(206,448)	(1,045,983)	(206,448)
Net Operating Difference	198,073	219,072	115,133	(694,991)	163,541
Ending Fund Balance	417,432	636,504	751,637	56,647	220,188
Fund Balance Allocation					
Unassigned	0	(0)	0	(0)	0
Cash Flow	250,000	250,000	250,000	56,647	220,188
Capital Equip. Reserve	167,432	386,504	501,637	-	-
	417,432	636,504	751,637	56,647	220,188

Scenario VI - Updated for Fiscal Year 20/21 Actuals

	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
		$ 0.01721	0.0207	0.0248	0.0258
	Actual	***Actual***	20.0%	20.0%	4.0%
	Year 2	Year 3	Year 4	Year 5	Year 6
	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Beginning Fund Balance	(326,361)	(527,571)	(36,689)	31,781	123,745
Revenues					
Reclaimed Water	524,041	597,833	658,348	790,017	821,618
Interest Earned	421	-	9,721	421	1,237
Other	-	-	-	-	-
	524,462	597,833	668,069	790,438	822,855
Expenses					
Contract Services	356,606	335,610	345,678	356,049	366,730
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	206,168	138,317	142,467	146,741	151,143
Internal Service Charges	4,357	5,000	4,356	4,356	4,356
Indirect Costs	28,600	20,000	21,000	21,525	22,063
Equipment Repair	-	1,576	-	-	-
Misc. Expense	-	-	-	-	-
	595,731	500,503	513,501	528,670	544,292
Net operating difference	(71,269)	97,330	154,568	261,768	278,563
Non-Operating					
Capital Outlay				**(104,243)**	
One-time water entitlement sales		**-**	**125,000**	**750,187**	**125,000**
Loan Proceeds - Sewer Loan		**600,000**		**-**	
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan		**-**	**(4,650)**	**(609,300)**	
Interfund Transfers	76,507	-	-	-	-
	(129,941)	393,552	(86,098)	(169,804)	(81,448)
Net Operating Difference	(201,210)	490,882	68,470	91,964	197,115
Ending Fund Balance	(527,571)	(36,689)	31,781	123,745	320,860
Fund Balance Allocation					
Unassigned	(527,571)	(36,689)	-	-	-
Cash Flow	-	-	31,781	123,745	250,000
Capital Equip. Reserve	-	-	-	-	70,860
	(527,571)	(36,689)	31,781	123,745	320,860

Scenario VI - Updated for Fiscal Year 20/21 Actuals

	Cost per gallon 0.0268 4.0% Year 7 FY 24/25	Cost per gallon 0.0279 4.0% Year 8 FY 25/26	Cost per gallon 0.0290 4.0% Year 9 FY 26/27	Cost per gallon 0.0304 5.0% Year 10 FY 27/28	Cost per gallon 0.0320 5.0% Year 11 FY 28/29
Beginning Fund Balance	320,860	536,723	775,041	910,418	236,929
Revenues					
Reclaimed Water	854,483	888,662	924,208	970,419	1,018,940
Interest Earned	3,209	8,051	11,626	13,656	3,554
Other	-	-	-	-	-
	857,691	896,713	935,834	984,075	1,022,494
Expenses					
Contract Services	377,732	389,064	400,736	412,758	425,141
Legal Services	-	-	-	-	-
Postage	-	-	-	-	-
Telephone	-	-	-	-	-
Utilities	155,677	160,347	165,158	170,112	175,216
Internal Service Charges	4,356	4,356	4,356	4,356	4,356
Indirect Costs	22,615	23,180	23,760	24,354	24,962
Equipment Repair	-	-	-	-	-
Misc. Expense	-	-	-	-	-
	560,380	576,947	594,009	611,580	629,675
Net operating difference	297,311	319,765	341,825	372,495	392,819
Non-Operating					
Capital Outlay				**(839,535)**	
One-time water entitleme	**125,000**	**125,000**	**-**	**-**	**-**
Loan Proceeds - Sewer Loa					
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Debt Service - Sewer Loan					
Interfund Transfers	-	-	-	-	-
	(81,448)	(81,448)	(206,448)	(1,045,983)	(206,448)
Net Operating Difference	215,863	238,317	135,377	(673,488)	186,371
Ending Fund Balance	536,723	775,041	910,418	236,929	423,300
Fund Balance Allocation					
Unassigned	-	-	-	-	-
Cash Flow	250,000	250,000	250,000	56,647	220,188
Capital Equip. Reserve	286,723	525,041	660,418	180,282	203,112
	536,723	775,041	910,418	236,929	423,300

January 7, 2022

To: Tori Hannah

Daniel Gho

From: Andrea Roess, Managing Director, DTA

Steve Runk, Vice President Engineering, DTA

Subject: Peer Review of City Business Plan

The City of Pacific Grove ("City") recently constructed a 0.250 MGD reclaimed water treatment plant ("Plant") for the purpose of replacing potable water deliveries with reclaimed water to three principal customers, Pacific Grove Golf Links, El Carmelo Cemetery and Point Pinos Lighthouse landscaping. A detailed background of the existing physical and financial conditions of the reclaimed water system can be found in Pacific Grove Local Water Project Business Plan dated June 21, 2021 ("Business Plan"). City has asked DTA to conduct a peer review, consisting of: 1) an evaluation of the assumptions, methodology and calculations used to determine the proposed reclaimed water rate described in the Business Plan; and 2) provide a break-even rate analysis.

After review of the City's Business Plan and rate analysis, DTA has determined that the City's analysis of revenues and costs, debt service and available fund balances on an annual basis is rational, supportable and is consisted with industry practice. The City's financial model follows closely with the recommendations of American Water Works Association (AWWA) Manual of Water Supply Practices, M1. Furthermore, DTA has determined that to achieve a sustained, breakeven operation, City must impose steep increases in early years to reach a rate level of over $0.03 per gallon with modest increases thereafter.

EVALUATION OF THE BUSINESS PLAN

City looked at proposed revenues and expected expenses through FY28/29 (Year 11) for seven different revenue and cost assumption scenarios. Scenarios I-VII considered various combinations of supplementary water entitlement sales and debt repayment of operating loans. An overview of the findings for the seven scenarios can be found in the "Alternatives" section of the Business Plan. A rate analysis for Scenario VI, titled LWP Proforma, Scenario VI, was provided by City ("rate model"). This rate model was subsequently updated by City to include actual operating costs for FY20/21 as well as adjustments for recent average water demand. This analysis included one-time water rights sales in years 4 through 8. Also included are proceeds in year 3 from a $600,000 sewer fund loan, with loan repayments plus interest occurring in years 4 and 5. Operating costs were adjusted for inflation in subsequent years. Investment earnings on annual reserve balances included as a revenue source.

Revenues

The rate revenue in any given year is determined by multiplying the expected reclaimed water consumption, in gallons of reclaimed water, by the assumed rate, in dollars per gallon for that year. The expected consumption for each fiscal year is based on historical data and is discussed in the Business Plan. Other revenue shown in Scenario VI included one-time sales of water rights in years 4 through 8, and interest earned on fund balances.

Operating Expenses

Annual expenses such as contract services and utilities are based on actual costs incurred for FY20/21 and adjusted for inflation every year thereafter. In FY20/21 equipment repair and maintenance costs were incorporated into the contract services line item, in the amount of $21,000. Indirect costs are adjusted annually for inflation. Internal service charges are

assumed constant at $4,356 annually. Membranes have a useful life significantly greater than one year and therefore its replacement cost is considered a capital outlay.

Capital Outlay

Capital outlay costs, which include capital expenditures and membrane replacement, are identified in the Business Plan by fiscal year. In this model capital outlays occur in FY22/23 and FY 27/28. The remainder of the 30-year C.I.P. expenses occur in fiscal years beyond this study horizon. Funding for the capital outlay will be on a pay-as-you-go basis from the fund balances and therefore there will be no debt service related to capital outlays. The amount and timing of capital outlays are based on engineering estimates and are as shown in the Business Plan.

Debt Service

The rate model includes annual debt service payments for a State Revolving Loan of $206,448. In FY 21/22 and FY22/23 the project will repay a sewer fund loan of $600,000, with interest, in lump sum payments.

City Rate Increase Recommendations and Fund Balances

In Scenario VI the City proposes rate increases of 20% in Year 4 and Year 5, with 4% and 5% annual increases thereafter. This will result in positive fund balances in year 4 and each year thereafter, with a positive fund balance of $423,300 in Year 11. A substantial fund balance in year 11 is necessary to assist in providing sufficient funds in later years to pay for the remainder of the C.I.P. program.

BREAK EVEN ANALYSIS

As stated in the Business Plan, the project has been operating at an annual loss. City Staff has asked DTA to provide an independent analysis of rates that assumes that 1) annual revenues will cover annual expenses, and 2) provide fund balances that can pay for capital improvements in the near term as well as establish a reserve fund that will assist in funding future capital improvements beyond the horizon of this analysis. For the purposes of DTA's analysis, it is assumed that steep increases are imposed in the first two years to remove all annual negative operating balances, with modest increases thereafter. For instance, the attached model shows that rate increases of 35% and 21% in the first two years are required to prevent negative operating fund balances, and annual increases of 3% thereafter will build a fund balance of just under $500,000 in year 7 that will assist in meeting the C.I.P. requirements in later years.

Revenue, Expense and Debt Service Assumptions

DTA's analysis uses the same annual water consumption and annual expense data shown in the City's rate model discussed above. Also, the Capital Outlay expenses are repeated from the City's rate model. This analysis includes annual debt service payments for a State Revolving Loan. The interfund transfer of $76,507 was provided by the General Fund and repayment was not required. In FY20/21 the project received a loan of $600,000 from the sewer fund, as well as $37,000 in temporary funds to assist with cash flow. City staff assumes that this will be repaid through other sources also, rather than operating revenues shown herein. This analysis also assumes that any water rights sales that occur during this study period are not made a part of this analysis.

Findings

Based on the above assumptions, DTA finds that rate increases of 35% in Year 4, 21% in year 5 and 3% per year in Years 6 through 11 are necessary to achieve positive fund balances from this point forward, while accumulating a fund balance of just under $500,000 by year 11, to be used to fund capital improvements in later years. Steep increases in Years 4 and 5 are necessary to increase the rate levels from 0.017 per gallon to around $0.03 per gallon by Year 8. A rate level of around $0.03 per gallon with modest annual increases thereafter will enable City to not only achieve a break-even operation but allow fund balances to accumulate so that by year 11 these balances can carry forward to help fund future C.I.P. projects.

If the City choses to increase rates at a slower pace, the enterprise will continue to experience annual budget shortfalls, which will need to be offset by other sources.

BREAK EVEN ANALYSIS MODEL

Key Assumptions:

No water rights sales revenue Included in this model

Debt repayment for sewer fund loan made from other sources

Interfund transfer repayment made from other sources

	DTA Break Even Analysis									
	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon	Cost per gallon
		$ 0.01721	0.0232	0.0281	0.0290	0.0298	0.0307	0.0316	0.0326	0.0336
	Actual	***Actual***	35.0%	21.0%	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FY 28/29
Beginning Fund Balance	(326,361)	(527,571)	311	21,003	77,924	250,740	436,308	635,624	849,180	237,954
Operating Revenues										
Reclaimed Water	524,041	597,833	740,641	896,176	923,061	950,753	979,275	1,008,654	1,038,913	1,070,081
Interest Earned	421	-		107	495	1,643	3,435	5,360	7,424	5,436
Non Opereating Revenues										
One Time Entitlement Sales										
Interfund Transfers	76,507									
Operating Loan Proceeds	-	637,000	-	-	-	-	-	-	-	-
Subtotal - Revenues	600,969	1,234,833	740,641	896,282	923,556	952,396	982,711	1,014,013	1,046,337	1,075,516
Expenses										
Contract Services	356,606	335,610	345,678	356,049	366,730	377,732	389,064	400,736	412,758	425,141
Legal Services	-	-	-	-	-	-	-	-	-	-
Postage	-	-	-	-	-	-	-	-	-	-
Telephone	-	-	-	-	-	-	-	-	-	-
Utilities	206,168	138,317	142,467	146,741	151,143	155,677	160,347	165,158	170,112	175,216
Internal Service Charges	4,357	5,000	4,356	4,356	4,356	4,356	4,356	4,356	4,356	4,356
Indirect Costs	28,600	20,000	21,000	21,525	22,063	22,615	23,180	23,760	24,354	24,962
Equipment Repair	-	1,576	-	-	-	-	-	-	-	-
Misc. Expense	-	-	-	-	-	-	-	-	-	-
subtotal - Expenses	595,731	500,503	513,501	528,670	544,292	560,380	576,947	594,009	611,580	629,675
Net operating difference	5,238	734,330	227,140	367,612	379,264	392,016	405,763	420,004	434,757	445,841
Non-Operating:										
Capital Outlay				**(104,243)**					**(839,535)**	
Debt										
Debt Service - State Loan	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Repayment of Interfund Transfer			-	-	-	-	-	-	-	-
Debt Service - Sewer Loan				-						
sub total - Debt	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)	(206,448)
Net Revenue/Deficit	(201,210)	527,882	20,692	56,921	172,816	185,568	199,315	213,556	(611,226)	239,393
Ending Fund Balance	(527,571)	311	21,003	77,924	250,740	436,308	635,624	849,180	237,954	477,347

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Sandra Kandell, City Clerk

MEETING DATE: February 16, 2022

SUBJECT: Hybrid Meeting Update

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve staff recommendation to commence hybrid meetings by phases as outlined in the Discussion section of agenda report.

DISCUSSION

The City Clerk has been working with the City Manager, IT Department, Public Works, and the Police Department in order to provide this status update. As the Council was informed earlier, all metrics on the technology side have been accomplished except for a time clock. The time clock method currently used will continue to be used until another is put into place. This report provides phases staff believes applicable in commencing hybrid meetings on March 2, 2022. The phases are pursuant to safety recommendations by the City's Human Resources Department, Safety Committee, the California Department of Public Health (CDPH) and the California Joint Powers Insurance Agency (CJPIA). Phases cover masks/vaccination cards, plexiglass inserts, chamber capacity limits, and social distancing.

The State's indoor mask requirement will end February 15, 2022, and will revert to the previous guidance. Effective February 16, 2022, masks will be required for unvaccinated individuals in all indoor public settings, and for all individuals regardless of vaccination status, in higher risk settings such as public transit, etc. Businesses, venue operators, hosts, etc. may determine their own paths forward to protect staff and patrons and may choose to require all patrons to wear masks. The California Department of Public Health's February 7, 2022, is attached for ease of reference. AB 361 expires in January 2024, so long as the Governor has declared a state of emergency. The Governor's Executive Order declaring a state of emergency is set to expire on March 31, 2022. It is unknown at this time whether it will be extended by a further order. A County of Monterey State of Emergency Declaration could continue the virtual meetings, however, it is unknown whether the County of Monterey will issue one. AB 361 and Executive Order N-1-22 are attached for the Council's ease of reference.

The Council should note that the Mayor's State of the City Address set for February 23, 2022, at 6:00 PM will be held via hybrid. The Mayor will attend in-person. Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and

then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public may continue attending via Zoom. The City Clerk, Deputy, IT, and AMP staff will attend in-person. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks where needed. Open doors and windows will provide ventilation.

Based on the information above, staff recommends the following phases to ease into hybrid meetings.

Phase 1: For City Council Meetings of March 2, 2022, and March 16, 2022, the Mayor plus three other members of the Council attend in-person. This could alternate for the March 16, 2022, meeting. Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public may continue attending via Zoom. The City Clerk, Deputy, IT, and AMP staff will attend in-person. City Staff will continue to attend via Zoom. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks if needed. Open doors and windows will provide ventilation.

Phase 2: For City Council Meetings of April 6, 2022, and April 20, 2022, Mayor plus all members of the Council attend in-person (dependent upon a further State/Local Order). Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallway seating is recommended. The public may continue attending via Zoom. The City Clerk, Deputy, IT, and AMP staff would attend in-person. Optional attendance of either in-person or Zoom for City Staff. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks if needed. Open doors and windows will provide ventilation.

Phase 3: For City Council Meetings of May 4 to future, Mayor plus all members of the Council attend in-person (dependent upon a further State/Local Order). Capacity in Chamber limited to approximately 20 will be established for the public and attendance will be on a first come, first served basis. No public will be allowed to stand in Council Chamber, unless in line for public speaking and then no more than a line of 3 members of the public is recommended. Outdoor speakers will be turned on and chairs will be made available for outdoor seating. Due to inadequate spacing, no hallwayis recommended. The public can continue to attend via Zoom. The City Clerk, Deputy, IT, and AMP staff would attend in-person. Optional attendance of either in-person or Zoom for City Staff. Medical grade masks will be required and Chamber will be supplied with hand sanitizer, wipes, and extra masks if needed. Open doors and windows will provide ventilation.

City staff will continue to review changes that could occur with respect to COVID.

OPTIONS

1. Accept all recommendations.
2. Provide alternate direction.

FINANCIAL IMPACT:

Council budget funds will be used for miscellaneous costs to support hybrid meetings. An approximate cost ranges between $600-800.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

CHPH Letter

AB 361

N-1-22 Order

TOMÁS J. ARAGÓN, M.D., Dr.P.H.
State Public Health Officer & Director

State of California—Health and Human Services Agency

California Department of Public Health

GAVIN NEWSOM
Governor

February 7, 2022

TO: All Californians

SUBJECT: Guidance for the Use of Face Masks

This guidance will take effect on February 16, 2022. For current Guidance for the Use of Face Masks, see the current guidance for face coverings .

Changes Taking Effect February 16, 2022:

- **Universal masking shall remain required in only specified settings.**
- **Only unvaccinated persons are required to mask in all Indoor Public Settings. Fully vaccinated individuals are recommended to continue indoor masking when the risk may be high.**

Related Materials: Face Coverings Q&A | Face Coverings Fact Sheet (PDF) | Face Mask Tips and Resources | Face Shields Q&A (PDF) | Safe Schools for All Hub | More Home & Community Guidance |All Guidance | More Languages

Guidance For the Use of Masks

Background

COVID-19 cases and hospitalization are declining across the state. This is due in large part to the collective efforts of Californians to get vaccinated, get boosted, and wear masks.

A universal indoor masking requirement was reinstated on December 15, 2021, to add a layer of mitigation as the Omicron variant, a Variant of Concern as labeled by the World Health Organization, increased in prevalence across California, the United States, and the world and spread much more easily than the original SARS-CoV-2 virus and

the Delta variant. Implementing the universal masking requirement in all indoor public settings during the winter season was an important tool to decrease community transmission during the highly infectious Omicron surge.

The current hospital census is still over capacity, but the dramatic surge in cases and hospitalizations due to the highly infectious Omicron variant over the last two months has declined significantly. Californians are also increasingly knowledgeable about how to protect themselves and their loved ones with effective masks when there may be risk of COVID-19 exposure. Accordingly, it is now appropriate for the universal indoor masking requirement to expire on February 15, 2022 as scheduled.

The COVID-19 vaccines remain effective in preventing serious disease, hospitalization, and death from the SARS-CoV-2 virus. Unvaccinated individuals are much more likely to become infected when compared to vaccinated and boosted individuals. Vaccination continues to remain the ultimate exit strategy out of the COVID-19 pandemic. While the percentage of Californians fully vaccinated and boosted continues to increase, we continue to have areas of the state where vaccine coverage is low, putting individuals and communities at greater risk for COVID-19.

A series of cross-sectional surveys in the U.S. suggested that a 10% increase in self-reported mask wearing tripled the likelihood of slowing community transmission.[1] Our recently published case-control study conducted in California from February 18 to December 1, 2021 demonstrated that consistently wearing a face mask or respirator in indoor public settings reduces the risk of acquiring SARS-CoV-2 infection. [2]

The masking requirement in California schools has allowed us to keep schools open when compared to other parts of the country. California accounts for roughly 12% of all U.S. students, but accounted for only 1% of COVID-19 related school closures during the Omicron surge. Nationally during the Delta surge in July and August 2021, jurisdictions without mask requirements in schools experienced larger increases in pediatric case rates, and school outbreaks were 3.5 times more likely in areas without school mask requirements.[3], [4].

Maintaining the masking requirements in other specified, high-risk settings continues to be consistent with CDC recommendations and allows us to protect our most vulnerable populations and the workforce that delivers critical services in these settings.

In workplaces, employers are subject to the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS) or in some workplaces the Cal/OSHA Aerosol Transmissible Diseases (ATD) (PDF) Standard and should consult those regulations for additional applicable requirements.

Masking Requirements

Masks are **required for all individuals in** the following indoor settings, regardless of vaccination status. Surgical masks or higher-level respirators (e.g., N95s, KN95s, KF94s) with good fit are highly recommended.

- On public transit[5] (examples: airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares) and in transportation hubs (examples: airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation)
- **Indoors** in K-12 schools[6], childcare[7]
- Emergency[8] shelters and cooling and heating centers[9]
- Healthcare settings[10]
- State and local correctional facilities and detention centers[11]
- Homeless shelters[12]
- Long Term Care Settings & Adult and Senior Care Facilities[13]

Additionally, masks **are required* for unvaccinated individuals** in indoor public settings and businesses (examples: retail, restaurants, theaters, family entertainment centers, meetings, state and local government offices serving the public). Fully vaccinated individuals are recommended to continue indoor masking when the risk may

be high. Surgical masks or higher-level respirators (e.g., N95s, KN95s, KF94s) with good fit are highly recommended.

See State Health Officer Order, issued on July 26, 2021, for a full list of high-risk congregate and other healthcare settings where surgical masks are required for unvaccinated workers, and recommendations for respirator use for unvaccinated workers in healthcare and long-term care facilities in situations or settings not covered by Cal OSHA ETS or ATD.

For additional information on types of masks, the most effective masks, and ensuring a well-fitted mask, individuals should refer to CDPH Get the Most out of Masking and see CDPH Masking Guidance Frequently Asked Questions for more information.

*Guidance for Businesses, Venue Operators or Hosts

In settings where masks are required only for unvaccinated individuals, businesses, venue operators or hosts may choose to:

- Provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance prior to entry.
- Implement vaccine verification to determine whether individuals are required to wear a mask.
- Require all patrons to wear masks.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to masks requirements

The following **individuals** are exempt from wearing masks at all times:

- Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

[1] Rader B, White LF, Burns MR, et al. Mask-wearing and control of SARS-CoV-2 transmission in the USA: a cross-sectional study. *The Lancet Digital Health*. 2021;3(3):e148–e157.

[2] Andrejko KL, Pry JM, Myers JF, et al. Effectiveness of Face Mask or Respirator Use in Indoor Public Settings for Prevention of SARS-CoV-2 Infection — California, February–December 2021. MMWR Morb Mortal Wkly Rep. ePub: 4 February 2022

[3] Jehn M, McCullough JM, Dale AP, Gue M, Eller B, Cullen T, Scott SE. Association between K–12 school mask policies and school-associated COVID-19 outbreaks — Maricopa and Pima Counties, Arizona, July–August 2021. *MMWR Morb Mortal Wkly Rep*. 2021; 70(39);1372–1373.

[4] Budzyn SE, Panaggio MJ, Parks SE, Papazian M, Magid J, Eng M, Barrios LC. Pediatric COVID-19 cases in counties with and without school mask requirements — United States, July 1–September 4, 2021. *MMWR Morb Mortal Wkly Rep*. 2021; 70(39);1377–1378.

[5] CDC Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs

[6] CDC Guidance for COVID-19 Prevention in K-12 Schools

[7] CDC COVID-19 Guidance for Operating Early Care and Education/Child Care Programs

[8] CDC's Interim Guidance for General Population Disaster Shelters During the COVID-19 Pandemic

[9] CDC COVID-19 and Cooling Centers

[10] CDC Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic

[11] CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

[12] CDC Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)

[13] CDC Nursing Homes and Long-Term Care Facilities

California Department of Public Health
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Department Website (cdph.ca.gov)

AB-361 Open meetings: state and local agencies: teleconferences. (2021-2022)

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Date Published: 09/17/2021 09:00 PM

Assembly Bill No. 361

CHAPTER 165

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials

have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in

connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 89305.6 is added to the Education Code, to read:

89305.6. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2. Section 11133 is added to the Government Code, to read:

11133. (a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all

otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5. Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6. It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8. (a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-1-22

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 12, 2021, I issued Executive Order N-25-20, paragraph 11, and on March 17, 2020, I issued Executive Order N-29-20, paragraph 3, waiving certain requirements that public meetings of state bodies occur in-person; and

WHEREAS on June 11, 2021, I issued Executive Order N-08-21 to roll back certain provisions of my COVID-19-related Executive Orders and to clarify that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

WHEREAS paragraph 42 of Executive Order N-08-21 specified that the waiver of requirements that public meetings of state bodies occur in-person would be valid through September 30, 2021; and

WHEREAS on September 16, 2021, I signed into law Assembly Bill 361 (AB 361), which amended the Government Code and Education Code to provide additional flexibility for state bodies to conduct public meetings via teleconference through January 31, 2022; and

WHEREAS since Thanksgiving, the statewide seven-day average case rate has increased by 805% and the number of COVID-19 hospitalized patients has increased by 154%; and

WHEREAS this surge is being driven by the recent emergence of the Omicron variant, which has recently been estimated to account for approximately 70% of cases sequenced nationally; and

WHEREAS early data suggest that the Omicron variant is more transmissible than the Delta variant; and

WHEREAS requiring large numbers of individuals to gather, and potentially travel long distances, for in-person public meetings could potentially, and unnecessarily, expose numerous people to COVID-19, further contribute to the ongoing surge in cases caused by the Omicron variant, compound disruptions to our economy, and undermine public health measures during the current State of Emergency; and

WHEREAS when the Legislature considered AB 361 this past fall, the Omicron variant had not emerged, and the virus had not demonstrated the ability to evade immunity; and

WHEREAS in light of the present surge in cases due to the Omicron variant, and to protect the public health and safety, it is necessary to temporarily extend the flexibilities for state bodies to conduct teleconferences under AB 361 beyond January 31, 2022, to provide state bodies the option of conducting public meetings remotely to reduce the risk of in-person exposure to members of the staff body, staff, and members of the public; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with the statutes specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, and in particular, Government Code sections 8567, 8571, and 8627 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The sunset dates in Education Code section 89305.6, subdivision (g), and Government Code section 11133, subdivision (g), are suspended until March 31, 2022.

2. This Order shall expire at 11:59 p.m. on April 1, 2022.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 5th day of January 2022.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Bill Peake, Mayor, Chaps Poduri, Councilmember
MEETING DATE:	February 16, 2022
SUBJECT:	Financial Report Subcommittee
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Direct staff to implement Financial Report Subcommittee recommendations listed below.

DISCUSSION

On October 20, 2021 Council approved the formation of a Financial Report Subcommittee consisting of Councilmember Poduri and Mayor Peake that would be responsible with working with staff to:

- Create additional financial report and/or review reporting options
- Review any potential changes to OpenGov transparency site or migrate to another transparency software
- Review the best location to publish or access the corresponding documents

Meetings were held:

1. October 27, 2021; Chaps Poduri, Bill Peake, Mary Lagasca, and Tori Hannah
2. November 29, 2021; Chaps Poduri, Bill Peake, Mary Lagasca, and Tori Hannah
3. January 6, 2022; Chaps Poduri, Bill Peake, and Tori Hannah
4. February 3, 2022; Chaps Poduri, Bill Peake, and Tori Hannah

An online survey was conducted to obtain public input on the City's financial reporting platform. Although the number of responses were small it provided good insights. Responses included items such as webpage was not easy to navigate, missing information related to CIP and CalPERS, and suggestions for better design.

During subcommittee meetings, examples of OpenGov and ClearGov financial transparency websites were reviewed. It was observed that ClearGov standard charts were easy to understand and preferable over the more flexible but harder to use OpenGov charts.

Current financial reports and website design were reviewed for ease of use and type of information provided.

Recommendations from the outcome of the subcommittee meetings included:

#1. A single **Financial Statements** webpage consolidating all financial reports:

- Budget / Quarterly Budget
- Annual Comprehensive Financial
- Pension Obligations
    - Expanded to include an overview and pension obligation bond data
- Sales Tax
- Treasurer
- Workers Compensation
- Core Revenue
- Check Register
- Purchase Order
- Capital Improvement Project Budget Report (Previously included in the Quarterly Budget Report)

#2. Transitioning from OpenGov to **ClearGov** when feasible. Standard ClearGov charts would provide an easy way to understand financial information.

#3. Staff providing Council with an **implementation** update before the end of fiscal year 2022.

GOAL ALIGNMENT –
a. Financial Stability
b. Create additional City finance reports through a City Council subcommittee

OPTIONS

Provide alternate direction.

FINANCIAL IMPACT:

There is minimal fiscal impact.

GOAL ALIGNMENT: See Goal Alignment within Discussion section.

Attachments

PPT

Financial Report Subcommittee

Recommendations

City Council
City of Pacific Grove

Subcommittee tasks

- **Examine possibility of creating new financial reports and/or review reporting options**
- **Review current software (OpenGov) and potential to migrate to new software**
- **Review locations to publish/access related documents**

Subcommittee meetings

#	Date	Attended by
1	10/27/21	Poduri, Peake, Lagasca, Hannah
2	11/29/21	Poduri, Peake, Lagasca, Hannah
3	01/06/22	Poduri, Peake, Hannah
4	02/03/22	Poduri, Peake, Hannah

Online survey

- **Survey was posted through 11/21/21 for public comment**
- **Public responses included:**
  - **Difficulties in navigating website/page**
  - **Missing CIP and PERS information**
  - **Suggestions for better design**

Subcommittee recommendations

- **Single webpage to consolidate all financial reports:**

  Budget / Quarterly Budget
  Annual Comprehensive Financial
  Pension Obligations (expanded to include an overview and pension obligation bond data)
  Sales Tax
  Treasurer
  Workers Compensation
  Core Revenue
  Check Register
  Purchase Order
  Capital Improvement Project Budget Report (previously included in the Quarterly Budget Report)

Subcommittee recommendations

- **Transition from OpenGov to ClearGov when feasible**
- **Staff to provide Council with implementation update(s) before end of FY21/22**

Questions?

City Council
City of Pacific Grove

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Bill Peake, Mayor
MEETING DATE:	February 16, 2022
SUBJECT:	Monarch Resort Homekey Project
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION
Direct City Manager to begin public outreach on the Monarch Resort Homekey project no later than March 16, 2022.

DISCUSSION
INTRODUCTION
On January 19, 2022, Council authorized an application to the CA Department of Housing and Community Development (HCD) for up to $15,000,000 for the conversion of the Monarch Resort 1111 Lighthouse Ave. into a Homekey project. The application was subsequently filed with HCD.

Council also authorized the City Manager to fund, acquire, rehabilitate, and operate (with partners) the Monarch Resort Homekey project.

DISCUSSION
Our community has a decades long history of welcoming residents in need. They include: The Bridge Restoration Ministry (addictions), Gateway Center (intellectual disabilities), Vista Point Apartments (low-income seniors), and New Start Recovery Solutions – formerly Beacon House (addictions). The addition of a Homekey project to help those experiencing homelessness, including youth and those with disabilities is in keeping with this tradition of helping others.

As with any new facility or program, Council and the community should understand how the program works and what is city government's role. A sound public outreach program could answer questions and allay concerns including:

City responsibilities

a. What does the state require of the city for the life of this 55-year project?
b. What responsibilities will the city have in its partnership with Shangri La Industries?
c. What responsibilities will the city have in its partnership with Step Up Second Street?

Finances

d. What is the budget and funding sources for the first 5 years (acquisition, rehabilitation, operation, and resident supportive services)?
e. If funding sources decline after 5 years, what is the financial backstop for operation and resident supportive services expenses?
f. What is the expected municipal tax loss?

Neighborhood

g. Will this program attract more homeless people than can be housed?
h. Could local drug use or crime increase and how would that be prevented?
i. What assurance exists that the site will continue to be well maintained and attractive?

Residents

j. Will locals be given priority to rent?
k. Will on site supportive services for residents be available round the clock?
l. Will supportive services include transportation to meet needs not available nearby?
m. What is the quota system for categories of residents?
n. Will residents include families?

OPTIONS

N/A

FINANCIAL IMPACT:

There is no fiscal impact in the writing of this agenda report.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Summary

Letter of Operating Support

Homekey Summary (auto populated from Award, Match and Revenue worksheet)					
Maximum Homekey Award		**Applicant Requested Homekey Award**		**Lesser of Maximum and Requested Award**	
Capital Baseline Award	$8,800,000.00	Capital Baseline Award	$8,800,000.00	Capital Baseline Award	$8,800,000.00
Additional Contribution	$4,900,000.00	Additional Contribution	$4,900,000.00	Additional Contribution	$4,900,000.00
Total Maximum Capital Award	**$13,700,000.00**	**Total Requested Capital Award**	**$13,700,000.00**	**Total Capital Award**	**$13,700,000.00**
Operating Subsidy	$1,730,543.23	Operating Subsidy	$1,730,543.23	Operating Subsidy	$1,730,543.23
50% of Relocation Costs	$0.00	50% of Relocation Costs	$0.00	50% of Relocation Costs	$0.00
§207 Bonus Award - app submittal	$490,000.00	§207 Bonus Award - app submittal	$490,000.00	§207 Bonus Award - app submittal	$490,000.00
§207 Bonus Award - full occupancy	$490,000.00	§207 Bonus Award - full occupancy	$490,000.00	§207 Bonus Award-full occupancy	$490,000.00
Total Maximum Homekey Award	**$16,410,543.23**	**Total Requested Homekey Award**	**$16,410,543.23**	**Total Homekey Award**	**$16,410,543.23**

Number of Doors at Acquisition	50	Number of Units Proposed in the Project	50						
Number of At-Risk of Homelessness Units	0	Number of Chronically Homeless Units	24	Number of Homeless Units	15				
Number of Homeless Youth or Youth at Risk of Homelessness Units	10	Number of Assisted Units	49						
Number of Units accessible to persons with mobility disabilities	8	Number of Units accessible to persons with hearing or vision disabilities	5						

Project Overview											
Project Name	Step Up in Pacific Grove, A Shangri-La Community										
Project Address	1111 Lighthouse Avenue			Project City	Pacific Grove		State	CA	Zip	93950	
Project County	Monterey		Is the Project in a Rural Area per H&S Code §50199.21? (use the TCAC Method for determining rural status)								No
Assessor Parcel Number (APN)	006-113-004-000	Enter parcel # 2 APN here	Enter parcel # 3 APN here	Enter parcel # 4 APN here	Enter parcel # 5 APN here	Enter parcel # 6 APN here	Enter parcel # 7 APN here	Enter parcel # 8 APN here	Enter parcel # 9 APN here	Enter parcel # 10 APN here	Enter parcel # 11 APN here
Assessor Parcel Number (APN)	Enter parcel # 12 APN here	Enter parcel # 13 APN here	Enter parcel # 14 APN here	Enter parcel # 15 APN here	Enter parcel # 16 APN here	Enter parcel # 17 APN here	Enter parcel # 18 APN here	Enter parcel # 19 APN here	Enter parcel # 20 APN here	Enter parcel # 21 APN here	Enter parcel # 22 APN here
Geographic Set Aside	Central Coast										
Project Type (Transitional Housing and Congregate Shelter are Interim Housing)	Permanent Housing										
Building Type	Motel										

Applicant #1											
Entity name	The City of Pacific Grove					Organization type	City				
Address	300 Forest Avenue			City	Pacific Grove	State	CA	Zip	93950		
Auth Rep	Ben Harvey	Title	City Manager	Email	citymanager@cityofpacificgrove.org			Phone	(831) 648-3106		
Contact	Anastacia Wyatt	Title	Senior Housing Program Manager	Email	awyatt@cityofpacificgrove.org			Phone	(831) 648-3182		
Address	300 Forest Avenue			City	Pacific Grove	State	CA	Zip	93950		
File Name	App1 Cert & Legal	See Certifications & Legal worksheet.								Uploaded to HCD?	Yes
File Name	App1 Resolution	Signature required; see Applicant Documents worksheet.								Uploaded to HCD?	Yes
File Name	App1 TIN Form	See Applicant Documents worksheet.								Uploaded to HCD?	Yes
Co-Applicant #1 (if applicable)											
Entity name	Shangri-La Industries, LLC					Organization type	For-profit Corp				
Address	660 South Figueroa Street, Suite 1888			City	Los Angeles	State	CA	Zip	90017		
Auth Rep	Andrew Meyers Abdul-Wahab	Title	CEO	Email	ameyers@shangrila.us			Phone	(310) 701-7574		
Contact	Cody Holmes	Title	CFO	Email	cholmes@shangrila.us			Phone	(818) 421-4376		
Address	660 South Figueroa Street, Suite 1888			City	Los Angeles	State	CA	Zip	90017		
File Name	Co-App1 Cert & Legal	See Certifications & Legal worksheet.								Uploaded to HCD?	Yes
File Name	Co-App1 Resolution	Signature required; see Applicant Documents worksheet.								Uploaded to HCD?	Yes
File Name	Co-App1 OrgDoc1, OrgDoc2, etc	See Applicant Documents worksheet.								Uploaded to HCD?	Yes
File Name	Co-App1 OrgChart	See Applicant Documents worksheet.								Uploaded to HCD?	Yes
File Name	Co-App1 Signature Block	See Applicant Documents worksheet.								Uploaded to HCD?	Yes
File Name	Co-App1 Payee Data Record	See Applicant Documents worksheet.								Uploaded to HCD?	Yes
File Name	Co-App1 TIN Form	See Applicant Documents worksheet.								Uploaded to HCD?	N/A
File Name	Co-App1 Cert of Good Standing	Dated 30 days or less from the Application due date.								Uploaded to HCD?	Yes
File Name	Co-App1 Tax-Exempt Status	Evidence of tax-exempt status from IRS and Franchise Tax Board, if applicable								Uploaded to HCD?	N/A
Co-Applicant #2 (if applicable)											
Entity name	Step Up on Second Street, Inc.					Organization type	Non-profit Corp				
Address	1328 Second Street			City	Santa Monica	State	CA	Zip	90401		
Auth Rep	Aaron Criswell	Title	Chief Housing Development Officer	Email	acriswell@stepup.org			Phone	(213) 458-6491		
Contact	Aaron Criswell	Title	Chief Housing Development Officer	Email	acriswell@stepup.org			Phone	(213) 458-6491		
Address	1328 Second Street			City	Santa Monica	State	CA	Zip	90401		

THE COALITION
OF HOMELESS SERVICES PROVIDERS

MEMBER AGENCIES

Central Coast Center for Independent Living

Community Homeless Solutions

Community Human Services

CSU Monterey Bay – CHE Center

Dorothy's Place

Housing Authority of the County of Monterey

Housing Resource Center of Monterey County

Interim, Inc.

MidPen Housing Corporation

The Salvation Army - Monterey Peninsula Corps

San Benito County Health & Human Services Agency

Sun Street Centers

Veterans Transition Center

ASSOCIATE MEMBERS

Access Support Network

CHISPA

Downtown Streets Team

Eden Housing

Food Bank for Monterey County

Gathering for Women

Nation's Finest

Neighborhood Services Center of the First United Methodist Church

Victory Mission

YWCA Monterey County

COMMUNITY ADVISORS

City of Marina

City of Salinas

City of Sand City

Monterey County Department of Social Services/CAP

Monterey County Office of Education

January 28, 2022

Gustavo Velasquez, Director
California Department of Housing and Community Development
2020 West El Camino Avenue
Sacramento, CA 95833

RE: Availability Operating Support for Monarch Pacific Grove Development #165

Dear Mr. Velasquez,

The Coalition of Homeless Service Providers is pleased to provide this letter of support to Shangri La Industries, LLC and Step Up to Second Inc. in furtherance of their Homekey development that will utilize the state Homekey Program to acquire and convert the current Monarch Resort into permanent supportive housing. The Coalition of Homeless Services Providers is a 501(c)3 non-profit organization that serves as Monterey and San Benito County's Continuum of Care (CoC) lead. We coordinate services among partner agencies, ensure our community is following federal guidelines, report homeless statistics to federal and state governments, and seek funding for the homeless services community.

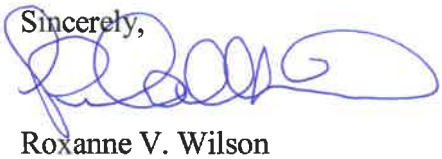
The City of Pacific Grove has brought together nonprofit, City and private industry partners to design and implement a permanent supportive housing model targeting persons experiencing chronic homelessness and homeless transitional age youth. The project plan includes leveraging local resources and partnerships for the acquisition and conversion of a hotel site to provide the City's first Housing First program.

To ensure the effective delivery of fifty (50) studio housing units (49 of which will be reserved for the target populations and 1 will be a manager's unit) to those who are in most need, the CoC supports the Monarch Pacific Grove Homekey application and endeavors to commit operating assistance in the range of $200,000 for four years as requested. At this time, the CoC has committed resources to four previously submitted Homekey projects in Monterey County. While these applications have exhausted current County and CoC resources we are planning to review our resources so that we can support all Homekey projects. The CoC is working with the County Department of Social Services and Housing and Community Development Department, to identify the requested funding to support operations. Any additional commitments are subject to approval of the Board of Supervisors and CoC Board. I am pleased to

report that all agencies have expressed support for the Monarch Pacific Grove Homekey application.

Please feel free to contact me at rwilson@chsp.org, should you require any further communications regarding this matter. Thank you for your consideration.

Sincerely,



Roxanne V. Wilson

Executive Officer

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Joyce Halabi, Deputy Public Works Director

MEETING DATE: February 16, 2022

SUBJECT: FY21/22 Street Rehabilitation Project – Ocean View Blvd

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

RECOMMENDATION

Authorize an agreement with Monterey Peninsula Engineering for the FY21/22 Street Rehabilitation Project on Ocean View Blvd in an amount not to exceed $1,145,323 plus a 15% contingency.

DISCUSSION

The FY21/22 Street Rehabilitation Project on Ocean View Blvd was approved as part of the FY21/22 Capital Improvement Plan (CIP). This project serves as a vital road rehabilitation project that will address two segments of Ocean View Blvd:

1. Ocean View Blvd from 2nd St to Carmel Ave
2. Ocean View Blvd from 17th St to Sea Palm Ave

These segments were selected for rehabilitation based on a thorough review of the City's Pavement Management Program, existing road conditions, and in-field observations.

Existing Conditions

These heavily trafficked road segments of Ocean View Blvd are currently in "poor" condition with a Pavement Condition Index (PCI) rating ranging from 33-40. Rehabilitation of these segments will vastly improve road conditions and allow for aging stormwater and sewer infrastructure to be addressed prior to road treatments.

Construction documents and specifications were completed in December 2021. On December 13, 2021, the City released a call for bids. 4 bids were received:

Contractor	Bid
Monterey Peninsula Engineering	$1,145,323
Anderson Pacific Engineering Construction Inc.	$1,307,271
Granite Rock Company	$1,398,084
Mckim Corporation	$1,536,301.70

Monterey Peninsula Engineering (MPE) has been qualified as the lowest responsible bidder. MPE has performed numerous street rehabilitation, stormwater and sewer improvement projects for the City and is qualified to perform this work.

Scope of Work
The scope of work for the project includes:

- Approximately 182,000 SF of asphalt concrete (AC) overlay
- Approximately 3,000 SF of pavement patching
- Various stormwater improvements including installation of 184 LF of storm water pipe, reconstruction of 5 catch basins, construction of 2 new catch basins, and 3 storm drain manhole access points
- Reconstruction of 300 SF of sidewalk and 140 LF of curb/gutter
- Reconstruction of 3 curb ramps, construction of 1 new curb ramp
- Thermoplastic pavement markings
- Replacement of 725 LF of sanitary sewer pipe, and
- Rehabilitation of 8 manholes

It is anticipated that construction will be substantially complete before Memorial Day, May 30, 2022.

Additionally, the City has been working closely with California American Water to coordinate vital water main replacements to occur on segments Ocean View Blvd within the project area, between 17th St and Mermaid Ave and 1st St to 11th St, prior to the pavement improvements. Project coordination with California American Water allows for improved long-term pavement preservation.

OPTIONS

1. Authorize an agreement
2. Do not authorize the agreement

FINANCIAL IMPACT:
The proposed construction contract is within the approved project budget. A total budget of $1,576,443 was approved via the FY21/22 CIP and is derived from the General Fund, Road Maintenance and Rehabilitation Account (RMRA)/Senate Bill 1, Measure X, and the Sewer Fund as noted below.

Funding Source	Approved CIP Funding
City of Pacific Grove General Fund	$300,000
RMRA/Senate Bill 1 (SB1)	$310,428
Measure X	$566,015
Sewer Fund	$400,000
Total	$1,576,443

The General Fund allocation will be fully expended first in order to meet Maintenance of Effort (MOE) requirements. It is anticipated that the SB1 allocation will also be fully expended, and project savings will be derived from Measure X and the Sewer Fund.

GOAL ALIGNMENT: City Asset Stewardship: Repair, maintain and improve City assets, including streets, sidewalks, sewer systems, buildings, and parks and trails.

Attachments

Draft Agreement

CITY OF PACIFIC GROVE
CONSTRUCTION SERVICES AGREEMENT
FY21/22 STREET REHABILITATION PROJECT – OCEAN VIEW BLVD

This CONSTRUCTION SERVICES AGREEMENT ("Agreement"), is made and effective **February 28, 2022,** by and between the City of Pacific Grove, a municipal corporation ("City"), and **Monterey Peninsula Engineering** ("CONTRACTOR"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

   This Agreement shall commence on **February 28, 2022** and shall remain and continue in effect until tasks described herein are completed, but in no event later than **June 30, 2022**, unless sooner terminated pursuant to the provisions of this Agreement.

2. SCOPE OF WORK

   CONTRACTOR shall perform within the time set forth in the project specifications and shall furnish all labor, materials, equipment, tools, utility services, and transportation and perform and complete all work required in connection with the construction of **road rehabilitation, and sewer and stormwater improvements** "Work" for the **FY21/22 Street Rehabilitation Project on Ocean View Blvd** (hereinafter "Project").

   By entering into this Agreement, CONTRACTOR acknowledges that there may be other contractors on the site whose work will be coordinated with that of its own. CONTRACTOR expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other separate contractors, the City, the Construction Manager, the Architect, or utilities. CONTRACTOR also expressly agrees that, in the event its work is hindered, delayed, interfered with, or otherwise affected by a separate contractor, its sole remedy will be a direct action against the separate contractor. To the extent allowed by law, CONTRACTOR will have no remedy, and hereby expressly waives any remedy against the City, the Construction Manager, or the Architect on account of delay, hindrance, interference or other events caused by a separate contractor.

3. PERFORMANCE

   a. CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks described herein. CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONTRACTOR hereunder in meeting its obligations under this Agreement.

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b. CONTRACTOR shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety. CONTRACTOR further agrees to take all necessary precautions for the safety of its employees and shall comply with all applicable provisions of federal, state and local regulations, ordinances and codes. CONTRACTOR shall be responsible for erecting and properly maintaining at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known or reasonably foreseeable or unusual hazards.

c. CONTRACTOR must possess at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing. CONTRACTOR shall ensure that any subcontractor working on the Project possesses at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing.

d. CONTRACTOR shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.

e. CONTRACTOR shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by CONTRACTOR or in any way affect the performance of its service pursuant to this Agreement. CONTRACTOR shall at all times observe and comply with all such laws and regulations. City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of CONTRACTOR to comply with this Section.

f. CONTRACTOR agrees to comply with all the applicable provisions of Sections 1777.5 and 1777.6 of the Labor Code, which Sections are hereby specifically referred to, incorporated herein by reference and made a part hereof as though set forth at length herein.

g. CONTRACTOR agrees that in the performance of this Agreement or any sub-agreement hereunder, neither CONTRACTOR nor any person acting on CONTRACTOR's behalf shall refuse to employ or refuse to continue in any employment any person on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, sex or age. Harassment in the workplace is not permitted in any form. CONTRACTOR further agrees to comply with all laws with respect to employment when performing this Agreement.

h. CONTRACTOR shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and part of this Agreement.

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i. To ensure performance, CONTRACTOR must provide Faithful Performance and Labor and Material Bonds in favor of City, each in the amount of one hundred percent (100%) of the value of the Agreement.

j. CONTRACTOR declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial agreement or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly, from CONTRACTOR, or from any officer, employee or agent of CONTRACTOR, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

4. REGISTRATION REQUIREMENTS

Pursuant to Section 1771.1(a) of the Labor Code:

a. "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

b. CONTRACTOR must be registered with the Department of Industrial Relations (DIR) of the State of California in order to be eligible to work on public works projects. CONTRACTOR shall ensure registration with the DIR that is active and in good standing.

c. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

d. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.

e. This Project is subject to compliance monitoring and enforcement by the DIR.

f. CONTRACTOR is not subject to public works requirements (including registration with the DIR) if the public works project is under $1,000, unless the City knows that

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the same CONTRACTOR will be awarded total project costs in excess of $1,000 for a given year.

5. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONTRACTOR is bound by the contents of City's Request for Proposal on file at the Public Works Department hereto and incorporated herein by this reference, and the contents of the proposal submitted by CONTRACTOR, available on file at the Public Works Department, hereto and incorporated herein by this reference. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in CONTRACTOR's proposals.

6. CITY MANAGEMENT

Public Works Director shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONTRACTOR, but not including the authority to enlarge the Scope of Work or change the compensation due to CONTRACTOR. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change CONTRACTOR's compensation, subject to Section 7 hereof.

7. PAYMENT

a. City agrees to pay CONTRACTOR monthly, in accordance with the bid on file at the Public Works Department attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **THIS AMOUNT SHALL NOT EXCEED $1,145,323 plus a 15% contingency** which sum shall include all costs, if any, for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. The City Manager's contract authority is limited to a total threshold of $40,000, which includes all costs. Contracts, including any contract amendments that exceed the total threshold, require City Council approval. Any contracts, including contract amendments that exceed the total threshold, which do not have City Council approval, shall be void.

c. CONTRACTOR will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of CONTRACTOR's fees, it shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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d. Retention of securities: Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract, at the request and expense of CONTRACTOR.

e. Final Payment: Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the City to the CONTRACTOR no sooner than thirty-five (35) days after a Notice of Completion has been recorded, unless otherwise stipulated in the Notice of Completion, provided the work has then been completed, the Agreement fully performed, and a final Certificate for Payment has been issued by the Architect.

8. INSPECTION

City shall at all times have the right to inspect the work and materials. CONTRACTOR shall furnish all reasonable aid and assistance required by City for the proper examination of the work and all parts thereof. Such inspection shall not relieve CONTRACTOR from any obligation to perform said work strictly in accordance with the specifications or any modifications thereof and in compliance with the law.

9. CONTRACTOR'S FAILURE TO PROCURE COMPLETION OF PROJECT

In the event CONTRACTOR fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, and if CONTRACTOR for a period of three (3) calendar days after receipt of written demand from City or its designated representative to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, and to prosecute its work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said three (3) calendar days, fails to continue to do so; then City may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the City to another contractor or by a combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the City, shall be a charge against the CONTRACTOR, and may be deducted from any money due or becoming due to CONTRACTOR from the City, or the CONTRACTOR shall pay the City the amount of said charge, or the portion thereof unsatisfied. The sureties, provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the City.

10. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

a. City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONTRACTOR at least thirty (30) days prior written notice. Upon receipt of said notice, CONTRACTOR shall immediately cease all work under this Agreement, unless the notice provides otherwise.

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If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, City shall pay to CONTRACTOR the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, CONTRACTOR will submit an invoice to the City pursuant to Section 7.c.

11. DEFAULT OF CONTRACTOR

a. CONTRACTOR's failure to comply with the provisions of this Agreement shall constitute a default. In the event CONTRACTOR is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating CONTRACTOR for any work performed after the date of default and can terminate this Agreement immediately by written notice to CONTRACTOR. If such failure by CONTRACTOR to make progress in the performance of work hereunder arises out of causes beyond CONTRACTOR's control, and without fault or negligence of CONTRACTOR, it shall not be considered a default.

b. If the City Manager or designee determines CONTRACTOR is in default in the performance of any of the terms or conditions of this Agreement, they shall cause to be served upon CONTRACTOR a written notice of the default. CONTRACTOR shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event CONTRACTOR fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

12. OWNERSHIP OF DOCUMENTS

a. CONTRACTOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. CONTRACTOR shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONTRACTOR shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records at CONTRACTORS office; shall permit City to make copies and transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained at the City of Pacific Grove City Hall for a minimum period of three (3) years after receipt of final payment.

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b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of CONTRACTOR. With respect to computer files, CONTRACTOR shall make available to City, at City's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

13. RECORD AUDIT

In accordance with Government Code, Section 8546.7, records of both City and CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

14. INDEMNIFICATION

CONTRACTOR shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and CONTRACTOR, or should City otherwise find CONTRACTOR's legal counsel unacceptable, then CONTRACTOR shall reimburse the City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONTRACTOR's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

CONTRACTOR obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this agreement, CONTRACTOR shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where

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City's active negligence accounts for only a percentage of the liability involved, the obligation of CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of City.

15. INSURANCE

Prior to the beginning of and throughout the duration of the Work, CONTRACTOR and its subcontractors shall maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CONTRACTOR or its subcontractors in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to City.

16. INDEPENDENT CONTRACTOR

a. CONTRACTOR is and shall at all times remain as to City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONTRACTOR for performing services hereunder for City. City shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.

c. Any and all employees or sub-contractors of CONTRACTOR under this Agreement, while engaged in the performance of any work or services required by CONTRACTOR under this Agreement, shall be considered employees or sub-contractors of CONTRACTOR only and not of city. Any and all claims that may arise under the Workers' Compensation Act on behalf of said employees or sub-contractors, while so engaged and all claims made by a third party as a consequence of any negligent act or

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omission on the part of the CONTRACTOR's employees or sub-contractors, while so engaged in any of the work or services provided for or rendered herein shall not be City's obligation.

17. PREVAILING WAGE

Wage rates for this Project shall be in accordance with the "General Wage Determination Made by the Director of Industrial Relations Pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1", for Monterey County. Wage rates shall conform with those posted by Contractor and at the Project site. The following Labor Code sections are hereby referenced and made a part of this Agreement:

a. Section 1775 - Penalty for Failure to Comply with Prevailing Wage Rates.
b. Section 1777.4 - Apprenticeship Requirements.
c. Section 1777.5 - Apprenticeship Requirements.
d. Section 1813 - Penalty for Failure to Pay Overtime.
e. Sections 1810 and 1811 - Working Hour Restrictions.
f. Section 1775 - Payroll Records.
g. Section 1773.8 - Travel and Subsistence Pay.
h. Section 1778 – Kickbacks.
i. Section 1779, 1780 – Acceptance of Fees.
j. Section 1771.4 – Certified Payroll.

Pursuant to the Labor Code, City is required to withhold from any progress payments owed to a contractor any amount that has been forfeited as penalties, or as wages owed to employees who have not been paid the prevailing wage for work performed. This allows the intervention by the Division of Labor Standards Enforcement, which is headed by the State Labor Commission, in a contractor's lawsuit for recovery of amounts withheld by an awarding body. All withheld wages and penalties will be transferred to the Labor Commissioner for disbursement in those cases where a contractor fails to bring a lawsuit for amounts withheld within ninety (90) days after completion of the public works contract and formal acceptance of the job by the awarding body. The Labor Commissioner is then permitted to intervene in any lawsuit brought by the contractor against an awarding body for recovery of amounts withheld.

18. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for Work to be performed in connection with the Project performed under this Agreement.

19. CONFLICT OF INTEREST

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CONTRACTOR shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement.

CONTRACTOR covenants that neither they nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly nor indirectly, which will conflict in any manner or degree with the performance of their services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or sub-contractor. CONTRACTOR further covenants that CONTRACTOR has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that CONTRACTOR and/or its sub-contractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

If City determines CONTRACTOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), CONTRACTOR shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with City disclosing CONTRACTOR's and/or such other person's financial interests.

20. NO WAIVER OF BREACH/TIME

The waiver by City of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

21. CONFIDENTIAL INFORMATION/RELEASE OF INFORMATION

a. All information gained by CONTRACTOR in performance of this Agreement shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents, or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.

b. CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents, or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or

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party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing, or similar proceeding. CONTRACTOR agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

22. SUBSURFACE HAZARDOUS MATERIALS

a. In the event trenches or other excavations extend deeper than four (4) feet below the surface, CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the City in writing of any:

   i. Material that CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.

   ii. Subsurface or latent physical conditions at the site differing from those indicated.

   iii. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Agreement.

b. Upon receipt of said notification, City will investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of or the time required for performance of any part of the work, the City will issue a change order under the procedures described in the Specifications.

c. In the event a dispute arises between the City and CONTRACTOR whether the conditions materially differ, or involve hazardous waste or cause a decrease or increase in the CONTRACTOR's cost of or time required for performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. CONTRACTOR shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

23. LIQUIDATED DAMAGES

Pursuant to Government Code Section 53069.85, if Work is not completed within the Agreement time or in strict accordance with the Project Schedule, it is understood, acknowledged and agreed that the City will suffer damage. It is therefore agreed that the

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CONTRACTOR shall pay to the City the $1,000 or each and every calendar day of delay beyond the Agreement Time, or beyond any completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule, or beyond the time indicated in the Project Schedule for any individual Agreement activity.

CONTRACTOR expressly understands, acknowledges and agrees that such liquidated damages can and shall be imposed if the CONTRACTOR does not meet each and every aspect of any activity schedule, completion schedule, construction schedule or Project milestones established in or pursuant to the Project Schedule. If the City accepts work or makes any payment under this Agreement after a default by reason of delays, the acceptance of such work and/or payment(s) shall in no respect constitute a waiver or modification of any provisions regarding Agreement Time, a completion schedule, the Project Schedule or the accrual of liquidated damages. In the event the same is not paid, the CONTRACTOR further agrees that City may deduct the amount thereof from any money due or that may become due the CONTRACTOR under the Agreement. This Section does not exclude recovery of damages under provisions of the Agreement Documents and is expressly in addition to the City's ability to seek other damages.

Parties will meet and agree on a contract schedule. Liquidated damages may be assessed if any individual activity duration exceeds the time indicated for that activity on the Project Construction Schedule.

24. WARRANTY

In addition to any and all warranties provided or implied by law or public policy, CONTRACTOR warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that CONTRACTOR shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. CONTRACTOR further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, CONTRACTOR shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which City may have, City shall have the right to require, and CONTRACTOR shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from CONTRACTOR's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by CONTRACTOR under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, CONTRACTOR shall, upon any reasonable notice from City, replace or repair the same to City's satisfaction. Unless otherwise expressly permitted, all materials

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and supplies to be used by CONTRACTOR in the performance of the Services shall be new and best of kind.

CONTRACTOR hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

25. CLAIM PROCEDURES UNDER PUBLIC CONTRACT CODE SECTION 9204

CONTRACTOR shall comply with the procedure set forth in Public Contracts Code section 9204 for any claim, as that term is defined therein, for one or more of the following: 1) a time extension, including, without limitation, for relief from damages or penalties for delay, 2) payment of money or damages arising from work done pursuant to this Agreement, and/or 3) payment of an amount disputed by the City under this Agreement.

26. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:
Daniel Gho, Public Works Director
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

To CONTRACTOR:
Peter J Taormina, Manager
Monterey Peninsula Engineering
PO BOX 400
Marina, CA 93933

27. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

28. ASSIGNMENT

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CONTRACTOR shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Subject to the foregoing, all terms of the Agreement will be binding upon, enforceable by and inure to the benefit of the parties and their successors and assigns.

29. GOVERNING LAW

City and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in Monterey County, or the federal district court with jurisdiction over the City. CONTRACTOR agrees not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

30. ATTORNEY'S FEES AND COURT VENUE

Should either party to this Agreement bring legal action against the other (formal judicial proceeding, mediation or arbitration) the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case, and such fee shall be included in the judgment together with all costs.

31. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONTRACTOR warrants and represents that they have the authority to execute this Agreement on behalf of the CONTRACTOR and the authority to bind CONTRACTOR to the performance of its obligations hereunder.

32. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

33. AGREEMENT CONTAINS ALL UNDERSTANDINGS: AMENDMENT

a. This document represents the entire and integrated Agreement between City and CONTRACTOR, and supersedes all prior negotiations, representations and agreements, either written or oral.

b. Any modification or amendment to this Agreement must be in writing.

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c. Neither City nor CONTRACTOR shall be deemed to have waived any obligation of the other, or to have agreed to any modification to this Agreement unless it is in writing, and signed by the party giving the waiver.

34. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF PACIFIC GROVE CONTRACTOR

By:_____ By:_____
Public Works Director .

Date: _____ Date: _____

By: _____ By: _____
City Mayor

Date: _____ Date: _____

Approved As To Form: _____
City Attorney

_____
Date

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Exhibit A

Scope of Work/Services

CONTRACTOR shall provide construction services per bid specifications and engineered drawings titled "STREET REHABILITATION PROJECT OCEAN VIEW BOULEVARD BETWEEN 2ND & CARMEL AVE AND BETWEEN 17TH ST & SEAL PALM AVE" prepared by Neill Engineers Corp, dated December 13, 2021. The bid specifications and engineered drawings are incorporated herein by reference and are made an integral part of this Agreement.

Contractor and /or sub-contractors shall provide the City of Pacific Grove's project manager daily field observation/inspection reports and testing results. All areas of project requiring compaction testing shall be done in conformance with job specifications.

The work, as indicated by the plans shall be done in accordance with the special provisions/technical specifications as designated and engineered by Neill Engineers Corp, in accordance with the current edition of Standard Specifications of the State of California Department of Transportation.

Contractor shall remove of all existing unused soils, base and asphalt materials and properly dispose said materials at a State approved disposal site.

Contractor shall submit a traffic control plan to the City's Traffic Engineer for approval no less than 10 days prior to the commencement of work.

Contractor shall notice all residents and business properties that abut streets of this project and all residents and business within 300 feet of this project with dates, times, and type of work to be performed no less than 10 days prior to commencement of any work.

All work as outlined in this contract, project specifications and engineered plans shall be performed in a workman like manner and in accordance with industry standards.

All Environmental and water pollution prevention requirements as specified in the plans and specification shall be met and constantly monitored throughout the project.

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Exhibit B

Insurance Specifications

General liability insurance. CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and a $2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONTRACTOR shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

Workers' compensation insurance. CONTRACTOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000) for CONTRACTOR's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code In addition, CONTRACTOR shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

CONTRACTOR shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

Builder's risk insurance (construction contracts as applicable). Upon commencement of construction and with approval of City, CONTRACTOR shall obtain and maintain builder's risk insurance for the entire duration of the Project until only the City has an insurable interest. The Builder's Risk coverage shall include the coverages as specified below.

The named insureds shall be CONTRACTOR and City, including its officers, officials, employees, and agents. All Subcontractors (excluding those solely responsible for design Work) of any tier and suppliers shall be included as additional insureds as their interests may appear. CONTRACTOR shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to City. The policy shall contain a provision that all proceeds from the builder's risk policy shall be made payable to the City. The City will act as a fiduciary for all other interests in the Project.

Policy shall be provided for replacement value on an "all risk" basis for the completed value of the project. There shall be no coinsurance penalty or provisional limit provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty

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workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) Ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) Ocean marine cargo coverage insuring any Project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site or any staging area. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and sublimits and shall be submitted to the City prior to commencement of construction.

1. Other provisions or requirements

Proof of insurance. CONTRACTOR shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONTRACTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONTRACTOR, his agents, representatives, employees or subcontractors. CONTRACTOR must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. City and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

Primary/noncontributing. Coverage provided by CONTRACTOR shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Products/completed operations coverage. Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The City, its

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officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by CONTRACTOR or City will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of Agreement provisions (non estoppel). CONTRACTOR acknowledges and agrees that any actual or alleged failure on the part of the City to inform CONTRACTOR of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the CONTRACTOR maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. CONTRACTOR agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

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Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. CONTRACTOR agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONTRACTOR, provide the same minimum insurance coverage and endorsements required of CONTRACTOR. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONTRACTOR agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the CONTRACTOR a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the CONTRACTOR, the City and CONTRACTOR may renegotiate CONTRACTOR's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Timely notice of claims. CONTRACTOR shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from CONTRACTOR's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONTRACTOR shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Jenny McAdams, Mayor Pro Tem
MEETING DATE: February 16, 2022
SUBJECT: City of Pacific Grove Youth Commission
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION
Direct the City Manager to return with a draft ordinance and resolution to form a Youth Commission.

DISCUSSION
At the November 3, 2021 City Council meeting the Council held a discussion regarding the formation of a Youth Commission. City Youth Commissions provide recommendations to the Council on issues affecting that City's youth and typically work with their Recreation Departments on attracting youth participation. Youth Commissioners often serve at City events as volunteers, learn the importance of being involved in local governance, and develop lifelong leadership skills. Youth Commissioners are also exposed to city municipal jobs and the public service career path.

At Council's request I have met with our Recreation Program Manager and located a local educator, Lauralea Gaona, who is willing to partner with the City and serve as the initial "adult member". Lauralea Gaona has been a teacher since 2000 and started teaching for the Pacific Grove Unified School District in 2013. Mrs. Gaona currently teaches at: 9th Grade Honors Social Studies, 12th grade Government, AP Government and Politics Teacher, and is the High School's Close Up Advisor. Mrs. Gaona chaperoned 22 Pacific Grove High School students on the High School's bi-annual trip to Washington D.C. this past November as pictured below with Congressman Jimmy Panetta at our Nation's Capital. Photos are attached.

The Diversity, Equity, and Inclusion Task Force was met with similar Council hesitation which has become a critical and permanent Commission. I am encouraged the City's Youth Commission will have a similar positive impact to our City, and be an excellent opportunity to engage our families and youth.

City of Pacific Grove Youth Commission Purpose
The purpose of the Youth Commission is to provide a voice to our youth, empower our youth to engage with local government, and provide the Council with recommendations to better serve our youth.

City of Pacific Grove Youth Commission Formation
The Youth Commission would consist of seven youth members and one adult (non-voting) member who is an educator at the Pacific Grove Unified School District. The youth members of the Youth

Commission shall be between 13 and 18 years of age at time of appointment, a student in grades 7 through 12, and live in the City of Pacific Grove. The Youth Commission would meet one time a month during the school year and supported by the Recreation Department Director.

GOAL ALIGNMENT
Community Responsiveness: Develop and implement systems, interfaces and infrastructure to better communicate with the public.

ELECTRONIC ATTACHMENTS
1. CA Youth Commissions and Councils- Institute for Local Government
2. Youth Commission and Engagement Resources- Institute for Local Government
3. Sample Ordinance to Establish Youth Advisory Commission - City of Lathrop

OPTIONS

1. Provide other direction.
2. Take no action.

FINANCIAL IMPACT:
None.

GOAL ALIGNMENT: See Goal Alignment within Discussion section.

Attachments

Photos





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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Jenny McAdams, Mayor Pro Tem
MEETING DATE:	February 16, 2022
SUBJECT:	Removal of Library Fines and Forgiveness of Current Outstanding Overdue Fines
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION
Discuss the removal of library fines and forgiveness of current outstanding overdue fines. Direct the City Manager to return with a resolution and amendment to the Master Fee Schedule.

DISCUSSION
To support library patrons and our communities, the Pacific Grove Public Library has not charged overdue fines since the beginning of the pandemic. Library fees for the City of Pacific Grove are located on page 22 of the City's Master Fee Schedule.
Per communications with our Library Director, Diana Godwin: "Our county library consortium has been looking at the feasibility of combining catalogs to allow county library users the ability to place materials from any library on hold and have these items delivered. It's a work in progress, but one important criteria was the agreement that all participating libraries would not charge late fines. Fines have been shown to prevent patrons from returning to the library, the shame of an account with large overdue fees results in lower circulation numbers and additional loss of materials. Collecting the small amount of money that late fees produce is not worth the negative perceptions." Ms. Godwin supports both a resolution to remove overdue fines and the needed amendment to the Master Fee Schedule.
The below information is taken from the Monterey County Board of Supervisor's November 16, 2021 Board Report regarding their recent actions of omitting fees for our Monterey County Free Libraries. Like the County, the City of Pacific Grove are also members of GARE (Government Alliance on Race and Equity).

- The American Library Association passed a resolution on overdue fines as a form of social inequity, and research has shown the critical importance of books in the home for early literacy and school readiness. A family that fears risk of accruing fines they cannot readily pay can too easily end up not allowing their young children to bring books home during a critical reading period. A family with access blocked due to overdue fines may not be able to use other resources, such as library computers, or access resources required for school success.
- A GARE (Government Alliance on Race and Equity) Issue Brief *Advancing Racial Equity in Public Libraries* specifically calls out library fines as both institutional and structural racism, stating a "library's enforcement of fines has a disproportionate impact on people of color, who are overrepresented in among low-income populations due to the racial wealth gap" and detailing

how users blocked from borrowing resources or using services such as computers then have impacts compounded across multiple institutions and throughout other areas. **GARE Issue Brief**

- Other California public library systems have stopped charging overdue fines. These include San Jose Public Library, Los Angeles County Public Library, Sonoma County Library, Tulare County Library, Santa Clara County Library, Sacramento Public Library, San Luis Obispo City/County Library, Marin County Library, and San Diego Public Library. **ULC Fine Free Map**

GOAL ALIGNMENT

Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Financial Stability: Develop a strategic plan to better address current and future City expenditure and revenue needs while continuing to provide high quality municipal service.

ELECTRONIC ATTACHMENTS

1. Monterey County Board of Supervisor Board Report and Resolution
2. Master Fee Schedule
3. Godwin/McAdams Email

OPTIONS

1. Provide other direction.
2. Take no action.

FINANCIAL IMPACT:

The City does not separate library fines and fees from replacement fees for lost or damaged books. The financial impact associated with removal of library late fees and fines is anticipated to be very minimal.

GOAL ALIGNMENT: See Goal Alignment within Discussion section.