NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

AMENDED REGULAR MEETING AGENDA

Wednesday, May 18, 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 IN PERSON AND VIRTUALLY (HYBRID).

CHAMBER CAPACITY SEATING IS LIMITED AND PROVIDED ON A FIRST COME, FIRST SERVED BASIS.

THE VIRTUAL MEETING 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. Service Award: Will Crandell (20 Years) PG 9
Reference: Ben Harvey, City Manager
Recommended Action: Receive presentation.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Mayor's Proclamation: Public Works Week PG 11
Reference: Bill Peake, Mayor
Recommended Action: Receive proclamation.
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 by City Attorney

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 May 11, 2022 City Council Special Meeting PG 13

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. Resolution Setting the Appropriations Limit for FY 2022-2023 PG 19

Reference: Jennifer Pope, Management Analyst

Recommended Action: Hold a public hearing and approve a resolution setting the Appropriations Limit for Fiscal Year 2022-2023.

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

B. Diversity, Equity and Inclusion Task Force ***Action required by 7/1/2022.*** PG 30

Reference: Ben Harvey, City Manager and Sandra Kandell, City Clerk

Recommended Action:

1. Approve a resolution designating the Task Force as a permanent body; and
2. Extend term ending dates for Task Force Members to January 2023.

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

C. Parks Bond Per Capita Grant Application and Agreement ***Action required by 5/18/22.*** PG 34

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

Recommended Action: Approve a resolution authorizing the submission of two (2) Per Capita Grant Program Applications to the State of California's Department of Parks and Recreation.

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

8. **REPORTS – INFORMATION ONLY**
Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Check Register Report – April 2022 PG 67
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. Core Revenue Report Status for April 2022 PG PG 111
Reference: Tori Hannah, Administrative Services Director/Assistant City Manager
Recommended Action: Receive the Core Revenue Status Report for April 2022.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Monterey-Salinas Transmit Meeting Minutes: April 11, 2022 PG 114
Reference: Joe Amelio, Councilmember
Recommended Action: Receive minutes.
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 PG 122
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

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**
Items pulled from this section will be placed under 13. New Business

A. Beautification and Natural Resources Commission Minutes: March 15, 2022 PG 124
Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive minutes.

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

B. Diversity, Equity & Inclusion Task Force Minutes: April 25, 2022 PG 129

Reference: Sandra Kandell, City Clerk

Recommended Action: Receive minutes.

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

C. Economic Development Commission Minutes: February 10, 2022 and March 10, 2022

Reference: Ben Harvey, City Manager PG 133

Recommended Action: Receive minutes.

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

D. Library Board Minutes: January 10, 2022 PG 142

Reference: Diana Godwin, Library Manager

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. Hospitality Improvement District (HID) program for Fiscal Year 2022-23 PG 145

Reference: Lori Frati, Management Analyst

Recommended Action:

1. Hold a public hearing to determine whether a majority written protest to the proposed annual district assessment is received.
2. If no majority protest is determined, adopt the resolution to approve the annual report, levy the annual assessment, approve the program for Fiscal Year 2022-23, appoint the HID Advisory Board, and authorize the City Manager to execute an agreement with the Pacific Grove Chamber of Commerce to administer the HID budget.

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

B. Downtown Business Improvement District (BID) program for Fiscal Year 2022-23
Reference: Lori Frati, Management Analyst PG 166
Recommended Action: Hold a public hearing to determine majority protest to the annual assessment were not received, and Adopt resolution to approve annual report, levy annual assessment, approve the recommended Fiscal Year 2022-23 program, appoint the BID Advisory Board for Fiscal Year 2022-23, and authorize the City Manager to execute an agreement allowing the Pacific Grove Chamber of Commerce to administer the BID budget.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

C. Caledonia Park Dog Exception at Special Events PG 185
Reference: Bill Peake, Mayor
Recommended Action: Hold first reading and adopt an ordinance amending Chapter 14.08.030 of the Pacific Grove Municipal Code titled 'Dogs prohibited in public parks – Exceptions' which would allow dogs in Caledonia Park with a Special Event authorization by City Council and direct that publication of the ordinance will be satisfied by publication of a summary approved by the City Attorney.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

D. ATC Hotel Sloat Avenue ROW Vacation PG 189
Reference: Rob Mullane, AICP, Contract Planner
Recommended Action: 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~~***8300***-8368 of the California Streets and Highways Code.
CEQA: Environmental Impact Report

12. **UNFINISHED AND ONGOING BUSINESS**

A. Pet Parade Special Event PG 198
Reference: Bill Peake, Mayor
Recommended Action: Approve a Pet Parade scheduled for July 29, 2022 at Caledonia Park and waive fees for City Staff support and park use.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. American Rescue Plan Act Community Survey Results & Project Direction PG 208
Reference: Ben Harvey, City Manager

Recommended Action: 1. Receive a report on the American Rescue Plan Act (ARPA) survey results.
2. Discuss allocating unprogrammed ARPA funds, and if consensus exists, provide direction to staff.

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

13. **NEW BUSINESS**

A. Diversity Equity & Inclusion (DEI) Plan Subcommittee Recommendations

Reference: Ben Harvey, City Manager and Sandra Kandell, City Clerk

Recommended Action: PG 212

- The City Council adopt Diversity and Equity as City Core Values
- The City hire a consultant to facilitate a Diversity, Equity and Inclusion (DEI) planning process to:
  - collect information and insight about advancing DEI in Pacific Grove and in the City organization
  - encourage community participation and elevate the voices of underrepresented communities through "learning sessions," surveys, key stakeholder interviews and other community outreach
  - identify focus areas and develop recommendations for a DEI strategic plan for all areas of the City organization, and to increase awareness and understanding of DEI in the community, ensuring a Pacific Grove that is safe, inclusive and just

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

B. Prohibition of Timeshares PG 214

Reference: Luke Coletti, Councilmember

Recommended Action: Direct the City Attorney and City Manager to assist and coordinate the following Planning Commission activity:

1. Review the City's timeshare prohibition (Zoning Code Chapter 23.45)
2. Recommend zoning code amendments to better effectuate the City's prohibition of timeshare projects, including those fractional interest uses marketed, sold, and managed as timeshares (e.g., Pacaso).

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

C. Consider transitioning from six (6) to four (4) Councilmembers PG 496

Reference: Luke Coletti and Amy Tomlinson, Councilmembers

Recommended Action: Direct City staff to return in July with all necessary documents for Council consideration for placing a City Charter amendment on the November 8, 2022, general election ballot to transition from six (6) to four (4) Councilmembers.

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: Ben Harvey, City Manager

MEETING DATE: May 18, 2022

SUBJECT: Service Award: Will Crandell (20 Years)

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

RECOMMENDATION

Receive presentation.

Attachments

Certificate

CITY OF PACIFIC GROVE

Service Award Recognition

is hereby granted to: Will Crandell

20 Years of Dedicated Public Service

Awarded: May 18th, 2022

Ben Harvey
City Manager

Bill Peake
Mayor

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: May 18, 2022

SUBJECT: Mayor's Proclamation: Public Works Week

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

RECOMMENDATION

Receive proclamation.

Attachments

PW Proclamation

Proclamation in Recognition of National Public Works Week

WHEREAS, public works infrastructure, facilities and services are of vital importance to sustainable communities and to the health, safety and well-being of the people of this community; and,

WHEREAS, such facilities and services could not be provided without the dedicated efforts of public works professionals, engineers, managers and employees from State and local units of Government and the private sector, who are responsible for and must plan, design, build, operate, and maintain the transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential to serve our citizens; and

WHEREAS, it is in the public interest for the citizens, civic leaders and children in California to gain knowledge of and maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and

WHEREAS, the year 2022 marks the **62nd annual National Public Works Week** sponsored by the American Public Works Association be it now,

RESOLVED, I, Bill Peake, Mayor of Pacific Grove**,** do hereby proclaim the week May 15-21, 2022 as National Public Works Week; and I urge all our people to join with representatives of the American Public Works Association and government agencies in activities and ceremonies designed to pay tribute to our public works professionals, engineers, managers and employees and to recognize the substantial contributions they have made to our national health, safety, welfare and quality of life.

Bill Peake

Bill Peake, Mayor

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: May 18, 2022

SUBJECT: Minutes of the May 11, 2022 City Council Special 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

SPECIAL MEETING

Wednesday, May 11, 2022, 5:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

**THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).
CHAMBER CAPACITY SEATING IS LIMITED AND PROVIDED ON A
FIRST COME, FIRST SERVED BASIS.
THE VIRTUAL MEETING 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:
https://us02web.zoom.us/j/209579290

DRAFT

CALL TO ORDER
Mayor Peake called the meeting to order at 5:00 p.m. City Clerk conducted roll call with the following Council present in Chamber: Mayor Peake, Councilmembers Amelio, Coletti, Poduri, Smith, and Tomlinson. Mayor Pro Tem presented via Zoom Webinar.

PLEDGE OF ALLEGIANCE
Mayor Peake led the pledge of allegiance.

1. **APPROVAL OF AGENDA**
Action: Consent Agenda item 6A was removed from the Agenda.

Upon motion by Councilmember Smith and seconded by Councilmember Tomlinson, Council voted to approve the 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.

2. **PRESENTATIONS**

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
A. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**
General public comment was received from Jenny MacMurdo.

CONSENT AGENDA

Action: Upon motion by Councilmember Amelio and seconded by Mayor Pro Tem McAdams, Council voted to approve the Consent 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.

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

A. Minutes of the May 4, 2022 City Council Closed Session and Regular Meetings
Action: Approved minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

A. Application for State Housing and Community Development Department for the Local Housing Trust Fund Program, formation of a Regional Housing Trust Fund, and contribution of Permanent Local Housing Allocation Funds ***This item was removed from the agenda during the Approval of the Agenda.***
Reference: Anastacia Wyatt, Senior Housing Program Manager
Recommended Action: Approve a resolution authorizing an application to the State Housing and Community Development (HCD) for the Local Housing Trust Fund (LHTF) Program, formation of a Regional Housing Trust Fund, and contribution of Permanent Local Housing Allocation (PLHA) funds.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

9. **REPORTS – REQUIRING ACTION**

A. Contract Amendment with Rincon Consultants, Inc.
Action: Approved 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 Focused Environmental Impact Report (EIR) relating to a development project located at 1661 Sunset Drive.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

DRAFT

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

A. Diversity, Equity, and Inclusion Task Force Minutes: March 14, 2022
Action: Received minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Planning Commission Meeting Minutes: March 10, 2022
Action: Received minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

A. Consider Adoption of an Ordinance to continue to Outdoor Dining Rules
Public comment was received from Moe Ammar, Jenny MacMurdo, Arielle Zina, Debby Beck, and Mike Durrant.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Tomlinson, Council voted to introduce and hold first reading of an ordinance to continue for one year Ordinance 21-013 - Adopting Temporary Outdoor Dining Rules - direct that publication of the ordinance be satisfied by publication of a summary approved by the City Attorney, direct City staff to return with an update no later than December 21, 2022, and make the following changes to the ordinance as follows: Facts (pg. 1) 2. remove the last sentence and replace with: MPWMD extended urgency ordinance No 190 on 4/18/2022 to sunset on 4/18/2023 and 5. Correct a grammatical error by removing the seventh word "is", to read: this ordinance promotes…...

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 Section 15269, Specific Actions Necessary to Prevent or Mitigate an Emergency

12. **UNFINISHED AND ONGOING BUSINESS**

13. **NEW BUSINESS**

A. FY22/23 Capital Improvement Plan & SB1 Project List
Public comment was received from Andy Kubica, Sally Moore, and Jean Anton.

Action: Upon motion by Mayor Peake and seconded by Councilmember Coletti, Council voted to divide the question.

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

DRAFT

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

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Smith, Council voted to receive and approve the FY 22/23 Capital Improvement Plan (CIP) to include in the Operating Budget.

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.

Action: Upon motion by Councilmember Tomlinson and seconded by Councilmember Smith, Council voted to approve Resolution No. 22-023 adopting the FY22/23 SB1 Project List.

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.

Action: Council deferred providing direction on the use of American Rescue Plan Act (ARPA) funds for CIP projects.

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

B. Apology for Treatment of Chinese Settlers and Citizens
Public comment was received from Sue Parris, Randy Sabado, Brenda Hee Wong, Kathy Biala, Taylor Lee, and Janet Cohen.

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Amelio, Council voted to

1. Approve Resolution No. 22-024 - apology to the Chinese Village Community and descendants; and
2. Approve the resolution be publicly read by Councilmember Poduri at the May 14, 2022 Walk of Remembrance.

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

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

DRAFT

NOES: None.
ABSENT: None.

14. **FULL PRESENTATIONS**

A. QAlert Presentation
No public comment was received.

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

ADJOURNMENT
Council adjourned the regular meeting at approximately 8:30 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:	Jennifer Pope, Management Analyst
MEETING DATE:	May 18, 2022
SUBJECT:	Resolution Setting the Appropriations Limit for FY 2022-2023
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold a public hearing and approve a resolution setting the Appropriations Limit for Fiscal Year 2022-2023.

DISCUSSION

Article XIII B of the California Constitution requires cities to adopt an annual Appropriations Limit, based on population and economic growth factors, as prescribed by State law. Staff has calculated the Appropriations Limit for FY 2022-2023 and recommends that Council adopt a resolution establishing the limit at $45,591,100. Estimated City tax revenue appropriations subject to the limit total $22,629,000, indicating that the City is not at risk of exceeding its limit.

California's State Appropriations Limit places a "ceiling" each year on the amount of monies that can be spent from local government tax proceeds. Most appropriations are subject to the Appropriations Limit, however, the law does allow exemptions for capital outlay, debt service, and subventions. Tax proceeds in excess of the Limit over a two-year period must be rebated to taxpayers.

The adoption of Proposition 4 in 1979 and amended by Proposition 98 in 1998 and Proposition 111 in 1990 established the requirement and procedure for establishing an Appropriations Limit for local agencies. In brief, the amount of revenue that the City is annually authorized to appropriate is limited by factors relating to changes in population and the economy. The population factor selected may either be the rate of change in population for the City or for the County. The economic factor selected may either be the change in California's per capita income or the change in non-residential assessed property valuation. In other words, the formula works as follows:

(% change in population (City or County) + 100) / 100

Multiplied by EITHER:

(% change in California per capita income + 100) / 100

OR

(% change in non-residential assessed valuation + 100) / 100

The value determined by the formula set forth above is then applied to the previous year's Limit to yield the new Appropriations Limit for the fiscal year.

Data on the change in California per capita income, county population, and city population for use in the calculation are provided by the State Department of Finance. Data on the change in value on assessed valuation from non-residential construction are provided by the Monterey County Assessor's Office. For the Fiscal Year 2022-2023 Appropriations Limit calculation, the data includes the following:

City of Pacific Grove population percentage change	-1.21%
Monterey County population percentage change	**-0.62%**
California per capita income percentage change	**7.55%**
City of Pacific Grove percentage change in Assessed Value from Non-residential construction	N/A*

*Source: Monterey County Assessor's Office; information currently not available

For every year since 1990, the City has chosen to use the largest factors possible, which in all years except 1996, 2011 and 2022 were the California per capita income and County population growth. Using the factors that yield the highest possible appropriation limit preserves optimal control and flexibility at the local level for matching resources to desired service levels.

Staff recommends using the California per capita income factor (7.55%) and the population growth rate for Monterey County (-0.62%) as highlighted in bold above as the population change for the County exceeds the population change for the City.

Using these factors, the Appropriations Limit will be calculated as follows:

(-0.62% + 100) / 100 X (7.55% + 100) / 100 = 1.0755

Applying the FY 2022-2023 factor to the FY 2021-2022 Appropriations Limit, which was $42,655,071, the FY 2022-2023 limit would be $45,591,100.

The table below shows the amount of appropriated revenue subject to the Appropriations Limit:

CITY OF PACIFIC GROVE

APPROPRIATIONS SUBJECT TO LIMIT

BUDGETED TAX REVENUES	**Adopted Budget FY 2021/22**	**Proposed Budget FY 2022/23**
Property Tax	6,300,000	6,610,000
Utility User Tax	1,775,000	1,929,000
Sales & Use Tax	4,109,000	5,616,000
Transient Occupancy Tax	4,703,000	5,867,000
Business License Tax	359,000	322,000
Other Taxes	117,000	237,000
Interest on Taxes	31,000	32,000
Motor Vehicle in Lieu Fees	1,925,000	2,016,000
TOTAL BUDGETED TAX REVENUES	**19,319,000**	**22,629,000**
APPROPRIATIONS LIMIT	**42,655,071**	**45,591,100**
(OVER) UNDER LIMIT	**23,336,071**	**22,962,100**
PERCENTAGE OF REVENUES SUBJECT TO LIMIT	**45.29%**	**49.63%**

Based on the total amount of budgeted tax revenue estimated for FY 2022-23, which is $22,629,000, the City of Pacific Grove is not at risk of exceeding its limit.

Section 65009(b)(2) of the California Government Code provides that legal challenges to the City's action on this proposed matter shall be limited to issues raised in testimony during the public hearing process.

In the review of this matter, the City has followed those guidelines adopted by the State of California and published in the California Administrative Code, Title 14, Section 15000, et seq.

OPTIONS

1. Take no action.
2. Provide alternative direction to staff.

FINANCIAL IMPACT:

There is no fiscal impact.

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

Attachments

Notice of Publication
California Department of Finance Price Factor and Population Information
Resolution

CITY OF PACIFIC GROVE
NOTICE OF PUBLIC HEARING
Wednesday, May 18, 2022 6:00 p.m.
300 Forest Avenue, Pacific Grove, CA

PUBLIC HEARING NOTICE

City of Pacific Grove meetings will be conducted with virtual and in person participation (hybrid). Members of the public may check the City Council website for details on accessing the meeting via the internet and Peninsula Channel 25.

www.cityofpacificgrove.org/about-city/city-council

NOTICE IS HEREBY GIVEN THAT the City Council of the City of Pacific Grove will hold a public hearing on **Wednesday, May 18, 2022, at 6:00 p.m.**, to consider a resolution establishing the City's Appropriation Limit for Fiscal Year 2022-23.

Copies of the proposed resolution will be made available at the City Clerk's office in City Hall at 300 Forest Avenue, Pacific Grove, California. This item does not require CEQA review.

Please note that Section 65009(b)(2) of the Government Code provides that legal challenges to the City's action on this proposed matter may be limited to only those issues raised in testimony during the public hearing process.

_____

SANDRA KANDELL, City Clerk

Published: April 14, 2022

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

Gavin Newsom ▪ Governor
1021 O Street, Suite 3110 ▪ Sacramento CA 95814 ▪ www.dof.ca.gov

May 2022

Dear Fiscal Officer:

Subject: Price Factor and Population Information

Appropriations Limit
California Revenue and Taxation Code section 2227 requires the Department of Finance to transmit an estimate of the percentage change in population to local governments. Each local jurisdiction must use their percentage change in population factor for January 1, 2022, in conjunction with a change in the cost of living, or price factor, to calculate their appropriations limit for fiscal year 2022-23. Attachment A provides the change in California's per capita personal income and an example for utilizing the price factor and population percentage change factor to calculate the 2022-23 appropriations limit. Attachment B provides the city and unincorporated county population percentage change. Attachment C provides the population percentage change for counties and their summed incorporated areas. The population percentage change data excludes federal and state institutionalized populations and military populations.

Population Percent Change for Special Districts
Some special districts must establish an annual appropriations limit. California Revenue and Taxation Code section 2228 provides additional information regarding the appropriations limit. Article XIII B, section 9(C) of the California Constitution exempts certain special districts from the appropriations limit calculation mandate. The code section and the California Constitution can be accessed at the following website: http://leginfo.legislature.ca.gov/faces/codes.xhtml.

Special districts required by law to calculate their appropriations limit must present the calculation as part of their annual audit. Any questions special districts have on this requirement should be directed to their county, district legal counsel, or the law itself. No state agency reviews the local appropriations limits.

Population Certification
The population certification program applies only to cities and counties. California Revenue and Taxation Code section 11005.6 mandates Finance to automatically certify any population estimate that exceeds the current certified population with the State Controller's Office. **Finance will certify the higher estimate to the State Controller by June 1, 2022**.

Please Note: The prior year's city population estimates may be revised. The per capita personal income change is based on historical data.

If you have any questions regarding this data, please contact the Demographic Research Unit at (916) 323-4086.

KEELY MARTIN BOSLER
Director
By:

ERIKA LI
Chief Deputy Director

Attachment

A. **Price Factor**: Article XIII B specifies that local jurisdictions select their cost of living factor to compute their appropriation limit by a vote of their governing body. The cost of living factor provided here is per capita personal income. If the percentage change in per capita personal income is selected, the percentage change to be used in setting the fiscal year 2022-23 appropriation limit is:

Per Capita Personal Income

Fiscal Year (FY)	Percentage change over prior year
2022-23	7.55

B. Following is an example using sample population change and the change in California per capita personal income as growth factors in computing a 2022-23 appropriation limit.

2022-23:

Per Capita Cost of Living Change = 7.55 percent
Population Change = -0.30 percent

Per Capita Cost of Living converted to a ratio: $\frac{7.55 + 100}{100} = 1.0755$

Population converted to a ratio: $\frac{-0.30 + 100}{100} = 0.997$

Calculation of factor for FY 2022-23: 1.0755 x 0.997 = 1.0723

Attachment B
Annual Percent Change in Population Minus Exclusions*
January 1, 2021 to January 1, 2022 and Total Population, January 1, 2022

County City	Percent Change 2021-2022	--- Population Minus Exclusions --- 1-1-21	 1-1-22	Total Population 1-1-2022
Monterey				
Carmel-By-The-Sea	-1.74	3,095	3,041	3,041
Del Rey Oaks	-1.22	1,558	1,539	1,539
Gonzales	-1.79	8,492	8,340	8,340
Greenfield	4.97	18,705	19,634	19,634
King City	-1.08	13,476	13,331	13,331
Marina	0.87	21,271	21,457	21,457
Monterey	-1.69	24,283	23,872	28,082
Pacific Grove	-1.21	14,942	14,761	14,761
Salinas	-1.14	161,777	159,932	159,932
Sand City	-1.59	378	372	372
Seaside	2.64	26,891	27,600	32,068
Soledad	-1.15	19,226	19,004	26,308
Unincorporated	-1.32	105,741	104,341	104,851
County Total	-0.62	419,835	417,224	433,716

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

Attachment C

Annual Percent Change in Population Minus Exclusions*
January 1, 2021 to January 1, 2022

County	Percent Change 2021-22	--- Population Minus Exclusions --- 1-1-21	1-1-22
Los Angeles			
Incorporated	-0.71	8,907,581	8,844,059
County Total	-0.71	9,923,635	9,853,284
Madera			
Incorporated	-0.66	79,979	79,453
County Total	0.33	151,653	152,155
Marin			
Incorporated	-1.08	191,936	189,869
County Total	-1.11	256,537	253,686
Mariposa			
Incorporated	0.00	0	0
County Total	-0.20	17,018	16,984
Mendocino			
Incorporated	-0.35	28,697	28,596
County Total	-0.78	90,655	89,951
Merced			
Incorporated	0.41	192,660	193,455
County Total	0.88	280,833	283,311
Modoc			
Incorporated	1.00	2,699	2,726
County Total	0.98	8,606	8,690
Mono			
Incorporated	0.56	7,324	7,365
County Total	0.61	13,167	13,247
Monterey			
Incorporated	-0.39	314,094	312,883
County Total	-0.62	419,835	417,224

*Exclusions include residents on federal military installations and group quarters residents in state mental institutions, state and federal correctional institutions and veteran homes.

RESOLUTION NO. 22-xxx

RESOLUTION OF THE CITY OF PACIFIC GROVE ESTABLISHING THE FISCAL YEAR 2022-23 APPROPRIATION LIMIT

FINDINGS

1. The City Council conducted a public hearing regarding the City's Fiscal Year 2022-2023 Appropriation limit on May 18, 2022.

2. The public hearing was noticed and advertised as required by law.

3. The Council received testimony and other evidence regarding the Appropriation Limit to be established for the City.

4. The Council elects to use the change in California per capita personal income and change in population for the County of Monterey as adjustment factors to calculate the City's Appropriation Limit for the Fiscal Year 2022-2023.

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

1. The foregoing Findings are adopted as findings of the City Council as though set forth in full.

2. The Appropriation Limit for Fiscal Year 2022-2023 shall be $45,591,100.

3. The Notice of Public Hearing and State of California Department of Finance calculation factors are hereby approved and by this reference are incorporated as set forth in its entirety.

4. This Resolution shall take effect immediately following passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 18th day of May 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: Ben Harvey, City Manager and Sandra Kandell, City Clerk

MEETING DATE: May 18, 2022

SUBJECT: Diversity, Equity and Inclusion Task Force ***Action required by 7/1/2022.***

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

RECOMMENDATION

1. Approve a resolution designating the Task Force as a permanent body; and
2. Extend term ending dates for Task Force Members to January 2023.

DISCUSSION

At its regular meeting of January 20, 2021, Council directed staff and the City Attorney's office to prepare an ordinance to create a "Task Force on Diversity, Equity, and Inclusion" as a temporary body that, if warranted, could ultimately become a permanent group to help inform staff and Council on issues pertaining to diversity, equity, inclusion and racial justice. Since established, the Diversity Equity and Inclusion (DEI) Task Force has and continues to identify, prioritize, review and address ongoing items within the City of Pacific Grove.

At its regular meeting of December 1, 2021, Council approved the Task Force for Diversity, Equity and Inclusion become a permanent body and directed the City Attorney to draft the required resolution for effect pursuant to Section 3 of Ordinance 21-007 establishing the Diversity, Inclusion, and Equity Task Force. The attached resolution meets this requirement.

Finally, current terms end July 2022 for DEI Task Force members and must be extended. In keeping with 2 year terms for non-Charter committees and the City's annual appointments, staff recommends Council extend the term ending dates for Task Force Members to January 2023.

OPTIONS

Provide alternate direction.

FINANCIAL IMPACT:

There is no fiscal impact.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Draft Resolution

RESOLUTION NO. 22-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DESIGNATING THE TASK FORCE ON DIVERSITY, EQUITY, AND INCLUSION TO BE A PERMANENT BODY PURSUANT TO PGMC CHAPTER 3.46

Findings

A. At its regular meeting of January 20, 2021, Council directed staff and the City Attorney's office to prepare an ordinance to create a "Task Force on Diversity, Equity, and Inclusion" as a temporary body that, if warranted, could ultimately become a permanent group to help inform staff and Council on issues pertaining to diversity, equity, inclusion, and racial justice.

B. This referenced ordinance was codified in the Municipal Code as Chapter 3.46, entitled "Task Force on Diversity, Equity, and Inclusion."

C. Council enabled a later resolution to be adopted that could designate the Task Force a permanent body as referenced in Section 4 of that Ordinance. This Resolution is intended to implement that option as allowed by the Municipal Code.

D. In the enactment of this resolution, 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 found this activity to not be a Project defined by the California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment; and

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

SECTION 1. Findings.

The foregoing Findings are adopted findings of the City Council as though set forth fully within the body of this Resolution.

SECTION 2. Task Force Sunset Date.

The ordinance enacting PGMC Chapter 3.46 provided Chapter 3.46 "shall sunset and have no further force or effect on July 1, 2022 unless the Council, on or before June 30, 2022 chooses to adopt a resolution designating the Task Force to be a permanent body pursuant to PGMC Chapter 3.46 of Title 3, Boards and Commissions."

SECTION 3. Designation as Permanent Body.

This Resolution shall meet the requirements set forth in Section 2, above, and shall designate the Task Force on Diversity, Equity, and Inclusion to be a permanent body for all purposes consonant with PGMC Chapter 3.46.

SECTION 4. Implementation. The City Manager is directed to take all action needed to implement this Resolution.

SECTION 5. Severability. If any provision, section, paragraph, sentence, clause or phrase of this resolution, 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 resolution, 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 6. Effective Date. This resolution shall take immediate effect upon its passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 18th day of May, 2022, 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: Daniel Gho, Public Works Director / Deputy City Manager

MEETING DATE: May 18, 2022

SUBJECT: Parks Bond Per Capita Grant Application and Agreement ***Action required by 5/18/22.***

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

RECOMMENDATION

Approve a resolution authorizing the submission of two (2) Per Capita Grant Program Applications to the State of California's Department of Parks and Recreation.

DISCUSSION

The Per Capita Program originated from the Parks and Water Bond Act of 2018 (Proposition 68), approved by California voters on June 5, 2018. The program provides funding for local park rehabilitation, creation, and improvement grants to local governments on a per capita basis.

The City is eligible for a $177,952 grant for two existing CIP projects: (1) ADA compliant playground equipment at George Washington Park and (2) backstop replacement at the 17 Mile Drive (Municipal) ball field.

Project	City Funding	Grant Funding	Total Project Funding
17 Mile Drive Backstop Replacement	$24,000	$96,000	$120,429
George Washington Park Playground Equipment	$25,000	$81,952	$106,952

Municipal Ball Park

Through the City's FY21/22 CIP, funding was approved for the replacement of the backstop at 17 Mile Drive Ball Field with a total allocated budget of $24,000. The existing backstop has significantly deteriorated and needs replacement. Projects bids received were well over the allocated budget and ranged from $77,000 - $95,000. This grant will allow the city to bridge the funding shortfall and make necessary replacements to the heavily used recreation infrastructure. Following formal agreement execution, Staff will issue a formal call for bids to allow for replacement.

George Washington Park Playground Equipment

At the December 15, 2021 meeting, the City Council allocated $25,000 of funding to allow for installation of ADA compliant playground equipment and equipment for young children (2-5 years old).

Initial research revealed $25,000 was not sufficient to allow for purchase and installation of suitable equipment. With this additional grant funding, the City can seek proposals for adequate playground equipment and present mockups to the Recreation Board for selection. The requested scope will include the purchase/installation of the playground equipment, the boarder, and surfacing, as well as an ADA inclusive swing, that can be added to the current swings at the park.

Initial application materials have been submitted. To continue through the grant award process, the City Council must adopt a resolution that approves the filing of the applications (Attachments 1 & 2). The resolution also appoints authority to the City Manager, or the City Manger's designee, to sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope. The draft grant agreement is included for reference as Attachment 3.

OPTIONS

1. Do nothing
2. Do not authorize grant application submission

FINANCIAL IMPACT:

The funding for the two projects, that has been allocated as part of the City's Capital Improvement Program, will serve as a match for the grant. If the City successfully obtains the grant, Request for Proposals will be issued for the two project and then brought forward to the City Council for consideration at a future meeting.

GOAL ALIGNMENT: City Asset Stewardship: Repair, maintain and improve City assets, including streets, sidewalks, sewer systems, buildings, and parks and trails.

Attachments

Backstop Application

GWP Playground Application

Per Capita Agreement

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Per Capita Project Application Form

PROJECT NAME Pacific Grove Municipal Ballpark Backstop	REQUESTED GRANT AMOUNT $ 96,000
PROJECT SITE NAME and PHYSICAL ADDRESS where PROJECT is located including zip code (substitute latitude and longitude where no street address is available) Pacific Grove Municipal Ball Park located at 230 17 Mile Dr. Pacific Grove, CA 93950	MATCH AMOUNT (if project is not serving a severely disadvantaged community) $ 24,000 LAND TENURE (☑ all that apply) ☑ Owned in fee simple by GRANTEE ☐ Available (or will be available) under a ( ) year lease or easement

NEAREST CROSS STREET Short Street		
Project Type (Check one) Acquisition ☐ Development ☑		
COUNTY OF PROJECT LOCATION Monterey County		
GRANTEE NAME AND MAILING ADDRESS City of Pacific Grove - 300 Forest Ave, Pacific Grove CA 93950		
AUTHORIZED REPRESENTATIVE AS SHOWN IN RESOLUTION		
Name (typed or printed) and Title	Email address	Phone
Daniel Gho, Public Works Director	dgho@cityofpacificgrove.org	831-648-5722 x4203
GRANT CONTACT-For administration of grant (if different from AUTHORIZED REPRESENTATIVE)		
Name (typed or printed) and Title	Email address	Phone
Amy Colony, Admin Tech	acolony@cityofpacificgrove.org	831-648-5722 x4202

GRANT SCOPE: I represent and warrant that this APPLICATION PACKET describes the intended use of the requested GRANT to complete the items listed in the attached Development PROJECT Scope/Cost Estimate Form or acquisition documentation. I declare under penalty of perjury, under the laws of the State of California, that the information contained in this APPLICATION PACKET, including required attachments, is accurate.

Signature of AUTHORIZED REPRESENTATIVE as shown in Resolution	Date
Print Name: Daniel Gho	4/29/2022
Title: Public Works Director	

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Development Project Scope/Cost Estimate Form

GRANTEE:	City of Pacific Grove	PROJECT Name	Pacific Grove Municipal Ballpark Backstop

Development project scope (Describe the project in 30 words or less):
Project would facilitate a full replacement of the backstop at the Municipal Ball Park located at 230 17 Mile Dr. The existing backstop has deteriorated and is in need of replacement.

Project Scope Items - ☐ all that apply:

Install new	Renovate existing	Replace existing	Recreation Element
☐	☐	☐	Pool, aquatic center, splash pad
☐	☐	☐	Trails or walking paths
☐	☐	☐	Landscaping or irrigation
☐	☐	☐	Group picnic, outdoor classrooms, other gathering spaces
☐	☐	☐	Play equipment, outdoor fitness equipment
☐	☐	☐	Sports fields, sports courts, court lighting
☐	☐	☐	Community center, gym, other indoor facilities
☐	☐	☐	Restroom, concession stand
☐	☐	☑	Other: Baseball field backstop
☐	☐	☐	Other:
☐	☐	☐	Minor elements which support one or more of the recreation elements checked above: benches, lighting, parking, signage, etc.

PRE-CONSTRUCTION (costs incurred prior to ground-breaking, such as design, permits, bid packages, CEQA); up to 25% of total PROJECT cost.	$0
Construction	$120000
Total PROJECT cost	$120000
Subtract GRANTEE match if not in severely disadvantaged community (20% of total PROJECT cost, see page 13)	Less match -$ 24000
Total GRANT amount requested	$96000

The GRANTEE understands that all elements listed on this form must be complete and open to the public before the final grant payment will be made.

Daniel Gho — 4/29/2022

AUTHORIZED REPRESENTATIVE Signature — Date

Daniel Gho, Public Works Director

Print Name and Title

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Funding Sources Form

GRANTEE:	PROJECT Name
City of Pacific Grove	Pacific Grove Municipal Ballpark Backstop

PROJECTS funded by the program are not complete until the PROJECT SCOPE is complete, and the PROJECT is open to the public. PROJECTS will:

- Be entirely funded by the GRANT, *or*
- Require funds in excess of the GRANT.

If the PROJECT requires funds in excess of the GRANT, the SCOPE of the PROJECT may be either the SCOPE of the larger project, or a subset of the larger project.

For example, if the PROJECT is $100,000 towards construction of a $500,000 park, the SCOPE can be the $500,000 park, or a $100,000 element of the park, such as a playground, that can be complete and open to the public.

☑ The PROJECT will be entirely funded by the GRANT, *or*
☐ The PROJECT requires funds in excess of the GRANT:
  ☐ The SCOPE is the same as the scope of the larger project, *or*
  ☐ The SCOPE is a subset of a larger project, the scope of that larger project is:

Larger project cost: $ Anticipated completion date:

List all funds that will be used. Submit revised Funding Sources form should funding sources be added or modified.

Funding Source	Date Committed	Amount
Per Capita/State of California	July 1, 2018	$ 96,000
City of Pacific Grove	May 11, 2022	$ 24,000
		$

I represent and warrant that I have full authority to execute this Funding Sources Form on behalf of the GRANTEE. I declare under penalty of perjury, under the laws of the State of California, that this status report, and any accompanying documents, for the above-mentioned GRANT is true and correct to the best of my knowledge.

Daniel Gho 4/29/2022

AUTHORIZED REPRESENTATIVE Signature Date

Daniel Gho, Public Works Director

Print Name and Title

California State Parks

Per Capita Match Calculator

Project ID: 107848
Coordinates: 36.6241, -121.9292
Date: 4/27/2022

This is the Per Capita Match Report for the site you have selected. Please review to ensure that the pin lies within the boundaries of an existing or proposed park, and submit to OGALS with your Project Application.

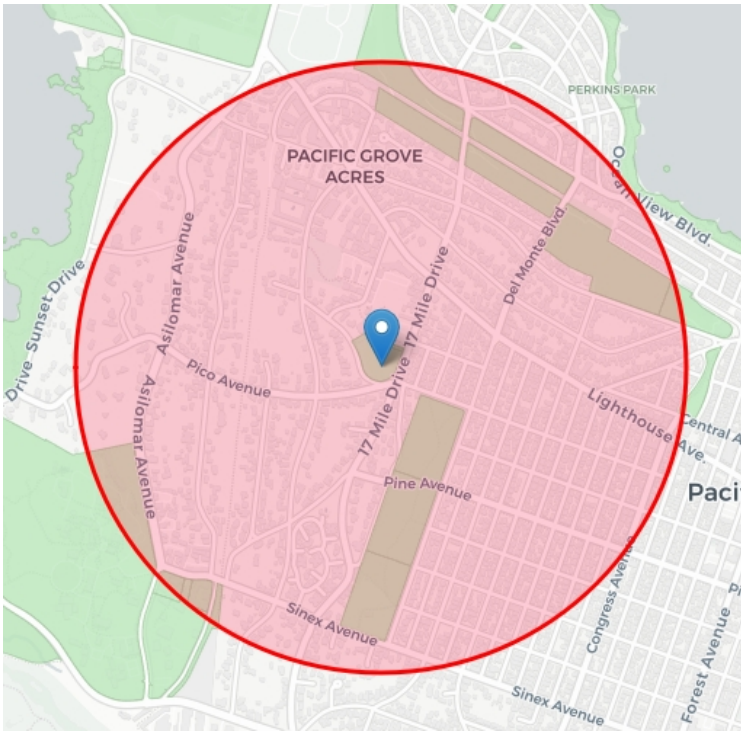
PROJECT AREA STATISTICS

County	Monterey
Median Household Income	$89,475
Agency Type	Other Agency

The community served does not qualify as Severely Disadvantaged. Match IS required.

- Park or Preserved Area
- Disadvantaged Community
- Severely Disadvantaged Community
- No Data

PROJECT AREA MAP



REPORT BACKGROUND

The project statistics have been calculated based on half mile radius around the point location selected. Only park acres within the project area's half mile radius are reported.

Population and people in poverty are calculated by determining the percent of any census block-groups that intersect with the project area. The project area is then assigned the sum of all the census block-group portions. An equal distribution in census block-groups is assumed. Rural areas are calculated at a census block level to improve results.

Median household and per capita income are calculated as a weighted average of the census block- group values that fall within the project area.

More information on the calculations is available on the methods page.

Demographics—American Community Survey (ACS) 5-year estimates 2014-2018; Decennial 2010 Census; the margin of error (MOE) was not analyzed.

Parks—California Protected Areas Database 2020a CFF adjusted (6/2020) - more information at http://www.CALands.org. Parks and park acres area based on best available source information but may not always contain exact boundaries or all parks in specific locations. Parks are defined further in the 2015 SCORP (pg. 4).

Users can send updated information on parks to SCORP@parks.ca.gov

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

CEQA Compliance Certification

GRANTEE: City of Pacific Grove

Project Name: PG Municipal Ballpark Backstop

Project Address: 230 17 Mile Dr, Pacific Grove, CA 93950

Is CEQA complete? ☐ Yes ☑ No Is completing CEQA a PROJECT SCOPE item? ☑ Yes ☐ No

What document was filed, or is expected to be filed for this project's CEQA analysis:

Date complete/expected to be completed

☑ Notice of Exemption (attach recorded copy if filed) Expected Winter 2023
☐ Notice of Determination (attach recorded copy if filed)
☐ Other:

If CEQA is complete, and a Notice of Exemption or Notice of Determination was not filed, attach a letter from the Lead Agency explaining why, certifying the project has complied with CEQA and noting the date that the project was approved by the Lead Agency.

Lead Agency Contact Information	
Agency Name: City of Pacific Grove	
Contact Person: Daniel Gho, Public Works Director/Deputy City Manager	
Mailing Address: 300 Forest Avenue, Pacific Grove, CA 93950	
Phone: (831) 648-5722x4203	Email: dgho@cityofpacificgrove.org

Certification:

I hereby certify that the above referenced Lead Agency has complied or will comply with the California Environmental Quality Act (CEQA) and that the project is described in adequate and sufficient detail to allow the project's construction or acquisition.

I further certify that the CEQA analysis for this project encompasses all aspects of the work to be completed with grant funds.

Daniel Gho 4/29/2022

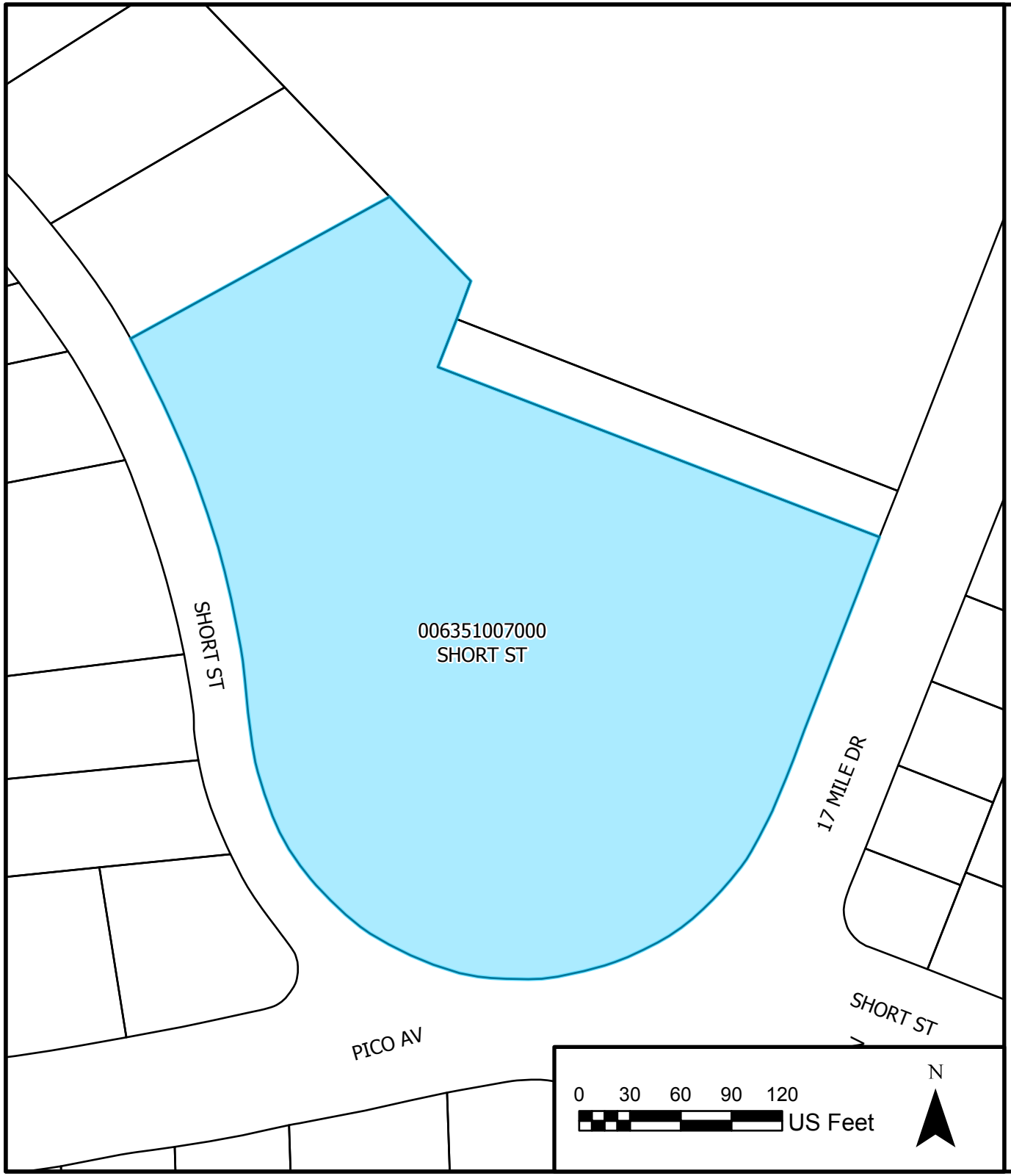
AUTHORIZED REPRESENTATIVE Signature Date

Daniel Gho, Public Works Director/Deputy City Manager

Print Name and Title

FOR OGALS USE ONLY

CEQA Document	Date Received	PO Initials
☐ NOE ☐ NOD		



City of Pacific Grove Parcel Report

APN: 006351007000

Details

Address: SHORT ST
Zoning: O
City Land Use: Open Space (OS)
Lot & Block: PACIFIC GROVE ACRES POR OF BLK 313 A CITY BALL PARK

Approximate Acreage: 6.17 2.70 0.19
Approximate Square Feet: 117432

Area of Special Biological Significance: No
Archaeology Zone: No
Butterfly Habitat: No
Coastal Zone: No
Environmentally Sensitive Habitat Area: No
Historic Resources Inventory: No
Historical Site: No
Septic: No
Water Management Zone: No

Selected Parcel Coordinates: 121°55'45"W 36°37'28"N

Legend

Selected Parcel

Parcel

DISCLAIMER:

THE CITY OF PACIFIC GROVE HAS MADE EVERY EFFORT TO ASSURE THE ACCURACY OF THIS MAP. THE CITY DOES NOT, HOWEVER, ASSUME ANY RESPONSIBILITY, IMPLIED OR OTHERWISE, AND MAKES NO REPRESENTATION, WARRANT, GUARANTEE OR CLAIM REGARDING MAP ACCURACY.

THE INFORMATION CONTAINED HEREIN WAS BELIEVED TO BE VALID AT THE TIME OF PUBLICATION. THE CITY OF PACIFIC GROVE RESERVES THE RIGHT TO MAKE CHANGES IN THE WEB SITE AT ANY TIME AND WITHOUT NOTICE. THE CITY OF PACIFIC GROVE ASSUMES NO LIABILITY FOR DAMAGES INCURRED DIRECTLY OR INDIRECTLY AS A RESULT OF ERRORS, OMISSIONS OR DISCREPANCIES. THE WEB SITE INCLUDES LINKS TO OTHER WEB SITES NOT CONTROLLED BY THE CITY OF PACIFIC GROVE. THE CITY OF PACIFIC GROVE TAKES NO RESPONSIBILITY FOR THE VIEWS, CONTENT OR ACCURACY OF THE OTHER SITES, NOR DOES IT ENDORSE ANY CONTENT OR PRODUCTS CONTAINED THEREIN.

Date Exported: 3/15/2021

Quick Search | Cart (0)($0.00)

Monterey County
California

HOME | PAYMENTS | PROPERTY TAXES

Find Property

Please provide your search criteria and click the Search button. Review the Help section below for more information on how to locate your Assessment or Fee Parcel.

ROLL YEAR	SEARCH BY	FEE PARCEL	
2021	FEE PARCEL	006351007000	SEARCH

006-351-007-000

Owner : CITY OF PACIFIC GROVE
Year : 2021
TRA : 004000
Roll Cat. : CS
Fee Parcel : 006-351-007-000

View Details

Site Plan: Pacific Grove Municipal Ballpark Backstop



Before Photos: Municipal Park Baseball Field Backstop – April 27th, 2022











State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Per Capita Project Application Form

PROJECT NAME George Washington Park Young Children's ADA Compliant Playground	REQUESTED GRANT AMOUNT $ $81,952
PROJECT SITE NAME and PHYSICAL ADDRESS where PROJECT is located including zip code (substitute latitude and longitude where no street address is available) George Washington Park Young Children's ADA Compliant Playground - Corner of Sinex Ave and Alder St. Pacific Grove, Ca 93950	MATCH AMOUNT (if project is not serving a severely disadvantaged community) $ 25,000 LAND TENURE (☑ all that apply) ☑ Owned in fee simple by GRANTEE ☐ Available (or will be available) under a ( ) year lease or easement

NEAREST CROSS STREET Sinex Ave		
Project Type (Check one) Acquisition ☐ Development ☑		
COUNTY OF PROJECT LOCATION Monterey County		
GRANTEE NAME AND MAILING ADDRESS City of Pacific Grove - 300 Forest Ave Pacific Grove, CA 93950		
AUTHORIZED REPRESENTATIVE AS SHOWN IN RESOLUTION		
Name (typed or printed) and Title	Email address	Phone
Daniel Gho, Public Works Director	dgho@cityofpacificgrove.org	831-648-5722x4203
GRANT CONTACT-For administration of grant (if different from AUTHORIZED REPRESENTATIVE)		
Name (typed or printed) and Title	Email address	Phone
Amy Colony, Administrative Technician	acolony@cityofpacificgrove.org	831-648-5722 x4202

GRANT SCOPE: I represent and warrant that this APPLICATION PACKET describes the intended use of the requested GRANT to complete the items listed in the attached Development PROJECT Scope/Cost Estimate Form or acquisition documentation. I declare under penalty of perjury, under the laws of the State of California, that the information contained in this APPLICATION PACKET, including required attachments, is accurate.

Signature of AUTHORIZED REPRESENTATIVE as shown in Resolution — Date

Print Name: Daniel Gho — 4/29/2022

Title: Public Works Director

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Development Project Scope/Cost Estimate Form

GRANTEE:	PROJECT Name
City of Pacific Grove	George Washington Park Young Children's ADA Compliant Playground

Development project scope (Describe the project in 30 words or less)**:**
This project will allow for the purchase and installation of children's park play equipment that is ADA accessible.

Project Scope Items - ☐ all that apply:

Install new	Renovate existing	Replace existing	Recreation Element
☐	☐	☐	Pool, aquatic center, splash pad
☐	☐	☐	Trails or walking paths
☐	☐	☐	Landscaping or irrigation
☐	☐	☐	Group picnic, outdoor classrooms, other gathering spaces
☑	☐	☐	Play equipment, outdoor fitness equipment
☐	☐	☐	Sports fields, sports courts, court lighting
☐	☐	☐	Community center, gym, other indoor facilities
☐	☐	☐	Restroom, concession stand
☐	☐	☐	Other:
☐	☐	☐	Other:
☐	☐	☐	Minor elements which support one or more of the recreation elements checked above: benches, lighting, parking, signage, etc.

PRE-CONSTRUCTION (costs incurred prior to ground-breaking, such as design, permits, bid packages, CEQA); up to 25% of total PROJECT cost.	$
Construction	$ 106952
Total PROJECT cost	$ 106952
Subtract GRANTEE match if not in severely disadvantaged community (20% of total PROJECT cost, see page 13)	Less match -$ 25000
Total GRANT amount requested	$ 81952

The GRANTEE understands that all elements listed on this form must be complete and open to the public before the final grant payment will be made.

Daniel Gho — 4/29/2022

AUTHORIZED REPRESENTATIVE Signature — Date

Daniel Gho, Public Works Director

Print Name and Title

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Funding Sources Form

GRANTEE:	PROJECT Name
City of Pacific Grove	George Washington Park Children's ADA Playground

PROJECTS funded by the program are not complete until the PROJECT SCOPE is complete, and the PROJECT is open to the public. PROJECTS will:

- Be entirely funded by the GRANT, *or*
- Require funds in excess of the GRANT.

If the PROJECT requires funds in excess of the GRANT, the SCOPE of the PROJECT may be either the SCOPE of the larger project, or a subset of the larger project.

For example, if the PROJECT is $100,000 towards construction of a $500,000 park, the SCOPE can be the $500,000 park, or a $100,000 element of the park, such as a playground, that can be complete and open to the public.

☑ The PROJECT will be entirely funded by the GRANT, *or*
☐ The PROJECT requires funds in excess of the GRANT:
  ☐ The SCOPE is the same as the scope of the larger project, *or*
  ☐ The SCOPE is a subset of a larger project, the scope of that larger project is:

Larger project cost: $ Anticipated completion date:

List all funds that will be used. Submit revised Funding Sources form should funding sources be added or modified.

Funding Source	Date Committed	Amount
Per Capita/State of California	July 1, 2018	$ 81,952
City of Pacific Grove	December 15, 2021	$ 25,000
		$

I represent and warrant that I have full authority to execute this Funding Sources Form on behalf of the GRANTEE. I declare under penalty of perjury, under the laws of the State of California, that this status report, and any accompanying documents, for the above-mentioned GRANT is true and correct to the best of my knowledge.

Daniel Gho 4/29/2022

AUTHORIZED REPRESENTATIVE Signature Date

Daniel Gho, Public Works Director

Print Name and Title

California State Parks

Per Capita Match Calculator

Project ID: 107845
Coordinates: 36.6175, -121.9290
Date: 4/26/2022

This is the Per Capita Match Report for the site you have selected. Please review to ensure that the pin lies within the boundaries of an existing or proposed park, and submit to OGALS with your Project Application.

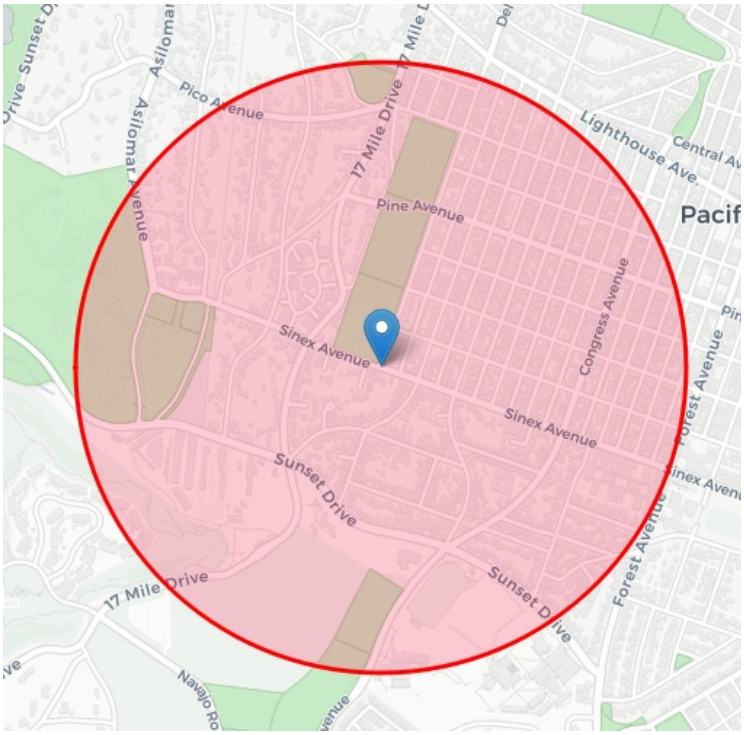
PROJECT AREA STATISTICS

County	Monterey
Median Household Income	$94,135
Agency Type	Other Agency

The community served does not qualify as Severely Disadvantaged. Match IS required.

Park or Preserved Area
Disadvantaged Community
Severely Disadvantaged Community
No Data

PROJECT AREA MAP



REPORT BACKGROUND

The project statistics have been calculated based on half mile radius around the point location selected. Only park acres within the project area's half mile radius are reported.

Population and people in poverty are calculated by determining the percent of any census block-groups that intersect with the project area. The project area is then assigned the sum of all the census block-group portions. An equal distribution in census block-groups is assumed. Rural areas are calculated at a census block level to improve results.

Median household and per capita income are calculated as a weighted average of the census block- group values that fall within the project area.

More information on the calculations is available on the methods page.

Demographics—American Community Survey (ACS) 5-year estimates 2014-2018; Decennial 2010 Census; the margin of error (MOE) was not analyzed.

Parks—California Protected Areas Database 2020a CFF adjusted (6/2020) - more information at http://www.CALands.org. Parks and park acres area based on best available source information but may not always contain exact boundaries or all parks in specific locations. Parks are defined further in the 2015 SCORP (pg. 4).

Users can send updated information on parks to SCORP@parks.ca.gov

State of California – The Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

CEQA Compliance Certification

GRANTEE: City of Pacific Grove

Project Name: George Washington Park Young Children's ADA Compliant Playground

Project Address: George Washington Park, 700 Alder St, Pacific Grove, CA 93950

Is CEQA complete? ☐ Yes ☑ No Is completing CEQA a PROJECT SCOPE item? ☑ Yes ☐ No

What document was filed, or is expected to be filed for this project's CEQA analysis:

Date complete/expected to be completed

☑ Notice of Exemption (attach recorded copy if filed) Expected Winter 2023
☐ Notice of Determination (attach recorded copy if filed)
☐ Other:

If CEQA is complete, and a Notice of Exemption or Notice of Determination was not filed, attach a letter from the Lead Agency explaining why, certifying the project has complied with CEQA and noting the date that the project was approved by the Lead Agency.

Lead Agency Contact Information	
Agency Name: City of Pacific Grove	
Contact Person: Daniel Gho, Public Works Director/Deputy City Manager	
Mailing Address: 300 Forest Avenue, Pacific Grove, CA 93950	
Phone: (831) 648-5722x4203	Email: dgho@cityofpacificgrove.org

Certification:

I hereby certify that the above referenced Lead Agency has complied or will comply with the California Environmental Quality Act (CEQA) and that the project is described in adequate and sufficient detail to allow the project's construction or acquisition.

I further certify that the CEQA analysis for this project encompasses all aspects of the work to be completed with grant funds.

Daniel Gho 4/29/2022

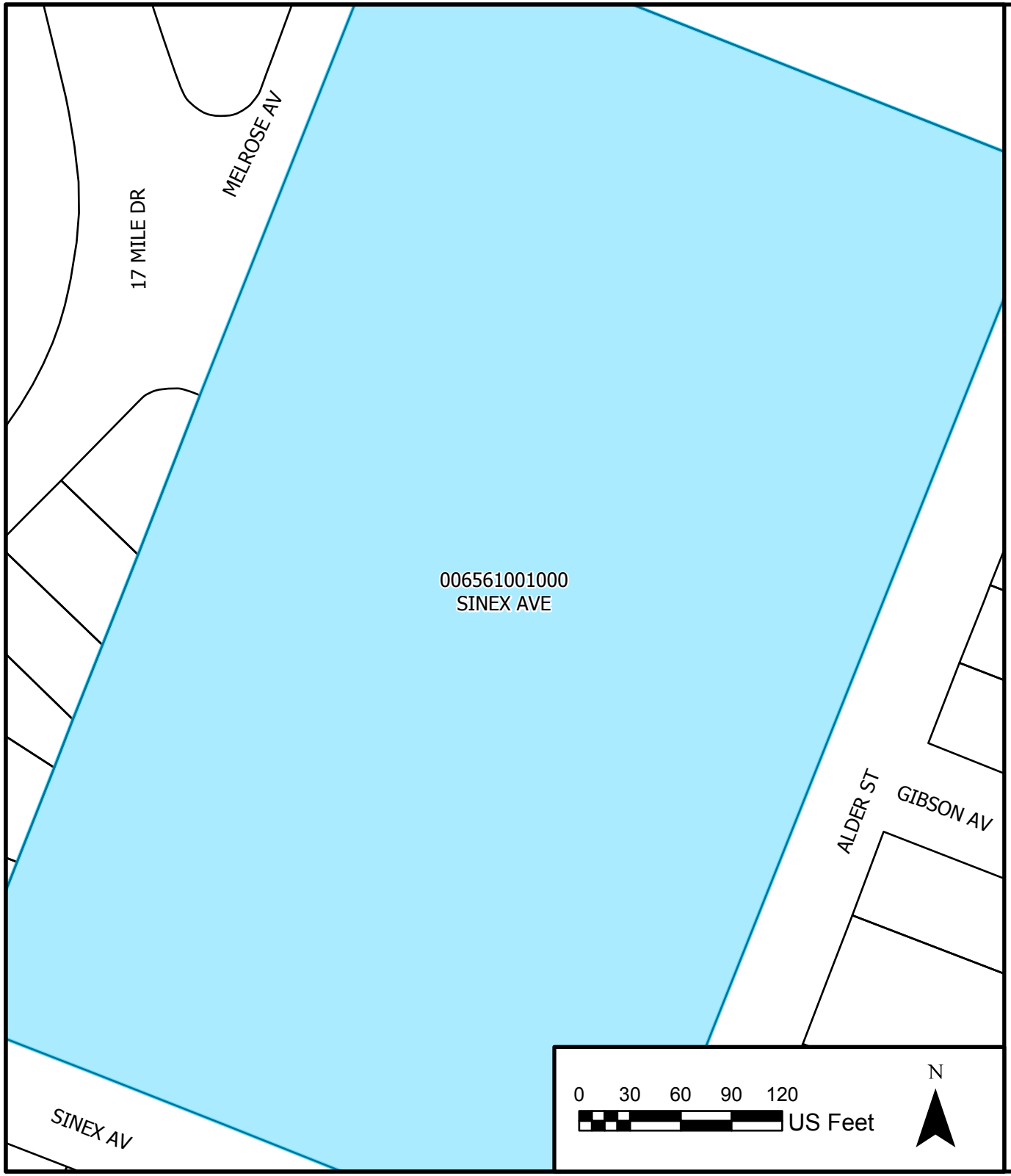
AUTHORIZED REPRESENTATIVE Signature Date

Daniel Gho, Public Works Director/Deputy City Manager

Print Name and Title

FOR OGALS USE ONLY

CEQA Document	Date Received	PO Initials
☐ NOE ☐ NOD		



City of Pacific Grove Parcel Report

APN: 006561001000

Details

Address: SINEX AVE
Zoning: O
City Land Use: Open Space (OS)
Lot & Block: PACIFIC GROVE ADD 5 MUNICIPAL PARK BLK 323

Approximate Acreage: 6.78
Approximate Square Feet: 295543

Area of Special Biological Significance: No
Archaeology Zone: No
Butterfly Habitat: No
Coastal Zone: No
Environmentally Sensitive Habitat Area: No
Historic Resources Inventory: No
Historical Site: No
Septic: No
Water Management Zone: No

Selected Parcel Coordinates: 121°55'45"W 36°37'7"N

Legend

Selected Parcel

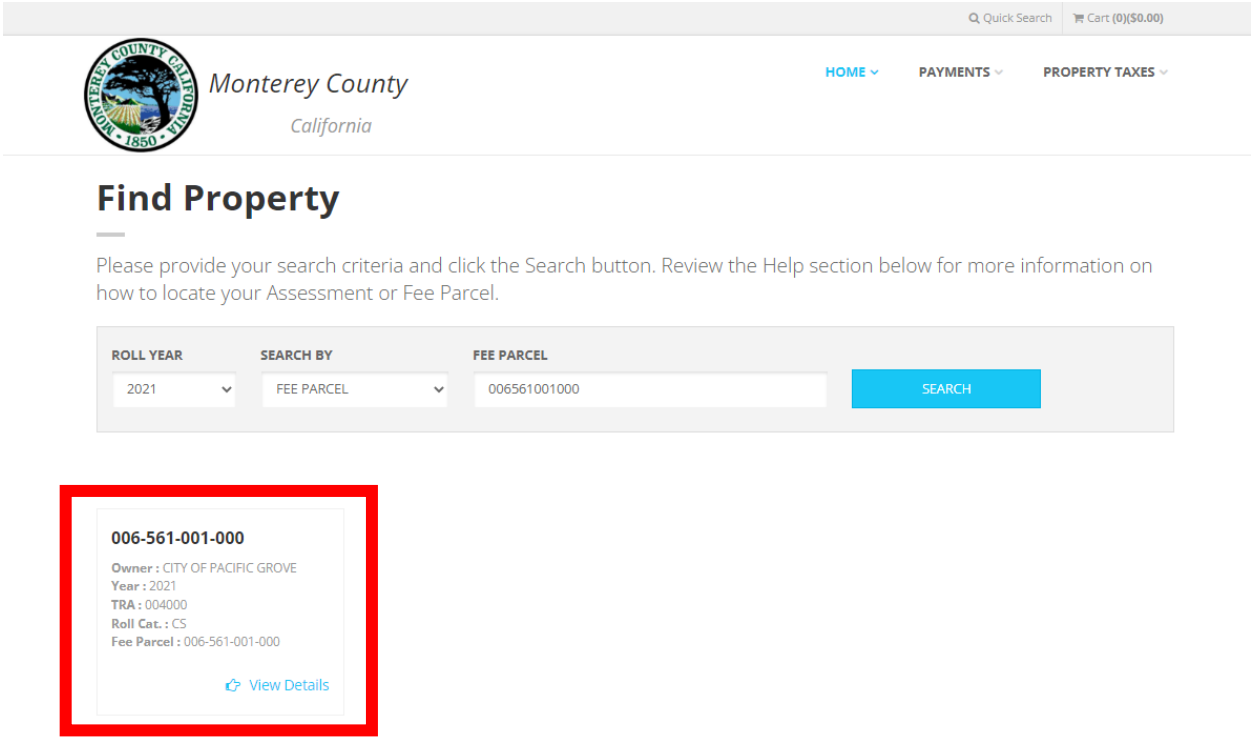
Parcel

DISCLAIMER:

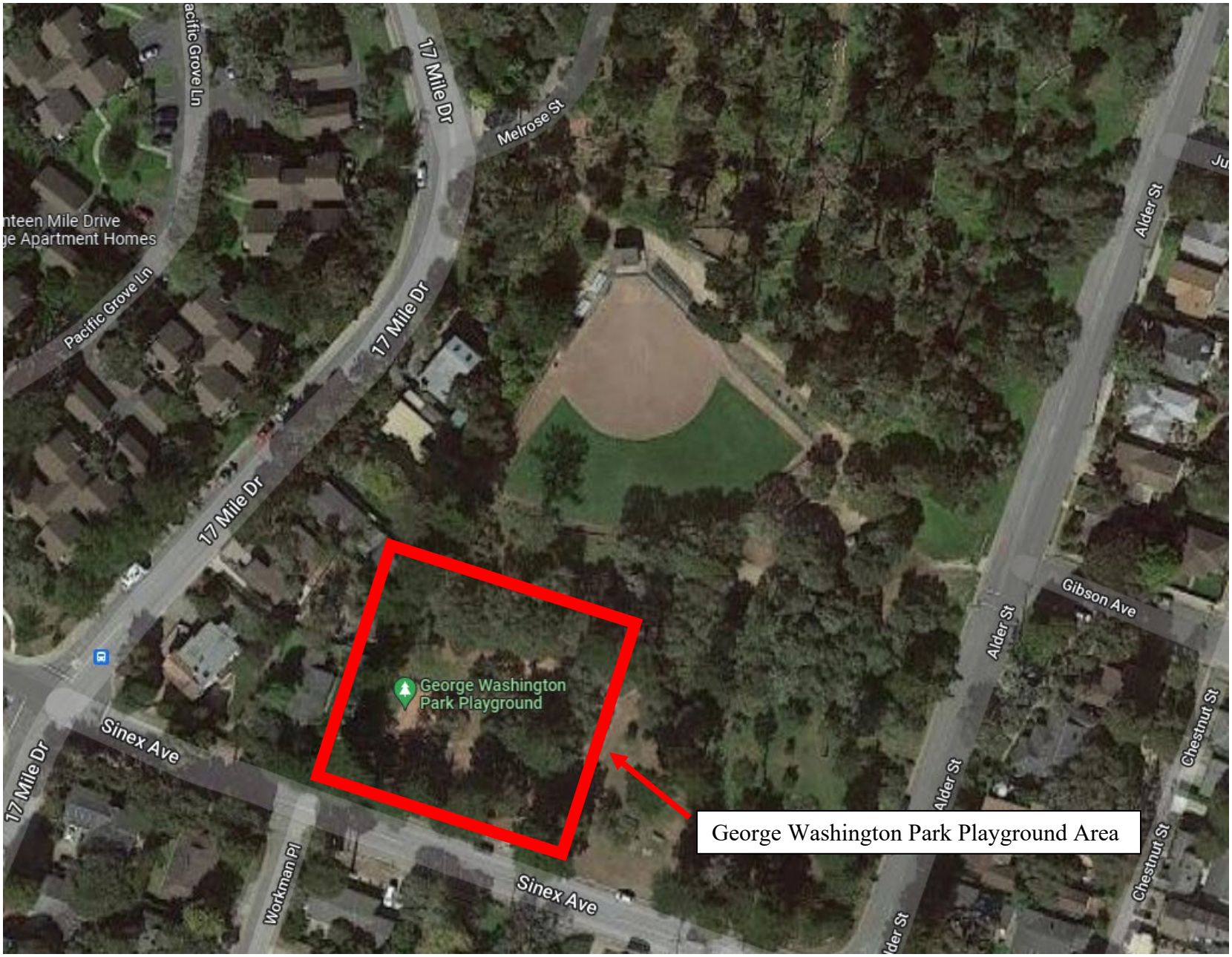
THE CITY OF PACIFIC GROVE HAS MADE EVERY EFFORT TO ASSURE THE ACCURACY OF THIS MAP. THE CITY DOES NOT, HOWEVER, ASSUME ANY RESPONSIBILITY, IMPLIED OR OTHERWISE, AND MAKES NO REPRESENTATION, WARRANT, GUARANTEE OR CLAIM REGARDING MAP ACCURACY.

THE INFORMATION CONTAINED HEREIN WAS BELIEVED TO BE VALID AT THE TIME OF PUBLICATION. THE CITY OF PACIFIC GROVE RESERVES THE RIGHT TO MAKE CHANGES IN THE WEB SITE AT ANY TIME AND WITHOUT NOTICE. THE CITY OF PACIFIC GROVE ASSUMES NO LIABILITY FOR DAMAGES INCURRED DIRECTLY OR INDIRECTLY AS A RESULT OF ERRORS, OMISSIONS OR DISCREPANCIES. THE WEB SITE INCLUDES LINKS TO OTHER WEB SITES NOT CONTROLLED BY THE CITY OF PACIFIC GROVE. THE CITY OF PACIFIC GROVE TAKES NO RESPONSIBILITY FOR THE VIEWS, CONTENT OR ACCURACY OF THE OTHER SITES, NOR DOES IT ENDORSE ANY CONTENT OR PRODUCTS CONTAINED THEREIN.

Date Exported: 3/15/2021


Quick Search
Cart (0)($0.00)
Monterey County
California
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PAYMENTS
PROPERTY TAXES
Find Property
Please provide your search criteria and click the Search button. Review the Help section below for more information on how to locate your Assessment or Fee Parcel.
ROLL YEAR
2021
SEARCH BY
FEE PARCEL
FEE PARCEL
006561001000
SEARCH
006-561-001-000
Owner : CITY OF PACIFIC GROVE
Year : 2021
TRA : 004000
Roll Cat. : CS
Fee Parcel : 006-561-001-000
View Details

Site Plan: George Washington Park Young Children's ADA Compliant Playground




707
709
711
980
711
George Washington
Park Playground
Sinex Ave
Sinex Ave
Installation area for new
Young Children's ADA
Compliant Playground
George Washington Park Playground Area

Before Photos: George Washington Park Young Children's ADA Compliant Playground – April 27th, 2022



Front view of area where new playground will be installed



Side view of area where new playground will be installed



Back view of area where new playground will be installed.

State of California - Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION

GRANT CONTRACT

2018 Parks Bond Act

Per Capita Grant Program

GRANTEE City of Pacific Grove

THE PROJECT PERFORMANCE PERIOD is from July 01, 2018 through June 30, 2024

CONTRACT PERFORMANCE PERIOD is from July 01, 2018 through June 30, 2048

The GRANTEE agrees to the terms and conditions of this Contract, and the State of California, acting through its Director of the Department of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below.

The GRANTEE agrees to complete the GRANT SCOPE(s) as defined in the GRANT SCOPE/Cost Estimate Form or acquisition documentation for the application(s) filed with the State of California.

The General and Special Provisions attached are made a part of and incorporated into the Contract.

City of Pacific Grove
Grantee

By _____
(Signature of Authorized Representative)

Title City Manager

Date _____

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By _____

Date _____

CERTIFICATION OF FUNDING
(For State Use Only)

CONTRACT NO	AMENDMENT NO	FISCAL SUPPLIER I.D.			PROJECT NO.
C9801410		0000013462			
AMOUNT ENCUMBERED BY THIS DOCUMENT		FUND.			
$177,952.00		Drought, Water, Cln Air, Cstl Protc, Outdoor Fund			
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT		ITEM	CHAPTER	STATUTE	FISCAL YEAR
		3790-101-6088	29	18	2021/22
TOTAL AMOUNT ENCUMBERED TO DATE		Reporting Structured.	Account/Alt Account.	ACTIVITY CODE	PROJECT / WORK PHASE
$ $177,952.00		37900091	5432000-5432000000	69801	

I. RECITALS

This CONTRACT is entered into between the California Department of Parks and Recreation (hereinafter referred to as "GRANTOR," "DEPARTMENT" or "STATE") and City of Pacific Grove (hereinafter referred to as "GRANTEE").

The DEPARTMENT hereby grants to GRANTEE a sum (also referred to as "GRANT MONIES") not to exceed _$177,952___, subject to the terms and conditions of this AGREEMENT and the 2018/19 California State Budget, Chapter 29, statutes of 2018, Item number – 3790-101-6088 (appropriation chapter and budget item number hereinafter referred to as "PER CAPITA GRANT"). These funds shall be used for completion of the GRANT SCOPE(S).

The Grant Performance Period is from _July 01, 2018_ to _June 30, 2024_.

II. GENERAL PROVISIONS

A. Definitions

As used in this CONTRACT, the following words shall have the following meanings:

1. The term "ACT" means the California Drought, Water, Parks Climate, Coastal Protection, and Outdoor Access for All Act of 2018, as referred to in section I of this CONTRACT.

2. The term "APPLICATION" means the individual project APPLICATION packet for a project pursuant to the enabling legislation and/or grant program process guide requirements.

3. The term "DEPARTMENT" or "STATE" means the California Department of Parks and Recreation.

4. The term "DEVELOPMENT" means capital improvements to real property by means of, but not limited to, construction, expansion, and/or renovation, of permanent or fixed features of the property.

5. The term "GRANTEE" means the party described as the GRANTEE in Section I of this CONTRACT.

6. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form or acquisition documentation found in each of the APPLICATIONS submitted pursuant to this grant.

7. The term "PROCEDURAL GUIDE" means the document identified as the "Procedural Guide for California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 Per Capita Program." The

PROCEDURAL GUIDE provides the procedures and policies controlling the administration of the grant.

B. Project Execution

1. Subject to the availability of GRANT MONIES, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set forth in the scope described in the enabling legislation and referenced in the APPLICATION, Section I of this CONTRACT, and under the terms and conditions set forth in this CONTRACT.

   The GRANTEE shall assume any obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE(S).

   The GRANTEE agrees to submit any change or alteration from the original GRANT SCOPE(S) in writing to the STATE for prior approval. This applies to any and all changes that occur after STATE has approved the APPLICATION. Changes in the GRANT SCOPE(S) must be approved in writing by the STATE.
2. The GRANTEE shall complete the GRANT SCOPE(S) in accordance with the time of the Performance Period set forth in Section I of this CONTRACT, and under the terms and conditions of this CONTRACT.
3. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq., Title 14, California Code of Regulations, Section 15000 et seq.).
4. The GRANTEE shall comply with all applicable current laws and regulations affecting DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the California Unruh Act (California Civil Code §51 et seq.).

C. Project Costs

1. GRANTEE agrees to abide by the PROCEDURAL GUIDE.
2. GRANTEE acknowledges that STATE may make reasonable changes to its procedures as set forth in the PROCEDURAL GUIDE. If STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.

D. Project Administration

1. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the

grant and any interest earned shall be returned to the STATE within 60 days after project completion or end of the Grant Performance Period, whichever is earlier.

2. The GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made such a request. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the grant performance period, whichever is earlier. The Grant Performance Period is identified in Section I of this CONTRACT.

3. The GRANTEE shall make property or facilities acquired and/or developed pursuant to this contract available for inspection upon request by the STATE.

E. Project Termination

1. Project Termination refers to the non-completion of a GRANT SCOPE. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.
2. The GRANTEE may unilaterally rescind this CONTRACT at any time prior to the commencement of the project. The commencement of the project means the date of the letter notifying GRANTEE of the award or when the funds are appropriated, whichever is later. After project commencement, this CONTRACT may be rescinded, modified or amended only by mutual agreement in writing between the GRANTEE and the STATE, unless the provisions of this CONTRACT provide that mutual agreement is not required.
3. Failure by the GRANTEE to comply with the terms of the (a) PROCEDURAL GUIDE, (b) any legislation applicable to the ACT, (c) this CONTRACT as well as any other grant contracts, specified or general, that GRANTEE has entered into with STATE, may be cause for suspension of all obligations of the STATE unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.
4. Any breach of any term, provision, obligation or requirement of this CONTRACT by the GRANTEE shall be a default of this CONTRACT. In the case of any default by GRANTEE, STATE shall be entitled to all remedies available under law and equity, including but not limited to: a) Specific Performance; b) Return of all GRANT MONIES; c) Payment to the STATE of the fair market value of the project property or the actual sales price, whichever is higher; and d) Payment to the STATE of the costs of enforcement of this CONTRACT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.
5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete and the GRANT PROJECT is open to the public.

F. Budget Contingency Clause

If funding for any fiscal year is reduced or deleted by the budget act for purposes of this program, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a CONTRACT amendment to GRANTEE to reflect the reduced grant amount. This Paragraph shall not require the mutual agreement as addressed in Paragraph E, provision 2, of this CONTRACT.

G. Hold Harmless

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this CONTRACT except claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.

2. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.

3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the GRANTEE agrees to pay the STATE's litigation costs, expenses, and reasonable attorney fees.

4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

H. Financial Records

1. The GRANTEE shall maintain satisfactory financial accounts, documents, including loan documents, and all other records for the project and to make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project

termination or issuance of final payment, whichever is later.

2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.

3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this contract or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this contract. Such accounts, documents, and records shall be retained by the GRANTEE for at least five years following project termination or issuance of final payment, whichever is later.

4. The GRANTEE shall use a generally accepted accounting system.

I. Use of Facilities

1. The GRANTEE agrees that the GRANTEE shall operate and maintain the property acquired or developed with the GRANT MONIES, for the duration of the Contract Performance Period.

2. The GRANTEE agrees that, during the Contract Performance Period, the GRANTEE shall use the property acquired or developed with GRANT MONIES under this contract only for the purposes of this grant and no other use, sale, or other disposition or change of the use of the property to one not consistent with its purpose shall be permitted except as authorized by the STATE and the property shall be replaced with property of equivalent value and usefulness as determined by the STATE.

3. The property acquired or developed may be transferred to another entity if the successor entity assumes the obligations imposed under this CONTRACT and with the approval of STATE.

4. Any real Property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the STATE provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make the STATE a guarantor or a surety for any debt or mitigation, nor does it waive the STATE'S rights to enforce performance under the Grant CONTRACT.

5. All real property, or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of GRANT MONIES received from STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.

6. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

J. Nondiscrimination

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this contract.

2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project contract or under provisions of the enabling legislation and/or grant program.

K. Severability

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the CONTRACT which can be given effect without the invalid provision or application, and to this end the provisions of this CONTRACT are severable.

L. Liability

1. STATE assumes no responsibility for assuring the safety or standards of construction, site improvements or programs related to the GRANT SCOPE. The STATE'S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

2. GRANTEE will secure adequate liability insurance, performance bond, and/or other security necessary to protect the GRANTEE's and STATE'S interest against poor workmanship, fraud, or other potential loss associated with completion of the grant project.

M. Assignability

Without the written consent of the STATE, the GRANTEE'S interest in and responsibilities under this CONTRACT shall not be assignable by the GRANTEE either in whole or in part.

N. Use of Grant Monies

GRANTEE shall not use any grant funds (including any portion thereof) for the purpose of making any leverage loan, pledge, promissory note or similar financial device or transaction, without: 1) the prior written approval of the STATE; and 2) any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the project property shall be completely subordinated to this CONTRACT through a Subordination Agreement provided and approved by the STATE, signed by all parties involved in the transaction, and recorded in the County Records against the fee title of the project property.

O. Section Headings

The headings and captions of the various sections of this CONTRACT have been inserted only for the purpose of convenience and are not a part of this CONTRACT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this CONTRACT.

P. Waiver

Any failure by a party to enforce its rights under this CONTRACT, in the event of a breach, shall *not* be construed as a waiver of said rights; and the waiver of any breach under this CONTRACT shall *not* be construed as a waiver of any subsequent breach.

City of Pacific Grove _____
GRANTEE

By:_____
Signature of Authorized Representative

Title: _____

Date: _____

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By: _____

Date: _____

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: May 18, 2022

SUBJECT: Check Register Report – April 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 April 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

April Check Register Report

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	83724 V	10/21/16	6237	MERRILL OLINGER	131	5215	MILEAGE REIMBURSEME	0.00	-35.86
101	100387 V	08/04/21	2894	WILSON'S PLUMBING &	503	5223	GOLF COURSE	0.00	-1,293.15
101	101110 V	10/27/21	2772	VALLEY SAW & GARDEN	503	5223		0.00	-927.53
101	101318 V	11/23/21	9516	JONATHAN FERRANTELL	01	214	DAM DEPOSIT REFUND	0.00	-160.00
101	101318 V	11/23/21	9516	JONATHAN FERRANTELL	01	214	DAM. DEPOSIT REFUND	0.00	-500.00
TOTAL CHECK								0.00	-660.00
101	101522 V	12/23/21	4948	CREATIVE PRODUCT SO	301	5291	DARE GRAD CERTIFICA	0.00	-92.65
101	101522 V	12/23/21	4948	CREATIVE PRODUCT SO	301	5291	DARE GRADUATION SHI	0.00	-627.49
TOTAL CHECK								0.00	-720.14
101	101866 V	02/04/22	9551	PETE RUIZ	01	4401	REFUND REPORT FEE	0.00	-191.00
101	102348 V	03/30/22	1988	O'REILLY & ASSOCIAT	502	5309	MECH STOCK	0.00	-39.12
101	102348 V	03/30/22	1988	O'REILLY & ASSOCIAT	505	5226	GRINDER 1	0.00	-53.45
101	102348 V	03/30/22	1988	O'REILLY & ASSOCIAT	502	6001	MECH STOCK	0.00	-467.63
101	102348 V	03/30/22	1988	O'REILLY & ASSOCIAT	502	5309	MECH STOCK	0.00	-49.83
TOTAL CHECK								0.00	-610.03
101	102380	04/01/22	6237	MERRILL OLINGER	131	5215	MILAGE REIMB	0.00	35.86
101	102383	04/05/22	2133	PERS	513	5145	MARCH 2022 UAL	0.00	250.00
101	102383	04/05/22	2133	PERS	101	5145	MARCH 2022 UAL	0.00	416.68
101	102383	04/05/22	2133	PERS	133	5145	MARCH 2022 UAL	0.00	2,333.33
101	102383	04/05/22	2133	PERS	502	5145	MARCH 2022 UAL	0.00	2,583.33
101	102383	04/05/22	2133	PERS	501	5145	MARCH 2022 UAL	0.00	3,166.67
101	102383	04/05/22	2133	PERS	421	5145	MARCH 2022 UAL	0.00	4,833.33
101	102383	04/05/22	2133	PERS	121	5145	MARCH 2022 UAL	0.00	8,916.67
101	102383	04/05/22	2133	PERS	503	5145	MARCH 2022 UAL	0.00	9,083.33
101	102383	04/05/22	2133	PERS	131	5145	MARCH 2022 UAL	0.00	10,250.00
101	102383	04/05/22	2133	PERS	401	5145	MARCH 2022 UAL	0.00	10,333.33
101	102383	04/05/22	2133	PERS	201	5145	MARCH 2022 UAL	0.00	12,333.33
101	102383	04/05/22	2133	PERS	505	5145	MARCH 2022 UAL	0.00	16,583.33
101	102383	04/05/22	2133	PERS	351	5145	MARCH 2022 UAL	0.00	88,862.58
101	102383	04/05/22	2133	PERS	301	5145	MARCH 2022 UAL	0.00	105,500.00
TOTAL CHECK								0.00	275,445.91
101	102385	04/08/22	9499	CSI HR GROUP	121	5202	PERSONNEL PERFORMAN	0.00	920.00
101	102385	04/08/22	9499	CSI HR GROUP	101	5202	CITY COUNCIL - ASSI	0.00	440.00
TOTAL CHECK								0.00	1,360.00
101	102386	04/08/22	8356	PENINSULA TINT & WI	401	5223	WINDOW TINTING	0.00	4,128.65
101	102387	04/08/22	2952	AFLAC	01	202	DED:5291 AFLAC P/T	0.00	69.24
101	102387	04/08/22	2952	AFLAC	01	202	DED:5200 AFLAC PREM	0.00	717.32
101	102387	04/08/22	2952	AFLAC	01	202	DED:5201 AFLAC P/T	0.00	1,776.62
TOTAL CHECK								0.00	2,563.18
101	102388	04/08/22	2935	CALIF LAW ENFORCMEN	01	202	DED:3200 LTD PD	0.00	514.50

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:531 HEALTH	0.00	350.62
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:109 HEALTH	0.00	507.91
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:115 HEALTH	0.00	701.23
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:2072 HEALTH	0.00	862.50
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:120 HEALTH	0.00	1,015.82
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:2225 HEALTH INS	0.00	1,057.01
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:1 HEALTH	0.00	1,057.01
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:0563 HEALTH FAM	0.00	1,114.18
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:118 HEALTH	0.00	1,294.10
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:110 HEALTH	0.00	2,031.62
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:2071 HEALTH	0.00	2,397.00
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:103 HEALTH	0.00	2,454.34
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:102 HEALTH	0.00	2,748.24
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:106 HEALTH	0.00	3,171.06
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:104 HEALTH	0.00	3,506.15
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:105 HEALTH	0.00	3,646.40
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:533 HEALTH	0.00	3,646.40
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:2073 HEALTH FAM	0.00	4,438.00
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:2074 HEALTH	0.00	911.50
101	102389	04/08/22	1	CALPERS HEALTH	01	202	DED:100 HEALTH	0.00	6,870.63
TOTAL CHECK								0.00	43,781.72
101	102390	04/08/22	2939	CALPERS LONG TERM C	01	202	DED:6000 LTC	0.00	144.26
101	102391	04/08/22	3134	CITY OF PACIFIC GRO	01	202	DED:3300 AFLAC DEP	0.00	390.28
101	102391	04/08/22	3134	CITY OF PACIFIC GRO	01	202	DED:3301 AFLAC MED	0.00	2,578.02
TOTAL CHECK								0.00	2,968.30
101	102392	04/08/22	3393	EFT	01	202	DED:*FM MEDICARE	0.00	10,009.86
101	102392	04/08/22	3393	EFT	01	202	DED:*SCA STATE TAX	0.00	14,455.72
101	102392	04/08/22	3393	EFT	01	202	DED:*FT FEDERAL TX	0.00	37,744.57
TOTAL CHECK								0.00	62,210.15
101	102393	04/08/22	9589	FOREMAN FINANCIAL,	01	202	DED:7506 WAGE ORDER	0.00	555.29
101	102394	04/08/22	2946	PACIFIC GROVE CITY	01	202	DED:7000 ASSOC DUES	0.00	783.75
101	102395	04/08/22	2938	MASS MUTUAL (457 PL	01	202	DED:3999 ROTH IRA	0.00	765.00
101	102395	04/08/22	2938	MASS MUTUAL (457 PL	01	202	DED:4000 DEF COMP	0.00	13,561.57
TOTAL CHECK								0.00	14,326.57
101	102396	04/08/22	2936	MTRY COUNTY DEPT OF	01	202	DED:0023 GARNISH	0.00	236.30
101	102397	04/08/22	2949	PACIFIC GROVE MANAG	01	202	DED:7203 ASSOC DUES	0.00	20.00
101	102398	04/08/22	2051	CITY OF PACIFIC GRO	01	202	DED:1003 WORK COMP	0.00	5,890.29
101	102398	04/08/22	2051	CITY OF PACIFIC GRO	01	202	DED:1006 WORK COMP	0.00	6.39
101	102398	04/08/22	2051	CITY OF PACIFIC GRO	01	202	DED:1009 WORK COMP	0.00	66.15
101	102398	04/08/22	2051	CITY OF PACIFIC GRO	01	202	DED:1005 WORK COMP	0.00	1,262.54
101	102398	04/08/22	2051	CITY OF PACIFIC GRO	01	202	DED:1010 WORK COMP	0.00	2,981.27
TOTAL CHECK								0.00	10,206.64

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102399	04/08/22	2052	CITY OF PACIFIC GRO	01	202	DED:7510 PERS REIMB	0.00	44.13
101	102400	04/08/22	2053	CITY OF PACIFIC GRO	01	202	DED:2101 DENTAL	0.00	75.80
101	102400	04/08/22	2053	CITY OF PACIFIC GRO	01	202	DED:201 DENTAL	0.00	187.95
101	102400	04/08/22	2053	CITY OF PACIFIC GRO	01	202	DED:202 DENTAL	0.00	189.64
101	102400	04/08/22	2053	CITY OF PACIFIC GRO	01	202	DED:2102 DENTAL	0.00	375.90
101	102400	04/08/22	2053	CITY OF PACIFIC GRO	01	202	DED:200 DENTAL	0.00	606.40
101	102400	04/08/22	2053	CITY OF PACIFIC GRO	01	202	DED:2103 DENTAL FAM	0.00	663.74
TOTAL CHECK								0.00	2,099.43
101	102401	04/08/22	2054	CITY OF PACIFIC GRO	01	202	DED:0005 SUTA	0.00	125.94
101	102402	04/08/22	2133	PERS	01	202	DED:0025 PERS RT MS	0.00	-3.38
101	102402	04/08/22	2133	PERS	01	202	DED:0004 SURV BEN	0.00	84.63
101	102402	04/08/22	2133	PERS	01	202	DED:0022 PERS SP MS	0.00	113.75
101	102402	04/08/22	2133	PERS	01	202	DED:0018 PERS SP SF	0.00	376.54
101	102402	04/08/22	2133	PERS	01	202	DED:08 PERS OTHER	0.00	398.01
101	102402	04/08/22	2133	PERS	01	202	DED:2001 PERS	0.00	830.26
101	102402	04/08/22	2133	PERS	01	202	DED:0009 PERS OTHER	0.00	1,028.78
101	102402	04/08/22	2133	PERS	01	202	DED:2000 PERS EMPLY	0.00	1,109.58
101	102402	04/08/22	2133	PERS	01	202	DED:0002 PERS	0.00	5,432.85
101	102402	04/08/22	2133	PERS	01	202	DED:07 PERS CITY	0.00	6,210.61
101	102402	04/08/22	2133	PERS	01	202	DED:0017 PERS RG SF	0.00	6,534.35
101	102402	04/08/22	2133	PERS	01	202	DED:0011 PERS ER SF	0.00	6,980.01
101	102402	04/08/22	2133	PERS	01	202	DED:0021 PERS REG M	0.00	7,578.70
101	102402	04/08/22	2133	PERS	01	202	DED:0020 PERS ER M3	0.00	8,645.95
101	102402	04/08/22	2133	PERS	01	202	DED:0006 PERS CITY	0.00	11,151.67
101	102402	04/08/22	2133	PERS	01	202	DED:01 PERS	0.00	12,276.69
TOTAL CHECK								0.00	68,749.00
101	102403	04/08/22	2943	POLICE OFFICERS ASS	01	202	DED:7204 ASSOC DUES	0.00	7.00
101	102403	04/08/22	2943	POLICE OFFICERS ASS	01	202	DED:7205 ASSOC DUES	0.00	881.04
TOTAL CHECK								0.00	888.04
101	102404	04/08/22	2940	LEGAL SHIELD	01	202	DED:6100 LEGAL SVC	0.00	14.95
101	102405	04/08/22	7956	STATE DISABILITY TA	01	202	DED:0026 SDI	0.00	3,856.22
101	102406	04/08/22	8211	STANDARD INSURANCE	01	202	DED:3500 LIFE INS	0.00	1,354.50
101	102407	04/08/22	8352	TRANSAMERICA EMPLOY	01	202	DED:5202 TRANSAMERI	0.00	627.08
101	102408	04/08/22	4177	UNION BANK OF CALIF	01	202	DED:4005 PARS-457	0.00	839.70
101	102409	04/08/22	632	VISION SERVICE PLAN	01	202	DED:302 VISION	0.00	60.00
101	102409	04/08/22	632	VISION SERVICE PLAN	01	202	DED:2502 VISION	0.00	62.82
101	102409	04/08/22	632	VISION SERVICE PLAN	01	202	DED:301 VISION	0.00	75.00
101	102409	04/08/22	632	VISION SERVICE PLAN	01	202	DED:300 VISION	0.00	216.38
101	102409	04/08/22	632	VISION SERVICE PLAN	01	202	DED:2503 VISION FAM	0.00	285.01
TOTAL CHECK								0.00	699.21

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102411	04/14/22	721	D & S PAINTING INC.	503	5223	MUNI BASEBALL FIELD	0.00	975.00
101	102412	04/15/22	4299	NOLAND, HAMERLY, ET	111	5205	LEGAL SERVICES	0.00	3,248.50
101	102414	04/15/22	4943	US BANK	121	5215	HARVEY CC MAR 2022	0.00	354.93
101	102414	04/15/22	4943	US BANK	301	5215	FRANCIS CC MAR 2022	0.00	679.50
101	102414	04/15/22	4943	US BANK	201	5221	HUNTER CC MAR 2022	0.00	52.50
101	102414	04/15/22	4943	US BANK	503	5223	GHO CC MAR 2022	0.00	389.11
101	102414	04/15/22	4943	US BANK	101	5221	LIVIAN CC MAR 2022	0.00	929.59
101	102414	04/15/22	4943	US BANK	201	5211	WYATT CC MAR 2022	0.00	42.96
101	102414	04/15/22	4943	US BANK	133	5212	KHASIMI CC MAR 2022	0.00	556.48
101	102414	04/15/22	4943	US BANK	301	5291	FRANCIS CC MAR 2022	0.00	1,131.73
101	102414	04/15/22	4943	US BANK	421	5361	CLARK CC MAR 2022	0.00	1,617.74
101	102414	04/15/22	4943	US BANK	121	5216	LIVIAN CC MAR 2022	0.00	149.00
101	102414	04/15/22	4943	US BANK	133	5224	KHASIMI CC MAR 2022	0.00	604.20
101	102414	04/15/22	4943	US BANK	501	5261	GHO CC MAR 2022	0.00	170.35
101	102414	04/15/22	4943	US BANK	121	5261	HARVEY CC MAR 2022	0.00	175.65
101	102414	04/15/22	4943	US BANK	101	5291	LINDSTROM CC MAR 20	0.00	223.23
101	102414	04/15/22	4943	US BANK	131	5291	HANNAH CC MAR 2022	0.00	510.26
101	102414	04/15/22	4943	US BANK	301	5291	PD TRAVEL CC MAR 20	0.00	574.77
101	102414	04/15/22	4943	US BANK	401	5301	GODWIN CC MAR 2022	0.00	174.87
101	102414	04/15/22	4943	US BANK	301	5301	FRANCIS CC MAR 2022	0.00	339.89
101	102414	04/15/22	4943	US BANK	301	5301	PD TRAVEL CC MAR 20	0.00	619.86
101	102414	04/15/22	4943	US BANK	301	5275	SANTOS CC MAR 2022	0.00	103.56
101	102414	04/15/22	4943	US BANK	501	5215	GHO CC MAR 2022	0.00	38.09
101	102414	04/15/22	4943	US BANK	201	5215	WYATT CC MAR 2022	0.00	81.68
101	102414	04/15/22	4943	US BANK	301	5215	MADALONE CC MAR 202	0.00	260.37
101	102414	04/15/22	4943	US BANK	301	5215	PD TRAVEL CC MAR 20	0.00	2,645.04
101	102414	04/15/22	4943	US BANK	133	5307	KHASIMI CC MAR 2022	0.00	3,284.28
101	102414	04/15/22	4943	US BANK	133	5229	KHASIMI CC MAR 2022	0.00	14.99
101	102414	04/15/22	4943	US BANK	121	5301	LINDSTROM CC MAR 20	0.00	23.13
TOTAL CHECK								0.00	15,747.76
101	102415	04/15/22	6411	QUADIENT LEASING US	501	5225	FEB-APR MAIL MACHIN	0.00	114.57
101	102415	04/15/22	6411	QUADIENT LEASING US	301	5225	FEB-APR MAIL MACHIN	0.00	199.25
101	102415	04/15/22	6411	QUADIENT LEASING US	101	5225	FEB-APR MAIL MACHIN	0.00	14.87
101	102415	04/15/22	6411	QUADIENT LEASING US	421	5225	FEB-APR MAIL MACHIN	0.00	14.97
101	102415	04/15/22	6411	QUADIENT LEASING US	401	5225	FEB-APR MAIL MACHIN	0.00	24.94
101	102415	04/15/22	6411	QUADIENT LEASING US	131	5225	FEB-APR MAIL MACHIN	0.00	29.92
101	102415	04/15/22	6411	QUADIENT LEASING US	201	5225	FEB-APR MAIL MACHIN	0.00	44.84
101	102415	04/15/22	6411	QUADIENT LEASING US	121	5225	FEB-APR MAIL MACHIN	0.00	44.84
TOTAL CHECK								0.00	488.20
101	102416	04/15/22	8890	4LEAF	201	5201	BUILDING DEPARTMENT	0.00	7,947.28
101	102416	04/15/22	8890	4LEAF	201	5201	BUILDING DEPARTMENT	0.00	56,426.35
101	102416	04/15/22	8890	4LEAF	505	5201	FY21/22 TRAFFIC ENG	0.00	1,125.00
TOTAL CHECK								0.00	65,498.63
101	102417	04/15/22	5621	ACCENT CLEAN & SWEE	504	5201	FY21/22 STREET SWEE	0.00	13,266.00
101	102418	04/15/22	4965	ALVAREZ TECHNOLOGY	133	5201	AFTER HOURS, WEEKEN	0.00	450.00
101	102418	04/15/22	4965	ALVAREZ TECHNOLOGY	133	5201	AFTER HOURS, WEEKEN	0.00	3,963.00

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
TOTAL CHECK								0.00	4,413.00
101	102419	04/15/22	8330	AMAZON CAPITAL SERV	201	5301	OFFICE SUPPLIES	0.00	179.06
101	102419	04/15/22	8330	AMAZON CAPITAL SERV	131	5301	OFFICE SUPPLIES	0.00	137.99
TOTAL CHECK								0.00	317.05
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	936.28
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	1,076.68
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	1,224.53
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	1,394.34
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	2,353.55
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305		0.00	3,473.04
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	428.58
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	435.38
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	512.21
101	102420	04/15/22	106	AMERICAN SUPPLY COM	421	5309	REC SUPPLIES	0.00	445.88
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	341.48
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	79.77
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	88.25
101	102420	04/15/22	106	AMERICAN SUPPLY COM	503	5305	SUPPLIES	0.00	72.37
TOTAL CHECK								0.00	12,862.34
101	102421	04/15/22	107	AMERICAN TIME & SIG	503	5223	CITY HALL CLOCK	0.00	470.83
101	102421	04/15/22	107	AMERICAN TIME & SIG	503	5223	CITY HALL CLOCK	0.00	484.91
TOTAL CHECK								0.00	955.74
101	102422	04/15/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	101.60
101	102422	04/15/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	101.60
101	102422	04/15/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	104.60
101	102422	04/15/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	104.60
TOTAL CHECK								0.00	412.40
101	102423	04/15/22	5363	AT&T CALNET 3	133	5212	ADMIN	0.00	23.12
101	102423	04/15/22	5363	AT&T CALNET 3	133	5206		0.00	22.56
TOTAL CHECK								0.00	45.68
101	102424	04/15/22	7061	BEACH HOUSE BAR AND	503	5201	BEACH HOUSE LP BATH	0.00	1,800.00
101	102426	04/15/22	5131	BEST BEST & KRIEGER	111	5205	ON CALL DEVELOPMENT	0.00	1,896.00
101	102426	04/15/22	5131	BEST BEST & KRIEGER	201	5202	ASSIST & REVIEW HOU	0.00	276.50
TOTAL CHECK								0.00	2,172.50
101	102427	04/15/22	9530	BLUE MOON NATIVE GA	503	5223	PERKING PARK	0.00	261.00
101	102430	04/15/22	8848	BRYCE CONSULTING IN	121	5237	COMPENSATION STUDY	0.00	510.00
101	102430	04/15/22	8848	BRYCE CONSULTING IN	121	5237	COMPENSATION STUDY	0.00	3,230.00
TOTAL CHECK								0.00	3,740.00
101	102431	04/15/22	5378	CA BUILDING STANDAR	01	231	CBSB JAN-MAR 2022	0.00	334.80
101	102432	04/15/22	395	CA DEPT OF CONSERVA	01	219	SMIP JAN-MAR 2022	0.00	683.88

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102433	04/15/22	402	CA DEPT OF JUSTICE	121	5201	DOJ APPLICANT BG CH	0.00	192.00
101	102435	04/15/22	7769	CARL MOUNTEER	01	4203	REFUND	0.00	218.40
101	102436	04/15/22	522	CDW GOVERNMENT INC	133	5229	FIREWALL & WIFI SOF	0.00	12,264.65
101	102437	04/15/22	3955	CENTRAL COAST SURVE	131	5201	STR 141 17TH ST	0.00	500.00
101	102438	04/15/22	5198	CODE PUBLISHING, IN	121	5201	CUMULATIVE SUPPLEME	0.00	264.00
101	102439	04/15/22	5171	COMCAST	133	5206	INTERNET PW	0.00	106.16
101	102440	04/15/22	4948	CREATIVE PRODUCT SO	301	5291	DARE GRADUATION TSH	0.00	418.32
101	102442	04/15/22	846	DROUGHT RESISTANT N	503	5223	NURSERY SUPPLIES	0.00	85.15
101	102443	04/15/22	3970	ALHAMBRA & SIERRA S	421	5201	WATER SERVICE	0.00	139.14
101	102445	04/15/22	7424	EDGES ELECTRICAL GR	503	5223		0.00	1.89
101	102445	04/15/22	7424	EDGES ELECTRICAL GR	503	5223	STOCK	0.00	300.81
TOTAL CHECK								0.00	302.70
101	102446	04/15/22	9562	ELLIS INVESTIGATION	121	5237	IMPARTIAL WORPLACE	0.00	21,740.00
101	102448	04/15/22	9601	ERIC BARTHEL III	01	220	SALES TAX ON LINER	0.00	20.15
101	102449	04/15/22	4173	FASTENAL	503	5223	TOOL BATTERY	0.00	142.35
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PW	0.00	10.85
101	102450	04/15/22	592	FOREST HILL ACE HAR	411	5223		0.00	18.90
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PLATT PARK	0.00	25.19
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PLATT PARK	0.00	40.63
101	102450	04/15/22	592	FOREST HILL ACE HAR	505	5331		0.00	20.22
101	102450	04/15/22	592	FOREST HILL ACE HAR	505	5331		0.00	76.06
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PW	0.00	2.16
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PW	0.00	4.88
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PW	0.00	6.48
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PW	0.00	8.11
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	PW	0.00	9.78
101	102450	04/15/22	592	FOREST HILL ACE HAR	502	5309		0.00	3.80
101	102450	04/15/22	592	FOREST HILL ACE HAR	503	5223	JEWEL PARK	0.00	14.33
TOTAL CHECK								0.00	241.39
101	102451	04/15/22	9588	GENUINE PARTS COMPA	503	5223	CLUB HOUSE	0.00	7.79
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	503	5223	B&G	0.00	16.29
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	503	5223	B&G	0.00	19.88
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	503	5223	B&G	0.00	27.82
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	513	5309	FORESTRY	0.00	35.88
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	513	5309	FORESTRY	0.00	44.07
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	503	5223	B&G	0.00	37.16
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	503	5223	B&G	0.00	194.42

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	513	5309	FORESTRY	0.00	221.34
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	505	5309	STREETS	0.00	238.69
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	505	5309	STREETS	0.00	140.29
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	503	5223	B&G	0.00	141.59
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	505	5309	STREETS	0.00	61.58
TOTAL CHECK								0.00	1,179.01
101	102455	04/15/22	8975	HEIHACHIRO TAKARABE	421	5208	CONTRACTOR PAYMENT	0.00	140.00
101	102456	04/15/22	8993	HR & ASSOCIATES	225	5209	ATC PLANNING SERVIC	0.00	3,762.50
101	102457	04/15/22	7433	IPS GROUP, INC	301	5224	PARKING METTER MAIN	0.00	777.99
101	102457	04/15/22	7433	IPS GROUP, INC	301	5213	IPS METER BANK FEES	0.00	1,450.44
TOTAL CHECK								0.00	2,228.43
101	102458 V	04/15/22	7529	JOCELYN FRANCIS	301	5215	CAPE ANNUAL TRAININ	0.00	-197.25
101	102458	04/15/22	7529	JOCELYN FRANCIS	301	5215	CAPE ANNUAL TRAININ	0.00	197.25
TOTAL CHECK								0.00	0.00
101	102460	04/15/22	9572	KSBW	201	5471	ADVERTISING - ECONO	0.00	4,900.00
101	102461	04/15/22	1523	LIEBERT CASSIDY WHI	121	5261	EMPLOYMENT LAW SUBS	0.00	1,000.00
101	102461	04/15/22	1523	LIEBERT CASSIDY WHI	301	5205	PD EMPLYMENT LEGAL	0.00	624.00
101	102461	04/15/22	1523	LIEBERT CASSIDY WHI	301	5205	PD EMPLOYMENT LEGAL	0.00	1,167.00
101	102461	04/15/22	1523	LIEBERT CASSIDY WHI	121	5202	POA NEGOTIATIONS	0.00	1,053.00
101	102461	04/15/22	1523	LIEBERT CASSIDY WHI	121	5202	POA NEGOTIATIONS	0.00	1,404.00
TOTAL CHECK								0.00	5,248.00
101	102462	04/15/22	8559	MICHAELA BASANESE	301	5215	CAPE ANNUAL TRAININ	0.00	184.50
101	102463	04/15/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	72.33
101	102463	04/15/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	72.33
101	102463	04/15/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	72.33
101	102463	04/15/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	72.33
101	102463	04/15/22	1693	MISSION LINEN SUPPL	351	5291	LINEN SERVICES FY 2	0.00	72.33
TOTAL CHECK								0.00	361.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	421	5201	LINEN AND UNIFORM C	0.00	16.61
101	102466	04/15/22	1694	MISSION UNIFORM SER	421	5201	LINEN AND UNIFORM C	0.00	69.88
101	102466	04/15/22	1694	MISSION UNIFORM SER	421	5201	LINEN AND UNIFORM C	0.00	69.88
101	102466	04/15/22	1694	MISSION UNIFORM SER	421	5201	LINEN AND UNIFORM C	0.00	69.88
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	13.17
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	13.17
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	13.16

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	13.17
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	13.17
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	13.17
101	102466	04/15/22	1694	MISSION UNIFORM SER	421	5201	LINEN AND UNIFORM C	0.00	12.84
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	351	5291	LINEN AND UNIFORM C	0.00	12.11
101	102466	04/15/22	1694	MISSION UNIFORM SER	351	5291	LINEN AND UNIFORM C	0.00	12.11
101	102466	04/15/22	1694	MISSION UNIFORM SER	351	5291	LINEN AND UNIFORM C	0.00	12.11
101	102466	04/15/22	1694	MISSION UNIFORM SER	421	5201	LINEN AND UNIFORM C	0.00	12.84
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	78.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	78.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	78.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	502	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	503	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	76.64
101	102466	04/15/22	1694	MISSION UNIFORM SER	505	5309	LINEN AND UNIFORM C	0.00	76.64
TOTAL CHECK								0.00	1,641.31
101	102467	04/15/22	3807	MONTEREY COUNTY WEE	201	5221	WWL 2ND READ	0.00	126.95
101	102468	04/15/22	1798	MONTEREY ONE WATER	501	5222		0.00	180.12
101	102468	04/15/22	1798	MONTEREY ONE WATER	401	5222		0.00	180.12
101	102468	04/15/22	1798	MONTEREY ONE WATER	503	5222		0.00	3,019.40
101	102468	04/15/22	1798	MONTEREY ONE WATER	421	5222		0.00	540.36
101	102468	04/15/22	1798	MONTEREY ONE WATER	131	5222		0.00	630.42
101	102468	04/15/22	1798	MONTEREY ONE WATER	411	5222		0.00	90.06
TOTAL CHECK								0.00	4,640.48
101	102471	04/15/22	9602	MONTEREY PENINSULA	01	4401	REFUND	0.00	191.00
101	102472	04/15/22	1802	CITY OF MONTEREY	351	5227	UNIT 6414	0.00	3,583.02
101	102472	04/15/22	1802	CITY OF MONTEREY	351	5227	UNIT 6424	0.00	6,481.63
101	102472	04/15/22	1802	CITY OF MONTEREY	351	5201	ANNUAL FIRE SERVICE	0.00	226,572.93
TOTAL CHECK								0.00	236,637.58
101	102473	04/15/22	1815	MORRILL & FORBES	503	5223	CITY MANAGERS OFFIC	0.00	750.00
101	102475	04/15/22	4299	NOLAND, HAMERLY, ET	111	5205	LEGAL SERVICES	0.00	1,154.65
101	102475	04/15/22	4299	NOLAND, HAMERLY, ET	121	5205	MANAGEMENT REPRESEN	0.00	4,431.00
TOTAL CHECK								0.00	5,585.65
101	102476	04/15/22	8289	NORCAL HUMAN RESOUR	121	5216	PROF ASSOC MTG TRAI	0.00	175.00
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	12.68

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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	169.61
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	124.01
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	49.75
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	49.75
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	61.07
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	63.02
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	64.70
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	401	5301	OFFICE SUPPLIES	0.00	74.02
101	102477	04/15/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	77.13
TOTAL CHECK								0.00	745.74
101	102478	04/15/22	9528	PACIFIC CHESS ACADE	421	5208	REFUND	0.00	1,089.00
101	102479	04/15/22	2024	PACIFIC GAS & ELECT	505	5222	GOLF STREETS	0.00	33.50
101	102479	04/15/22	2024	PACIFIC GAS & ELECT	505	5222	CREDIT	0.00	-26.69
101	102479	04/15/22	2024	PACIFIC GAS & ELECT	421	5222	REC	0.00	334.97
TOTAL CHECK								0.00	341.78
101	102480	04/15/22	7116	PECKHAM & MCKENNEY	121	5201	EXECUTIVE RECRUITME	0.00	8,577.11
101	102480 V	04/15/22	7116	PECKHAM & MCKENNEY	121	5201	EXECUTIVE RECRUITME	0.00	-8,577.11
TOTAL CHECK								0.00	0.00
101	102483	04/15/22	8429	PURE JANITORIAL LLC	411	5201	FY21/22 JANITORIAL	0.00	2,385.00
101	102484	04/15/22	2219	PURE WATER	501	5309		0.00	20.45
101	102484	04/15/22	2219	PURE WATER	502	5309		0.00	20.45
101	102484	04/15/22	2219	PURE WATER	503	5309		0.00	20.45
101	102484	04/15/22	2219	PURE WATER	505	5309		0.00	20.45
TOTAL CHECK								0.00	81.80
101	102485	04/15/22	3709	R & R PRODUCTS, INC	503	5223	BEDKNIFE-DOUBLE LIP	0.00	318.96
101	102486	04/15/22	2241	R & S ERECTION OF M	503	5223	TIME & MATERIAL	0.00	341.40
101	102487	04/15/22	7621	READY REFRESH	301	5291	WATER SERVICE	0.00	144.49
101	102488	04/15/22	4468	RENTAL DEPOT MONTER	503	5223	NORAIR-800	0.00	51.30
101	102489	04/15/22	8123	RJ THOMAS MFG. CO.,	503	5223		0.00	2,376.83
101	102490	04/15/22	3828	SAME DAY SHRED	121	5291	CONF SHRED SERVICES	0.00	45.00
101	102491	04/15/22	7891	SIR SPEEDY	131	5303	BUSINESS CARDS	0.00	68.82
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	12.28
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	16.16
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	23.89
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	31.21
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	100.89
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	140.25
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	153.30
101	102492	04/15/22	2567	STAPLES CREDIT PLAN	301	5301	OFFICE SUPPLIES	0.00	356.06

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
TOTAL CHECK								0.00	834.04
101	102493	04/15/22	7314	STRESSCRETE	505	5331	LED FIXTURES-STREET	0.00	6,372.75
101	102494	04/15/22	2606	SUMMIT UNIFORMS	301	5275	BALLISTIC VEST/HANK	0.00	1,202.03
101	102495	04/15/22	2993	CENTRALSQUARE TECHN	131	5201	PUBLIC ADMIN PROJEC	0.00	45.00
101	102497	04/15/22	4650	TORO PETROLEUM CORP	351	5311	FD 600 PINE AVE	0.00	1,795.86
101	102498	04/15/22	8379	TRANSUNION RISK AND	301	5201	4170441/TLO	0.00	75.00
101	102500	04/15/22	2772	VALLEY SAW & GARDEN	503	5223	REMAINING	0.00	30.00
101	102501	04/15/22	2786	VERIZON WIRELESS	301	5206	VERIZON WIRELESS MO	0.00	506.42
101	102502	04/15/22	9305	WATSONVILLE FORD	301	5227	PD UNIT 5 - TRANSMI	0.00	9,492.44
101	102502	04/15/22	9305	WATSONVILLE FORD	301	5227	UNIT 8	0.00	314.15
101	102502	04/15/22	9305	WATSONVILLE FORD	301	5227	UNIT 5	0.00	107.60
TOTAL CHECK								0.00	9,914.19
101	102503	04/15/22	8989	WEX BANK	301	5311	FUEL	0.00	136.91
101	102505 V	04/15/22	4203	CHRIS WILSON PLUMBI	503	5223	CITY HALL	0.00	-312.72
101	102505	04/15/22	4203	CHRIS WILSON PLUMBI	503	5223	CITY HALL	0.00	312.72
TOTAL CHECK								0.00	0.00
101	102506	04/15/22	1204	WINNERS AWARDS & EN	513	5309	MEMORIAL TREE PROGR	0.00	289.51
101	102508	04/15/22	5994	PTM DOCUMENT SYSTEM	131	5303	1099/W2G	0.00	242.02
101	102509	04/15/22	8974	ALENA RACHELLE WAGR	421	5208	CONTRACTOR CLASS	0.00	294.00
101	102510	04/19/22	2894	WILSON'S PLUMBING &	503	5223		0.00	312.72
101	102512	04/22/22	2952	AFLAC	01	202	DED:5201 AFLAC P/T	0.00	1,776.62
101	102512	04/22/22	2952	AFLAC	01	202	DED:5200 AFLAC PREM	0.00	717.32
101	102512	04/22/22	2952	AFLAC	01	202	DED:5291 AFLAC P/T	0.00	69.24
TOTAL CHECK								0.00	2,563.18
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:2074 HEALTH	0.00	911.50
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:118 HEALTH	0.00	911.60
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:120 HEALTH	0.00	1,015.82
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:2225 HEALTH INS	0.00	1,057.01
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:1 HEALTH	0.00	1,057.01
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:0563 HEALTH FAM	0.00	1,114.18
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:110 HEALTH	0.00	2,031.62
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:2071 HEALTH	0.00	2,397.00
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:103 HEALTH	0.00	2,454.34
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:102 HEALTH	0.00	2,748.24
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:106 HEALTH	0.00	3,171.06
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:104 HEALTH	0.00	3,506.15

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CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:105 HEALTH	0.00	3,646.40
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:533 HEALTH	0.00	3,646.40
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:2073 HEALTH FAM	0.00	4,438.00
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:115 HEALTH	0.00	701.23
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:2072 HEALTH	0.00	862.50
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:531 HEALTH	0.00	350.62
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:109 HEALTH	0.00	507.91
101	102513	04/22/22	1	CALPERS HEALTH	01	202	DED:100 HEALTH	0.00	6,870.63
TOTAL CHECK								0.00	43,399.22
101	102514	04/22/22	2939	CALPERS LONG TERM C	01	202	DED:6000 LTC	0.00	144.26
101	102515	04/22/22	3134	CITY OF PACIFIC GRO	01	202	DED:3301 AFLAC MED	0.00	2,578.02
101	102515	04/22/22	3134	CITY OF PACIFIC GRO	01	202	DED:3300 AFLAC DEP	0.00	348.00
TOTAL CHECK								0.00	2,926.02
101	102516	04/22/22	3393	EFT	01	202	DED:*FM MEDICARE	0.00	10,054.20
101	102516	04/22/22	3393	EFT	01	202	DED:*SCA STATE TAX	0.00	14,643.96
101	102516	04/22/22	3393	EFT	01	202	DED:*FT FEDERAL TX	0.00	38,335.71
TOTAL CHECK								0.00	63,033.87
101	102517	04/22/22	9589	FOREMAN FINANCIAL,	01	202	DED:7506 WAGE ORDER	0.00	555.29
101	102518	04/22/22	2946	PACIFIC GROVE CITY	01	202	DED:7000 ASSOC DUES	0.00	783.75
101	102519	04/22/22	2938	MASS MUTUAL (457 PL	01	202	DED:3999 ROTH IRA	0.00	765.00
101	102519	04/22/22	2938	MASS MUTUAL (457 PL	01	202	DED:4000 DEF COMP	0.00	13,096.57
TOTAL CHECK								0.00	13,861.57
101	102520	04/22/22	2936	MTRY COUNTY DEPT OF	01	202	DED:0023 GARNISH	0.00	236.30
101	102521	04/22/22	2949	PACIFIC GROVE MANAG	01	202	DED:7203 ASSOC DUES	0.00	20.00
101	102522	04/22/22	2051	CITY OF PACIFIC GRO	01	202	DED:1005 WORK COMP	0.00	1,246.13
101	102522	04/22/22	2051	CITY OF PACIFIC GRO	01	202	DED:1010 WORK COMP	0.00	2,959.81
101	102522	04/22/22	2051	CITY OF PACIFIC GRO	01	202	DED:1003 WORK COMP	0.00	5,896.49
101	102522	04/22/22	2051	CITY OF PACIFIC GRO	01	202	DED:1009 WORK COMP	0.00	77.31
101	102522	04/22/22	2051	CITY OF PACIFIC GRO	01	202	DED:1006 WORK COMP	0.00	18.91
TOTAL CHECK								0.00	10,198.65
101	102523	04/22/22	2052	CITY OF PACIFIC GRO	01	202	DED:7510 PERS REIMB	0.00	44.13
101	102524	04/22/22	2053	CITY OF PACIFIC GRO	01	202	DED:2103 DENTAL FAM	0.00	663.74
101	102524	04/22/22	2053	CITY OF PACIFIC GRO	01	202	DED:2101 DENTAL	0.00	75.80
101	102524	04/22/22	2053	CITY OF PACIFIC GRO	01	202	DED:201 DENTAL	0.00	187.95
101	102524	04/22/22	2053	CITY OF PACIFIC GRO	01	202	DED:202 DENTAL	0.00	189.64
101	102524	04/22/22	2053	CITY OF PACIFIC GRO	01	202	DED:2102 DENTAL	0.00	225.54
101	102524	04/22/22	2053	CITY OF PACIFIC GRO	01	202	DED:200 DENTAL	0.00	606.40
TOTAL CHECK								0.00	1,949.07
101	102525	04/22/22	2054	CITY OF PACIFIC GRO	01	202	DED:0005 SUTA	0.00	126.14

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101	102526	04/22/22	2133	PERS	01	202	DED:2000 PERS EMPLY	0.00	1,109.58
101	102526	04/22/22	2133	PERS	01	202	DED:0002 PERS	0.00	5,432.85
101	102526	04/22/22	2133	PERS	01	202	DED:07 PERS CITY	0.00	6,018.86
101	102526	04/22/22	2133	PERS	01	202	DED:0009 PERS OTHER	0.00	785.94
101	102526	04/22/22	2133	PERS	01	202	DED:2001 PERS	0.00	830.26
101	102526	04/22/22	2133	PERS	01	202	DED:0004 SURV BEN	0.00	86.49
101	102526	04/22/22	2133	PERS	01	202	DED:0022 PERS SP MS	0.00	113.00
101	102526	04/22/22	2133	PERS	01	202	DED:08 PERS OTHER	0.00	398.01
101	102526	04/22/22	2133	PERS	01	202	DED:0018 PERS SP SF	0.00	404.16
101	102526	04/22/22	2133	PERS	01	202	DED:0017 PERS RG SF	0.00	6,534.35
101	102526	04/22/22	2133	PERS	01	202	DED:0011 PERS ER SF	0.00	7,007.91
101	102526	04/22/22	2133	PERS	01	202	DED:0021 PERS REG M	0.00	7,703.82
101	102526	04/22/22	2133	PERS	01	202	DED:0020 PERS ER M3	0.00	8,785.79
101	102526	04/22/22	2133	PERS	01	202	DED:0006 PERS CITY	0.00	10,732.56
101	102526	04/22/22	2133	PERS	01	202	DED:01 PERS	0.00	11,885.38
101	102526	04/22/22	2133	PERS	01	202	DED:0025 PERS RT MS	0.00	-3.38
TOTAL CHECK								0.00	67,825.58
101	102527	04/22/22	2943	POLICE OFFICERS ASS	01	202	DED:7205 ASSOC DUES	0.00	881.04
101	102528	04/22/22	7956	STATE DISABILITY TA	01	202	DED:0026 SDI	0.00	3,867.16
101	102530	04/22/22	8352	TRANSAMERICA EMPLOY	01	202	DED:5202 TRANSAMERI	0.00	627.08
101	102531	04/22/22	4177	UNION BANK OF CALIF	01	202	DED:4005 PARS-457	0.00	793.17
101	102532	04/22/22	632	VISION SERVICE PLAN	01	202	DED:2502 VISION	0.00	34.90
101	102532	04/22/22	632	VISION SERVICE PLAN	01	202	DED:302 VISION	0.00	60.00
101	102532	04/22/22	632	VISION SERVICE PLAN	01	202	DED:301 VISION	0.00	75.00
101	102532	04/22/22	632	VISION SERVICE PLAN	01	202	DED:300 VISION	0.00	216.38
101	102532	04/22/22	632	VISION SERVICE PLAN	01	202	DED:2503 VISION FAM	0.00	285.01
TOTAL CHECK								0.00	671.29
101	102533	04/25/22	2133	PERS	101	5145	APR 2022 UAL	0.00	416.68
101	102533	04/25/22	2133	PERS	131	5145	APR 2022 UAL	0.00	10,250.00
101	102533	04/25/22	2133	PERS	401	5145	APR 2022 UAL	0.00	10,333.33
101	102533	04/25/22	2133	PERS	201	5145	APR 2022 UAL	0.00	12,333.33
101	102533	04/25/22	2133	PERS	505	5145	APR 2022 UAL	0.00	16,583.33
101	102533	04/25/22	2133	PERS	351	5145	APR 2022 UAL	0.00	88,862.58
101	102533	04/25/22	2133	PERS	301	5145	APR 2022 UAL	0.00	105,500.00
101	102533	04/25/22	2133	PERS	133	5145	APR 2022 UAL	0.00	2,333.33
101	102533	04/25/22	2133	PERS	502	5145	APR 2022 UAL	0.00	2,583.33
101	102533	04/25/22	2133	PERS	501	5145	APR 2022 UAL	0.00	3,166.67
101	102533	04/25/22	2133	PERS	421	5145	APR 2022 UAL	0.00	4,833.33
101	102533	04/25/22	2133	PERS	121	5145	APR 2022 UAL	0.00	8,916.67
101	102533	04/25/22	2133	PERS	503	5145	APR 2022 UAL	0.00	9,083.33
101	102533	04/25/22	2133	PERS	513	5145	APR 2022 UAL	0.00	250.00
TOTAL CHECK								0.00	275,445.91
101	102535	04/29/22	6216	MONTEREY BAY TREEWO	513	5201	FY21/22 ARBORIST SE	0.00	2,200.00
101	102535	04/29/22	6216	MONTEREY BAY TREEWO	513	5201	FY21/22 ARBORIST SE	0.00	2,500.00
101	102535	04/29/22	6216	MONTEREY BAY TREEWO	513	5201	FY21/22 ARBORIST SE	0.00	3,100.00

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101	102535	04/29/22	6216	MONTEREY BAY TREEWO	513	5201	FY21/22 ARBORIST SE	0.00	3,800.00
TOTAL CHECK								0.00	11,600.00
101	102536	04/29/22	9614	ALLISON STEGGE	01	4462	REFUND	0.00	180.00
101	102537	04/29/22	4965	ALVAREZ TECHNOLOGY	133	5201	CREDIT - OVERCHARGE	0.00	-462.75
101	102537	04/29/22	4965	ALVAREZ TECHNOLOGY	133	5201	ONSITE IT SUPPORT	0.00	2,625.00
TOTAL CHECK								0.00	2,162.25
101	102538	04/29/22	8636	ALYSON HUNTER	201	5215	MEALS/LODGING	0.00	299.04
101	102539	04/29/22	8330	AMAZON CAPITAL SERV	501	5309	VOLUNTEER APPRECIAT	0.00	95.18
101	102539	04/29/22	8330	AMAZON CAPITAL SERV	501	5309	VOLUNTEER APPRECIAT	0.00	186.78
101	102539	04/29/22	8330	AMAZON CAPITAL SERV	501	5309	VOLUNTEER APPRECIAT	0.00	247.98
TOTAL CHECK								0.00	529.94
101	102541	04/29/22	3905	AMERICAN LOCK & KEY	503	5223	COMMUNITY CENTER	0.00	390.00
101	102541	04/29/22	3905	AMERICAN LOCK & KEY	503	5223	GOLF COURSE	0.00	458.73
TOTAL CHECK								0.00	848.73
101	102542	04/29/22	9613	ANGELA M RAILSBACK	01	214	DEPOSIT REFUND	0.00	185.00
101	102543	04/29/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	104.60
101	102543	04/29/22	9430	ARAMARK UNIFORM & C	301	5201	LINEN SERVICE	0.00	104.60
TOTAL CHECK								0.00	209.20
101	102544	04/29/22	6154	AT&T	133	5212	ADMIN ALARM	0.00	33.97
101	102544	04/29/22	6154	AT&T	351	5212	SEWER ALARM	0.00	33.97
101	102544	04/29/22	6154	AT&T	421	5212	REC	0.00	33.97
TOTAL CHECK								0.00	101.91
101	102545	04/29/22	5363	AT&T CALNET 3	133	5206	PHONES	0.00	1,789.12
101	102545	04/29/22	5363	AT&T CALNET 3	133	5206	INTERNET LIBRARY	0.00	173.77
TOTAL CHECK								0.00	1,962.89
101	102546	04/29/22	8476	AT&T MOBILITY	301	5206	AT&T FIRSTNET CELLP	0.00	1,630.40
101	102547	04/29/22	213	BAKER & TAYLOR COMP	401	5301	LABELS AND SUPPLIES	0.00	44.69
101	102547	04/29/22	213	BAKER & TAYLOR COMP	401	5301	LABELS AND SUPPLIES	0.00	0.97
101	102547	04/29/22	213	BAKER & TAYLOR COMP	401	5301	LABELS AND SUPPLIES	0.00	13.61
101	102547	04/29/22	213	BAKER & TAYLOR COMP	401	5301	LABELS AND SUPPLIES	0.00	15.38
101	102547	04/29/22	213	BAKER & TAYLOR COMP	401	5301	LABELS AND SUPPLIES	0.00	21.93
101	102547	04/29/22	213	BAKER & TAYLOR COMP	401	5301	LABELS AND SUPPLIES	0.00	28.58
TOTAL CHECK								0.00	125.16
101	102549	04/29/22	4934	BARTEL ASSOCIATES,	131	5202	GASB 75 ACTUARIAL V	0.00	1,243.00
101	102552	04/29/22	3501	CALTRONICS BUSINESS	301	5225	PD	0.00	106.25
101	102552	04/29/22	3501	CALTRONICS BUSINESS	501	5225	PW	0.00	231.02
101	102552	04/29/22	3501	CALTRONICS BUSINESS	131	5225	FIN	0.00	364.88
101	102552	04/29/22	3501	CALTRONICS BUSINESS	201	5225	CDD	0.00	415.98
101	102552	04/29/22	3501	CALTRONICS BUSINESS	501	5225	PW	0.00	54.74

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101	102552	04/29/22	3501	CALTRONICS BUSINESS	401	5225	LIB	0.00	76.55
TOTAL CHECK								0.00	1,249.42
101	102554	04/29/22	8399	CARAHSOFT	133	5229	DOCUSIGN DIGITAL SI	0.00	4,314.80
101	102556	04/29/22	2993	CENTRALSQUARE TECHN	131	5201	EFINANCE SOFTWARE &	0.00	4,092.31
101	102556	04/29/22	2993	CENTRALSQUARE TECHN	131	5201	EFINANCE SOFTWARE &	0.00	4,092.31
101	102556	04/29/22	2993	CENTRALSQUARE TECHN	131	5201	CONSULTING, PROJ MG	0.00	27.00
101	102556	04/29/22	2993	CENTRALSQUARE TECHN	131	5201	CONSULTING, PROJ MG	0.00	90.00
101	102556	04/29/22	2993	CENTRALSQUARE TECHN	131	5201	CONSULTING, PROJ MG	0.00	207.00
TOTAL CHECK								0.00	8,508.62
101	102558	04/29/22	6309	COLANTUONO, HIGHSMI	111	5205	LEGAL SERVICES PG&E	0.00	44.05
101	102559	04/29/22	5171	COMCAST	133	5206	TV SERVICE - CH	0.00	14.04
101	102559	04/29/22	5171	COMCAST	133	5206	INTERNET - CH	0.00	153.16
TOTAL CHECK								0.00	167.20
101	102560	04/29/22	649	CPS HR CONSULTING	301	5201	PST PRE EMPLOY TEST	0.00	786.00
101	102560	04/29/22	649	CPS HR CONSULTING	301	5201	CREDIT	0.00	-70.00
TOTAL CHECK								0.00	716.00
101	102562	04/29/22	3451	DE LAY & LAREDO	111	5203	MARCH 2022 LEGAL SE	0.00	35,095.00
101	102562	04/29/22	3451	DE LAY & LAREDO	201	5205	MARCH 2022 LEGAL SE	0.00	171.60
TOTAL CHECK								0.00	35,266.60
101	102563	04/29/22	779	DEMCO	401	5301	LIB SUPPLIES	0.00	101.06
101	102564	04/29/22	9187	DEVIL MOUNTAIN WHOL	503	5223		0.00	529.21
101	102565	04/29/22	846	DROUGHT RESISTANT N	503	5223		0.00	43.66
101	102565	04/29/22	846	DROUGHT RESISTANT N	503	5223		0.00	1,122.76
TOTAL CHECK								0.00	1,166.42
101	102566	04/29/22	3970	ALHAMBRA & SIERRA S	351	5291	WATER SERVICE	0.00	235.12
101	102569	04/29/22	7424	EDGES ELECTRICAL GR	503	5223		0.00	104.69
101	102570	04/29/22	9607	EDWING COBOS	01	4670		0.00	432.75
101	102570	04/29/22	9607	EDWING COBOS	01	214		0.00	189.00
TOTAL CHECK								0.00	621.75
101	102571	04/29/22	904	ENGINEERED FIRE SYS	351	5201	PLAN REVIEW MAR 202	0.00	500.00
101	102572	04/29/22	982	FIRST ALARM INC.	301	5223	ALARM TEST	0.00	127.44
101	102573	04/29/22	9609	FRANCESCO GRILLO	01	214	DEPOSIT REFUND	0.00	510.00
101	102574	04/29/22	7884	GARDAWORLD	131	5202	APRIL 2022	0.00	85.66
101	102575	04/29/22	9588	GENUINE PARTS COMPA	351	5227	UNIT 6414	0.00	181.40

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101	102577	04/29/22	8723	GOLDEN STATE EMERGE	351	5227	UNIT 6414	0.00	548.77
101	102577	04/29/22	8723	GOLDEN STATE EMERGE	351	5227	UNIT 6414	0.00	60.92
TOTAL CHECK								0.00	609.69
101	102579	04/29/22	1138	GROVE MARKET	421	5361	FOOD FOR SPRING BRE	0.00	8.62
101	102579	04/29/22	1138	GROVE MARKET	421	5361	SUPPLIES FOR OFFICE	0.00	3.88
TOTAL CHECK								0.00	12.50
101	102580	04/29/22	1266	HOWARD'S UPHOLSTERY	301	5227	UNIT #8	0.00	214.94
101	102581	04/29/22	7529	JOCELYN FRANCIS	301	5215	REFUND TRAVEL EXPNS	0.00	387.99
101	102581	04/29/22	7529	JOCELYN FRANCIS	301	5215	CAPE TRAINING SEMIN	0.00	184.50
TOTAL CHECK								0.00	572.49
101	102582	04/29/22	4367	KELLY MOORE PAINT C	503	5223	MUNI PARK	0.00	590.71
101	102582	04/29/22	4367	KELLY MOORE PAINT C	503	5223	CREDIT	0.00	-85.63
101	102582	04/29/22	4367	KELLY MOORE PAINT C	503	5223	CREDIT	0.00	-107.87
TOTAL CHECK								0.00	397.21
101	102583	04/29/22	3521	KIMBALL MIDWEST	502	5309	MECH SHOP	0.00	456.75
101	102583	04/29/22	3521	KIMBALL MIDWEST	502	5309	CREDIT	0.00	-8.59
TOTAL CHECK								0.00	448.16
101	102584	04/29/22	1467	LANGUAGE LINE SERVI	301	5201	TRANSLATION SERVICE	0.00	6.58
101	102586	04/29/22	8647	MAIN STREET SIGNS	505	5331	SIGNS & SUPPLIES	0.00	484.26
101	102587	04/29/22	9610	MAX MURRAY	301	5215	REFUND FOR PARKING	0.00	36.00
101	102590	04/29/22	8886	MINUTEMAN PRESS	101	5303		0.00	2,860.22
101	102591	04/29/22	3443	MONTEREY BAY PEST C	503	5223		0.00	180.00
101	102591	04/29/22	3443	MONTEREY BAY PEST C	503	5223		0.00	490.00
TOTAL CHECK								0.00	670.00
101	102593	04/29/22	3807	MONTEREY COUNTY WEE	131	5221	2ND READ NOTICE	0.00	108.81
101	102593	04/29/22	3807	MONTEREY COUNTY WEE	301	5221	2ND READ NOTICE	0.00	108.81
101	102593	04/29/22	3807	MONTEREY COUNTY WEE	131	5221	PUBLIC HEARING	0.00	126.95
101	102593	04/29/22	3807	MONTEREY COUNTY WEE	131	5221	PUBLIC HEARING NOTI	0.00	126.95
101	102593	04/29/22	3807	MONTEREY COUNTY WEE	131	5221	PUBLIC HEARING NOTI	0.00	199.49
101	102593	04/29/22	3807	MONTEREY COUNTY WEE	131	5221	PUBLIC HEARING NOTI	0.00	217.62
TOTAL CHECK								0.00	888.63
101	102595	04/29/22	1797	MONTEREY REGIONAL W	504	5201	SB1383	0.00	12,696.00
101	102596	04/29/22	1801	MONTEREY TIRE SERVI	301	5227	UNIT #4	0.00	479.13
101	102598	04/29/22	6431	QUADIENT FINANCE US	131	5291	POSTAGE	0.00	1,575.17
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	30.45
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	86.11
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	471.50

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	131	5301	OFFICE SUPPLIES	0.00	58.29
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	121	5301	OFFICE SUPPLIES	0.00	63.36
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	72.04
101	102599	04/29/22	1958	OFFICE DEPOT, INC.	201	5301	OFFICE SUPPLIES	0.00	85.31
TOTAL CHECK								0.00	867.06
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	503	5227	UNIT #54	0.00	71.71
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	502	5309	MECH STOCK	0.00	39.12
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	502	6001	MECH STOCK	0.00	467.63
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	502	5309	MECH STOCK	0.00	49.83
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	505	5226	GRINDER 1	0.00	53.45
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	301	5227	POLICE STOCK	0.00	55.40
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	503	5227	UNIT 54	0.00	12.14
TOTAL CHECK								0.00	749.28
101	102602	04/29/22	2012	P.G. MUSEUM OF NATU	411	5201	CITY CONTRIBUTION T	0.00	65,910.00
101	102603	04/29/22	2024	PACIFIC GAS & ELECT	411	5802	MUSEUM	0.00	270.67
101	102605	04/29/22	2062	PACIFIC WEST WATER	131	5301	OFFICE SUPPLIES	0.00	42.85
101	102605	04/29/22	2062	PACIFIC WEST WATER	201	5301	OFFICE SUPPLIES	0.00	42.85
TOTAL CHECK								0.00	85.70
101	102607	04/29/22	8140	PATISSERIE BECHLER	501	5309	VOLUNTEER APPRECIAT	0.00	1,464.00
101	102608	04/29/22	5936	PEBBLE BEACH COMPAN	513	5351		0.00	750.00
101	102609	04/29/22	8394	RAYMOND GORDANO	301	5215	MEALS/TRAVEL/LODGIN	0.00	293.25
101	102610	04/29/22	9608	RIA ESPINOZA	01	214	DEPOSIT REFUND	0.00	189.00
101	102611	04/29/22	9606	RYANN COTTONARO	01	4203	REFUND	0.00	131.30
101	102612	04/29/22	7413	SALINAS VALLEY PRO	301	5275	UNIFORM BELT	0.00	41.50
101	102613	04/29/22	2448	SENTRY ALARM SYSTEM	503	5223	SPRINKLER INSPECTIO	0.00	150.00
101	102613	04/29/22	2448	SENTRY ALARM SYSTEM	351	5223	FIRE ALARM MALFUNCT	0.00	305.00
101	102613	04/29/22	2448	SENTRY ALARM SYSTEM	401	5223	PHONE PROBLEMS	0.00	275.00
TOTAL CHECK								0.00	730.00
101	102614	04/29/22	8068	SHI INTERNATIONAL C	133	5229	VMWARE - 1YR RENEWA	0.00	2,606.53
101	102615	04/29/22	7891	SIR SPEEDY	101	5303	BUSINESS CARDS	0.00	67.76
101	102616	04/29/22	7441	SLAKEY BROTHERS INC	411	5223		0.00	232.73
101	102617	04/29/22	2533	SOUTH BAY REG. PUBL	301	5215	CSI COURSE	0.00	3,405.00
101	102618	04/29/22	2541	SPCA OF MONTEREY CO	301	5201	SPCA MONTEREY COUNT	0.00	1,328.00
101	102619	04/29/22	9336	STAPHANY ARRIOLA	421	5361	REFUND FOR SUPPLIES	0.00	63.07

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
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FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102620	04/29/22	3392	STATE WATER RESOURC	505	5291	ANNUAL PERMIT FEES	0.00	808.00
101	102621	04/29/22	1768	STURDY OIL COMPANY	505	5311		0.00	1,690.13
101	102621	04/29/22	1768	STURDY OIL COMPANY	503	5311		0.00	3,380.28
101	102621	04/29/22	1768	STURDY OIL COMPANY	301	5311		0.00	6,732.10
101	102621	04/29/22	1768	STURDY OIL COMPANY	01	111		0.00	3,451.54
TOTAL CHECK								0.00	15,254.05
101	102622	04/29/22	9605	SYNCOPAL PAYMENT SO	201	5201	PMT PROCES 3/3-4/4/	0.00	905.00
101	102623	04/29/22	3884	THE PACIFIC GROVE P	101	5221		0.00	450.00
101	102624	04/29/22	7263	TOM'S SITE SERVICES	503	5223		0.00	1,190.38
101	102626	04/29/22	9611	VICTORIA PETTY	01	214	DEPOSIT REFUND	0.00	189.00
101	102627	04/29/22	2800	ROXANE VIRAY	301	5123	RETIREMENT MED BENE	0.00	150.00
101	102629	04/29/22	8136	WELLS FARGO VENDOR	501	5225	KONICA LEASE FY 21/	0.00	147.32
101	102629	04/29/22	8136	WELLS FARGO VENDOR	401	5225	KONICA LEASE FY 21/	0.00	164.75
101	102629	04/29/22	8136	WELLS FARGO VENDOR	301	5225	KONICA LEASE FY 21/	0.00	173.65
101	102629	04/29/22	8136	WELLS FARGO VENDOR	131	5225	KONICA LEASE FY 21/	0.00	173.65
101	102629	04/29/22	8136	WELLS FARGO VENDOR	121	5225	KONICA LEASE FY 21/	0.00	174.70
101	102629	04/29/22	8136	WELLS FARGO VENDOR	201	5225	KONICA LEASE FY 21/	0.00	205.51
TOTAL CHECK								0.00	1,039.58
101	102630	04/29/22	1204	WINNERS AWARDS & EN	101	5303	NAMEPLATES	0.00	24.04
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	863 OCEANVIEW IRRG	0.00	801.12
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	263 GROVE ACRES	0.00	209.11
101	102632	04/29/22	438	CALIFORNIA AMERICAN	351	5222	600 PINE	0.00	219.69
101	102632	04/29/22	438	CALIFORNIA AMERICAN	201	5222	304 16TH ST FIRE	0.00	85.65
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	980 PIEDMONT BALL P	0.00	2,506.24
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	150 FOREST-JEWELL P	0.00	2,992.49
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	616 OCEANVIEW IRRG	0.00	3,475.14
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	391 OCEANVW-BERWICK	0.00	7,676.32
101	102632	04/29/22	438	CALIFORNIA AMERICAN	501	5222	MECH 5%	0.00	24.94
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	139 GRAND AVE	0.00	67.70
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	B & G 15%	0.00	74.80
101	102632	04/29/22	438	CALIFORNIA AMERICAN	501	5222	SUNSET-CORPYARD18%	0.00	89.77
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	130 LIGHTHOUSE IRRI	0.00	93.59
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	585 LAUREL	0.00	93.59
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	165 FOREST-MUSEUM	0.00	175.56
101	102632	04/29/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST AVE	0.00	185.78
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	429 LIGHTHOUSE IRRG	0.00	185.78
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	619 OCEANVIEW IRRIG	0.00	185.78
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	100 OCEANVW IRRIG	0.00	185.78
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	196 OCEANVW IRRIG	0.00	185.78
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	515 JUNIPERO	0.00	292.55
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	1051 OCEANVIEW IRRG	0.00	296.41
101	102632	04/29/22	438	CALIFORNIA AMERICAN	201	5222	304 16TH ST BDOM-FI	0.00	304.80
101	102632	04/29/22	438	CALIFORNIA AMERICAN	301	5222	580 PINE	0.00	326.28

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102632	04/29/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST	0.00	359.98
101	102632	04/29/22	438	CALIFORNIA AMERICAN	401	5222	550 CENTRAL	0.00	659.72
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	930 SINEX	0.00	866.81
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	611 CENTRAL AVE	0.00	913.04
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	707 OCEANVIEW-NAIAD	0.00	991.55
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	711 OCEANVIEW IRRG	0.00	1,124.74
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	610 OCEANVW IRRIGPK	0.00	1,232.55
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	230 17-MILE DRIVE	0.00	1,239.82
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	114 CALEDONIA PK	0.00	1,288.43
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	620 OCEANVIEW/BATH	0.00	1,348.34
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	616 OCEANVW-SWIM PL	0.00	1,421.23
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	1025 MORSE-PLATT PK	0.00	1,530.56
101	102632	04/29/22	438	CALIFORNIA AMERICAN	411	5222	165 FOREST AVE FIRE	0.00	51.05
101	102632	04/29/22	438	CALIFORNIA AMERICAN	351	5222	600 PINE AVE FIRE	0.00	51.05
101	102632	04/29/22	438	CALIFORNIA AMERICAN	421	5222	CENTRAL 4 IN FIRE	0.00	51.05
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	2100 SUNSET DRIVE	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	840 LIGHTHSE PLANTE	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	850 LIGHTHSE PLANTE	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	882 LIGHTHSE PLANTE	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	106 7TH ST PARK	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	351	5222	643 HYDRANTS HYDT	0.00	39.26
101	102632	04/29/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST FIRE-50%	0.00	25.52
101	102632	04/29/22	438	CALIFORNIA AMERICAN	201	5222	300 FOREST FIRE-50%	0.00	25.53
101	102632	04/29/22	438	CALIFORNIA AMERICAN	131	5222	300 FOREST IRRIG	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	131	5222	308 16TH ST.	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	748 LIGHTHSE IRRG	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	800 LIGHTHSE PLANTE	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	792 LIGHTHSE IRRIG	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	582 LIGHTHSE IRRIG	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	503	5222	765 LIGHTHSE IRRIG	0.00	38.28
TOTAL CHECK								0.00	34,414.24
101	102633	04/29/22	2786	VERIZON WIRELESS	121	5212	CM	0.00	28.12
101	102633	04/29/22	2786	VERIZON WIRELESS	133	5212	IT	0.00	38.01
101	102633	04/29/22	2786	VERIZON WIRELESS	421	5212	REC	0.00	44.39
101	102633	04/29/22	2786	VERIZON WIRELESS	133	5212	ADMIN	0.00	51.32
101	102633	04/29/22	2786	VERIZON WIRELESS	351	5212	FIRE	0.00	63.67
101	102633	04/29/22	2786	VERIZON WIRELESS	401	5212	LIB	0.00	76.02
101	102633	04/29/22	2786	VERIZON WIRELESS	201	5212	CDD	0.00	78.64
101	102633	04/29/22	2786	VERIZON WIRELESS	501	5212	PW	0.00	121.28
101	102633	04/29/22	2786	VERIZON WIRELESS	301	5212	PD	0.00	136.39
101	102633	04/29/22	2786	VERIZON WIRELESS	501	5212	PW	0.00	571.76
TOTAL CHECK								0.00	1,209.60
101	102634	04/29/22	4948	CREATIVE PRODUCT SO	301	5291	DARE GRADUATION CER	0.00	92.65
101	102634	04/29/22	4948	CREATIVE PRODUCT SO	301	5291	DARE GRADUATION SHI	0.00	627.49
TOTAL CHECK								0.00	720.14
101	102635	04/29/22	9516	JONATHAN FERRANTELL	01	214	DAMAGE DEPOSIT REFU	0.00	660.00
101	102636	04/29/22	2772	VALLEY SAW & GARDEN	503	5223	RECIPRICATOR FS131	0.00	927.53

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 01 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102637	04/29/22	2894	WILSON'S PLUMBING &	503	5223	GOLF COURSE	0.00	1,293.15
101	V4152022	04/15/22	8974	ALENA RACHELLE WAGR	421	5208	CONTRACTOR PAYMENT	0.00	682.50
101	V4152023	04/15/22	9196	DIANNE LYLE	421	5208	DANCE CLASSES CONTR	0.00	1,761.20
101	V4292024	04/29/22	2987	HARRIS & ASSOCIATES	201	5202	CONTRACT PLANNING S	0.00	25,613.75
TOTAL CASH ACCOUNT								0.00	1,709,686.51
TOTAL FUND								0.00	1,709,686.51

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 06 - STATE FRANCHISE PEG

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102534	04/29/22	5664	ACCESS MONTEREY PEN	105	5201	PEG SERV FEB-AP 202	0.00	9,750.00
TOTAL CASH ACCOUNT								0.00	9,750.00
TOTAL FUND								0.00	9,750.00

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 07 - LIBRARY BLDG & EQUIP FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102561	04/29/22	8532	CROZIER STUDIOS	402	5291	ART CURATION FOR TH	0.00	1,470.00
TOTAL CASH ACCOUNT								0.00	1,470.00
TOTAL FUND								0.00	1,470.00

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 11 - LIBRARY BOOK FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102414	04/15/22	4943	US BANK	403	5303	WEIRICK CC MAR 2022	0.00	14.13
101	102414	04/15/22	4943	US BANK	403	5303	WEIRICK CC MAR 2022	0.00	1,183.45
TOTAL CHECK								0.00	1,197.58
101	102507	04/15/22	7568	FRIENDS OF PACIFIC	403	5291	DONATION-JOE ROCK M	0.00	3,183.90
101	102540	04/29/22	8818	AMAZON.COM	403	5303	ZIPBOOKS	0.00	942.70
101	102547	04/29/22	213	BAKER & TAYLOR COMP	403	5303	BOOKS AND MATERIALS	0.00	37.99
101	102547	04/29/22	213	BAKER & TAYLOR COMP	403	5303	BOOKS AND MATERIALS	0.00	133.51
101	102547	04/29/22	213	BAKER & TAYLOR COMP	403	5303	BOOKS AND MATERIALS	0.00	211.17
101	102547	04/29/22	213	BAKER & TAYLOR COMP	403	5303	BOOKS AND MATERIALS	0.00	245.47
101	102547	04/29/22	213	BAKER & TAYLOR COMP	403	5303	BOOKS AND MATERIALS	0.00	368.01
101	102547	04/29/22	213	BAKER & TAYLOR COMP	403	5303	BOOKS AND MATERIALS	0.00	433.21
TOTAL CHECK								0.00	1,429.36
101	102555	04/29/22	1040	CENGAGE LEARNING/GA	403	5303	BOOKS & MATERIALS	0.00	132.20
101	102588	04/29/22	3304	MIDWEST TAPE	403	5303	BOOKS & MATERIALS	0.00	121.22
101	102601	04/29/22	5567	OVERDRIVE, INC.	403	5303	BOOKS AND MATERIALS	0.00	5.98
TOTAL CASH ACCOUNT								0.00	7,012.94
TOTAL FUND								0.00	7,012.94

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 12 - FIRE EMERG EQUIP FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102428	04/15/22	3400	BOUND TREE MEDICAL,	355	5309	MEDICAL SUPPLIES	0.00	652.34
101	102481	04/15/22	2118	PENINSULA WELDING &	355	5309	MEDICAL SUPPLIES	0.00	562.89
101	102551	04/29/22	3400	BOUND TREE MEDICAL,	355	5309	ASPIRIN	0.00	7.19
TOTAL CASH ACCOUNT								0.00	1,222.42
TOTAL FUND								0.00	1,222.42

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 14 - CIVIC CENTER FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102468	04/15/22	1798	MONTEREY ONE WATER	704	5207		0.00	360.24
TOTAL CASH ACCOUNT								0.00	360.24
TOTAL FUND								0.00	360.24

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 15 - HOUSING FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	204	5145	MARCH 2022 UAL	0.00	833.33
101	102533	04/25/22	2133	PERS	204	5145	APR 2022 UAL	0.00	833.33
101	102557	04/29/22	8961	CONTEMPORARY INFORM	202	5424	BCKG CHECK	0.00	19.80
TOTAL CASH ACCOUNT								0.00	1,686.46
TOTAL FUND								0.00	1,686.46

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 18 - GAS TAX FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	508	5145	MARCH 2022 UAL	0.00	1,666.67
101	102452	04/15/22	1105	GRANITE ROCK COMPAN	508	5331	HMADIKE64	0.00	551.71
101	102452	04/15/22	1105	GRANITE ROCK COMPAN	508	5331	HMADIKE64	0.00	662.06
TOTAL CHECK								0.00	1,213.77
101	102453	04/15/22	1112	GREEN VALLEY IND'L	508	5331	SUPPLIES	0.00	410.68
101	102499	04/15/22	9148	TRI COUNTY CONCRETE	508	5331	STREETS	0.00	320.81
101	102499	04/15/22	9148	TRI COUNTY CONCRETE	508	5331	STREETS	0.00	396.93
TOTAL CHECK								0.00	717.74
101	102511	04/20/22	1104	GRANITE CONSTRUCTIO	508	5331		0.00	551.71
101	102511	04/20/22	1104	GRANITE CONSTRUCTIO	508	5331		0.00	662.06
TOTAL CHECK								0.00	1,213.77
101	102533	04/25/22	2133	PERS	508	5145	APR 2022 UAL	0.00	1,666.67
101	102550	04/29/22	8701	BEAR ELECTRICAL SOL	508	5331	MAINTENANCE	0.00	250.00
101	102569	04/29/22	7424	EDGES ELECTRICAL GR	508	5331	DT STREET LIGHTS	0.00	23.12
101	102589	04/29/22	8199	MIKE HARVEY'S CONCR	508	5201	SIDEWALK DEV POLICY	0.00	15,800.00
101	102603	04/29/22	2024	PACIFIC GAS & ELECT	508	5222	PW	0.00	7,195.68
101	102621	04/29/22	1768	STURDY OIL COMPANY	508	5311		0.00	1,690.13
101	102632	04/29/22	438	CALIFORNIA AMERICAN	508	5222	ST FUND 50%	0.00	249.36
TOTAL CASH ACCOUNT								0.00	32,097.59
TOTAL FUND								0.00	32,097.59

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 22 - ASSET SEIZURE FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102381	04/04/22	9600	AIYANA BILLANTE	22	213	EVID MKB #2143	0.00	1,055.15
TOTAL CASH ACCOUNT								0.00	1,055.15
TOTAL FUND								0.00	1,055.15

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 27 - LIGHTHOUSE MAINT.& IMPV.

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102459	04/15/22	5698	KEN HINSHAW	413	5309	REIMB	0.00	463.84
101	102468	04/15/22	1798	MONTEREY ONE WATER	413	5222		0.00	90.06
101	102539	04/29/22	8330	AMAZON CAPITAL SERV	413	5309		0.00	61.29
101	102632	04/29/22	438	CALIFORNIA AMERICAN	413	5222	90 ASILOMAR	0.00	65.59
TOTAL CASH ACCOUNT								0.00	680.78
TOTAL FUND								0.00	680.78

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 40 - POETRY PROMOTION FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102414	04/15/22	4943	US BANK	405	5201	GODWIN CC MAR 2022	0.00	624.00
101	102468	04/15/22	1798	MONTEREY ONE WATER	405	5291		0.00	128.46
101	102548	04/29/22	7366	BARBARA MOSSBERG	405	5291	POETRY PROMOTION	0.00	1,664.77
101	102553	04/29/22	8580	ANGELA CANALES	405	5291	PRINTING PRESENTATI	0.00	122.29
101	102623	04/29/22	3884	THE PACIFIC GROVE P	405	5291	POETRY PROMOTION	0.00	225.00
101	102625	04/29/22	2783	PATRICE VECCHIONE	405	5291	POETRY PROMOTION	0.00	800.00
101	V4292023	04/29/22	9604	DANIEL B. SUMMERHIL	405	5291	POETRY PROMOTION	0.00	500.00
TOTAL CASH ACCOUNT								0.00	4,064.52
TOTAL FUND								0.00	4,064.52

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 41 - YOUNT INCOME FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	510	5145	MARCH 2022 UAL	0.00	166.67
101	102444	04/15/22	9506	DUDEK	510	6031	GWP MANAGEMENT PLAN	0.00	530.00
101	102533	04/25/22	2133	PERS	510	5145	APR 2022 UAL	0.00	166.67
101	102568	04/29/22	9506	DUDEK	510	6031	GWP MANAGEMENT PLAN	0.00	1,815.00
TOTAL CASH ACCOUNT								0.00	2,678.34
TOTAL FUND								0.00	2,678.34

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 43 - SLESF FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102429	04/15/22	9548	BOYDD PRODUCTS	304	5275	PC50 APR ASSEMBLY T	691.25	8,591.25
101	102429	04/15/22	9548	BOYDD PRODUCTS	304	5275	CTCF50 RIOT AGENT F	95.55	1,187.55
TOTAL CHECK								786.80	9,778.80
101	102447	04/15/22	9033	ENTERPRISE FM TRUST	304	5225	LEASED VEHICLES	0.00	2,125.60
TOTAL CASH ACCOUNT								786.80	11,904.40
TOTAL FUND								786.80	11,904.40

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 63 - CAPITAL IMPROV PROJ FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102470	04/15/22	1786	MONTEREY PENINSULA	631	6031	FY21/22 POINT PINOS	0.00	100,000.00
101	102474	04/15/22	1896	NEILL ENGINEERS COR	631	6041	CRACK + SLURRY	0.00	23,866.40
101	102504	04/15/22	9401	WILLIAMS SCOTSMAN,	631	6021	FY21/22 PW CONSTRUC	0.00	1,219.85
101	102578	04/29/22	3378	DON CHAPIN CO., INC	631	6041		0.00	1,210.00
101	102594	04/29/22	1786	MONTEREY PENINSULA	631	6041	ROAD REHAB OVB - FY	0.00	57,503.50
101	102631	04/29/22	9325	ZANDER DESIGN	631	6031	POINT PINOS TRAIL C	0.00	1,000.00
TOTAL CASH ACCOUNT								0.00	184,799.75
TOTAL FUND								0.00	184,799.75

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 70 - EMP BENEFIT FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	703	5123	ADMIN FEE	0.00	200.00
101	102384	04/05/22	632	VISION SERVICE PLAN	703	5123	APRIL 2022	0.00	143.03
101	102410	04/07/22	1	CALPERS HEALTH	703	5123	APRIL RET & CHGS	0.00	941.83
101	102529	04/22/22	8211	STANDARD INSURANCE	703	5123	APR 2022	0.00	2,921.96
101	102606	04/29/22	4279	PARS	703	5141	PARS FEES	0.00	399.06
101	V4292022	04/29/22	9163	CLAREMONT BEHAVIORA	703	5123	MAY 2022	0.00	648.15
TOTAL CASH ACCOUNT								0.00	5,254.03
TOTAL FUND								0.00	5,254.03

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 71 - WORKERS COMP FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	701	5145	MARCH 2022 UAL	0.00	583.33
101	102533	04/25/22	2133	PERS	701	5145	APR 2022 UAL	0.00	583.33
TOTAL CASH ACCOUNT								0.00	1,166.66
TOTAL FUND								0.00	1,166.66

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 72 - LIABILITY INS FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	702	5145	MARCH 2022 UAL	0.00	416.67
101	102533	04/25/22	2133	PERS	702	5145	APR 2022 UAL	0.00	416.67
101	102562	04/29/22	3451	DE LAY & LAREDO	702	5201	MARCH 2022 LEGAL SE	0.00	9,597.06
TOTAL CASH ACCOUNT								0.00	10,430.40
TOTAL FUND								0.00	10,430.40

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 74 - LOCAL WATER PROJECT

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102468	04/15/22	1798	MONTEREY ONE WATER	741	5222		0.00	10,068.40
101	102479	04/15/22	2024	PACIFIC GAS & ELECT	741	5222	LWP	0.00	4,615.48
101	102482	04/15/22	7716	PERC WATER CORPORAT	741	5201	LWP O&M	0.00	25,295.72
101	102567	04/29/22	9552	DAVID TAUSSIG AND A	741	5201	LOCALWATER PROJECT	0.00	10,351.50
101	102632	04/29/22	438	CALIFORNIA AMERICAN	741	5222	1313 OCEAN VIEW BLV	0.00	17,504.14
TOTAL CASH ACCOUNT								0.00	67,835.24
TOTAL FUND								0.00	67,835.24

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 75 - CEMETERY FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	601	5145	MARCH 2022 UAL	0.00	1,166.67
101	102415	04/15/22	6411	QUADIENT LEASING US	601	5225	FEB-APR MAIL MACHIN	0.00	10.23
101	102448	04/15/22	9601	ERIC BARTHEL III	75	4484	CEMENT LINER	0.00	230.28
101	102451	04/15/22	9588	GENUINE PARTS COMPA	601	5309		0.00	33.08
101	102451	04/15/22	9588	GENUINE PARTS COMPA	601	5227		0.00	71.80
TOTAL CHECK								0.00	104.88
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	601	5309	CEM	0.00	43.00
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	601	5309	CEM	0.00	48.96
101	102454	04/15/22	1199	HAYWARD LUMBER COMP	601	5309	CEM	0.00	51.64
TOTAL CHECK								0.00	143.60
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	78.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	601	5309	LINEN AND UNIFORM C	0.00	13.16
TOTAL CHECK								0.00	451.05
101	102484	04/15/22	2219	PURE WATER	601	5309		0.00	20.45
101	102533	04/25/22	2133	PERS	601	5145	APR 2022 UAL	0.00	1,166.67
101	102585	04/29/22	8118	LLORIN-VELASQUEZ CO	601	5201	CEMETERY MARCH 2022	0.00	2,625.00
101	102585	04/29/22	8118	LLORIN-VELASQUEZ CO	601	5201	CEMETERY APRIL 2022	0.00	2,625.00
TOTAL CHECK								0.00	5,250.00
101	102621	04/29/22	1768	STURDY OIL COMPANY	601	5311		0.00	432.60
101	102632	04/29/22	438	CALIFORNIA AMERICAN	601	5222	CEM 4%	0.00	19.95
101	102632	04/29/22	438	CALIFORNIA AMERICAN	601	5222	1254 DELMONTECEM70%	0.00	207.49
TOTAL CHECK								0.00	227.44
101	102633	04/29/22	2786	VERIZON WIRELESS	601	5212	CEM	0.00	20.02
TOTAL CASH ACCOUNT								0.00	9,223.89
TOTAL FUND								0.00	9,223.89

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 76 - SEWER FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102383	04/05/22	2133	PERS	611	5145	MARCH 2022 UAL	0.00	9,250.00
101	102425	04/15/22	8579	BEFORE THE MOVIE IN	611	5221	THEATER AD	0.00	199.00
101	102434	04/15/22	7226	CAPITAL ONE PUBLIC	612	5801		0.00	12,329.00
101	102434	04/15/22	7226	CAPITAL ONE PUBLIC	612	5802		0.00	32,115.26
TOTAL CHECK								0.00	44,444.26
101	102441	04/15/22	696	CSC OF SALINAS	611	5227	UNIT 47	0.00	218.54
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	78.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	76.65
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	13.16
101	102466	04/15/22	1694	MISSION UNIFORM SER	611	5309	LINEN AND UNIFORM C	0.00	13.16
TOTAL CHECK								0.00	451.05
101	102469	04/15/22	9292	MONTEREY ONE WATER	611	5201	QUARTERLY LIFT STAT	0.00	47,432.76
101	102479	04/15/22	2024	PACIFIC GAS & ELECT	611	5222	PW	0.00	905.96
101	102484	04/15/22	2219	PURE WATER	611	5309		0.00	20.50
101	102533	04/25/22	2133	PERS	611	5145	APR 2022 UAL	0.00	9,250.00
101	102544	04/29/22	6154	AT&T	611	5212	SEWER ALARM	0.00	33.97
101	102544	04/29/22	6154	AT&T	611	5212	SEWER ALARM	0.00	33.97
101	102544	04/29/22	6154	AT&T	611	5212	SEWER ALARM	0.00	33.97
TOTAL CHECK								0.00	101.91
101	102568	04/29/22	9506	DUDEK	612	6051	STREET REHAB OVB -	0.00	4,081.61
101	102578	04/29/22	3378	DON CHAPIN CO., INC	612	6051		0.00	2,380.00
101	102578	04/29/22	3378	DON CHAPIN CO., INC	611	5201	FY21/22 SANITARY SE	0.00	2,328.20
101	102578	04/29/22	3378	DON CHAPIN CO., INC	611	5201	FY21/22 SANITARY SE	0.00	2,483.60
TOTAL CHECK								0.00	7,191.80
101	102597	04/29/22	1896	NEILL ENGINEERS COR	611	5201	RETAINER	0.00	1,000.00
101	102600	04/29/22	9576	O'REILLY AUTO ENTER	611	5227	UNIT #44	0.00	18.48
101	102621	04/29/22	1768	STURDY OIL COMPANY	611	5311		0.00	1,318.12
101	102628	04/29/22	6777	WALLACE GROUP	612	6051	CARRY FORWARD- CONS	0.00	1,235.00
101	102632	04/29/22	438	CALIFORNIA AMERICAN	611	5222	100 OCEANVW IRRIG	0.00	38.28
101	102632	04/29/22	438	CALIFORNIA AMERICAN	611	5222	1273 CRESPI POND 50	0.00	59.41

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 76 - SEWER FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102632	04/29/22	438	CALIFORNIA AMERICAN	611	5222	SEWER 8%	0.00	39.90
TOTAL CHECK								0.00	137.59
TOTAL CASH ACCOUNT								0.00	127,256.58
TOTAL FUND								0.00	127,256.58

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 77 - GOLF FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102604	04/29/22	7474	PACIFIC GROVE CAPIT	622	6061	CAPITAL IMP ACT GOL	0.00	12,239.17
101	102632	04/29/22	438	CALIFORNIA AMERICAN	621	5222	1273 CRESPI POND 50	0.00	59.40
101	102632	04/29/22	438	CALIFORNIA AMERICAN	621	5222	77 ASILOMAR FIRE SV	0.00	85.65
101	102632	04/29/22	438	CALIFORNIA AMERICAN	625	5222	77 ASILOMAR GOLF HS	0.00	1,541.18
101	102632	04/29/22	438	CALIFORNIA AMERICAN	621	5222	1254 DELMONTEGOLF30	0.00	88.92
TOTAL CHECK								0.00	1,775.15
TOTAL CASH ACCOUNT								0.00	14,014.32
TOTAL FUND								0.00	14,014.32

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 78 - SEWER LATERAL LOANS

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102496	04/15/22	9603	TANYA ANISTRATENKO	78	4409	OVERPAYMENT	0.00	28.24
101	102592	04/29/22	1770	MONTEREY COUNTY REC	781	5424		0.00	49.00
TOTAL CASH ACCOUNT								0.00	77.24
TOTAL FUND								0.00	77.24

SELECTION CRITERIA: transact.yr='22' and transact.period='10'
ACCOUNTING PERIOD: 11/22

FUND - 93 - KOO ESTATE DONATION

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DIVISION	ACCNT	----DESCRIPTION----	SALES TAX	AMOUNT
101	102576	04/29/22	9542	GHD INC	931	6031	LOVERS POINT PIER A	0.00	2,659.76
TOTAL CASH ACCOUNT								0.00	2,659.76
TOTAL FUND								0.00	2,659.76
TOTAL REPORT								786.80	2,206,387.22

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: May 18, 2022

SUBJECT: Core Revenue Report Status for April 2022

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

RECOMMENDATION

Receive the Core Revenue Status Report for April 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. During the Fiscal Year 21/22 Mid-Year Budget presentation, it was estimated that these three revenue sources would generate approximately $18.5 million. This represents approximately 65% of the amended General Fund revenue estimates; or 70% of the General Fund projected receipts, net of the American Rescue Plan Act Fund and the Library bequest transfers.

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

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_April 2022

Attachment 1
Core Revenue Report
April 2022

The following tables include the FY21/22 budget and year to date revenues. The receipts represent funds received to date. The Amended Budget reflects the proposed budget ordinance that was presented to City Council on April 6, 2021.

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 received its first two property tax payments for FY21/22 in December 2021 and April 2022, with an additional minor payment anticipated 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	8,518,000	8,407,088	98.7%

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. The Fiscal Year 21/22 revenues are recovering at a steady rate.

Transient Occupancy Tax	Amended Budget	YTD Receipts	% of Amended Budget
FY21/22	5,696,000	4,470,989	78.5%

The City receives transient occupancy tax in the month following the stay. The revenues received in April are for the March lodging period.

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	314,248	205,130
February	409,906	205,512	412,711	207,199
March	145,558	334,004	476,041	142,037
April	22,362	379,613		
May	56,465	428,612		
June	151,029	518,002		
	4,851,730	3,585,958	4,470,989	2,211,258
April 2022 TOT Payments are anticipated to be received late May 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	4,309,000	2,790,352	64.8%

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 can contribute 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	479,810	177,451
January Advance	244,631	281,830	260,937	(20,893)
February Advance	322,132	339,550	316,738	(22,812)
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	2,790,352	160,237
March 2022 payments are anticipated to be received in late May *as the State pays the City two months in arrears*				

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, Council Member

MEETING DATE: May 18, 2022

SUBJECT: Monterey-Salinas Transmit Meeting Minutes: April 11, 2022

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

RECOMMENDATION

Receive minutes.

Attachments

MST Minutes

MEETING OF THE MST BOARD OF DIRECTORS

MEETING MINUTES

April 11, 2022
10:00 am (Pacific)

Present:	Dan Albert (Chair)	City of Monterey
	Jeff Baron	City of Carmel-by-the-Sea
	John Gaglioti	City of Del Rey Oaks
	Lorraine Worthy	City of Gonzales
	Yanely Martinez	City of Greenfield
	Mike LeBarre	City of King
	David Burnett	City of Marina
	Joe Amelio	City of Pacific Grove
	Tony Barrera	City of Salinas
	Mary Ann Carbone	City of Sand City
	Dave Pacheco	City of Seaside
	Anna Velazquez	City Soledad
	Luis Alejo	County of Monterey
Absent:	Joe Amelio	City of Pacific Grove
	Anna Velazquez (Vice Chair)	City Soledad
Staff:	Carl Sedoryk	General Manager/CEO
	Lisa Rheinheimer	Assistant General Manager
	Norman Tuitavuki	Chief Operating Officer
	Michael Kohlman	Chief Information Officer
	Kelly Halcon	Director of HR & Risk Management
	Michelle Overmeyer	Director of Planning & Innovation
	Andrea Williams	General Accounting & Budget Manager
	Jeanette Alegar-Rocha	Deputy Secretary
	Ikuyo Yoneda-Lopez	Marketing & Customer Service Manager
	Sonia Wills	Customer Service Supervisor
	Matthew Deal	Grants Analyst
	Scott Taylor	IT Manager
	Ezequiel Rebollar	IT Technician
	Lisa Cox	Risk and Safety Manager
	Sonjé Dayries	Compliance Officer
	Elena Grigorichina	Operations Analyst
	Marzette Henderson	Transportation Manager

	Kevin Allshouse	Mobility Coordinator
	Claudia Valencia	Mobility Specialist
	Ruben Gomez	Mobility Specialist
	Beronica Carriedo	Community Relations Coordinator
	Sloan Campi	Planning Manager
	Daniel Bruno	Scheduling Assistant
	Emma Patel	Associate Planner
	David Bielsker	Transit Scheduler
Counsel:	Dave Laredo	General Counsel, De Lay & Laredo
Public:	Tate Baugh	MST Customer
	Douglas Thomson	MV Transportation

Apology is made for any misspelling of a name.

1. CALL TO ORDER

1-1. Roll Call.

1-2. Pledge of Allegiance.

Chair Albert called the meeting to order at 10:00 a.m. Roll call was taken, and a quorum was established. Chair Albert led the pledge of allegiance.

1-3. Review Highlights of the Agenda. (Carl Sedoryk)

2. PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA

There were no public comments.

3. CONSENT AGENDA

These items will be approved by a single motion. Anyone may request that an item be discussed and considered separately.

3-1. Approve Resolution 2022-26 Authorizing Remote Teleconference Meetings. (Carl Sedoryk)

3-2. Approve Resolution 2022-27 recognizing Michael Cajobe, Maintenance Mechanic, as Employee of the Month for April 2022. (Frank Marcos)

3-3. Approve Minutes of the MST Board Meeting on March 14, 2022. (Jeanette Alegar-Rocha)

3-4. Receive Draft Minutes MST Board Administrative Performance Committee Meeting on March 14, 2022. (Jeanette Alegar-Rocha)

3-5. Financial Reports – February 2022. (Lori Lee)
   a) Accept reports of February 2022 Cash Flow
   b) Approve February 2022 Disbursements
   c) Accept Report of February 2022 Treasury Transactions

3-6. Receive Report on Lost and Found Items Left on MST Property for the Month of December 2021. (Sonia Wills)

3-7. Approve Retirement Resolution 2022-28 Recognizing Steve Carroll, Maintenance Mechanic, for His 40 Years of Service. (Frank Marcos)

3-8. Approve Retirement Resolution 2022-29 Recognizing Grace Casey, Coach Operator, for Her 30 Years of Service. (Norman Tuitavuki)

3-9. Authorize the General Manager/CEO to Continue Retention of Sohagi Law Group for Legal Services Related to Two Cases in an Amount Not to Exceed $395,000. (Lisa Rheinheimer)

3-10. Reject Claim by Claimant, Bryant Ramirez. (Lisa Cox)

3-11. Reject Claim by the Claimant, Allstate ASO Aolivama & Alejandro Bucio. (Lisa Cox)

3-12. Receive Draft Minutes from the Measure Q Oversight Committee of March 28, 2022. (Jeanette Alegar-Rocha)

3-13. Receive Letter from Measure Q Oversight Committee Reporting that FY 2021 Funds Were Spent on Eligible Expenses. (Lisa Rheinheimer)

3-14. Reject Claim by Abramson Labor Group Re: Francisco Martinez v. Monterey-Salinas Transit. (Lisa Cox)

End of Consent Agenda

There were no public comments on the Consent Agenda.

On a motion by Director Carbone, seconded by Director Gaglioti and carried by the following vote, which was conducted by roll call, the Board approved items 3-1 through 3-14 on the Consent Agenda:

AYES:	**10**	**Albert, Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez Pacheco, and Worthy**
NOES:	**0**	
ABSENT:	**4**	**Alejo, Amelio, Velazquez**
ABSTAIN:	**0**	

Board member Luis Alejo joined the meeting at 10:15 a.m.

4. RECOGNITIONS AND SPECIAL PRESENTATIONS

4-1. April 2022 Employee of the Month – Michael Cajobe (Frank Marcos)

4-2. Retirement – Steve Carroll, 40 Years of Service (Frank Marcos)

4-3. Retirement – Grace Casey, 30 Years of Service (Norman Tuitavuki)

4-4. Board Member Service Recognition – Carl Sedoryk

Director Name	Sworn In	Milestone	Anniversary Date
Mike LeBarre	January 12, 2015	5 Years	January 2020
Dave Pacheco	January 12, 2015	5 Years	January 2020
Dan Albert	January 9, 2017	5 Years	January 2022
Luis Alejo	February 6, 2017	5 Years	February 2022
Anna Velazquez	February 6, 2017	5 Years	February 2022
Yanely Martinez	April 10, 2017	5 Years	April 2022

4-5. Receive Staff Report on Activities Related to the COVID-19 Pandemic Incident Response and Recovery Planning to Date and Provide Direction, If Needed. (Carl Sedoryk)

4-6. Receive MST Brand Development. (Ikuyo Yoneda-Lopez)

5. PUBLIC HEARINGS

5-1. FY 2022 Program of Projects for Federal Transit Administration Section 5307 Federally Funded Projects. (Matthew Deal)

a) Conduct Public Hearing for FY 2022 Program of Projects,
b) Adopt the FY 2022 Program of Projects, and
c) Authorize Filing of the Appropriate Grant Applications with the Federal Transit Administration and Caltrans.

Matt Deal, Grants Analyst provided the below update to the FY 2022 Program of Projects:

Monterey-Salinas Transit
Final Program of
Section 5307 Federally Funded Projects

Project	FY 2022
Fixed-Route Bus Planning & Operations	~~**$10,284,000**~~ **$12,074,210**
Bus and Vehicle Procurements	~~**$216,000**~~ **$1,000,000**
TOTAL	~~**$10,500,000**~~ **$13,074,210**

Chair Albert opened the public hearing and called for public comments.

Public Comment:

Tate Baugh stated support for resuming Lines 55 and 86 and asked for a timeline from the Board and staff of when these bus lines would be available to the Gilroy Caltrain Station. Mr. Baugh also inquired about a dedicated Salinas/ King City bus-only lane and road improvements that would address flooding issues in the area.

Carl Sedoryk, General Manager/CEO, informed the Board that MST and Santa Clara Valley Transit Authority (VTA) are in discussions about funding and how to pay for a return of MST service to the Gilroy Caltrain Station. The Salinas / King City bus-only lanes is in the MST Feasibility Study (10-year long term vision). The Transportation Agency for Monterey County Board would have most input and funding regarding improvements to address the flooding concern along US 101 south of Salinas.

On a motion by Director Gaglioti, seconded by Director Carbone and carried by the following vote, which was conducted by roll call, the Board approved the updated FY 2022 Program of Projects, and authorized filing of the appropriate grant applications with the Federal Transit Administration and Caltrans:

AYES:	**11**	**Albert, Alejo, , Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez Pacheco, and Worthy**
NOES:	**0**	
ABSENT:	**2**	**Amelio, Velazquez**
ABSTAIN:	**0**	

General Manager/CEO, Carl Sedoryk, left the meeting at 11:00 a.m. due to another meeting conflict.

6. ACTION ITEMS

6-1. Approve the Proposed Ineligible for Rehire Policy. (Deanna Smith)

There were no public comments.

The MST Board received the proposed Ineligible for Rehire Policy and provided comments to staff.

On a motion by Director Gaglioti, seconded by Director Carbone and carried by the following vote, which was conducted by roll call, the Board directed staff to update the Policy per comments by the Board and place the revised Policy on the consent agenda for consideration at the May 9, 2022 Board meeting:

AYES:	**11**	**Albert, Alejo, , Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez Pacheco, and Worthy**
NOES:	**0**	
ABSENT:	**2**	**Amelio, Velazquez**
ABSTAIN:	**0**	

6-2. Approve Resolution 2022-30 Authorizing the Certifications and Assurances, Authorized Agent Forms and Execution of the Low Carbon Transit Operations Program (LCTOP) Projects for FY 2021/22. (Matthew Deal)

There were no public comments.

On a motion by Director Baron, seconded by Director Gaglioti and carried by the following vote, which was conducted by roll call, the Board approved Resolution 2022-30 authorizing the Certifications and Assurances, Authorized Agent Forms and Execution of the Low Carbon Transit Operations Program (LCTOP) Projects for FY 2021/22:

AYES:	**11**	**Albert, Alejo, Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez, Pacheco, and Worthy**
NOES:	**0**	
ABSENT:	**2**	**Amelio, Velazquez**
ABSTAIN:	**0**	

6-3. Review Proposed Fare Changes and Direct Staff to Conduct Outreach Including Public Hearings. (Lisa Rheinheimer)

There were no public comments.

On a motion by Director LeBarre, seconded by Director Gaglioti and carried by the following vote, which was conducted by roll call, the Board directed staff to conduct outreach including public hearings:

AYES:	**11**	**Albert, Alejo, , Baron, Barrera, Burnett, Carbone, Gaglioti, LeBarre, Martinez Pacheco, and Worthy**
NOES:	**0**	
ABSENT:	**2**	**Amelio, Velazquez**
ABSTAIN:	**0**	

7. REPORTS & INFORMATION ITEMS

The Board will receive and file these reports, which do not require action by the Board.

7-1. General Manager/CEO Report – February 2022)

7-2. Federal Legislative Advocacy Report

7-3. State Legislative Advocacy Update

7-4. Staff Trip Reports – None

7-5. Correspondence – Congressman Jimmy Panetta

8. BOARD REPORTS, COMMENTS, AND REFERRALS

8-1. Reports on Meetings Attended by Board Members at MST Expense. (AB 1234)

8-2. Board Member Comments and Announcements.

a) CTA Spring Legislative Conference, May 18, 2022. Early Registration Deadline, April 20, 2022.

8-3. Board Member Referrals for Future Agendas.

9. CLOSED SESSION

There were no public comments.

9-1 Conference with Monterey-Salinas Transit and ATU Labor Contract – Gov. Code § 54957.6.

9-2. Significant Exposure to Litigation Pursuant to § 54956.9(b): (One Case: Francisco Martinez vs. Monterey-Salinas Transit District; Court & Case # Not Assigned.)

General Counsel, Dave Laredo reported that the Board received updates on closed session items #9-1 and #9-2, but no reportable action was taken.

10. ATTACHMENTS

10-1. The Detailed Monthly Performance Statistics and Disbursement Journal for February 2022 can be viewed online within the GM Report at http://mst.org/about-mst/board-of-directors/board-meetings/

11. ADJOURN

With no further business to discuss, Chair Albert adjourned the meeting at 12:01 p.m. (Pacific).

PREPARED BY:_____ REVIEWED BY:_____

Jeanette Alegar-Rocha Carl G. Sedoryk

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:	May 18, 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: Daniel Gho, Public Works Director/Deputy City Manager

MEETING DATE: May 18, 2022

SUBJECT: Beautification and Natural Resources Commission Minutes: March 15, 2022

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

RECOMMENDATION

Receive minutes.

Attachments

BNRC Minutes

SUBJECT March 15, 2022, BNRC meeting minutes
RECOMMENDATION
Approve the meeting minutes.
---

1. Call to order at 4:00 p.m.
Roll Call by Wooten: Commissioners present: Sara Green, Colleen Ingram, Megan McKenna, Susan Myers, Claudia Vierneisel, *Lucy Moore absent*

2. Approval of March 15th agenda
Motion to approve, McKenna. 2nd, Green. 6-0 approval.

3. Commission and Staff Announcements (City-related items only)
Commissioners

- **Wooten-** Welcomed Luke Coletti as the new council liaison. Reported the final count of Monarchs Friday 3/11 was 1,243. Height of the season over 14k in the Sanctuary, and total for western region Thanksgiving count was almost 250k, where last year there were fewer than 2k. Stated there is an item on council agenda to approve wildlife commission. If you have an opportunity to support that it would be great. Reported there was a Washington Park tree planting on the weekend- about 35 trees: 30 pine and 4 to 5 cypresses. Thanked Patrick Lovejoy who donated about 90 trees to GWP for planting in addition to the City trees planted, thanks to the City as well.
- **Vierneisel:** Coletti did not get the invitation as a panelist. Requested someone send him the link.
- **Ingram**: SPG had their first program at the Museum since COVID, and showed the movie No Impact Man. It was small because SPG didn't advertise it, and found the movie was a great way to reenergize our commitments to moving toward more sustainable consumerism and limiting our plastic waste here along the coast.

Staff

- None

4. Council Liaison Announcements

- **Coletti**- Stated he is glad to be the liaison and is looking forward to the appointment.

5. General Public Comments

- **Lisa Ciani-** Stated the Marine Protected Area Collaborative held their meeting this week, and the subject of confusing dog ordinances. Lovers Point was mentioned.. no dogs in park or dogs on leash. The signs make it confusing for everyone in the park, the double negatives used in the wording are confusing. The PG code 14.08.030 was revised to say – "exceptions—dogs are permitted on leash in certain areas.." LP Park is an area dogs are permitted but not the grass or beach. Contradictory signs lead to disturbing beach wildlife. Dogs are allowed on kayaks and SUP boards but not on the beach. Along with everything BNRC is doing, she hopes the inconsistent signs at Lovers Point can be addressed.

All Written Comments

- **Karin Locke:** Stated she is glad the BNRC will have a new and informed council liaison, is pleased that the groundwork for a Climate Action Plan is being done and commended the secretary on offering informative minutes.

.

6. Approval of the minutes of February 15th, BNRC meeting McKenna
Motion to approve, McKenna, 2nd, Myers, 6-0 approval.

7. Regular Agenda

7A. CIP Submissions- urban canopy and native plant habitat restoration **Reference:** Sara Green, Cathy Wooten, BNRC Chair

Recommended Action: Receive report

Public comment: -

- **Ciani** – Stated those are excellent projects. The trees are hugely needed, providing an employee to water them is huge. The native plant restoration location is good, continuing east of the Pt. Pinos Trail project. Concerned if it's digging down more than 12 inches there is supposed to be tribal monitoring provided and hope that was included in budget.
- **Rebecca Lee**- Thanked BNRC for both projects because it will also involve the community. The new watering position is important as the Friends of Seaside Parks Alliance report you need to water trees for 3 years because of the mega drought. Also, what the museum climate stewards are saying. Sidewalk uplift needs to be considered hand in hand with trees as you move forward. Will there be planting in the strips of homeowners on the other side of the sidewalk? Also concerned about some of the pollinators- there are some native bees that burrow in the dirt. Could you leave some dirt around the new plantings for them as they can't get through the wood chips?
- **Inge Lorentzen Daumer:** Stated that some native bees live in gopher holes and ground squirrels so that might take care of the problem.

Commissioner comments: -

- None

7B. Arbor Day

Reference: Dan Gho

Recommended Action: Receive report

End of the month of April 29, continuing with Tree City USA.

Public comment: -

- **R Lee**- Finds this exciting and shared that this week Monterey is doing their event, that this could be a school project to memorialize their tree in their yard. Asked if the community could use city non-potable water. Shared ideas for the project- taking pictures of the people with their trees as they grow in the local paper, students who need community hours can help with this project. There are grants to fund tree planting, but we need to have the grants written.

Commissioner comments:

- **Wooten:** Stated she prepared a Q and A to get the conversation going about how we can implement this event, stated that BNRC members can certainly help with tabling and distributing the trees.
- **Vierneisel**- Stated she would love to participate, and the Farmer's market would be nice.
- **Ingram**- Support the effort and is willing to table at the Farmer's Market with the BNRC, suggested Community Builders to get volunteers if needed.
- **McKenna**- Stated support for the project and asked if this will this be an event for that day, or there will extras given out at the market. **GHO** answered yes and he hopes to get a couple of hundred small seedlings. McKenna asked if a handout could be given with the tree on how to care for them. Also like the painted rocks and would recommend a promotional handout to paint the rocks.
- **Myers**: Also agree about the rock and instructions. **Asked Gho** if he has an idea where this will be – City Hall, or Parks. **GHO** answered TBD- thinking of City Hall courtyard.

- **Green**: **Aske**d **Gho** if the City had a have budget for this or would need donations as The Arbor Day Shop sells seedlings by zone. **GHO** – Stated the City will fund but will accept donations for trees and asked for Arbor Day Shop link. Green stated she will forward the link.
- **Wooten** - Stated willingness to prepare the care instructions with help of the arborist. Thought the Museum should be engaged in this as they would probably support. Would like to see some of the council and other commissioners handing out trees, also the GWP volunteers. We can help PW with all these groups. Is there a way to communicate with us as we proceed because the next meeting? **GHO**- said he will pass along any information that does not need action that would not violate the Brown Act.

7C. BNRC Goals
Reference: Cathy Wooten, BNRC Chair
Recommended Action: Receive report and provide direction

Public comment: -
- **R Lee** – Shared approval of item (L) to review the goals throughout the year, thinks BNRC needs to get more members. Asked if intentionally omitted or was it not needed to review Title 12, asked if regarding (D2), habitat could go beyond pollinators as yards are habitats for wildlife. (F.1)- pervious surfaces. - Steve Carrera is the only one who has kept his certification up. Monterey PW engineers decided on Rubberway. (H.4) Food compost- capstone project museum. (K)- Climate action is huge and learned Seaside earmarked 130K on study to see what they can do to combat climate action. Perhaps we can forward to council for monetary assistance.
- **Lisa Ciani** – Noticed under (C)- Monarch Sanctuary…refers to the Env. Programs Mgr. the person has been chosen a month ago and will be announced soon- Will this position carry over into the Monarch Sanctuary management team. I am hoping the council will approve the wildlife protection commission. Hopefully that would reduce your responsibility for (B) Shoreline Resources and(G), the marine and wildlife resources. Appreciates all that BNRC takes on and thinks this is one of the most important commissions in the City.

Commissioner Goals discussion: -
(A)Parks
- **Green:** Questioned when the Memorial Tree program would be back online because it is not active now. It shows it is suspended. **Gho** answered that all locations have been exhausted and that it will be coming before the BNRC soon to discuss new sites.
- **Wooten:** Asked if any commissioners would volunteer to take Akeman's place on Parks subcommittee.
- **McKenna**: Volunteered to take a seat on this subcommittee and recommended that the Memorial Tree Program be moved to the Trees subcommittee.
- **Green:** Reminded commission that this was discussed as an option so it should work.
- **Ingram:** Pointed out that Parks and Rec Commission also works on parks and trees, so we may want to work with them at least on the subcommittee level.
- **Wooten:** Agreed that BNRC and Parks/Rec. should collaborate and will reach out to them. Also likes combining (A)Parks and (D)Trees on the goals list
- **Myers:** Questioned who would now be on the combined subcommittee as we are limited to 3. Determined to remain with Wooten, Vierneisel, and Green.

Motion to combine A and D with members Wooten, Vierneisel and Green, Wooten, 2nd, Ingram, approve 6-0
(B)Shoreline
- **Green:** Stated that we had discussed (3) Whale Trail was not applicable to Pacific Grove and that it should be removed. **Gho** added that he has been at the Monterey Regional Stormwater

Management Program is looking into how to incorporate the Whale Trail, so the project is still active.

- **Ingram:** Agreed to remove the Whale Trail, but also questioned the need for this goal if the Council approves a Coastal Wildlife Protection Commission might be overseeing some of this as well as the marine wildlife topic.
- **Wooten**: Shared that we should keep these goals and work with the coastal wildlife protection committee if/when it is approved.
- **Myers**: Stated she would like to become involved with this topic and initiate a subcommittee if someone would join her.
- **Green and McKenna**: Offered to would join Myers in a shoreline subcommittee.

Motion to eliminate item (3) from (B) and to form subcommittee of Myers, Green, and McKenna, Green, 2nd, McKenna, approve 6-0.

(C)Monarch Sanctuary - no change

- **McKenna:** Wanted to flag that we need an update to the Monarch Sanctuary Management Plan. **Wooten and Gho** stated that it would be picked up when the Environmental Prog. Manager is officially on the job.

(D) Trees (added Green earlier motion)

(E) Art – no change

- **Ingram:** Requested to be removed from this subcommittee and asked if someone would take the place
- **Green:** Volunteered to sit on this subcommittee

(F) Water -no subcommittee, no change

(G) Marine and Wildlife – no change

- **Vierneisel:** Offered to replace Akeman on this subcommittee

(H) Litter – no change

(I) IPM – no change

(J) Community Engagement

(K) Climate Action – no change

(L) Organizational Efficiency

- **Ingram:** Volunteered to activate this in order to research updates for BNRC website
- **Myers:** Agreed to join and suggested combing this with (J) community engagement and (L). Asked Wooten if she would approve of the combination since she is on (J) but note (L).
- **Wooten:** Agreed to remain a member of the combined subcommittee. Asked if there were any more recommendations before motions.

Motion to approve combining (J) and (L), Ingram, 2nd, Green, approve 6-0.

Gho: Asked to comment- stated there are a lot of goals. As subcommittees progress and want to place items on the agenda, it will be up to Chair Wooten but feel free to reach out if you have questions.

8. NEXT MEETING – April 19th, 2022

ADJOURNMENT: 5:09
Motion to adjourn, Myers, 2nd, Ingram, 6-0 approval
Colleen Ingram, Secretary

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: May 18, 2022

SUBJECT: Diversity, Equity & Inclusion Task Force Minutes: April 25, 2022

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

RECOMMENDATION

Receive minutes.

Attachments

DEI Minutes

MEETING MINUTES

CITY OF PACIFIC GROVE
DIVERSITY, EQUITY, AND INCLUSION TASK FORCE

SPECIAL MEETING
Monday, April 25, 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 THEGOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

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1. **CALL TO ORDER / ROLL CALL**

Chair Tina Rau called the meeting to order at 6:02 pm. City Manager Harvey conducted roll call with the following Task Force members present via Zoom Meeting: Task Force Members (Members) Kim Bui, Kristi Markowitz, and Tina Rau. Members Edward Juarez-Lefevre and Nadja Mark were absent.

2. **APPROVAL OF AGENDA**

Action: Upon motion by Secretary Bui and seconded by Chair Rau the Task Force approved the Agenda.

Motion carried 3-0-2, by the following roll call vote:

AYES:	Members Bui, Markowitz, and Rau.
NOES:	None.
ABSENT:	Members Juarez-Lefevre and Mark

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

Secretary Bui and City Manager Harvey made announcements.

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Council member Poduri made an announcement.

5. **GENERAL PUBLIC COMMENT**
No public comment was received.

6. **APPROVAL OF THE MINUTES**
Action: Upon motion by Chair Rau and seconded by Member Mark, the Task Force approved the Minutes of the March 14, 2022 Regular Meeting as follows:

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Mark, Markowitz, and Rau.
NOES:	None.
ABSENT:	Member Juarez-Lefevre

7. **REGULAR AGENDA**

A. Apology for Treatment of Chinese Settlers and Citizens
Secretary Bui and Member Mark gave a presentation.

Public comment was received from Michael Ipson, Janet Cohen, Randy Sabado, Sue Parris, and Christine Gruber

Action: Upon motion by Member Markowitz and seconded by Chair Rau, the Task Force received and recommended a City Apology for the treatment of Chinese settlers and citizens and recommended that the City Apology be placed on the May 11, 2022, City Council Agenda and be publicly read at the May 14, 2022 Walk of Remembrance.

Motion carried 4-0-1 by the following vote:

AYES:	Members Bui, Mark, Markowitz, and Rau.
NOES:	None.
ABSENT:	Member Juarez-Lefevre

B. Amendment to the City Council Special Events 900-1
Chair Rau gave a presentation.

Public comment was received from Michael Ipson and Janet Cohen.

Action: The presentation was received.

C. City DEI Plan Subcommittee
Secretary Bui provided a presentation.

No public comment was received.

Action: The presentation was received.

NEXT MEETING: Regular Meeting on May 9, 2022 at 6:00 p.m.

ADJOURNMENT
Chair Rau adjourned the special meeting at approximately 7:21 p.m.

Respectfully Submitted,

Kim Bui
Secretary

Approved by Chair: _____Date_____

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:	May 18, 2022
SUBJECT:	Economic Development Commission Minutes: February 10, 2022 and March 10, 2022
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

Minutes

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MEETING MINUTES

CITY OF PACIFIC GROVE

ECONOMIC DEVELOPMENT COMMISSION

REGULAR MEETING

Thursday, February 10, 2022, 4:00 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

Commissioners Present: Chair Mourlam, Vice Chair Uppman, Secretary Zina, Member Markowitz

1. **APPROVAL OF AGENDA**

City Manager Ben Harvey requested meeting start with item 6, which was approved unanimously by all councilmembers.

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2. COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)

City Manager welcomed Jenny MacMurdo, new Pacific Grove Chamber of Commerce President, as an ex-officio (non-voting) Member of the Economic Development Commission. Jenny takes the place of Moe Ammar, who has retired from the Chamber after 29 years of service to the community.

3. COUNCIL LIAISON ANNOUNCEMENTS

Council Member McAdams thanked Chair Beck for her contributions to the Economic Development Commission and acknowledged her movement to the Planning Commission.

4. GENERAL PUBLIC COMMENT

No request from the public for comment.

5. APPROVAL OF THE MINUTES

A. Economic Development Commission Meeting Minutes: December 16, 2021

On a motion by Vice Chair Uppman, seconded by Commissioner Markowitz, the Commission voted 4-0-0 to approve the draft minutes

REGULAR AGENDA

6. Election of Officers

Nicholas Mourlam nominated himself for Chare, the Commission voted unanimously to approve.
Chair Mourlam nominated Erik Uppman as Vice Chair, the Commission voted unanimously to approve.
Chair Mourlam nominated Arielle Zina nominated as Secretary, the Commission voted unanimously to approve.

7. District Vacancy Tax

Commission members discussed the tax, its potential impact from the City of Pacific Grove as well as business owners. Chair Uppman highlighted potential optics within the business community given timing to coincide with a new Ballot measure for additional sales tax.

City Manager Ben Harvey acknowledged a potential possibility to hire former President of the Pacific Grove Chamber of Commerce, Moe Amar, on a limited contract for

Commissioner Markowitz made a motion to recommend to City Council the creation of a subcommittee to review a potential ballot measure to impose a commercial district vacancy tax, or alternatives to this approach. Secretary Zina seconded the motion. Motion passed unanimously

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(4-0).

8. **Vacant Storefront Program**

Commission members discussed a potential program and the varying types of incentives that could be imposed and the timing impacts to both potential business owners as well as the City.

Laurel O'Halloran provided an overview of fees involved in starting a business, which can vary depending on the permits needed. Typical costs is around $220, however can increase up to $3000.

Chair Mourlam made a motion to convene a subcommittee to review a vacant storefront program, which was seconded by Secretary Zina. Volunteers for the subcommittee included Vice Chair Uppman, Secretary Zina, and Commissioner MacMurdo. Motion passed unanimously (4-0).

9. **Report from City Business Ombudsperson**

Laurel O'Halloran provided an update on business activity in Pacific Grove.

- Seltzer company will open in February on 631 Oceanview Blvd. Initially, it was only going to assume one storefront at that location, but has opted to take two.
- Captain + Stoker will open its second location in Pacific Grove in March 2022 where the Juicery was formerly. They are hoping to install a parklet.
- Red House Café opened their second location in January 2022, Winston's Brunch Place. This is the location where Holly's was formerly located. They are considering installing a parklet.
- Saucy Otter Brew Pub has all of their approvals and license for planning, and will be submitting their building permit in March
- PG Hotel, to be located at 157 Grand Avenue is planning to break ground in Spring 2022.
- Working with Mondos to identify a new location.
- A restaurant was planning to take the location formerly occupied by Crema, but the building owner has decided to put the location up for sale.
- The building where Pier 1 was located was recently purchased.
- 520 Lighthouse is planning to be complete with Condos and mix use restaurants on the ground floor is planning to be complete by Fall 2022.

City Manager Ben Harvey clarified for Vice Chair Uppman that in April 2022, the ordinance allowing Parklet's expires.

10. Report from City Economic Development Consultant

Barry Foster highlighted that most cities are back to pre-pandemic sales tax revenues, however, because labor and good prices have increased, small businesses have not seen revenues return to pre-pandemic amounts. Projecting that the economy will continue to grow and recovery through 2022.

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In the Fall 2020, Foster created a Recovery Action Plan for Pacific Grove and is in the process of updating with a final draft tentatively scheduled for the new few weeks.

Working with the City and Commissioner MacMurdo (in her capacity as President of the Chamber of Commerce) to update and revamp the Economic Development Webpage for the City to increase ease of access to potential new businesses.

Collaborating with City manager Harvey to conduct a Broker event. Last event was held in January 2020, immediately pre-pandemic. Roughly 15 commercial brokers in the area attended, including some property owners. Planning to host the new event on Wednesday, March 9th.

Public Comment: *Debbie Beck requested data on sales tax in the City of Pacific Grove.*

Barry Foster highlighted that they provide a quarterly newsletter on City sales tax that is non-confidential and could be shared.

City Manager Ben Harvey also noted that the City Council receives a monthly Core Revenue Report that tracks sales tax, property tax, and TOT receipts which is presented monthly at the second meeting each month. General characterization is that sale tax has increased. Property tax has increased the most. TOT has not been as strong, but is starting to increase.

11. UNFINISHED AND ONGOING BUSINESS

City Manager Ben Harvey noted that the upcoming City Council meeting is reviewing an application to modify aspects of their initial plan (e.g., increased height restriction). Given the impact that this luxury hotel will have on our downtown, it may be of interest to the Commissioners to participate.

Chair Mourlam requested that Laura O'Halloran submit a list of vacant properties to the subcommittee.

Vice Chair Uppman reminded everyone of three vacant EDC seats to seek to invite additional qualified candidates to participate.

ADJOURNMENT – 5:28pm

APPROVED BY THE ECONOMIC DEVELOPMENT COMMISSION

DocuSigned by:
Arielle Zina
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Arielle Zina
Secretary

4/29/2022

Date

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MEETING MINUTES

CITY OF PACIFIC GROVE

ECONOMIC DEVELOPMENT COMMISSION

REGULAR MEETING

Thursday, March 10, 2022, 4:00 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

1. **APPROVAL OF AGENDA**

   - Motion to approve agenda made by Commissioner Uppman, seconded by Secretary Zina. Passes unanimously (4-0)

2. **COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
   - **Secretary Position.** Secretary Zina noted that while she initially took the position on a temporary basis, she will commit to the role for the remainder of this term.
   - **New EDC Commissioner.** City Council approved recommendation from Mayor to approve Chip Merry as an EDC member. He is City Manager of Carmel by the Sea, but an engaged resident of Pacific Grove. He has a

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conflict for today's meeting but will join for future meetings once he is sworn in. Notably, he was previously City Development Director for Monterey and is an urban planner by education.

- **Remaining Seats.** Chair Mourlam inquired regarding remaining open seats. City Manager Ben Harvey noted that they are continuing to publicize these seats in their newsletters, social media, etc. Jenny MacMurdo offered to outreach to members of the Chamber.

3. **COUNCIL LIAISON ANNOUNCEMENTS**
Director of Community Development will be leaving her position with the City in April.

City Council had its first hybrid meeting both in person and via Zoom. Currently Committee meetings will not be available for hybrid meetings, but in person meetings are possible, should the commission choose to. Chair Mourlam requested that we address this at the end of the agenda during Unfinished and Ongoing Business.

4. **GENERAL PUBLIC COMMENT**
No public comment.

5. **APPROVAL OF THE MINUTES**
Due to the minutes not being included in the package, approval of the minutes will be deferred to the April meeting.

REGULAR AGENDA

6. **Oral Update From City Business Ombudsperson**
Business activity:
   - Seltzer Co. building walk through occurred. Tentatively planning for soft opening by first week of April.
   - Captain and Stoker walk through occurred and is making progress. Still hoping to open in April.
   - Saucy Otter Brew Pub is moving along to submit building plans.
   - PG Hotel has approved building plans. Hoping to break ground in Spring 22, pending decision on amendment to their building plans being reviewed by City Council next week.

During the broker luncheon that occurred 3.9 and one of the inputs included restarting the Façade program. Investigating whether funding exists and will report back to the EDC before or during the next meeting in April. Previous Façade program had $50K budget. The façade program was open to for both property and business owners.

7. **Oral Update From City Economic Development Consultant**

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- While sales tax has improved to pre-pandemic levels, costs have increased so small businesses are still struggling. Encourage cities to work with small business.
- Outdoor dining is a new normal in California. Pacific Grove parklets seem successful to increase options for patrons.
- Website update is progressing with a goal of a refreshed site with increased ease of access. Considering incorporating videos to increase use.
- Broker lunch included 11 individuals. Recommended holding a property owners meeting, building off of Monterey's approach. They hold their meetings monthly and the owners themselves take ownership to lead the meeting. It serves as a forum to engage property owners, including those that are not local to the community.

No public comment.

Vice Chair Uppman inquired regarding website and City Manager noted that the timeline has been pushed back due to a decision to use an internal developer, who has been out on maternity leave.
Noted that June and July traffic included 140 views to the site. Vice Chair Uppman recommended that prior to developing new content, we should work to ensure we are driving appropriate traffic to the site. City Manager Ben Harvey note that we will increase ease of access of the EDC link on the City of Pacific Grove's main page.

City Manager Ben Harvey noted that during or prior to the April EDC meeting, the goal is to review initial outline of the revamped website.

Secretary Zina inquired further about Monterey's property owner meeting. It was confirmed that Monterey's meeting is for commercial property owners. When Zina inquired how to engage them, the consultant highlighted a potential role of the City to help support in the initial days before being able to transition to the property owners leading the meeting. City Manager is in the process of securing agreement with Moe Amar to engage property owners to build this relationship.

8. UNFINISHED AND ONGOING BUSINESS

February recommendation to City Council. Chair Mourlam inquired how to advance the February recommendation to the City Council. City Manager Harvey noted that best practice would be to include a report or presentation to the City Council itself. However, given the backlog in the City Council meetings, it is unlikely together onto the Agenda until May at the earliest.

Marketing funds from 2021. An inquiry was made about the former subcommittee including Former Commissioner Amar, Former Chair Beck and

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Vice Chair Uppman. Action was taken based on the recommendation and a commercial will be airing soon. In a future meeting, City Manager Harvey will review any remaining budget of the EDC.

Foot Traffic Technology. Vice Chair Uppman highlighted new technology on foot traffic. Notably there are many approaches and companies, but essentially the company tracks location data from apps on cell phones and monitors foot traffic. Barry noted that he is aware of the company and that Placer.AI is quite expensive. Does not have access due to the cost restriction.

Shopping Center Convention in Monterey. Barry Foster mentioned attending a shopping center conference. Commissioner MacMurdo inquired what, if any, presence the City of Pacific Grove has at these events. Barry Foster noted that traditionally, Pacific Grove has not sought after the larger, national retailers that attend those meetings.

Gas Price impact on encouraging local businesses. A commissioner highlighted that the EDC could identify how the increase gas prices may spur more local commerce.

Parklets to expire. Secretary Zina will create an agenda item for the next EDC meeting so the EDC may be positioned to make a recommendation to City Council.

Pandemic Funds. City Manager noted an upcoming survey on ARCA on how to spend pandemic funds ($1.8M to arrive in July; booked as revenue in the next fiscal year).

In person meeting. After general consensus, the EDC will plan to continue on Zoom.

ADJOURNMENT – 5:15pm

APPROVED BY THE ECONOMIC DEVELOPMENT COMMISSION

DocuSigned by:
Arielle Zina
57C72030BDF74EC...

Arielle Zina
Secretary

4/29/2022
Date

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Diana Godwin, Library Director

MEETING DATE: May 18, 2022

SUBJECT: Library Board Minutes: January 10, 2022

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

RECOMMENDATION

Receive Minutes

DISCUSSION

Library Board Minutes: January 10, 2022

OPTIONS

Receive Minutes

FINANCIAL IMPACT:

None

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

Attachments

LAB Minutes January 2022

NOTICE OF MEETING

CITY OF PACIFIC GROVE

LIBRARY BOARD

REGULAR MEETING

Monday, January 10, 2022 4:00 P.M.

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

MINUTES

CALL TO ORDER/ROLL CALL – 4:03 pm. Attending: Library Director Diana Godwin, City Council Liaison Bill Peake, Board Chair Heather Lazare, Board members Marybeth Rinehart, Faye Mueller-Delia (joined at 4:30 p.m.) and Tama Olver.

1. **ELECTION OF SECRETARY.** *Motion: Nominate and elect Tama Olver to the position of Secretary.* Lazare/Rinehart. Approved unanimously 3/0/0.

2. **APPROVAL OF AGENDA** *Motion: Approve the agenda as written*. Lazare/Rinehart. Approved unanimously 3/0/0.

3. **COMMISSION/STAFF ANNOUNCEMENTS**

Chair Lazare noted:

a. There is vacancy on the board. Names of candidates should be submitted to Mayor Peake. Candidates must live in Pacific Grove.
b. There is a vacancy on the Reopening Committee. Marybeth volunteered to fill the vacancy and will contact Jean Blondeau for transition.

Library Director Goodwin noted:

a. Receipt of an enquiry about whether we are considering closing given the state of the pandemic.

b. The value of including a discussion related to Hayes Perkins on a future agenda.

4. COUNCIL LIAISON ANNOUNCEMENTS

Mayor Peake noted:

a. Has received an application for the Library Board that will be public toward the end of the month. Other board appointments will be considered January 19.
b. The ATC project appeal will be considered at the council meeting on 1/12.
c. An upcoming water entitlement purchase for the PG Hotel to be constructed across from the Library will support the project approved in 2018.
d. Upcoming items being considered are an increase salary and benefits for council members, training on being an excellent council, and the role of a council liaison.

5. PUBLIC COMMENT

Noreen Nance, President of the Pacific Grove Library Foundation board and a member of that board for 8 years, plans to attend Library Advisory Board meetings to ensure we collaborate. She extended an invitation to attend at Foundation board meetings.

6. APPROVAL OF THE MINUTES

The minutes of the meeting of November 8, 2021 were accepted without change.

Faye Mueller-Delia joined the meeting.

REGULAR AGENDA

7. UNFINISHED AND ONGOING BUSINESS

1. Landscaping Committee.
   Chair Lazare noted that the committee has completed its work. Maintenance by volunteers will occur on Fridays at 10 a.m. Much appreciation goes to committee members Mary Beth, Dave Parker, Lucy Moore, Judy Wills.
2. Naming opportunity.
   Consistent with the established naming guidelines, David Laws has suggested making a donation so that the local history room could be named in honor of his wife, Jean Laws. Whether to accept the proposal and make a recommendation to the city council will be considered at a future meeting.

ADJOURNMENT – 4:38 pm.
Next Meeting: March 14, 2022, 4pm, via Zoom.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Lori Frati, Management Analyst

MEETING DATE: May 18, 2022

SUBJECT: Hospitality Improvement District (HID) program for Fiscal Year 2022-23

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

RECOMMENDATION

1. Hold a public hearing to determine whether a majority written protest to the proposed annual district assessment is received.
2. If no majority protest is determined, adopt the resolution to approve the annual report, levy the annual assessment, approve the program for Fiscal Year 2022-23, appoint the HID Advisory Board, and authorize the City Manager to execute an agreement with the Pacific Grove Chamber of Commerce to administer the HID budget.

DISCUSSION

In November 2007, the City established the Hospitality Improvement District (HID), appointed an advisory board, and established an assessment for the District.

On October 29, 2018, City Council adopted Resolution No. 18-039, granting the City of Monterey to include the City Pacific Grove in the Monterey County Tourism Improvement District (MCTID).

On November 28, 2018, Council adopted Resolution No. 18-047, amending the Hospitality Improvement District assessment, effective January 1, 2019. This amendment allowed Pacific Grove to equally bifurcate the original assessment. Under this new structure, the HID assessment of $2.00 per night for full-service lodging establishments at $1.00 per room night for all others, will be transferred to the Pacific Grove Chamber of Commerce. Resolution 12-014 defines full service lodging accommodations as "…generally mid-price, upscale or luxury hotels with a restaurant, lounge facilities and meeting space as well as minimum service levels, often including bell service and room service. These hotels report food and beverage revenue". Pacific Grove currently has no full-service hotels or bed and breakfast establishments. HID assessment revenues are exclusively used for the support and benefit of the hospitality economy of Pacific Grove.

The separate MCTID assessment was approved for levy in January 2019, and is subject to a five-year term.

At its April 20, 2022, meeting, the City Council approved a resolution of intent to levy the HID

assessment for FY 2022-23 and set a public hearing for May 18, 2022 to consider the levy. California Streets and Highways Code Section 36525 provides that the District shall not be formed if written protests are received from the owners of businesses in the proposed area that will pay 50 percent or more of the assessments proposed to be levied. Staff advertised the public hearing pursuant to relevant State and Municipal Code sections. Staff has received no protest petitions as of this writing.

Pursuant to State law and City Council Resolution 07-044, which formed the HID, an Annual Report is required that reports on District revenues and expenditures, proposes a budget for Fiscal Year (FY) 2022-23, and requests the levy of an assessment for FY 2022-23.

The Pacific Grove Chamber of Commerce annual report (Attachment 1) reports on District revenues and expenditures for FY 2021-22, proposes a budget for FY 2022-23, and requests the levy of an assessment for FY 2022-23. No changes to HID boundaries are recommended for FY 2022-23. City Council Resolution 07-044 (Attachment 2) outlines the requirements for levying the annual assessment for the District. The terms of the Resolution have been met as indicated by the specific points of compliance set forth below:

- *Process for Advisory Board Appointment*: Per the Resolution, the Chamber of Commerce facilitated a noticing of all properties in the HID and a meeting of the HID Advisory Board to fill Advisory Board seats that will expire on June 30, 2022. Results of the election from the Chamber of Commerce are included in the report, with the following recommended Advisory Board for next year:
- Fady Hannah (Lighthouse Lodge and Cottages), term expires June 30, 2024
- Michael Grech (Monterey Peninsula Inn), term expires June 30, 2024
- Amrish Patel (Centrella Bed & Breakfast Inn), term expires June 30, 2023
- Robert Boerner (Pacific Gardens Inn), term expires June 30, 2023

As stated in the ordinance that created the HID, "a conference facility", in reference to Asilomar Conference Grounds, will have one representative on the board at all times. Enos Esquivel, of Asilomar will be the board member on the HID representing the conference facility.

- *Contract with Chamber of Commerce for Services* (Attachment 3): The City will contract with the Chamber of Commerce to administer the HID program in compliance with the plan approved by the City Council. Any unspent revenues will be retained by the Chamber for performance of the FY 2022-23 contract.
- *Chamber of Commerce Financial Reporting:* The FY 2021-22 HID report from the Chamber includes HID expenditure activity for current fiscal year to January 31, 2022.

Proposed FY 2022-23 HID Program. The City of Pacific Grove estimates a total of $239,000 will be distributed to the HID in FY 2022-23; however, this amount may be amended based on transient occupancy revenues within the fiscal year. The estimated revenue of $239,000, in addition to the carry-over balance of $20,000, brings the FY 2022-23 budget to $259,000.

The HID Advisory Board recommends allocating HID assessment revenues for the following projected FY 2022-23 expenditures:

Proposed HID Expenditure Budget FY 2022-23	
Bookkeeping	$4,800
Marketing/Advertising	$97,600
Promotions and Signage	$10,000

Miscellaneous	$4,500
Lease and Property Exp. (Visitor Center)	$46,700
Operating Expenses (Visitor Center)	$91,000
Technology	$2,000
Landscaping	$2,400
Total	$259,000

OPTIONS

1. Decline to adopt the Resolution.
2. Adopt a modified Resolution.
3. Provide alternative direction.

FINANCIAL IMPACT:

The City acts as the administrative pass-through to the HID. Assessment revenues may only be used for HID purposes; and will reflect the actual amounts collected.

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

Attachments

Hid Annual Report

HID Resolution 07-044

HID Reso 22-23

HID Contract with Chamber of Commerce

CHAMBER OF COMMERCE
& TOURIST CENTERS

March 9, 2022

To: Lori Frati - Finance Management Analyst
From: Jenny MacMurdo - Pacific Grove Chamber of Commerce
Subject: Pacific Grove Hospitality Improvement District Annual Report

In accordance with the City's approved agreement with Pacific Grove Chamber of Commerce (PGCC), I am submitting the HID annual report.

Introduction

For the past twelve months Pacific Grove lodging establishments continued to suffer major loses due to the pandemic that caused the below:

1. Closing, then slow re-opening of the destination's top attraction, the Monterey Bay Aquarium;
2. Cancellation of most events that attract thousands such as many Car Week events, Jazz Festival, and Good Old Days;
3. Closing of Asilomar Conference Grounds. The grounds generate 30% of the HID's annual budget;
4. Cancellation of most group and conference business;
5. Extremely unpredictable elimination then staged re-opening of indoor and outdoor dining; all visitors need a place to dine when visiting a community.

Election of Board Members

On Tuesday, February 9th, 2022 the Chamber hosted a public meeting and invited all HID members. The purpose of the meeting was to facilitate the nomination of the HID Advisory Board representatives. The two below innkeepers were elected to a two-year term from July 1, 2022 until June 30, 2024:

1. Fady Hannah – Lighthouse Lodge & Cottages
2. Michael Grech - Monterey Peninsula Inn

For your information, the ordinance that created the HID stipulated that "a conference facility", in reference to Asilomar Conference Grounds, will have one representative on the board at all times. Enos Esquivel of Asilomar will be the board member on the HID representing the conference facility. The newly elected HID members will join the below two Advisory Board members that are serving until June 30, 2023:

1. Robert Boerner – Pacific Gardens Inn
2. Amrish Patel – Centrella Bed & Breakfast Inn

Income/Beginning Balance

The beginning balance of the HID account was $112,937.92. Total income of the HID from July 1, 2021 through January 31, 2022 is $119,984.63 compared to $265,389 in FY 19/20, a decline of 54.79%.

Expenditures and Details

Total expenses from July 1, 2021 until January 31, 2022 are $133,384.99.
HID expenditures have been invested in the below main areas:

1. Tourist Center
    a. The Tourist Center at 100 Central Avenue is the largest operating expense of the HID.
    b. Before the pandemic, the center attracted hundreds of visitors that were referred to all business districts in Pacific Grove.
    c. The Center re-opened to its regular schedule, 7 days a week, 363 days a year on June 16, 2021. From June 2021 to February 2022, the Center had a total of 8,601 visit the center, averaging 950 per month. These totals are roughly 45% below pre-pandemic numbers.
    d. We are optimistic that the coming months will see an increase in visitors, but given the unrest on the global stage, and the rising price of gas and other uncertainties, we are unable to predict the timing of a full return to the new normal.
    e. Visitors are excited to be traveling and most of our visitors are California residents who love our destination. However, we continue to see travelers from across the US and Europe as well.
    f. Since its opening in May of 2011, the center revitalized the Central/Eardley business area.
    g. The center is predominately volunteer driven.
2. Online Marketing
    a. Online marketing remains the most effective method of reaching targeted market segments in an engaging manner.
    b. The chamber's total following is over 25,000 across all social media platforms.
    c. The HID contracts with several media companies that handle strategic campaigns that attract visitors to Pacific Grove.
    d. The focus is on generating overnight visitors who will stay in town, eat, and shop.
3. Print Advertising
    a. Northern California and the Central Valley are the top two feeder markets for Pacific Grove.
    b. Most HID print advertising targets key markets and utilize Bay Area publications and travel magazines.
4. Video Promotions
    a. Over the past three years, the HID produced promotional videos of most lodging establishments.
    b. Aerial Video Services of Monterey produced virtual tours of lodges and inns.
    c. This allows potential visitors to check-out establishments remotely prior to booking a reservation.
5. Promotional Brochures
    a. In December 2021, our tourist guide was fully re-designed and updated.
    b. Currently, we are in the process of updating our brochures and walking tour.
    c. Printed materials are still frequently requested by travel partners.
    d. This year our Tourist Information Center has been added to the Central Coast Tourism Council's map/brochure, gaining additional visibility for the center.

6. Distribution Services
    a. The HID funded the distribution of the tourist guide to key locations in the County as well as San Jose airport.
    b. Certified Folder Display Services is a company that specializes in delivery of brochures in California. The company distributes the guide on behalf of the HID.
7. Promotional "Give-A-Ways"
    a. In prior years, the HID funded branded mugs, binoculars, sling bags, t-shirts, and wine glasses to promote Pacific Grove. The t-shirts were given to hotel guests, especially repeat visitors.
    b. This FY, the HID held back on funding promotional give-a-ways.

Key Goals for 2022 – 2023

1. The Chamber continues converting all possible messages and images to reflect the new branding completed in April 2020. We are currently working on a new Chamber/Destination website, which should roll out by summer 2022.
2. Educate and support local innkeepers in developing better relationships with Monterey County Convention & Visitors Bureau. It is critical that we take advantage of the services offered by the MCCVB.
3. Develop a Lodging Quality Assurance (LQA) Program to ensure our lodging partners are provided with information and tools to consistently improve lodging standards, and that visitors to Pacific Grove always experience the finest in accommodations.
4. Develop a Certified Vendor Program to assist the area's lodging partners on reaching higher LQA ratings. The program would educate vendors on the LQA rating system so they can assist property owners with purchasing high quality products that correspond with inspection qualifications.
5. Continue to collaborate with major organizations that benefit Pacific Grove such as the Monterey Bay Aquarium, CourseCo Inc., Asilomar Conference Grounds, WeatherTech Raceway Laguna Seca and others.
6. Promote Pacific Grove during major events such as the AT&T Pebble Beach Pro-Am, Monterey Jazz Festival, Car Week, US Open, and holiday celebrations.
7. Invest in marketing "Christmas at the Inns" which promotes all bed and breakfast inns in town.
8. Subsidize marketing opportunities that may not be affordable to small innkeepers.
9. Complete production of virtual tours and introduce new and exciting destination exploration videos.
10. Evaluate and consider supporting new opportunities that will benefit the lodging establishments.

Reserve

Typically, the HID maintains a reserve of one year of operation. This is mainly due to the lease of the tourist center.

Due to the significant decline of business at Asilomar Conference Grounds as well as continued overall decline in visitors due to the pandemic, a full year of reserves has not been maintained this FY. In FY 22/23, the HID hopes to build back the lost reserve, and potentially implement a new policy indicating a specific percentage (such as 20%) in annual reserves each FY.

In the unlikely event that the HID is dissolved, the center will remain operational for as long as possible until an alternative funding source is created.

Forecasted Expenses Through June 30, 2022

Marketing Opportunities	$ 7,000
Online Marketing	15,000
Print Media	10,000
Promotion and Signage	3,000
Visitor Center Lease	17,000
Visitor Center Operation	13,000
Visitor Center Staffing	20,000
Misc. Expenses	2,000

At the Tuesday, February 9, 2022 HID meeting, the Advisory Board voted to convert the annual HID assessment program to a three-year assessment program. The purpose of the conversion is to give the HID Advisory Board more time to do longer-range marketing and public relations strategic planning.

In order to optimize market share, travel marketing ideally should be developed and planned 3-4 quarters in advance, then implemented, at the very least, 2 quarters prior to travel expectancy. For example, the HID's marketing efforts should currently (Spring 2022) be marketing for a late summer/fall travel time period.

Due to Council agenda deadlines, this report was submitted by March 9, 2022 as requested by the city. Although the future impacts of the pandemic on the hospitality industry are unknown, the Pacific Grove Chamber is confident that travel sentiment has turned a corner and we should begin to see a return to more normal occupancy in FY 2022/2023. Adjustments will be made accordingly if/when needed.

Respectfully submitted by,

Jenny MacMurdo

Jenny MacMurdo
HID Administrator
President/CEO Pacific Grove Chamber of Commerce

Pacific Grove Hospitality Improvement
Balance Sheet
As of July 1, 2021

	Jul 1, 21
ASSETS	
Current Assets	
Checking/Savings	
Mechanics Bank	56,792.93
Total Checking/Savings	56,792.93
Total Current Assets	56,792.93
TOTAL ASSETS	**56,792.93**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Due to/from Chamber	406.99
Total Other Current Liabilities	406.99
Total Current Liabilities	406.99
Total Liabilities	406.99
Equity	
C/Fwd from Prior Year	-260,000.00
Retained Earnings	316,385.94
Total Equity	56,385.94
TOTAL LIABILITIES & EQUITY	**56,792.93**

Pacific Grove Hospitality Improvement
Balance Sheet
As of January 31, 2022

	Jan 31, 22
ASSETS	
Current Assets	
Checking/Savings	
Mechanics Bank	45,283.91
Total Checking/Savings	45,283.91
Total Current Assets	45,283.91
TOTAL ASSETS	**45,283.91**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Due to/from Chamber	2,298.33
Total Other Current Liabilities	2,298.33
Total Current Liabilities	2,298.33
Total Liabilities	2,298.33
Equity	
C/Fwd from Prior Year	-260,000.00
Retained Earnings	316,385.94
Net Income	-13,400.36
Total Equity	42,985.58
TOTAL LIABILITIES & EQUITY	**45,283.91**

Pacific Grove Hospitality Improvement
Profit & Loss Budget vs. Actual
July 2021 through January 2022

	Jul '21 - Jan 22	Budget	$ Over Budget
Ordinary Income/Expense			
Income			
Carried Fwd Prior Year	0.00	70,000.00	-70,000.00
Income	119,984.63	140,000.00	-20,015.37
Total Income	119,984.63	210,000.00	-90,015.37
Expense			
Bookkeeping	2,100.00	3,800.00	-1,700.00
Branding	4,719.00		
Marketing/Advertising			
Marketing Opportunities	8,940.23	7,000.00	1,940.23
Marketing Support Events	13,599.31	5,000.00	8,599.31
Online Marketing	6,730.18	23,000.00	-16,269.82
Print Media	5,043.76	8,000.00	-2,956.24
Promotions and signage	2,877.34	6,000.00	-3,122.66
Research, Support & Development	0.00	24,000.00	-24,000.00
Marketing/Advertising - Other	19.91		
Total Marketing/Advertising	37,210.73	73,000.00	-35,789.27
Miscellaneous Expense	1,682.89	14,500.00	-12,817.11
Value Added Promo- Restaurants	420.00		
Visitor Center			
Construction	0.00	2,000.00	-2,000.00
Furniture and Fixtures	100.00		
Lease	20,329.00	41,000.00	-20,671.00
Lease Insurance	1,566.00	1,600.00	-34.00
Lease Real Estate Tax	5,602.18	4,100.00	1,502.18
Operating Expense			
Landscaping	750.00	2,000.00	-1,250.00
Operation	4,502.60	9,000.00	-4,497.40
Staffing/Other	52,412.97	57,000.00	-4,587.03
Technology	1,989.62	2,000.00	-10.38
Total Operating Expense	59,655.19	70,000.00	-10,344.81
Total Visitor Center	87,252.37	118,700.00	-31,447.63
Total Expense	133,384.99	210,000.00	-76,615.01
Net Ordinary Income	-13,400.36	0.00	-13,400.36
Net Income	**-13,400.36**	**0.00**	**-13,400.36**

Pacific Grove Hospitality Improvement District
Profit & Loss Budget Overview
July 2022 – June 2023

Ordinary Income/Expense	July 2022 – June 2023
Income	
Carried Forward Prior Year	$ 20,000
Projected Income	239,000
Total Operating Budget	**$259,000**
Expenses	
Bookkeeping	$ 4,800
Marketing/Advertising	
Marketing Opportunities	25,000
Marketing Support Events	8,600
Online/Website Marketing	33,000
Print Media	15,000
Promotion and Signage	10,000
Branding, Research & Development	16,000
Total Marketing/Advertising	$107,600
Tourist Center	
Lease	41,000
Lease Insurance	1,600
Real Estate Taxes	4,100
Landscaping	2,400
Operation: Utilities, Web Access	11,000
Staffing *Including Social Media*	80,000
Technology	2,000
Total Tourist Center	$142,100
Misc. Expense	$ 4,500
Total Expenses	**$259,000**
Net Income	$ 0

RESOLUTION 07-044

A RESOLUTION OF THE CITY OF PACIFIC GROVE DECLARING ITS INTENT TO FORM AND CREATE THE PACIFIC GROVE HOSPITALITY IMPROVEMENT DISTRICT AND SETTING A PUBLIC PROTEST HEARING RELATING TO THAT FORMATION

WHEREAS, the City of Pacific Grove (City) desires to form a parking and business improvement district (designated as the Pacific Grove Hospitality Improvement District or PGHID) pursuant to California Streets and Highways Code 36500, *et seq.* for the benefit of hospitality establishments within the City; and,

WHEREAS, the purpose of the Pacific Grove Hospitality Improvement District Shall be to fund promotion, marketing activities, and physical improvements to support and improve the hospitality economy in Pacific Grove; and,

WHEREAS, the City Council desires to convene a public hearing to establish the Pacific Grove Hospitality Improvement District; and,

WHEREAS, the City Council intends this resolution to constitute and resolve its declaration of intent to establish the Pacific Grove Hospitality Improvement District in accord with Streets and Highways Code section 36500, *et seq.* and to adopt the rules and procedures of Streets and Highways Code sections 36524 and 36525 to govern its determination as to the existence or non-existence of a majority protest;

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

SECTION 1. The City declares its intention to form a Parking and Business Improvement District pursuant to California Streets and Highways Code 36500, *et seq.*

SECTION 2. The name of Parking and Business Improvement District proposed to be formed shall be the "Pacific Grove Hospitality Improvement District." This District may occasionally be referenced as the "PGHID".

SECTION 3. The boundaries of the Pacific Grove Hospitality Improvement District are the same boundaries as the corporate boundaries of the City.

SECTION 4. The following definitions shall apply to this ordinance, and shall be used for all purposes by the Pacific Grove Hospitality Improvement District:

Accommodations Establishment. The term "Accommodations Establishment" shall refer to either a "Bed & Breakfast Inn", a "Motel", or a "Conference Lodging Establishment" as defined by this Section.

Bed & Breakfast Inn. The term "Bed & Breakfast Inn" shall refer to an establishment that meets the criteria set by Pacific Grove Municipal Code section 23.08.290.

Conference Lodging Establishment. The term "Conference Lodging Establishment" shall refer to any establishment that meets the criteria set by Pacific Grove Municipal Code section 23.08.160, has 300 or more guest rooms, and that offers special venues for meetings, conferences, and special events.

Motel. The term "Motel" shall include the term "Hotel" and shall refer to any establishment that meets the criteria set by Pacific Grove Municipal Code sections 23.08.030 or 23.08.160, but excluding there from any establishment that meets the definition of "Bed & Breakfast Inn" or "Conference Lodging Establishment" as set by this ordinance.

SECTION 5. Assessments levied under the Pacific Grove Hospitality Improvement District may fund promotion, marketing and physical improvements of property in accord with Streets and Highways Code section 36500, *et seq.* for the purpose of improving the hospitality economy of the City.

SECTION 6. Improvements and activities of the Pacific Grove Hospitality Improvement District shall be funded by assessments on all Accommodations Establishments within the PGHID. Except where the Council determines funds to be otherwise available, all improvements of activities of the PGHID shall be funded by the assessment set pursuant to this ordinance.

SECTION 7. An annual assessment shall be levied for the Pacific Grove Hospitality Improvement District upon new or existing Accommodations Establishment within the PGHID. New establishments shall not be exempt. The assessment shall be paid at the time the Accommodations Establishment pays transient occupancy taxes to the City. Accommodations Establishments that meet the criteria of "full-service" as set by the most recent report promulgated by Smith Travel Research, Inc. (STR Report) shall pay an assessment of $1.50 per occupied room per night. All other Accommodations Establishments shall pay an assessment of $1.00 per occupied room per night.

SECTION 8. The Council hereby sets a public hearing to establish the Pacific Grove Hospitality Improvement District on December 5, 2007 at 6:00 pm, or as soon thereafter as the item may be called, at City Hall, 300 Forest Avenue, Pacific Grove, California.

SECTION 8. Streets and Highways Code sections 36524 and 36525 sets forth rules and procedures that govern the filing of protests and the determination of a majority protest. The City shall apply the following procedures to determine the existence of a majority protest:

a. At the public hearing to hear such protests, testimony of all interested persons for or against the establishment of the Pacific Grove Hospitality Improvement District, the extent of the PGHID, or the furnishing of specified types of improvements or activities shall be heard. A protest may be made in writing or orally by any interested person. Any protest pertaining to the regularity or sufficiency of the proceeding shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made.

b. Each written protest shall be filed with the City Clerk on or before December 5, 2007. The City Council may waive any irregularity in the form or content of any written protest, and at the public hearing may correct minor defects in the proceedings. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

c. Each written protest must contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the City as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this requirement shall not be counted in determining a majority protest.

d. If written protests are received from the owners of Accommodations Establishments in the proposed Pacific Grove Downtown Business Improvement District which will pay 50% or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50%, no further proceedings to create the PGHID or to levy the proposed assessment, as contained in this ordinance intention, shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the area, these types of improvements or activities shall be eliminated.

SECTION 9. Upon determination that a majority protest does not exist, the City Council shall be authorized to form the Pacific Grove Hospitality Improvement District, and may thereafter appoint an Advisory Board for the Pacific Grove Hospitality Improvement District. The proposed appointment process shall be by the following process:

a. Membership on the PGHID Advisory Board shall be limited to Accommodations Establishment owners, concessionaires representing Accommodations Establishments, or employees holding the written consent of the Accommodations Establishment, within the PGHID area. To sponsor a member on the PGHID Advisory Board, each Accommodations Establishments shall have fully paid its PGHID assessment at the time of appointment, and remain fully paid during the term of that representative's membership on the Board.

b. The PGHID Advisory Board shall be comprised of five (5) members. Two (2) members shall represent "Motels" as defined by this ordinance. Two (2) members shall represent businesses classified as "Bed and Breakfast Inns" as defined by this ordinance. One member shall represent businesses classified as a "Conference Lodging Establishment" as defined by this ordinance. If an Accommodations Establishment pays more than one-quarter of the City's total transient occupancy tax revenue, that Accommodations Establishment shall be entitled to one of the five seats on the PGHID Advisory Board.

c. PGHID Advisory Board members shall serve two-year terms, with appointments staggered at one-year intervals. The term for the two (2) members representing "Motels" and the term for the two (2) members representing "Bed and Breakfast Inns" shall each be staggered.

d. The PGHID Advisory Board shall be appointed by the City Council, following a nomination process facilitated by the Chamber of Commerce. Each February, the Pacific Grove Chamber of Commerce (Chamber) shall mail a letter to each Accommodations Establishment located in the PGHID. The letter shall announce the Chamber shall hold a meeting at City Hall for the purpose of conducting open elections for the PGHID Advisory Board seats that may be vacant or are scheduled to become vacant as of July 1 of that calendar year. The letter shall further notify each Accommodations Establishment of the Advisory Board selection process.

e. At the noticed meeting, the Chamber shall facilitate a selection process whereby any Accommodations Establishment representative meeting the qualification established in (b) above may be nominated for a seat on the Advisory Board. The Chamber shall conduct the election by secret ballot, and shall count ballots cast at that meeting or received by mail. One representative each Accommodations Establishment in the Pacific Grove Hospitality Improvement District shall be eligible to vote; votes may be cast in person at the meeting, or if the Accommodations Establishment representative is unable to attend the vote may be made by proxy, signed on behalf of the Accommodations Establishment. Each Accommodations Establishment shall be allowed one vote for each open seat.

f. Nominees receiving the most votes shall be deemed to have won the election. The Chamber shall verify the election results and forward the names to the City Clerk no later than April 30. If the results are not transmitted to the City Clerk on or before April 30, the Council shall appoint the PGHID Advisory Board members by the process set forth for appointing boards and commissions in Chapter 3.04 of the Municipal Code.

g. The City Council may accept or reject the election result as to any open seat. Should the Council reject the election result as to a seat, the Chamber shall forward another make a substitute recommendation. PGHID Advisory Board members shall serve at the pleasure of the Council. The Council may, by majority vote, remove any Advisory Board member with or without cause.

SECTION 10. It is proposed that the Pacific Grove Hospitality Improvement District Advisory Board shall meet at least two (2) times per year. The Advisory Board shall be deemed a "legislative body" for all purposes of the Ralph M. Brown Act, Government Code section 54950, *et seq.* Each meeting of the Advisory Board shall be open and public as required by that Act.

SECTION 11. It is proposed that the City Manager may authorize the Chamber of Commerce, by contract, to spend PGHID assessment revenues on behalf of the City provided each expenditure is made in accord with the Pacific Grove Hospitality Improvement District program and budget as approved by the City, and in compliance with all City purchasing regulations, or as otherwise set by ordinance.

SECTION 12. It is proposed that the PGHID Advisory Board shall prepare and file an annual report with the City regarding the Pacific Grove Hospitality Improvement District. The report shall, among other things, itemize improvements and activities for the fiscal year, state the cost of activities, the amount of surplus or deficit revenues carried over from a previous fiscal

year, and contributions other than assessments. The report shall meet the requirements of California Streets and Highways Code section 36533. The City Council shall review each report, and may approve the report as filed or modify any portion of the report and approve it as modified.

SECTION 13. It is proposed that after approving the annual report, the City shall adopt an annual resolution of intention to levy the assessment for that fiscal year, publish a notice and hold a public hearing on the assessment. This action may be taken by resolution

SECTION 14. This resolution is exempt from provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines.

RESOLVED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 7th day of November, 2007, by the following vote:

AYES: Bennett, Cort, Davis, Miller, Nilmeier, Stilwell

NOES: Cohen

ABSENT: None

APPROVED:

DANIEL E. CORT, Mayor

ATTEST:

CHARLENE WISEMAN, City Clerk

APPROVED AS TO FORM:

DAVID LAREDO, City Attorney

RESOLUTION NO. 22---

APPROVING THE ANNUAL REPORT AND PROGRAM OF EXPENDITURES, ASSESSING THE LEVY AND APPOINTING AN ADVISORY BOARD FOR THE HOSPITALITY IMPROVEMENT DISTRICT FOR FISCAL YEAR 2022-23

1. The Council conducted a public hearing to consider the levy of the proposed Fiscal Year 2022-23 assessment for the Pacific Grove Hospitality Improvement District on May 18, 2022 at 6:00 pm; and

2. The City Clerk gave notice of the public hearing by causing the resolution of intention, adopted by the City Council on April 20, 2022, to be published in a newspaper of general circulation at least seven days before the public hearing; and

3. At the public hearing, the City Council heard and considered all protests against the Fiscal Year (FY) 2022-23 levy of assessments for the Pacific Grove Hospitality Improvement District, and the rules and procedures used in receiving and considering protests complied with those set forth in Streets and Highways Code sections 36524, 36525 and 36534; and

4. Said Improvement Area Law provides, at California Street and Highways Code Section 36530, that the City Council shall appoint an advisory board to make recommendations to the City Council regarding expenditure of revenues collected from District business owners, and to make recommendations regarding the method and basis of assessment levy; and

5. This council has requested the Pacific Grove Chamber of Commerce to recommend membership for the advisory board by process of the public nomination and election, and the Chamber has made recommendations that this council desires to follow.

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

1. The Council 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. The City hereby levies and shall collect assessments for the FY 2022-23 within the Hospitality Improvement District (HID), as described in Section 6.54 of the Pacific Grove Municipal Code.

3. The assessment is currently set at $2.00 per room night for full-service lodging establishments and $1.00 per room night for all others.
Pacific Grove has no full-service hotels or bed and breakfast establishments that collect the $2.00 per room night fee

4. There is no change in the boundaries of the district as established in the prior year and set forth in Section 6.54.030 of the Pacific Grove Municipal Code.

5. The Council approves the annual report prepared by the Advisory Board of the Pacific Grove Hospitality Improvement District.

6. The Council approves the Pacific Grove Hospitality Improvement District program for FY 2022-23, as follows:

Proposed HID Expenditure for FY 2022-23

Proposed HID Expenditure Budget FY 2022-23	
Bookkeeping	$ 4,800
Marketing	97,600
Miscellaneous Expenses	4,500
Promotions and Signage	10,000
Landscaping	2,400
Lease & Property Exp. (Visitor Center)	46,700
Operating Exp. (Visitor Center)	91,000
Technology	2,000
Total	$ 259,000

7. The City Manager is authorized to approve an agreement with the Pacific Grove Chamber of Commerce to administer the program for FY 2022-23.

8. The City Manager is authorized to approve mid-year amendments to the program and agreement with the Pacific Grove Chamber of Commerce within the total amount approved for the year.

9. Pursuant to California Streets and Highways Code Section 26530, the City Council hereby appoints the following (named with their business affiliations) as the advisory board for and on behalf of the Downtown Business Improvement District:

- Fady Hannah (Lighthouse Lodge & Suites), term expires June 30, 2024
- Michael Grech (Monterey Peninsula Inn), term expires June 30, 2024
- Enos Esquivel (Asilomar Conference Grounds) continuous
- Amrish Patel (Centrella Inn), term expires June 30, 2023
- Robert Boerner (Pacific Gardens Inn), term expires June 30, 2023

10. The advisory board hereby appointed is subject to all provisions of the Ralph M. Brown Act, and the board hereby is directed to comply therewith.

11. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 18th day of May 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

July 1, 2022

Jenny MacMurdo
Pacific Grove Chamber of Commerce
584 Central Avenue
Pacific Grove, CA 93950

Dear Jenny MacMurdo,

This letter, once signed by both parties, is intended to serve as the agreement between the City of Pacific Grove and the Pacific Grove Chamber of Commerce regarding the expenditure of Hospitality Improvement District (HID) revenues for FY 2022-23.

The HID Advisory Board recommended and the City Council approved a program and budget of $259,000 for FY 2022-23 HID activities. This agreement reflects the approved activities.

Agreement:

1. The City of Pacific Grove will remit the revenues resulting from HID assessments during FY 2022-23 on a quarterly basis within 30 days of the City's due date for Transient Occupancy Tax payments from lodging establishments.

2. The Pacific Grove Chamber of Commerce will spend the transferred HID proceeds exclusively in the manner specified below:

HID Expenditure Budget for FY 2022-23

● Bookkeeping	4,800
● Marketing/Advertising	97,600
● Technology	2,000
● Promotions and Signage	10,000
● Lease & Property Expenses (Visitor Center)	46,700
● Operating Expenses (Visitor Center)	91,000
● Miscellaneous	4,500
● Landscaping	2,400
Total	$259.000

The Pacific Grove Chamber of Commerce will prepare an annual report for the HID to be submitted along with the recommended program and budget for the following fiscal year. The report shall include, but not be restricted to, the following information:

- Proposed changes to district boundaries
- A report of all expenditures from the current year (amount and purpose of expenditure transaction and the budgeted activity to which the expenditure is attributable)
- A statement reconciling the balances of all bank accounts holding HID revenues to the aforementioned expenditure report.
- The amount of surplus or deficit revenues projected to be carried over from a previous fiscal year.
- The amount of any contributions to be made from sources other than district assessments.
- The activities and/or improvements, along with estimated costs, to be provided for the coming fiscal year.

4. Modifications to the spending plan reflected herein may only occur with the written approval of the Pacific Grove City Manager.

Signed:

_____	_____
Ben Harvey, City Manager	Jenny MacMurdo, President
City of Pacific Grove	Pacific Grove Chamber of Commerce
_____	_____
Date	Date

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Lori Frati, Management Analyst

MEETING DATE: May 18, 2022

SUBJECT: Downtown Business Improvement District (BID) program for Fiscal Year 2022-23

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

RECOMMENDATION

Hold a public hearing to determine majority protest to the annual assessment were not received, and Adopt resolution to approve annual report, levy annual assessment, approve the recommended Fiscal Year 2022-23 program, appoint the BID Advisory Board for Fiscal Year 2022-23, and authorize the City Manager to execute an agreement allowing the Pacific Grove Chamber of Commerce to administer the BID budget.

DISCUSSION

In 2000, the City established the Downtown Pacific Grove Business Improvement District (BID), appointed an advisory board, and levied assessments for the District. The assessments may be used only for the promotion, marketing and advertising of professional and retail businesses located in the district, and for general maintenance to benefit those businesses. All businesses located in the BID are assessed an amount equal to 35% of their business license tax. The assessment is collected together with the business license tax payment in July of each assessment year. Since its formation in 2000, the BID and assessments have been annually reauthorized.

At its April 20, 2022, meeting, the City Council approved a resolution of intent to levy the BID assessment for Fiscal Year (FY) 2022-23 and set a public hearing to consider the levy for May 18, 2022. California Streets and Highways Code Section 36525 provides that the District shall not be formed if written protests are received from the owners of businesses in the proposed area that will pay 50 percent or more of the assessments proposed to be levied. Staff advertised the public hearing pursuant to relevant State and Municipal Code sections. Staff has received no protest petitions as of this writing.

The District's annual report (Attachment 1) lists the results of the election of Board Members, details revenues and expenditures for FY 2021-22, proposes a budget for FY 2022-23, and requests the levy of an assessment for FY 2022-23. No changes to BID boundaries are recommended for FY 2022-23.

City Council Resolution 07-042 (Attachment 2) outlines the requirements for re-establishing the district. The terms of the Resolution have been met as indicated by the specific points of compliance set forth below:

Process for Advisory Board appointment: Per the resolution, the Chamber of Commerce facilitated a noticing of all properties in the BID and a meeting of the BID Advisory Board to fill Advisory Board seats that will expire on June 30, 2022. Results of the election from the Chamber of Commerce are included in the report with the following recommended Advisory Board for next year:

- Liz Jacobs (Wild Fish Restaurant), term expires June 30, 2024
- Marietta Bain (Fandango Restaurant), term expires June 30, 2024
- Stephanie Loftus (The Quill), term expires June 30, 2024
- Vacant seat. TBD
- Kim Poulin (Pacific Grove Plaza), term expires June 30, 2023
- Matt Bosworth (Mechanics Bank), term expires June 30, 2023
- Sherry Sands (Paul's Drapery), term expires June 30, 2023

Contract with Chamber of Commerce for services: The City contracted with the Chamber of Commerce to administer the BID program in compliance with the plan approved by the City Council. The attached report from the Chamber shows the expenditures for the FY 2022-23 budget.

Chamber of Commerce financial reporting: The FY 2021-22 BID report from the Chamber includes BID expenditure activity for current fiscal year to January 31, 2022.

Proposed FY 2022-23 BID Program. The BID's current and projected financial information, as provided by the Chamber of Commerce, is included in Attachment 1.
The BID Advisory Board recommends the following allocation of BID assessment revenue for FY 2022-23, which is estimated to total $29,000:

Proposed BID Expenditure Budget for FY 2022-23	
Administration	$1,600
Advertising	$6,700
Community Projects	$3,000
Marketing Opportunities	$9,700
Promotional and Events	$8,000
Total	$29,000

OPTIONS

1. Decline to adopt the Resolution.
2. Adopt a modified Resolution.
3. Provide alternative direction.

FINANCIAL IMPACT:
The City acts as the administrative pass-through to the BID. The assessed funds may only be used for BID purposes and not for any other City purpose.

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

Attachments

BID Annual Report
BID Resolution 07-042
BID Resolution FY22-23
BID Contract 2022-23

CHAMBER OF COMMERCE
& TOURIST CENTERS

March 9, 2022

To: Lori Frati - Finance Management Analyst
From: Jenny MacMurdo – Pacific Grove Chamber of Commerce
Subject: Downtown Business Improvement District (BID) Report

In accordance with the City's agreement with Pacific Grove Chamber of Commerce (PGCC), I am submitting the BID Annual Report.

Introduction

Just as all business districts nationwide, the pandemic has continued to present major challenges in downtown Pacific Grove:

- Consumers continue shopping online due to stay at home orders by the County and State, as well as fears of virus exposure;
- Professionals continue to operate out of their residences, creating an increase in vacant space;
- Several downtown anchors such as Pier One, Hambrooks Auction House, Fat Willie's Antiques and Bank of America closed and have yet been redeveloped into new downtown businesses.

The demand for dining remains strong, yet full recovery has continued to be hampered by orders by the California Department of Public Health and Monterey County Environmental Health Department. The parklets and overall outdoor dining is attracting hundreds to downtown especially on weekends. There is also clearly a shift in the demographic of clientele as a result of the new ambience in the business district.

Election of Board Members

On Wednesday, March 2, 2022, a publicly noticed BID general membership meeting was held at the Tourist Information Center and on Zoom. In addition, a notice of the meeting was emailed to every BID member on the City's business license list that is located within the BID boundaries. The following three Advisory Board members were elected (Hector Chavez – Winning Wheels declined re-election):

- Liz Jacobs - Wild Fish Restaurant
- Marietta Bain – Fandango Restaurant
- Stephanie Loftus – The Quill

The term of the above three members that were elected on February 3rd is two years, expiring on June 30th, 2024. They join the following Advisory Board members:

- Kim Poulin - Pacific Grove Plaza
- Matt Bosworth - Mechanics Bank
- Sherry Sands – Paul's Drapery

Hector Chaves – Winning Wheels, declined re-election; therefore, the BID Advisory Board will be searching for his replacement to start July 1, 2022 through June 30, 2024.

Income/Beginning Balance

The beginning balance of the BID account was $17,811.48. As of January 1, 2022 the BID income was $22,499.09 compared to $36,683.11 in FY 19/20, or a decline of 38.67%

Expenditure Report

Since July 1, 2021, the BID had only eight expenses:

1.	BID administration	$1,600
2.	Fund listing of all BID businesses in the Tourist Guide	$3,500
3.	First Friday Event Promotion – Print Advertising	$1,200
4.	Halloween Promotion – Borchard Farms	$1,360
5.	Halloween Promotion – Red Engine Rides	$700
6.	Halloween Promotion – Print Advertising	$700
7.	Misc. Exp. –Tom McMahon Retirement Reception	$229.62
8.	Funded several holiday promotions and events that were managed by the BID agency TBC Communications	$7,276.17

Between now and the end of the fiscal year, we anticipate the below expenses:

• Downtown Spring event	$5,000
• Two advertisements in the Monterey Herald	$1,600
• Possible beautification projects or support of new events	$4,000

Direction

In 2022-2023 the BID direction will continue to focus on promotions, advertising and supporting events such as the Halloween, Shop Local, and First Friday events.

Closing

Downtown Pacific Grove is clearly evolving. The Holman building is almost full. The 520 Lighthouse Avenue project will provide new retail spaces when finished in the Fall of 2022. Re-purposing some of the large structures downtown such as Pier One, Hambrooks Auction House, Fat Willie's Antiques, and Lighthouse Cinema will be a key to the future of downtown.

Thank you.

Respectfully submitted by:

Jenny MacMurdo
BID Administrator
President/CEO, Pacific Grove Chamber of Commerce

Business Improvement District
Balance Sheet
As of July 1, 2021

	Jul 1, 21
ASSETS	
Current Assets	
Checking/Savings	
Mechanics Bank	17,811.48
Total Checking/Savings	17,811.48
Total Current Assets	17,811.48
TOTAL ASSETS	**17,811.48**
LIABILITIES & EQUITY	
Equity	
Opening Balance Equity	-7,672.66
Unrestricted Net Assets	25,484.14
Total Equity	17,811.48
TOTAL LIABILITIES & EQUITY	**17,811.48**

Business Improvement District
Balance Sheet
As of January 31, 2022

	Jan 31, 22
ASSETS	
Current Assets	
Checking/Savings	
Mechanics Bank	23,744.78
Total Checking/Savings	23,744.78
Total Current Assets	23,744.78
TOTAL ASSETS	**23,744.78**
LIABILITIES & EQUITY	
Equity	
Opening Balance Equity	-7,672.66
Unrestricted Net Assets	25,484.14
Net Income	5,933.30
Total Equity	23,744.78
TOTAL LIABILITIES & EQUITY	**23,744.78**

Business Improvement District
Profit & Loss Budget vs. Actual
July 2021 through January 2022

	Jul '21 - Jan 22	Budget	$ Over Budget
Ordinary Income/Expense			
Income			
Program Income			
Carry Over, Prior Year, Mktg	0.00	3,000.00	-3,000.00
City Assessment	22,499.09	23,000.00	-500.91
Total Program Income	22,499.09	26,000.00	-3,500.91
Total Income	22,499.09	26,000.00	-3,500.91
Expense			
Administration	1,600.00	1,600.00	0.00
Advertising			
Print Advertising	700.00	2,000.00	-1,300.00
Tourist Guide Listing BID Membe	3,500.00	3,500.00	0.00
Total Advertising	4,200.00	5,500.00	-1,300.00
Business Expenses			
Miscellaneous	229.62		
Total Business Expenses	229.62		
Community Projects			
Feast of Lanterns	0.00	2,000.00	-2,000.00
Total Community Projects	0.00	2,000.00	-2,000.00
Marketing Opportunities	1,360.00	6,900.00	-5,540.00
Operations			
Events/Promotions	700.00		
Total Operations	700.00		
Promotion Events	8,476.17	10,000.00	-1,523.83
Total Expense	16,565.79	26,000.00	-9,434.21
Net Ordinary Income	5,933.30	0.00	5,933.30
Net Income	**5,933.30**	**0.00**	**5,933.30**

Business Improvement District
Profit & Loss Budget Overview
July 2022 – June 2023

Ordinary Income/Expense	July '22 – June '23
Income	
Program Income	
Carry Over, Prior Year, Mktg	5,000.00
City Assessment	24,000.00
Total Program Income	29,000.00
Total Income	**29,000.00**
Expenses	
Total Administration	1,600.00
Advertising	
First Friday	1,200.00
Print Advertising	2,000.00
Guide to PG BID Listings	3,500.00
Total Advertising	6,700.00
Total Community Projects	3,000.00
Total Marketing Opportunities	9,700.00
Total Promotion Events	8,000.00
Total Expenses	**29,000.00**
Net Ordinary Income	0.00
New Income	**0.00**

RESOLUTION NO. 7-042

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE REVISING AND RESTATING THE RULES AND PROCEDURES FOR THE DOWNTOWN PACIFIC GROVE BUSINESS IMPROVEMENT DISTRICT

THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City formed a parking and business improvement district pursuant to California Streets and Highways Code 36500, et seq. with Resolution No. 0-007, which was passed and adopted by the Pacific Grove City Council on February 9, 2000.

SECTION 2. The name of the parking and business improvement district is the "Downtown Pacific Grove Business Improvement District."

SECTION 3. The boundaries of the Downtown Pacific Grove Business Improvement District are as shown on the map referred to as "Boundaries of the Downtown Pacific Grove Business Improvement District," on file with the City Clerk, and as specified herein including both sides of every street except for Pine Avenue:

Central Avenue from 505 Central to 530 Central up to Caledonia Park and the back of the Post Office

Lighthouse Avenue from 472 Lighthouse and 477 Lighthouse to 728 Lighthouse and 721 Lighthouse

Laurel Avenue from 521 Laurel to 631 Laurel at the corner of 18th and Laurel

Pine Avenue only on the north side (Police/Fire Dept. Side) from 546 Pine to 644 Pine

15th Street from 135 15th Street to 223 15th Street

Fountain Avenue from 156 Fountain and 157 Fountain to 314 Fountain

Grand Avenue from 157 Grand and the backside of the Pacific Grove Museum of Natural History to 315 Grand and 318 Grand

Forest Avenue from 154 Forest and 164 Forest to 264 Forest and 311 Forest

16th Street from 172 16th Street to 207 16th Street

17th Street from 153 17th Street to 231 17th and 232 17th Street

18th Street from Central Avenue which includes 160 18th Street to Laurel Avenue

19th Street and Congress between Central Avenue and Lighthouse Avenue

SECTION 4. The activities to be funded by the assessments levied under the Downtown Pacific Grove Business Improvement District are promotion, marketing and advertising of professional and retail businesses in downtown Pacific Grove.

SECTION 5. The proposed improvements and activities of the Downtown Pacific Grove Business Improvement District shall be funded by annual assessments on business owners in the district.

SECTION 6. The method and basis for the annual levy of assessments are as follows:

The City shall collect the annual assessment from the business owners when the business license tax is paid, in July of each year. Excepting service stations and catalogue sales establishments, each business in the district shall pay an annual assessment equal to 35% of its business license tax.

SECTION 7. New businesses in the district shall be subject to the annual levy of assessment.

SECTION 8. Pursuant to Streets and Highways Code sections 36524 and 36525, the following rules and procedures regarding the filing of protests and a majority protest shall apply to the scheduled public hearing:

a. At the annual public hearing to hear such protests, testimony of all interested persons for or against the establishment of the district, the extent of the district, or the furnishing of specified types of improvements or activities shall be heard. A protest may be made in writing or orally by any interested person. Any protest pertaining to the regularity or sufficiency of the proceeding shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made.

b. Every written protest must be filed with the City Clerk on or before the public hearing date. The City Council may waive any irregularity in the form or content of any written protest, and at the public hearing may correct minor defects in the proceedings. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

c. Each written protest must contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the City as the owner of the business, the protest shall contain or be accompanied by written evidence that the person

subscribing is the owner of the business. A written protest which does not comply with this requirement shall not be counted in determining a majority protest.

d. If written protests are received from the owners of businesses in the proposed district which will pay 50% or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50%, no further proceedings to create the Pacific Grove Downtown Business Improvement District or to levy the proposed assessment, as contained in this resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the area, these types of improvements or activities shall be eliminated.

SECTION 9. The Business Improvement District Advisory Board for FY 2007/08 shall be comprised of the following members:

- Bill Valuch, Board Chair (Miss Trawick's Garden Shop), one-year term expiring June 30, 2008
- Terry Clements, Board Vice-Chair (The Clothing Store), two-year term expiring June 30, 2009
- Susan Anderson (Futons & Such), two-year team expiring June 30, 2009
- Jeanne Byrne (Jeanne C. Byrne, Architect), two-year term expiring June 30, 2009
- Robert Lewis (Robert Lewis Gallery), one-year term expiring June 30, 2008
- Henry Nigos (Edward Jones Investments), one-year term expiring June 30, 2008
- Ron Schenk (St. Vincent DePaul Thrift Shop), one-year term expiring June 30, 2008

SECTION 10. Each advisory Board seated on or after July 1, 2008 shall be appointed by the following process:

a. In February of each year, the Pacific Grove Chamber of Commerce shall mail a letter to all owners of businesses located in the BID. The letter shall include an announcement of a meeting to be held at City Hall for the purpose of holding open elections for BID advisory board seats that are vacant or are scheduled to become vacant as of July 1 of the same year.

b. Membership on the Advisory Board is eligible to representatives of business owners within the BID area who have fully paid their BID assessment at the time of appointment, and remain fully paid during the term of their membership on the Board.

c. At the noticed meeting, the Chamber of Commerce shall facilitate a nomination process whereby any business owners meeting the qualification established in (b) above may be nominated for a seat on the board.

d. At the same meeting, the Chamber of Commerce shall facilitate an election by secret written ballot received, mailed or cast at that meeting. All BID members in attendance at the meeting shall be eligible to vote. If a BID member is unable to attend a proxy with a signed statement from the member shall be allowed to participate on the member's behalf.

e. The nominees receiving the most votes shall be deemed to have won the election. The election winners' names shall be forwarded to the City Clerk no later than April 30th of the same year as a recommendation to the City Council for filling board vacancies.

f. The City Council shall appoint the seven (7) member BID Advisory Board. The BID Advisory Board shall meeting quarterly or more frequently. Each meeting shall comply with the Brown Act. The Council may remove members of the BID Advisory Board for cause.

If the City Clerk does not receive said recommendation by April 30th of each year, the Business Improvement District Advisory Board shall be appointed by the process set forth for appointing boards and commissions in Chapter 3.04 of the Municipal Code.

SECTION 11. Board members seated beginning in FY 2007/08, members shall serve two-year terms, with appointments staggered at one-year intervals.

SECTION 12. The Pacific Grove Chamber of Commerce shall be authorized by contract to spend BID assessment revenues on behalf of the City, in accordance with the BID program and budget approved by the City Council, and in compliance with all City purchasing regulations, or as otherwise set by ordinance.

SECTION 13. California Streets and Highways Code section 36533 requires the Advisory Board to prepare and file with the City an annual report regarding the BID. The report, among other things, is required to itemize improvements and activities in the fiscal year, the cost of those activities, the amount of surplus or deficit revenues carried over from a previous fiscal year, and contributions other than assessments. The City Council shall approve the report as filed or modify any portion and approve it as modified.

SECTION 14. After approving the annual report, the City must adopt an annual resolution of intention to levy the assessment for that fiscal year, publish a notice and hold a public hearing on the assessment. Following the hearing, the City Council may establish the district by ordinance.

SECTION 15. This Resolution is exempt from provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, Section 15320, in that it causes a modification of the rules and procedures for an established subsidiary district within the Pacific Grove city boundaries.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 19th day of September, 2007, by the following vote:

AYES: Bennett, Cohen, Cort, Davis, Nilmeier, Stillwell

NOES: None

ABSENT: None

APPROVED:

DANIEL E. CORT, Mayor

ATTEST:

CHARLENE WISEMAN, City Clerk

APPROVED AS TO FORM:

DAVID LAREDO, City Attorney

RESOLUTION NO. 22-xxx

APPROVING THE ANNUAL REPORT, APPROVING THE PROGRAM OF EXPENDITURES, ASSESSING THE LEVY, AND APPOINTING AN ADVISORY BOARD FOR THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT FOR FISCAL YEAR 2022-23

FINDINGS

1. The Council conducted a public hearing to consider the levy of the proposed Fiscal Year (FY) 2022-23 assessment for the Pacific Grove Downtown Business Improvement District on May 18, 2022 at 6:00 pm; and

2. The City Clerk gave notice of the public hearing by causing the resolution of intention, adopted by the City Council on April 20, 2022, to be published in a newspaper of general circulation at least seven days before the public hearing; and

3. At the public hearing, the City Council heard and considered all protests against the fiscal year 2022-23 levy of assessments for the Downtown Pacific Grove Business Improvement District, and the rules and procedures used in receiving and considering protests complied with those set forth in Streets and Highways Code sections 36524, 36525 and 36534; and

4. Said Improvement Area Law provides, at California Street and Highways Code Section 36530, that the City Council shall appoint an advisory board to make recommendations to the City Council regarding expenditure of revenues collected from District business owners, and to make recommendations regarding the method and basis of assessment levy; and

5. Council has requested the Pacific Grove Chamber of Commerce to recommend membership for the advisory board by process of the public nomination and election, and the Chamber has made recommendations that this council desires to follow;

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

1. The Council 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. The City hereby levies and shall collect assessments for the Fiscal Year 2022-23 within the Downtown Pacific Grove Business Improvement District (BID), as described in Section 6.50.010 of the Pacific Grove Municipal Code

3. There is no change in the boundaries of the district as established in the prior year and set forth in Section 6.50.020 of the Pacific Grove Municipal Code.

4. The Council approves the annual report prepared by the Advisory Board of the Downtown Pacific Grove Business Improvement District.

5. The City Council approves the Downtown Business Improvement District program for FY 2022-2023, as follows:

Proposed BID Expenditure for FY 2022-23

Administration	$ 1,600
Promotional Events	8,000
Advertising	6,700
Community Projects	3,000
Marketing Opportunities	9,700
Total	$29,000

6. The City Manager is authorized to approve an agreement with the Pacific Grove Chamber of Commerce to administer the program for FY 2022-23.

7. The City Manager is authorized to approve mid-year amendments to the program and agreement with the Pacific Grove Chamber of Commerce within the total amount approved for the year.

8. Pursuant to California Streets and Highways Code Section 26530, the City Council hereby appoints the following (named with their business affiliations) as the advisory board for and on behalf of the Downtown Business Improvement District:
    - Liz Jacobs (Wild Fish Restaurant), term expires June 30, 2024
    - Stephanie Loftus (The Quill), term expires June 30, 2024
    - Marietta Bain (Fandango Restaurant), term expires June 30, 2024
    - Kim Poulin (Pacific Grove Plaza), term expires June 30, 2023
    - Matt Bosworth (Mechanics Bank), term expires June 30, 2023
    - Sherry Sands (Paul's Drapery), term expires June 30, 2023

9. The advisory board hereby appointed is subject to all provisions of the Ralph M. Brown Act, and the board hereby is directed to comply therewith.

10. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 18th day of May 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

July 1, 2022

Jenny MacMurdo, President
Pacific Grove Chamber of Commerce
584 Central Avenue
Pacific Grove, CA 93950

Dear Jenny MacMurdo,

This letter, once signed by both parties, is intended to serve as the agreement between the City of Pacific Grove and the Pacific Grove Chamber of Commerce regarding the expenditure of Downtown Business Improvement District (BID) revenues for FY 2022-23.

The BID Advisory Board recommended, and the City Council approved a program and budget of $29,000 for FY 2022-23 BID activities. This agreement reflects the approved activities.

Agreement:

1. The City of Pacific Grove will remit the revenues resulting from BID assessments during FY 2022-23 in two installments, with the first to occur on or about September 1, 2022, and the second to occur on or about May 1, 2023. Any BID assessment revenues received after May 1st will be remitted as part of the following year's revenues.

2. The Pacific Grove Chamber of Commerce will spend the transferred BID proceeds exclusively in the manner specified below:

BID Expenditure Budget for FY 2022-23

● Administration	$1,600
● Promotion and Events	8,000
● Advertising	6,700
● Community projects	3,000
● Marketing Opportunities	9,700
Total	$29,000

3. The Pacific Grove Chamber of Commerce will prepare an annual report for the BID to be submitted along with the recommended program and budget for the following fiscal year. The report shall include, but not be restricted to, the following information:

    - A report of all expenditures from the current year (amount and purpose of expenditure transaction and the budgeted activity to which the expenditure is attributable)

    - A statement reconciling the balances of all bank accounts holding BID revenues to the aforementioned expenditure report.

    - The amount of surplus or deficit revenues projected to be carried over from a previous fiscal year.

    - The amount of any contributions to be made from sources other than district assessments.

    - The activities and/or improvements, along with estimated costs, to be provided for the coming fiscal year.

4. Modifications to the spending plan reflected herein may only occur with the written approval of the Pacific Grove City Manager.

Signed:

_____	_____
Ben Harvey, City Manager	Jenny MacMurdo, President
City of Pacific Grove	Pacific Grove Chamber of Commerce
_____	_____
Date	Date

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:	May 18, 2022
SUBJECT:	Caledonia Park Dog Exception at Special Events
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold first reading and adopt an ordinance amending Chapter 14.08.030 of the Pacific Grove Municipal Code titled 'Dogs prohibited in public parks – Exceptions' which would allow dogs in Caledonia Park with a Special Event authorization by City Council and direct that publication of the ordinance will be satisfied by publication of a summary approved by the City Attorney.

DISCUSSION

During Council's February 16, 2022 meeting the Special Events Calendar for Fiscal Year 2022-2023 was discussed. Staff noted that some Special Events bring animals to our parks (Holiday in the Park, Good Old Days, and Pet Parade). However, PGMC Chapter 14.08.03 prohibits dogs in Caledonia Park which is used for some Special Events.

This ordinance amending Chapter 14.08.03 would, during Council authorized Special Events, allow dogs in Caledonia Park. Thus, enabling Special Events in Caledonia Park to be in compliance with the municipal code.

OPTIONS

Provide alternative or do not approve.

FINANCIAL IMPACT:

None.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Draft Ordinance

ORDINANCE NO. 22-___

AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING CHAPTER 14.08.030 OF THE PACIFIC GROVE MUNICIPAL CODE REGARDING DOGS PROHIBITED IN PUBLIC PARKS - EXCEPTIONS

WHEREAS, this Ordinance amends PGMC Section 14.08.030, entitled "Dogs prohibited in public parks – Exceptions" and;

WHEREAS, subsection (a) states it is unlawful for any person to lead or conduct any dog, whether or not on a leash, within any public park or cemetery in the city and;

WHEREAS, an annual pet parade has been held in Pacific Grove possibly since 1952 and;

WHEREAS, the staging area for the pet parade has been Caledonia Park and includes many dogs;

WHEREAS, the municipal code prohibits dogs in Caledonia Park and thus the parade has been in violation of the municipal code and;

WHEREAS, this event has been authorized the City Council as a Special Event and enjoyed by many in the community who freely participate and;

WHEREAS, there have been no reported instances of significant inconvenience, injury or death as a result of the pet parade and;

WHEREAS, exceptions to the general prohibition of dogs are permitted on leash at any time in areas, subject to all other applicable provisions of the code;

WHEREAS, at the February 16th 2022 Council meeting, Council voted to direct staff to return to Council with an ordinance to allow municipal code exceptions for designated events to allow pets in the parks;

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.;

WHEREAS, amendment of PGMC Section 14.08.030 pertaining to Dogs prohibited in public parks - Exceptions will not result in a significant impact to the environment and is, therefore, categorically exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 of the CEQA Guidelines.

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

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 14.08.030 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:

...

14.08.030 Dogs prohibited in public parks - Exceptions

(a) Subject to the exceptions set out in subsections (b) and (c) of this section, it is unlawful for any person to lead or conduct any dog, whether or not on a leash, within any public park or cemetery in the city.

(b) On-Leash Exceptions. As exceptions to the general prohibition of subsection (a) of this section, dogs are permitted on leash at any time in the following areas, subject to all other applicable provisions of this code:

(1) In that portion of George Washington Park lying northerly of the Little League baseball field;

(2) On any improved or natural trail or path in our coastal zone, including the recreational walking and biking trails running along the city's waterfront and shoreline;

(3) In Lynn "Rip" Van Winkle open space;

(4) In Lovers Point Park, excluding the beach and grass areas;

(5) In Berwick Park; and

(6) Along the Southern-Pacific Railroad right-of-way from Lighthouse Avenue to Sunset Drive.

(7) In Caledonia Park during specific times and dates allowed pursuant to a Special Event authorization by the City Council.

…

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 _____ day of _____, 2022, 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:	Rob Mullane, AICP, Contract Planner
MEETING DATE:	May 18, 2022
SUBJECT:	ATC Hotel Sloat Avenue ROW Vacation
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~~***8300***-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 the City Council's meeting of February 16, 2022, where the item was tabled. Since that meeting, the applicant team has reached out to the property owners who have frontage on the west end of this segment of Sloat Avenue to confirm continued access. This evening's public hearing on the ROW vacation has been re-noticed.

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. Although a challenge to certification of the EIR has been filed (Pacific Grove Coast Watch; Anthony Ciani v. City of Pacific Grove; Monterey Superior Court Case No. 22CV000387), no injunction or other order has been issued by the Court to disable reliance on that EIR, No additional CEQA analysis, or postponement of consideration is required for Council to authorize vacation of the Sloat Avenue 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:
I MOVE THE 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

Draft Resolution

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 18th day of May, 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

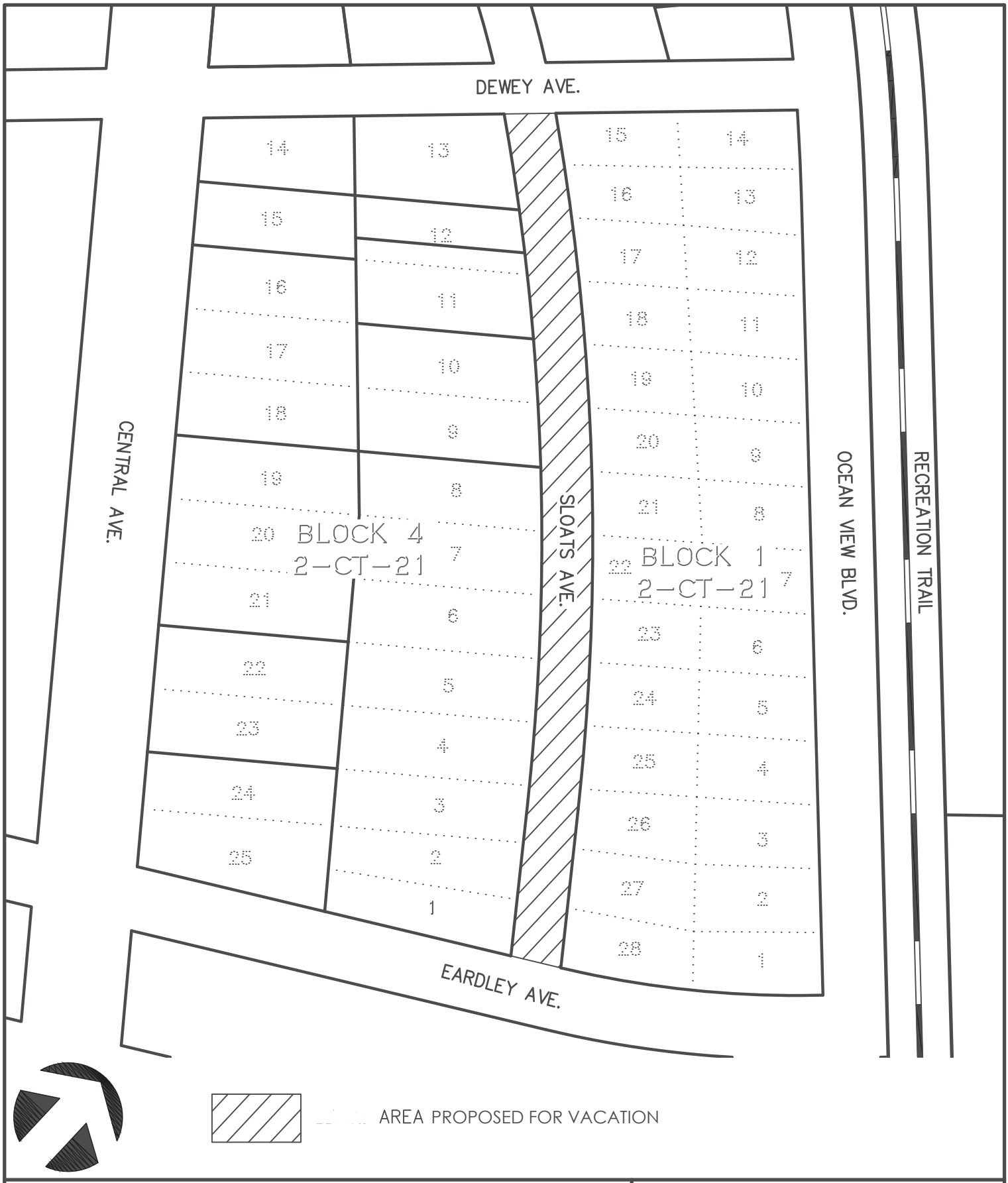
END OF DESCRIPTION

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: Bill Peake, Mayor

MEETING DATE: May 18, 2022

SUBJECT: Pet Parade Special Event

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

RECOMMENDATION

Approve a Pet Parade scheduled for July 29, 2022 at Caledonia Park and waive fees for City Staff support and park use.

DISCUSSION

This parade features children and pets which are carried, walk, bike or are pulled in a wagon for a few blocks downtown under the guidance of adult supervision. It is a modest, child and pet oriented, family friendly event. In the past it has been free to all. This parade hasn't been held in 3 years.

Children and pets assemble with a parent or guardian at the Caledonia Park basketball court. The parade route runs up to Lighthouse and Congress and turns left proceeding to Forest Ave. where it turns around and returns to the park. Community residents have typically lined both sides of Lighthouse Ave. to watch and cheer.

City staff and the police department would be required for street closures and public safety. Volunteers assist including 'pooper-scooper' responsibility.

In the past the old police car and fire truck have been in the parade. If necessary to save costs, Council could not approve these vehicles and reduce the parade length thus reducing the number of City Staff and hours worked.

A first reading of an ordinance amending Chapter 14.08.030 of the Pacific Grove Municipal Code titled 'Dogs prohibited in public parks – Exceptions' which would allow dogs in Caledonia Park with a Special Event authorization by City Council has been proposed for Council approval.

The Recreation Board recommended conditional approval on April 28, 2022. The conditions are listed in the attachment.

City Manager and staff recommended do not approve on April 28, 2022 (attached).

OPTIONS

Provide alternative or do not approve.

FINANCIAL IMPACT:

- None if approved for full cost recovery.
- I've requested a cost estimate from the City Manager for the event (1) as held in the past and (2) a less expensive event (half the parade route and without the old police car and old fire truck).
- The Butterfly Parade city cost is $4,845 which is a larger parade.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Pet Parade App & Rec Board Recommendations

[redacted]

Special Event Application Instructions

STEP 1: Complete pages one through six of this Special Event Application form.

- **Priority will be given to all requests completed and submitted by November 30, 2020.**
- Submitted events will be considered for approval by the Pacific Grove City Council for dates during the Fiscal Year, July 1, 2021 – June 30, 2022

STEP 2: Submit the application to the City of Pacific Grove Recreation (Youth Center) by email, mail or in person.

- **Email**: Kyle Susic (Recreation Manager) – recreation@cityofpacificgrove.org
- **Mail / In Person**: Pacific Grove Youth Center – 302 16th St, Pacific Grove CA 93950

STEP 3: The City of Pacific Grove Special Events Committee will review the application and determine if additional processing is required. If it does not, the event will be included into the proposed 2021/2022 Special Event Calendar and the application will proceed to STEP 4. If the application requires additional conditions, the applicant will be required to meet with the Recreation Manager to discuss any special details or requirements for the event.

STEP 4: The events calendar and applications will be submitted to the Recreation Board and City Council for approval.

STEP 5: Upon approval from City Council, applicant will be required to submit required insurance documents, pay the Special Event Application Fees and complete any additional event permit requirements (sound, film, etc.)

Applicant Information

Title of Event: Pet Parade

Date(s) of Event: Friday July 29th

Sponsoring Organization: Youth Ambassadors of Pacfic Grove ☐ Profit ☑ Non-Profit ID# _____

[redacted]	Pacific Grove	CA	93950
Address	*City*	*State*	*Zip*

Christine Gruber	[redacted]
Contact Person	*Phone*

yaopgpresident@gmail.com	yaopg.org
Email	*Website*

Event Information

Type of Event:

☐ Race / Run ☐ Charity Walk ☐ Holiday Event ☑ Parade
☐ Exhibit ☐ Ceremony ☐ Concert ☐ Car Show
☐ Other _____

Time of Event:

Set Up & Preparation:	Day/Date:	Friday July 29, 2022	From:	1:00pm	To:	2:00pm
Actual Event:	Day/Date:	Friday July 29, 2022	From:	2:00pm	To:	3:00pm
Clean Up & Close:	Day/Date:	Friday July 29, 2022	From:	3:00pm	To:	4:00pm

Location Request: Calendonia Park and Lighthouse Avenue

Anticipated Attendance: 300 Anticipated Participants: 300

Estimated Gross Receipts: $0.00

Proceeds to PG Organizations: $0.00 Proceeds to County Organizations: $0.00

[redacted]

City of Pacific Grove

Special Event Application - Fiscal Year 2021/2022

Purpose and description of Proposed Event:

We would like to bring back the beloved Pet Parade to the people of Pacific Grove so children can show off their pets, bikes and costumes. We want to be sure the even that Ruby started for the children in the Recreation Department will continue and all can enjoy it.

Additional Elements (Check all that apply):

☑	Street Closure(s)	☐	Games/Rides	☐	Amplified Sound -	Describe: Lighthous Avenue
☐	Vehicles	☐	Stage	☐	Filming -	Describe:
☐	Security	☐	Tent(s)	☐	Vendors -	Amount:
☑	Animals	☐	Food	☐	Admission -	Cost:
☐	Banners	☐	Alcohol	☐	Parking Passes -	Amount:
☐	Other:					

Food, Drink & Vendors: Health Permit Required. *Contact Monterey County Health Department at 831.755.4500*

Alcohol Served or Sold: ABC License & Liquor Insurance Required. *Contact Alcohol Beverage Control at 831.755.1990*

Amplified Sound: Pacific Grove Sound Permit Required. *Contact Pacific Grove Police Department 831.648.3143*

Filming: Pacific Grove Film Permit Required *Contact Pacific Grove Police Department 831.648.3143*

Tents: Tents and Structures Inspection Required *Contact Monterey Fire Department 831.646.3908*

Food, Drink, Merchandise Sales: Pacific Grove Business License Required *Contact Finance Department at 831.648.3102*

Event Information Continued

Describe Street Closures and/or Parking Arrangements for Event:

Central Avenue from 19th street to Congress, Lighthouse Avenue from Congress Avenue to Forest Avenue.

Describe Arrangements for Event Clean Up, Recycling and Appropriate Disposal:

We will have a pooper scooper at the end of the parade, we will have clean up in the park after the event.

Describe Procedures for Security and Crowd Control:

We need crowd control at the street closure barricades. We would appreciate maintenance to be there as they have done in the past. This event started as a Recreation Department event, we would like help with i

City of Pacific Grove

Special Event Application - Fiscal Year 2021/2022

Describe Restroom Accommodations (*see attached chart for portable toilet requirements)*:

Restrooms in th park as it is a short event.

Describe Accommodations Pursuant to the Americans with Disability Act:

The park and Lighthouse Avenue are ADA compliant

Describe Notification Procedures to Surrounding Businesses and Residents:

We will send out letters on June 1, 2022

Describe Medical Services and First Aid Accommodations:

Call 911 and a first aid kit will be available at the park

Event Personnel Provided by Sponsor:

The Youth Ambassadors of Pacific Grove and the board will be on site for the event.

Request of City Services, Personnel and Support:

Closure of streets. We would the old police car, the old fire truck to be in the parade. We would like the ~~recreation department personnel to be at the park to help with the crowd.~~

Conditions of Permit

1. INSURANCE REQUIRMENTS:

At least thirty (30) days prior to the event, furnish the City with a certificate of insurance and an additional insured endorsement (CG Form 20 26) in an amount not less than $2 Million, naming the City of Pacific Grove as an additional insured. Such insurance must be primary to any City insurance, and the City must have at least ten (10) days' notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required polices are reduced; (3) or the deductible or self-insured retention is increased.

If applicable

Automobile Liability: Insurance Services Office Form Number CA 0001 covering all owned, non-owned or hired autos with limit no less than $1,000,000 per accident for bodily injury and property damage. The City shall be an additional insured on

this policy.

Workers' Compensation/Employer's Liability insurance: As required by the State of California with Statutory Limits in the amount of One Million Dollars ($l,000,000) per accident. Sponsoring Organization grants a waiver of any right to subrogation and agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation; however, this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

2. REIMBURSEMENT:

The sponsoring organization must reimburse the City for all direct and incidental expenses for the use of City personnel and facilities. The City has the absolute discretion to determine the number of personnel that will be provided for an event.

3. TRASH, RECYCLE & WASTE MAMAGEMENT:

The sponsor is responsible for all sign placement and removal, litter control, trash removal and clean-up activities and for providing necessary containers and personnel for recycling activities as determined by the City.

The use of helium balloons or other event decorations that may result in illicit waste or discharges are prohibited.

The sponsor must properly dispose of waste throughout the term of the event and immediately upon conclusion of the event the area must be returned to a clean condition. Public waste containers may not be used for any of event's waste disposal. One (1) waste station is required for every increment of 50 people. A waste station is a set of three (3) 64-gallon wheeled carts where one (1) is blue and is for recycling, one (1) is yellow and is for compostable and one (1) is black and is for garbage. The three carts that comprise a waste station must be placed out together as a set with signage for event attendee use. If vendor booths are set up with garbage containers, they must also be equipped with recycling and compostable containers. These must be set up side by side each clearly marked with what items may be placed in each container. Garbage, recycling, and compostable collection service can be ordered by contacting the City's franchise waste hauler. Alternate containers are acceptable as long as they adhere to the specifications set forth above. The sponsor must ensure that all recyclable materials are delivered to a recycling facility, and not to a landfill.

4. STORM WATER MANAGEMENT:

The sponsor must comply with Pacific Grove Municipal Code Chapter 9.30, the storm water management and discharge control ordinance. Specifically, the sponsor shall be responsible to ensure that litter control is provided consistent with this ordinance, which requires that no person shall throw, deposit, leave, maintain, keep, or permit to be thrown or deposited, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or waters of the U.S., any pollutant, refuse, rubbish, garbage, litter, or other discarded or abandoned object, so that the same may cause or contribute to pollution. Waste deposited in proper waste receptacles for the purpose of collection is exempt from this prohibition. No person shall discharge or cause to be discharged into the city storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards, other than storm water. **[Ord. 07-002 | 2, 2007]**

5. FOOD PACKAGING:

Contractors in the performance of city contracts and special event promoters may not provide prepared food in disposable food service ware that contains polystyrene foam. City contractors and special event promoters utilizing disposable food service ware shall use compostable products that are BPI certified while performing under a city contract on city property. Violations of this condition shall result in fines pursuant to Pacific Grove Municipal Code Section 11.99.060.

City of Pacific Grove

Special Event Application - Fiscal Year 2021/2022

6. MUNICIPAL CODES:

The sponsor must comply with all Pacific Grove Municipal Codes.

The sponsor acknowledges Muni codes against: Alcohol in Public, Smoking in Parks, Amplified Sound, Drones, Signs & Banners and Obstruction of Streets and Sidewalks.

Service Fees

Fees for Special Events are set by City Council and are subject to the City's Master Fee Schedule.

Council may waive City-incurred charges for organizations and events that are sponsored by the City.

Fees are considered each May by the City and quoted fees may increase.

Service		Fees
Special Event Application Fee:	(events with fewer than 1,000 participants)	$210.00
Special Event Application Fee:	(events with more than 1,000 participants)	$768.00
Special Event City Staffing Fees:	(Police, Fire, Public Works, Recreation, Etc.)	Fully Burdened Rate
Sound Permit:	(Required for Amplified Sound)	$80.00
Sound Permit Deposit:	(Refundable)	$500.00
Directional Signage		$3.00 Per Day
"No Parking" Signs		$2.00 Per Day
Barricades		$3.00 Per Day
Delineators		$4.00 Per Day
Rails	(Include Two Barricades)	$11.00 Per Day
Traffic Cones		$3.00 Per Day
Park Fees		$342.00 Per Hour
Recreation Trail Fees		$342.00 Per Hour

Questionnaire of Economic Impact

Financial Impact Estimates:

Visitors During Event: Number of event days _____ Number of participants Expected _____

Motel Contract Agreements: Number of motel stays (expected in the City of Pacific Grove) _____

Extent of Publicizing:

Dollar Amount to be spent on Advertising: _____

Forms of Advertisement: (List types) _____

Marketing Area for Ads: _____

City of Pacific Grove

Special Event Application - Fiscal Year 2021/2022

Agreement

I hereby certify the foregoing statements to be true and correct and that I am authorized to sign this Application on behalf of the sponsoring organization. I agree, on behalf of the sponsoring organization, to indemnify, defend and hold harmless the City of Pacific Grove, its City Council, officers, agents, and employees from and against any and all loss, damages, liability, injury, claims, suits costs and expenses, whatsoever, including attorney's fees, regardless of the merit or outcome of any such claim or suit arising from or in any manner connected to the requested activity. I also agree that, if the request is approved, to comply with all application and permit conditions, and understand that failure to comply with any conditions, or any violation of the law may result in immediate cancellation of the event, denial of future events and/or criminal prosecution.

Authorized Event Representative: Name (Print): Christine Gruber	*Title:* President
Organization Name: Youth Ambassadors of Pacific Grove	*Telephone:* 831-869-5388
Signature:	*Date:*

Contact Information

City of Pacific Grove Special Events
Recreation Department
302 16th St.
Pacific Grove, CA 93950
831.648.3134
recreation@cityofpacificgrove.org

City Hall
300 Forest Ave
Pacific Grove, CA 93950
831.648.3100
Fax: 831.375.9863

City Staff Approval

COMMENTS:

Signature	*Date*

Recreation Board Approval

COMMENTS:

Signature	*Date*

City Council Approval

COMMENTS:

Signature	*Date*

City of Pacific Grove

Special Event Application - Fiscal Year 2021/2022

PORTABLE TOILET FORMULA

How many portable restroom rentals do I need for my guests or patrons in attendance?

Duration of Event

	1hr	2 hrs	3 hrs	4 hrs	5 hrs	6 hrs	7 hrs	8 hrs	9 hrs	10 hrs
50	1	1	1	1	2	2	2	2	2	2
100	2	2	2	2	3	3	3	3	4	4
250	3	3	3	4	4	4	5	5	6	6
500	4	4	5	5	6	6	7	7	8	8
1,000	6	7	8	8	9	9	10	10	11	12
2,000	9	12	15	16	17	17	18	18	19	19
3,000	12	18	22	24	25	26	27	28	29	30
4,000	16	24	29	32	34	35	37	38	39	40
5,000	20	30	36	40	43	44	46	47	48	50
6,000	24	36	44	49	52	53	54	56	58	60
7,000	28	42	52	58	60	62	64	66	68	70
8,000	32	48	60	66	69	72	74	76	78	80
10,000	36	54	68	75	80	84	88	90	95	100
15,000	40	47	56	75	94	113	131	150	169	188
20,000	44	50	75	100	125	150	175	200	225	250
25,000	50	69	99	130	160	191	221	252	282	313
30,000	55	82	119	156	192	229	266	302	339	376
35,000	60	96	139	181	224	267	310	352	395	438
40,000	66	109	158	207	256	305	354	403	452	501
45,000	72	123	178	233	288	343	398	453	508	563
50,000	80	137	198	259	320	381	442	503	564	626
55,000	86	150	217	285	352	419	486	554	621	688
60,000	93	164	237	311	384	457	531	604	677	751
65,000	100	177	257	336	416	495	575	654	734	813
70,000	106	191	277	362	448	533	619	704	790	876
75,000	113	205	296	388	480	571	663	755	846	938
80,000	121	218	316	414	512	609	707	805	903	1001
85,000	128	232	336	440	544	647	751	855	959	1063
90,000	136	246	356	466	576	686	796	906	1016	1126
95,000	143	259	375	491	607	724	840	956	1072	1188
100,000	151	273	395	517	639	762	884	1006	1128	1251

ADA Compliant Regulations

Under section 4.1.2(6) of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), requires that at least 5% (and no less than one) of toilets units complying with ADA guidelines be installed at each cluster of portable toilet or bathing units. Accessible units must be clearly identified and must be large enough to allow wheelchairs to make a 180-degree turn.

Pet Parade Recommendations

Recreation Board
April 28, 2022

Conditionally approved the pet parade with two conditions:
1. Full cost recovery
2. Contingent on meeting and discussing with staff, the DEI task force, and community stakeholders per the previous recommendation.

Katie Clark, Recreation Manager
April 28, 2022

Recommendation

1. Do not approve special event permit applications for the Pet Parade, Pacific Grove Summer Lights Dance and Pacific Grove Summer Lights to proceed as part of the Fiscal Year 2022/23 Special Events Calendar on the basis that the late submission do not provide sufficient time to plan, organize and administer an event of this magnitude.

Pet Parade (Friday, July 29)
This is a parade that features the youth of the community and allows them a chance to dress in costume, ride their bikes, and show off their pets. They would assemble with a parent or guardian at Caledonia Park with their bike or pet. The parade route would run down Lighthouse Ave between Congress and Forest Ave. City staff and the police department would be required for street closures and public safety.

Concerns – Municipal code 14.08.030 states that dogs are prohibited in public parks. At the special events presentation before City Council on February 16, it was confirmed that exceptions to city municipal code for this event cannot be made. Council gave direction to city staff to return to Council with an ordinance to allow pets in the park for designated events. At the time that report was prepared, this item has not been completed, so a recommendation for this event cannot be made.

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Jocelyn Francis, Police Administrative Services Manager

MEETING DATE: May 18, 2022

SUBJECT: American Rescue Plan Act Community Survey Results & Project Direction

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

RECOMMENDATION

1. Receive a report on the American Rescue Plan Act (ARPA) survey results.
2. Discuss allocating unprogrammed ARPA funds, and if consensus exists, provide direction to staff.

DISCUSSION

The City of Pacific Grove anticipates an award of $1.8 million in American Rescue Plan Act (ARPA) funding. Earlier this year, Council directed staff to conduct an ARPA Community Survey to determine community member priorities in utilizing the expected funding.

During the week of April 11th, City staff took various steps in announcing and advertising the opening of the ARPA Community Survey. Steps taken included: issuing a press release, sending a City-wide postcard mailer, posting announcement flyers in City facilities, providing hardcopy surveys to the Library, advertising in a local newspaper, creating a dedicated webpage link, posting on social media, and publicizing in the City Manager report.

On May 13, 2022 the survey closed at 5:00 pm. Due to City Council agenda time constraints, the draft results attached are as of May 13, 2022 at 8:30 AM and include 807 respondents. Once the survey closes, staff will post final results no later than Monday, May 16th at 5:00 pm at www.cityofpg.org/arpa.

On the May 11, 2022 City Council meeting there was discussion about potentially utilizing the unprogrammed ARPA funding on identified projects listed on the Deferred CIP Project List. In addition, for consideration, attached is a copy of the Unfunded Capital Outlay Project List. If consensus is received tonight, Council can direct staff to include identified projects in the proposed FY22/23 Budget.

Alternatively, if consensus is not received tonight, Council can direct staff to include the unprogrammed ARPA funding as a placeholder in the FY22/23 Budget. This would allow Council and staff more time to identify projects that align with survey results with a FY22/23 Budget Amendment.

OPTIONS

1. Take no action. Note: If the City Council takes no action, staff will proceed in earmarking the unprogrammed ARPA funds within the proposed Fiscal Year 22-23 budget for a future decision.
2. Provide alternate direction

FINANCIAL IMPACT:

Any direction received on this item does not formally approve funding. It should be noted, however, the unprogrammed ARPA funding currently totals $843,000 and will be included in the proposed FY22/23 Budget.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

ARPA Community Survey Results - DRAFT

Unfunded Capital Outlay Project List

AMERICAN RESCUE PLAN ACT (ARPA) COMMUNITY SURVEY RESULTS – DRAFT

Results provided are as of Friday, May 13th at 8:30 AM.
Final results will be posted at: www.cityofpg.org/arpa

Survey Opportunities	Average Rating
Improvements to public streets, intersections, and sidewalks	3.7
Improvements to recycled water plant and sewer infrastructure	3.6
Increased funding for local parks and recreation programs	3.5
Contributions to local nonprofits such as food banks and social service agencies	3.3
Increased funding for fire, EMS, and other first responders	3.1
Financial support for households facing housing insecurity, such as emergency rent/mortgage assistance, utility assistance, and legal support for those facing eviction or foreclosure	3.1
Funding to address homelessness and affordable housing	3.0
Increased funding for police and other public safety services	3.0
Financial assistance to restaurants, bars, retail stores, and other small businesses impacted by COVID-19	3.0
Improvements to city-owned buildings and other public facilities	2.8
Funding for new economic development and job training initiatives	2.8
Financial support for local arts, music, entertainment, and tourism-related businesses	2.7
Government technology upgrades to more online services	2.5

Respondent Demographics

Live | 706	Work | 189	Business Owner | 79
65 and Older | 41%	55-64 years | 19.1%	45-54 years | 15.2%
35-44 years | 14.4%	25-34 years | 4.4%	18-24 years | 0.5%
17 and Younger | 1.6%	Prefer not to say | 3.8%	**Total Respondents: 807**

General Fund Capital Outlay - Unfunded Project List

Project Title	Total Requests	Included Proposed Budget	Unfunded
Two Street Light Poles - Downtown Lighthouse	20,000	10,000	10,000
Two Street Light Pole - Forest Avenue	20,000	10,000	10,000
Two Hybrid Patrol Vehicles and Outfitting	140,000	70,000	70,000
Wireless Access Points Additions / Upgrades	10,000	-	10,000
Library Data Center Relocation	25,000	-	25,000
Potential contribution to the Vehicle Replacement Fund for a new fire truck *(Staff is exploring debt financing; along with partial grant funding for an electric-powered fire truck)*			

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 and Sandra Kandell, City Clerk

MEETING DATE: May 18, 2022

SUBJECT: Diversity Equity & Inclusion (DEI) Plan Subcommittee Recommendations

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

RECOMMENDATION

- The City Council adopt Diversity and Equity as City Core Values
- The City hire a consultant to facilitate a Diversity, Equity and Inclusion (DEI) planning process to:
  - collect information and insight about advancing DEI in Pacific Grove and in the City organization
  - encourage community participation and elevate the voices of underrepresented communities through "learning sessions," surveys, key stakeholder interviews and other community outreach
  - identify focus areas and develop recommendations for a DEI strategic plan for all areas of the City organization, and to increase awareness and understanding of DEI in the community, ensuring a Pacific Grove that is safe, inclusive and just

DISCUSSION

At its January 24, 2022 special meeting a subcommittee was appointed comprising of DEI Vice-Chair Edward Juarez-Lefevre and Secretary Bui to develop recommendations for a process for a City DEI Plan, working with City Manager Harvey. The City of San Luis Obispo's Diversity, Equity and Inclusion planning process and recommendations provide a solid foundation for the recommended DEI planning process. In addition to the recommendations above, the subcommittee encourages the sharing of ideas, information and knowledge with other entitles engaged in DEI work, such as the school district, local nonprofits, service groups, etc. The DEI Subcommittee reviewed best practices, met with City Manager Ben Harvey on February 23, 2022, and provided updates to the DEI Task Force and public at its March 14, 2022 and April 25, 2022 meetings. At its May 9, 2022 meeting the DEI Task Force approved the recommendations be forwarded to Council for discussion and direction.

At Council's May 18, 2022 meeting, staff will introduce Vice-Chair Edward Juarez-Lefevre and Secretary Bui who will be providing Council with a presentation for Council consideration.

OPTIONS

1. Accept the DEI Subcommittees' recommendations.
2. Provide alternate direction

FINANCIAL IMPACT:

There is no fiscal impact for the writing of this agenda report and Council discussion.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Luke Coletti, Councilmember
MEETING DATE: May 18, 2022
SUBJECT: Prohibition of Timeshares
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Direct the City Attorney and City Manager to assist and coordinate the following Planning Commission activity:

1. Review the City's timeshare prohibition (Zoning Code Chapter 23.45)
2. Recommend zoning code amendments to better effectuate the City's prohibition of timeshare projects, including those fractional interest uses marketed, sold, and managed as timeshares (e.g., Pacaso).

DISCUSSION

Measure B (1982)

On November 2, 1982, Pacific Grove voters adopted Measures B, which: (1) prohibits timeshare projects throughout the city, and (2) imposes strict zoning standards on condominium development.

On November 17, 1982, the City Council adopted Ordinance 1315 N.S. (Attachment #1), which codified Measure B under Chapter 23.45 of the Pacific Grove Municipal Code (PGMC).

PGMC 23.45 includes the following provisions:

> **23.45.020 Timeshare projects prohibited.**
> Timeshare projects shall not be permitted in the city of Pacific Grove.
>
> **23.45.030 Intention of chapter.**
> It is the intention of this chapter to avoid special privileges for condominiums and planned unit developments and to have such forms of development conform to the zoning standards and subdivision standards applicable to single-family residential district development. ***It is also the intention of this chapter in prohibiting timeshares to avoid the conversion and loss of the city's residential stock and character*** (emphasis added).

Definition of "Timeshare"

The authors of Measure B did not include a definition of "timeshare project." However, the zoning code at the time, which allowed timeshare projects as a permitted use (see Ordinance 1250 N.S.), included the following definition:

> **23.64.025 Use permit – Timeshare project**.
> A timeshare project, as such term is defined in Section 11003.5 of the Business and Professions Code …

In addition, at the same November 2, 1982 election, voters also adopted Measure C (see Ordinance 1316 N.S.), which established the following definitions:

> **6.11.010 (b) Time Share**.
> "Time-share" shall have the meaning as defined in Section 11003.5 of the California Business and Professions Code and in Section 23.64.025 of the Municipal Code.
>
> **6.11.010 (c) Time Share Owner.**
> "Time-share owner" means the person or persons who own one or more time-share interests in a time-share project within the city, whether or not approved under said Section 23.64.025 of the Code.

Section 23.64.025 was removed from the zoning code in 1997 (see Ordinance 97-22).

Section 6.11.010, last amended in 1997 (see Ordinance 97-39), is currently the only part of the city's municipal code that defines "timeshare":

> **6.11.010 Definitions.**
>
> "Time-share" shall have the meaning as defined in Section 11003.5 of the California Business and Professions Code.
>
> "Time-share owner" means the person or persons who own one or more time-share interests in a time-share project within the city.

The Problem

The city's municipal code and definitions are out of date. For example, PGMC Section 6.11.010 references Section 11003.5 of the California Business and Professions Code, which was repealed by the State Legislature in 2004 (see Statutes of California 2004, Ch. 697, Sec. 4).

Pacaso is active on the Monterey Peninsula (Attachment #2)

Pacaso claims the properties they market, sell, and then mange are not timeshares. Pacaso is actively litigating this claim (Attachment #3). See also www.stopacasonow.com. Pacaso is marketing, selling, and managing properties based on 1/8 fractional ownership shares. Each share "gives owners up to 44 stay nights" with each stay lasting "anywhere from 2 to 14 nights." Owners of two shares have the option to book "stays up to 28 nights." (see Pacaso FAQs). Since property usage/*sharing* is allocated based on *time*, this type of commercially managed co-ownership is clearly a *timeshare* and therefore conflicts with Measure B (1982). Furthermore, this type of commercially managed transient vacation

use has the same impacts on surrounding residential neighborhoods as short-term vacation rentals, which are prohibited in all residential districts outside of the coastal zone (see Measure M (2018), Ordinance 18-018).

Conclusion

Because of stale municipal code, and new timeshare marketing schemes (e.g., Pacaso), the city is in an extremely weak position to enforce Measure B (PGMC 23.45).

The city must defend the expressed will of the people, as provided in Measure B, a citizens' initiative.

Other cities are actively defending their timeshare prohibitions (Attachments #4, #5)

The Vacation Ownership and Time-Share Act of 2004 expressly preserves the authority of local jurisdictions to regulate timeshares through "zoning, subdivision, or building code or other real estate use law, ordinance, or regulation." Bus. & Prof. Code Section 11280(b).

Therefore, the Planning Commission should recommend zoning code amendments to better effectuate the City's prohibition of timeshare projects, including those fractional interest uses marketed, sold, and managed as timeshares (e.g., Pacaso).

OPTIONS

1. Take no action.
2. Provide alternate direction.

FINANCIAL IMPACT:

There is no financial impact in referring an item to the Planning Commission.

GOAL ALIGNMENT: Not Applicable.

Attachments

Timeshare Ordinance (Pacific Grove)

Local Pacaso Timeshares

Pacaso Inc. v. City of St. Helena

Enforcement Orders (Carmel, others)

Timeshare Ordinances (Others)

ORDINANCE NO. 1315 N.S.

ORDINANCE CODIFYING INITIATIVE MEASURE B
ENACTING REGULATIONS FOR MULTIPLE UNIT DEVELOPMENT INVOLVING
CONDOMINIUMS, PLANNED UNIT DEVELOPMENTS, AND TIME-SHARES
ENACTED IN NOVEMBER 1982 ELECTION

THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

1. Measure B, as enacted by the Election of the City of Pacific Grove on November 2, 1982 is hereby codified so that the same may be conveniently referred to in the Municipal Code of the City as follows:

"Chapter 23.45

INITIATIVE ORDINANCE ENACTING REGULATIONS FOR
MULTIPLE UNIT DEVELOPMENTS INVOLVING
CONDOMINIUMS, PLANNED UNIT DEVELOPMENTS, AND TIME-SHARES

THE PEOPLE OF THE CITY OF PACIFIC GROVE DO ORDAIN AS FOLLOWS:

23.45.010 Effective the date of the adoption of this ordinance by the City Council or by the voters of the City of Pacific Grove, the following regulations shall apply to multiple residential developments involving condominiums or Planned Unit Developments (PUDs), in lieu of any ordinance or resolution to the contrary:

A. In any planned unit or condominium development, the permitted number of dwelling units per acre shall not be more than twenty-five percent (25%) greater than that constructed in the nearest Single-Family Residential District (hereafter referred to as defined in the Pacific Grove Zoning Ordinance Section 23.12.010, as it existed on June 1st, 1982). Should more than one Single-Family Residential District be adjacent to the development, the lowest number of units per acre will be observed. However, in no case shall there be less than 4,000 square feet of land per unit. In computing land area available for such purposes, areas shall be excluded which would not normally constitute part of the building site, such as:

1. A minimum of 24-foot-wide strip for the length of any private roadway proposed for common use;

2. Any area serving as commercial or visitor-commercial use and uses ancillary thereto; and

3. Club houses, common recreational buildings, meeting rooms, and sales rooms and area.

B. Fifty per cent (50%) of the entire building site area, but exclusive of common roadways, shall not be covered vertically from the ground upward and shall be landscaped with permeable plants or materials.

C. The height of any structure shall not exceed 25 feet.

D. Two covered automobile parking spaces shall be provided for the exclusive use of each dwelling unit.

23.45.010 Time-share projects shall not be permitted in the City of Pacific Grove.

23.45.030 It is the intention of this ordinance to avoid special privileges for condominiums and Planned Unit Developments and to have such forms of development conform to the zoning standards and subdivision standards applicable to Single-Family Residential District development. It is also the intention of this ordinance in prohibiting time-shares to avoid the conversion and loss of the City's residential stock and character.

23.45.040 No building permit shall be issued that is not consistent with the provisions of this enactment.

23.45.050 The provisions of this enactment are independent and separable and if any one provision is held to be invalid the People hereby declare their intention that they would have enacted each provision separately."

PASSED AND ADOPTED BY THE PEOPLE OF THE CITY OF PACIFIC GROVE this 2nd day of November, 1982.

2. Nothing contained herein is intended to alter, amend, or effect any provision in the Initiative Ordinance as adopted.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY PACIFIC GROVE this 17th day of November, 1982, by the following vote:

AYES: Fisher, Hughes, Martine, Russell, Sloan, Williams

NOES: Eaton

ABSENT: None

APPROVED: November 17, 1982

FLORUS C. WILLIAMS, Mayor

ATTEST:

William S. Pitt

WILLIAM S. PITT, City Clerk

(Suggested by City Clerk.)

Pacific Grove OKs Measure B

Pacific Grove voters gave their support of Measure B — the initiative ordinance banning timeshares and revising density standards — by a vote of 3,063 to 2,588, or 54.2 percent.

The measure, which takes effect immediately, bans timeshares anywhere in the city and sets standards requiring planned unit developments to be compatible with density of the nearest single-family neighborhood.

The measure was placed on the ballot after 2,043 registered voters in the city signed an initiative petition circulated by the Pacific Grove Property Rights Committee.

Anne Bradley of the Property Rights Committee, said the vote in favor of Measure B "is a tribute to the intelligence of Pacific Grove voters and their love for this town."

She commented that the "other side used a slick, expensive media campaign" and that "No on B advertising definitely confused the voters. If it weren't for the false statements regarding the tearing down of Victorians and replacing them with six-unit apartments and the scare tactics regarding affordable housing, I'm sure the margin (of votes) would have been far greater."

T. Arnold Smith of the Citizens for Affordable Housing, the group opposing Measure B, commented that he was sorry to see the outcome.

Referring to the use of the initiative, he said, "We elect a council to make decisions for the people and I think they've done a good job in protecting the city. I don't like to see their responsibilities taken from them."

ORDINANCE NO. 1250 N.S.

ORDINANCE AMENDING MUNICIPAL CODE SECTIONS 23.08.020 AND 23.08.110 AND ADDING SECTION 23.64.025 RE TIMESHARES

THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

1. Section 23.08.020 of the Municipal Code is hereby amended by adding the following sentence thereto:

   "An apartment house shall not include any timeshare project as defined in Section 11003.5 of the Business and Professions Code, added by Chapter 601 of Statutes of 1980."

2. Section 23.08.110 of the Municipal Code is hereby amended by adding the following sentence thereto:

   "A dwelling group shall not include any timeshare project as defined in section 11003.5 of the Business and Professions Code as added by Chapter 601 of Statutes of 1980."

3. Section 23.64.025 is hereby added to the Municipal Code to read as follows:

   "23.64.025. A timeshare project, as such term is defined in Section 11003.5 of the Business and Professions Code, shall be restricted to the C, I, V. C., and R-3-M Districts, subject to first securing a use permit. Timeshare projects, when permitted, shall be limited to forms of interest and use as inhere in the definition of "Community Housing Project" at Section 24.18.010(b) of this Code. Any conversion from an existing use, including motel or hotel use, to a timeshare project shall conform to Chapter 23.29 of this Code as if the conversion were from a multiple-dwelling rental development; provided, however, the provisions of Subsections (d)(1), (e), (f) and (k) of Section 23.29.040, Sections 23.29.050(f), 23.29.080, 23.29.090, and 23,29.110 shall not apply except to units used as residences. An applicant for a timeshare project shall submit with the application at least 15 copies of all documents required to be filed with the California Real Estate Commission in respect thereto, and in the form as thus filed. No use permit shall issue for a timeshare project which, in the discretion of the Planning Commission, lacks proper means of securing adequate maintenance of the project or which lacks a reliable mechanism or plan to secure the payment of the Transient Occupancy Tax under Chapter 6.09 of this Code." A special processing fee of $100.00 plus $10.00 for each proposed unit subject to timesharing shall accompany each timeshare application, in addition to the applicable use permit fee.

4. This ordinance shall take effect 30 days after final passage.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 18th day of March, 1981, by the following vote:

AYES: Fisher, Hughes, Martine, Sloan, Williams
Noes: None
Absent: Eaton, Franco

APPROVED:

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 1316 N.S.

**ORDINANCE CODIFYING MEASURE C
APPROVED BY VOTERS ON NOVEMBER 2, 1982
AND IMPOSING TAX ON TIME-SHARE OCCUPANCY
IN LIEU OF TRANSIENT OCCUPANCY TAX**

THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

1. The City Clerk is instructed to effect codification of Measure C as Chapter 6.11 of the Municipal Code, in accordance with the numbered sections thereof adopted by the voters of the City on November 2, 1982.

2. Notwithstanding the provision of Measure C requiring a vote of two-thirds of the voters for enactment, by authority of the decision of the California Supreme Court on August 5, 1982, in City and County of San Francisco v. John C. Farrell, 32 Cal. 3d 47, the Council finds that the tax involved does not qualify as a special tax so that its approval by a majority of the voters suffices to enact the measure.

3. As provided in Measure C, Chapter 6.11 shall go into effect on January 1, 1983.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 17th day of November, 1982, by the following vote:

AYES: Eaton, Fisher, Hughes, Martine, Russell, Sloan, Williams

NOES: None

ABSENT: None

APPROVED: November 17, 1982

FLORUS C. WILLIAMS, Mayor

ATTEST:

William S. Pitt
WILLIAM S. PITT, City Clerk

(Suggested by City Clerk.)

ORDINANCE NO. 1316 N.S.

ORDINANCE TO BE SUBMITTED TO VOTERS IMPOSING TAX ON TIME-SHARE OCCUPANCY IN LIEU OF TRANSIENT OCCUPANCY TAX.

WHEREAS, there has recently been promoted the matter of selling time-shares as a form of vacation plan, whereby persons may purchase fractional estates in new or converted condominiums, apartments, or motels, whereby they attain the right to occupy a unit in the facility for a certain time period annually;

WHEREAS, the Legislature has recognized the need to regulate this type of promotion in 1980, when it enacted Chapter 601 to define time shares and make them subject to regulations of the California Department of Real Estate;

WHEREAS, the City enacted Ordinance No. 1250 N. S. on March 18, 1981, whereby a use permit must first be obtained for any time-share project under Section 23.64.025 of the Municipal Code;

WHEREAS, the City has taken the position that time-share interests are subject to the Transient Occupancy Tax under Chapter 6.09 of the Municipal Code, so that the tax is applicable to whatever consideration is payable for the periodic right of occupancy, the problem has arisen as to the manner of collecting the same and the period of time over which the same may be collected, and a challenge has been raised as to the applicability of such tax to such an interest;

WHEREAS, it is recognized that time-share interests may be sold to persons who ma have periodically vacationed in the City and who may previously paid the Transient Occ pancy Tax when occupying motels and other forms of lodging, so that if the tax were he inapplicable to the time-share form of interest the City might suffer a serious loss of revenue for its vital operations;

AND WHEREAS, the City wishes to insure this source of revenue on a steady reliabl basis and in the amount it would have reasonably expected to receive had the purchaser continued to use traditional forms of transient occupancy, especially in view of the facts that the charges on and demands of the vacationer for City services will be substantially the same:

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PACIFIC GROVE DO ORDAIN AS FOLLOWS:

1. Chapter 6.11 is hereby added to the Municipal Code to be entitled, "Time Share Tax in Lieu of Transient Occupancy Tax", to read as follows:

Section 6.11.010. Definitions. Except where the context otherwise requires, the definitions in this section govern the construction of this chapter:

(a) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(b) Time Share. "Time share" shall have the meaning as defined in Section 11003.5 of the California Business and Professions Code and in Section 23.64.025 of the Municipal Code.

(c) Time Share Owner. "Time Share Owner" means the person or persons who own one or more time share interests in a time share project within the City, whether or not approved under said Section 23.64.025 of the Code.

(d) Transient Occupancy Tax. "Transient Occupancy Tax" means the tax imposed by Chapter 6.09 of this Code.

(e) Promoter. "Promoter" means the owner of the time share project who sells or offers time share interest for sale to the general public.

(f) Manager. "Manager" means the person who is employed by the owner and/or association to manage, maintain the operate a time share project.

(g) Association. "Association" means the organization of owners as organized in a recorded Covenants, Conditions and Restrictions for the time share project, and includes the promoter for such times as the promoter is entitled to controlling vote in the association or its Board of Directors.

(h) Tax Administrator. "Tax Administrator" shall mean the City Clerk.

Section 6.11.020. Time Share Tax Imposed. For the privilege of occupancy in any time share project for any period of time, and in lieu of the Transient Occupancy Tax under Chapter 11.09 of this Code, any time share owner or person occupying throu or under a time share owner, shall pay a tax for each such period of occupancy equiva lent to eight (8) percent of rental value of the premises occupied for the period of occupancy.

The Tax Administrator shall determine the rental value of each time share unit periodically in advance from whatever evidence which may be available, including but not limited to: prevailing rates for rental of similar facilities; actual rentals charged by the promoter in unsold time share units in the project; rentals charged by individual time share owners.

Each time a rental value is established for a time share project, the Tax Admini trator shall mail written notice of the determination to the Association and the Manager of the project. Any person aggrieved by such a determination shall have 15 days from the receipt of the notice to appeal such to the City Council. The City Council's determination on appeal shall be final.

The tax hereby imposed shall not apply to transient rentals of units by the promoter prior to sale, but such shall be subject to Chapter 6.09. The tax under this Chapter shall apply, in lieu of Chapter 6.09, to occupancy by or through an individual time share owner, whatever consideration may have been given.

Section 6.11.030. Collection of Tax. The manager or the association shall collect the applicable tax from the individual time share owner or the person actual occupying the unit by or through such owner either at the time of actual occupancy o at the time of its collection of the maintenance assessment.

Section 6.11.040. Reporting and Remitting. Each promoter, manager, or associa tion shall, on or before the last day of the month following the close of each

calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him, of the total occupancies of each time share unit and the taxes due hereunder on account thereof and the taxes collected. Such return may collectively report units bearing similar rental values, if supported by required records. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected pursuant to this chapter shall be segregated from the promoter or association's funds and shall be held in trust for the benefit and account of the city until payment thereof is made to the tax administrator.

Section 6.11.050. Penalties and Interest. (a) ORIGINAL DELINQUENCY. Any promoter or association which fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

(b) CONTINUED DELINQUENCY. Any promoter or association who fails to remit any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

(c) FRAUD. If the tax administrator determines that the non-payment or any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.

(d) INTEREST. In addition to the penalties imposed, any promoter or association who fails to remit any tax imposed by this chapter, shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) PENALTIES MERGED WITH TAX. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

Section 6.11.060. Failure to Collect and Report Tax--Determination of Tax by Tax Administrator. If any promoter or association shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any promoter or association who has failed or refused to collect the same and to make such report and remittance, he shall proceed to determine and assess against such promoter or association the tax, interest and penalties provided for by this chapter. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the promoter or association so assessed at his last known place of address. Such promoter or association may within ten days after the serving o mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If application by the promoter or

association for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the promoter or association may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 6.09.090.

Section 6.11.070. Appeal. Any promoter or association aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

Section 6.11.080. Records. It shall be the duty of every promoter or association liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

Section 6.11.090. Refunds. (a) FILING CLAIM. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claim shall be on forms furnished by the tax administrator.

(b) REFUND TO OPERATOR. A promoter or association may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected liable therefor; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to such person or credited to tax subsequently payable by such person to the promoter or association.

(c) REFUND TO OCCUPANT. An occupant may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the occupant directly to the tax administrator, or when the occupant having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the occupant has been unable to obtain

a refund from the promoter or association who collected the tax.

(d) PROOF REQUIRED. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Section 6.11.100. Actions to Collect. Any tax required to be paid by any occupant under the provisions of this chapter shall be deemed a debt owed by the occupant to the city. Any such tax collected by a promoter or association which has not been paid to the city shall be deemed a debt owed by the promoter or association to the city, for which the city may bring suit in addition to remedies for misappropriating of city funds. Any tax which a promoter or association has failed to collect, wilfully or negligently or by failure to carry out the duties hereunder employed, and any interest or penalties thereon shall be deemed a debt owed the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the City of Pacific Grove for the recovery of such amount.

Section 6.11.110. Penalties for Violations--Unlawful Acts. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than five hundred dollars or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment.

Any promoter or association or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid.

Section 6.11.120. Invalidity. Should any provision of this chapter be declared invalid or inapplicable to any person or class of persons, the remaining provisions shall continue in force and/or remain applicable to other persons or classes of persons.

2. This ordinance shall take effect on the first day of the second month which begins after it shall have been approved by a vote of two-thirds of the voters voting in an election to approve or disapprove the passage of this ordinance under Article XIII A, Section 4 of the California Constitution.

PASSED AND ADOPTED BY THE PEOPLE OF THE CITY OF PACIFIC GROVE this 2nd day of November, 1982.

APPROVED: November 2, 1982

Florus C. Williams, Mayor

ATTEST:

William S. Pitt, City Clerk

ORDINANCE NO. 97-22

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE RESCINDING SECTION 23.64.025 OF THE PACIFIC GROVE MUNICIPAL CODE TO DELETE REFERENCE TO TIMESHARE USE PERMITS

WHEREAS, by initiative ordinance the people of the city in 1982 adopted Section 23.45.020 of the Pacific Grove Municipal Code, which section prohibits timeshare projects; and

WHEREAS, there remains in the Municipal Code a provision, found at Section 23.64.025, setting out conditions under which timeshares may be developed in the city; and

WHEREAS, Section 23.64.025 is in conflict with the aforedescribed initiative provision and should be deleted from the Code;

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

SECTION 1. Section 23.64.025 of the Pacific Grove Municipal Code hereby is rescinded.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 4th day of June, 1997, by the following vote:

AYES: Costello, Davis, Fisher, Honegger, Huitt, Koffman, Martine

NOES: None

ABSENT: None

APPROVED:

Sandra L. Koffman
SANDRA L. KOFFMAN, Mayor

ATTEST:

Peter Woodruff
PETER WOODRUFF, City Clerk

APPROVED AS TO FORM:

G C Thacher
GEORGE C. THACHER, City Attorney

ORDINANCE NO. 97-39

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING SUBSECTIONS (b) AND (c) OF SECTION 6.11.010 OF THE PACIFIC GROVE MUNICIPAL CODE TO DELETE REFERENCES TO A PREVIOUSLY RESCINDED PROVISION OF THE CODE

WHEREAS, this council has previously rescinded Section 23.64.025 of the Pacific Grove Municipal Code; and

WHEREAS, Section 6.11.010 of the Municipal Code includes two references to Section 23.64.025; and

WHEREAS, this council desires to delete said references as obsolete;

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

SECTION 1. Subsections (b) and (c) of Section 6.11.010 of the Pacific Grove Municipal Code hereby are amended to read as follows:

> (b) "Time-share" shall have the meaning as defined in Section 11003.5 of the California Business and Professions Code.
>
> (c) "Time-share owner" means the person or persons who own one or more time-share interests in a time-share project within the city.

SECTION 2. This ordinance shall become effective on the thirtieth day following final passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 20th day of August, 1997, by the following vote:

AYES: Costello, Fisher, Honegger, Koffman, Martine

NOES: None

ABSENT: Davis, Huitt

APPROVED:

Sandra L. Koffman

SANDRA L. KOFFMAN, Mayor

ATTEST:

Peter Woodruff

PETER WOODRUFF, City Clerk

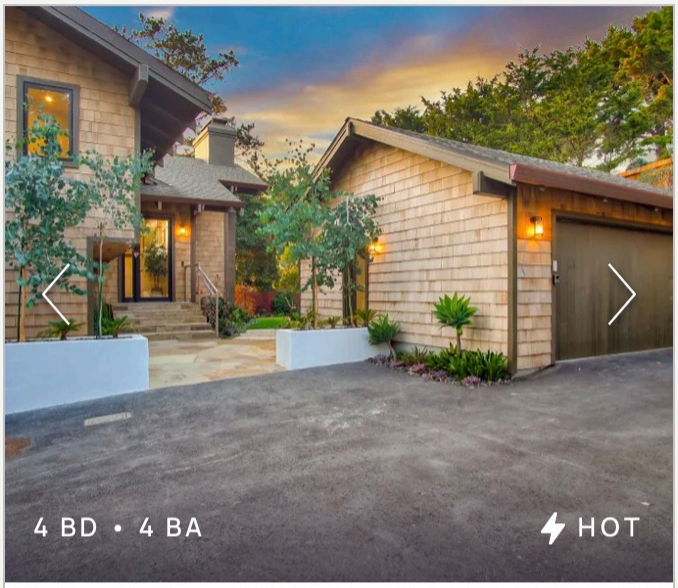
APPROVED AS TO FORM:

GEORGE C. THACHER, City Attorney

Luxury homes in Carmel-Monterey

Pacaso makes co-ownership simple — you own a spectacular second home for 1/8 of the cost, and we manage it. Browse our collection of stunning homes to get started.





SPINDRIFT

$788,000/share

Carmel Highlands, CA

Available Now



RODEO

$1,126,000/share

Pebble Beach, CA

Available Now



See details ›

PEBBLE BEACH, CA

Prospect

Carmel-Monterey at a glance

Walk through Carmel-by-the-Sea, and one word comes to mind: charming. This Northern California town, located on the coast just south of Monterey and Pebble Beach, has a storybook feel, with a walkable, stone-paved downtown core that just begs for an afternoon of exploration. For a small town, Carmel is a shopper's paradise, with everything from outdoor malls to family-owned boutiques.

An artist's colony at heart, creative types will love the opportunity to browse the many local art galleries, take part in the annual Carmel Art Festival or the monthly Carmel Art Walk, or get hands-on with an art workshop led by a local artist in residence.

Carmel also has a reputation as a great city for dogs and their humans. You'll find many pet-friendly stores and hotels, as well as water bowls outside pretty much every shop. Well-behaved pups can frolic off-leash at two local beaches, Carmel Beach and Mission Trails Park.

This seaside village is also perfectly positioned for visitors who love to golf. The world-famous Pebble Beach Golf Links is just a short drive away, and it's a bucket-list course for many golfers. In fact, the course has been consistently ranked the top public golf course in the country.

Co-ownership made simple

Shop

Explore our collection of stunning single-family homes in top second home destinations. We'll help you find the perfect fit, and you decide how many shares you'd like to own.

Own

We create a property LLC for each home, find and vet co-owners, and handle all the sales details. At closing, the co-owners enjoy 100% ownership of the home – Pacaso does not retain any shares.

Enjoy

We take care of furnishings, repairs, utilities and property management – you just show up and relax. Scheduling is easy and equitable with our app and SmartStay™ technology.

CONTACT US



Pacaso®

Make your second home dreams a reality

pacaso.com

Company that sells shares in houses told to leave town

By MARY SCHLEY

A CONTEMPORARY four-bedroom, five-bathroom house on Dolores south of 13th was sold last month for $6,928,000 by a company called Pacaso in one-eighth shares for $866,000 apiece, but that model violates a ban on timeshares, according to city officials.

In January, under the name Dolores 7 SW of 13th LLC, Pacaso paid $5,757,000 for the home Jovan and Sanya Micovic bought less than four years earlier for $2 million, according to Monterey County records. Pacaso creates a specific LLC for each property and then sells shares to people interested in co-ownership. After the deal closes, the company becomes the property manager for the new fractional owners, handling maintenance, upkeep and scheduling their stays of up to 14 days at a time.

Walks like a duck?

But that setup flies in the face of city codes prohibiting timeshares, city attorney Brian Pierik said in an April 7 letter to the company's legal counsel and director of government relations in San Francisco.

"We are aware that Pacaso has asserted to other jurisdictions that the properties that they sell and manage are not timeshares, but rather 'fractionalized ownerships,'" Pierik wrote. "However, this is simply not true. Regardless

See **FRACTIONAL** *page 19A*

FRACTIONAL

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of what Pacaso wants to call its business model, the impact is the same — this type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are prohibited by the city's municipal code."

Laws banning short-term rentals and timeshares "are specifically intended to minimize the impacts created by this type of use and occupancy of land," he said.

The municipal code states that "timeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the city," but it does not define what a timeshare is.

Pierik described the fractional ownership in the Dolores Street home and Pacaso's management of it as "unlawful" and said they "must cease immediately."

"The frequent, rotating occupancy of the owners is functionally akin to short-term rentals, and the city's existing regulations on timeshare uses are specifically intended to minimize the impacts created by this type of use and occupancy of land," he wrote.

Pierik said Pacaso must stop advertising and selling fractional ownership in residential properties in town and that failure to do so could result in enforcement, though that's limited to $1,000 in fines and up to six months in jail. Pierik did not say what should become of the people who bought shares in the house.



Advertised on a real estate website, this house on Dolores Street was sold by Pacaso to eight fractional owners who will share it. The city says that's not allowed.

He requested a reply from the company by April 21.

Colin Tooze, vice president of public affairs and communications for Pacaso, told The Pine Cone his company "offers a sustainable model of second-home ownership by making it easier for a small number of people to own a home together in an LLC."

He disagreed that co-ownership is the same as timeshare. "Regrettably, the city attorney's correspondence overlooks key details of Pacaso's business and in no way reflects the positive contributions of these homeowners to the Carmel community, including year-round support for local businesses," he said. "We look forward to continuing the positive dialogue we've had with members of the city council so far, and remain eager to work with city leaders to address any concerns or questions."



Pacaso fights 'timeshare' label

By MARY SCHLEY

CO-OWNING A house and taking turns staying in it is not the same as a timeshare and therefore doesn't violate any city laws, according to Pacaso Vice President of Legal Affairs Kevin Heneghan. In fact, that arrangement can actually be good for the city, which doesn't have the legal ability to stop it, anyway.

Heneghan's April 19 letter was directed to city attorney Brian Pierik, who sent a cease-and-desist letter to the company a couple of weeks ago arguing that houses with fractional ownership are the same as timeshares and therefore run afoul of the law.

Lack of understanding

"Pacaso has had numerous conversations with city officials. We thought these conversations were productive and that city officials understood our co-ownership model and that we wanted to be a good partner in the community,"

See **PACASO** *page 15A*

PACASO

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Heneghan wrote. "It is even more disappointing that you have demanded a draconian solution, i.e., that Pacaso cease its current operations in the city. This is especially egregious when one considers that Pacaso is only managing a single home in the city and, to our knowledge, there has not been a single complaint regarding the home."

In January, under the name Dolores 7 SW of 13th LLC, Pacaso paid $5,757,000 for the home and then sold it last month for $6,928,000 in one-eighth shares for $866,000 apiece. Typically, after the deal closes, Pacaso becomes the property manager and handles maintenance, upkeep and scheduling the owners' stays.

Friends and family

But that arrangement is no different than friends or family members sharing ownership in a property and deciding how to use it, according to Heneghan, who joined Pacaso in March after working for Airbnb for more than five years. Co-ownership of homes "is a common practice throughout California, the Monterey Peninsula and in Carmel," Heneghan said.

"According to our analysis, about 60 percent of the housing units in the city are not occupied on a full-time basis by their owners, and over 2,500 of these are owned in an LLC or trust, which enable co-ownership arrangements," he said.

Traditional timesharing provides a contractual right to use a property, not to own it, while Pacaso co-owners have full ownership rights. And they can employ the company to manage their properties but are not obligated to — another distinction from timeshares, he said.

"Furthermore, the co-owners can sell the home, dissolve the LLC and distribute the sale proceeds of the real estate asset to each co-owner on a pro rata basis," he said. "That is, they have all of the rights and optionality of any other single-family residence owners."

He went on to argue that Pacaso homes comply with city laws and even satisfy its housing goals. The co-owners of the Carmel home use it "for residential purposes, which is a permitted use," he said.

"We presume it is not the intention of the city or the aim of the city's zoning code to regulate who may or may not co-own real estate together, or dictate the vehicle through which they elect to co-own real estate," he said.

The lawyer noted the city's own general plan acknowledges government's "limited ability to influence second home ownership and use," and said that any attempt to enforce the timeshare ban against the Dolores Street homeowners would violate the Coastal Act by restricting access to the coast in a new and unfair way.

He even suggested that having eight owners of one vacation house serves the general plan's goal to "protect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement," because otherwise, each of the eight might own a separate second house here.

"In short, by decreasing demand for second homes in Carmel, the Pacaso model will allow the city to preserve existing housing stock based on the basic laws of supply and demand," he speculated. "Second home ownership can be inefficient, exclusionary and wasteful, as second homes owned by just one family typically sit vacant up to 80 percent of any given year," while Pacaso houses are occupied full-time as their various owners take turns.

The owners build long-term connections to their community, unlike those of the "empty homes with the blinds closed," and they spend money here, too, according to Heneghan.

"We look forward to being a good partner with the city and look forward to continuing our productive conversations with the city's elected officials," he concluded.



Pacaso bought this Carmel Highlands house this month for $5.2 million and is offering one-eighth shares for $788,000 each. The former owner bought it four years ago for $1.2 million.

City won't back down on Pacaso

By MARY SCHLEY

IN THE lawyers' duel over whether a house owned by eight people is a timeshare, city attorney Brian Pierik this week fired off a response to Pacaso's counsel, Kevin Heneghan, who argued in an April 19 letter that houses under fractional ownership are not timeshares because the people own the property, not the time they spend in it.

"Our office has reviewed your assertions that Pacaso is not a timeshare and disagree that Pacaso is not in the business of advertising, selling and operating timeshares in the manner defined by" the city's municipal code, Pierik wrote May 4. "Pacaso does not dispute that it creates multi-member LLCs to hold property. Nor does it contest that it sells shares of such LLCs to individual owners."

With the Pacaso model, the company creates a limited liability company to list on the deed of the house, as many individuals and families do, and then sells one-eighth shares in the LLC. The owners of the LLC thereby own the real estate and can have Pacaso manage it, including maintenance and scheduling their stays, or they can opt to manage it on their own, according to Heneghan.

But Pierik said Pacaso's website indicates otherwise, "stating that owners are entitled to stay in a Pacaso property based on the number of shares in the property that they own, with each share entitling an owner to stay up to 44 nights per any given year, using either the six 'general stays' that can last between two and 14 nights per year and be reserved 24 months in advance, to stay up to 44 nights per year, and rights to 'short-notice stays' based on a floating schedule of availability."

Prove a negative

He also said the company failed to provide any evidence that such scheduling doesn't violate the city's ban on timeshares. "Granting each owner the right to use the property for up to 44 nights per year based on rules created by Pacaso and having use established under a floating time schedule creates a timeshare use prohibited by the CMC, regardless of whether the ownership of the property is held via an LLC or some other manner," Pierik said. "This is because the city prohibits both timeshare estates (where a user is party to a timeshare

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PACASO

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program and owns an interest in the estate in real property) as well as timeshare uses (where a user is party to a timeshare program and exercises a right of occupancy pursuant to a license, contractual or membership right without having an estate in the real property)."

Pierik reiterated the city's demand that Pacaso "cease and desist from any advertising, operation, and/or sale of timeshare properties with the city" and threatened enforcement action if the company doesn't follow orders.

Pierik also threatened the new owners of the Pacaso house on Dolores south of 13th that instigated the sparring in the first place. So far, it has been the only Pacaso property in the city limits.

"We also wish to point out that any action by Pacaso to continue its operations in Carmel-by-the-Sea in the manner described above would expose its clients to potential jeopardy for violating the city's codes prohibiting timeshares," he said.

Councilman demands info

Pierik then mentioned councilman Jeff Baron met with Pacaso representatives in March and was promised a copy of the basic Pacaso LLC template "so that the city can review it and determine its adherence to the city's municipal code regarding timeshares" and requested "reporting on how the parcel tax/property tax/accounting/reporting works in conjunction with the Monterey County Assessor's and Tax Collector's Office as shares of the LLC are created, then sold and resold."

"Council member Baron did not receive these documents and information, and we renew that request at this time," Pierik said.

Colin Tooze, vice president of public affairs and communications for Pacaso, said it's a shame the conflict has escalated. "It's unfortunate that one member of the city council is escalating a conversation over one, $6.9 million home in Carmel-by-the-Sea into a broadside against second home co-ownership," he wrote.

Choosing to own property with others is nothing new and is common practice in Carmel, and Pacaso's co-ownership model offers numerous benefits to the community — including a more sustainable use of limited housing stock and year-round support for local businesses," he said. "We look forward to continuing to discuss these important issues with city leaders and are confident that cooler heads will prevail."



To Neighbors, There is NO Difference Between

Short Term Rentals and Pacaso

A realtor for Monterey Peninsula Home Team wrote this email to Stop Pacaso Now website, signing it as a 'Concerned Citizen"....concerned that we may be hurting his relationship to Pacaso!

"Stop acting like this is an Airbnb operation.
Open your eyes.
Property tax is paid at the market price and the buyers of the shares are a very affluent crowd.
You're lucky to have them in your area.
Would you rather have the homes empty for 90 percent of the year? Maybe you would. sounds a little selfish to me.
Wake up. Mind your own business"

Let's break this Pacaso Realtor's comments down:

1) To neighbors living next door to Pacaso it is just like an AirBnB with a constant turnover of anonymous guests coming to vacation

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Caroline.VanNess@skadden.com
ASHLEY PHILLIPS (SBN 318397)
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Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC,

Plaintiffs,

v.

THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5.

Defendants

Case No.:

COMPLAINT FOR:

(1) DECLARATORY JUDGMENT;

(2) DUE PROCESS VIOLATION;

(3) SELECTIVE ENFORCEMENT;

(4) INVALID USE OF MUNICIPAL AUTHORITY; AND

(5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

JURY TRIAL DEMANDED

Plaintiffs Pacaso Inc., a Delaware corporation, and PAC 6 CA 2021 LLC (collectively, "Pacaso"), for their Complaint against the City of St. Helena ("the City" or "St. Helena"); Maya DeRosa ("DeRosa"), in her capacity as Planning & Building Director of St. Helena; Geoff Ellsworth ("Ellsworth"), in his capacity as Mayor of St. Helena; Ethan Walsh ("City Attorney Walsh"), in his capacity as City Attorney of St. Helena; and Does 1 through 5 (collectively, the "Defendants"), allege based on personal knowledge and on information and belief as follows:

INTRODUCTION

1. This case arises out of Defendants' calculated and intellectually dishonest campaign against Pacaso and its homeowners to violate their protected rights to share ownership of a single-family home with others. Acting under the false pretense of enforcing the City's time-share ordinance, codified in Section 17.112.130 of the St. Helena Municipal Code ("Section 17.112.130"), Defendants have sought to preclude Pacaso and its homeowners from enjoying the benefits of secondary home ownership in St. Helena—a privilege that they have sought to reserve only for those in the upper echelon of financial status (*i.e.*, those who can afford to purchase and own primary and second homes in St. Helena on their own, despite the astronomical housing prices in the area). Sadly, this is just the latest chapter in a long history of improper attempts by the City to exclude outsiders from the community. With Defendants now entrenched in this unprincipled position, Pacaso has no choice but to seek judicial intervention to guarantee the legally-protected rights of its homeowners to enjoy the benefits of owning property in the beautiful surrounds of St. Helena.

2. Defendants' crusade against Pacaso is based on manufactured, incorrect theories about both the scope of Section 17.112.130 and Pacaso's business model. One thing about Section 17.112.130 is clear: the Ordinance prohibits only "[t]he creation of a time-share project" in St. Helena. But Pacaso homes are not time-shares, and Pacaso does not create "time-share project[s]."

3. Instead, Pacaso has introduced a new pathway for second home ownership that provides individuals who have traditionally been excluded from the second home market an opportunity to turn their dreams into reality. Pacaso eliminates several significant barriers to second home ownership, including exorbitant costs, inevitable maintenance hassles, and even the

perceived guilt of having the home sit vacant. Pacaso prides itself in serving a diverse clientele, underscoring the power of ownership to unlock new opportunities for traditionally underrepresented communities. Its owner group is organically diverse: around two-thirds of Pacaso homeowners in St. Helena and 25% of Pacaso's total owner group are non-white or identify as LGBTQ+.

4. Pacaso's homeowners are not renters or investors. They co-own the home with up to seven other homeowners. Pacaso's co-homeownership structure has no resemblance to commercial or quasi-commercial use. Pacaso homeowners are true homeowners who make a significant financial investment in their home, and are in it for the long-haul. They are directly invested in the home, its surrounding neighborhood and community, and own for their personal use and enjoyment, not for profit. Pacaso homeowners cannot sell their ownership stake during the first year of ownership, and they are strictly prohibited from renting out the property at any point to anyone.

5. Unlike absentee second home owners, Pacaso homeowners occupy their home and support local businesses year-round, including those disproportionately impacted by COVID-19, such as wineries, restaurants, and retail shops. What is more, Pacaso itself employs between 8-10 local businesses per property, including real estate agents, property managers, landscapers, pool cleaners, home cleaners, laundry services, handymen, local artists, and more. Indeed, today, 60% of all residential properties in St. Helena did not take the owner occupant exemption, which means the owners patronize local businesses only a fraction of the year. In contrast, Pacaso homeowners use and occupy their home year-round, just like a primary residence. In sum, Pacaso's homeowners are part and parcel of the underlying economic ecosystem of St. Helena.

6. Pacaso is—and has always been—fully compliant with, and committed to upholding, the laws and values of St. Helena. Despite the obvious opportunities to develop a fruitful partnership, Defendants have rejected any attempt to embrace Pacaso and its homeowners as the equal community members they are. Instead, they have taken aim at Pacaso, seemingly at the behest of a few vocal St. Helena residents with improper outsider bias.

7. Defendants' recent challenge to Pacaso was launched less than a year after they first attempted to regulate Pacaso, but were forced to accept that co-ownership structures like Pacaso's are lawful and not subject to Section 17.112.130.

8. On July 14, 2020, reacting to "concerns" from neighbors about a listing for a Pacaso home, then-acting City Attorney Karen Ueda prepared a Report to City Council (the "July 2020 Report" or "Report," attached as Ex. A hereto). Desperate for a way to regulate and control Pacaso and its homeowners, the City Council directed City Attorney Ueda to evaluate the scope of Section 17.112.130 and whether it applied to Pacaso.

9. The answer was plainly "no." The July 2020 Report concluded that "a timeshare use differs from a fractional or partial ownership of a property." Report at 323. Not only that, any attempted regulation of this type of ownership would run afoul of a basic premise of the limits on zoning authority: "[B]y law zoning regulations must focus on the *use* of the land." (Report at 325 (emphasis added).) The July 2020 Report acknowledged that this "fundamental challenge" could not be cured by amendment to Section 17.112.130, because "zoning based solely on ownership, as opposed to the use of the land, is impermissible." Report at 326.

10. On July 14, 2020, City Attorney Ueda presented the findings of the July 2020 Report to the City Council and reiterated that the zoning code cannot regulate based on the identity of the homeowners: "Whether a residence is owned by a non-permanent city resident, for example, who may use that residence as a second home, isn't an issue that can be regulated by the zoning code. And so, ***we can't regulate based on the identity of the owner or of a tenant***."[1] July 13, 2020, Meeting at 3:20-21.

11. Extensive discussion ensued at that meeting about the limitations and impropriety of the City attempting to regulate partial ownership of single-family homes as reflected in numerous statements by City Council members including the Vice Mayor, including:

- Section 17.112.130 "was improperly written or inaccurately written" such that it does not cover partial ownership of a single-family home like a Pacaso home. (July 14, 2010, Meeting at 3:30.)

[1] Recording of July 14, 2020 City Council Meeting ("July 14, 2020, Meeting"), available at https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true&timestamp=11860.

- "My concern is that ***we're overreaching what we can do legally*** though by, from what I understand, ***we can't control how people own this***. They're able to do it, and so I don't want us to go down the path of spending a lot of money ***trying to find our own way around what we can legally do***. And I think that ***there's other ways to regulate that we have like in our ordinance*** such as if there are loud noises, if that's the issue, if there's loud partying after a certain amount of hours. That's the kind of thing that I'd be more interested in looking at than regulating who gets to own the property if ***this is something that by law can happen***." (July 14, 2020, Meeting at 3:30-31.)

- "***What you want and what's legal are entirely different matters***. I think ***this is driven by case law and civil rights law*** and cases, you know, I could see the other side of this issue that ***we're not in the business of regulating families and how people come together to buy properties***." (July 14, 2020, Meeting at 3:31-32.)

- "***[W]e don't want to go down a path where we're going to get sued*** because that doesn't make any sense either, and then we need to focus on the issue, the noise and the nuisance and be a little bit more robust on that part of it. . . . ***I know the case law is sort of against us on this***." (July 14, 2020, Meeting at 3:32.)

12. In the face of these damning admissions—and without any changes in law or fact since July 2020—Defendants decided to change course in early 2021, threatening that unless Pacaso immediately ceased its efforts to market a home in St. Helena to prospective home buyers, it would contact all real estate agents in the area to "educate" them on the "illegality" of Pacaso's ownership model. Despite admissions on the public record from Defendant Walsh that the City had not yet been able to reconcile its newfound position with the clear guidance from former City Attorney Ueda, Defendants nonetheless followed through on their threat in an effort to chill real estate activity surrounding the Pacaso home—sending a letter to all real estate agents in the area that threatened sanctions if agents were to sell a purported "timeshare" property that was then currently listed on the MLS (*i.e.*, the Pacaso property). Defendants' plan worked to perfection, as Pacaso has been contacted by numerous real estate agents and potential buyers, concerned about possible retribution from the City if they proceed with attempts to buy or sell the Pacaso property in St. Helena.

13. Pursuing enforcement that is at odds with the City Attorney's own position on Section 17.112.130 is deeply problematic, violative of Pacaso's rights, and confirms that its latest attempt to interfere with Pacaso's operations and homeowner activity is motivated by an improper purpose.

14. Indeed, the City's reliance on Section 17.112.130 is nothing more than a pretext to erect barriers and deny homeownership to new diverse residents, and to control ***who*** owns and occupies a particular residence. This unlawful and exploitative conduct must be stopped.

THE PARTIES

15. Pacaso is a corporation formed under the laws of Delaware, doing business as "Pacaso," and headquartered in San Francisco, California. Pacaso, which previously operated under the brand name "Niner Homes," first started operations in 2020. It launched as Pacaso in October 2020. Pacaso currently owns and/or manages at least five single-family homes in the City of St. Helena.

16. PAC 6 CA 2021 LLC, a California limited liability company, is the property-specific LLC that owns deeded title to 1242 Madrona Ave., a single-family residence located in St. Helena.

17. The City of St. Helena is a municipality in Napa County, California and is part of the North Bay Region of the San Francisco Bay Area. St. Helena is a General Law City and operates a Council-City Manager style of government and derives its power from the California Constitution and laws enacted by the State legislature.

18. Defendant Maya DeRosa is the Planning & Building Director of St. Helena. In this role, she is responsible for reviewing, revising, and implementing St. Helena's General Plan and zoning ordinances. She provides regular staff support for the City Council and Planning Commission. As the Planning & Building Director, DeRosa has "the authority and powers necessary to gain compliance with the provisions of this code and applicable state codes," and is "considered to be [an] enforcement official[]." Section 1.12.040.

19. Defendant Geoff Ellsworth is the Mayor of St. Helena. The City Attorney acts under the Mayor and City Council's direction. Defendant Ellsworth served as City Council member from November 2016 until he was elected Mayor in November 2018. The Mayor presides over City Council meetings, signs official documents, and officiates at ceremonies and events. The Mayor is elected at-large to serve a two-year term as presiding officer at City Council meetings and as the official head of the City for legislative purposes.

20. Defendant Ethan Walsh is the City Attorney of St. Helena. As City Attorney, Mr. Walsh is responsible for providing legal advice to the City Council and staff in carrying out their duties in the operations of the City government. Mr. Walsh is responsible for bringing about suits on behalf of the City.

21. Doe Defendants #1-5 may include St. Helena City Council members including Vice Mayor Paul Dohring, Anna Chouteau, Lester Gardy, and Eric Hall. Although certain of their names are known, the basis for liability against the Doe Defendants has yet to be determined, because the full extent of their involvement in the ongoing violations of Pacaso's rights will only be uncovered through discovery. These members have collectively represented the City Council since November 2020, with Vice Mayor Dohring and Anna Chouteau serving since 2018. The City Council is the legislative and policy-making body of the City of St. Helena. Acting as a whole, but bearing individual responsibility, these members are responsible for setting the direction of City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. Given the lack of transparency around the City Council's involvement and Defendants' decision to depart from the July 2020 Report and to start enforcing Section 17.112.130 against Pacaso, Pacaso is ignorant of the true names of the Does who are also directly responsible for the conduct giving rise to the causes of action herein. Pacaso will later seek to amend the complaint to include the true names of the defendants once ascertained through discovery.

JURISDICTION AND VENUE

22. As this case involves questions which arise under the U.S. Constitution and the laws of the United States, the jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331. This action is authorized by 42 U.S.C. § 1983. The Court has jurisdiction to issue relief pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201 and 2202. This court has jurisdiction to hear Plaintiffs' pendent state claim through the doctrine of supplemental jurisdiction set forth at 28 U.S.C. § 1367.

23. This district is the proper venue and jurisdiction to the location of some or all of the Defendants, and the location where the injury occurred, under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

I. Pacaso Seeks To Democratize Second Home Ownership In St. Helena

24. Pacaso (formerly known as Niner Homes) launched in October of 2020 introducing a new pathway for second home ownership.

25. Pacaso currently owns and/or manages five single-family homes in the City of St. Helena.

26. Pacaso lowers the barriers to the second home market by simplifying and streamlining the co-ownership process by reducing costs and making ownership possible at a more accessible price point. Pacaso organizes the ownership group, manages the legal process, and provides a management service to streamline the home ownership process for the co-owners.

27. Pacaso further facilitates broader access to the second home market by allowing co-owners to buy partial interests in real property. Pacaso creates a property-specific LLC for each home, which owns deeded title to the real property. Then Pacaso organizes and vets a maximum of eight co-owners, who hold co-ownership interests in the LLC and co-own the home in increments ranging from 12.5% to 50%.

28. The co-owners can purchase their desired ownership interest based on their expected occupancy needs, financial means, and even in certain circumstances their desire to participate in the LLC with co-owners of their choosing. At closing, the co-owners enjoy 100% ownership in the property, and Pacaso's only role remains to serve, at the discretion of the homeowners, as program manager overseeing the LLC and employing local businesses to care for the home.

29. The concept of co-ownership through an LLC is far from new. In St. Helena, property ownership through LLCs or other vehicles that facilitate multiple owner arrangements is very common. But Pacaso simplifies the process in a novel way that makes the experience accessible to people who lack the resources or time to own and manage a whole second home. As a result, Pacaso has made second home ownership available to a broader set of people, including those in traditionally diverse and underrepresented communities.

30. In short, Pacaso's model seeks to enrich the lives of new and diverse second home owners and open the second home market, which has traditionally only been accessible to affluent and predominantly white buyers. Pacaso specializes in top second home destinations and is currently focused on 25 markets across 10 states.

31. This is especially true in St. Helena. In St. Helena, second home ownership has typically been possible only for elite and predominantly white buyers, particularly on St. Helena's affluent west side. In contrast, Pacaso's owner group is organically diverse; approximately 66% of Pacaso homeowners in St. Helena and 25% of Pacaso's total owner group are non-white or identify as LGBTQ+.

II. Pacaso Shifts Demand Away From The More Limited Supply Of Affordable Homes And Ensures Second Homes Are Fully Utilized

32. The workforce housing challenges in St. Helena are acute, and much of this shortage can be attributed to second home buyers purchasing moderately priced whole homes.

33. Since 2018, only 7% of homes sold in St. Helena were sold below $500,000, and 82% of those properties were purchased by second home buyers.

34. Pacaso's approach helps relieve competition for more affordable homes by giving second home buyers a better option. Instead of competing for a whole home valued at $525,000, for example, Pacaso offers second home buyers an option to be co-owners of a $4-5 million property for the same price. Just one Pacaso home can remove up to eight buyers from local competition.

35. Second homes are notorious for sitting empty much of the year. In contrast, Pacaso-managed homes are fully utilized, which means that Pacaso homeowners engage in their community and support local businesses year-round.

36. Just like their neighbors, Pacaso homeowners make large financial investments in their homes and bring an owner mentality, not a vacation mentality, to their use of the property. Short-term rentals are strictly prohibited, and all owners agree to Pacaso's policies, which prohibit large events or parties. A Pacaso home in St. Helena is subject to all of the same noise and nuisance ordinances that apply to other single-family residences.

III. In July 2020, The City Attorney And City Council Members Concluded That The Time-Share Ordinance Does Not Regulate Co-Owned Homes, Conceding That The Ordinance Does Not Apply To Pacaso

A. Overview Of Section 17.112.130, The City's Time-Share Project Ban

37. The City of St. Helena has a time-share ordinance, codified in Section 17.112.130, which states:

> The creation of a ***time-share project as a means of ownership*** of any single-family, two-family or multiple-family dwelling or any apartment house shall be prohibited within the city.

38. Section 17.112.130 sets forth a series of definitions—which are both circular, vague, and incomplete. For example, a "Time-sharing project" is defined as "any real property that is subject to a time-share program." Section 17.112.130(B). [2]

39. In turn, "time-share program" is defined to mean "any arrangement for time-share intervals [which is later defined as either a time-share estate or a time-share use] in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession *circulates* among *purchasers of the time-share intervals* . . . ." *Id*. (emphasis added).

40. Section 17.112.130 defines "time-share estate" as ownership in a "property devoted to a time-share fee" and "time-share use" means "any contractual right of exclusive occupancy, which does not fall within the definition of a time share estate, including, without limitation, a vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation bond." *Id*.

B. Under Defendants' Own Analysis, Section 17.112.130 Does Not Apply To Pacaso

41. Defendants are carrying out an enforcement campaign against Pacaso that is *in direct conflict* with a position that City Attorney Ueda took in a written report and oral presentation

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[2] The ordinance also defines "offering" as "any offer to sell, solicitation, inducement or advertisement, whether by radio, television, newspaper, magazine or by mail, whereby a person is given an opportunity to acquire a time-share interval of a residence within the city," but "offering" is not used anywhere in Section 17.112.130 or its definitions.

(cont'd)

to the City Council in July 2020.[3]

42. The July 2020 Report was undertaken based on purported "concerns raised by both City residents and Council members after some residents discovered a real estate listing for a fractional or partial ownership interest in a residential home in town." Report at 323.[4]

43. As City Attorney Ueda and Maya DeRosa herself concluded, "timeshare use differs from a fractional or partial ownership of a property." *Id.*

44. Indeed, after laying out the "fairly circuitous definition"—as the City Attorney described it—"to determine if a project is a prohibited timeshare or not," the City Attorney conceded the differences between a time-share and a fractional ownership:

> What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, ***is not identical to a fractional or partial ownership***; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses. (Report at 324 (emphasis added).)

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[3] DeRosa, in her capacity as Planning & Building Director of St. Helena and acting under the color of law, *approved* the report and participated in the July 14, 2020 meeting at which its findings were presented, which both concluded that the time-share ban does not apply to a co-ownership models like Pacaso's, and that Pacaso's operations do not violate the ordinance. Ellsworth, in his capacity as Mayor of St. Helena and acting under the color of law, and the City Council also participated in July 14, 2020 meeting. *See* July 14, 2020, Meeting at 3:29; *see also* Regular City Council Meeting, August 11, 2020, at 39, https://sthelena.civicweb.net/document/43063/Regular%20City%20Council%20-%2011%20Aug%202020.pdf?handle=838240E8400F467DA80B707D222A9EA8. As such, Ellsworth was made aware of the July 2020 report and the issues surrounding application of the time-share ordinance against fractional or partial co-ownership structures.

[4] In the July 14, 2020 meeting regarding its findings, the discussion referenced "this particular piece of property"—*i.e.*, the Pacaso home that was the subject of Defendants' earlier correspondence. July 14, 2020, Meeting at 3:35. That this "piece of property" is a Pacaso property is confirmed by the fact that a City Council member stated that this property came to the attention of the City by way of a complaint from neighbors, as indicated in the City's May 22, 2020 Letter. Further, City Attorney Ueda later confirmed during the discussion that the structure of the "particular piece of property that we're talking about" was through a corporation (which is the exact structure of a Pacaso home).

45. The City Attorney further admitted that its time-share ordinance cannot regulate "based solely on ownership"—which is exactly what the City's recent challenge to Pacaso attempts to do:

> [Z]oning based solely on ownership, as opposed to the use of land, is impermissible. Timeshare regulations should, thus, focus on the type and use of the property and its related impacts, such as specific intervals of exclusive occupancy that render the use more akin to a transient commercial use. (Report at 326.)

46. The July 2020 Report identifies that this is indeed the goal of enforcement efforts against Pacaso, stating that the analysis stems from "***a concern that non-permanent City residents*** are purchasing property in St. Helena as a second home(s) either for themselves or their guests." Report at 325. Thus, the City Attorney cautioned against the very path that it is now pursuing: "[Z]oning regulations may not target individuals. In other words, the City may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides." *Id.* (citing *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 1013 (2000)).

47. In fact, the City Council members were unable to state even ***one permissible purpose, goal or non-suspect reason*** to justify application of the time-share ordinance against partial co-ownership structures like Pacaso's. Rather, the primary concern identified at the July meeting was "different people coming in and out of the unit or house" (July 14, 2020, Meeting at 3:25):

> I think what concerns me about [Pacaso homes] and what the neighbors raised was, instead of having one family living next door to you, you have maybe six, and you know they'd alternate when they arrived and they felt, I think they alluded to it being like a short-term rental. But it certainly maybe isn't what the people think when you buy a single-family dwelling in an area that is known for single-family homes. I know over the years the definition of what's a family has gotten broadened, but I'm just wondering if there's a way to address the concerns of the neighbors if you see one because I'm sympathetic to . . . what they're saying. ***We have multiple people next door coming in and out. It's not really short term rental, but what can we do about that? Anything?*** (July 14, 2020, Meeting at 3:24-25.)

48. This purported "reason" clearly targets individuals and "the identity of a tenant or where a particular resident permanently resides"—which is strictly impermissible (*see infra* at

¶¶ 113-127). In fact, the City Attorney was forced to admit that this was improper grounds for invoking Section 17.112.130 and inconsistent with the purpose behind the ordinance:

> If the issue is primarily that there are different people coming in and out of the unit or house, then I'm not entirely sure what can be done about that . . . . The direction that it's gone in, in terms of potential regulation, is that ***if there's a concern about impacts that are caused from having too many people basically at a particular residence, [then] those impacts can be addressed by current standards in place for noise and parking standards and that type of thing***. So I think it's one thing to talk about people versus you know the potential impacts that could result. (July 14, 2020, Meeting at 3:25-26.)

49. The discussion of the July 2020 Report further confirmed Defendants' intent to improperly target particular types of homeowners. Notably, City Attorney Ueda confirmed that the City would ideally want to exclude *certain types of owners* based on family or friend relationships, from being barred from partial ownership of a residence in St. Helena:

> I do think the hardest part is really figuring out how to define the issue and the scope, right, because if we're getting at multiple ownership of one piece of property, it's really challenging to figure out a way to define that that doesn't preclude people who really do need to go buy a piece of property for financial reasons. . . . ***They may all be friends or family members, and I don't think that's the type of activity that the City would want to preclude***, and that's the challenge that we have in trying to figure out how to define this in a way that would work. (July 14, 2020, Meeting at 3:33-34.)

50. City Attorney Ueda also stated concerns over the "significant practical challenges to implementing and enforcing the existing timeshare regulations." Report at 325. This is because it lacks visibility into each residence's ownership structure and "[t]he City does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements." *Id.* As a result, and by its own admission, the City's outreach to Pacaso is targeted and arbitrary, based solely on a "tip" from a real estate agent.

51. Further, City Attorney Ueda conceded that the "City's code appears to try to . . . regulate timeshare uses as a commercial use." Report at 325. As explained below, Pacaso homes are strictly residential homes with no commercial purpose (*see infra* at ¶¶ 55-63).

52. In providing an example of a joint ownership scenario that *does not* trigger the City's time-share prohibition, the City specifically described a scenario where a residence is owned by multiple people who each do not choose to live in the residence, but the "joint or partial

ownership of the residence would not be considered a timeshare" because each "member could have equal access to the residence (as opposed to purchasing a limited amount of time)." Report at 326. This is Pacaso's model and Pacaso's homeowners do not "purchase a limited amount of time" in the residence.

53. In fact, the distinction between a "time-share" and other types of partial or fractional ownership structures is so obvious that even the National Association of Realtors (one of the most trusted sources for matters relating to residential real estate) explicitly acknowledges these distinct concepts:

> Fractional interest ownership, once used primarily with commercial tenants-in-common, has recently blossomed in the vacation home market. Not to be confused with a time-share or a destination club, fractional interest properties can be a sensible and profitable alternative to owning a second home.[5]

54. Consistent with its correspondence with Pacaso and public statements regarding the inapplicability of Section 17.112.130 to Pacaso, Defendants did not attempt to further interfere with Pacaso or its homeowners until recently.

A. **Pacaso Is Not A "Time Share Project"**

55. The City's July 2020 analysis flows from the simple and indisputable fact that Pacaso's small co-ownership model is starkly different from any "time-share project" purportedly covered by Section 17.112.130 or that is properly the subject of *any* zoning regulation.

56. Pacaso creates a property-specific LLC for each home, which owns deeded title to the property. Then Pacaso organizes and vets a maximum of eight co-owners, who have an ownership interest in the LLC and co-own the home in increments ranging from 12.5% to 50%. The co-owners can purchase their desired ownership interest based on their expected occupancy needs, financial means, and even in certain circumstances their desire to participate in the LLC with co-owners of their choosing. At closing, the co-owners enjoy 100% ownership in the property, and Pacaso's only role remains as program manager overseeing the LLC.

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[5] *See* Def. of Fractional Interest Ownership, *National Association of Realtors*, at https://www.nar.realtor/fractional-interest-ownership.

57. Pacaso's homeowners do not merely own the "right of exclusive occupancy," (Def. of "Time-share use," Section 17.112.130(B)) or a "use, occupancy or possession" right that "circulates among purchasers . . . according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year" (Def. of "Time-share program," Section 17.112.130(B)). Nor do they participate in an "arrangement for time-share intervals." Def. of "Time-share program," Section 17.112.130(B).

58. Rather, just like any other residential homeowner, Pacaso homeowners own a real property asset in a single-family home that includes real property interests, rights and obligations. An interest in a time-share project is vastly different from the rights inherent to real property co-ownership, including possession, control, exclusion, and disposition. Indeed, a Pacaso homeowner, just like any other homeowner, has rights *well* beyond a situation whereby "somebody literally gets a limited amount of time in a particular piece of property to use," which is how a "timeshare" was described by City Attorney Ueda. July 14, 2020, Meeting at 3:19.

59. Instead, Pacaso homeowners have inherent and inalienable rights inherent to owning property, which include the right to possession, to control, to use and quiet enjoyment, to privacy and to exclude others, to sell the property, to physically be on the property, to leave the property, to choose who else can be on the property, to build or alter the property, to make improvements or refurbish the property, and to sell or dispose of the property, among many other rights.[6]

60. Pacaso's involvement in management of the home, at the election of the home's co-owners, does not change the nature of the homeowners' interests and rights. Pacaso supports owners as a program manager, making their ownership experience seamless through LLC and property management services, interior design, scheduling service, and concierge services. In fact,

[6] Further, an owner of a "time-share" interest, as opposed to an owner of a single-family home, is typically a member of a large commercial development of density, whereby multiple unrelated occupants are using the overall property at the same time, buying not for the purposes of real estate ownership, but for purposes of enjoying or benefiting from the time-share program or amenities.

if Pacaso homeowners collectively agree that Pacaso's services are no longer desired, the owners can choose to terminate their relationship with Pacaso and self-manage their property.

61. Plainly, Pacaso co-owners are not merely purchasing "time-share intervals." Def. of "Time-share program," Section 17.112.130(B). Pacaso homeowners' ability to stay in the home is not capped. Subject to availability and covering operating and ownership costs, a Pacaso co-owner can spend more time in the house, beyond the default time attributable to each co-owner's ownership stake. Co-owners' ability to spend time in the home is fluid and flexible.

62. Further, Pacaso homeowners are true owners with complete control of their home and expansive rights, rather than merely having a right of "use, occupancy or possession" that is limited to a time schedule. Def. of "Time-share program," Section 17.112.130(B). For example, Pacaso homeowners have the right to store their personal possessions on the property year round. Pacaso homeowners are also heavily involved in all levels of management and decision-making regarding the property. They vote on matters such as selecting and replacing the program manager, renovations on the home or other changes to the interior or exterior design, and various other fundamental homeownership matters. Co-owners can even sell the home outright. Pacaso is merely a service. Ultimately, Pacaso homeowners have complete control.

63. It is clear that Pacaso's properties do not fall within the purview of the City's time-share ordinance, which on its face does not apply to real property co-ownership structures like Pacaso's.

B. Section 17.112.130's "Findings and Purpose" Confirm that the Ordinance Does Not Apply to Pacaso

64. It is abundantly clear from the "Findings and Purpose" of Section 17.112.130 that Pacaso homes are not a covered "time-share project." Section 17.112.130 includes the following express purposes for the time-share ban:

1. There is a critical shortage of affordable housing in the city for long-term occupancies (more than six months annually), and the availability of additional residential dwelling units is substantially restricted by the growth management system;

2. The conversion of residential dwelling units within the city to time-sharing projects eliminates residential dwelling units otherwise available for long-term occupancies (more than six months annually) in the city;

3. Time-sharing projects have the same character as commercial hotels, motels and other transient occupancy uses due to their transient nature and to the multiple short-term (less than six months annually) occupancies by those participating in time-sharing projects;

4. Such commercial or quasi-commercial like use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods; and

5. The city council finds and determines that this section is necessary to protect the public health, safety and welfare of the citizens of the city.

Section 17.112.130(A).

65. The City's attempt to obstruct Pacaso's operations lacks any rational connection to any of the stated purposes behind Section 17.112.130.

66. Targeting Pacaso does nothing to ensure homes are available for long-term occupancies. The City lacks all visibility and control into how much time homeowners intend to spend in their homes. Preventing Pacaso from buying properties does nothing to prevent other prospective buyers from buying the home as a second home that will remain unoccupied for the majority of the year, or that will be rented for periods under six months, or who buy anticipating the ability to use it for short-term rentals, among other non "long-term occupancy" uses.

67. In fact, Pacaso has the exact opposite effect by redirecting second homeowners who would have otherwise purchased affordable inventory needed by the local workforce to homes at a higher price point.

68. Pacaso homeowners are long-term oriented (like most homeowners) and have materially different incentives with respect to their conduct, use and treatment of the home as compared to short-term renters. This is because Pacaso homeowners are directly invested in the home, its surrounding neighborhood and community, and the long-term maintenance and success of the property and community at large. Pacaso homeowners are true homeowners who own for their personal use and enjoyment, not for profit. They can sell their interest at any point after the first year of ownership by listing the property on the Multiple Listing Service ("MLS") with a local real estate agent, and they are strictly prohibited from renting out the property at any point to anyone. In fact, Pacaso homeowners are "long-term" occupants under the City's stated "six-month" standard (Section 17.112.130(A)), as Pacaso homeowners are strictly prohibited from

selling their interest at any point before the *first year* of ownership or from renting out the property at any point to anyone.

69. In contrast, a time-share typically entails merely the right to use a fixed amount of time in a property. A time-share is highly restrictive in terms of resell ability, pricing and control. Time-share interests are usually held in multi-unit buildings or resort properties and use of the property is typically split across a large number of investors. Owners of a time-share interest are unlikely to have any interactions, let alone form a community. Behaviorally (and due to the nature of the properties, the structure of time-share ownership, and nature of the investment), time-share owners resemble short-term renters or hotel guests.

70. Nor is there a rational relation between the City's stated purpose of banning "commercial or quasi-commercial like use" in residential areas, such as that which results from "commercial hotels, motels and other transient occupancy uses," and any enforcement measures taken against Pacaso (Section 17.112.130(A)). Pacaso is a ***purely residential*** co-homeownership structure that lacks any resemblance to such "commercial or quasi-commercial like use."

71. Pacaso's homes are subject to the same residential occupancy rules as other homes, and homeowners respect the same rules that other owners are expected to follow. Unlike commercial properties, which are required to offer parking for each individual guest room, Pacaso homes are single-family homes with two parking spaces per dwelling unit, as required by Section 17.124.030.

72. Moreover, Pacaso co-owners use their homes in a way that is wholly consistent with other single-family residences. Their use does not cause "traffic generation and multiple occupancies disturbing the peace and quiet." Section 17.112.130(A)(4). Just like all other single-family homes, there is only one co-owner using the property at a time; co-owners agree not to have large events or parties; co-owners adhere to a 9 pm to 7 am quiet hour policy; co-owners agree not to rent the home to third parties; and Pacaso encourages homeowners to avoid parking on the street unless absolutely necessary. There is nothing "transient" or "commercial" about the co-owners who choose to share home ownership of property in St. Helena. In sum, Pacaso homeowners are

no different from other homeowners in St. Helena; Pacaso and its co-owners are dedicated to ensuring the peace, safety, and welfare of the citizens of St. Helena.

73. Indeed, in discussing the July 2020 Report, City Council members confirmed that the primary purpose behind the time-share ordinance is to regulate commercial uses. For example, one City Council member stated: "First of all, I think our whole timeshare thing probably came into being when Rodney Friedrich brought his hotel forward." July 14, 2020, Meeting at 3:24. This reference was to a hotel development approved by City Council in 2010, for a ***60-room hotel*** which would sell shares in the hotel rooms.

74. Further, the then-acting City Attorney stated: "[I]n a nutshell, the prohibition [is] . . . based, in part, on findings that the city council made, that timeshare uses are commercial for quasi-commercial uses that serve to reduce available residential housing and increase traffic and noise impacts." July 14, 2020, Meeting at 3:18. Thus, time-share ordinances generally "treat timeshares as commercial uses, often times in buildings that are like ***high rise condo-type buildings to other fractional ownership hotels***." July 14, 2020, Meeting at 3:20 (emphasis added).

75. On the other hand, as noted by City Attorney Ueda, "fractional or partial ownership interests may not necessarily trigger any concerns as more commercial uses would because, for example, multiple members of one family could decide to purchase a residence together, they may not stay there all at the same time, but they wouldn't necessarily be having interest like a timeshare either." July 14, 2020, Meeting at 3:21-22.

76. Pacaso and its homes do not implicate these "commercial" uses. As a result, the City Council members were unable to state even ***one purpose, goal or non-suspect reason*** to justify application of the time-share ordinance against partial co-ownership structures like Pacaso's (*see supra* at ¶¶ 47-49), and the City Council was forced to admit that the primary concern identified at the July meeting (*i.e.*, "different people coming in and out of the unit or house") is clearly impermissible (*id*; *see infra* at ¶¶ 125-27).

77. Nor do Pacaso homes detract from the City's goal of ensuring availability of "critical shortage of affordable housing in the city." Pacaso's service reduces competition for housing inventory critically-needed by the local workforce. Today, St. Helena's median home

value of $1.65 million is at odds with its median household income of $90,031; most of those employed in St. Helena cannot afford to live there. Pacaso offers second home buyers a better option than a whole home, thus redirecting second home buyers away from the low inventory available at that level.

78. The major disconnects between the stated goals underpinning Section 17.112.130, Pacaso's model, and the City's latest enforcement efforts against Pacaso suggest that the City's reliance on Section 17.112.130 is nothing more than a pretext to deny homeownership to new, diverse residents.

IV. Defendants Communicated To Pacaso Nearly A Year Ago Its Conclusion That Section 17.112.130 Does Not Apply To Pacaso

79. The City first raised the issue of the time-share ban with Pacaso (formerly Niner Homes) in May 2020. On May 15, 2020, Maya DeRosa, in her capacity as the Planning & Building Director of the City of St. Helena, sent a letter on behalf of the City to a Pacaso homeowner, giving notice that "if" the home located at 1005 Valley View Street were "used as a timeshare or short term rental," such use would be impermissible pursuant to the City Municipal Code. May 15, 2020 Letter. Those cc'd on the letter included: Elizabeth Olcott with Keller Williams; City Attorney Ueda, City Attorney; and Mark Prestwich, City Manager. *Id*.

80. On May 19, 2020, Pacaso responded on behalf of the Pacaso homeowner, explaining why Pacaso's operations do not violate such ordinances and that the homeowner's use of his property was entirely consistent with such laws. May 19, 2020 Letter.

81. On May 22, 2020, Maya DeRosa, cc'ing Mark Prestwich and City Attorney Ueda, replied on behalf of the City thanking Pacaso for providing an explanation of its proposed property ownership structure, its proposed use of the property, and the reasons Pacaso does not fall within a timeshare model.[7]

[7] Defendant Maya DeRosa instructed the Pacaso homeowner to "direct any future correspondence through [her] on this matter as [she is] the designated point of contact for the City." May 22, 2020 Letter at 2.

82. Notably, in the May 22, 2020 letter, DeRosa and the City, tacitly acknowledging that Pacaso is not a "timeshare project," ***dropped any reference*** to a violation of the City's time-share ordinance, giving Pacaso the presumed green-light to move forward with its operations from this standpoint. Instead, the May 22, 2020 letter challenged only the homeowner's alleged posting of his home on "Luxury Retreats" for short-term rentals without a permit to do so.

83. Pacaso responded on May 26, 2020, confirming that the property would not be used as a short-term rental property in the future and that the homeowners would remove any posting on the "Luxury Retreats" website. May 26, 2020 Letter.

84. Following this initial exchange with the City, Pacaso moved forward with its operations, investing material resources, time, and efforts, in reliance on the City's representations that Pacaso's operations were permitted.

V. Despite Its Legal Conclusions That It Cannot Regulate Pacaso, Defendants Have Now Proceeded To Unlawfully And Brazenly Enforce The Ordinance Against Pacaso

85. Against the backdrop of Defendants' repeated conclusions that the time-share ordinance does not apply to fractional co-ownership structures like Pacaso's and that the time-share ordinance would need to be amended in order to reach such structures, Defendants, acting under the color of law, have nevertheless sought to enforce the time-share ordinance against Pacaso.

86. The change in position and determination to enforce the ordinance against Pacaso, absent any change in facts or law, is untimely, unfounded, and suspect.

87. In January 2021, a real estate agent for Pacaso received a letter from DeRosa regarding four Pacaso property listings, inaccurately charging that the properties are subject to the City's time-share ordinance. Jan. 25, 2021 Letter. With full knowledge and awareness of the chilling effect that her actions—as a enforcement official under St. Helena's Municipal Code—would have, DeRosa requested that the letter be forwarded to "the buyer and the buyer's agent" (*id.* at 1), and "any other agents that share these listings" to ensure that no zoning violations occur (*id.* at 2).

88. DeRosa's letter had only one purpose: to knowingly and falsely invoke Section 17.112.130 to prevent Pacaso and its homeowners from determining to share ownership of a home

together. DeRosa knew that in purporting to enforce the "local regulations in place pertaining to timeshares," she was unlawfully targeting Pacaso, despite her knowledge that Pacaso is not subject to Section 17.112.130, and that myriad other homes have identical co-ownership structures. Jan. 25, 2021 Letter at 1.

89. Ellsworth and City Council approved and were cc'd on the January 2021 letter, which they knew was inaccurate and sent with an improper purpose. Nonetheless, they failed to intervene to correct or retract the letter.

90. In response, Pacaso contacted DeRosa to confirm, again, that Pacaso is not a time-share, nor does the service allow time sharing use, and that Pacaso prohibits short-term rentals.

91. Next, at a City Council meeting on February 9, 2021, City Attorney Walsh again raised the issue of Section 17.112.130. City Attorney Walsh's update to the City Council and St. Helena residents confirms that he and the City had not reached a different conclusion regarding the time-share ordinance since the conclusion reached in its July 2020 Report.[8] Instead, City Attorney Walsh conceded that he and the City were still "looking at" and "delving further into that issue" (the applicability of the zoning ordinance), confirming that they had not yet determined what to do regarding co-ownership structures like Pacaso's and whether such structures could be regulated under the time-share ordinance. City Attorney Walsh further stated that he and the City were "looking into both what we can do under our current regulations and potentially looking at some

[8] Ellsworth, in his capacity as Mayor, along with Paul Dohring, in his capacity as Vice Mayor, and Anna Chouteau, Eric Hall and Lester Hardy, in their capacities as City Council members, also attended the February 9 City Council meeting. See February 9, 2021 City Council Meeting Agenda, at https://sthelena.civicweb.net/filepro/documents/48295?preview=48296. Ellsworth, Dohring and Chouteau were made aware of and participated in discussions regarding the July 2020 Report, including the fact that applying the time-share ordinance against partial co-ownership structures like a Pacaso home was impermissible, unconstitutional, and exceeded the scope of the City's zoning authority and police power. Defendant Ellsworth, and Council Members Dohring and Chouteau were thus on notice that City Attorney Walsh was continuing to consider such impermissible actions, despite the July 2020 Report. Ellsworth had the power to prevent the City Attorney Walsh from taking such actions, but failed to intervene, as evidenced by the enforcement efforts against Pacaso that followed.

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changes to the existing regulations," confirming the need to amend the time-share ordinance in order for such co-ownership structures to be subject to the ordinance was still being considered.[9]

92. Nonetheless, and in the face of these statements, the *very next day* on February 10, 2021, City Attorney Walsh sent a letter to Pacaso stating that the City "disagrees" that "Pacaso is not operating a timeshare in St. Helena," and threatening "to enforce its restrictions on timeshares" as well as "action to educate brokers and the public about the ***illegal nature of Pacaso's timeshares***." Feb. 10, 2021 Letter. City Attorney Walsh suggested that the City's challenge was purportedly "[b]ased on the evidence that the City has received" about "the nature of Pacaso's and its buyers' intended use" of Pacaso homes, yet did not provide or describe such "evidence." *Id*. at 1.

93. Despite being unable to point to any alleged "evidence," and without any law or authority supporting his conclusion (which directly contradicts the earlier, reasoned analysis), the City Attorney improperly placed the burden on Pacaso, inviting it to "convince" the City that it was not subject to the time-share ordinance: "If Pacaso convinces the City that Pacaso's—and its buyers'—intended use of residential property in the City does not constitute a timeshare under state law and regulations or the City's code, the City will not apply the timeshare-prohibition." *Id*.

94. Meanwhile, to effectively foreclose any ability of Pacaso homeowners to become part of the City of St. Helena community (and thereby eliminate the need for the City Council to reconcile its elitist position with the plain language of the time-share ordinance), the City Attorney sent a threatening letter regarding timeshare regulations to all City listing agents and brokers on March 16, 2021 (the "March 2021 Letter") alleging that the City's timeshare regulations apply to co-ownership—thereby chilling, under threat of fines and other penalties, any desire on the agents' part to be involved in a sale of ownership interests in Pacaso properties in St. Helena.[10]

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[9] *See* February 9, 2021 City Council Meeting at 14:11-14:42 at https://www.youtube.com/watch?v=XUTsUdZ5wA8&t=759s&ab_channel=CityofSt.Helena.

[10] City Attorney Walsh was not acting within the scope of his official discretion when he sent the March 2021 Letter and performed other acts in furtherance of enforcing the time-share ordinance against Pacaso. City Attorney Walsh was merely attempting to implement a policy decision reached by the City. Those acts were not taken as part of any policy-making functions. In *(cont'd)*

95. City Attorney Walsh expressly warned that his letter applied to "several properties that are currently listed for sale"— plainly linking his notice of purported zoning violations to listings for interests in Pacaso homes. March 2021 Letter at 1.

96. Thus, City Attorney Walsh's March 2021 Letter to all real estate agents and brokers in St. Helena is the manifestation of this very threat "to educate brokers and the public about the illegal nature of Pacaso's timeshare" (Feb. 10, 2021 Letter), and constitutes the City's determination that it was "not convinced" that Pacaso's operations are permitted under Section 17.112.130.

97. City Attorney Walsh was not acting within the scope of his official discretion when he sent the February 2021 Letter or March 2021 Letter and determined to enforce the time-share ordinance against Pacaso; his actions were attempts to implement a policy decision, which he had no basis to reach, given the conclusions reached in the July 2020 Report. In light of the opposite conclusion reached in the June 2020 Report, he acted without due care by sending the February 2021 Letter in an effort to enforce the time-share ordinance against Pacaso.

98. Defendant Ellsworth had the power to prevent and should have prevented City Attorney Walsh from sending the February 2021 Letter and March 2020 Letter, but failed to intervene in order to stop the impermissible application of the time-share ordinance against Pacaso. Defendant Ellsworth knew that City Attorney Walsh's conduct would violate Pacaso's rights, as it constituted unlawful selective enforcement against Pacaso and violated Pacaso's due process rights by applying Section 17.112.130 in a manner that directly conflicted with the earlier analysis of the scope of the ordinance.[11]

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light of the conclusions reached in the June 2020 Report, City Attorney Walsh acted with full knowledge of the wrongfulness of his conduct.

[11] Moreover, "[s]tate law prohibits [St. Helena City] Council from taking action on any item not listed on the agenda." *See* St. Helena City Council Home, at https://www.cityofsthelena.org/bc-citycouncil. Following the July 14, 2020 meeting (which included on its agenda both the item for "Discussion Regarding Timeshare Issues" and an attachment to the July 2020 Report (*see* Agenda Item 11.2 at https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true&timestamp=11860)), City Attorney Walsh, acting at the direction of City Council, nevertheless took an action at odds with the conclusion reached in the July 2020 Report and the July 14, 2020 City Council discussion without re-adding this item to any subsequent agenda for further discussion—including the

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99. On March 17, 2021, Pacaso responded to City Attorney Walsh, identifying the myriad ways in which the City's challenge to Pacaso is flawed and unsupported by fact or law. Pacaso requested confirmation by April 1, 2021, confirming that the City would adhere to the analysis and conclusions from the July 2020 Report, and would drop its improper crusade against Pacaso. The City and City Attorney Walsh failed to respond.

100. The March 2021 Letter, among other communications with real estate agents, brokers, and potential buyers in St. Helena—which Defendants have failed to retract—have caused Pacaso substantial harm. Among other harm, Defendants' misinformation campaign undermines Pacaso's existing relationships with real estate agents working on its behalf, interferes with Pacaso's business relationships and arrangements, tarnishes Pacaso's reputation and goodwill in the community, and impairs Pacaso from future development (including future business partners and key stakeholders in the St. Helena community) by calling into question the legality of Pacaso's operations.

101. These threats have scared real estate agents and chilled their efforts to buy and sell ownership interests in Pacaso properties. Likewise, Defendants' threats have deterred prospective buyers from purchasing Pacaso properties.

102. Indeed, as a direct result of the March 2021 Letter, individuals on NextDoor (a social networking service for neighborhoods) posted comments about Pacaso potentially being violative of the time-share ordinance, further reflecting the confusion created by the March 2021 Letter regarding Pacaso's legality. One user wrote:

> The [March 16, 2021] letter from the City of St. Helena didn't specify any action but did say violators of the City's . . . timeshare [ordinance] are subject to code violations and costly fines. The homes in St. Helena currently being offered for sale as fractional ownership purchases (8 separate owners per house) haven't closed yet. It's my understanding this Pacaso Fractional Ownership Management Company had a few months to find 8 buyers for each of these homes. If they were unable to do so, the listings would go back to the agents that initially listed these properties. I have no idea where they stand today. I haven't seen any reported sales of the properties in questions.

February 9, 2021 City Council meeting agenda. Adopting the enforcement policy set out in the February 2021 Letter, without adding this item to an agenda for further City Council discussion and public commentary, was impermissible.

103. By intentionally disrupting Pacaso's ability to list its properties on the MLS, discouraging real estate agents and brokers from working with or listing Pacaso properties, and causing confusion among residents, real estate agents, and potential buyers regarding the legality of Pacaso's operations in St. Helena (especially without first resolving Pacaso's challenge to such prohibitive actions by the City), Pacaso has directly suffered and continues to suffer damages.

104. To date, Ellsworth has failed to take action to terminate the violative effect of his, City Attorney Walsh's and DeRosa's actions.

VI. As The City Concedes, The Ordinance Is Ambiguous, Confusing, And Void For Vagueness

105. If the City's interpretation of Section 17.112.130 and recent conclusion that it does apply to Pacaso is accepted, then the time-share ordinance fails for being vague, ambiguous and overly broad as applied to Pacaso.

106. The City all but admits that its time-share ordinance is vague and difficult to determine whether conduct is prohibited, stating that it "has a fairly circuitous definition to determine if a project is a prohibited timeshare or not":

> The Code has a fairly circuitous definition to determine if a project is a prohibited timeshare or not. A "time-share project" means any real property subject to a "time-share program." A "time-share program" is defined as "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years." (SHMC § 17.112.130(A).) A "time-share estate" is defined in the Code to mean "an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) or a time-share lease." (*Id*.) (Report at 324.)

107. In fact, during a City Council meeting discussing the time-share ordinance, City Attorney Ueda repeatedly stated that "the definition and the overall section is a little bit confusing," July 14, 2020, Meeting at 3:18, and that the ordinance " has some terms that are not defined." *Id*. at 3:19.

108. Likewise, one City Council member acknowledged that, as written, the time-share ordinance does not apply to fractional co-ownership structures, referring to it as "improperly written or inaccurately written," and requesting that the City "clean it up so that we extend the fractional and eliminate this activity" of Pacaso. July 14, 2020, Meeting at 3:30. City Attorney Ueda agreed, acknowledging that if the Council wants to regulate partial ownerships, it would be necessary for the City Attorney to "take a look at that and try to clean up the ordinance." *Id*. at 3:22.

109. After interpreting these "circuitous" definitions, City Attorney Ueda concluded that "[w]hat emerges from these various definitions" is that a timeshare *is not a* fractional or partial ownership, and that the ordinance only applies to timeshare intervals involving "an ownership arrangement where the owners have purchased an allotted amount of time to use the property":

> What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, is not identical to a fractional or partial ownership; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses. (Report at 324.)

110. The City's, City Attorney Walsh's, Ellsworth's and DeRosa's interpretation of the time-share ordinance and conclusion that it does not apply to fractional or partial ownerships in July 2020 cannot be squared with their position today that the ordinance applies to Pacaso.

111. Setting aside the vague and circuitous definitions in the ordinance, one thing is perfectly clear: the particular "use" that the ordinance intends to cover (and all it is permitted to regulate) are large-scale commercial and quasi-commercial use (like condominiums and hotels (*see supra* at ¶¶ 47-49; *infra* at ¶¶ 125-27)), which is completely different from the activity and use of Pacaso homes (among other single-family homes). By interpreting the ordinance to apply to Pacaso, Defendants' reading would cover *every single-family home with more than one owner* (whether through an LLC or otherwise), rendering the ordinance overbroad, failing to adhere to its stated legislative purpose, and defying common sense. Thus, Defendants' tortured application of the time-share ordinance against Pacaso is further vague, circular, and confusing, as the ordinance was never intended to apply to the partial ownership of single-family residential dwellings.

112. If the terms of Section 17.112.130 are so amorphous as to lead Defendants to conclude first that Pacaso is not covered, and then—with no change in underlying facts—that Pacaso ***is*** covered, the Ordinance should be deemed void for vagueness, as applied to Pacaso.

VII. The Ordinance, As Applied To Pacaso, Exceeds The Scope Of Permissible Zoning Ordinances Under Government Code § 65850 And So Should Be Stricken

113. Defendants' attempt to apply the time-share ordinance against Pacaso exceeds the scope of a municipality's zoning authority and police power under California Government Code § 65850(a), and is outside the scope of its authority to regulate permissible zoning subject matters.

114. A local legislative body may only adopt ordinances that regulate "the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." Cal. Gov't Code § 65850(a).

115. The City acknowledged the limits on its power in this regard, and conceded that zoning ordinances "must focus on the use of land":

> The most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by ***law zoning regulations must focus on the use of land.*** (See, e.g., O'Loane v. O'Rourke, 231 Cal.App.2d 774, 780 (1965) [zoning is "the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land."].) State law enumerates the specific types of permissible zoning regulations, ***which are likewise focused on "the use of buildings, structures, and land" and related physical requirements, such as the location and size of signs, buildings and structures.*** (Gov. Code, § 65850.) (Report at 325 (emphasis added).)

116. The City's time-share ordinance regulates beyond the mere "use" of buildings, structures, or land, as permitted in Gov. Code 65850(a). Defendants' application of Section 17.112.130 against Pacaso regulates the individuals and persons who can reside in a residential residence, and targets individuals "based on the identity of a tenant or where a particular resident permanently resides." Report at 325.

117. The City itself acknowledged this very concern by stating that zoning regulations may only regulate the *types* of uses, and cannot target individuals or adopt regulations "based on the identity of a tenant or where a particular resident permanently resides," and described the

"concern that *non-permanent City residents* are purchasing property in St. Helena as a second home(s):"

> While there may be a concern that non-permanent City residents are purchasing property in St. Helena as a second home(s) either for themselves or their guests, ***zoning regulations may not target individuals***. In other words, the City ***may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides***. (See, e.g., Friends of Davis v. City of Davis, 83 Cal.App.4th 1004, 1013 (2000) ["a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like"].) City ordinances ***also may not regulate or define what constitutes a "family" for purposes of limiting the number of unrelated people who live together in a dwelling***. (City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980).) (Report at 325 (emphasis added).)

118. Indeed, Section 17.112.130 regulates the "means of ownership" in its prohibition of the "creation of a time-share project as a means of ownership." Instead of focusing on the "use" of land as between residential and other purposes, Section 17.112.130, by its terms, and Defendants, in their application against Pacaso, regulate and target individuals based on *who* the owners are.

119. Further highlighting Defendants' tortured application of the time-share ordinance against Pacaso, City Attorney Ueda stated "that it is difficult to regulate if we're primarily focused on ***taking a piece of property and looking at it in terms of how many people own that property because that's not really a particular use as the zone code regulates uses, but it focuses on ownership***." July 14, 2020, Meeting at 3:22 (emphasis added).

120. In fact, the City and City Council even conceded that Defendants are overreaching, and admitted that attempting to apply the time-share ordinance against Pacaso is wrongful, illegal, unconstitutional, and beyond the power of the City. As one City Council member acknowledged: "***[w]hat you want and what's legal are entirely different matters***," and suggested that regulating Pacaso under the time-share ordinance would be against "case law and civil rights," (July 14, 2020, Meeting at 3:31 (emphasis added)), stating that the City is "not in the business of regulating families and how people come together to buy properties." *Id*. at 3:32.

121. Another City Council member stated her concern "that [Defendants] are overreaching what [they] can do legally," stating that the City is not permitted to "control how people own" property, and that she does not "want [the City] to go down a path spending a lot of

money" battling a clearly-losing legal argument (like the one Pacaso brings here). July 14, 2020, Meeting at 3:31.

122. A land use ordinance exceeds municipal authority under the police power where it has no substantial relation to the public health, safety, morals or general welfare. Defendants' enforcement of the time-share ordinance against Pacaso is arbitrary and unreasonable, and has no substantial relation to the public health, safety, morals, or general welfare, let alone any of the other stated purposes underlying Section 17.112.130, as propounded against Pacaso. *See supra* at ¶¶ 47-50, 64-78.

123. In fact, the City itself stated to Pacaso in its May 22, 2020 letter that its property "came to the City's attention because neighbors in the surrounding area are concerned about [the] types of impacts" created by "loud parties, amplified sound, and increased traffic." May 22, 2020 Letter. However, the City previously admitted that "[i]f the City Council is concerned about the potential neighborhood impacts timeshare uses may create"—listing "large parties" as an example—"the City ***has existing regulations in place to address such impacts***." Report at 326 (emphasis added). Specifically, "if the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction." *Id.* "The City's Municipal Code also addresses nuisances generally and has parking standards in place." *Id.*

124. In fact, a City Council member confirmed that the primary "concern" with fractional co-ownership structures like Pacaso's stemmed from neighbors raising their gripe that "instead of having one family living next door to you, you have maybe six" that are "alternat[ing]." July 14, 2020, Meeting at 3:24.

125. However, City Attorney Ueda in July 2020 herself conceded that this stated concern was not a rational basis to apply the time-share ordinance against Pacaso:

> [I]f the issue is primarily that there are different people coming in and out of the unit or house, I'm not entirely sure what can be done about that, right, because different people could be at a house at any given time for whatever reason. They could be guests, or they could be people who own the house and their siblings or whatever. The direction that it's gone in in terms of potential regulation is that if there's a concern about impacts that are caused from having too

> many people basically at a particular residence and those impacts can be addressed by current standards in place for noise and parking standards and that type of thing. So I think it's one thing to talk about people versus the potential impacts that could result, and if there are specific impacts, we can look at what we have in place or if there are additional changes that could be made to perhaps is the nuisance abatement procedures and the nuisance, what we define as a nuisance, for sort of having a more quiet neighborhood. (July 14, 2020, Meeting at 3:25-26.)

126. Given the many other existing regulations and policies in place to address the supposed "concerns" the City had with Pacaso's properties and that supposedly underly the purpose and intent of Section 17.112.130, Defendants' attempt to apply this time-share ordinance against Pacaso is unreasonable, unwarranted, and an invalid land use ordinance under Cal. Gov't Code § 65850(a).

127. Thus, the City's determination that Pacaso's operations are "illegal" under the time-share ordinance—a decision reflected in the City Attorney's March 2021 Letter to all real estate agents and brokers in St. Helena—exceeds the scope of the City's zoning authority and police power under Cal. Gov't Code § 65850(a).

VIII. Defendants' Selective And Arbitrary Enforcement Of The Time-Share Ordinance Against Pacaso Is Impermissible

128. Defendants deliberately singled out Pacaso, attempting to enforce the time-share ordinance against Pacaso but not against those entities or individuals who are similarly situated or functionally the same as Pacaso.

129. The City's selective enforcement of the time-share ordinance against Pacaso highlights the very concerns that the City itself recognized in July 2020. The City conceded that one of the "significant practical challenges to implementing and enforcing the existing timeshare regulations" is that "[a]bsent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties." Report at 325. The City conceded that it "does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements." *Id*.

130. City Attorney Ueda further highlighted these concerns during discussions of the July 2020 Report:

> [W]e also would have practical challenges implementing and enforcing timeshare regulations and that City generally doesn't know when a residence becomes a timeshare. Those are typically private transactions between private parties and the city doesn't monitor real estate sales, and . . . **some types of fractional or partial ownership interests may not necessarily trigger any concerns as more commercial uses would** because, for example, multiple members of one family could decide to purchase a residence together, they may not stay there all at the same time, but they wouldn't necessarily be having interest like a timeshare either. (July 14, 2020, Meeting at 3:21-22 (emphasis added).)

131. City Attorney Ueda further confirmed the selective and arbitrary approach the City is taking by pursuing enforcement only against Pacaso properties, but not fractional co-ownership structures among multiple friends who wish to purchase and co-own property (which is functionally the same as Pacaso's co-ownership structure):

> [I]f we're getting at multiple ownership of one piece of property, it's really challenging to figure out a way to define that. That doesn't preclude people who really do need to go buy a piece of property for financial reasons. They all want to have a piece of it. They may all be friends or family members, and I don't think that's the type of activity that the city would want to preclude, and that's the challenge that we have in trying to figure out how to define this in a way that would work. (July 14, 2020, Meeting at 3:33-34.)

132. In fact, in St. Helena, 559 second homes[12] are owned by an LLC, trust, or similar mechanism which facilitates multiple owner arrangements.[13] This represents 36% of all second homes and 21% of the entire housing stock. However, these non-Pacaso LLCs are still in existence, and do not differ from Pacaso with respect to the use of the residential single-family home. Nonetheless, Defendants have not pursued a similar enforcement agenda against them as against Pacaso.

133. Defendants' attempt to enforce Section 17.112.130 against Pacaso, where other co-owned residences (through LLCs or otherwise) have not faced similar challenges, is selective and

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[12] "Second home" refers to homes that did not take the owner occupant exemption.

[13] Among the 559 second homes, 221 are held as LLCs or other companies.

arbitrary, and based on invidious criteria—namely, to deny homeownership to new diverse and/or less affluent residents who hope to purchase property in St. Helena through a co-ownership structure.

IX. Defendants' Enforcement Agenda Against Pacaso Is The Latest Chapter In The City's Long History Of Exclusion

134. The City's arbitrary, selective, and pretextual enforcement of its invalid time-share ban against Pacaso—whose mission is to enrich the lives of diverse individuals by democratizing the ownership of second homes—is the latest chapter in a long history of the City of St. Helena erecting barriers to home ownership for people of diverse and less affluent backgrounds.

135. Notably, in St. Helena, second home ownership is typically accessible only to elite and predominantly white buyers. This is no "accident." The City has enshrined anti-growth principles into law, residents have filed lawsuits against affordable housing projects, and unelected neighborhood vigilantes have made it difficult for diverse individuals to move into the City.

136. For example, in 1993, the City of St. Helena adopted a long-term policy document that acts as a guide for future land use decisions called "The General Plan." *See* City of St. Helena, *General Plan Update* 4 (Apr. 2, 2018), https://www.cityofsthelena.org/sites/default/files/fileattachments/planning_resources/page/6501/st_helena_general_pan_nop_033018.pdf. The "primary goal of this General Plan is to preserve the rural, small town quality and agricultural character of St. Helena." City of St. Helena, *General Plan Introduction* 1-1 (1993), https://www.cityofsthelena.org/sites/default/files/fileattachments/planning/page/881/e_1_intro_1.pdf. The plan explicitly called for "growth management." *Id*. at 1-3.

137. Over the years, as the plan was updated, the City made it more and more difficult for affordable housing to be built on City property under the guise of managing growth. The latest plan, titled "the 2040 General Plan," was approved in 2019 by the St. Helena Housing Commission after nearly a decade of entanglements over environmental concerns, among other issues. *See* Uzo Ehi, *Legal Settlement Enables St. Helena to Embrace Density in General Plan*, California Planning & Development Report (June 3, 2019), https://www.cp-dr.com/articles/20190603_1.

138. Underpinning all the debates, however, is a general reluctance for progress and innovation in the City of St. Helena. Members of the City Council communicated to Pacaso representatives that they do not want things to change from how they have always been. In fact, St. Helena City Council Member and former Planning Commission Chair, Lester Hardy, stated that "the rise of anti-growth 'hopes' in St. Helena is not a recent development." *Id.* In fact, "[c]omparing the 2040 General Plan Update with the 1993 General Plan . . . I would say that anti-growth sentiment has as much influence today as it did then." *Id.* He further went on to say that the efforts to limit "population growth ha[ve] been a priority for many residents and voters in St. Helena for the last 30 years or more; this sentiment is always a factor in the city's land use policy decisions, of varying significance depending on the particulars." *Id.* This reality is in tension with St. Helena's stated legislative purpose behind the time-share ordinance, which purports to preserve "affordable housing in the city for long-term occupancies." Section 17.112.130(A)(1).

139. Discussions during City Council meetings regarding the time-share ordinance confirm this exclusionary sentiment among City Council members and residents alike.

CLAIM 1

DECLARATORY RELIEF: INAPPLICABILITY OF SECTION 17.112.130

(AGAINST THE CITY)

140. Pacaso adopts and reasserts the allegations contained in paragraphs 1-139 as if fully set forth herein.

141. There is an actual controversy now existing between Pacaso and the City concerning the application of Section 17.112.130 against Pacaso. Defendants have started enforcing Section 17.112.130 against Pacaso and its homeowners, have deemed Pacaso "illegal," are seeking to prohibit sales by Pacaso to multiple owners, and are taking steps to prevent real estate agents and brokers from working with or transacting with Pacaso under Section 17.112.130, despite the fact that this ordinance is inapplicable to Pacaso.

142. On March 17, 2021, Pacaso wrote to the City Attorney and identified the myriad ways in which Defendants' challenge to Pacaso is flawed and unsupported by fact or law. Pacaso

requested confirmation by April 1, 2021, confirming that the City would adhere to the analysis and conclusions from the July 2020 Report, and would drop its battle against Pacaso. The City and City Attorney failed to respond.

143. Section 17.112.130 does not apply to co-ownership of real property. Section 17.112.130 prohibits "[t]he creation of a time-share project as a means of ownership." A "time-sharing project" is defined as "any real property that is subject to a time-share program." Section 17.112.130(B). A "time-share program" is defined to mean "any arrangement for time-share intervals [which is later defined as either a time-share estate or a time-share use] in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals." *Id.* A "time-share estate" is defined as ownership in a "property devoted to a time-share fee" and "time-share use" means "any contractual right of exclusive occupancy." *Id.*

144. Pacaso's small co-ownership model is starkly different from any "time-share" project purportedly covered by Section 17.112.130, and thus does not apply to Pacaso. *See supra* at ¶¶ 56-80. Pacaso homeowners do not merely own the "right of exclusive occupancy," or a "use, occupancy or possession" right that "circulates among purchasers . . . according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year." Section 17.112.130(B), Def. of "Time-Share program." Rather, Pacaso homeowners own a real property asset in a single-family home that includes real property interests, and rights and obligations shared among co-owners.

145. Section 17.112.130 prohibits "[t]he creation of a time-share project as a means of ownership." Pacaso creates a property-specific LLC for each home, which owns deeded title to the property. The LLC which holds the Pacaso property does not constitute "[t]he creation of a time-share project as a means of ownership." Rather, it serves as a structure for homeowners to co-own a home and facilitates a collaborative ownership experience with diverse individuals of their choosing.

146. Further, the legislative intent of the Section 17.112.130 further confirms that it does not apply to Pacaso. The City's attempts to enforce Section 17.112.130 are wholly inconsistent with its stated "Findings And Purpose." Targeting Pacaso does nothing to ensure homes are available for long-term occupancies. The City lacks all visibility and control into how much time homeowners intend to spend in their homes. Preventing Pacaso from buying properties has no bearing on the likelihood that other prospective buyers are either buying the home as a second home, or anticipating the ability to use it for short-term rentals, among other non "long-term occupancy" uses. Nor is there a rational relation between the City's stated purpose of banning "commercial or quasi-commercial like use" in residential areas, as results from "commercial hotels, motels and other transient occupancy uses" and any enforcement measures taken against Pacaso. Pacaso is a purely residential co-homeownership structure that lacks any resemblance to such "commercial or quasi-commercial like use."

147. Because Section 17.112.130 does not apply to Pacaso, the City cannot enforce this section against Pacaso. Pacaso seeks declaratory judgment and a permanent injunction barring enforcement of Section 17.112.130 against Pacaso.

CLAIM 2

DUE PROCESS VIOLATION: DEFENDANTS' APPLICATION OF SECTION 17.112.130 TO PACASO IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

(AGAINST ALL DEFENDANTS)

148. Pacaso adopts and reasserts the allegations contained in paragraphs 1-147 as if fully set forth herein.

149. The Ordinance violates the due process guarantees of the Fourteenth Amendment and California Constitution because if the Defendants' interpretation of Section 17.112.130 as covering Pacaso is accepted, it is based on terms that are unconstitutionally vague and ambiguous.

150. Section 17.112.130 fails to provide Pacaso, homeowners, or real estate agents and brokers a reasonable opportunity to know what conduct is prohibited under the ordinance, or any guidance as to how to determine whether the activities fall within the prohibited conduct.

151. Instead, Defendants, acting under the color of law, are exploiting definitions in Section 17.112.130 that are unclear circuitous, and incomplete, in order to claim that Pacaso is a "timeshare project" within its meaning. For example, a "[t]ime-sharing project" is defined as "any real property that is subject to a time-share program." Section 17.112.130(B). In turn, "[t]ime-share program" is defined to mean "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals." *Id.* The Code then defines "[t]ime-share interval" as "***a*** time-share estate or a time-share use." *Id.* The Code then circuitously defines "[t]ime-share use" as "any contractual right of exclusive occupancy which does not fall within the definition of a time-share estate, including, without limitation, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond," and defines "time-share estate" as ownership in a "property devoted to a time-share fee . . . or a time-share lease" (without further defining either of those terms). *Id.*

152. Further, the prohibited conduct under Section 17.112.130 is "[t]he creation of a time-share project as a means of ownership." Neither "creation" nor "means of ownership" are defined in the ordinance. And "means of ownership" does not specify the type of ownership interest held. This in turn conflicts with the definition of "[t]ime-share program," which focuses on "any ***arrangement*** for time-share intervals," and "[t]ime-share use" which focuses on a "contractual right of exclusive occupancy," both of which differ from "ownership" in the abstract. Section 17.112.130(B).

153. The City admits that under its time-share ordinance, it is difficult to determine whether conduct is prohibited, stating that it "has a fairly circuitous definition to determine if a project is a prohibited timeshare or not." *See* Report at 324.

154. Section 17.112.130 is further vague and ambiguous as applied by Defendants against Pacaso. A person of ordinary intelligence would read the time-share ordinance differently than Defendants have applied it, and when reading the time-share ordinance, it cannot reasonably be applied the way Defendants now interpret it. There is no reference in Section 17.112.130 or its

definitions to fractional or partial co-ownership structures like Pacaso's. The City, City Council, City Attorney and DeRosa confirmed this interpretation of the time-share ordinance in the July 2020 Report, finding that the time-share ordinance only regulates commercial use and that time-shares are distinct from fractional or partial ownership structures. Yet, Defendants, acting under the color of law, now apply a wholly different interpretation of the time-share ordinance against Pacaso, abandoning their previous position in the July 2020 Report, and now interpreting the ordinance to apply to Pacaso, a fractional co-ownership structure. Defendants' inconsistent interpretation and application of the time-share ordinance over the course of time has failed to give Pacaso fair notice that the time-share ordinance regulates partial or fractional ownership structures, and further highlights Defendants' arbitrary, capricious and unjustified standard of interpretation and enforcement of the ordinance.

155. The City's application of an unconstitutionally vague ordinance against Pacaso has been carried out through City Attorney Walsh's, DeRosa's, and Ellsworth's conduct, including through sending, and other acts taken in connection with, the January 2021 Letter, the City Attorney's February 2021 Letter to Pacaso, deeming Pacaso "illegal," and the City Attorney's March 2021 Letter to all real estate agents and brokers in St. Helena, acting on his threat to inform others that the City and City Attorney Walsh had determined that Pacaso was illegal, as well as Defendants' other communications to real estate agents, brokers and residents of St. Helena stating or suggesting that Pacaso's operations violate the time-share ordinance. Defendants have undertaken these actions against Pacaso by interpreting the time-share ordinance in such a manner that deprived Pacaso of fair notice that the unconstitutionally vague ordinance regulates partial or fractional ownership structures.

156. By enforcing Section 17.112.130 against Pacaso, DeRosa, Ellsworth and City Attorney Walsh, acting under the color of law, deprived Pacaso of its rights under the United States Constitution, by depriving Pacaso of fair notice that the unconstitutionally vague time-share ordinance regulates partial or fractional ownership structures. DeRosa's, Ellsworth's and City Attorney Walsh's actions were a direct cause of Pacaso's injuries, because their conduct directly

caused a violation of Pacaso's rights. DeRosa, Ellsworth and City Attorney Walsh are authorized to enforce Section 17.112.130 and they did so in an unlawful manner.

157. Ellsworth, acting under the color of law and in a position of superiority to City Attorney Walsh, failed to prevent or take action to correct the enforcement efforts against Pacaso carried out by City Attorney Walsh. Ellsworth was aware that his failure to prevent or take corrective actions would apply an unconstitutionally vague time-share ordinance against Pacaso in such a way that deprived Pacaso of its rights under the United States Constitution. As a result, Pacaso lacked fair notice that the ordinance regulates partial or fractional ownership structures. Nevertheless, Ellsworth knowingly failed to prevent or take actions to correct such enforcement efforts, despite his power and authority to do so.

158. DeRosa, in her capacity as the Planning & Building Director of St. Helena, is responsible for reviewing, revising, and implementing the City of St. Helena's General Plan and zoning ordinances, including the time-share ordinance; is "considered to be [an] enforcement official" with "the authority and powers necessary to gain compliance with the provisions of [the St. Helena Municipal] code and applicable state codes" (Section 1.12.040); and was the "designated point of contact for the City" with regard to time-share enforcement against Pacaso. As such, Defendant DeRosa had final policymaking authority concerning the review, revision, implementation, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

159. City Attorney Ethan Walsh is responsible for providing legal advice to the City Council in carrying out its duties in the operations of the City government, and for bringing about suits on behalf of the City. Walsh had final policymaking authority concerning the enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

160. City Council members, including Ellsworth, are responsible for reviewing public policy and adopting policies responsive to the community. Ellsworth had final policymaking

authority concerning the review, adoption, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

161. Defendants' enforcement of the time-share ordinance against Pacaso, which caused Pacaso to suffer a constitutional violation, is carried out pursuant to St. Helena's long history of exclusion, discrimination and anti-growth principles, which include actions designed to stifle diversity and housing opportunities for underrepresented communities. *See supra* at ¶¶ 134-39. The City's long-standing policy and practice of exclusion, outsider bias, and erecting barriers to home ownership for people of diverse and underrepresented backgrounds is so closely related to and coheres with the City's enforcement efforts against Pacaso as to be the moving force that caused it.

162. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Pacaso seeks injunctive relief against Defendants, whose enforcement of the vague and ambiguous time-share ordinance against Pacaso conflicts with and violates the Fourteenth Amendment and California Constitution.

CLAIM 3

SELECTIVE AND DISCRIMINATORY ENFORCEMENT

(AGAINST ALL DEFENDANTS)

163. Pacaso adopts and reasserts the allegations contained in paragraphs 1-162 as if fully set forth herein.

164. Defendants' pattern of selective and arbitrary enforcement violates Pacaso's constitutional rights.

165. Pacaso was and is treated differently from entities or persons similarly situated. Defendants, acting under the color of law, deliberately singled out Pacaso, attempting to enforce Section 17.112.130 against Pacaso, but not against those entities or individuals who are similarly situated or functionally the same as Pacaso.

166. For example, in St. Helena, 559 second homes[14] are owned by an LLC, trust, or similar mechanism which facilitates multiple owner arrangements.[15] This represents 36% of all second homes and 21% of the entire housing stock. These homes include single-family residences that are co-owned by multiple owners, and which do not different in any respect from how a Pacaso home is used by its co-owners.

167. These non-Pacaso LLCs are still in existence, and Defendants have not pursued a similar enforcement agenda against them as against Pacaso.

168. Defendants' unequal treatment of Pacaso (*i.e.*, its enforcement of Section 17.112.130 against Pacaso, where other co-owned residences, through LLCs, tenancy in common, or otherwise, have not faced similar challenges) was intentional and based on invidious criteria. Defendants have intentionally and deliberately singled out Pacaso on the basis of invidious criteria—namely, that Pacaso serves diverse individuals who, in the eyes of Defendants, are non-resident transients. Defendants' arbitrary and selective enforcement of Section 17.112.130 against Pacaso is the latest chapter in a long history of the City erecting barriers to home ownership for people of diverse backgrounds, and is a pretext to deny homeownership to new diverse residents who hope to purchase property in St. Helena through a co-ownership structure.

169. Defendants' unequal treatment of Pacaso is selective, arbitrary, and not rationally related to a legitimate governmental purpose. The City's stated reasons for enforcement against Pacaso cannot pass muster. The City stated to Pacaso in the May 22, 2020 letter that its property "came to the City's attention because neighbors in the surrounding area are concerned about [the] types of impacts" created by "loud parties, amplified sound, and increased traffic."

170. However, the City itself conceded that such stated reasons for enforcement were pretextual. For example, the City admitted that "[i]f the City Council is concerned about the potential neighborhood impacts timeshare uses may create" —listing "large parties" as an example—"the City ***has existing regulations in place to address such impacts***." Report at 326

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[14] "Second home" refers to homes that did not take the owner occupant exemption.

[15] Among the 559 second homes, 221 are held as LLCs or other companies.

(emphasis added). The City stated, "[I]f the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction." Report at 326. "The City's Municipal Code also addresses nuisances generally and has parking standards in place." *Id.*

171. Given the many other existing regulations in place to address the supposed "concerns" the City has stated with regard to Pacaso, the City's enforcement agenda against Pacaso is suspect and appears to be nothing but a pretext to deny homeownership to new diverse residents.

172. Further, Pacaso co-owners agree to several additional restrictions that ensure their use promotes the City's stated goals. For example, there is a maximum of eight co-owners for any home, with only one family using the property at a time; co-owners agree not to have large events or parties; co-owners adhere to a 9 p.m. to 7 a.m. quiet hour policy; co-owners are prohibited from renting the home; and Pacaso encourages homeowners to avoid parking on the street. Pacaso homeowners are no different from other homeowners in St. Helena, thus, efforts to preclude their homeownership does nothing to advance the City's stated goals for enforcement against Pacaso (and not other residential co-ownership structures).

173. Discussions regarding the July 2020 Report confirmed that Defendants were unable to state one purpose, goal or non-suspect "basis" to justify application of the time-share ordinance against Pacaso, and that the primary "concern" identified (*i.e.*, "different people coming in and out of the unit or house") is not a permissible (let alone rational) basis for enforcing the time-share ordinance against Pacaso.

174. Defendants' enforcement efforts against Pacaso are but a pretext for Defendants' improper motive and discriminatory design of exclusion and actions designed to stifle diversity and housing opportunities for underrepresented communities. The City itself concedes that one of the "significant practical challenges to implementing and enforcing the existing timeshare regulations" is that "[a]bsent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties." Report at 325. The City concedes that it "does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership

arrangements." *Id.* The City's selective enforcement of the time-share ordinance against Pacaso highlights the very concerns that the City itself recognized.

175. The City's selective and arbitrary enforcement against Pacaso has been carried out through City Attorney Walsh's, DeRosa's, and Ellsworth's conduct, including through sending, and other acts taken in connection with, the January 2021 Letter, the City Attorney's February 2021 Letter to Pacaso, deeming Pacaso "illegal," and the City Attorney's March 2021 Letter to all real estate agents and brokers in St. Helena, acting on his threat to inform others that the City and City Attorney Walsh had determined that Pacaso was illegal, as well as Defendants' other communications to real estate agents, brokers and residents of St. Helena stating or suggesting that Pacaso's operations violate the time-share ordinance. Defendants have undertaken these actions against Pacaso, while failing to carry out an enforcement regime against similarly situated or functionally equivalent individuals or entities.

176. By enforcing Section 17.112.130 against Pacaso, DeRosa, Ellsworth and City Attorney Walsh, acting under the color of law, deprived Pacaso of its rights under the United States Constitution, by unlawfully targeting Pacaso without any rational basis for enforcing the law against Pacaso, but no other co-owners of homes within St. Helena. DeRosa's, Ellsworth's and City Attorney Walsh's actions were a direct cause of Pacaso's injuries, because their conduct directly caused a violation of Pacaso's rights. DeRosa, Ellsworth and City Attorney Walsh are authorized to enforce Section 17.112.130 and they did so in an unlawful manner.

177. Ellsworth, acting under the color of law and in a position of superiority to City Attorney Walsh, failed to prevent or take action to correct the enforcement efforts against Pacaso carried out by City Attorney Walsh. Ellsworth was aware that his failure to prevent or take corrective actions would deprive Pacaso of its rights under the United States Constitution by unlawfully targeting Pacaso without any rational basis for enforcing the law against Pacaso, but no other co-owners of homes within St. Helena. Nevertheless, Ellsworth knowingly failed to prevent or take actions to correct such enforcement efforts, despite his power and authority to do so.

178. DeRosa, in her capacity as the Planning & Building Director of St. Helena, is responsible for reviewing, revising, and implementing the City of St. Helena's General Plan and

zoning ordinances, including the time-share ordinance, is "considered to be [an] enforcement official" as the "planning director" and has "the authority and powers necessary to gain compliance with the provisions of this code and applicable state codes" (Section 1.12.040), and was the "designated point of contact for the City" with regard to time-share enforcement against Pacaso. DeRosa had final policymaking authority concerning the review, revision, implementation, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

179. City Attorney Walsh is responsible for providing legal advice to the City Council in carrying out their duties in the operations of the City government, and for bringing about suits on behalf of the City. City Attorney Walsh had final policymaking authority concerning the enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

180. City Council members, including Ellsworth, are responsible for reviewing public policy and adopting policies responsive to the community. Ellsworth had final policymaking authority concerning the review, adoption, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

181. Defendants' enforcement of the time-share ordinance against Pacaso, which caused Pacaso to suffer a constitutional violation, was carried out pursuant to St. Helena's long history of exclusion, discrimination and anti-growth principles, which include actions designed to stifle diversity and housing opportunities for underrepresented communities. *See supra* at ¶¶ 134-39. The City's long-standing policy and practice of exclusion, outsider bias, and erecting barriers to home ownership for people of diverse and underrepresented backgrounds is so closely related to and coheres with the City's enforcement efforts against Pacaso as to be the moving force that caused it.

182. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Pacaso seeks injunctive relief against Defendants, whose selective and discriminatory enforcement of the time-share ordinance against Pacaso conflicts with and violates the Fourteenth Amendment and California Constitution.

CLAIM 4

DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY

(AGAINST THE CITY)

183. Pacaso adopts and reasserts the allegations contained in paragraphs 1-182 as if fully set forth herein.

184. Section 17.112.130 is inapplicable against Pacaso for the separate and independent reason that it represents an invalid use of legislative authority, and exceeds the scope of a municipality's zoning authority and police power under Cal. Gov't Code § 65850(a).

185. The City's application of the time-share ordinance against Pacaso regulates beyond the mere "use" of buildings, structures, or land, as permitted in Cal. Gov't Code § 65850(a). Instead, the City's application of Section 17.112.130 against Pacaso targets individuals "based on the identity of a tenant or where a particular resident permanently resides" and tries to regulate the individuals and persons who can reside in a residential residence.

186. The plain language of Section 17.112.130 regulates the "means of ownership" in its prohibition of the "creation of a time-share project as a means of ownership." Instead of focusing on the "use" of land as between residential and other purposes, Section 17.112.130 focuses on *who* the owners are rather than the use of land as between residential and other purposes.

187. By applying Section 17.112.130 against Pacaso, the City is targeting individuals and regulating "based on the identity of a tenant or where a particular resident permanently resides." Report at 325.

188. Section 17.112.130 is arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

189. The City's stated reasons for Section 17.112.130 and its enforcement against Pacaso have no rational basis or substantial relation to its legislative purpose and findings. The City itself

stated to Pacaso in its May 22, 2020 letter that its property "came to the City's attention because neighbors in the surrounding area are concerned about [the] types of impacts" created by "loud parties, amplified sound, and increased traffic." However, the City previously admitted that "[i]f the City Council is concerned about the potential neighborhood impacts timeshare uses may create"—listing "large parties" as an example—"the City ***has existing regulations in place to address such impacts***." Report at 326 (emphasis added). The City stated, "[I]f the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction." *Id.* "The City's Municipal Code also addresses nuisances generally and has parking standards in place." *Id.*

190. Further, Pacaso strictly prohibits short-term rentals, and all Pacaso homeowners agree to Pacaso's policies, which prohibit large events or parties.

191. Given the many other existing regulations and policies in place to address the supposed "concerns" the City had with Pacaso's properties and that supposedly underly the purpose and intent of Section 17.112.130, Section 17.112.130 (and the City's attempt to apply this section against Pacaso) is unreasonable, unwarranted, and an invalid land use ordinance under Cal. Gov't Code § 65850(a).

CLAIM 5

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)

192. Pacaso adopts and reasserts the allegations contained in paragraphs 1-191 as if fully set forth herein.

193. The City's and its employees' efforts to discourage real estate agents, brokers and potential home buyers from working or transacting with Pacaso constitutes a clear, intentional interference with Pacaso's business relationships with St. Helena residents, real estate agents and brokers in St. Helena.

194. Among other tortious behavior, City Attorney Walsh sent the March 2021 Letter to all real-estate offices in the City regarding time-share regulations in an effort to discourage agents and brokers from working or transacting with Pacaso. The March 2021 Letter intimidated and

threatened real estate agents and brokers from engaging and transacting with Pacaso, claiming the "objective" of the letter is "to ensure that no zoning violation occurs as a result of a transaction" in which the real estate agents or brokers and their clients are involved.

195. Likewise, Defendants, on behalf of and at the direction of the City, sent letters to Pacaso and its homeowners notifying them that if their home was used as a timeshare, such use would be impermissible pursuant to the City Municipal Code. *See supra* at ¶¶ 56-80.

196. The City's and City Attorney Walsh's actions and communications undermine Pacaso's existing contractual relationships with real estate agents working on its behalf, interferes with Pacaso's business relationships and arrangements, tarnishes Pacaso's reputation and good will in the community, and impairs Pacaso from future developments (including future business partners and key stakeholders in the St. Helena community) by calling into question the legality of Pacaso's operations.

197. The City and City Attorney Walsh are aware of Pacaso's business model, its target market, its customer base, and the importance of Pacaso's business relationships with real estate agents and brokers in St. Helena.

198. The actions and communications of the City and City Attorney Walsh were intentional and aimed at halting Pacaso's current and future business opportunities in St. Helena, and at discouraging real estate agents and brokers from working with Pacaso or listing Pacaso properties.

199. The interference with Pacaso's current and prospective business relationships is wrongful. It is based on an incorrect and erroneous application of a time-share ordinance that does not apply to Pacaso—a position that the City and City Attorney Ueda, conceded in the July 2020 Report, which made clear that Section 17.112.130 does not apply to ownership models like Pacaso. The City and City Attorney Walsh invoked Section 17.112.130 with full knowledge that it cannot be applied to Pacaso, and that enforcing it violated Pacaso's and its homeowners' constitutional rights.

200. Pacaso has directly suffered and continues to suffer damages resulting from the fact that the March 2021 Letter that discouraged transactions or working with Pacaso was sent to ***all***

real estate agents and brokers in St. Helena. This letter has (1) discouraged and continues to chill, under threat of fines and other penalties, agents from marketing Pacaso properties or being involved in a sale of ownership interests in Pacaso properties in St. Helena in any capacity; and (2) intentionally disrupted Pacaso's ability to list its properties on the MLS by discouraging real estate agents and brokers from working with or listing Pacaso properties.

201. Further, Pacaso suffered and continues to suffer damages as a result of the confusion caused by Defendants among all agents, brokers, and potential homeowners in St. Helena as to the legality of Pacaso's operations (especially without first resolving Pacaso's challenge to such prohibitive actions by the City), which further hampers Pacaso's operations and ability to sell ownership interests in Pacaso properties in St. Helena. Moreover, the confusion caused by Defendants as to the legality of Pacaso homes among existing Pacaso homeowners in St. Helena (and in other cities) has inappropriately caused such homeowners anxiety, fear, and distrust in Pacaso, causing such homeowners to reach out to Pacaso and the City as to their ability to resale the property.[16]

202. Absent corrective action, Defendants' prior communications to agents, brokers, and potential Pacaso homeowners will continue to cause irreparable harm to Pacaso.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

a) For judgment in favor of Pacaso against Defendants on all Causes of Action;

b) For a judgment declaring that Section 17.112.130 does not apply to Pacaso;

c) For a judgment declaring that Defendants do not have the authority to enforce Section 17.112.130 against Pacaso;

d) For an injunction enjoining the City and Defendant Walsh from continuing to knowingly interfere with Pacaso's economic interests by communicating false information about the legality of Pacaso's operations and homes;

e) For a mandatory injunction compelling the City and Defendant Ethan Walsh to send a retraction letter to the real estate agents and brokers in St. Helena clarifying that real estate listings and transactions that sell co-ownership opportunities that are not

[16] Though the City's and Defendant Walsh's conduct has harmed Pacaso, Pacaso does not seek monetary or other damages based on their intentional interference with Pacaso's economic interests. As set forth herein, Pacaso seeks mandatory and prohibitory injunctions to cure Defendants' tortious conduct and to prevent future, recurring harms.

"time share projects" fall outside of the City's time-share regulations, and that no "zoning violation" will "occur[]" as a result of transacting with Pacaso and listing a home owned by Pacaso for sale;

f) For attorneys' fees pursuant to 42 U.S.C. § 1988 and Cal. Code of Civ. Proc. § 1021.5; and

g) For such other and further relief as this Court may deem proper.

DATED: April 6, 2021

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Lance A. Etcheverry*
LANCE A. ETCHEVERRY
Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

DEMAND FOR JURY TRIAL

Pacaso respectfully requests a trial by jury on all issues so triable.

DATED: April 6, 2021

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Lance A. Etcheverry*
LANCE A. ETCHEVERRY
Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

Exhibit A

Report to the City Council
Regular City Council - 14 Jul 2020

Agenda Section: **NEW BUSINESS**

Subject: **Discussion Regarding Timeshare Issues**

CEQA Determination: **Not a CEQA project**

Prepared By: Kara Ueda, City Attorney

Reviewed By: April Mitts, Finance Director

Approved By: Maya DeRosa, Planning & Building Director/Acting City Manager

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BACKGROUND

This agenda item is for informational purposes only to guide and facilitate a policy discussion amongst the City Council regarding timeshare uses and fractional ownership of residences in the City. The issue is being discussed following concerns raised by both City residents and Council members after some residents discovered a real estate listing for a fractional or partial ownership interest in a residential home in town.

The St. Helena Municipal Code currently prohibits creation of a timeshare project as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house within the City. (SHMC § 17.112.130) The prohibition is based, in part, on findings made by the City Council that timeshare uses are commercial or quasi-commercial uses that serve to reduce available residential housing and increase traffic and noise impacts. (See SHMC § 17.112.130(A).) As explained further below, though, a timeshare use differs from a fractional or partial ownership of a property.

DISCUSSION

What is a timeshare?

State law and the California Department of Real Estate regulate the advertising and sale of timeshares pursuant to "The Vacation Ownership and Time-Share Act of 2004." (Bus. & Prof. Code, § 11210 et seq.). That law defines a "time-share plan" to mean "any arrangement, plan, scheme, or similar device, other than an exchange program,

whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years." (Bus. & Prof. Code, § 11212(z).) The law mandates certain registration and advertising requirements for timeshare plans and regulates the information and terms that must be included in a sale in order to protect consumers who may purchase time-share interests. However, the law does not regulate the location and use of timeshare plans, and it expressly does not invalidate or modify local "zoning, subdivision, or building code" ordinances. (Bus. & Prof. Code, § 11280.)

The St. Helena Zoning Code prohibits the creation of a timeshare project as a means of ownership of any single-family, two-family, or multi-family dwelling or apartment house. (SHMC § 17.112.130). The Code has a fairly circuitous definition to determine if a project is a prohibited timeshare or not. A "time-share project" means any real property subject to a "time-share program." A "time-share program" is defined as "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years." (SHMC § 17.112.130(A).) A "time-share estate" is defined in the Code to mean "an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) or a time-share lease. (Id.) What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, is not identical to a fractional or partial ownership; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses.

Timeshares, thus, are somewhat similar to short-term rentals and fractional ownership hotels but differ from both in important ways. The City defines short-term rentals as a use in which overnight accommodations are provided to guests for compensation for periods of less than thirty (30) days in a single-family dwelling and are only authorized with a short-term rental permit. (SHMC § 17.04.160.) Short-term rentals are generally rented by guests on a short-term basis. After the guest leaves, they have no further obligation or ownership of the property. A timeshare, on the other hand, means that the person has an ongoing ownership interest in the property for a limited duration of time.

The City defines fractional ownership hotels as hotels with a minimum of 40 rooms, in which 75% or more of the rooms may be made available to individuals as "time-share estates," "which is defined as a time-share interest, which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof, pursuant to Section 11212(x)(1) of the California Business and Professions Code, and subject to obtaining

permission required to do so obtained from the California Department of Real Estate." (SHMC § 17.112.150.) The Zoning Code provides that fractional ownership hotels are conditionally permitted in the Service Commercial district. Timeshares as discussed herein, by comparison, may be for any particular interval of time and are a type of fractional/partial ownership. But not all fractional/partial ownership interests are considered timeshare interests. For purposes of much of the discussion in this report, timeshares are discussed in the context of a single-family home rather than, for example, a large condominium project or converted hotel.

What are the challenges and limitations to regulating partial ownership in single-family residences?

City staff and the City Attorney's office have reviewed a small sample of other jurisdictions' ordinances regulating timeshares. What emerges as a theme from this limited review is that other jurisdictions appear to regulate timeshare uses as commercial uses, such as timeshare units in high-rise condominium buildings or something akin to fractional ownership hotels. The City's code appears to try to similarly regulate timeshare uses as a commercial use.

The most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by law zoning regulations must focus on the use of land. (See, e.g., O'Loane v. O'Rourke, 231 Cal.App.2d 774, 780 (1965) [zoning is "the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land."].) State law enumerates the specific types of permissible zoning regulations, which are likewise focused on "the use of buildings, structures, and land" and related physical requirements, such as the location and size of signs, buildings and structures. (Gov. Code, § 65850.) Thus, the City's Zoning Code focuses on the types of uses, including, for example, different types of residential uses, winery uses, and commercial uses.

While there may be a concern that non-permanent City residents are purchasing property in St. Helena as a second home(s) either for themselves or their guests, zoning regulations may not target individuals. In other words, the City may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides. See, e.g., Friends of Davis v. City of Davis, 83 Cal.App.4th 1004, 1013 (2000) ["a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like"].) City ordinances also may not regulate or define what constitutes a "family" for purposes of limiting the number of unrelated people who live together in a dwelling. (City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980).)

There are also significant practical challenges to implementing and enforcing the existing timeshare regulations. Absent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties. The City does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements. Additionally, there may be a

number of joint ownership scenarios that do not necessarily trigger the same concerns as commercial transient uses or that do not qualify as a prohibited timeshare under the City's ordinance. For example, multiple members of an extended family may all wish to purchase a residence together. The family members may not all necessarily live in the home together at the same time, but they also did not set up an arrangement where they each have a timeshare interval. While this residence may be owned by multiple people who each do not choose to live in the residence, the joint or partial ownership of the residence would not be considered a timeshare as each family member could have equal access to the residence (as opposed to purchasing a limited amount of time). These challenges do not necessarily preclude regulating or prohibiting timeshare uses but should be considered in determining whether additional or amended regulations are desired.

What may the City regulate with respect to timeshares?

For the above reasons, zoning based solely on ownership, as opposed to the use of land, is impermissible. Timeshare regulations should, thus, focus on the type and use of the property and its related impacts, such as specific intervals of exclusive occupancy that render the use more akin to a transient commercial use.

If the City Council is concerned about the potential neighborhood impacts timeshare uses may create, the City has existing regulations in place to address such impacts. For example, if the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction. The City's Municipal Code also addresses nuisances generally and has parking standards in place. However, these regulations all regulate the impacts of certain activities on the land, not the land uses themselves.

FISCAL IMPACT

None at this time. Additional staff time and research will be required if zoning amendments are proposed.

RECOMMENDED ACTION

Receive this report, discuss, and provide direction to staff if desired. City staff is seeking guidance and clarification from the City Council concerning the specific problem(s) a Zoning Code amendment could help resolve, but with the limitations noted above for regulating timeshares and partial ownership.

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Attorneys for Defendants
CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; and CITY ATTORNEY ETHAN WALSH

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC,

Petitioner,

v.

THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5,

Defendants.

Case No. 3:21-cv-02493

DEFENDANTS' ANSWER TO COMPLAINT

Defendants, CITY OF ST. HELENA ("City"), PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY, and CITY ATTORNEY ETHAN WALSH ("City Attorney") (collectively the "City Defendants") hereby answer Plaintiff PACASO INC. and PAC 6 CA 2021 LLC (collectively "Plaintiffs") Complaint for: (1) Declaratory Judgment; (2) Due Procession Violation; (3) Selective Enforcement; (4) Invalid Use of Municipal Authority; and (5) Intentional Interference with Prospective Economic Advantage ("Complaint"). City Defendants answers as follows: (hereafter "City" or "Defendant" hereby answers the allegations in the Complaint of PACASO INC. and PAC 6 CA 2021 LLC ("Plaintiffs"), as follows:

INTRODUCTION

1. In answering Paragraph 1 of the Complaint, City Defendants deny each and every allegation in Paragraph 1 of the Complaint.

2. In answering Paragraph 2 of the Complaint, City Defendants deny each and every allegation in Paragraph 2 of the Complaint.

3. In answering Paragraph 3 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 3 of the Complaint.

4. In answering Paragraph 4 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 4 of the Complaint.

5. In answering Paragraph 5 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 5 of the Complaint.

6. In answering Paragraph 6 of the Complaint, City Defendants deny each and every allegation in Paragraph 6 of the Complaint.

7. In answering Paragraph 7 of the Complaint, City Defendants deny each and every allegation in Paragraph 7 of the Complaint.

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8. In answering Paragraph 8 of the Complaint, City Defendants admit that a Report to the City Council was prepared on July 14, 2020 and that local residents expressed concerns about a residential property, which one of the Plaintiffs owns. City Defendants deny each and every other allegation in Paragraph 8 of the Complaint.

9. In answering Paragraph 9 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 9 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

10. In answering Paragraph 10 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 10 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

11. In answering Paragraph 11 of the Complaint, to the extent that Plaintiffs have accurately quoted what was said during the July 2014 Meeting, City Defendants admit that such statements were made. City Defendants deny each and every other allegation in Paragraph 11 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 2014 Meeting.

12. In answering Paragraph 12 of the Complaint, City Defendants deny each and every allegation in Paragraph 12 of the Complaint.

13. In answering Paragraph 13 of the Complaint, City Defendants deny each and every allegation in Paragraph 13 of the Complaint.

14. In answering Paragraph 14 of the Complaint, City Defendants deny each and every allegation in Paragraph 14 of the Complaint.

THE PARTIES

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15. In answering Paragraph 15 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 15 of the Complaint.

16. In answering Paragraph 16 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 16 of the Complaint.

17. In answering Paragraph 17 of the Complaint, City Defendants admit the allegations asserted.

18. In answering Paragraph 18 of the Complaint, City Defendants admit the allegations asserted.

19. In answering Paragraph 19 of the Complaint, City Defendants deny that the City Attorney acts under the Mayor's direction. Except as denied, City Defendants admit the allegations asserted.

20. In answering Paragraph 20 of the Complaint, City Defendants admit the allegations asserted.

21. In answering Paragraph 21 of the Complaint, City Defendants admit that St. Helena City Council members include Vice Mayor Paul Dohring, Anna Chouteau, Lester Gardy, and Eric Hall. City Defendants admit that these members have collectively represented the City Council since November 2020. City Defendants deny that Vice Mayor Dohring has served on the City Council since 2018. City Defendants admit that Anna Chouteau has served on the City Council since 2018. City Defendants admit that the City Council is a legislative and policy-making body for the City of St. Helena. City Defendants admit that the City Council bears responsibility for setting City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 21 of the Complaint.

JURISDICTION AND VENUE

22. In answering Paragraph 22 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is

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required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 22 of the Complaint.

23. In answering Paragraph 23 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 23 of the Complaint.

GENERAL ALLEGATIONS

24. In answering Paragraph 24 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 24 of the Complaint.

25. In answering Paragraph 25 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 25 of the Complaint.

26. In answering Paragraph 26 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 26 of the Complaint.

27. In answering Paragraph 27 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 27 of the Complaint.

28. In answering Paragraph 28 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 28 of the Complaint.

29. In answering Paragraph 29 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 29 of the Complaint.

30. In answering Paragraph 30 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 30 of the Complaint.

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31. In answering Paragraph 31 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 31 of the Complaint.

32. In answering Paragraph 32 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 32 of the Complaint.

33. In answering Paragraph 33 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 33 of the Complaint.

34. In answering Paragraph 34 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 34 of the Complaint.

35. In answering Paragraph 35 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 35 of the Complaint.

36. In answering Paragraph 36 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 36 of the Complaint.

37. In answering Paragraph 37 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 37 of the Complaint.

38. In answering Paragraph 38 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 38 of the Complaint.

39. In answering Paragraph 39 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as

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admitted, City Defendants deny each and every other allegation in Paragraph 39 of the Complaint.

40. In answering Paragraph 40 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 40 of the Complaint.

41. In answering Paragraph 41 of the Complaint, City Defendants deny each and every allegation in Paragraph 41 of the Complaint.

42. In answering Paragraph 42 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 42 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

43. In answering Paragraph 43 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 43 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

44. In answering Paragraph 44 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 44 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

45. In answering Paragraph 45 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 45 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

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46. In answering Paragraph 46 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 46 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

47. In answering Paragraph 47 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 47 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

48. In answering Paragraph 48 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 48 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

49. In answering Paragraph 49 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 49 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

50. In answering Paragraph 50 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 50 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

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51. In answering Paragraph 51 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 51 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

52. In answering Paragraph 52 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 52 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

53. In answering Paragraph 53 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 53 of the Complaint.

54. In answering Paragraph 54 of the Complaint, City Defendants deny each and every allegation in Paragraph 54 of the Complaint.

55. In answering Paragraph 55 of the Complaint, City Defendants deny each and every allegation in Paragraph 55 of the Complaint.

56. In answering Paragraph 56 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 56 of the Complaint.

57. In answering Paragraph 57 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 57 of the Complaint.

58. In answering Paragraph 58 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 58 of the Complaint, including, but not limited

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to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

59. In answering Paragraph 59 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 59 of the Complaint.

60. In answering Paragraph 60 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 60 of the Complaint.

61. In answering Paragraph 61 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 61 of the Complaint.

62. In answering Paragraph 62 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 62 of the Complaint.

63. In answering Paragraph 63 of the Complaint, City Defendants deny each and every allegation in Paragraph 63 of the Complaint.

64. In answering Paragraph 64 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as alleged. Except as admitted, City Defendants deny each and every other allegation in Paragraph 64 of the Complaint.

65. In answering Paragraph 65 of the Complaint, City Defendants deny each and every allegation in Paragraph 65 of the Complaint.

66. In answering Paragraph 66 of the Complaint, City Defendants deny each and every allegation in Paragraph 66 of the Complaint.

67. In answering Paragraph 67 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 67 of the Complaint.

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68. In answering Paragraph 68 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 68 of the Complaint.

69. In answering Paragraph 69 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 69 of the Complaint.

70. In answering Paragraph 70 of the Complaint, City Defendants deny each and every allegation in Paragraph 70 of the Complaint.

71. In answering Paragraph 71 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 71 of the Complaint.

72. In answering Paragraph 72 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 72 of the Complaint.

73. In answering Paragraph 73 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 73 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

74. In answering Paragraph 74 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 74 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

75. In answering Paragraph 75 of the Complaint, City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

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76. In answering Paragraph 76 of the Complaint, City Defendants deny each and every allegation in Paragraph 76 of the Complaint.

77. In answering Paragraph 77 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 77 of the Complaint.

78. In answering Paragraph 78 of the Complaint, City Defendants deny each and every allegation in Paragraph 78 of the Complaint.

79. In answering Paragraph 79 of the Complaint, City Defendants admit the allegations asserted.

80. In answering Paragraph 80 of the Complaint, City Defendants admit that a response, dated May 19, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 80 of the Complaint.

81. In answering Paragraph 81 of the Complaint, City Defendants admit that Ms. DeRosa sent a written response, dated May 22, 2020, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 81 of the Complaint.

82. In answering Paragraph 82 of the Complaint, City Defendants deny each and every allegation in Paragraph 82 of the Complaint.

83. In answering Paragraph 83 of the Complaint, City Defendants admit that a response, dated May 26, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 83 of the Complaint.

84. In answering Paragraph 84 of the Complaint, City Defendants deny that the City represented that Pacaso's operations were permitted. City Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained therein, and, on that basis, deny each and every other allegation in Paragraph 84 of the Complaint.

85. In answering Paragraph 85 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is

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required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 85 of the Complaint.

86. In answering Paragraph 86 of the Complaint, City Defendants deny each and every allegation in Paragraph 86 of the Complaint.

87. In answering Paragraph 87 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter, dated January 25, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 87 of the Complaint.

88. In answering Paragraph 88 of the Complaint, City Defendants deny each and every allegation in Paragraph 88 of the Complaint.

89. In answering Paragraph 89 of the Complaint, City Defendants deny each and every other allegation in Paragraph 89 of the Complaint.

90. In answering Paragraph 90 of the Complaint, City Defendants admit that Pacaso contacted Maya DeRosa. City Defendants assert that the other allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every other allegation in Paragraph 90 of the Complaint.

91. In answering Paragraph 91 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the February 9, 2021 meeting, then City Defendants admit that such person(s) said what they are alleged to have said during the meeting. Except as admitted, City Defendants deny each and every allegation in Paragraph 91 of the Complaint.

92. In answering Paragraph 92 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 92 of the Complaint.

93. In answering Paragraph 93 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks

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for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 93 of the Complaint.

94. In answering Paragraph 94 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 94 of the Complaint.

95. In answering Paragraph 95 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 95 of the Complaint.

96. In answering Paragraph 96 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 96 of the Complaint.

97. In answering Paragraph 97 of the Complaint, City Defendants deny each and every allegation in Paragraph 97 of the Complaint.

98. In answering Paragraph 98 of the Complaint, City Defendants deny each and every allegation in Paragraph 98 of the Complaint.

99. In answering Paragraph 99 of the Complaint, City Defendants admit that Pacaso responded to City Attorney Walsh on March 17, 2021 and that Mr. Walsh did not respond to Pacaso's letter by April 1, 2021. City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

100. In answering Paragraph 100 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 100 of the Complaint.

101. In answering Paragraph 101 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 101 of the Complaint.

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102. In answering Paragraph 102 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 102 of the Complaint.

103. In answering Paragraph 103 of the Complaint, City Defendants deny each and every allegation in Paragraph 103 of the Complaint.

104. In answering Paragraph 104 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 104 of the Complaint.

105. In answering Paragraph 105 of the Complaint, City Defendants deny each and every allegation in Paragraph 105 of the Complaint.

106. In answering Paragraph 106 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 106 of the Complaint.

107. In answering Paragraph 107 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 107 of the Complaint.

108. In answering Paragraph 108 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 108 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

109. In answering Paragraph 109 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 109 of the Complaint.

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110. In answering Paragraph 110 of the Complaint, City Defendants deny each and every allegation in Paragraph 110 of the Complaint.

111. In answering Paragraph 111 of the Complaint, City Defendants deny each and every allegation in Paragraph 111 of the Complaint.

112. In answering Paragraph 112 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 112 of the Complaint.

113. In answering Paragraph 113 of the Complaint, City Defendants deny each and every allegation in Paragraph 113 of the Complaint.

114. In answering Paragraph 114 of the Complaint, City Defendants assert that Government Code § 65850 speaks for itself, and that no response is otherwise required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 114 of the Complaint.

115. In answering Paragraph 115 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 115 of the Complaint.

116. In answering Paragraph 116 of the Complaint, City Defendants deny each and every allegation in Paragraph 116 of the Complaint.

117. In answering Paragraph 117 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 117 of the Complaint.

118. In answering Paragraph 118 of the Complaint, City Defendants deny each and every allegation in Paragraph 118 of the Complaint.

119. In answering Paragraph 119 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit

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she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 119 of the Complaint.

120. In answering Paragraph 120 of the Complaint, City Defendants deny each and every allegation in Paragraph 120 of the Complaint.

121. In answering Paragraph 121 of the Complaint, City Defendants deny each and every allegation in Paragraph 121 of the Complaint.

122. In answering Paragraph 122 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 122 of the Complaint.

123. In answering Paragraph 123 of the Complaint, to the extent that Plaintiffs have accurately quoted the May 22, 2020 letter and July 2020 Report, City Defendants admit that the letter and/or report read as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 123 of the Complaint.

124. In answering Paragraph 124 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 124 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

125. In answering Paragraph 125 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 125 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

126. In answering Paragraph 126 of the Complaint, City Defendants deny each and every allegation in Paragraph 126 of the Complaint.

127. In answering Paragraph 127 of the Complaint, City Defendants deny each and every allegation in Paragraph 127 of the Complaint.

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128. In answering Paragraph 128 of the Complaint, City Defendants deny the allegations asserted.

129. In answering Paragraph 129 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 129 of the Complaint.

130. In answering Paragraph 130 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 130 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

131. In answering Paragraph 131 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 131 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

132. In answering Paragraph 132 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 132 of the Complaint.

133. In answering Paragraph 133 of the Complaint, City Defendants deny each and every allegation in Paragraph 133 of the Complaint.

134. In answering Paragraph 134 of the Complaint, City Defendants deny each and every allegation in Paragraph 134 of the Complaint.

135. In answering Paragraph 135 of the Complaint, City Defendants deny each and every allegation in Paragraph 135 of the Complaint.

136. In answering Paragraph 136 of the Complaint, City Defendants admit that the City adopted a General Plan, and assert that the document speaks for itself. To the extent a further

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response is required, City Defendants deny each and every allegation in Paragraph 136 of the Complaint.

137. In answering Paragraph 137 of the Complaint, City Defendants deny each and every allegation in Paragraph 137 of the Complaint.

138. In answering Paragraph 138 of the Complaint, City Defendants deny each and every allegation in Paragraph 138 of the Complaint.

139. In answering Paragraph 139 of the Complaint, City Defendants deny each and every allegation in Paragraph 139 of the Complaint.

CLAIM 1

DECLARATORY RELIEF: INAPPLICABILITY OF SECTION 17.112.130

(AGAINST THE CITY)

140. The City Defendants reasserts the answers to Paragraphs 1-139.

141. In answering Paragraph 141 of the Complaint, the City Defendants asserts that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 141 of the Complaint.

142. In answering Paragraph 142 of the Complaint, the City Defendants admit that Pacaso sent a letter dated March 17, 2021, requested a response by April 1, 2021, and that the City Defendants did not respond before April 1, 2021. Except as admitted, City Defendants deny each and every allegation in Paragraph 142 of the Complaint.

143. In answering Paragraph 143 of the Complaint, City Defendants deny each and every allegation in Paragraph 143 of the Complaint.

144. In answering Paragraph 144 of the Complaint, City Defendants deny each and every allegation in Paragraph 144 of the Complaint.

145. In answering Paragraph 145 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 145 of the Complaint.

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146. In answering Paragraph 146 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 146 of the Complaint.

147. In answering Paragraph 147 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 147 of the Complaint.

CLAIM 2

DUE PROCESS VIOLATION: DEFENDANTS' APPLICATION OF SECTION 17.112.130 TO PACASO IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

(AGAINST ALL DEFENDANTS)

148. City Defendants reassert the answers to Paragraphs 1-147.

149. In answering Paragraph 149 of the Complaint, City Defendants deny each and every allegation in Paragraph 149 of the Complaint.

150. In answering Paragraph 150 of the Complaint, City Defendants deny each and every allegation in Paragraph 150 of the Complaint.

151. In answering Paragraph 151 of the Complaint, City Defendants deny each and every allegation in Paragraph 151 of the Complaint.

152. In answering Paragraph 152 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

153. In answering Paragraph 153 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

154. In answering Paragraph 154 of the Complaint, City Defendants deny each and every allegation in Paragraph 154 of the Complaint.

155. In answering Paragraph 155 of the Complaint, City Defendants deny each and every allegation in Paragraph 155 of the Complaint.

156. In answering Paragraph 156 of the Complaint, City Defendants deny each and every allegation in Paragraph 156 of the Complaint.

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157. In answering Paragraph 157 of the Complaint, City Defendants deny each and every allegation in Paragraph 157 of the Complaint.

158. In answering Paragraph 158 of the Complaint, City Defendants deny each and every allegation in Paragraph 158 of the Complaint.

159. In answering Paragraph 159 of the Complaint, City Defendants deny each and every allegation in Paragraph 159 of the Complaint.

160. In answering Paragraph 160 of the Complaint, City Defendants deny each and every allegation in Paragraph 160 of the Complaint.

161. In answering Paragraph 161 of the Complaint, City Defendants deny each and every allegation in Paragraph 161 of the Complaint.

162. In answering Paragraph 162 of the Complaint, City Defendants deny each and every allegation in Paragraph 162 of the Complaint.

CLAIM 3

SELECTIVE AND DISCRIMINATORY ENFORCEMENT

(AGAINST ALL DEFENDANTS)

163. City Defendants reassert the answers to Paragraphs 1-162.

164. In answering Paragraph 164 of the Complaint, City Defendants deny each and every allegation in Paragraph 164 of the Complaint.

165. In answering Paragraph 165 of the Complaint, City Defendants deny each and every allegation in Paragraph 165 of the Complaint.

166. In answering Paragraph 166 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 166 of the Complaint.

167. In answering Paragraph 167 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 167 of the Complaint.

168. In answering Paragraph 168 of the Complaint, City Defendants deny each and every allegation in Paragraph 168 of the Complaint.

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169. In answering Paragraph 169 of the Complaint, City Defendants deny each and every allegation in Paragraph 169 of the Complaint.

170. In answering Paragraph 170 of the Complaint, City Defendants deny each and every allegation in Paragraph 170 of the Complaint.

171. In answering Paragraph 171 of the Complaint, City Defendants deny each and every allegation in Paragraph 171 of the Complaint.

172. In answering Paragraph 172 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 172 of the Complaint.

173. In answering Paragraph 173 of the Complaint, City Defendants deny each and every allegation in Paragraph 173 of the Complaint.

174. In answering Paragraph 174 of the Complaint, City Defendants deny each and every allegation in Paragraph 174 of the Complaint.

175. In answering Paragraph 175 of the Complaint, City Defendants deny each and every allegation in Paragraph 175 of the Complaint.

176. In answering Paragraph 176 of the Complaint, City Defendants deny each and every allegation in Paragraph 176 of the Complaint.

177. In answering Paragraph 177 of the Complaint, City Defendants deny each and every allegation in Paragraph 177 of the Complaint.

178. In answering Paragraph 178 of the Complaint, City Defendants deny each and every allegation in Paragraph 178 of the Complaint.

179. In answering Paragraph 179 of the Complaint, City Defendants deny each and every allegation in Paragraph 179 of the Complaint.

180. In answering Paragraph 180 of the Complaint, City Defendants deny each and every allegation in Paragraph 180 of the Complaint.

181. In answering Paragraph 181 of the Complaint, City Defendants deny each and every allegation in Paragraph 181 of the Complaint.

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182. In answering Paragraph 182 of the Complaint, City Defendants deny each and every allegation in Paragraph 182 of the Complaint.

CLAIM 4

DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY

(AGAINST THE CITY)

183. The City reasserts the answers to Paragraphs 1-182.

184. In answering Paragraph 184 of the Complaint, City Defendants deny each and every allegation in Paragraph 184 of the Complaint.

185. In answering Paragraph 185 of the Complaint, City Defendants deny each and every allegation in Paragraph 185 of the Complaint.

186. In answering Paragraph 186 of the Complaint, City Defendants deny each and every allegation in Paragraph 186 of the Complaint.

187. In answering Paragraph 187 of the Complaint, City Defendants deny each and every allegation in Paragraph 187 of the Complaint.

188. In answering Paragraph 188 of the Complaint, City Defendants deny each and every allegation in Paragraph 188 of the Complaint.

189. In answering Paragraph 189 of the Complaint, City Defendants deny each and every allegation in Paragraph 189 of the Complaint.

190. In answering Paragraph 190 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 190 of the Complaint.

191. In answering Paragraph 191 of the Complaint, City Defendants deny each and every allegation in Paragraph 191 of the Complaint.

CLAIM 5

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)

192. The City Defendants reassert the answers to Paragraphs 1-191.

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193. In answering Paragraph 193 of the Complaint, City Defendants deny each and every allegation in Paragraph 193 of the Complaint.

194. In answering Paragraph 194 of the Complaint, the City and City Attorney admit that City Attorney Walsh sent a letter in March 2021 to real-estate offices in the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 194 of the Complaint.

195. In answering Paragraph 195 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter on May 15, 2020 notifying a homewoner that, if a house was used as a timeshare in violation of the Municipal Code, then that would be a violation of the Municipal Code.

196. In answering Paragraph 196 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 196 of the Complaint.

197. In answering Paragraph 197 of the Complaint, Defendants deny each and every allegation in Paragraph 197 of the Complaint.

198. In answering Paragraph 198 of the Complaint, City Defendants deny each and every allegation in Paragraph 198 of the Complaint.

199. In answering Paragraph 199 of the Complaint, City Defendants deny each and every allegation in Paragraph 199 of the Complaint.

200. In answering Paragraph 200 of the Complaint, City Defendants deny each and every allegation in Paragraph 200 of the Complaint.

201. In answering Paragraph 201 of the Complaint, City Defendants deny each and every allegation in Paragraph 201 of the Complaint.

202. In answering Paragraph 202 of the Complaint, City Defendants deny each and every allegation in Paragraph 202 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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1. As a first, separate affirmative defense, City Defendants allege that the Complaint, and each claim alleged therein, fail to state facts sufficient to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. As a second, separate affirmative defense, City Defendants allege that the Complaint is barred in whole or in party by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

3. As a third, separate affirmative defense, City Defendants allege that they are entitled to immunity pursuant to Government Code § 820.2.

FOURTH AFFIRMATIVE DEFENSE

4. As a fourth, separate affirmative defense, City Defendants allege that they are entitled to immunity pursuant to Government Code § 821.6.

FIFTH AFFIRMATIVE DEFENSE

5. As a fifth, separate affirmative defense, City Defendants allege that the Complaint is barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. As a sixth, separate affirmative defense, City Defendants allege that the Complaint is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

7. As a seventh, separate affirmative defense, City Defendants allege that the Complaint is barred, in whole or in part, on the ground that one or more claims is based on a privileged communication.

EIGHTH AFFIRMATIVE DEFENSE

8. As an eighth, separate affirmative defense, City Defendants allege that the Complaint is barred, in whole or in part, on the ground of illegality.

NINTH AFFIRMATIVE DEFENSE

9. As a ninth, separate affirmative defense, City Defendants reserve the right to plead additional affirmative defenses.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. That the Complaint be dismissed with prejudice;

2. That Plaintiffs take nothing by this proceeding;

3. That City Defendants be awarded their costs of suit incurred in the defense of this action;

4. That City Defendants be awarded their reasonable attorneys' fees incurred in the defense of this action; and

5. For such other and further relief as the Court deems just and proper.

Dated: May 17, 2021

BEST BEST & KRIEGER LLP

By: _____

DAMIAN M. MOOS
DAMIAN A. NORTHCUTT
TYLER D. ANTHONY

Attorneys for Defendants
CITY OF ST. HELENA; PLANNING & BUILDINGDIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; and CITY ATTORNEY ETHAN WALSH

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC,

Petitioner,

v.

THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5,

Defendants.

Case No. 3:21-cv-02493-WHO

DEFENDANTS' FIRST AMENDED ANSWER TO COMPLAINT

Defendants, CITY OF ST. HELENA ("City"), PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY, and CITY ATTORNEY ETHAN WALSH ("City Attorney") (collectively the "City Defendants") hereby answer Plaintiff PACASO INC. and PAC 6 CA 2021 LLC (collectively "Plaintiffs") Complaint for: (1) Declaratory Judgment; (2) Due Procession Violation; (3) Selective Enforcement; (4) Invalid Use of Municipal Authority; and (5) Intentional Interference with Prospective Economic Advantage ("Complaint"). City Defendants answers as follows: (hereafter "City" or "Defendant" hereby answers the allegations in the Complaint of PACASO INC. and PAC 6 CA 2021 LLC ("Plaintiffs"), as follows:

INTRODUCTION

1. In answering Paragraph 1 of the Complaint, City Defendants deny each and every allegation in Paragraph 1 of the Complaint.

2. In answering Paragraph 2 of the Complaint, City Defendants deny each and every allegation in Paragraph 2 of the Complaint.

3. In answering Paragraph 3 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 3 of the Complaint.

4. In answering Paragraph 4 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 4 of the Complaint.

5. In answering Paragraph 5 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 5 of the Complaint.

6. In answering Paragraph 6 of the Complaint, City Defendants deny each and every allegation in Paragraph 6 of the Complaint.

7. In answering Paragraph 7 of the Complaint, City Defendants deny each and every allegation in Paragraph 7 of the Complaint.

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8. In answering Paragraph 8 of the Complaint, City Defendants admit that a Report to the City Council was prepared on July 14, 2020 and that local residents expressed concerns about a residential property, which one of the Plaintiffs owns. City Defendants deny each and every other allegation in Paragraph 8 of the Complaint.

9. In answering Paragraph 9 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 9 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

10. In answering Paragraph 10 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 10 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

11. In answering Paragraph 11 of the Complaint, to the extent that Plaintiffs have accurately quoted what was said during the July 2014 Meeting, City Defendants admit that such statements were made. City Defendants deny each and every other allegation in Paragraph 11 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 2014 Meeting.

12. In answering Paragraph 12 of the Complaint, City Defendants deny each and every allegation in Paragraph 12 of the Complaint.

13. In answering Paragraph 13 of the Complaint, City Defendants deny each and every allegation in Paragraph 13 of the Complaint.

14. In answering Paragraph 14 of the Complaint, City Defendants deny each and every allegation in Paragraph 14 of the Complaint.

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THE PARTIES

15. In answering Paragraph 15 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 15 of the Complaint.

16. In answering Paragraph 16 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 16 of the Complaint.

17. In answering Paragraph 17 of the Complaint, City Defendants admit the allegations asserted.

18. In answering Paragraph 18 of the Complaint, City Defendants admit the allegations asserted.

19. In answering Paragraph 19 of the Complaint, City Defendants deny that the City Attorney acts under the Mayor's direction. Except as denied, City Defendants admit the allegations asserted.

20. In answering Paragraph 20 of the Complaint, City Defendants admit the allegations asserted.

21. In answering Paragraph 21 of the Complaint, City Defendants admit that St. Helena City Council members include Vice Mayor Paul Dohring, Anna Chouteau, Lester Gardy, and Eric Hall. City Defendants admit that these members have collectively represented the City Council since November 2020. City Defendants deny that Vice Mayor Dohring has served on the City Council since 2018. City Defendants admit that Anna Chouteau has served on the City Council since 2018. City Defendants admit that the City Council is a legislative and policy-making body for the City of St. Helena. City Defendants admit that the City Council bears responsibility for setting City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 21 of the Complaint.

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JURISDICTION AND VENUE

22. In answering Paragraph 22 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 22 of the Complaint.

23. In answering Paragraph 23 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 23 of the Complaint.

GENERAL ALLEGATIONS

24. In answering Paragraph 24 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 24 of the Complaint.

25. In answering Paragraph 25 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 25 of the Complaint.

26. In answering Paragraph 26 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 26 of the Complaint.

27. In answering Paragraph 27 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 27 of the Complaint.

28. In answering Paragraph 28 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 28 of the Complaint.

29. In answering Paragraph 29 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 29 of the Complaint.

30. In answering Paragraph 30 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 30 of the Complaint.

31. In answering Paragraph 31 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 31 of the Complaint.

32. In answering Paragraph 32 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 32 of the Complaint.

33. In answering Paragraph 33 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 33 of the Complaint.

34. In answering Paragraph 34 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 34 of the Complaint.

35. In answering Paragraph 35 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 35 of the Complaint.

36. In answering Paragraph 36 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 36 of the Complaint.

37. In answering Paragraph 37 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 37 of the Complaint.

38. In answering Paragraph 38 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as

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admitted, City Defendants deny each and every other allegation in Paragraph 38 of the Complaint.

39. In answering Paragraph 39 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 39 of the Complaint.

40. In answering Paragraph 40 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 40 of the Complaint.

41. In answering Paragraph 41 of the Complaint, City Defendants deny each and every allegation in Paragraph 41 of the Complaint.

42. In answering Paragraph 42 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 42 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

43. In answering Paragraph 43 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 43 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

44. In answering Paragraph 44 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 44 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

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45. In answering Paragraph 45 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 45 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

46. In answering Paragraph 46 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 46 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

47. In answering Paragraph 47 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 47 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

48. In answering Paragraph 48 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 48 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

49. In answering Paragraph 49 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 49 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

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50. In answering Paragraph 50 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 50 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

51. In answering Paragraph 51 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 51 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

52. In answering Paragraph 52 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 52 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

53. In answering Paragraph 53 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 53 of the Complaint.

54. In answering Paragraph 54 of the Complaint, City Defendants deny each and every allegation in Paragraph 54 of the Complaint.

55. In answering Paragraph 55 of the Complaint, City Defendants deny each and every allegation in Paragraph 55 of the Complaint.

56. In answering Paragraph 56 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 56 of the Complaint.

57. In answering Paragraph 57 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 57 of the Complaint.

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58. In answering Paragraph 58 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 58 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

59. In answering Paragraph 59 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 59 of the Complaint.

60. In answering Paragraph 60 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 60 of the Complaint.

61. In answering Paragraph 61 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 61 of the Complaint.

62. In answering Paragraph 62 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 62 of the Complaint.

63. In answering Paragraph 63 of the Complaint, City Defendants deny each and every allegation in Paragraph 63 of the Complaint.

64. In answering Paragraph 64 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as alleged. Except as admitted, City Defendants deny each and every other allegation in Paragraph 64 of the Complaint.

65. In answering Paragraph 65 of the Complaint, City Defendants deny each and every allegation in Paragraph 65 of the Complaint.

66. In answering Paragraph 66 of the Complaint, City Defendants deny each and every allegation in Paragraph 66 of the Complaint.

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67. In answering Paragraph 67 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 67 of the Complaint.

68. In answering Paragraph 68 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 68 of the Complaint.

69. In answering Paragraph 69 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 69 of the Complaint.

70. In answering Paragraph 70 of the Complaint, City Defendants deny each and every allegation in Paragraph 70 of the Complaint.

71. In answering Paragraph 71 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 71 of the Complaint.

72. In answering Paragraph 72 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 72 of the Complaint.

73. In answering Paragraph 73 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 73 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

74. In answering Paragraph 74 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 74 of the Complaint, including, but not limited

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to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

75. In answering Paragraph 75 of the Complaint, City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

76. In answering Paragraph 76 of the Complaint, City Defendants deny each and every allegation in Paragraph 76 of the Complaint.

77. In answering Paragraph 77 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 77 of the Complaint.

78. In answering Paragraph 78 of the Complaint, City Defendants deny each and every allegation in Paragraph 78 of the Complaint.

79. In answering Paragraph 79 of the Complaint, City Defendants admit the allegations asserted.

80. In answering Paragraph 80 of the Complaint, City Defendants admit that a response, dated May 19, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 80 of the Complaint.

81. In answering Paragraph 81 of the Complaint, City Defendants admit that Ms. DeRosa sent a written response, dated May 22, 2020, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 81 of the Complaint.

82. In answering Paragraph 82 of the Complaint, City Defendants deny each and every allegation in Paragraph 82 of the Complaint.

83. In answering Paragraph 83 of the Complaint, City Defendants admit that a response, dated May 26, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 83 of the Complaint.

84. In answering Paragraph 84 of the Complaint, City Defendants deny that the City represented that Pacaso's operations were permitted. City Defendants are without sufficient

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knowledge or information to form a belief as to the truth of the remaining allegations contained therein, and, on that basis, deny each and every other allegation in Paragraph 84 of the Complaint.

85. In answering Paragraph 85 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 85 of the Complaint.

86. In answering Paragraph 86 of the Complaint, City Defendants deny each and every allegation in Paragraph 86 of the Complaint.

87. In answering Paragraph 87 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter, dated January 25, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 87 of the Complaint.

88. In answering Paragraph 88 of the Complaint, City Defendants deny each and every allegation in Paragraph 88 of the Complaint.

89. In answering Paragraph 89 of the Complaint, City Defendants deny each and every other allegation in Paragraph 89 of the Complaint.

90. In answering Paragraph 90 of the Complaint, City Defendants admit that Pacaso contacted Maya DeRosa. City Defendants assert that the other allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every other allegation in Paragraph 90 of the Complaint.

91. In answering Paragraph 91 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the February 9, 2021 meeting, then City Defendants admit that such person(s) said what they are alleged to have said during the meeting. Except as admitted, City Defendants deny each and every allegation in Paragraph 91 of the Complaint.

92. In answering Paragraph 92 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks

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for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 92 of the Complaint.

93. In answering Paragraph 93 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 93 of the Complaint.

94. In answering Paragraph 94 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 94 of the Complaint.

95. In answering Paragraph 95 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 95 of the Complaint.

96. In answering Paragraph 96 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 96 of the Complaint.

97. In answering Paragraph 97 of the Complaint, City Defendants deny each and every allegation in Paragraph 97 of the Complaint.

98. In answering Paragraph 98 of the Complaint, City Defendants deny each and every allegation in Paragraph 98 of the Complaint.

99. In answering Paragraph 99 of the Complaint, City Defendants admit that Pacaso responded to City Attorney Walsh on March 17, 2021 and that Mr. Walsh did not respond to Pacaso's letter by April 1, 2021. City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

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100. In answering Paragraph 100 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 100 of the Complaint.

101. In answering Paragraph 101 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 101 of the Complaint.

102. In answering Paragraph 102 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 102 of the Complaint.

103. In answering Paragraph 103 of the Complaint, City Defendants deny each and every allegation in Paragraph 103 of the Complaint.

104. In answering Paragraph 104 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 104 of the Complaint.

105. In answering Paragraph 105 of the Complaint, City Defendants deny each and every allegation in Paragraph 105 of the Complaint.

106. In answering Paragraph 106 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 106 of the Complaint.

107. In answering Paragraph 107 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 107 of the Complaint.

108. In answering Paragraph 108 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every

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allegation in Paragraph 108 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

109. In answering Paragraph 109 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 109 of the Complaint.

110. In answering Paragraph 110 of the Complaint, City Defendants deny each and every allegation in Paragraph 110 of the Complaint.

111. In answering Paragraph 111 of the Complaint, City Defendants deny each and every allegation in Paragraph 111 of the Complaint.

112. In answering Paragraph 112 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 112 of the Complaint.

113. In answering Paragraph 113 of the Complaint, City Defendants deny each and every allegation in Paragraph 113 of the Complaint.

114. In answering Paragraph 114 of the Complaint, City Defendants assert that Government Code § 65850 speaks for itself, and that no response is otherwise required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 114 of the Complaint.

115. In answering Paragraph 115 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 115 of the Complaint.

116. In answering Paragraph 116 of the Complaint, City Defendants deny each and every allegation in Paragraph 116 of the Complaint.

117. In answering Paragraph 117 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged.

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Except as admitted, City Defendants deny each and every allegation in Paragraph 117 of the Complaint.

118. In answering Paragraph 118 of the Complaint, City Defendants deny each and every allegation in Paragraph 118 of the Complaint.

119. In answering Paragraph 119 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 119 of the Complaint.

120. In answering Paragraph 120 of the Complaint, City Defendants deny each and every allegation in Paragraph 120 of the Complaint.

121. In answering Paragraph 121 of the Complaint, City Defendants deny each and every allegation in Paragraph 121 of the Complaint.

122. In answering Paragraph 122 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 122 of the Complaint.

123. In answering Paragraph 123 of the Complaint, to the extent that Plaintiffs have accurately quoted the May 22, 2020 letter and July 2020 Report, City Defendants admit that the letter and/or report read as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 123 of the Complaint.

124. In answering Paragraph 124 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 124 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

125. In answering Paragraph 125 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every

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allegation in Paragraph 125 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

126. In answering Paragraph 126 of the Complaint, City Defendants deny each and every allegation in Paragraph 126 of the Complaint.

127. In answering Paragraph 127 of the Complaint, City Defendants deny each and every allegation in Paragraph 127 of the Complaint.

128. In answering Paragraph 128 of the Complaint, City Defendants deny the allegations asserted.

129. In answering Paragraph 129 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 129 of the Complaint.

130. In answering Paragraph 130 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 130 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

131. In answering Paragraph 131 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 131 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

132. In answering Paragraph 132 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 132 of the Complaint.

133. In answering Paragraph 133 of the Complaint, City Defendants deny each and every allegation in Paragraph 133 of the Complaint.

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134. In answering Paragraph 134 of the Complaint, City Defendants deny each and every allegation in Paragraph 134 of the Complaint.

135. In answering Paragraph 135 of the Complaint, City Defendants deny each and every allegation in Paragraph 135 of the Complaint.

136. In answering Paragraph 136 of the Complaint, City Defendants admit that the City adopted a General Plan, and assert that the document speaks for itself. To the extent a further response is required, City Defendants deny each and every allegation in Paragraph 136 of the Complaint.

137. In answering Paragraph 137 of the Complaint, City Defendants deny each and every allegation in Paragraph 137 of the Complaint.

138. In answering Paragraph 138 of the Complaint, City Defendants deny each and every allegation in Paragraph 138 of the Complaint.

139. In answering Paragraph 139 of the Complaint, City Defendants deny each and every allegation in Paragraph 139 of the Complaint.

CLAIM 1

DECLARATORY RELIEF: INAPPLICABILITY OF SECTION 17.112.130

(AGAINST THE CITY)

140. The City Defendants reasserts the answers to Paragraphs 1-139.

141. In answering Paragraph 141 of the Complaint, the City Defendants asserts that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 141 of the Complaint.

142. In answering Paragraph 142 of the Complaint, the City Defendants admit that Pacaso sent a letter dated March 17, 2021, requested a response by April 1, 2021, and that the City Defendants did not respond before April 1, 2021. Except as admitted, City Defendants deny each and every allegation in Paragraph 142 of the Complaint.

143. In answering Paragraph 143 of the Complaint, City Defendants deny each and every allegation in Paragraph 143 of the Complaint.

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144. In answering Paragraph 144 of the Complaint, City Defendants deny each and every allegation in Paragraph 144 of the Complaint.

145. In answering Paragraph 145 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 145 of the Complaint.

146. In answering Paragraph 146 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 146 of the Complaint.

147. In answering Paragraph 147 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 147 of the Complaint.

CLAIM 2

DUE PROCESS VIOLATION: DEFENDANTS' APPLICATION OF SECTION 17.112.130 TO PACASO IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

(AGAINST ALL DEFENDANTS)

148. City Defendants reassert the answers to Paragraphs 1-147.

149. In answering Paragraph 149 of the Complaint, City Defendants deny each and every allegation in Paragraph 149 of the Complaint.

150. In answering Paragraph 150 of the Complaint, City Defendants deny each and every allegation in Paragraph 150 of the Complaint.

151. In answering Paragraph 151 of the Complaint, City Defendants deny each and every allegation in Paragraph 151 of the Complaint.

152. In answering Paragraph 152 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

153. In answering Paragraph 153 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

154. In answering Paragraph 154 of the Complaint, City Defendants deny each and every allegation in Paragraph 154 of the Complaint.

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155. In answering Paragraph 155 of the Complaint, City Defendants deny each and every allegation in Paragraph 155 of the Complaint.

156. In answering Paragraph 156 of the Complaint, City Defendants deny each and every allegation in Paragraph 156 of the Complaint.

157. In answering Paragraph 157 of the Complaint, City Defendants deny each and every allegation in Paragraph 157 of the Complaint.

158. In answering Paragraph 158 of the Complaint, City Defendants deny each and every allegation in Paragraph 158 of the Complaint.

159. In answering Paragraph 159 of the Complaint, City Defendants deny each and every allegation in Paragraph 159 of the Complaint.

160. In answering Paragraph 160 of the Complaint, City Defendants deny each and every allegation in Paragraph 160 of the Complaint.

161. In answering Paragraph 161 of the Complaint, City Defendants deny each and every allegation in Paragraph 161 of the Complaint.

162. In answering Paragraph 162 of the Complaint, City Defendants deny each and every allegation in Paragraph 162 of the Complaint.

CLAIM 3

SELECTIVE AND DISCRIMINATORY ENFORCEMENT

(AGAINST ALL DEFENDANTS)

163. City Defendants reassert the answers to Paragraphs 1-162.

164. In answering Paragraph 164 of the Complaint, City Defendants deny each and every allegation in Paragraph 164 of the Complaint.

165. In answering Paragraph 165 of the Complaint, City Defendants deny each and every allegation in Paragraph 165 of the Complaint.

166. In answering Paragraph 166 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 166 of the Complaint.

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167. In answering Paragraph 167 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 167 of the Complaint.

168. In answering Paragraph 168 of the Complaint, City Defendants deny each and every allegation in Paragraph 168 of the Complaint.

169. In answering Paragraph 169 of the Complaint, City Defendants deny each and every allegation in Paragraph 169 of the Complaint.

170. In answering Paragraph 170 of the Complaint, City Defendants deny each and every allegation in Paragraph 170 of the Complaint.

171. In answering Paragraph 171 of the Complaint, City Defendants deny each and every allegation in Paragraph 171 of the Complaint.

172. In answering Paragraph 172 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 172 of the Complaint.

173. In answering Paragraph 173 of the Complaint, City Defendants deny each and every allegation in Paragraph 173 of the Complaint.

174. In answering Paragraph 174 of the Complaint, City Defendants deny each and every allegation in Paragraph 174 of the Complaint.

175. In answering Paragraph 175 of the Complaint, City Defendants deny each and every allegation in Paragraph 175 of the Complaint.

176. In answering Paragraph 176 of the Complaint, City Defendants deny each and every allegation in Paragraph 176 of the Complaint.

177. In answering Paragraph 177 of the Complaint, City Defendants deny each and every allegation in Paragraph 177 of the Complaint.

178. In answering Paragraph 178 of the Complaint, City Defendants deny each and every allegation in Paragraph 178 of the Complaint.

179. In answering Paragraph 179 of the Complaint, City Defendants deny each and every allegation in Paragraph 179 of the Complaint.

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180. In answering Paragraph 180 of the Complaint, City Defendants deny each and every allegation in Paragraph 180 of the Complaint.

181. In answering Paragraph 181 of the Complaint, City Defendants deny each and every allegation in Paragraph 181 of the Complaint.

182. In answering Paragraph 182 of the Complaint, City Defendants deny each and every allegation in Paragraph 182 of the Complaint.

CLAIM 4

DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY

(AGAINST THE CITY)

183. The City reasserts the answers to Paragraphs 1-182.

184. In answering Paragraph 184 of the Complaint, City Defendants deny each and every allegation in Paragraph 184 of the Complaint.

185. In answering Paragraph 185 of the Complaint, City Defendants deny each and every allegation in Paragraph 185 of the Complaint.

186. In answering Paragraph 186 of the Complaint, City Defendants deny each and every allegation in Paragraph 186 of the Complaint.

187. In answering Paragraph 187 of the Complaint, City Defendants deny each and every allegation in Paragraph 187 of the Complaint.

188. In answering Paragraph 188 of the Complaint, City Defendants deny each and every allegation in Paragraph 188 of the Complaint.

189. In answering Paragraph 189 of the Complaint, City Defendants deny each and every allegation in Paragraph 189 of the Complaint.

190. In answering Paragraph 190 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 190 of the Complaint.

191. In answering Paragraph 191 of the Complaint, City Defendants deny each and every allegation in Paragraph 191 of the Complaint.

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CLAIM 5

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)

192. The City Defendants reassert the answers to Paragraphs 1-191.

193. In answering Paragraph 193 of the Complaint, City Defendants deny each and every allegation in Paragraph 193 of the Complaint.

194. In answering Paragraph 194 of the Complaint, the City and City Attorney admit that City Attorney Walsh sent a letter in March 2021 to real-estate offices in the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 194 of the Complaint.

195. In answering Paragraph 195 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter on May 15, 2020 notifying a homeowner that, if a house was used as a timeshare in violation of the Municipal Code, then that would be a violation of the Municipal Code.

196. In answering Paragraph 196 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 196 of the Complaint.

197. In answering Paragraph 197 of the Complaint, Defendants deny each and every allegation in Paragraph 197 of the Complaint.

198. In answering Paragraph 198 of the Complaint, City Defendants deny each and every allegation in Paragraph 198 of the Complaint.

199. In answering Paragraph 199 of the Complaint, City Defendants deny each and every allegation in Paragraph 199 of the Complaint.

200. In answering Paragraph 200 of the Complaint, City Defendants deny each and every allegation in Paragraph 200 of the Complaint.

201. In answering Paragraph 201 of the Complaint, City Defendants deny each and every allegation in Paragraph 201 of the Complaint.

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202. In answering Paragraph 202 of the Complaint, City Defendants deny each and every allegation in Paragraph 202 of the Complaint.

AFFIRMATIVE DEFENSES

City Defendants assert the following affirmative defenses against each and every claim and cause of action alleged by Plaintiffs. By asserting the following defenses, City Defendants do not assume the burden of proof on any essential element of Plaintiffs' claims.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

City Defendants incorporate by reference the answers and allegations stated above.

As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that the Complaint fails to allege facts sufficient to state a claim against the City Defendants.

Plaintiffs fail to state sufficient facts to state a claim for declaratory relief (Claim 1) because Section 17.122.130 of the St. Helena Municipal Code does apply to Pacaso. On information and belief, Pacaso markets properties in the City under the guise of "co-ownership" arrangements; in-fact, Pacaso is selling timeshares prohibited by Section 17.122.130 of the St. Helena Municipal Code. Plaintiffs are not entitled to declaratory relief because they were violating the City's municipal ordinance.

Plaintiffs fail to state sufficient facts to state a claim for due process violation (Claim 2) because Section 17.112.130 of the St. Helena Municipal Code is not unconstitutionally vague or ambiguous. On information and belief, Pacaso was provided fair notice of Section 17.112.130, its specific terms, and its application to partial or fractional ownership structures, such as those marketed by Pacaso in the City. On information and belief, Pacaso attempted to sell timeshares as fractional ownership/co-ownership properties in the City in violation of Section 17.122.130 of the St. Helena Municipal Code.

Plaintiffs fail to state a selective and discriminatory enforcement claim (Claim 3) because the City Defendants enforce all violations of Section 17.122.130 in the City in the same manner, and do not take a different approach with those related to Pacaso. The City Defendants allege

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that there was no selective enforcement of Section 17.112.130 of the St. Helena Municipal Code against Pacaso.

Plaintiffs fail to state a claim for Invalid Use of Municipal Authority (Claim 4) because Section 17.112.130 of the St. Helena Municipal Code does not exceed the City's scope of a municipal zoning authority and police power under Cal. Government Code § 65850(a). Section 17.112.130 of the St. Helena Municipal Code is not arbitrary or unreasonable as it has a substantial relation to the public health, safety, morals, and general welfare of the residents of the City. The City's enforcement of Section 17.112.130 against Pacaso is reasonable, warranted, and a valid land use ordinance under California Government Code § 65850(a).

Plaintiffs fail to state a claim for Intentional Interference with Prospective Economic Advantage (Claim 5) because Plaintiff's fifth claim arises from protected speech and is a strategic lawsuit against public participation ("SLAAP"). Plaintiffs' claim is based on privileged communications and are subject to a special motion to strike under California Code of Civil Procedure §425.16. A special motion to strike (anti-SLAAP motion) was filed by the City and City Attorney on May 17, 2021 [Doc. 18.]. City Defendants further allege, on information and belief, that Plaintiffs cannot demonstrate that they incurred an actual loss or disruption to a prospective economic advantage in which they had a sufficiently reasonable expectation of future business or income.

SECOND AFFIRMATIVE DEFENSE

(Governmental Immunity For Exercise of Discretion – California Government Code § 820.2)

City Defendants incorporate by reference the answers and allegations stated above.

As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint pursuant to California Government Code § 820.2. City Defendants allege that the decisions in the Complaint were an exercise of governmental discretion immune from challenge under California Government Code § 820.2, and as such, all of Plaintiffs' claims are barred.

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THIRD AFFIRMATIVE DEFENSE

(Governmental Immunity for Administrative Proceeding Within Scope of Employment – California Government Code § 821.6)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint pursuant to California Government Code § 821.6. City Defendants allege that the enforcement actions alleged in the Complaint were part of an administrative proceeding within the scope of employment, immune from challenge under California Government Code § 821.6, and, as such, all of Plaintiffs' claims are barred.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint by reason of the doctrine of estoppel. On information and belief, City Defendants allege Plaintiffs willfully violated Section 17.112.130 of the St. Helena Municipal Code by owning and/or marketing ownership of timeshares in the City.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint by reason of the doctrine of unclean hands. On information and belief, City Defendants allege Plaintiffs willfully violated federal, state and/or local laws in connection with their sale of fractional interests in real property, including, but not limited to, federal and state securities laws, state laws governing the marketing and sale of time shares, and Section 17.112.130 of the St. Helena Municipal Code.

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SIXTH AFFIRMATIVE DEFENSE

(Privileged Communications)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint because Plaintiffs' claims are based on privileged communications. City Defendants allege that the enforcement actions alleged in the Complaint were part of City employees official duties, and were conducted as part of an official proceeding concerning a matter of common interest. City Defendants further allege that Plaintiffs claims are based on privileged communications under California Civil Code § 47.

SEVENTH AFFIRMATIVE DEFENSE

(Illegality)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint by reason of the doctrine of illegality. On information and belief, City Defendants allege Plaintiffs willfully violated federal, state and/or local laws in connection with their sale of fractional interests in real property, including, but not limited to, federal and state securities laws, state laws governing the marketing and sale of time shares, and Section 17.112.130 of the St. Helena Municipal Code.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Remedies)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint because Plaintiffs failed to exhaust their administrative remedies before filing their Complaint. On information and belief, City Defendants allege that Plaintiffs did not participate in any administrative hearing prior to the filing of the Complaint.

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NINTH AFFIRMATIVE DEFENSE

(Failure to Comply With the California Tort Claims Act - California Government Code §§ 810, *et seq.*)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint because Plaintiffs failed to comply with the California Tort Claims Act (California Government Code §§ 810, *et seq.*). On information and belief, the City never received a government claim from Plaintiffs prior to the filing of the Complaint.

TENTH AFFIRMATIVE DEFENSE

(Statute of Limitations - Government Code § 65009)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that Plaintiffs' action is barred, in whole or in part, by the statute of limitations set forth in California Government Code § 65009. On information and belief, City Defendants allege that Plaintiffs' Complaint was not brought within ninety (90) days of the enactment of Sections 17.112.130 and 17.134.010-17.134.100 of the St. Helena Municipal Code.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. That the Complaint be dismissed with prejudice;

2. That Plaintiffs take nothing by this proceeding;

3. That City Defendants be awarded their costs of suit incurred in the defense of this action;

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4. That City Defendants be awarded their reasonable attorneys' fees incurred in the defense of this action as permitted by law; and

5. For such other and further relief as the Court deems just and proper.

Dated: June 1, 2021

BEST BEST & KRIEGER LLP

By: */s/ Damian N. Northcutt*
DAMIAN M. MOOS
DAMIAN A. NORTHCUTT
TYLER D. ANTHONY

Attorneys for Defendants
CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; and CITY ATTORNEY ETHAN WALSH

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC,

Petitioner,

v.

THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5,

Defendants.

Case No. 3:21-cv-02493-WHO

DEFENDANTS' FIRST AMENDED ANSWER TO COMPLAINT

Defendants, CITY OF ST. HELENA ("City"), PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY, and CITY ATTORNEY ETHAN WALSH ("City Attorney") (collectively the "City Defendants") hereby answer Plaintiff PACASO INC. and PAC 6 CA 2021 LLC (collectively "Plaintiffs") Complaint for: (1) Declaratory Judgment; (2) Due Procession Violation; (3) Selective Enforcement; (4) Invalid Use of Municipal Authority; and (5) Intentional Interference with Prospective Economic Advantage ("Complaint"). City Defendants answers as follows: (hereafter "City" or "Defendant" hereby answers the allegations in the Complaint of PACASO INC. and PAC 6 CA 2021 LLC ("Plaintiffs"), as follows:

INTRODUCTION

1. In answering Paragraph 1 of the Complaint, City Defendants deny each and every allegation in Paragraph 1 of the Complaint.

2. In answering Paragraph 2 of the Complaint, City Defendants deny each and every allegation in Paragraph 2 of the Complaint.

3. In answering Paragraph 3 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 3 of the Complaint.

4. In answering Paragraph 4 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 4 of the Complaint.

5. In answering Paragraph 5 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 5 of the Complaint.

6. In answering Paragraph 6 of the Complaint, City Defendants deny each and every allegation in Paragraph 6 of the Complaint.

7. In answering Paragraph 7 of the Complaint, City Defendants deny each and every allegation in Paragraph 7 of the Complaint.

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8. In answering Paragraph 8 of the Complaint, City Defendants admit that a Report to the City Council was prepared on July 14, 2020 and that local residents expressed concerns about a residential property, which one of the Plaintiffs owns. City Defendants deny each and every other allegation in Paragraph 8 of the Complaint.

9. In answering Paragraph 9 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 9 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

10. In answering Paragraph 10 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 10 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

11. In answering Paragraph 11 of the Complaint, to the extent that Plaintiffs have accurately quoted what was said during the July 2014 Meeting, City Defendants admit that such statements were made. City Defendants deny each and every other allegation in Paragraph 11 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 2014 Meeting.

12. In answering Paragraph 12 of the Complaint, City Defendants deny each and every allegation in Paragraph 12 of the Complaint.

13. In answering Paragraph 13 of the Complaint, City Defendants deny each and every allegation in Paragraph 13 of the Complaint.

14. In answering Paragraph 14 of the Complaint, City Defendants deny each and every allegation in Paragraph 14 of the Complaint.

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THE PARTIES

15. In answering Paragraph 15 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 15 of the Complaint.

16. In answering Paragraph 16 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 16 of the Complaint.

17. In answering Paragraph 17 of the Complaint, City Defendants admit the allegations asserted.

18. In answering Paragraph 18 of the Complaint, City Defendants admit the allegations asserted.

19. In answering Paragraph 19 of the Complaint, City Defendants deny that the City Attorney acts under the Mayor's direction. Except as denied, City Defendants admit the allegations asserted.

20. In answering Paragraph 20 of the Complaint, City Defendants admit the allegations asserted.

21. In answering Paragraph 21 of the Complaint, City Defendants admit that St. Helena City Council members include Vice Mayor Paul Dohring, Anna Chouteau, Lester Gardy, and Eric Hall. City Defendants admit that these members have collectively represented the City Council since November 2020. City Defendants deny that Vice Mayor Dohring has served on the City Council since 2018. City Defendants admit that Anna Chouteau has served on the City Council since 2018. City Defendants admit that the City Council is a legislative and policy-making body for the City of St. Helena. City Defendants admit that the City Council bears responsibility for setting City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 21 of the Complaint.

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JURISDICTION AND VENUE

22. In answering Paragraph 22 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 22 of the Complaint.

23. In answering Paragraph 23 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 23 of the Complaint.

GENERAL ALLEGATIONS

24. In answering Paragraph 24 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 24 of the Complaint.

25. In answering Paragraph 25 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 25 of the Complaint.

26. In answering Paragraph 26 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 26 of the Complaint.

27. In answering Paragraph 27 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 27 of the Complaint.

28. In answering Paragraph 28 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 28 of the Complaint.

29. In answering Paragraph 29 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 29 of the Complaint.

30. In answering Paragraph 30 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 30 of the Complaint.

31. In answering Paragraph 31 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 31 of the Complaint.

32. In answering Paragraph 32 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 32 of the Complaint.

33. In answering Paragraph 33 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 33 of the Complaint.

34. In answering Paragraph 34 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 34 of the Complaint.

35. In answering Paragraph 35 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 35 of the Complaint.

36. In answering Paragraph 36 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 36 of the Complaint.

37. In answering Paragraph 37 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 37 of the Complaint.

38. In answering Paragraph 38 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as

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admitted, City Defendants deny each and every other allegation in Paragraph 38 of the Complaint.

39. In answering Paragraph 39 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 39 of the Complaint.

40. In answering Paragraph 40 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 40 of the Complaint.

41. In answering Paragraph 41 of the Complaint, City Defendants deny each and every allegation in Paragraph 41 of the Complaint.

42. In answering Paragraph 42 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 42 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

43. In answering Paragraph 43 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 43 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

44. In answering Paragraph 44 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 44 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

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45. In answering Paragraph 45 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 45 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

46. In answering Paragraph 46 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 46 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

47. In answering Paragraph 47 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 47 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

48. In answering Paragraph 48 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 48 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

49. In answering Paragraph 49 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 49 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

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50. In answering Paragraph 50 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 50 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

51. In answering Paragraph 51 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 51 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

52. In answering Paragraph 52 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 52 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

53. In answering Paragraph 53 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 53 of the Complaint.

54. In answering Paragraph 54 of the Complaint, City Defendants deny each and every allegation in Paragraph 54 of the Complaint.

55. In answering Paragraph 55 of the Complaint, City Defendants deny each and every allegation in Paragraph 55 of the Complaint.

56. In answering Paragraph 56 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 56 of the Complaint.

57. In answering Paragraph 57 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 57 of the Complaint.

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58. In answering Paragraph 58 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 58 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

59. In answering Paragraph 59 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 59 of the Complaint.

60. In answering Paragraph 60 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 60 of the Complaint.

61. In answering Paragraph 61 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 61 of the Complaint.

62. In answering Paragraph 62 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 62 of the Complaint.

63. In answering Paragraph 63 of the Complaint, City Defendants deny each and every allegation in Paragraph 63 of the Complaint.

64. In answering Paragraph 64 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as alleged. Except as admitted, City Defendants deny each and every other allegation in Paragraph 64 of the Complaint.

65. In answering Paragraph 65 of the Complaint, City Defendants deny each and every allegation in Paragraph 65 of the Complaint.

66. In answering Paragraph 66 of the Complaint, City Defendants deny each and every allegation in Paragraph 66 of the Complaint.

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67. In answering Paragraph 67 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 67 of the Complaint.

68. In answering Paragraph 68 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 68 of the Complaint.

69. In answering Paragraph 69 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 69 of the Complaint.

70. In answering Paragraph 70 of the Complaint, City Defendants deny each and every allegation in Paragraph 70 of the Complaint.

71. In answering Paragraph 71 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 71 of the Complaint.

72. In answering Paragraph 72 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 72 of the Complaint.

73. In answering Paragraph 73 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 73 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

74. In answering Paragraph 74 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 74 of the Complaint, including, but not limited

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to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

75. In answering Paragraph 75 of the Complaint, City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

76. In answering Paragraph 76 of the Complaint, City Defendants deny each and every allegation in Paragraph 76 of the Complaint.

77. In answering Paragraph 77 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 77 of the Complaint.

78. In answering Paragraph 78 of the Complaint, City Defendants deny each and every allegation in Paragraph 78 of the Complaint.

79. In answering Paragraph 79 of the Complaint, City Defendants admit the allegations asserted.

80. In answering Paragraph 80 of the Complaint, City Defendants admit that a response, dated May 19, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 80 of the Complaint.

81. In answering Paragraph 81 of the Complaint, City Defendants admit that Ms. DeRosa sent a written response, dated May 22, 2020, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 81 of the Complaint.

82. In answering Paragraph 82 of the Complaint, City Defendants deny each and every allegation in Paragraph 82 of the Complaint.

83. In answering Paragraph 83 of the Complaint, City Defendants admit that a response, dated May 26, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 83 of the Complaint.

84. In answering Paragraph 84 of the Complaint, City Defendants deny that the City represented that Pacaso's operations were permitted. City Defendants are without sufficient

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knowledge or information to form a belief as to the truth of the remaining allegations contained therein, and, on that basis, deny each and every other allegation in Paragraph 84 of the Complaint.

85. In answering Paragraph 85 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 85 of the Complaint.

86. In answering Paragraph 86 of the Complaint, City Defendants deny each and every allegation in Paragraph 86 of the Complaint.

87. In answering Paragraph 87 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter, dated January 25, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 87 of the Complaint.

88. In answering Paragraph 88 of the Complaint, City Defendants deny each and every allegation in Paragraph 88 of the Complaint.

89. In answering Paragraph 89 of the Complaint, City Defendants deny each and every other allegation in Paragraph 89 of the Complaint.

90. In answering Paragraph 90 of the Complaint, City Defendants admit that Pacaso contacted Maya DeRosa. City Defendants assert that the other allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every other allegation in Paragraph 90 of the Complaint.

91. In answering Paragraph 91 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the February 9, 2021 meeting, then City Defendants admit that such person(s) said what they are alleged to have said during the meeting. Except as admitted, City Defendants deny each and every allegation in Paragraph 91 of the Complaint.

92. In answering Paragraph 92 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks

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for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 92 of the Complaint.

93. In answering Paragraph 93 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 93 of the Complaint.

94. In answering Paragraph 94 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 94 of the Complaint.

95. In answering Paragraph 95 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 95 of the Complaint.

96. In answering Paragraph 96 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 96 of the Complaint.

97. In answering Paragraph 97 of the Complaint, City Defendants deny each and every allegation in Paragraph 97 of the Complaint.

98. In answering Paragraph 98 of the Complaint, City Defendants deny each and every allegation in Paragraph 98 of the Complaint.

99. In answering Paragraph 99 of the Complaint, City Defendants admit that Pacaso responded to City Attorney Walsh on March 17, 2021 and that Mr. Walsh did not respond to Pacaso's letter by April 1, 2021. City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

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100. In answering Paragraph 100 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 100 of the Complaint.

101. In answering Paragraph 101 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 101 of the Complaint.

102. In answering Paragraph 102 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 102 of the Complaint.

103. In answering Paragraph 103 of the Complaint, City Defendants deny each and every allegation in Paragraph 103 of the Complaint.

104. In answering Paragraph 104 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 104 of the Complaint.

105. In answering Paragraph 105 of the Complaint, City Defendants deny each and every allegation in Paragraph 105 of the Complaint.

106. In answering Paragraph 106 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 106 of the Complaint.

107. In answering Paragraph 107 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 107 of the Complaint.

108. In answering Paragraph 108 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every

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allegation in Paragraph 108 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

109. In answering Paragraph 109 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 109 of the Complaint.

110. In answering Paragraph 110 of the Complaint, City Defendants deny each and every allegation in Paragraph 110 of the Complaint.

111. In answering Paragraph 111 of the Complaint, City Defendants deny each and every allegation in Paragraph 111 of the Complaint.

112. In answering Paragraph 112 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 112 of the Complaint.

113. In answering Paragraph 113 of the Complaint, City Defendants deny each and every allegation in Paragraph 113 of the Complaint.

114. In answering Paragraph 114 of the Complaint, City Defendants assert that Government Code § 65850 speaks for itself, and that no response is otherwise required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 114 of the Complaint.

115. In answering Paragraph 115 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 115 of the Complaint.

116. In answering Paragraph 116 of the Complaint, City Defendants deny each and every allegation in Paragraph 116 of the Complaint.

117. In answering Paragraph 117 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged.

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Except as admitted, City Defendants deny each and every allegation in Paragraph 117 of the Complaint.

118. In answering Paragraph 118 of the Complaint, City Defendants deny each and every allegation in Paragraph 118 of the Complaint.

119. In answering Paragraph 119 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 119 of the Complaint.

120. In answering Paragraph 120 of the Complaint, City Defendants deny each and every allegation in Paragraph 120 of the Complaint.

121. In answering Paragraph 121 of the Complaint, City Defendants deny each and every allegation in Paragraph 121 of the Complaint.

122. In answering Paragraph 122 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 122 of the Complaint.

123. In answering Paragraph 123 of the Complaint, to the extent that Plaintiffs have accurately quoted the May 22, 2020 letter and July 2020 Report, City Defendants admit that the letter and/or report read as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 123 of the Complaint.

124. In answering Paragraph 124 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 124 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

125. In answering Paragraph 125 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every

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allegation in Paragraph 125 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

126. In answering Paragraph 126 of the Complaint, City Defendants deny each and every allegation in Paragraph 126 of the Complaint.

127. In answering Paragraph 127 of the Complaint, City Defendants deny each and every allegation in Paragraph 127 of the Complaint.

128. In answering Paragraph 128 of the Complaint, City Defendants deny the allegations asserted.

129. In answering Paragraph 129 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 129 of the Complaint.

130. In answering Paragraph 130 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 130 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

131. In answering Paragraph 131 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 131 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

132. In answering Paragraph 132 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 132 of the Complaint.

133. In answering Paragraph 133 of the Complaint, City Defendants deny each and every allegation in Paragraph 133 of the Complaint.

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134. In answering Paragraph 134 of the Complaint, City Defendants deny each and every allegation in Paragraph 134 of the Complaint.

135. In answering Paragraph 135 of the Complaint, City Defendants deny each and every allegation in Paragraph 135 of the Complaint.

136. In answering Paragraph 136 of the Complaint, City Defendants admit that the City adopted a General Plan, and assert that the document speaks for itself. To the extent a further response is required, City Defendants deny each and every allegation in Paragraph 136 of the Complaint.

137. In answering Paragraph 137 of the Complaint, City Defendants deny each and every allegation in Paragraph 137 of the Complaint.

138. In answering Paragraph 138 of the Complaint, City Defendants deny each and every allegation in Paragraph 138 of the Complaint.

139. In answering Paragraph 139 of the Complaint, City Defendants deny each and every allegation in Paragraph 139 of the Complaint.

CLAIM 1

DECLARATORY RELIEF: INAPPLICABILITY OF SECTION 17.112.130

(AGAINST THE CITY)

140. The City Defendants reasserts the answers to Paragraphs 1-139.

141. In answering Paragraph 141 of the Complaint, the City Defendants asserts that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 141 of the Complaint.

142. In answering Paragraph 142 of the Complaint, the City Defendants admit that Pacaso sent a letter dated March 17, 2021, requested a response by April 1, 2021, and that the City Defendants did not respond before April 1, 2021. Except as admitted, City Defendants deny each and every allegation in Paragraph 142 of the Complaint.

143. In answering Paragraph 143 of the Complaint, City Defendants deny each and every allegation in Paragraph 143 of the Complaint.

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144. In answering Paragraph 144 of the Complaint, City Defendants deny each and every allegation in Paragraph 144 of the Complaint.

145. In answering Paragraph 145 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 145 of the Complaint.

146. In answering Paragraph 146 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 146 of the Complaint.

147. In answering Paragraph 147 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 147 of the Complaint.

CLAIM 2

DUE PROCESS VIOLATION: DEFENDANTS' APPLICATION OF SECTION 17.112.130 TO PACASO IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

(AGAINST ALL DEFENDANTS)

148. City Defendants reassert the answers to Paragraphs 1-147.

149. In answering Paragraph 149 of the Complaint, City Defendants deny each and every allegation in Paragraph 149 of the Complaint.

150. In answering Paragraph 150 of the Complaint, City Defendants deny each and every allegation in Paragraph 150 of the Complaint.

151. In answering Paragraph 151 of the Complaint, City Defendants deny each and every allegation in Paragraph 151 of the Complaint.

152. In answering Paragraph 152 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

153. In answering Paragraph 153 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

154. In answering Paragraph 154 of the Complaint, City Defendants deny each and every allegation in Paragraph 154 of the Complaint.

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155. In answering Paragraph 155 of the Complaint, City Defendants deny each and every allegation in Paragraph 155 of the Complaint.

156. In answering Paragraph 156 of the Complaint, City Defendants deny each and every allegation in Paragraph 156 of the Complaint.

157. In answering Paragraph 157 of the Complaint, City Defendants deny each and every allegation in Paragraph 157 of the Complaint.

158. In answering Paragraph 158 of the Complaint, City Defendants deny each and every allegation in Paragraph 158 of the Complaint.

159. In answering Paragraph 159 of the Complaint, City Defendants deny each and every allegation in Paragraph 159 of the Complaint.

160. In answering Paragraph 160 of the Complaint, City Defendants deny each and every allegation in Paragraph 160 of the Complaint.

161. In answering Paragraph 161 of the Complaint, City Defendants deny each and every allegation in Paragraph 161 of the Complaint.

162. In answering Paragraph 162 of the Complaint, City Defendants deny each and every allegation in Paragraph 162 of the Complaint.

CLAIM 3

SELECTIVE AND DISCRIMINATORY ENFORCEMENT

(AGAINST ALL DEFENDANTS)

163. City Defendants reassert the answers to Paragraphs 1-162.

164. In answering Paragraph 164 of the Complaint, City Defendants deny each and every allegation in Paragraph 164 of the Complaint.

165. In answering Paragraph 165 of the Complaint, City Defendants deny each and every allegation in Paragraph 165 of the Complaint.

166. In answering Paragraph 166 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 166 of the Complaint.

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167. In answering Paragraph 167 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 167 of the Complaint.

168. In answering Paragraph 168 of the Complaint, City Defendants deny each and every allegation in Paragraph 168 of the Complaint.

169. In answering Paragraph 169 of the Complaint, City Defendants deny each and every allegation in Paragraph 169 of the Complaint.

170. In answering Paragraph 170 of the Complaint, City Defendants deny each and every allegation in Paragraph 170 of the Complaint.

171. In answering Paragraph 171 of the Complaint, City Defendants deny each and every allegation in Paragraph 171 of the Complaint.

172. In answering Paragraph 172 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 172 of the Complaint.

173. In answering Paragraph 173 of the Complaint, City Defendants deny each and every allegation in Paragraph 173 of the Complaint.

174. In answering Paragraph 174 of the Complaint, City Defendants deny each and every allegation in Paragraph 174 of the Complaint.

175. In answering Paragraph 175 of the Complaint, City Defendants deny each and every allegation in Paragraph 175 of the Complaint.

176. In answering Paragraph 176 of the Complaint, City Defendants deny each and every allegation in Paragraph 176 of the Complaint.

177. In answering Paragraph 177 of the Complaint, City Defendants deny each and every allegation in Paragraph 177 of the Complaint.

178. In answering Paragraph 178 of the Complaint, City Defendants deny each and every allegation in Paragraph 178 of the Complaint.

179. In answering Paragraph 179 of the Complaint, City Defendants deny each and every allegation in Paragraph 179 of the Complaint.

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180. In answering Paragraph 180 of the Complaint, City Defendants deny each and every allegation in Paragraph 180 of the Complaint.

181. In answering Paragraph 181 of the Complaint, City Defendants deny each and every allegation in Paragraph 181 of the Complaint.

182. In answering Paragraph 182 of the Complaint, City Defendants deny each and every allegation in Paragraph 182 of the Complaint.

CLAIM 4

DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY

(AGAINST THE CITY)

183. The City reasserts the answers to Paragraphs 1-182.

184. In answering Paragraph 184 of the Complaint, City Defendants deny each and every allegation in Paragraph 184 of the Complaint.

185. In answering Paragraph 185 of the Complaint, City Defendants deny each and every allegation in Paragraph 185 of the Complaint.

186. In answering Paragraph 186 of the Complaint, City Defendants deny each and every allegation in Paragraph 186 of the Complaint.

187. In answering Paragraph 187 of the Complaint, City Defendants deny each and every allegation in Paragraph 187 of the Complaint.

188. In answering Paragraph 188 of the Complaint, City Defendants deny each and every allegation in Paragraph 188 of the Complaint.

189. In answering Paragraph 189 of the Complaint, City Defendants deny each and every allegation in Paragraph 189 of the Complaint.

190. In answering Paragraph 190 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 190 of the Complaint.

191. In answering Paragraph 191 of the Complaint, City Defendants deny each and every allegation in Paragraph 191 of the Complaint.

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CLAIM 5

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)

192. The City Defendants reassert the answers to Paragraphs 1-191.

193. In answering Paragraph 193 of the Complaint, City Defendants deny each and every allegation in Paragraph 193 of the Complaint.

194. In answering Paragraph 194 of the Complaint, the City and City Attorney admit that City Attorney Walsh sent a letter in March 2021 to real-estate offices in the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 194 of the Complaint.

195. In answering Paragraph 195 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter on May 15, 2020 notifying a homeowner that, if a house was used as a timeshare in violation of the Municipal Code, then that would be a violation of the Municipal Code.

196. In answering Paragraph 196 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 196 of the Complaint.

197. In answering Paragraph 197 of the Complaint, Defendants deny each and every allegation in Paragraph 197 of the Complaint.

198. In answering Paragraph 198 of the Complaint, City Defendants deny each and every allegation in Paragraph 198 of the Complaint.

199. In answering Paragraph 199 of the Complaint, City Defendants deny each and every allegation in Paragraph 199 of the Complaint.

200. In answering Paragraph 200 of the Complaint, City Defendants deny each and every allegation in Paragraph 200 of the Complaint.

201. In answering Paragraph 201 of the Complaint, City Defendants deny each and every allegation in Paragraph 201 of the Complaint.

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202. In answering Paragraph 202 of the Complaint, City Defendants deny each and every allegation in Paragraph 202 of the Complaint.

AFFIRMATIVE DEFENSES

City Defendants assert the following affirmative defenses against each and every claim and cause of action alleged by Plaintiffs. By asserting the following defenses, City Defendants do not assume the burden of proof on any essential element of Plaintiffs' claims.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

City Defendants incorporate by reference the answers and allegations stated above.

As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that the Complaint fails to allege facts sufficient to state a claim against the City Defendants.

Plaintiffs fail to state sufficient facts to state a claim for declaratory relief (Claim 1) because Section 17.122.130 of the St. Helena Municipal Code does apply to Pacaso. On information and belief, Pacaso markets properties in the City under the guise of "co-ownership" arrangements; in-fact, Pacaso is selling timeshares prohibited by Section 17.122.130 of the St. Helena Municipal Code. Plaintiffs are not entitled to declaratory relief because they were violating the City's municipal ordinance.

Plaintiffs fail to state sufficient facts to state a claim for due process violation (Claim 2) because Section 17.112.130 of the St. Helena Municipal Code is not unconstitutionally vague or ambiguous. On information and belief, Pacaso was provided fair notice of Section 17.112.130, its specific terms, and its application to partial or fractional ownership structures, such as those marketed by Pacaso in the City. On information and belief, Pacaso attempted to sell timeshares as fractional ownership/co-ownership properties in the City in violation of Section 17.122.130 of the St. Helena Municipal Code.

Plaintiffs fail to state a selective and discriminatory enforcement claim (Claim 3) because the City Defendants enforce all violations of Section 17.122.130 in the City in the same manner, and do not take a different approach with those related to Pacaso. The City Defendants allege

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that there was no selective enforcement of Section 17.112.130 of the St. Helena Municipal Code against Pacaso.

Plaintiffs fail to state a claim for Invalid Use of Municipal Authority (Claim 4) because Section 17.112.130 of the St. Helena Municipal Code does not exceed the City's scope of a municipal zoning authority and police power under Cal. Government Code § 65850(a). Section 17.112.130 of the St. Helena Municipal Code is not arbitrary or unreasonable as it has a substantial relation to the public health, safety, morals, and general welfare of the residents of the City. The City's enforcement of Section 17.112.130 against Pacaso is reasonable, warranted, and a valid land use ordinance under California Government Code § 65850(a).

Plaintiffs fail to state a claim for Intentional Interference with Prospective Economic Advantage (Claim 5) because Plaintiff's fifth claim arises from protected speech and is a strategic lawsuit against public participation ("SLAAP"). Plaintiffs' claim is based on privileged communications and are subject to a special motion to strike under California Code of Civil Procedure §425.16. A special motion to strike (anti-SLAAP motion) was filed by the City and City Attorney on May 17, 2021 [Doc. 18.]. City Defendants further allege, on information and belief, that Plaintiffs cannot demonstrate that they incurred an actual loss or disruption to a prospective economic advantage in which they had a sufficiently reasonable expectation of future business or income.

SECOND AFFIRMATIVE DEFENSE

(Governmental Immunity For Exercise of Discretion – California Government Code § 820.2)

City Defendants incorporate by reference the answers and allegations stated above.

As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint pursuant to California Government Code § 820.2. City Defendants allege that the decisions in the Complaint were an exercise of governmental discretion immune from challenge under California Government Code § 820.2, and as such, all of Plaintiffs' claims are barred.

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THIRD AFFIRMATIVE DEFENSE

(Governmental Immunity for Administrative Proceeding Within Scope of Employment – California Government Code § 821.6)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint pursuant to California Government Code § 821.6. City Defendants allege that the enforcement actions alleged in the Complaint were part of an administrative proceeding within the scope of employment, immune from challenge under California Government Code § 821.6, and, as such, all of Plaintiffs' claims are barred.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and distinct affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint by reason of the doctrine of estoppel. On information and belief, City Defendants allege Plaintiffs willfully violated Section 17.112.130 of the St. Helena Municipal Code by owning and/or marketing ownership of timeshares in the City.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint by reason of the doctrine of unclean hands. On information and belief, City Defendants allege Plaintiffs willfully violated federal, state and/or local laws in connection with their sale of fractional interests in real property, including, but not limited to, federal and state securities laws, state laws governing the marketing and sale of time shares, and Section 17.112.130 of the St. Helena Municipal Code.

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SIXTH AFFIRMATIVE DEFENSE

(Privileged Communications)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint because Plaintiffs' claims are based on privileged communications. City Defendants allege that the enforcement actions alleged in the Complaint were part of City employees official duties, and were conducted as part of an official proceeding concerning a matter of common interest. City Defendants further allege that Plaintiffs claims are based on privileged communications under California Civil Code § 47.

SEVENTH AFFIRMATIVE DEFENSE

(Illegality)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint by reason of the doctrine of illegality. On information and belief, City Defendants allege Plaintiffs willfully violated federal, state and/or local laws in connection with their sale of fractional interests in real property, including, but not limited to, federal and state securities laws, state laws governing the marketing and sale of time shares, and Section 17.112.130 of the St. Helena Municipal Code.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Remedies)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint because Plaintiffs failed to exhaust their administrative remedies before filing their Complaint. On information and belief, City Defendants allege that Plaintiffs did not participate in any administrative hearing prior to the filing of the Complaint.

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NINTH AFFIRMATIVE DEFENSE

(Failure to Comply With the California Tort Claims Act - California Government Code §§ 810, *et seq.*)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that no relief may be obtained under the Complaint because Plaintiffs failed to comply with the California Tort Claims Act (California Government Code §§ 810, *et seq.*). On information and belief, the City never received a government claim from Plaintiffs prior to the filing of the Complaint.

TENTH AFFIRMATIVE DEFENSE

(Statute of Limitations - Government Code § 65009)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to all claims in the Complaint, City Defendants allege that Plaintiffs' action is barred, in whole or in part, by the statute of limitations set forth in California Government Code § 65009. On information and belief, City Defendants allege that Plaintiffs' Complaint was not brought within ninety (90) days of the enactment of Sections 17.112.130 and 17.134.010-17.134.100 of the St. Helena Municipal Code.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. That the Complaint be dismissed with prejudice;

2. That Plaintiffs take nothing by this proceeding;

3. That City Defendants be awarded their costs of suit incurred in the defense of this action;

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4. That City Defendants be awarded their reasonable attorneys' fees incurred in the defense of this action as permitted by law; and

5. For such other and further relief as the Court deems just and proper.

Dated: June 1, 2021

BEST BEST & KRIEGER LLP

By: */s/ Damian N. Northcutt*
DAMIAN M. MOOS
DAMIAN A. NORTHCUTT
TYLER D. ANTHONY

Attorneys for Defendants
CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; and CITY ATTORNEY ETHAN WALSH

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC,

Petitioner,

v.

THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5,

Defendants.

Case No. 3:21-cv-02493-WHO

DEFENDANTS' SECOND AMENDED ANSWER TO COMPLAINT

BEST BEST & KRIEGER LLP

Defendants, CITY OF ST. HELENA ("City"), PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY, and CITY ATTORNEY ETHAN WALSH ("City Attorney") (collectively the "City Defendants") hereby answer Plaintiff PACASO INC. and PAC 6 CA 2021 LLC (collectively "Plaintiffs") Complaint for: (1) Declaratory Judgment; (2) Due Procession Violation; (3) Selective Enforcement; (4) Invalid Use of Municipal Authority; and (5) Intentional Interference with Prospective Economic Advantage ("Complaint"). City Defendants answers as follows: (hereafter "City" or "Defendant" hereby answers the allegations in the Complaint of PACASO INC. and PAC 6 CA 2021 LLC ("Plaintiffs"), as follows:

INTRODUCTION

1. In answering Paragraph 1 of the Complaint, City Defendants deny each and every allegation in Paragraph 1 of the Complaint.

2. In answering Paragraph 2 of the Complaint, City Defendants deny each and every allegation in Paragraph 2 of the Complaint.

3. In answering Paragraph 3 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 3 of the Complaint.

4. In answering Paragraph 4 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 4 of the Complaint.

5. In answering Paragraph 5 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 5 of the Complaint.

6. In answering Paragraph 6 of the Complaint, City Defendants deny each and every allegation in Paragraph 6 of the Complaint.

7. In answering Paragraph 7 of the Complaint, City Defendants deny each and every allegation in Paragraph 7 of the Complaint.

8. In answering Paragraph 8 of the Complaint, City Defendants admit that a Report to the City Council was prepared on July 14, 2020 and that local residents expressed concerns about a residential property, which one of the Plaintiffs owns. City Defendants deny each and every other allegation in Paragraph 8 of the Complaint.

9. In answering Paragraph 9 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 9 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

10. In answering Paragraph 10 of the Complaint, to the extent that Plaintiffs have accurately quoted portions of the July 2020 Report, City Defendants admit that the July 2020 Report reads as alleged. City Defendants deny each and every other allegation in Paragraph 10 of the Complaint, including, but not limited to, any conclusions, meaning or interpretation that Plaintiffs derive or seek to insert into the July 2020 Report.

11. In answering Paragraph 11 of the Complaint, to the extent that Plaintiffs have accurately quoted what was said during the July 2014 Meeting, City Defendants admit that such statements were made. City Defendants deny each and every other allegation in Paragraph 11 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 2014 Meeting.

12. In answering Paragraph 12 of the Complaint, City Defendants deny each and every allegation in Paragraph 12 of the Complaint.

13. In answering Paragraph 13 of the Complaint, City Defendants deny each and every allegation in Paragraph 13 of the Complaint.

14. In answering Paragraph 14 of the Complaint, City Defendants deny each and every allegation in Paragraph 14 of the Complaint.

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THE PARTIES

15. In answering Paragraph 15 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 15 of the Complaint.

16. In answering Paragraph 16 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 16 of the Complaint.

17. In answering Paragraph 17 of the Complaint, City Defendants admit the allegations asserted.

18. In answering Paragraph 18 of the Complaint, City Defendants admit the allegations asserted.

19. In answering Paragraph 19 of the Complaint, City Defendants deny that the City Attorney acts under the Mayor's direction. Except as denied, City Defendants admit the allegations asserted.

20. In answering Paragraph 20 of the Complaint, City Defendants admit the allegations asserted.

21. In answering Paragraph 21 of the Complaint, City Defendants admit that St. Helena City Council members include Vice Mayor Paul Dohring, Anna Chouteau, Lester Gardy, and Eric Hall. City Defendants admit that these members have collectively represented the City Council since November 2020. City Defendants deny that Vice Mayor Dohring has served on the City Council since 2018. City Defendants admit that Anna Chouteau has served on the City Council since 2018. City Defendants admit that the City Council is a legislative and policy-making body for the City of St. Helena. City Defendants admit that the City Council bears responsibility for setting City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 21 of the Complaint.

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JURISDICTION AND VENUE

22. In answering Paragraph 22 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 22 of the Complaint.

23. In answering Paragraph 23 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 23 of the Complaint.

GENERAL ALLEGATIONS

24. In answering Paragraph 24 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 24 of the Complaint.

25. In answering Paragraph 25 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 25 of the Complaint.

26. In answering Paragraph 26 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 26 of the Complaint.

27. In answering Paragraph 27 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 27 of the Complaint.

28. In answering Paragraph 28 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 28 of the Complaint.

29. In answering Paragraph 29 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 29 of the Complaint.

30. In answering Paragraph 30 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 30 of the Complaint.

31. In answering Paragraph 31 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 31 of the Complaint.

32. In answering Paragraph 32 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 32 of the Complaint.

33. In answering Paragraph 33 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 33 of the Complaint.

34. In answering Paragraph 34 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 34 of the Complaint.

35. In answering Paragraph 35 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 35 of the Complaint.

36. In answering Paragraph 36 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 36 of the Complaint.

37. In answering Paragraph 37 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 37 of the Complaint.

38. In answering Paragraph 38 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as

admitted, City Defendants deny each and every other allegation in Paragraph 38 of the Complaint.

39. In answering Paragraph 39 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 39 of the Complaint.

40. In answering Paragraph 40 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as such. Except as admitted, City Defendants deny each and every other allegation in Paragraph 40 of the Complaint.

41. In answering Paragraph 41 of the Complaint, City Defendants deny each and every allegation in Paragraph 41 of the Complaint.

42. In answering Paragraph 42 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 42 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

43. In answering Paragraph 43 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 43 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

44. In answering Paragraph 44 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 44 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

45. In answering Paragraph 45 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 45 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

46. In answering Paragraph 46 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 46 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

47. In answering Paragraph 47 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 47 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

48. In answering Paragraph 48 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 48 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

49. In answering Paragraph 49 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 49 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

50. In answering Paragraph 50 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 50 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

51. In answering Paragraph 51 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 51 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

52. In answering Paragraph 52 of the Complaint, to the extent Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the Report reads as quoted. Except as admitted, City Defendants deny each and every other allegation in Paragraph 52 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what is written in the July 2020 Report.

53. In answering Paragraph 53 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 53 of the Complaint.

54. In answering Paragraph 54 of the Complaint, City Defendants deny each and every allegation in Paragraph 54 of the Complaint.

55. In answering Paragraph 55 of the Complaint, City Defendants deny each and every allegation in Paragraph 55 of the Complaint.

56. In answering Paragraph 56 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 56 of the Complaint.

57. In answering Paragraph 57 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 57 of the Complaint.

58. In answering Paragraph 58 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 58 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

59. In answering Paragraph 59 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 59 of the Complaint.

60. In answering Paragraph 60 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 60 of the Complaint.

61. In answering Paragraph 61 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 61 of the Complaint.

62. In answering Paragraph 62 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 62 of the Complaint.

63. In answering Paragraph 63 of the Complaint, City Defendants deny each and every allegation in Paragraph 63 of the Complaint.

64. In answering Paragraph 64 of the Complaint, to the extent Plaintiffs have accurately quoted the ordinance, City Defendants admit that the ordinance reads as alleged. Except as admitted, City Defendants deny each and every other allegation in Paragraph 64 of the Complaint.

65. In answering Paragraph 65 of the Complaint, City Defendants deny each and every allegation in Paragraph 65 of the Complaint.

66. In answering Paragraph 66 of the Complaint, City Defendants deny each and every allegation in Paragraph 66 of the Complaint.

67. In answering Paragraph 67 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 67 of the Complaint.

68. In answering Paragraph 68 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 68 of the Complaint.

69. In answering Paragraph 69 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 69 of the Complaint.

70. In answering Paragraph 70 of the Complaint, City Defendants deny each and every allegation in Paragraph 70 of the Complaint.

71. In answering Paragraph 71 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 71 of the Complaint.

72. In answering Paragraph 72 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 72 of the Complaint.

73. In answering Paragraph 73 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 73 of the Complaint, including, but not limited to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

74. In answering Paragraph 74 of the Complaint, to the extent Plaintiffs have accurately quoted who said what during the July 14, 2020 Meeting, City Defendants admit that the person said the accurately quoted material during the Meeting. Except as admitted, City Defendants deny each and every other allegation in Paragraph 74 of the Complaint, including, but not limited

to, any conclusions, meaning or (mis)interpretation that Plaintiffs derive or seek to insert into what was said during the July 14, 2020 Meeting.

75. In answering Paragraph 75 of the Complaint, City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

76. In answering Paragraph 76 of the Complaint, City Defendants deny each and every allegation in Paragraph 76 of the Complaint.

77. In answering Paragraph 77 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 77 of the Complaint.

78. In answering Paragraph 78 of the Complaint, City Defendants deny each and every allegation in Paragraph 78 of the Complaint.

79. In answering Paragraph 79 of the Complaint, City Defendants admit the allegations asserted.

80. In answering Paragraph 80 of the Complaint, City Defendants admit that a response, dated May 19, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 80 of the Complaint.

81. In answering Paragraph 81 of the Complaint, City Defendants admit that Ms. DeRosa sent a written response, dated May 22, 2020, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 81 of the Complaint.

82. In answering Paragraph 82 of the Complaint, City Defendants deny each and every allegation in Paragraph 82 of the Complaint.

83. In answering Paragraph 83 of the Complaint, City Defendants admit that a response, dated May 26, 2020 was sent, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 83 of the Complaint.

84. In answering Paragraph 84 of the Complaint, City Defendants deny that the City represented that Pacaso's operations were permitted. City Defendants are without sufficient

knowledge or information to form a belief as to the truth of the remaining allegations contained therein, and, on that basis, deny each and every other allegation in Paragraph 84 of the Complaint.

85. In answering Paragraph 85 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 85 of the Complaint.

86. In answering Paragraph 86 of the Complaint, City Defendants deny each and every allegation in Paragraph 86 of the Complaint.

87. In answering Paragraph 87 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter, dated January 25, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 87 of the Complaint.

88. In answering Paragraph 88 of the Complaint, City Defendants deny each and every allegation in Paragraph 88 of the Complaint.

89. In answering Paragraph 89 of the Complaint, City Defendants deny each and every other allegation in Paragraph 89 of the Complaint.

90. In answering Paragraph 90 of the Complaint, City Defendants admit that Pacaso contacted Maya DeRosa. City Defendants assert that the other allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every other allegation in Paragraph 90 of the Complaint.

91. In answering Paragraph 91 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the February 9, 2021 meeting, then City Defendants admit that such person(s) said what they are alleged to have said during the meeting. Except as admitted, City Defendants deny each and every allegation in Paragraph 91 of the Complaint.

92. In answering Paragraph 92 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks

for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 92 of the Complaint.

93. In answering Paragraph 93 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to Pacaso on February 10, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 93 of the Complaint.

94. In answering Paragraph 94 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 94 of the Complaint.

95. In answering Paragraph 95 of the Complaint, City Defendants admit that City Attorney Walsh sent a letter to local real estate agents, dated March 16, 2021, and assert that the document speaks for itself. Except as admitted, City Defendants deny each and every other allegation in Paragraph 95 of the Complaint.

96. In answering Paragraph 96 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 96 of the Complaint.

97. In answering Paragraph 97 of the Complaint, City Defendants deny each and every allegation in Paragraph 97 of the Complaint.

98. In answering Paragraph 98 of the Complaint, City Defendants deny each and every allegation in Paragraph 98 of the Complaint.

99. In answering Paragraph 99 of the Complaint, City Defendants admit that Pacaso responded to City Attorney Walsh on March 17, 2021 and that Mr. Walsh did not respond to Pacaso's letter by April 1, 2021. City Defendants assert that the documents/meeting speak for themselves and that no response is otherwise required.

100. In answering Paragraph 100 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 100 of the Complaint.

101. In answering Paragraph 101 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 101 of the Complaint.

102. In answering Paragraph 102 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 102 of the Complaint.

103. In answering Paragraph 103 of the Complaint, City Defendants deny each and every allegation in Paragraph 103 of the Complaint.

104. In answering Paragraph 104 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 104 of the Complaint.

105. In answering Paragraph 105 of the Complaint, City Defendants deny each and every allegation in Paragraph 105 of the Complaint.

106. In answering Paragraph 106 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 106 of the Complaint.

107. In answering Paragraph 107 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 107 of the Complaint.

108. In answering Paragraph 108 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every

allegation in Paragraph 108 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

109. In answering Paragraph 109 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 109 of the Complaint.

110. In answering Paragraph 110 of the Complaint, City Defendants deny each and every allegation in Paragraph 110 of the Complaint.

111. In answering Paragraph 111 of the Complaint, City Defendants deny each and every allegation in Paragraph 111 of the Complaint.

112. In answering Paragraph 112 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 112 of the Complaint.

113. In answering Paragraph 113 of the Complaint, City Defendants deny each and every allegation in Paragraph 113 of the Complaint.

114. In answering Paragraph 114 of the Complaint, City Defendants assert that Government Code § 65850 speaks for itself, and that no response is otherwise required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 114 of the Complaint.

115. In answering Paragraph 115 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 115 of the Complaint.

116. In answering Paragraph 116 of the Complaint, City Defendants deny each and every allegation in Paragraph 116 of the Complaint.

117. In answering Paragraph 117 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged.

Except as admitted, City Defendants deny each and every allegation in Paragraph 117 of the Complaint.

118. In answering Paragraph 118 of the Complaint, City Defendants deny each and every allegation in Paragraph 118 of the Complaint.

119. In answering Paragraph 119 of the Complaint, to the extent that Plaintiffs have accurately quoted what Ms. Ueda said during the July 14, 2020 meeting, City Defendants admit she said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 119 of the Complaint.

120. In answering Paragraph 120 of the Complaint, City Defendants deny each and every allegation in Paragraph 120 of the Complaint.

121. In answering Paragraph 121 of the Complaint, City Defendants deny each and every allegation in Paragraph 121 of the Complaint.

122. In answering Paragraph 122 of the Complaint, City Defendants assert that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 122 of the Complaint.

123. In answering Paragraph 123 of the Complaint, to the extent that Plaintiffs have accurately quoted the May 22, 2020 letter and July 2020 Report, City Defendants admit that the letter and/or report read as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 123 of the Complaint.

124. In answering Paragraph 124 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 124 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

125. In answering Paragraph 125 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every

allegation in Paragraph 125 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

126. In answering Paragraph 126 of the Complaint, City Defendants deny each and every allegation in Paragraph 126 of the Complaint.

127. In answering Paragraph 127 of the Complaint, City Defendants deny each and every allegation in Paragraph 127 of the Complaint.

128. In answering Paragraph 128 of the Complaint, City Defendants deny the allegations asserted.

129. In answering Paragraph 129 of the Complaint, to the extent that Plaintiffs have accurately quoted the July 2020 Report, City Defendants admit that the report reads as alleged. Except as admitted, City Defendants deny each and every allegation in Paragraph 129 of the Complaint.

130. In answering Paragraph 130 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 130 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

131. In answering Paragraph 131 of the Complaint, to the extent that Plaintiffs have accurately quoted who said what during the July 14, 2020 meeting, City Defendants admit those persons said what Plaintiffs allege. Except as admitted, City Defendants deny each and every allegation in Paragraph 131 of the Complaint, including any attempts by Plaintiffs to interpret, distort, misconstrue or take out of context what was said during the July 14, 2020 meeting.

132. In answering Paragraph 132 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 132 of the Complaint.

133. In answering Paragraph 133 of the Complaint, City Defendants deny each and every allegation in Paragraph 133 of the Complaint.

134. In answering Paragraph 134 of the Complaint, City Defendants deny each and every allegation in Paragraph 134 of the Complaint.

135. In answering Paragraph 135 of the Complaint, City Defendants deny each and every allegation in Paragraph 135 of the Complaint.

136. In answering Paragraph 136 of the Complaint, City Defendants admit that the City adopted a General Plan, and assert that the document speaks for itself. To the extent a further response is required, City Defendants deny each and every allegation in Paragraph 136 of the Complaint.

137. In answering Paragraph 137 of the Complaint, City Defendants deny each and every allegation in Paragraph 137 of the Complaint.

138. In answering Paragraph 138 of the Complaint, City Defendants deny each and every allegation in Paragraph 138 of the Complaint.

139. In answering Paragraph 139 of the Complaint, City Defendants deny each and every allegation in Paragraph 139 of the Complaint.

CLAIM 1

DECLARATORY RELIEF: INAPPLICABILITY OF SECTION 17.112.130

(AGAINST THE CITY)

140. The City Defendants reasserts the answers to Paragraphs 1-139.

141. In answering Paragraph 141 of the Complaint, the City Defendants asserts that the allegations contain Plaintiffs' legal theories and/or legal conclusion to which no response is required. To the extent a response is required, City Defendants deny each and every allegation in Paragraph 141 of the Complaint.

142. In answering Paragraph 142 of the Complaint, the City Defendants admit that Pacaso sent a letter dated March 17, 2021, requested a response by April 1, 2021, and that the City Defendants did not respond before April 1, 2021. Except as admitted, City Defendants deny each and every allegation in Paragraph 142 of the Complaint.

143. In answering Paragraph 143 of the Complaint, City Defendants deny each and every allegation in Paragraph 143 of the Complaint.

144. In answering Paragraph 144 of the Complaint, City Defendants deny each and every allegation in Paragraph 144 of the Complaint.

145. In answering Paragraph 145 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 145 of the Complaint.

146. In answering Paragraph 146 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 146 of the Complaint.

147. In answering Paragraph 147 of the Complaint, the City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 147 of the Complaint.

CLAIM 2

DUE PROCESS VIOLATION: DEFENDANTS' APPLICATION OF SECTION 17.112.130 TO PACASO IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

(AGAINST ALL DEFENDANTS)

148. City Defendants reassert the answers to Paragraphs 1-147.

149. In answering Paragraph 149 of the Complaint, City Defendants deny each and every allegation in Paragraph 149 of the Complaint.

150. In answering Paragraph 150 of the Complaint, City Defendants deny each and every allegation in Paragraph 150 of the Complaint.

151. In answering Paragraph 151 of the Complaint, City Defendants deny each and every allegation in Paragraph 151 of the Complaint.

152. In answering Paragraph 152 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

153. In answering Paragraph 153 of the Complaint, City Defendants deny each and every allegation in Paragraph 152 of the Complaint.

154. In answering Paragraph 154 of the Complaint, City Defendants deny each and every allegation in Paragraph 154 of the Complaint.

155. In answering Paragraph 155 of the Complaint, City Defendants deny each and every allegation in Paragraph 155 of the Complaint.

156. In answering Paragraph 156 of the Complaint, City Defendants deny each and every allegation in Paragraph 156 of the Complaint.

157. In answering Paragraph 157 of the Complaint, City Defendants deny each and every allegation in Paragraph 157 of the Complaint.

158. In answering Paragraph 158 of the Complaint, City Defendants deny each and every allegation in Paragraph 158 of the Complaint.

159. In answering Paragraph 159 of the Complaint, City Defendants deny each and every allegation in Paragraph 159 of the Complaint.

160. In answering Paragraph 160 of the Complaint, City Defendants deny each and every allegation in Paragraph 160 of the Complaint.

161. In answering Paragraph 161 of the Complaint, City Defendants deny each and every allegation in Paragraph 161 of the Complaint.

162. In answering Paragraph 162 of the Complaint, City Defendants deny each and every allegation in Paragraph 162 of the Complaint.

CLAIM 3

SELECTIVE AND DISCRIMINATORY ENFORCEMENT

(AGAINST ALL DEFENDANTS)

163. City Defendants reassert the answers to Paragraphs 1-162.

164. In answering Paragraph 164 of the Complaint, City Defendants deny each and every allegation in Paragraph 164 of the Complaint.

165. In answering Paragraph 165 of the Complaint, City Defendants deny each and every allegation in Paragraph 165 of the Complaint.

166. In answering Paragraph 166 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 166 of the Complaint.

167. In answering Paragraph 167 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 167 of the Complaint.

168. In answering Paragraph 168 of the Complaint, City Defendants deny each and every allegation in Paragraph 168 of the Complaint.

169. In answering Paragraph 169 of the Complaint, City Defendants deny each and every allegation in Paragraph 169 of the Complaint.

170. In answering Paragraph 170 of the Complaint, City Defendants deny each and every allegation in Paragraph 170 of the Complaint.

171. In answering Paragraph 171 of the Complaint, City Defendants deny each and every allegation in Paragraph 171 of the Complaint.

172. In answering Paragraph 172 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 172 of the Complaint.

173. In answering Paragraph 173 of the Complaint, City Defendants deny each and every allegation in Paragraph 173 of the Complaint.

174. In answering Paragraph 174 of the Complaint, City Defendants deny each and every allegation in Paragraph 174 of the Complaint.

175. In answering Paragraph 175 of the Complaint, City Defendants deny each and every allegation in Paragraph 175 of the Complaint.

176. In answering Paragraph 176 of the Complaint, City Defendants deny each and every allegation in Paragraph 176 of the Complaint.

177. In answering Paragraph 177 of the Complaint, City Defendants deny each and every allegation in Paragraph 177 of the Complaint.

178. In answering Paragraph 178 of the Complaint, City Defendants deny each and every allegation in Paragraph 178 of the Complaint.

179. In answering Paragraph 179 of the Complaint, City Defendants deny each and every allegation in Paragraph 179 of the Complaint.

180. In answering Paragraph 180 of the Complaint, City Defendants deny each and every allegation in Paragraph 180 of the Complaint.

181. In answering Paragraph 181 of the Complaint, City Defendants deny each and every allegation in Paragraph 181 of the Complaint.

182. In answering Paragraph 182 of the Complaint, City Defendants deny each and every allegation in Paragraph 182 of the Complaint.

CLAIM 4

DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY

(AGAINST THE CITY)

183. The City reasserts the answers to Paragraphs 1-182.

184. In answering Paragraph 184 of the Complaint, City Defendants deny each and every allegation in Paragraph 184 of the Complaint.

185. In answering Paragraph 185 of the Complaint, City Defendants deny each and every allegation in Paragraph 185 of the Complaint.

186. In answering Paragraph 186 of the Complaint, City Defendants deny each and every allegation in Paragraph 186 of the Complaint.

187. In answering Paragraph 187 of the Complaint, City Defendants deny each and every allegation in Paragraph 187 of the Complaint.

188. In answering Paragraph 188 of the Complaint, City Defendants deny each and every allegation in Paragraph 188 of the Complaint.

189. In answering Paragraph 189 of the Complaint, City Defendants deny each and every allegation in Paragraph 189 of the Complaint.

190. In answering Paragraph 190 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 190 of the Complaint.

191. In answering Paragraph 191 of the Complaint, City Defendants deny each and every allegation in Paragraph 191 of the Complaint.

CLAIM 5

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)

192. The City Defendants reassert the answers to Paragraphs 1-191.

193. In answering Paragraph 193 of the Complaint, City Defendants deny each and every allegation in Paragraph 193 of the Complaint.

194. In answering Paragraph 194 of the Complaint, the City and City Attorney admit that City Attorney Walsh sent a letter in March 2021 to real-estate offices in the City. Except as admitted, City Defendants deny each and every other allegation in Paragraph 194 of the Complaint.

195. In answering Paragraph 195 of the Complaint, City Defendants admit that Ms. DeRosa sent a letter on May 15, 2020 notifying a homeowner that, if a house was used as a timeshare in violation of the Municipal Code, then that would be a violation of the Municipal Code.

196. In answering Paragraph 196 of the Complaint, City Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, on that basis, deny each and every allegation in Paragraph 196 of the Complaint.

197. In answering Paragraph 197 of the Complaint, Defendants deny each and every allegation in Paragraph 197 of the Complaint.

198. In answering Paragraph 198 of the Complaint, City Defendants deny each and every allegation in Paragraph 198 of the Complaint.

199. In answering Paragraph 199 of the Complaint, City Defendants deny each and every allegation in Paragraph 199 of the Complaint.

200. In answering Paragraph 200 of the Complaint, City Defendants deny each and every allegation in Paragraph 200 of the Complaint.

201. In answering Paragraph 201 of the Complaint, City Defendants deny each and every allegation in Paragraph 201 of the Complaint.

202. In answering Paragraph 202 of the Complaint, City Defendants deny each and every allegation in Paragraph 202 of the Complaint.

AFFIRMATIVE DEFENSES

City Defendants assert the following affirmative defenses against each and every claim and cause of action alleged by Plaintiffs. By asserting the following defenses, City Defendants do not assume the burden of proof on any essential element of Plaintiffs' claims.

FIRST AFFIRMATIVE DEFENSE

(Unclean Hands/In Pari Delicto)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense, City Defendants allege that no relief may be obtained under one or more Claims in the Complaint by reason of the doctrine of unclean hands/in pari delicto. On information and belief, City Defendants allege Plaintiffs willfully violated federal, state and/or local laws in connection with their sale of fractional interests in real property, including, but not limited to, federal and state securities laws (The Securities Act of 1933, the Securities Exchange Act of 1934, and the California Corporation Securities Law of 1968), and state laws governing the marketing and sale of time shares (The Vacation Ownership and Time-Share Act of 2004). In the process of violating the above-referenced laws, on information and belief, Plaintiffs have harmed and/or prejudiced the City as the City not been able to enforce its zoning ordinances prohibiting time shares and short-term rentals because Plaintiffs have avoided the "time share" label by violating federal and state laws that define their business as a time share and/or security. Because of the illegal, fraudulent, and inequitable conduct of the Plaintiffs, on information and belief, Plaintiffs are in pari delicto, and cannot obtain relief on one or more of their claims.

SECOND AFFIRMATIVE DEFENSE

(Privileged Communications)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense, City Defendants allege that no relief may be obtained under one or more Claims in the Complaint because Plaintiffs' claims are based on privileged communications. City Defendants allege that the enforcement actions alleged in the Complaint,

including, but not limited to, letters sent on May 15, 2020 (¶79 of the Complaint), May 22, 2020 (¶82 of the Complaint), January 25, 2021 (¶87 of the Complaint), February 10, 2021 (¶92 of the Complaint) , March 16, 2021 (¶94 of the Complaint), and others (¶195 of the Complaint), were acts in furtherance of City employees' exercise of official duties, were conducted in connection with an official proceeding (including, but not limited to, a potential enforcement action), and/or concerned a matter of common interest. City Defendants allege that Plaintiffs claims are based on privileged communications under California Civil Code § 47.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations - Government Code § 65009)

City Defendants incorporate by reference the answers and allegations stated above. As a separate and affirmative defense to one or more claims made in the Complaint, City Defendants allege that Plaintiffs' action is barred, in whole or in part, by the statute of limitations set forth in California Government Code § 65009. On information and belief, City Defendants allege that Plaintiffs' Complaint was not brought within ninety (90) days of the enactment of Sections 17.112.130 and 17.134.010-17.134.100 of the St. Helena Municipal Code.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. That the Complaint be dismissed with prejudice;

2. That Plaintiffs take nothing by this proceeding;

3. That City Defendants be awarded their costs of suit incurred in the defense of this action;

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BEST BEST & KRIEGER LLP

4. That City Defendants be awarded their reasonable attorneys' fees incurred in the defense of this action as permitted by law; and

5. For such other and further relief as the Court deems just and proper.

Dated: June 17, 2021

BEST BEST & KRIEGER LLP

By: */s/ Damian N. Northcutt*
DAMIAN M. MOOS
DAMIAN A. NORTHCUTT
TYLER D. ANTHONY

Attorneys for Defendants
CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; and CITY ATTORNEY ETHAN WALSH

BEST BEST & KRIEGER LLP

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC., et al.,

Plaintiffs,

v.

CITY OF ST. HELENA, et al.,

Defendants.

Case No. 21-cv-02493-WHO

ORDER GRANTING ANTI-SLAPP MOTION TO STRIKE FIFTH CAUSE OF ACTION

Re: Dkt. No. 18

Plaintiffs Pacaso Inc. and PAC 6 CA 2021 LLC (collectively "Pacaso"), who claim that they have created a new and more accessible pathway for second home ownership by allowing co-owners to buy partial interests in real property, are suing the City of St. Helena, City Attorney Ethan Walsh, Mayor Geoff Ellsworth, and Planning and Building Director Maya DeRosa (collectively "defendants") for blocking it and its homeowners from enjoying home ownership in St. Helena and attempting to enforce a zoning ordinance that prohibits the creation of a timeshare project. Defendants move to strike Pacaso's fifth cause of action for intentional interference with prospective economic advantage, which is based on a March 16, 2021 letter that City Attorney Walsh sent to all real estate agents in St. Helena concerning the City's timeshare and short-term rental ordinances and the potential violation of those ordinances by persons selling fractional interests in residential properties.

Defendants have met their burden under step one of the analysis under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, by showing that the statements in the letter were made in connection with an issue under consideration by a legislative body and are protected under section 425.16(e)(2) of the anti-SLAPP statute. Under step two, Pacaso cannot show a reasonable probability that it will prevail on its claim because defendants have demonstrated that

Walsh sent the letter in the course of discharging his duties to evaluate and prevent violations of the City's ordinances, an act that is privileged under California Civil Code section 47(a)'s official duty privilege. For these reasons, the motion to strike the fifth cause of action is GRANTED. Pursuant to section 425.16(c) of the anti-SLAPP statute, defendants are entitled to attorney's fees in the amount of $20,126.50.

BACKGROUND

Pacaso (formerly known as Niner Homes) launched in 2020, seeking to "open the second home market, which has traditionally only been accessible to affluent and predominately white buyers," by simplifying and streamlining the co-ownership process that makes second home ownership possible at a more accessible price point. Complaint ("Compl.") [Dkt. No. 1] ¶¶ 15, 24, 26, 30. Pacaso creates a property-specific LLC for each home, which owns deeded title to the real property and then "organizes and vets a maximum of eight co-owners, who hold co-ownership interests in the LLC and co-own the home in increments ranging from 12.5% to 50%." *Id.* ¶ 27. "At closing, the co-owners enjoy 100% ownership in the property, and Pacaso's only role remains to serve, at the discretion of the homeowners, as program manager overseeing the LLC and employing local businesses to care for the home." *Id.* ¶ 28. Pacaso homeowners can "sell their interest at any point after the first year of ownership by listing the property on the Multiple Listing Service ('MLS') with a local real estate agent, and they are strictly prohibited from renting out the property at any point to anyone." *Id.* ¶ 68.

Pacaso currently owns and/or manages five single-family homes in the City of St. Helena in Napa County. *Id.* ¶¶ 17. 25. It contends that Pacaso homeowners "are part and parcel of the underlying economic ecosystem of St. Helena" unlike "absentee second homeowners" because "Pacaso homeowners use and occupy their home year-round," and "Pacaso itself employs between 8-10 local businesses per property, including real estate agents, property managers, landscapers, pool cleaners, home cleaners, laundry services, handymen, local artists, and more." *Id.* ¶ 5.

The City first communicated with Pacaso in May 2020. *Id.* ¶ 79. On May 15, 2020, Maya DeRosa, the City's Planning and Building Director, sent a "Notice of Potential Violation" to a Pacaso homeowner, Jay Jeffers, giving notice that if the home located at 1005 Valley View Street

was "used as a timeshare or short term rental," such use would be impermissible pursuant to the City Municipal Code. *Id.*; Declaration of Maya DeRosa in Support of Defendants' Motion to Strike ("DeRosa Decl.") [Dkt. No. 18-4], Ex. A (May 15, 2020 Letter). On May 19, 2020, Austin Allison (of then-named Niner Homes) responded on behalf of the homeowner to explain "why Pacaso's operations do not violate such ordinances and that the homeowner's use of his property was entirely consistent with such laws." Compl. ¶ 80; DeRosa Decl., Ex. B (May 19, 2020 Response). Allison clarified that "Mr. Jeffers actually owns two homes in Saint Helena," and that he is "selling a portion of his home on Valley View because he no longer desires to own 100% of the home[.]" May 19, 2020 Response at 1.

De Rosa replied on May 22, 2020, saying that she appreciated Allison's statement "that your company, Niner Homes, only serves owner-occupants and that you 'explicitly prohibit short term rentals and time-sharing uses' that the City's Municipal Code seeks to prevent." DeRosa Decl. Ex. C (May 22, 2020 Letter); *see* Compl. ¶¶ 81–82. DeRosa explained, "The City's concerns regarding both properties stem from apparent unpermitted short-term rentals of Mr. Jeffers' properties in the past, which is in part the reason for the City's initial notice of potential violation." May 22, 2020 Letter at 1. Because the May 22, 2020 letter "dropped any reference to a violation of the City's time-share ordinance," Pacaso alleges that it interpreted it as a "presumed green-light to move forward with its operations from this standpoint." Compl. ¶ 82.

On July 14, 2020, reacting to "concerns" from neighbors about a listing for a Pacaso home, then-acting City Attorney Karen Ueda prepared a report to the City Council "regarding timeshare uses and fractional ownership of residence in the City." *Id.* ¶ 8 and Ex. A ("July 2020 Report"). The City of St. Helena has a timeshare ordinance, codified in Section 17.112.130, which states: "The creation of a time-share project as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house shall be prohibited within the city." *Id.* ¶ 37; *see* Declaration of Ethan Walsh in Support of Defendants' Motion to Strike ("Walsh Decl.") [Dkt. No. 18-2], Ex. B (copies of the City's local ordinances pertaining to timeshares and short-term rentals).

The July 2020 Report found that timeshares are "somewhat similar to short-term rentals and fractional ownership hotels but differ from both in important ways." July 2020 Report at 324.

It addressed the "challenges and limitations to regulating partial ownership in single-family residences," finding that the "most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by law zoning regulations must focus on the use of land," and "may not target individuals." *Id.* at 325. That is, "zoning based solely on ownership, as opposed to the use of land, is impermissible." *Id.* at 326. The July 2020 Report concluded with the following "recommended action":

> Receive this report, discuss, and provide direction to staff if desired. City staff is seeking guidance and clarification from the City Council concerning the specific problem(s) a Zoning Code amendment could help resolve, but with the limitations noted above for regulating timeshares and partial ownership.

Id.

Ueda presented her July 2020 Report findings to the City Council, reiterating that "whether a residence is owned by a non-permanent city resident, for example, who may use that residence as a second home, isn't an issue that can be regulated by the zoning code. And so, *we can't regulate based on the identity of the owner or of a tenant*." Compl. ¶ 10 (citing Recording of July 14, 2020 City Council Meeting ("July 2020 Meeting") at 3:20:58 –3:21:13, available at https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true&timestamp=11860).[1] Pacaso quotes from the July 2020 Meeting, describing it as an "[e]xtensive discussion . . . about the limitations and impropriety of the City attempting to regulate partial ownership of single-family homes[.]" *Id.* ¶ 11. Despite those findings, Pacaso alleges, "[d]efendants decided to change course in early 2021, threatening that unless Pacaso immediately ceased its efforts to market a home in St. Helena to prospective home buyers, it would contact all real estate agents in the area to 'educate' them on the 'illegality' of Pacaso's ownership model." *Id.* ¶ 12.

[1] Pacaso's counsel submits a transcript of the July 2020 City Council meeting prepared by its legal staff and offers to submit a certified transcribed copy if required. *See* Declaration of Ashley Phillips in Support of Plaintiffs' Opposition ("Phillips Decl.") [Dkt. No. 22], Ex. 3. Defendants objects to the transcript for lack of relevance (FRE 401–403), lack of personal knowledge/foundation (FRE 602), impermissible hearsay (FRE 801–802), and under the best evidence rule (FRE 1002). *See* Evidentiary Objections to the Declaration of Ashley Phillips ("Evidentiary Objections") [Dkt. No. 23-2] 3. Because Pacaso has submitted the URL link to the July 14, 2021 City Council meeting, I need not rely on the transcript that it prepared for purposes of resolving this motion.

On January 25, 2021, a real estate agent for Pacaso received a letter from DeRosa regarding four Pacaso property listings. *Id.* ¶ 87. DeRosa's letter stated: "The City is proactively sending this letter to communicate that there are local regulations in place pertaining to timeshares and short term rentals and we request that this letter be forwarded to both the buyer and the buyer's agent to ensure that no zoning violations occur following these transactions." DeRosa Decl., Ex. E (January 2021 Letter at 1). Pacaso responded on January 26, 2021 to confirm that "Pacaso is not a time-share, nor does the service allow time sharing use, and that Pacaso prohibits short-term rentals." Compl. ¶ 90; *see* DeRosa Decl., Ex. G (January 2021 Response).

City Attorney Walsh, who replaced Ueda, raised the issue about the timeshare ordinance at the City Council's February 9, 2021 meeting. Compl. ¶ 91. Pacaso alleges that Walsh's update to the City Council "confirms that he and the City had not reached a different conclusion regarding the time-share ordinance since the conclusion reached in its July 2020 Report," and that instead he "conceded that he and the City were still 'looking at' and 'delving further into that issue' (the applicability of the zoning ordinance), confirming that they had not yet determined what to do regarding co-ownership structures like Pacaso's and whether such structures could be regulated under the time-share ordinance." *Id.* In Pacaso's view, Walsh's statement that he and the City were "looking into both what we can do under our current regulations and potentially looking at some changes to the existing regulations" confirms the need to amend the City's timeshare ordinance in order for it to apply to co-ownership structures like Pacaso.[2]

The next day, on February 10, 2021, Walsh sent a letter to Pacaso stating that the City "disagrees" that "Pacaso is not operating a timeshare in St. Helena." Compl. ¶ 92. In that letter, Walsh stated: "Based on the evidence that the City has received of the nature of Pacaso's and its buyers' intended use of residential properties in St. Helena, Pacaso appears to be operating,

[2] Pacaso's counsel submits a transcript of the February 9, 2021 City Council meeting prepared by its legal staff and offers to submit a certified transcribed copy if required. *See* Phillips Decl., Ex. 4; February 9, 2021 City Council Meeting at 14:11–14:42 at https://www.youtube.com/watch?v=XUTsUdZ5wA8&t=759s&ab_channel=CityofSt.Helena. Defendants object on the same grounds noted above. *See* Evidentiary Objections at 4. Because Pacaso has submitted the URL link to the February 9, 2021 City Council meeting, I need not rely on the transcript that it prepared for purposes of resolving this motion.

facilitating, and selling timeshares under state law and the City's code. (*See* St. Helena Municipal Code § 17.112.130.) Simply calling them co-ownership arrangements does not change that fact." Walsh Decl., Ex. D (February 2021 Letter at 1). Pacaso contends that Walsh did not provide or describe the "evidence" and instead improperly placed the burden on Pacaso, inviting it to convince the City that it was not subject to the time-share ordinance: "If Pacaso convinces the City that Pacaso's—and its buyers'—intended use of residential property in the City does not constitute a timeshare under state law and regulations or the City's code, the City will not apply the timeshare-prohibition." Compl. ¶ 93 (quoting February 2021 Letter at 1). Walsh gave Pacaso until February 19, 2021 to respond, stating: "Otherwise, the City will be forced to consider appropriate legal action to enforce its restrictions on timeshares, and also consider appropriate action to educate brokers and the public about the illegal nature of Pacaso's timeshares." February 2021 Letter at 2.

With no response from Pacaso[3], on March 16, 2021, Walsh sent a letter to all listing agents and brokers in the City of St. Helena, stating:

> The City is proactively sending this letter to all real-estate offices in the City to provide notice of local regulations pertaining to timeshares and short-term rentals that affect all residential properties in St. Helena, including several properties that are currently listed for sale. The City's regulations encourage the *long-term* residential character of the City's residential neighborhoods, which is vital to the welfare of the community.
> . . .
> The objective of this letter then is to ensure that no zoning violation occurs as a result of a transaction in which you or your clients might be involved.

Walsh Decl., Ex. E (March 2021 Letter at 1) (internal quotation marks omitted) (emphasis in original). The letter goes on to summarize the City's timeshare and short-term rental regulations, adding that the timeshare ordinances applies "to a timeshare whether the use is called a

[3] Pacaso contends that defendants incorrectly state that Pacaso failed to respond. Pacaso submits an email that their legal counsel sent to Walsh on February 17, 2021 stating that it would respond in due course. The email reads: "We are in receipt of your letter dated February 10, 202[1]. We have retained outside counsel who will response to the substance of the letter in two weeks." Phillips Decl., Ex. 5 at 1. Pacaso responded to Walsh on March 17, 2021, after Walsh's March 16, 2021 letter to the City's real estate agents. *See* Walsh Decl., Ex. F (March 17, 2021 Pacaso Letter).

'timeshare,' 'fractional-ownership,' 'co-ownership' 'vacation club,' or anything else." *Id.* at 2.

Pacaso contends that this "threatening" letter "chill[ed], under threat of fines and other penalties, any desire of the agents' part to be involved in a sale of ownership interests in Pacaso properties in St. Helena." Compl. ¶ 94. Although the March 2021 Letter did not mention Pacaso, Pacaso contends that Walsh "plainly link[ed] his notice of purported zoning violations to listings for interests in Pacaso homes." *Id.* ¶ 95. It describes the March 2021 Letter as "the manifestation of" Walsh's threat "to educate brokers and the public about the illegal nature of Pacaso's timeshare" from his February 2021 Letter to Pacaso. *Id.* ¶ 96.

Pacaso alleges that Walsh was not acting within the scope of his official discretion when he sent the February 2021 Letter or the March 2021 Letter and that Mayor Ellsworth had the power to prevent and should have prevented Walsh from sending the two letters "but failed to intervene in order to stop the impermissible application of the time-share ordinance against Pacaso." *Id.* ¶¶ 97–98. Pacaso claims that the March 2021 letter to the real estate agents, brokers, and potential buyers in St. Helena "have caused [it] substantial harm" because defendants' "misinformation campaign undermines Pacaso's existing relationships with real estate agents working on its behalf, interferes with Pacaso's business relationships and arrangements, tarnishes Pacaso's reputation and goodwill in the community, and impairs Pacaso from future development (including future business partners and key stakeholders in the St. Helena community) by calling into question the legality of Pacaso's operations." *Id.* ¶ 100. "These threats have scared real estate agents and chilled their efforts to buy and sell ownership interests in Pacaso properties. Likewise, Defendants' threats have deterred prospective buyers from purchasing Pacaso properties." *Id.* ¶ 101.

Pacaso asserts the fifth cause of action for intentional interference with prospective economic advantage against the City and Walsh based on the March 2021 Letter, alleging that "[t]he City's and its employees' efforts to discourage real estate agents, brokers and potential home buyers from working or transacting with Pacaso constitutes a clear, intentional interference with Pacaso's business relationships with St. Helena residents, real estate agents and brokers in St. Helena." Compl. ¶ 193. Pacaso's four other claims, asserted against either the City or all

defendants, seek declaratory judgment that Section 17.112.130, the City's timeshare ordinance, does not apply to Pacaso; that, as applied to Pacaso, is unconstitutionally vague and ambiguous and exceeds the City's zoning authority and police power; and for violation of Pacaso's due process rights based on selective and arbitrary enforcement. *Id.* ¶¶ 140–91.

LEGAL STANDARD

California Code of Civil Procedure 425.16 "was enacted to allow early dismissal of meritless first amendment cases aimed at chilling expression through costly, time-consuming litigation." *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 839 (9th Cir. 2001). These lawsuits are also known as "Strategic Lawsuits Against Public Participation," or "SLAPPs." *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th Cir. 2013). Under section 425.16 a party may file an "anti-SLAPP motion" to strike "a cause of action based on an act in furtherance of [the] right to petition or free speech." *Metabolife*, 264 F.3d at 840 (internal quotations omitted).

In ruling on an anti-SLAPP motion, a court engages in a two-step process. *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal.4th 53, 67 (2002). Under step one, the court assesses whether the moving party has made "a prima facie showing that the lawsuit arises from an act in furtherance of its First Amendment right to free speech." *Nat'l Abortion Federation v. Center for Medical Progress*, Case No. 15-cv-03522-WHO, 2015 WL 5071977, at *3 (N.D. Cal. Aug. 27, 2015).

> At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached.

Baral v. Schnitt, 1 Cal. 5th 376, 398 (2016).

If the moving party can establish step one, the burden shifts to the non-moving party which must then show a reasonable probability that it will prevail on its claim. *Makaeff*, 715 F.3d at 261. "For a plaintiff to establish a probability of prevailing on a claim, he must satisfy a standard comparable to that used on a motion for judgment as a matter of law." *Price v. Stossel*, 620 F.3d 992, 1000 (9th Cir. 2010). This standard requires that a claim be dismissed if the plaintiff presents

an insufficient legal basis, or if no reasonable jury would find in its favor. *Metabolife*, 264 F.3d at 840; *see also Price*, 620 F.3d at 1000 (an anti-SLAPP motion will be granted if the plaintiff "presents an insufficient legal basis for the claims or when no evidence of sufficient substantiality exists to support a judgment for the plaintiff") (internal quotations omitted).

DISCUSSION

I. STEP ONE: PROTECTED ACTIVITY

A defendant satisfies the first step of the analysis by demonstrating that the "conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e) [of section 425.16] . . . and that the plaintiff's claims in fact arise from that conduct." *Rand Res., LLC v. City of Carson*, 6 Cal.5th 610, 620 (2019) (internal quotation marks and citations omitted). The four categories in subdivision (e) describe conduct "in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue." Cal. Civ. Proc. Code § 425.16(e). Defendants contend that Pacaso's fifth cause of action arises from two of those categories: communications "made in connection with an issue under consideration or review by a legislative body, executive, or judicial body, or any other official proceeding authorized by law" (*Id.* § 425.16(e)(2)) and "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (*Id.* § 425.16(e)(4)).

Defendants rely on *City of Costa Mesa v. D'Alessio Invs., LLC*, 214 Cal. App. 4th 358 (2013). and *Maranatha Corr., LLC v. Dep't of Corr. & Rehab.*, 158 Cal. App. 4th 1075 (2008) for their subsection (e)(2) argument. An analysis of whether a cause of action arises from communication protected by subsection (e)(2) may "be broken down into three components: (a) was there an 'issue under consideration or review by a legislative, executive, or judicial body'; (b) were the [defendants'] statements made 'in connection with' this issue; and (c) [does] the cause[] of action pleaded by [Pacaso] 'aris[e] from' the [defendants'] statements?" *Costa Mesa*, 214 Cal. App. 4th at 372–73 (quoting Cal. Civ. Proc. Code § 425.16(e)(2)).

In *Costa Mesa*, a city brought claims against a commercial landlord to abate a public

nuisance and refused to issue him any new business licenses until the landlord complied. *Id.* at 365. The landlord filed a cross-complaint alleging that city employees slandered him and interfered with his business by making negative statements about him to prospective tenants and contractors. *Id.* at 366. The court found that the landlord's causes of action arose from "oral statements 'made in connection with an issue under consideration or review by a[n] . . . executive . . . body' under section 425.16, subdivision (e)(2)" and therefore was a protected activity. *Id.* at 372 (quoting Cal. Civ. Proc. Code § 425.16(e)(2)).

In *Maranatha*, a private firm sued the California Department of Corrections and Rehabilitation ("CDCR"), a state executive branch department, based on alleged defamatory statements made by the CDCR in a publicized letter (and subsequent oral comments made by an employee) explaining the reasons it was terminating its contract with the firm (*i.e.*, the firm misappropriated funds). 158 Cal. App. 4th at 1080–82. Under the first step of the anti-SLAPP analysis, the court found that "Maranatha's right to retain revenue from inmate telephone calls at the Victor Valley MCCF was undoubtedly an 'issue under consideration'" by the CDCR. *Id.* at 1085. "Indeed, the CDCR and Maranatha argued over the issue for years and their disagreement was referenced in an amendment to the contract. The conflict finally came to a head when Woodford terminated the contract on the ground that Maranatha had failed to account for and wrongfully withheld the ITRF." *Id.* The court rejected the private firm's argument that a matter is "under consideration or review" only when formal or official proceedings have initiated. *Id.* Such an argument "disregards the plain language of section 425.16(e)(2), which protects 'any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, *or* any other official proceeding authorized by law.'" *Id.* (quoting Cal. Civ. Proc. Code § 425.16(e)(2)) (emphasis added). The argument "would change the 'or' to an 'and' in derogation of settled principles of statutory construction and in disregard of the legislative mandate that section 425.16 be construed 'broadly.'" *Id.*

Like *Costa Mesa* and *Maranatha*, the statements in the March 2021 Letter were made in connection with an issue under consideration by a legislative body—the scope of the City's timeshare and short-term rental ordinances and potential violation of those ordinances by persons

selling fractional interests in residential properties. Pacaso's fifth cause of action arises from these statements; it alleges that the March 2021 Letter itself "intimidated and threatened real estate agents and brokers from engaging and transacting with Pacaso." Compl. ¶ 194; *see Costa Mesa*, 214 Cal. App. 4th at 375 ("D'Alessio is suing for relief based on the oral statements, not challenging the underlying acts (the refusal of the City and its employees to issue licenses).").

Pacaso's attempt to distinguish *Costa Mesa* and *Maranatha* is unpersuasive. That the parties in *Maranatha* considered the issue "for years" does not mean that defendants' consideration of the issue here for at least nine months makes it any less of a protected activity. *Maranatha*, 158 Cal. App. 4th at 1085. Similarly, that *Costa Mesa* involved two entities, "both an executive body (the City government) and a judicial body (the trial court)," that were "considering and reviewing the issue of whether illegal activity was occurring," does not make the one entity involved here any less deserving of protection from the anti-SLAPP statute. *Costa Mesa*, 214 Cal. App. 4th at 373.

The citations Pacaso offers in its opposition brief are distinguishable. In *Diamond Resorts U.S. Collection Dev., LLC v. Pandora Mktg., LLC*, 500 F. Supp. 3d 1104, 1108 (C.D. Cal. 2020), *appeal dismissed sub nom.*, 2021 WL 2209114 (9th Cir. Mar. 15, 2021), a plaintiff timeshare company sued a defendant "timeshare exit" company, which advertised itself as helping timeshare owners cancel or terminate their timeshare contracts, for tortious interference. The defendant "timeshare exit" company argued that the pre-litigation demand letters they sent out, demanding the timeshare company to cease and desist from communicating with their timeshare owners, arose from activity protected under section (e)(2) of the anti-SLAPP statute. The court rejected that argument because defendants "sent hundreds of exit letters," yet failed to state that "any letter resulted in subsequent litigation." *Id.* at 1113. Instead, as the plaintiff alleged, defendants "never intended to represent [timeshare] owners in any actual litigation." *Id.*

The court in *A.F. Brown Elec. Contractor, Inc. v. Rhino Elec. Supply, Inc.*, 137 Cal. App. 4th 1118, 1129 (2006), an action arising in part from a contractor's service of stop notices on a school district, found that there was "no 'official proceeding' in progress" at time of the stop notices, and that the stop notices required the district to withhold funds due to the general

contractor but "did not request the district to commence any type of proceeding, or to make any type of administrative or adjudicatory decision." *A.F. Brown* therefore concluded that the stop notices did not involve an "official proceeding" or serious consideration of litigation for clause (1) and (2) of section 425.16, subdivision (e) to apply. *Id.*

In *City of Industry v. City of Fillmore*, 198 Cal. App. 4th 191, 217 (2011), the court held that the fraud and conspiracy claims did not arise from administrative proceedings to determine the proper allocation of local sales tax revenues, a purported protected activity. Rather, it found that the claims were rooted in "a retailer's submission of sales tax returns to the [State Board of Equalization ("SBE")] in the ordinary course of business and the SBE's transmission of local sales tax revenues to local jurisdictions based on the returns," both of which "do[] not involve either a 'proceeding' or 'an issue under consideration or review' by an official body within the meaning of clauses (1) and (2) of section 425.16, subdivision (e)." *Id.*

Pacaso's citations either involved the lack of potential consideration by *judicial* bodies (*i.e.*, litigation was not contemplated) or claims that did not arise from the asserted protected activity. Neither issue is present here. Pacaso's fifth cause of action for intentional interference directly arises from the disputed March 2021 Letter. Statements in the March 2021 Letter were made in connection with an issue under consideration by a legislative body. Defendants have met their burden under step one of establishing that the fifth cause of action arises from protected activity within the meaning of section 425.16(e)(2).[4]

II. STEP TWO: PROBABILITY OF PREVAILING ON THE CLAIM

Once defendants demonstrate that the claims against them arise out of protected activity, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. *Baral*, 1 Cal.5th at 384. The inquiry "is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment." *Id.* at 384–85.

[4] Given that defendants' argument under section 425.16(e)(2) succeeds, I need not address whether the alleged conduct is protected under section 425.16(e)(4).

Defendants argue that Pacaso cannot make this showing because they are immune from suit for sending the March 2021 Letter. *See Rohde v. Wolf*, 154 Cal. App. 4th 28, 38 (2007) (finding that a statutory privilege is "relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense the plaintiff must overcome to demonstrate a probability of prevailing"). They contend that California Government Code section 820.2, the official duty privilege of California Civil Code section 47(a), the official proceeding privilege of Civil Code section 47(b), and the common interest privilege of Civil Code section 47(c) immunize them from liability for issuing the March 2021 Letter. Of the four statutory immunities raised by defendants, I find that the official duty privilege of section 47(a) is applicable to the March 2021 Letter and immunizes defendants from Pacaso's fifth cause of action.[5]

A. Official Duty Privilege under Civil Code section 47(a)

Section 47 (a) "confers privileged status upon any statement made by a public official in the course of discharging his [or her] official duties." *Royer v. Steinberg*, 90 Cal. App. 3d 490, 500 (1979); Cal. Civ. Code § 47(a). The privilege "protects any statement by a public official, so long as it is made (a) while exercising policy-making functions, and (b) within the scope of his [or her] official duties." *Maranatha*, 158 Cal. App. 4th at 1087 (citing *Royer*, 90 Cal. App. 3d at 501).

Defendants argue that the statements contained in the March 2021 Letter are privileged pursuant to section 47(a) because Walsh sent the letter in the course of discharging his duties as the city attorney to evaluate and prevent violations of the City's zoning ordinances, which involved a policy-making aspect and the exercise of discretion. *See* Walsh Decl. ¶¶ 2, 8–11.

[5] Immunity is not available under Government Code section 820.2 because Pacaso expressly pleads that it is seeking only "mandatory and prohibitory injunctions to cure Defendants' tortious conduct and to prevent future, recurring harms" and that it "does not seek monetary or other damages based on their intentional interference with Pacaso's economic interests." Compl. ¶ 201 n.16; *see La All. for Hum. Rts. v. City of Los Angeles*, No. LACV2002291DOCKESX, 2021 WL 1890782, at *7 (C.D. Cal. May 11, 2021) (finding Government Code section 814, which governs claims for immunities under sections 815.2 and 820.2 "specifically denotes that '[n]othing in this part affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee'") (quoting Cal. Gov't Code § 814). Because I find immunity applies under the official duty privilege of Civil Code section 47(a), I need not address the other privileges under sections 47(b) and 47(c).

Pacaso contends that the privilege does not apply because the March 2021 Letter merely implements a policy decision that was previously made (that Pacaso was violating the City's ordinances) and thus was "operational" and not an exercise of a policy-making function.

Statements made by city attorneys related to their policy-making function are protected under section 47(a). *Tutor-Saliba Corp. v. Herrera*, 136 Cal. App. 4th 604, 607 (2006) provides an illustrative example. There, a construction company ("Tutor") sued San Francisco City Attorney Dennis J. Herrera for defamation for statements he made about the potential merits of fraud litigation he had initiated against the company on behalf of the city. The California Court of Appeal affirmed the trial court's ruling striking the defamation action under the anti-SLAPP statute because the alleged defamatory statements fell under the official duty privilege of section 47(a). *Id.* at 617. It found:

> Under these circumstances, Herrera, as city attorney, had the authority, if not the duty, to express his professional opinion about the justification for, and potential merits of, the protracted and expensive litigation he had initiated on behalf of the city,[footnote omitted] as well as to make a public statement that he disagreed with the mayor's proposed unilateral action that would bring the case to a halt. While the language of his remarks was florid and certainly cast Tutor in an unfavorable light, the comments all concerned the claims being asserted in the federal action, and Herrera's professional opinion, as the municipal attorney entrusted with plenary power over that litigation, that the matter was well worth pursuing.

Id. at 615. It concluded that "the alleged defamatory statements Herrera made concerning Tutor's business practices related to the policy making he must necessarily perform as city attorney, and were within the scope of his duties." *Id.*

Tutor-Saliba cited two other analogous cases involving state and county attorneys. *Kilgore v. Younger*, 30 Cal. 3d 770 (1982) involved former state Attorney General Evelle Younger, who had commissioned a study of organized crime in California. The report named 92 persons suspected of involvement in organized crime, including plaintiff Kilgore, who was identified as being engaged in an illegal bookmaking operation. *Id.* at 774–775. The report was made public by Younger at a press conference during which he distributed copies to the media and proclaimed that he "adopted" its findings. *Id.* at 775. Kilgore sued for defamation and related torts. The California Supreme Court found that the official duty privilege of section 47(a) is "absolute" and

applied to public statements made by high-ranking governmental officers in the discharge of their official duties. *Id.* at 778.

In *Ingram v. Flippo*, 74 Cal. App. 4th 1280 (1999), Monterey County District Attorney Dean Flippo was sued for declaratory and injunctive relief by a local school member after issuing a press release charging the school board with minor violations of California's Brown Act, Government Code. section 54950 *et seq*. Although Flippo denied any intention to prosecute for the minor violations described in the press release, the court nonetheless found that the privilege applied: "[T]he District Attorney issued a press release summarizing the results of an investigation of a complaint of alleged violations of the Brown Act. The District Attorney's ultimate decision neither to prosecute nor to file a civil action at the time does not, in our view, affect the application of the privilege in these circumstances." *Id.* at 1294.

Tutor-Saliba went on to distinguish these types of circumstances from the two cases Pacaso relies on here—*McQuirk v. Donnelley*, 189 F.3d 793 (9th Cir. 1999) and *Neary v. Regents of the Univ. of Cal.*, 185 Cal. App. 3d 1136 (1986). In *McQuirk*, a former employee of the Glenn County Sheriff's Office applied for a job with a police department in Washington and sued the Glenn County Sheriff for allegedly defamatory statements made about him to the police department. *McQuirk*, 189 F.3d at 795. It is "[n]ot surprising[]" that "the court concluded that answering requests for employment references," statements made five years after the employee had retired from the Glenn County Sheriff's Office, "is part of the ministerial, or operational, duties of any employer, and certainly did not relate to the policy-making, law enforcement functions of a county sheriff." *Tutor-Saliba*, 136 Cal. App. 4th at 616 (citing *McQuirk*, 189 F.3d at 799–801). Similarly, *Neary* involved a vice chancellor at the University of California who released a veterinarian's report investigating dead cattle at the plaintiff's ranch, and the release of the report itself "was ministerial and divorced from any policy-making role the vice chancellor might have had." *Id.*; *see Neary*, 185 Cal. App. 3d at 1142.

Here, Walsh's statements were related to the policy-making he must necessarily perform as city attorney and were within the scope of his duties (like the city, county, and state attorneys involved in *Tutor-Saliba*, *Kilgore*, and *Ingram*). They were not merely ministerial or operational

(in contrast to the county sheriff and vice chancellor involved in *McQuirk* and *Neary*). Walsh declares that his official duties include "the assessment and prevention of potential violations of the municipal code, including zoning ordinances, which is within the scope of the discretion that is vested in [him] as the City's chief legal officer." Walsh Decl. ¶ 2. Pursuant to these duties and "in consultation with the City Manager, and to prevent what [he] believed, in good faith and after deliberation, to be a potential zoning violation, [he] informed the Realtors of the City's timeshare and short-term-rental regulations" through the March 2021 Letter. *Id.* ¶ 11. To repeat, Walsh sent the March 2021 Letter in the course of discharging his duties as the city attorney to evaluate and prevent violations of the City's zoning ordinances, which involved a policy-making aspect and the exercise of discretion.

Pacaso argues that the act of sending the March 2021 Letter was ministerial because it could have been accomplished by someone other than Walsh, given his testimony that "the March 16, 2021 letter was initially drafted to be sent on behalf of the City Manager." Walsh Decl. ¶ 11. The argument is unpersuasive. Walsh attests that he prepared the letter "in consultation with the City Manager and Ms. DeRosa" and that the letter informing realtors of the City's regulations and potential zoning violation was sent "[p]ursuant to [his] job duties," which includes "assess[ing] and prevent[ing] zoning violations" "in consultation with the City Manager" who is "authorized to enforce the City's Code." *Id.* Walsh's consultation with other city officials does not remove him from the cloak of the official duty privilege. Pacaso fails to cite any case that has held otherwise.

Pacaso cites the terms of Walsh's contract with the City, which states that all of his responsibilities are "as directed" or "as requested" by the City but does not mention any "policy making" or "discretion." *See* Phillips Decl., Exs. 1 and 2. Defendants object to Pacaso's submission of Walsh's contract with the City on lack of relevance and lack of foundation grounds. That evidence does not undermine the conclusion above. The record demonstrates that Walsh was doing what the St. Helena City Council directed him and his predecessor Ueda to do—look into the City's timeshare ordinance and investigate fractional uses in residential neighborhoods.[6]

[6] Pacaso also contends that another partner at Walsh's law firm, Best Best & Krieger, concluded that Pacaso was not subject to a time share ordinance in the City of Indian Wells. *See* Phillips

Accordingly, Pacaso cannot prevail on the fifth cause of action because it is based on conduct and statements protected by the official duty privilege of section 47(a).

III. LIMITED DISCOVERY IS NOT WARRANTED

Pacaso contends that it should be permitted to take discovery to test the factual assertions made by defendants in support of their claimed immunities and privileges before I entertain a possible dismissal of the fifth cause of action. It argues that it is entitled to discovery on whether the decision to send the March 2021 Letter was "policymaking" within the section 47(a) privilege.

A similar request for discovery was rejected in *Tutor-Saliba*. When faced with the court's skepticism concerning the need for any discovery, plaintiffs' counsel contended it was "entitled to [discovery] which can help establish that these privileges do not apply" and that "if the court determined that Herrera was acting in his official capacity, [it] 'should be able to explore' this question further." 136 Cal. App. 4th at 618. The *Tutor-Saliba* court found that "the trial court was well within its discretion in denying discovery" because "Tutor's last minute attempt to argue that discovery was needed to 'explore' the factual basis for Herrera's privilege claim was much too little, and came much too late." *Id.* The request was "too late" because it was only raised at the hearing and "too little" because "no attempt was made by counsel to explain what specific discovery was needed, and why it was needed" other than "general comments that they should be able to explore and conduct discovery on what 'exactly [Herrera's] duties are and whether his decision to speak at [the public event] fell within those official duties.'" *Id.* at 619.

Although Pacaso's request is not "too late" because it raised this issue in its briefing, it is "too little" to warrant discovery. The examples of necessary discovery that Pacaso provides in its opposition brief are overly board. When asked at the hearing what other facts it expected to uncover in discovery that would negate the privilege, Pacaso provided a similarly general response. In these circumstances, I find that discovery is not warranted.

Decl., Exs. 7–9 (copies of the City of Indian Wells' municipal code and letters sent between Pacaso and the City of Indian Wells in April 2021). It argues that Walsh's decision with respect to the City of St. Helena cannot be reconciled with the opposite conclusion reached on behalf of Indian Wells. It fails, however, to demonstrate how the circumstances involving another municipality and another lawyer is relevant to the matter at hand with Walsh and the City of St. Helena. Pacaso's counsel did not argue this point at the hearing.

IV. FEES

Subject to limited exceptions that do not apply here, "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." Cal. Civ. Proc. Code § 425.16(c)(1). "Because the award of attorney's fees under this provision is mandatory, 'the trial court must, upon defendant's motion for a fee award, rule on the merits of the SLAPP motion' even if the matter was dismissed before reaching said merits." *Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria v. Ceiba Legal, LLP*, 230 F. Supp. 3d 1146, 1152 (N.D. Cal. 2017) (quoting *Pfeiffer Venice Props. v. Bernard*, 101 Cal. App. 4th 211, 215 (2002)); *see Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001) (holding "any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.").

Defendants contend that they have incurred attorneys' fees and costs in the amount of $20,126.50. In support of their request, they submit a declaration that provides the hours spent by counsel (a partner, two litigation associates, and a paralegal), along with their hourly rates (which have been reduced in connection with this matter). *See* Supplemental Declaration of Damian M. Moos in Support of Motion to Strike [Dkt. No. 36].

Pacaso does not contest this amount or the reasonableness of defense counsel's hourly rates.[7] Instead, it argues that the request is premature and that attorneys' fees cannot be awarded until it has a chance to amend the Complaint. *See Verizon Delaware, Inc. v. Covad Communications Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) (holding that granting an anti-SLAPP motion without leave to amend "would directly collide with Fed. R. Civ. P. 15(a)'s policy favoring liberal amendment"). When asked at the hearing what facts it could allege in an amended complaint to save its fifth cause of action, Pacaso's counsel came up short. While amendment is usually freely given, in light of my determination that the fifth cause of action is based on privileged protected activity, amendment would be futile.

Having reviewed defendants' submission, I find that the amount of time spent researching

[7] At the July 6, 2021 Case Management Conference, I ordered defendants to submit a supplemental declaration describing the fees actually incurred in litigating the motion. *See* Minute Entry [Dkt. No. 35]. I allowed Pacaso to respond to the declaration by July 10, 2021. No response was filed.

and preparing the motion, briefs, and declaration is reasonable, as are the billing rates for defense counsel. Defendants' request for fees is GRANTED.

CONCLUSION

Defendants have met their burden under step one of the anti-SLAPP analysis by showing that the fifth cause of action arises from protected activity. They have also demonstrated that Pacaso cannot prevail on the fifth cause of action because the claim is based on conduct and statements privileged under section 47(a)'s official duty privilege. For these reasons, the motion to strike the fifth cause of action is GRANTED. Pacaso is ORDERED to pay $20,126.50 to defendants for fees and costs incurred in connection with the anti-SLAPP motion.

IT IS SO ORDERED.

Dated: July 15, 2021

William H. Orrick
United States District Judge

United States District Court
Northern District of California

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April 7, 2022

VIA E-MAIL TO
PATRICK@PACASO.COM and
ELLEN@PACASO.COM

Patrick Abell
Senior Legal Counsel
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Ellen Haberle, Director
Government & Industry Relations
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Request to Immediately Cease and Desist Unlawful Operations

Dear Mr. Abell and Ms. Haberle:

This law firm serves as City Attorney for the City of Carmel-by-the Sea, California ("City"). In that capacity, we are writing to advise Pacaso Inc. ("Pacaso") that Pacaso's current operations within the City are unlawful and must cease immediately. The City has been made aware of at least one property sold by Pacaso within the City at Dolores 7 SW 13th, Carmel by-the-Sea, CA 93921. The sale of this property constitutes the sale of a timeshare prohibited by the Carmel-by-the-Sea Municipal Code ("CMC") Section 17.28.010.

City Prohibition on Timeshare Uses

CMC section 17.28.010 provides that "[t]imeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City." Timeshare projects, programs and occupancies are further defined in CMC Section 17.70.020:

- A “time-share program” is “[a]ny arrangement for a project whereby the use, occupancy, or possession of real property has been made subject to a time-share estate, use, or occupancy, whereby such use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years.”

- A “time share estate” is defined as “[a] right of occupancy in a time-share project that is coupled with an estate in the real property.

- A “time-share use” is “a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property.”

- A “time-share project” is “[a] project in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted for the use or occupancy periods into which the project has been divided.

- A “project” specifically includes “[a]ny proposal for a new or changed use.”

Pacaso’s Business Involves the Sale and Management of Prohibited Timeshare Uses

Pacaso’s website indicates that its business model involves sales of property held by an limited liability company in 1/8 ownership shares, with the associated right to exclusive use of the subject property by the owner of the share, with Pacaso managing among other things, the upkeep of the property and providing an app to arrange for periods of exclusive use by the share owners. Pacaso’s website further states that each owner of a 1/8 share is entitled to 6 “general stays,” booked at least 61 days in advance, which may range between 2 to 14 nights, and unlimited “short notice stays” booked less than 60 days in advance. However, maximum stay length is limited to 14 nights regardless of the method of booking. Owners of two shares have the option to book stays up to 28 nights.

Pacaso’s business model meets the City’s Ordinance’s definition of a prohibited “timeshare program,” because the ownership of the property through the LLC is an “arrangement for a project whereby the use, occupancy, or possession of real property

has been made subject to a time-share estate, use, or occupancy," and rights to periods of exclusive use are circulated among the owners of the shares, in specific intervals up to 14 nights per 1/8 share, "according to a … floating schedule on a periodic basis for a specific period of time during any given year." Additionally, division of the property into fractionalized ownership under Pacaso's business model will create either a "time-share estate" or "time-share use" — either the owners of the shares of the LLC hold a "right of occupancy" and "an estate in the real property" which establishes a time-share estate, or if the LLC is deemed the sole holder of the "estate in the real property," then such owners have a "time-share use" because they will hold a right to determine and establish their rights of occupancy pursuant to their right to operate and control the LLC under the terms of any membership or operating agreements.

We are aware that Pacaso has asserted to other jurisdictions that the properties that they sell and manage are not timeshares, but rather "fractionalized ownerships." According to Pacaso, a Pacaso home is no different from any other single family residence. However, this is simply not true. Regardless of what Pacaso wants to calls its business model, the impact is the same — this type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are generally prohibited by the City's municipal code. (See CMC Sections 17.08.040, 17.68.030; 17.28.040.) The frequent, rotating occupancy of the owners is functionally akin to short-term rentals, and the City's existing regulations on timeshare uses are specifically intended to minimize the impacts created by this type of use and occupancy of land. Similar prohibitions on short-term rotating occupancies have already found lawful under *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, which found that the City could lawfully prohibit short-term rental of residential property for transient occupancy in residential neighborhoods as an incompatible "commercial" use.

Finally, several significant policy reasons justify the City's prohibition against timeshares. The City's prohibitions on timeshares were first adopted in 1988 in order to preserve housing stock. The Housing Element of the City's General Plan includes Goal G3-2, which is to "[p]reserve existing residential units and encourage the development of new multifamily housing in the Commercial and R-4 Districts." Furthermore, Goal G3-4 specifically requires that the City "[p]rotect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement." As part of this goal, the City has committed to "maintain and encourage the expansion of permanent residential housing stock," because the Housing Element notes that "[a] substantial percentage of the City's housing stock lies vacant much of the

year as second homes occupied for weekends, vacations or on a seasonable basis" which "has the effect of reducing the number of permanent, year-round residents in the City." To avoid depletion of residents and associated impacts on community, City services, Goal G3-4 of the City's Housing Element specifically requires the enforcement of the prohibitions on short-term, transient rentals and timeshares in residential dwellings.

In sum, conversion of any existing housing stock into timeshares or "fractionalized ownerships" reduces the available supply of homes for occupation for full-time residency, and therefore reduces the affordability of housing in the City, based on basic laws of supply and demand.

Pacaso is Unlawfully Operating Without Required Business Licenses

Pursuant to CMC section 5.04.020, it is unlawful for any person employed by Pacaso to commence or carry on any kind of business in the City without first procuring a business license and pay the applicable business license tax. (CMC section 5.04.020.) Pacaso does not possess a City business license, nor has it paid any business license tax to the City. As a result, Pacaso's operations within the City also are in conflict with the City's business license ordinance. However, we note that even if Pacaso obtains a business license, the business may not operate in the manner described above due to the prohibitions in the City's Municipal Code regarding timeshares.

Request to Cease Unlawful Operation

In conclusion, Pacaso's current operations within the City are unlawful and must cease immediately. The City requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within the City. Failure to comply may result in enforcement. Any violation of City zoning prohibitions is subject to administrative citation and imposition of new fines for each day of unlawful operation pursuant to CMC Chapter 18.04. Furthermore, any violation of CMC section 17.28.010 prohibiting timeshare uses is a misdemeanor subject to criminal prosecution, punishable by a fine not exceeding $1,000 and imprisonment for a term not exceeding a period of six months. (CMC 1.16.010, 17.66.040.)

We are requesting your written response to this letter by April 21, 2022 which you may submit to me via email to bpierik@bwslaw.com

Thank you for your cooperation.

Sincerely,

Brian A. Pierik
City Attorney
City of Carmel-by-the Sea

BAP:SAR/jc

CAM #4855-3499-0355 v1

Pacaso™

April 19, 2022

Brian A. Pierik
Burke, Williams & Sorensen, LLP
2310 East Ponderosa Drive - Suite 25
Camarillo, California 93010-4747

Dear Mr. Pierik:

We are in receipt of your letter dated April 7, 2022 on behalf of your client, the City of Carmel-by-the-Sea ("City").

As an initial matter, we were very disappointed to receive your letter. Pacaso has had numerous conversations with City officials. We thought these conversations were productive and that City officials understood our co-ownership model and that we wanted to be a good partner in the community. It is even more disappointing that you have demanded a draconian solution, i.e., that Pacaso cease its current operations in the City. This is especially egregious when one considers that Pacaso is only managing a single home in the City and, to our knowledge, there has not been a single complaint regarding the home.

Background

Pacaso is a real estate service company that supports buyers who wish to co-own residential property together through a property-specific LLC. Co-ownership, whereby a small group of family members or friends co-own a second home together, is a common practice throughout California, the Monterey Peninsula, and in Carmel. According to our analysis, about 60% of the housing units in the City are not occupied on a full-time basis by their owners and over 2,500 of these are owned in an LLC or trust, which enable co-ownership arrangements.

While your correspondence characterizes our business as "timeshare," there are several key differences between the Pacaso co-ownership model and traditional timesharing plans. Pacaso sells ownership interests in residential real estate, unlike traditional timesharing plans, which often give purchasers a contractual right to use a resort property. Just like family members who own property together, Pacaso co-owners together own 100% of the property and employ Pacaso as a service provider to assist them with scheduling, property management and expense management. If Pacaso co-owners no longer desire Pacaso's services, they have the option to terminate Pacaso as a service provider; traditional timeshare owners typically do not enjoy that option. Furthermore, the co-owners can sell the home, dissolve the LLC and distribute the sale proceeds of the real estate asset to each co-owner on a pro rata basis. That is, they have all of the rights and optionality of any other single-family residence owners.

Pacaso Homes Are Not Timeshares

Turning to the application of the City's timeshare ordinance, it is clear that the City's ordinance does not apply to a Pacaso home. Section 17.28.010 provides that: "[t]imeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City."

Times-hare project, program, and occupancy are defined in CMC Section 17.70.020 (emphasis added):

> Time-Share Occupancy. An occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity…**for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided."**
>
> Time-Share Project. A project in which a purchaser receives the right…to the recurrent, exclusive use or occupancy…**for a period of time that has been or will be allotted for the use or occupancy periods into which the project has been divided**."
>
> Time-Share Program. Any arrangement for a project whereby the use, occupancy, or possession of real property has been made subject to a time-share estate, use, or occupancy, whereby such use, occupancy, or possession circulates among **purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year,** but not necessarily for consecutive years.

As you can see above, the definitions of timeshare occupancy, project, and program only apply when usage rights in a property have been divided into increments of time. A Pacaso home is not divided into increments of time. Rather, the home is owned in its entirety, in fee simple, by the LLC and the property has not been divided into increments by a timeshare plan or by a timeshare instrument. It is analogous to when friends or family members co-own a second home today and the friends or family members decide how to share ownership and use of the property. The negotiation and cooperation by co-owners regarding how they want to use their second home does not create a timeshare because the property is owned in its entirety and not divided into time increments. In short, Pacaso owners are not purchasing a use right for a specific period time, but rather are purchasing a co-ownership interest and agreeing to equitably use the home with their co-owners.

The co-owners of the Carmel home use their home for residential purposes, which is a permitted use of the property and is similar to the manner in which other second home owners own and use homes in the City. We presume it is not the intention of the City or the aim of the City's zoning code to regulate who may or may not co-own a real estate together, or dictate the vehicle through which they elect to co-own real estate. As the City has acknowledged in its Housing Element of its General Plan, "Cities have limited ability to influence second home ownership and use." The co-owners of the Carmel home have elected to co-own their home in a multi-member LLCs, which is an ordinary practice in real estate. The co-owners have agreed to engage Pacaso as a service provider to assist them with the management of the home. As such, the co-owners of the home in question are owning the home in a way that is permissible under the City code and is similar to the manner in which other owners of second homes own and use homes in the City.

In addition, any attempt by the City to enforce its current ordinance against the Carmel home would run counter to the Coastal Act, in that it purports to restrict access to the City's coastal

zone in a way that has historically not been restricted for similarly situated co-owners of residential properties in the City.

Pacaso Homes Help the City Achieve Housing Goals

We also note that the Pacaso model will help the City achieve two goals set out in the City' Housing Element - "Preserve the existing housing stock" (Goal G3-1) and "Protect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement" (Goal G3-4).

The sale of Pacaso homes in Carmel will help "[p]reserve existing housing stock" by giving second home buyers a better option than a whole home. (Goal G3-1.) Just one co-owned Pacaso home can remove up to eight buyers from local housing competition by pooling them into a single luxury home, since Pacaso makes use of one property that would have otherwise been eight separate second-homes. As a result, the City's embrace of the Pacaso model could actually help preserve existing housing stock. In short, by decreasing demand for second homes in Carmel, the Pacaso model will allow the City to preserve existing housing stock, based on the basic laws of supply and demand.

The sale of Pacaso homes will also help "...[p]rotect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement." (Goal G3-4.) Second home ownership can be inefficient, exclusionary and wasteful, as second homes owned by just one family typically sit vacant up to 80% of any given year. Pacaso homes are different - the homes offer a more sustainable way to own and enjoy a second home. In return, Carmel and its neighborhood could benefit from the year-round occupancy that Pacaso homes provide which create a more vibrant community filled with families with a long-term connection to the community, not empty homes with the blinds closed. In addition, local Carmel businesses would benefit from year-end occupancy as Pacaso co-owners will frequent Carmel's shops, restaurants, and coffee shops more frequently than a second home-owner who is only in town sporadically.

We look forward to being a good partner with the City and look forward to continuing our productive conversations with the City's elected officials.

Sincerely,



Kevin Heneghan

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May 4, 2022

VIA EMAIL: KHENEGHAN@PACASO.COM and
VIA FEDERAL EXPRESS

Kevin Heneghan, VP Legal
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Pacaso Operations in City of Carmel-by-the-Sea

Dear Mr. Heneghan:

This letter is in response to your April 19, 2022 correspondence, acknowledging receipt and responding to my letter of April 7, 2022 on behalf of the City of Carmel-by-the-Sea ("City") to immediately cease and desist unlawful operations in violation of Carmel-by-the-Sea Municipal Code ("CMC") sections 17.28.010 and 17.70.020 prohibiting timeshare uses, and CMC section 5.04.020 requiring business licenses for commercial operations within the City of Carmel-by-the-Sea.

Our office has reviewed your assertions that Pacaso is not a time-share and disagree that Pacaso is not in the business of advertising, selling, and operating time shares in the manner defined by CMC section 17.70.020. Pacaso does not dispute that it creates multi-member LLCs to hold property. Nor does it contest that it sells shares of such LLCs to individual owners. It also does not dispute that the owners of such shares of the LLC gain fixed rights to the exclusive use and occupancy of a property pursuant to a floating time schedule, under such rules and operating agreements created by Pacaso, as a result of becoming owners and members of the LLC.

Rather, in your response letter, you assert that "[a] Pacaso home is not divided into increments of time. Rather, the home is owned in its entirety, in fee simple, by the LLC and the property has not been divided into increments by a timeshare plan or by a timeshare instrument." You also assert that "Pacaso owners are not purchasing a use right for a specific period time, but rather are purchasing a co-ownership interest and agreeing to equitably use the home with their co-owners." However, this is directly

contradicted by statements on Pacaso's own website,[1] stating that owners are entitled to stay in a Pacaso property based on the number of shares in the property that they own, with each share giving the owner rights to entitling an owner to stay up to 44 nights per any given year, using either the six "general stays" that can last between 2 and 14 nights per year and be reserved 24 months in advance, to stay up to 44 nights per year, and rights to "short-notice stays" based on a floating schedule of availability.

Furthermore, the website states that each owner will be allotted a "general stay" that "falls on a special date (e.g. federal holidays or popular local events)." Pacaso's response letter entirely fails to provide any substantive response that a floating schedule, as created by Pacaso, constitutes a prohibited time-share program, whereby the "use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or *floating time schedule on a periodic basis for a specific period of time during any given year* . . ." (See CMC section 17.28.020 [defining "time-share program"].)

Granting each owner the right to use the property for up to 44 nights per year based on a rules created by Pacaso and having use established under a floating time schedule creates a time-share use prohibited by the CMC, regardless of whether the ownership of the property is held via an LLC or some other manner. This is because the City prohibits both time-share estates (where a user is party to a time-share program and owns an interest in the estate in real property) as well as time-share uses (where a user is party to a time-share program and exercises a right of occupancy pursuant to a license, *contractual or membership* right without having an estate in the real property).

Thus, Pacaso's argument that the properties it sells and manages are not time-shares because of ownership through a multi-member LLC is unavailing. Owners of Pacaso properties own an interest in the real estate through the LLC, and are using the property pursuant to a floating schedule, thereby using and occupying the property as a prohibited time-share estate. In the alternative, if such owners are deemed not to own an interest in the real estate, because the LLC is considered the sole legal owner, then they are owners of prohibited time-share uses. By buying shares and becoming party to operating agreements for the LLC, such owners gain *contractual or membership* rights to use the property based on the floating time scheduling system and rules created by Pacaso, constituting a prohibited time-share use.

[1] https://www.pacaso.com/scheduling

As a result, the City reiterates its requirement that Pacaso cease and desist from any advertising, operation, and/or sale of timeshare properties with the City. Any use or listing of property for unlawful time-share use in the City may result in enforcement, including issuance of citations, civil action for injunctive relief, or criminal prosecution.

We also wish to point out that any action by Pacaso to continue its operations in Carmel-by-the-Sea in the manner described above would expose its clients to potential jeopardy for violating the City's codes prohibiting time shares.

Finally, in the meeting Councilmember Jeff Baron had with Steve Thomas and Gabe Dina-Smith on March 22, 2022, Councilmember Baron was told he would be provided with: (1) a copy of the basic Pacaso LLC template so that the City can review it and determine its adherence to the City's Municipal Code regarding time shares and (2) investigating and reporting on how the parcel tax/property tax/accounting/reporting works in conjunction with the Monterey County Assessor's and Tax Collector's Office as shares of the LLC are created, then sold and resold, Councilmember Baron did not receive these documents and information and we renew that request at this time.

Sincerely,

Brian A. Pierik

BAP:dvdw
CAM #4888-4151-8110 v1

Office of the City Attorney
Heather L. Stroud

VIA EMAIL

July 12, 2021

Patrick Abell
Senior Counsel, Real Estate, Pacaso
patrick@pacaso.com

NOTICE TO CEASE AND DESIST

Dear Mr. Abell:

Thank you for acknowledging the Courtesy Notice of Zoning Regulations Restricting Time Share Use sent to Pacaso on May 14, 2021. I received your email dated May 20, 2021 which asserts that Pacaso is not subject to the City of South Lake Tahoe's time share regulations. I have reviewed your assertions and disagree that Pacaso is not advertising, selling, and operating time shares as defined in the South Lake Tahoe City Code. Section 6.60.020 of the South Lake Tahoe City Code broadly defines "time-share" as "the right to use and occupy a unit on a periodic basis in any manner which under the laws of the state of California constitutes a time-share arrangement or estate." Under California law, a "time-share plan" is similarly broadly defined to mean "any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, received ownership rights in or the right to use accommodations for period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years." Bus. & Prof. Code §11212(z).

You attempt to distinguish Pacaso from a time share by stating that "Pacaso sells ownership interests in real estate." However, under the definition above, a "sale" or "deed" resulting in "ownership rights in or the right to use accommodations for a period of time less than a full year during any given year . . ." is a "time-share plan." You also note that time-share plans of 10 or fewer units are not subject to the Vacation Ownership and Time-Share Act of 2004, citing Business & Professions Code section 11211.5(b)(1). This does not mean that time-share plans of 8 units (like Pacaso's) are not time-share plans, just that they are not regulated by the state under this statute. The Vacation Ownership and Time-Share Act of 2004 includes a savings clause that expressly preserves the authority of local jurisdictions to regulate time shares through "zoning, subdivision, or building code or other real estate use law, ordinance, or regulation." Bus. & Prof. Code § 11280(b).

The City's zoning ordinance includes time share regulations that expressly prohibit conversion of residential structures to a time share use irrespective of the number of units. South Lake Tahoe City Code §6.60.040(B)(2). This provision was added in 2006, as the City Council found that "there is a

critical shortage of affordable housing" and "the conversion of residential property within the city to vacation time-sharing projects eliminates residential property otherwise available for rental in the city." South Lake Tahoe City Council Ord. No. 966. The City Council further found that "vacation time-sharing projects have the character of a commercial use due to the multiple occupancy of such projects by those participating in time-sharing projects" and "such commercial or quasi-commercial use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods." *Id.* This provision broadened a 1987 prohibition on converting multi-family housing to time shares to include all residential dwellings.

Information from Pacaso's website, downloaded on April 27, 2021, indicates that Pacaso is advertising properties for sale of 1/8 fractional ownership, with the ability to have exclusive use of the property for 1/8 of each year, or 44 days split into non-consecutive short-term stays of between 2 and 14 days. Since property usage is allocated based on time, this type of commercially managed co-ownership falls within the broad definition of "time-share" under the City Code. This type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are prohibited in residentially zoned areas in South Lake Tahoe following the passage of a citizens initiative in November 2018 (Measure T), and will be completely phased out of residential areas by the end of 2021.

In continuing to monitor the issue since sending the Courtesy Notice, I found three properties within the City of South Lake Tahoe on July 2 continuing to be advertised on Pacaso's website for sale of 1/8 fractional ownerships (3914 Saddle Rd., 1325 Wildwood Ave., and 783 Michael Dr. (with a note of "1 share left"). While the City is unaware of any Pacaso properties in operation as a time share use to date, we are concerned that potential buyers of fractional ownerships are not familiar with the City's time share regulations and Pacaso's advertising is misleading buyers whose use will be in violation of the South Lake Tahoe City Code from day one. Pacaso's continued solicitation and offering to sell illegal time shares is also a violation of South Lake Tahoe City Code. §§6.60.020(B), (D), (G); 6.60.040(B)(2); 6.60.070.

The City respectfully requests that Pacaso cease and desist all advertising and sale of fractional ownership of residential properties within the City of South Lake Tahoe. **Failure to comply with this request within 30 days (by August 11, 2021), may result in enforcement** including issuance of administrative citations under South Lake Tahoe City Code chapter 2.35. Further, any violation of the time share regulations in Chapter 6.60 is a misdemeanor and a public nuisance which may be enjoined in any court of competent jurisdiction under South Lake Tahoe City Code §6.60.080. Please note that there is also a private right of action for any person who has suffered damage as a result of a violation of the time share regulations under South Lake Tahoe City Code §6.60.090. I appreciate your prompt attention to this matter. Please feel free to contact me with any questions.

Respectfully,

Heather L. Stroud
City Attorney

cc: Joseph Irvin, City Manager
David Willbrand, Chief Legal Officer, Pacaso
Ellen Haberle, Director, Government & Community Relations, Pacaso

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December 6, 2021

VIA E-MAIL ELLEN@PACASO.COM

Ellen Haberle
Director, Government & Industry Relations
Pacaso.com
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Pacaso's Operations within the City of Palm Springs, California

Dear Ms. Haberle:

As you know, this law firm serves as City Attorney for the City of Palm Springs, California. In that capacity, we are writing to advise Pacaso.com that Pacaso's current operations within the City are unlawful and must cease immediately.

While I appreciate your recent efforts to meet with City officials and present Pacaso's position as to why the City's timeshare ordinance does not apply to Pacaso, as set forth more fully below, such a position it not legally tenable.

Pacaso is a company that holds itself out as a new way to own a second home. According to Pacaso's website (https://www.pacaso.com/learn), accessed earlier this year, Pacaso operates as follows:

> "Co-ownership with Pacaso is the best way to buy and own a great second home. From buying to closing here's how Pacaso works. First, tell us a little about yourself and what you are looking for in a second home. Then, start shopping. If a listing currently on Pacaso is not a fit, find one you love on any real estate site and share it with us. If the home is a match for Pacaso, we will partner with you to purchase up to half of the property in a private and professionally managed LLC uniquely designed for co-ownership. This LLC is referred to as the Pacaso Home LLC. On behalf of Pacaso, we line up financing for the LLC and close quickly. In parallel Pacaso remarkets remaining ownerships shares in the home to interested buyers. Buyers can purchase their desired amount of ownership from one-eighth

> to one-half of the whole home. We enable qualified buyers to access funds in the LLC and finance up to half of their purchase. The financing relationship is directly between the LLC and the buyer. Pacaso signs closing paperwork on behalf of the LLC. In parallel buyer signs the LLC owner operating agreement to complete their purchase. Ownership is recorded in the owner's schedule section of the owner operating agreement. Following closing the collective owners own 100% ownership interest in the LLC. We transform the home with modern interior design and address any necessary repairs. Owners use the mobile app to book stays 2 days to 24 months in advance. Scheduling is easy and equitable based on the number of shares owned. From there we take care of everything, overseeing local property management, bill pay and platform technology, all from the mobile app. Owners simply show up, relax and enjoy their Pacaso."

The maximum length of a stay is based on shares owned. Owners of one share can enjoy a stay anywhere from 2 to 14 nights. A stay with a duration of 2-7 nights counts as one general stay, while a stay with a duration of 8-14 nights counts as 2 general stays. Owners of two shares have the option to book stays up to 28 nights.

Pacaso asserts that the properties that they sell and manage are not timeshares. According to Pacaso, a Pacaso home is no different from any other single family residence. Pacaso further asserts that Pacaso co-owners agree to several restrictions to help ensure that their use promotes the public interest, safety and comfort. For example, Pacaso states that there is a maximum of eight co-owners for any home, with only one family using the property at a time; co-owners are prohibited from having large events or parties that exceed the maximum occupancy of the home; co-owners must adhere to a 9pm to 7am quiet hour policy; co-owners are prohibited from renting the home; and Pacaso encouraged homeowners to avoid parking on the street unless absolutely necessary. However, Pacaso does not provide any documentation or explanation of how these rules are enforced. The stays are reserved on an app, and while each co-owner is prohibited from renting the home as a short-term rental, they are permitted to allow other guests to stay there during their allotted days.

According to Pacaso, as of September, one single-family residence within Palm Springs has been fully sold, and Pacaso was marketing four others within the City.

City of Palm Springs Timeshare Ordinance

The City of Palm Springs regulates where timeshares can be located within the City and taxes occupancy of timeshares. Specifically, under the City's zoning ordinance, a timeshare

project is allowed only in those zoning districts where a hotel use would be permitted (i.e., R-3, R-4, R-4VP, C-B-D, C-1, C-1AA and C-2 zones, and G-R-5 and R-2 zones when fronting on a major or secondary thoroughfare). (Palm Springs Zoning Code, § 93.23.11(B).) Indeed, such uses are not allowed by right, but instead require a conditional use permit. Notably, timeshares are not permitted in single-family zones.

The City's Zoning Ordinance defines a "timeshare" as follows:

> **"**…a "time-share project" is one in which time-share rights or entitlement to use or occupy any real property or portion thereof has been divided as defined in Section 3.24.020(7) of the Palm Springs Municipal Code into twelve (12) or more time periods of such rights or entitlement." (PSZC, § 93.23.11(A).)

Section 3.24.020(7) defines timeshares, for purposes of taxation. It defines a "timeshare" as

> "occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity, for life, or for a term of years or other extended term, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), hotel or portion thereof, or segment of real property, annually or on some other seasonable or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided. The said right or entitlement to occupancy may attach in advance to a specific lot, parcel, unit, room(s), or portion of a hotel, or segment of real property, or may involve designation or selection of the same at a future time or times."

Despite Pacaso's assertions to the contrary, Pacaso's business model meets the City's Ordinance's definition of a "timeshare". The City's definition, broken down into its constituent parts, applies to Pacaso.

Specifically, Pacaso's business model fits the following definition: "wherein a purchaser receives the right in perpetuity… or other extended term, to the recurrent, exclusive use or occupancy of a lot … annually or on some other … periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided."

Here, purchasers of a Pacaso LLC receive the right, in perpetuity or some other period defined in the LLC agreement, to the recurrent and exclusive use of the lot on which the residence

is located. The right to such use is on some periodic basis, for a period of time that is allotted under the LLC agreement.

Thus, by its terms, the City's ordinance applies to a use such as Pacaso's. As such, Pacaso's operations are not permitted in single family-zones within the City of Palm Springs, California.

In addition to the City's Zoning Ordinance, the City's business license ordinance requires any party that is transacting any business within the City to first procure a business license and pay the applicable business license tax. (Palm Springs Municipal Code, § 3.48.010.) Pacaso does not possess a City business license, nor has it paid any business license tax to the City. As a result, Pacaso's operations within the City also are in conflict with the City's business license ordinance.

Finally, several significant policy reasons justify the City's prohibition against timeshares in single-family zones. As the City's Housing Element of the General Plan states,

> "Palm Springs considers housing affordability to be a critical issue. The inability to afford housing leads to a number of undesirable situations, including the doubling up of families in a single home, overextension of a household's financial resources, premature deterioration of housing due to the high number of occupants, situations where children and seniors cannot afford to live near other family members because of the lack of affordable housing options, and in more extreme cases, homelessness." (City of Palm Springs General Plan, Housing Element, p. 3-19, (2014-2019).)

For every house that Pacaso sells to one of its limited liability corporations, to be used as a second, vacation home, that house becomes unavailable to a buyer or renter who could live there full time. This necessarily reduces the amount of housing stock that is available for full time residents in the City. The reduction in housing stock, in turn, feeds the affordability crisis, making the remaining houses within the City more costly.

Pacaso may claim that it only purchases and sells "luxury" homes, and therefore does not impact the availability of affordable housing. However, basic laws of supply and demand dictate that every home that is made unavailable to a full time resident, whether "luxury" or not, necessarily reduces the supply of homes, and therefore reduces the affordability of housing in the City.

One of the policies of the City's Housing Elements is to "protect established single-family residential neighborhoods from the transition, intensification, and encroachment of uses that

detract and/or change the character of the neighborhood." (Housing Element, HS1.8, p. 3-63.) Pacaso portrays its business model as "the modern way to buy and own a second home". However, Pacaso's "modern way" involves up to eight (8) investors and their guests rotating occupancy throughout the year. Although the LLC investors are not technically "renters", neighbors can expect the property to have many of the secondary impacts of vacation rentals, which are currently prohibited in many Coachella Valley cities and heavily regulated in Palm Springs. For example, house cleaners will have to come to the home in between each stay, and the home can turn over multiple times in a week. To a neighbor, that impact is very much the same as if the occupants were short-term vacation renters. In addition, the "co-owners" of the limited liability company really have no connection with one another, other than their investment in the company. All of this necessarily changes the character of a neighborhood, in contravention of the City's stated policy of preserving the single-family residential character of its neighborhoods.

Another Housing Element policy is to "preserve the supply of affordable rental housing in the community, including mobile home parks, publicly subsidized rental housing, and special needs housing." (Housing Element, HS2.9, p. 3-68.) As stated above, Pacaso's business model removes single-family homes from the housing market for individuals or families who wish to reside in Palm Springs and therefore reduces the supply of affordable rental housing for those individuals or families.

Therefore, Pacaso's current operations within the City are unlawful and must cease immediately.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey S. Ballinger
of BEST BEST & KRIEGER LLP
City Attorney
City of Palm Springs

cc: Hon. Mayor and Councilmembers
Justin Clifton, City Manager
Teresa Gallavan, Asst. City Manager
Flinn Fagg, Development Services Director

THE REAL DEAL
NEW YORK REAL ESTATE NEWS

California reaming: Pacaso taking punches in home state

Second-home startup may be losing battle for hearts and minds

San Francisco / By T.P. Yeatts March 22, 2022 08:00 AM



Pacaso's Spencer Rascoff and Austin Allison (LinkedIn, iStock)

The proptech startup Pacaso has made a few enemies (https://therealdeal.com/issues_articles/neighborhood-brawl/) in its

efforts to help its customers realize their dream of second-home ownership.

Now comes the blowback, as legal and legislative actions in its home state of California spell trouble for the young company.

This month in Napa Valley, the planning commission for the city of St. Helena recommended expanding its rule banning timeshares to include Pacaso's fractional ownership model. The proposal will soon go before the city council.

Down south, Palm Springs voted to extend its ban on timeshares to Pacaso's business. It also issued a cease and desist letter to the company, which has sponsored four properties in the area.

The actions could trigger other roadblocks for Pacaso, which became something of a sensation last year when it achieved a $1 billion valuation (https://therealdeal.com/2021/09/14/less-than-one-year-after-launch-pacaso-is-valued-at-1-5b/) less than 12 months after its launch — the fastest any proptech has reached "unicorn" status (https://therealdeal.com/2021/12/06/undeterred-by-critics-pacaso-pursues-aggressive-expansion/) . The company operates in at least six other markets in California.

Read more

- M&A will define proptech landscape in 2022: MetaProp survey

- How to build a home in 30 days: Con-tech startup Diamond Age raises $50M (https://therealdeal.com/2022/03/16/how-to-build-a-home-in-30-days-construction-startup-diamond-age-raises-50m/)
- Knock it off: Homebuying startup ditches IPO plans (https://therealdeal.com/2022/03/15/knock-it-off-homebuying-startup-ditches-ipo-plans/)

San Francisco-based Pacaso, founded in 2020 by former Zillow executives Spencer Rascoff and Austin Allison, says it generated nearly $300 million in revenue in 2021 selling one-eighth shares of vacation properties across the U.S. to aspiring second-home owners — often over the protests of locals who saw its arrival as an invasion of their communities.

Demonstrations attended its recent debut in Maui, but the uproar has been particularly loud in its home state, where a loose association of anti-Pacaso civilian groups has coalesced to fight the company on the basis that it is a commercial enterprise operating in residential, or rural, areas.

The groups also assert Pacaso is hurting neighborhoods by removing already limited housing stock from tight markets — a claim the company disputes, citing its focus on a small group of luxury properties that are empty much of the year.

Pacaso preemptively sued St. Helena last April after the city of 6,000 signaled it would seek to freeze the company's activity there. Pacaso maintains that it is in the business not of timeshares but of co-ownership —– a new asset type as of last summer, after Pacaso pushed to have it recognized by the Real Estate Standards Organization.

This crucial distinction is what St. Helena and Palm Springs now seek to eliminate or render moot.

If St. Helena's planning commission gets the city council to include fractional ownership in the city's timeshare ordinance, it would be the first change to the law since 1982.

Colin Tooze, a spokesman for Pacaso, said that would represent selective application of the law. Nearly 10 percent of residential parcels in St. Helena are owned by limited liability companies, and more than 40 percent are owned in a trust, he said, citing Napa County Tax Assessor records. His argument is that those ownership models are similar to Pacaso's, yet no one is moving to ban them.

Pacaso "attempted to settle our differences through genuine compromise and dialogue," Tooze said in an email. "We certainly haven't always seen eye-to-eye with local officials in St. Helena."

Tooze attributed the setback in Palm Springs to city staffers who

have a “regrettably one-sided and inaccurate view of Pacaso’s business.” The company has been trying to work things out with the Palm Springs City Council, he said.

“We’re confident that members of the council understand that it’s not the proper role of local government to decide who is allowed to own property,” he said.

The actions in St. Helena and Palm Springs could set a precedent for other locales that take issue with Pacaso. The company plans to launch in 30 new markets this year, nearly doubling its footprint.

Tooze said the company will continue to “invest in building relationships with partners at all levels of government.”

“We are committed to dialogue and to working collaboratively with local leaders to make sure that we understand their priorities,” he said.

Contact T.P. Yeatts

Report to the City Council
Regular City Council - 22 Mar 2022

Agenda Section: **PUBLIC HEARINGS**

Subject: **Ordinance Adding Chapter 17.138 "Time Share Uses" and Sections 17.138.060 to Title 17, Zoning of the St. Helena Municipal Code, amending sections 17.48.030 (Central Business) and 17.52.030 (Service Commercial) and Deleting Section 17.112.130 of the St. Helena Municipal Code**

CEQA Determination: **Exempt**

Prepared By: Ethan Walsh, City Attorney

Reviewed By: April Mitts, Administrative Services Director

Approved By: James C. McCann, Interim City Manager

BACKGROUND

Over the past two years, there has been significant discussion in the community regarding Section 17.112.130 of the City's Zoning Code, which prohibits the creation of a time-share project as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house in the City (the "Time Share Ordinance"). The City Council discussed the Time Share Ordinance at its July 14, 2020 meeting in response to concerns raised regarding a real estate listing for a fractional or partial ownership interest in a residential home in the City. The prior City Attorney discussed this issue with the City, focusing on the question of the extent to which the City Council could regulate an ownership structure through the City's zoning authority, and noted the challenges of doing so. At the conclusion of the Council's discussion of this issue, Council directed the City Attorney and staff to continue to research its options to address the concerns raised by members of the community in response to the listing of the home at issue. In the months following the July 2020 Council meeting, the company that had been marketing that original home, now known as Pacaso, began marketing other homes in the City, and the City received additional complaints from members of the community. Based on new information that was available to the City, primarily through Pacaso's marketing materials, the City Attorney's office concluded that the properties being marketed by Pacaso were

not just fractional or partial ownership structures, but were also being marketed to be used as a time share project that would be prohibited under the City's ordinance, and informed Pacaso of that conclusion. Pacaso disagreed with the City Attorney's conclusion, and initiated a lawsuit in an effort to compel the City to retract its conclusion. That litigation is ongoing.

When reviewing the Time Share Ordinance in this context, the City Attorney's office found that the substance of the Time Share Ordinance has not been updated since its adoption in 1982. The City Attorney's office concluded that the Time Share Ordinance would benefit from an update to refine the definitions to more directly address the impacts of time-share uses, to clarify the means used by the City to enforce the restrictions on time share uses, and to clarify how time share uses are treated in non-residential districts. City staff initially delayed initiating any changes to the Time Share Ordinance while the litigation was ongoing. However, due to the continued marketing of time share uses within the City, staff has decided to move forward with recommending the proposed updates to the City's ordinance.

On March 1, 2022, the Planning Commission voted unanimously to recommend the City Council approve the proposed ordinance.

DISCUSSION

The Discussion section of the Staff Report is organized as follows: First, the section provides a brief explanation for the City's conclusion that the homes that have been marketed by Pacaso constitute time share projects. While the City's conclusion does not directly affect the changes to the Zoning Code set forth in the proposed ordinance, it is helpful to understand that the Time Share Ordinance, both in its original form and as proposed to be amended, is intended to protect against the impacts that these homes and similar uses could have on the City's housing supply and the character of the City's residential districts. Second, this section discusses the legal basis for the City's Time Share Ordinance, the reasons why the City prohibited time share uses in residential properties, and why those reasons continue to apply today. Third, this section outlines the changes made in the proposed ordinance and the reasons for the proposed changes.

A.Current Time Share Ordinance and Application to Pacaso Homes

Section 17.112.130 of the Zoning Code prohibits the creation of a time-share project as a means of ownership of any single-family, two-family or multiple family dwelling or apartment house within the City. A time-share project is defined in that section as any real property that is subject to a time-share program. A time-share program is in turn defined in part as an arrangement whereby the use, occupancy or possession of the property circulates among purchasers according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year.

Pacaso provides a significant amount of information on its website regarding the manner in which its homes are used by the purchasers of a Pacaso home. According to Pacaso's website, the single family residences marketed by Pacaso are held by a property-specific

limited liability company ("LLC"), and each co-owner purchases a 1/8 share in the LLC. (Pacaso.com/learn) Each 1/8 share entitles the co-owner to 44 stay nights within any 365 day window. Stays can be from 2 to 14 nights in duration for each 1/8 share. Back-toback stays are not permitted. (Pacaso.com/faq/scheduling) Stays are booked on an app, with specific rules governing the number of "special dates" that each co-owner can book, and the number of stays that each owner can book during "peak seasons." (Id.) Each owner can book the residence to use themselves, or may allow guests to use the residence, whether or not the co-owner is present. (Id.) Between each stay, Pacaso conducts a thorough inspection and cleaning. ("5 reasons Pacaso is better than a timeshare." Pacaso.com/blog/better-than-resort-timeshare)

The Pacaso model grants each 1/8 owner the right to use the property for a specific period of time (44 days in a year) in increments of 2-14 days. The use, occupancy and possession of the property circulates among the co-owners according to a floating time schedule that gives each co-owner exclusive rights to the property for a specific period of time each year. This use structure fits squarely in the City's definition of a time-share program, and the properties operated by Pacaso in this manner would therefore be timeshare projects under the existing Time Share Ordinance.

B.Reasons for the Time Share Ordinance

1. The City's General Plan

The City of St. Helena has long been defined by its rural, small town quality and agricultural character. In adopting the St. Helena General Plan Update 2040, the City noted that the defining, unifying goal of all the elements of the 1993 General Plan was: To protect the rural, small town quality and agricultural character of St. Helena. It is the General Plan's intent that the preservation of this small town character be the unifying philosophy that overlays all other stated goals and policies.(General Plan 2040, p. 1-2.)

While the 2040 General Plan acknowledges that this is no longer the sole, overriding focus of the General Plan, retaining the small town character of St. Helena remains a primary focus of the City's land use planning. (Id.)

A key component of retaining the City's small town character is maintaining a balance between the economic benefits that arise from visitors who come to St. Helena for its wineries, restaurants and historic downtown, and maintaining its authentic small town quality of life for the City's residents. This theme is consistent throughout the City's General Plan, and maintaining this balance is key to the City's long term viability. The General Plan notes in its Introduction that "[t]he community stands out in the Valley for its unique, historic character and its ability to attract visitors while also supporting the needs of its resident population." (General Plan p. 1-8.) The City has set goals to maintain that balance, striving to achieve an economy that "will meet the basic needs of residents, while balancing the benefits and impacts of visitors and provide better economic opportunities. (General Plan 1-15.) The City further seeks to "promote sustainable tourism practices that allow the City to enjoy the economic benefits of visitors to the region while maintaining the authentic small-town quality of life." (General Plan p. 3-9.)

St. Helena is a renowned tourist destination, bringing visitors from throughout the world to its wineries, restaurants and downtown, but it is also a functioning City and community, with residents who contribute to its social fabric. Like most communities throughout California, one of the key means that the City utilizes to maintain this balance is through its Zoning Ordinance. The City has commercial districts, like the Service Commercial district and the Central Business district, that provide for uses that serve both visitors and the local community, such as restaurants, retail shops and winery tasting rooms, among others, along with lodging where those visitors can stay. (St. Helena Municipal Code §§17.48.030, 17.52.030.) The City also has residential districts that provide housing for those who live in the community, at varying densities in order to provide a diversity of housing types.

2.Use of Zoning to Preserve Residential Areas

The use of zoning to preserve the character of the residential districts of a City has been common for over a century. In the seminal case of Euclid v. Ambler the United States Supreme Court upheld the validity of comprehensive zoning that would set aside residential districts "from which business and trade of every sort, including hotels and apartment houses, are excluded." (Euclid v. Ambler Co. 272 U.S. 365, 390.) The U.S. Supreme Court upheld the Village of Euclid's zoning ordinance in that instance, noting that the inclusion of non-residential uses in residential districts may have an increasingly deleterious impact on the residential area "until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed." (Id. at 394.)

The California Court of Appeals followed Euclid and subsequent cases in upholding the City of Carmel-by-the-Sea's zoning restriction on short-term rentals. (Ewing v. City of Carmel-By-The-Sea (1991) 234 Cal.App.3d 1579.) In that case, the Court noted that the City's chief purpose in adopting the short-term rental restriction was "to provide an appropriately zoned land area within the City for permanently single-family residential uses and structures and to enhance and maintain the residential character of the City." (Id. at 1579.) In upholding Carmel's short-term rental restriction, the Court found that short-term rentals "undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community." (Id. at 1591.)

3.Impacts of Time Share Uses on Residential Districts

Like Carmel, the City of St. Helena strives to maintain the character of its residential areas in the face of intense demand for accommodations to serve visitors to St. Helena. The

Time Share Ordinance is one of the means that the City has in place to ensure that it is able to maintain its existing and limited housing stock for use in long term residency, and to maintain the character of its residential zoning districts. When the City originally adopted the Time Share Ordinance in 1982, the City Council made specific findings based on the impact it foresaw if time share uses were to locate in the residential areas of the City. Those findings were as follows:

1. There is a critical shortage of affordable housing in the city for long-term occupancies (more than six months annually), and the availability of additional residential dwelling units is substantially restricted by the growth management system.
2. The conversion of residential dwelling units within the city to time-sharing projects eliminates residential dwelling units otherwise available for long-term occupancies (more than six months annually) in the city.
3. Time-sharing projects have the same character as commercial hotels, motels and other transient occupancy uses due to their transient nature and to the multiple shortterm (less than six months annually) occupancies by those participating in timesharing projects.
4. Such commercial or quasi-commercial like use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace
   and quiet of residential neighborhoods.
5. The city council finds and determines that this section is necessary to protect the public health, safety and welfare of the citizens of the city.

As discussed in more detail below, these findings continue to hold true in St. Helena, and continue to support the City's decision to restrict time-share uses in residential districts.

i. Housing Shortages and Impacts of Time-Share Uses on Existing Housing Stock

In adopting the current Time Share Ordinance, the City Council found that there was a critical shortage of affordable housing in the City for long-term occupancies. That continues to be the case, and is undoubtedly worse than was the case at the time the Time Share Ordinance was originally adopted. The most recent census data lists the median value of owner occupied homes in St. Helena at $1,112,100 for the period of 2015-2019, while the Zillow Home Value Index estimates medial home values in St. Helena to be approximately $1,870,000 as of February 2022. www.census.gov/quickfacts/sthelenacitycalifornia; zillow.com/home-values/.) In contrast, the median household income in St. Helena from 2015-2019 was $90,031, and the median income for a four person household in Napa County for 2021 is approximately $109,200. (www.census.gov/quickfacts/sthelenacitycalifornia; www.hcd.ca.gov/grantfunding/income-limits/state-and-federal-income-limits/docs/income-limits-2021.pdf.)

At the time of adoption of the City's Housing Element in 2015, the income necessary to purchase a median priced single family home was nearly $200,000 per year, and prices

have risen dramatically since then. (City of St. Helena Housing Element Update 2015¬23, p. 3.) The cost of homes currently in St. Helena are well in excess of what median income residents of St. Helena can afford, as well as median income residents of Napa County generally. Further, as Erika Sklar observed in the St. Helena Housing Update Report that she prepared for the City in April 2018, "St. Helena has more local jobs than people in the labor force, demanding large numbers of commuters to fill local jobs. Workers commute daily into St. Helena, many because there is no local housing that is affordable at the incomes that they make. 36% of St. Helena households cannot afford market rents while 70% of St. Helena households cannot afford to purchase a home. Paramedics and preschool teachers cannot afford St. Helena's market rents. Teachers, registered nurses, winery and hospitality managers and non-profit directors cannot afford homeownership in St. Helena." (St. Helena Housing Update Report, p. 7 (April 2018).)

The City has made and continues to make efforts to address the need for affordable housing in the City, including providing assistance for the Brenkle Court, Turley Flats and 963 Pope Street projects. The City has also ensured that new non-residential development will assist the City in providing adequate affordable housing, as evidenced by the significant contributions to affordable housing made by the Farmstead Lodging project through its development agreement with the City. These efforts, however, have highlighted the challenges of providing housing at all income levels, with the most significant challenge being a limited supply of existing housing stock in the City, and a limited supply of available land for new housing. Given the housing shortage already in existence, losing additional housing stock will only make this problem worse.

The findings in the original Time Share Ordinance also note that the conversion of homes to time sharing projects would eliminate residential dwelling units that would otherwise be available for long term residential use. This continues to be true, as a home that is used for time share purposes will no longer be available for households to use as their long term residence. This threat to the City's existing housing stock is not insignificant. The publicity regarding Pacaso's rise as a company speaks to a pent up demand for homes that could be converted to time share use, reducing available housing stock for long term use. Pacaso's co-founder has indicated that "[t]here are tens of millions of families that aspire to own second homes but are unable to, due to reasons of cost." (Just Five Months Old, Zillow Co-founder's Pacaso Claims It's Already A Unicorn" Noah Kirsch, March 24, 2021 (www.forbes.com/sites/noahkirsch/2021/03/24/just-five-months-old-zillowcofounders-pacaso-claims-its-alread-a-unicorn/.)) In discussing Pacaso's model, Dan Wenhold of the venture capital firm Fifth Wall said "[t]hey were taking a previously illiquid asset, which was a timeshare, and making it affordable for the masses, also making it attainable for folks who wanted to own a second home but previously weren't able to." ("Pacaso, the Proptech Startup Founds by Zillow Alums, Raises $125M Series C" Sophia Kunthara (September 14, 2021) (news.crunchbase.com/news/proptech-startup-pacasoraises-125m-series-c.)) Creating a new market for these prospective buyers who otherwise would not buy second homes unquestionably increases demand for these homes by creating an incentive for timeshare companies to buy up residences to meet this market demand. Creating more demand, and reducing supply, will further

ratchet up housing costs, exacerbating the already significant housing shortage in the City.

ii. Impacts to Character of the City's Residential Districts

The City Council additionally found as part of the adoption of the original Time Share Ordinance that time-sharing projects have the same character as commercial hotels, motels and other transient occupancy uses due to their transient nature and to the multiple short-term occupancies by those participating in time-sharing projects. The Council concluded that this commercial or quasi-commercial like use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods. This continues to be the case, as the nature of time share uses of residential property is different than the typical long term residential uses for which the residential districts of the City are intended.

The complaints that have been made by some local residents regarding the Pacaso homes are illustrative of the distinctions between time share uses and long term residential uses. A sampling of the email complaints received by the City are included in Attachment No. 2 to this Staff Report. The complaints received center on concerns over more intense traffic and parking issues, outdoor parties and conversations going late into the evening, sometimes as late as 2 A.M. One neighbor complained of outdoor lighting shining into her daughter's room at night. They complained of traffic and inadequate parking for the visitors to these homes. Further, neighbors have noted that with each turnover from one stay to another, cleaning and landscaping crews come to clean the unit and prepare it for the next user. While this level of maintenance is appropriate for a commercial vacation property, it impacts the residential character of the surrounding area by adding parking and noise burdens in the neighborhood. Living next door to a home where the residents turnover every 2-14 days, and professional cleaning and landscaping crews come to the property between each visit is much more akin to living by a commercial lodging project than a residential home. This is not at all surprising, given that these time share homes are used by people who are on vacation. While long term residents may have an occasional party at their home, the time share model means that these residences are constantly being used by people who are on vacation, hosting parties or celebrating special occasions. These activities by their nature are more intense than typical residential use of property.

The intensity of this use is a significant reason that these uses can change the character of a residential neighborhood. Long term residents, whether owners or renters, will occasionally have guests, and will occasionally have parties, but these time-share homes are used exclusively by people who are coming to the City on a short term basis for vacation or leisure. People will naturally stay out later, entertain more and gather in larger numbers while on vacation. That is the reason that these uses are more appropriate in non-residential areas that are intended to cater to the City's visitors and tourists. Time share uses can change the character of a residential neighborhood by having it serve not only as a residential area but also a visitor lodging area, and subjecting it to the impacts that come with that more intense land use.

In their marketing materials, Pacaso cites this intensity of use as a benefit, indicating that having these units filled with visitors seven days a week will benefit the local economy, since these visitors will patronize local businesses. (pacaso.com/communities) However, as noted above, the City strives through its General Plan to achieve a balance between benefits to the local economy and maintaining the character of the City. The City seeks to achieve this balance by promoting "sustainable tourist practices that allow the City to enjoy the economic benefits of visitors to the region while maintaining the authentic smalltown quality of life, (General Plan p. 3-9) and striving to achieve a local economy that "will meet the basic needs of residents, while balancing the benefits and impacts of visitors." (General Plan p. 1-15.) Bringing more visitors into residential neighborhoods to improve the local economy does not help to achieve that balance. It instead tips the scales in favor of the local economy, at the expense of the residential character of these neighborhoods.

The nature of the timeshare use itself can impact the residential character of the City's residential districts because it will ensure that the time share users can only use their property for a limited amount of time each year. In the case of Pacaso owners, each stay is limited to 2-14 days. As discussed above, in the Ewing v. City of Carmel-by-the-Sea case, the California Court of Appeal found that short term rentals would affect the essential character of a neighborhood and the stability of a community. The Court noted that "[s]hort term rentals have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They do not lead a Scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community."

This same problem is present with time-share uses. Each co-owner is in the unit on a short-term basis, and without the time to participate in the types of activities or build the relationships that create the fabric of a community. At the April 28, 2021 council meeting several Pacaso co-owners spoke of their experiences in St. Helena. All of them spoke of their affection for the community and the traditions they had established, but these were centered on attending local events and visiting shops, restaurants and wineries. These types of transactional activities are all beneficial to the City's local economy and are what the City hopes to see from visitors to the City, but it is not the type of community involvement described in the Ewing case that binds and strengthens a residential community. Given the City's desire to strike a balance between the demands of the City's visitor and tourist economy, and retaining its small town character and quality of life, the City has an interest in maintaining housing stock in its residential districts for long-term residents who will engage in the community in the manner described by the Court in Ewing, to the betterment of the entire community.

C.Proposed Amendments to the Time Share Ordinance

The proposed Ordinance would make certain changes to the City's Existing Time Share Ordinance, as described below.

1.Findings and Establishment of New Chapter

The proposed Ordinance includes detailed recitals and findings describing the policy bases for the City's regulation of time share uses. The findings are consistent with the findings made as part of the original Time Share Ordinance, but more detail has been added. The policy bases for the proposed Ordinance are discussed in the sections above, and further discussion is not necessary here.

The proposed Ordinance also relocates the restrictions on time share uses to its own chapter at Chapter 17.138. The Time Share Ordinance is currently located in Chapter 17.112, General Site Design and Development Standards. City staff believes that with the added level of detail in the Proposed Ordinance, these provisions merit being located in a separate chapter, and has changed the location of the Timeshare Ordinance accordingly.

2.Definitions

The Proposed Ordinance amends the definitions that are used to define time share uses, with the new definitions set forth in Section 17.138.020. The new definitions are modeled on the definitions utilized by the state to regulate time-shares in the Vacation Ownership and Time-Share Act of 2004 (Bus. & Prof. Code §§11210¬11288), but are modified somewhat to better apply in the land use regulation context.

The new ordinance includes a number of definitions that work in concert to define a timeshare use. The ordinance defines a "time-share use" as the use of one or more accommodations, or any part thereof, as part of a time-share property pursuant to a timeshare plan. An "accommodation" is defined in this Chapter to include a range of residential units that could potentially be used for time-share purposes. The types of residential units that can be accommodations are listed at the beginning of Section 17.138.020 in the proposed ordinance. A "time-share plan" is defined in the ordinance, and generally includes any arrangement, plan, scheme or similar device whereby a purchase receives the right to exclusive use of the accommodation, whether through the granting of ownership rights, possessory rights or otherwise, for a period of time less than a full year during any given year. A "time-share property", in turn is defined as one or more accommodations that are subject to the same time-share plan together with any property rights that are appurtenant to the accommodations. A "time-share instrument", is the document or documents that create or govern the operation of the time-share plan.

Therefore a time-share use is the use of a residential property that fits within the definition of an "accommodation" under the ordinance, pursuant to a "time-share plan", which grants each owner of the time-share property exclusive use of the property for a certain period of time each year, but not the full year.

It is important to note that not all properties with multiple owners or owned by business entities (such as LLCs) would constitute a time-share use under these definitions. The definitions focus on the manner in which the accommodation is used, not how it is owned. A time-share plan allows each owner exclusive use of the property for a specific period of time. This manner of use prevents the property from being used for long term residency, and leads to the continual cycling of visitors through the property and the more intense, constant vacation oriented use that the ordinance seeks to limit in residential districts of the City.

A property that is owned by a group of friends or extended family members, whether through a separate business entity or otherwise, will not necessarily mandate that only one owner will be able to use the property at a time. The more formal arrangement found in time-share uses increases the intensity of use, in that each individual time-share owner cycles through the property, whereas families or friends are more likely to use the property together or in groups leading to less transition in the residential neighborhood. The more formal relationship, use of professional property managers and rights to exclusive use found in timeshare uses contributes to the commercial character of the property, with added traffic due to the more frequent turnover of visitors and more frequent cleaning and inspection between each user, which is common for a commercial vacation property, but not for a home owned by family or friends.

3.Enforcement

The new ordinance additionally adopts a new enforcement structure for the City timeshare restrictions, modeled on the City's short-term rental ordinance. The ordinance prohibits both the use of accommodations for time-share use, and the advertisement of accommodations for time-share uses. This will better allow the City to prevent time-share uses in residential neighborhoods before they occur. The proposed Ordinance also outlines the process that will be used to enforce this new Chapter, again based on the City's existing short-term rental regulations. This approach has proved to be effective in enforcing the City's short-term rental regulations, and will help the City to take a more preventative approach to enforcing its time-share regulations as well.

4.Time Share Uses in Service Commercial and Central Business Districts

Finally, while the City's existing Time Share Ordinance did prohibit time-share projects within certain types of residential dwelling units within the City, it does not make distinctions based on the various zoning districts of the City. Given that the primary concerns and impacts of this use arise from the high intensity use of property that negatively impacts the residential character of residential districts within the City, this use may not have the same impacts in commercial districts where visitors can be closer to the amenities in the City that cater to visitors. The proposed new ordinance would allow time-share uses in the Service Commercial and Central Business Districts as conditional uses, provided that such time-share uses would be limited to accommodations in upper floors in conjunction with a mixed use project, would be required to provide at least one parking space for accommodations of two or fewer bedrooms, and at least two parking

spaces for accommodations of three or more bedrooms, and would be subject to such other conditions imposed by the City has part of the conditional use permit process. As part of the application for a time-share use, the applicant would have to provide specific information including a management plan and specific information on the accommodations and any ancillary uses. The City would then review the application process in accordance with its normal process for review of conditional uses. This would allow the City to address potential impacts associated with this use, similar to the approach that the City uses with hotels and other lodging accommodations in these districts.

Consistent with this change, the proposed ordinance updates the list of conditional uses in both the Service Commercial and Central Business Districts to include time share uses as regulated by the new Chapter 17.138.

The Planning Commission held a public hearing to consider the proposed ordinance at its regular meeting of March 1, 2022. Following the public hearing, the Planning Commission unanimously recommended that the City Council adopt the proposed ordinance. City staff has made minor, non-substantive edits to the proposed ordinance that went to the Planning Commission to correct typographical errors, and to add the sections amending the list of conditional uses in the Service Commercial and Central Business Districts.

FISCAL IMPACT

None

RECOMMENDED ACTION

Staff recommends that the City Council introduce by title only and waive further reading of an Ordinance Adding Chapter 17.138 "Time Share Uses" and Sections 17.138.010-17.138.060 to Title 17, Zoning, of the St. Helena Municipal Code, amending sections 17.48 (Central Business) and 17.52 (Service Commercial) and Deleting Section 17.112.130 of the St. Helena Municipal Code.

ATTACHMENTS

Attachment 1-St. Helena Time Share Ordinance-Final
Attachment 2-Community email comments

CITY OF ST. HELENA

ORDINANCE NO. _____

ADDING CHAPTER 17.138 "TIME SHARE USES" AND SECTIONS 17.138.010 – 17.138.060 TO TITLE 17, ZONING, OF THE ST. HELENA MUNICIPAL CODE, AMENDING SECTIONS 17.48.030 AND 17.52.030 AND DELETING SECTION 17.112.130 OF THE ST. HELENA MUNICIPAL CODE

WHEREAS, the City of St. Helena is a popular tourist destination, known for its scenic Napa Valley location, exceptional wineries and restaurants, historic Main Street and small town agricultural character; and

WHEREAS, preserving the rural, small town quality and agricultural character of the City of St. Helena has been a focal point of the City's land use planning for decades, and remains a primary focus in the City's 2040 General Plan; and

WHEREAS, the City of St. Helena stands out in the Napa Valley for its ability to attract visitors while also supporting the needs of its resident population. Maintaining the balance between the quality of life for residents and those who work in the City and the visitors who help to sustain the City's tourist economy is key to maintaining a sustainable community and a stable economy; and

WHEREAS, the City values and welcomes all visitors to the City and recognizes their contributions to the City's economy, but finds that in order to maintain the City's long term viability as a community where people not only come to visit, but also live, work and contribute to the long term betterment of the community through participation in the City's schools, local community groups, civic government and local serving businesses, the City must maintain a balance between residential land uses and visitor serving uses; and

WHEREAS, the City's existing housing stock is significantly impacted, with demand outweighing supply, resulting in extremely high housing prices as detailed in the accompanying staff report. A limited supply of suitable vacant land, exorbitantly high land costs, and limitations in the City's existing infrastructure, among other factors, have limited the construction of additional housing in the City of St. Helena; and

WHEREAS, according to the U.S. Census Bureau, the current median household income in the City of St. Helena is $90,031, while the estimated value of owner-occupied housing units from 2015-2019 was approximately $1,112,100, with current real estate listings suggesting that prices are increasing significantly, meaning that homes in the City are not affordable to the median household in the City; and

WHEREAS, as noted in the St. Helena Housing Update Report prepared for the City in April 2018, "St. Helena has more local jobs than people in the labor force, demanding large numbers of commuters to fill local jobs. Workers commute daily into

St. Helena, many because there is no local housing that is affordable at the incomes that they make. Thirty six percent (36%) of St. Helena households cannot afford market rents while seventy percent (70%) of St. Helena households cannot afford to purchase a home. Paramedics and preschool teachers cannot afford St. Helena's market rents. Teachers, registered nurses, winery and hospitality managers and nonprofit directors cannot afford homeownership in St. Helena"; and

WHEREAS, the City has made significant efforts to address the need for housing at lower income levels, of which recent examples include providing assistance to local nonprofit Our Town St. Helena for the Brenkle Court development, a mutual self-help housing development providing homeownership opportunities to eight low income working families, as well as the acquisition of a home located at 963 Pope Street using a charitable sale strategy. The property at 963 Pope Street is being developed with an additional four units to provide a total of five new affordable rental units in the City; and

WHEREAS, further, in connection with the recently approved Farmstead lodging project, the City negotiated with the developer to contribute one million dollars toward the purchase of property to be used for the development of not less than twenty units of housing that will be affordable to low and very low income households, and an additional two million two hundred thousand dollars to be used more generally toward the development of affordable housing in the City; and

WHEREAS, the City additionally provided substantial financial assistance to the recently completed Turley Flats Affordable Housing development, which provides eight units of rental affordable housing in a three story building located at 1105 Pope Street; and

WHEREAS, these efforts have helped to address the City's need for affordable housing, but have also highlighted the challenge of providing sufficient housing to meet demand, particularly at more affordable levels, due to the significant costs of acquiring housing or land for the development of housing in the City and the limited supply of such land; and

WHEREAS, the conversion of existing residential units to uses other than long-term residential use will further reduce the City's existing long-term housing supply, causing further imbalance between the demand for housing in the City and the existing supply, not only altering the character of the City's residential neighborhoods, but also presenting further challenges to the City's efforts to provide affordable housing within the community; and

WHEREAS, the City additionally has, for many years, worked to preserve its existing housing stock for long term residential use, both to maintain the character of its residential neighborhoods and prevent residential districts from becoming visitor and tourist serving districts, and to ensure that it would not be converted to uses other than long-term residential uses; and

WHEREAS, to this end, in 1982 the City adopted Ordinance No. 82-07, which prohibited the creation of time-share projects as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house within the City. This restriction was imposed because the conversion of residential dwelling units to time-sharing projects would eliminate residential dwelling units that would otherwise be available for long-term occupancies, and were inappropriate in residential areas because those uses have the same character as commercial hotels, motels and other transient occupancy uses, and would result in increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods; and

WHEREAS, the City has historically not received complaints about time-sharing uses in residential neighborhoods. Commencing in 2020, however, the City began receiving complaints regarding single family homes in the City that were being sold and/or marketed as "fractional ownership" or "co-ownership" homes, wherein each buyer may acquire a one-eighth interest in a limited liability company that will own the home. Under the structure pursuant to which these dwelling units are marketed and sold, each owner gets a one-eighth share along with the right to use the home for one-eighth of each year indefinitely. During each owner's usage period, that owner has exclusive use of the entire house. All rentals are prohibited; only owners and their guests are permitted to use the house. Each owner pays regular assessments to fund the operating costs of the home and maintenance reserves; and

WHEREAS, this arrangement, which provides that each purchaser is entitled to exclusive use of the property for a fixed number of days each year, is a "time-share plan" as defined in Business and Professions Code section 11212, and a "time share program" as defined in Section 17.112.130 of the City's Municipal Code; and

WHEREAS, the City has received numerous complaints regarding these properties, including parking impacts from large numbers of people staying at these properties; excessive noise late into the evening due to frequent outdoor parties; traffic due to frequent visitor turnover; traffic, noise and parking concerns due to frequent visits from cleaning, landscape maintenance and pool cleaning services that come to the properties in between each stay to prepare the home for the next guest; and an inability to maintain lines of communication to set community expectations with the users of the unit, as visitors only frequent the homes for short term stays of 2 to 14 days; and

WHEREAS, the complaints received by the City are reflective of the reasons that the City prohibited time-share projects within residential areas of the City. The time-share uses provide a short-term, high impact vacation oriented use of the property, where those that buy into the time-share use the home for entertaining and short term stays while visiting restaurants, wineries and other tourist oriented locations in St. Helena and the surrounding Napa Valley; and

WHEREAS, this high impact use, combined with the frequent turnover and commercial management of these properties is not consistent with the residential districts in which they are located. It is commercial in nature, in that these time-share

uses are structured as a short-term, tourist oriented, visitor serving use of the subject properties. The use of these properties as time-shares adds excessive noise and traffic to residential districts by using these properties for high impact tourist oriented uses more appropriately located in commercial districts of the City; and

WHEREAS, expanded use of residential properties for time-share uses will further reduce the availability of housing stock for long-term residential use, and create a new demand for time-share uses of residential properties; and

WHEREAS, this encroachment of tourist oriented, visitor serving uses in residential neighborhoods will not only compromise the residential character of these areas, but will also further increase the costs for housing in the City, undermining the City's efforts to provide a balance of housing for all income levels in the City; and

WHEREAS, the City's authority to enact zoning ordinances is based on the powers accorded cities and counties under the State constitution to make and enforce police regulations. This police power grants the City broad authority to regulate the development and use of real property within its jurisdiction to promote the public welfare; and

WHEREAS, pursuant to and in accordance with this authority, the City Council desires to reaffirm its restrictions on time-share uses in residential areas, and to update the language of the Zoning Code to provide consistency with the terminology used to define time-share uses in State law. Further, the City desires to provide greater clarity as to the zoning districts in which time-share uses are permitted as conditional uses, and the standards pursuant to which they will be reviewed in those zoning districts; and

WHEREAS, the Planning Commission of the City of St. Helena held a duly noticed public hearing on March 1, 2022, as required by law to consider all the information presented by staff, and public testimony presented in writing and at the meeting; and

WHEREAS, on March 1 2022, the Planning Commission of the City of St. Helena recommended that the City Council adopt this Ordinance amending the Municipal Code as described herein by a 5-0 vote; and

WHEREAS, on March 22, 2022, the City Council held a duly noticed public hearing, accepting testimony from the public, and discussed the proposed amendments and staff's recommended approval of this Ordinance; and

WHEREAS, the proposed zoning amendments are consistent with the General Plan goals, policies and implementation programs as the Ordinance will continue to preserve the agricultural, small town character of the City of St. Helena; will preserve the City's residential districts for residential uses; and will help to preserve the City's existing housing stock for long term residential uses, to avoid further exacerbating the existing impacts on the City's housing supply; and

Now, therefore, the City Council of the City of St. Helena does hereby ordain as follows:

SECTION 1: The above recitals are hereby incorporated as though set forth in this section.

SECTION 2: Chapter 17.138 and sections 17.138.010 – 17.138.060 are hereby added to Title 17 of the St. Helena Municipal Code, to read as follows:

"Chapter 17.138

TIME-SHARE USES

17.138.010 Purpose and Findings

17.138.020 Definitions

17.138.030 Time-share Uses Restricted to Service Commercial (SC) and Central Business (CB) Districts

17.138.040 Application Process and Development Standards

17.138.050 Violations, Enforcement and Civil Penalties

17.138.010 Purpose and Findings

A. There is a critical shortage of permanent, long-term housing in the City of St. Helena.

B. A limited supply of suitable vacant land, land values, and market demand for land for other uses, including but not limited to use of property for vineyards, have limited the construction of additional housing in the City of St. Helena.

C. St. Helena is a popular tourist destination known for its scenic Napa Valley location, exceptional wineries and restaurants, historic Main Street and small town agricultural character.

D. The City of St. Helena stands out in the Napa Valley for its ability to attract visitors while also supporting the needs of its resident population. Maintaining the balance between the quality of life for residents and those who work in the City and the visitors who help to sustain the City's tourist economy is key to maintaining a sustainable community and a stable economy.

E. Time-share uses are not an appropriate land use in the City's residential districts due to the multiple occupancy of time-share properties, the short-term, tourist oriented use of such property and commercial management of time-share facilities, all of which

create increased traffic generation, excessive noise, disruption to residential communities through commercial-level maintenance of the time-share facilities, and therefore are appropriately confined to commercial zoning districts.

F. Conversion of permanent housing to time-share facilities removes existing housing units from the City's existing stock and exacerbates an already severe housing shortage.

G. It is therefore in the public interest to prohibit conversions of existing housing units into time-share facilities, as to do so eliminates needed housing stock by diverting those units to a tourist-oriented, commercial use.

17.138.020 Definitions

For purposes of this Chapter, the following words and phrases shall have the meaning respectively ascribed to them by this Section:

"Accommodation" means any dwelling unit, apartment, condominium or cooperative unit, hotel or motel room, or other structure constructed for residential use and occupancy, including but not limited to a single family dwelling, or unit within a two family dwelling, three family dwelling, multiple family dwelling, or townhouse dwelling as defined in Section 17.04.160.

"Building" shall have the meaning ascribed to it by Section 17.04.160.

"Dwelling unit" shall have the meaning ascribed to it by Section 17.04.160.

"Managing entity" means the person who undertakes the duties, responsibilities and obligations of the management of a time-share plan.

"Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, or other legal entity, or any combination thereof.

"Time-share instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan and includes the declaration dedicating accommodations to the time-share plan.

"Time-share interest" means the right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, regardless of whether or not such right is coupled with a property interest in the time-share property or a specified portion thereof.

"Time-share plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, bylaws, shareholder agreement, partnership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives the right to exclusive use of an accommodation or accommodations, whether through the granting of ownership rights, possessory rights or otherwise, for a period of time less than a full year during any given

year, on a recurring basis for more than one year, but not necessarily for consecutive years.

“Time-share property” means one or more accommodations subject to the same time-share plan, together with any other property or rights to property appurtenant to those accommodations.

“Time-share use” means the use of one or more accommodations or any part thereof, as a time-share property pursuant to a time-share plan.

17.138.030 Time-share Uses Restricted to Service Commercial (SC) and Central Business (CB) Districts

Time-share uses are conditional uses within the City’s Service Commercial (SC) District and Central Business (CB) District, subject to approval of a conditional use permit applied for and approved in conformance with this Chapter. Time-share uses are not permitted in all other Zoning Districts in the City.

17.138.040 Application Process and Development Standards

A. Application Process. Approval of a conditional use permit for time-share uses in the Service Commercial District or Central Business District shall be required in accordance with the requirements of Chapter 17.168. In addition to the application requirements contained in Chapter 17.168, an application for a time-share use shall be accompanied by the following documents which shall be subject to the approval of the planning director:

1. Management Plan. A management plan shall describe the methods employed by the applicant to guarantee the future adequacy, stability, and continuity of a satisfactory level of management and maintenance of the time share use.

2. Application Requirements. In addition to any application requirements established by this section and any other applicable requirements of this code, the following information shall be submitted as part of any application to develop or establish a time-share use:

a. Typical floor plans for each accommodation.

b. The phasing of the construction of the accommodations on the time-share property, if applicable.

c. A description of any ancillary uses which are proposed in conjunction with the time share use.

d. A description of the method of management of the time share use and indication of the management entity for the time-share property.

e. Any restrictions on the use or occupancy of the accommodations.

f. Any other information or documentation the applicant, city staff or commission deems reasonably necessary to the consideration of the time-share use, including any required environmental documents.

B. Development Standards and Operational Requirements. Notwithstanding any other provision of this chapter, the following conditions must be met by any time-share use in any conditionally permitted zone. Additional requirements may be attached to a conditional use permit or development agreement if found to be necessary to assure that the time-share use meets the intent of this chapter:

1. Time-share uses developed in the Service Commercial District or Central Business District shall be limited to accommodations in upper floors in conjunction with a mixed-use project.

2. No existing residential use in the Service Commercial or Central Business District shall be converted to a time-share use.

3. Development Standards. The time-share use shall comply with all development standards for the zone in which it is located.

4. Parking. Parking shall be provided as follows:

a. For accommodations of two or fewer bedrooms, one parking space shall be provided for each accommodation.

b. For accommodations of three or more bedrooms, two parking spaces shall be provided for each accommodation.

4. Modification or Waiver of Standards. The planning commission may modify or waive one or more of the regulations contained in this section if it determines that strict compliance is not necessary to achieve the purpose and intent of this section.

17.138.060 Violations, Enforcement and Civil Penalties

A. Any responsible person, including but not limited to an owner of a time-share interest, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published, advertised or disseminated in any way and through any medium, the availability for sale or use of an accommodation in violation of this chapter is guilty of a misdemeanor for each day in which such accommodation is used, allowed to be used, or advertised for sale or use in violation of this chapter. Such violation shall be punishable pursuant to Chapter 1.20.

B. Time-share use, and/or advertisement for time-share use, of an accommodation in violation of this chapter is a threat to public health, safety or welfare and is thus declared to be unlawful and a public nuisance. Any such nuisance may be abated and/or restored by the enforcement official and also may be abated pursuant to Chapter 1.12, except that the civil penalty for a violation shall be one thousand dollars ($1,000.00). Each day the violation occurs shall constitute a separate offense.

C. Any responsible person who violates this chapter shall be liable and responsible for a civil penalty of one thousand dollars ($1,000.00) per violation per day such violation occurs. The city may recover such civil penalty by either civil action or administrative citation. Such penalty shall be in addition to all other costs incurred by the city, including without limitation the city's staff time, investigation expenses and attorney's fees.

1. Where the city proceeds by civil action, the court shall have discretion to reduce the civil penalty based upon evidence presented by the responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the court should consider the purpose of this chapter to prevent and deter violations and whether the reduction of civil penalties will frustrate that purpose by resulting in the responsible person's enrichment or profit as a result of the violation of this chapter. In any such civil action the city also may abate and/or enjoin any violation of this chapter.

2. Where the city proceeds by administrative citation, the city shall provide the responsible person notice of the right to request an administrative hearing to challenge the citation and penalty, and the time for requesting that hearing.

a. The responsible person shall have the right to request the administrative hearing within forty-five (45) days of the issuance of the administrative citation and imposition of the civil penalty. To request such a hearing, the responsible person shall notify the city clerk in writing within forty-five (45) days of the issuance of the citation. The appeal notification shall include all specific facts, circumstances and arguments upon which the appeal is based.

b. The city manager is hereby authorized to designate a hearing officer to hear such appeal. The city hearing officer shall conduct a hearing on the appeal within ninety (90) days of the request for the hearing unless one of the parties requests a continuance for good cause. The hearing officer shall only consider those facts, circumstances or arguments that the property owner or responsible person has presented in the appeal notification.

c. The hearing officer shall render a decision in writing within thirty (30) days of the conclusion of the hearing. The hearing officer shall have discretion to reduce the civil penalty based upon evidence presented by the property owner or responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the hearing officer should consider the purpose of this chapter to prevent and deter violations and whether the reduction of civil penalties will frustrate that purpose by resulting in the property owner's or responsible person's enrichment or profit as a result of the violation of this chapter.

d. Any aggrieved party to the hearing officer's decision on the administrative appeal may obtain review of the decision by filing a petition for writ

of mandate with the Napa County superior court in accordance with the timelines and provisions set forth in Government Code Section 53069.4.

e. If, following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be the responsible person for the civil penalty imposed by this section, such penalty, if unpaid within forty-five (45) days of the notice of the final determination, shall become a lien to be recorded against the property on which the violation occurred pursuant to Chapter 1.12. Such costs shall be collected in the same manner as county taxes, and thereafter the property upon which they are a lien shall be sold in the same manner as property now is sold for delinquent taxes.

D. Any violation of this chapter may also be abated and/or restored by the enforcement official and also may be abated pursuant to Chapter 1.12, except that the civil penalty under Chapter 1.12 for a violation shall be one thousand dollars ($1,000.00).

E. Each day the violation of this chapter occurs shall constitute a separate offense.

F. The remedies under this chapter are cumulative and in addition to any and all other remedies available at law and equity."

SECTION 3: Deletion of Section 17.112.130

Section 17.112.130 is hereby deleted in its entirety.

SECTION 4: Amendment of Section 17.48.030

Section 17.48.030 is hereby amended to add the following text as a separate line immediately following "Theaters, movie and legitimate;", and immediately prior to "Tobacco/smoke shop, including the sale of tobacco, tobacco and/or nicotine products and equipment for smoking;":

"Time share uses, pursuant to Sections 17.138.030 and 17.138.040;"

SECTION 5: Amendment of Section 17.52.030

Section 17.52.030 is hereby amended to add the following text as a separate line immediately following "Theaters, movie and legitimate;", and immediately prior to "Tobacco/smoke shop, including the sale of tobacco, tobacco and/or nicotine products and equipment for smoking;":

"Time share uses, pursuant to Sections 17.138.030 and 17.138.040;"

SECTION 6: CEQA

This ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that this ordinance is not subject to CEQA because the adoption of this ordinance is not a "project" pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations.

Moreover, under Section 15061(b)(3) of the State CEQA Guidelines, this ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment.

SECTION 6: Effective Date

This ordinance shall take effect 30 days after its final adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the _____ day of _____, 2022, and was adopted at a regular meeting of the St. Helena City Council on the _____ day of _____, 2022, by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Chouteau: _____
Councilmember Hardy: _____
Councilmember Hall: _____

APPROVED:

_____
Geoff Ellsworth, Mayor

ATTEST:

CITY OF ST. HELENA

_____
Cindy Tzafopoulos, City Clerk

From: Mari Jansdotter <mjansdotter@yahoo.com>
To: Anna Chouteau
Sent: 6/8/2021 7:25:45 AM
Subject: Re: [External] 1242 Madrona pictures Re: Pacaso

Thank you, Anna, for your kind reply.

I'm sorry you all have to go through this lawsuit by Pacaso and hope the judge find in your favor.

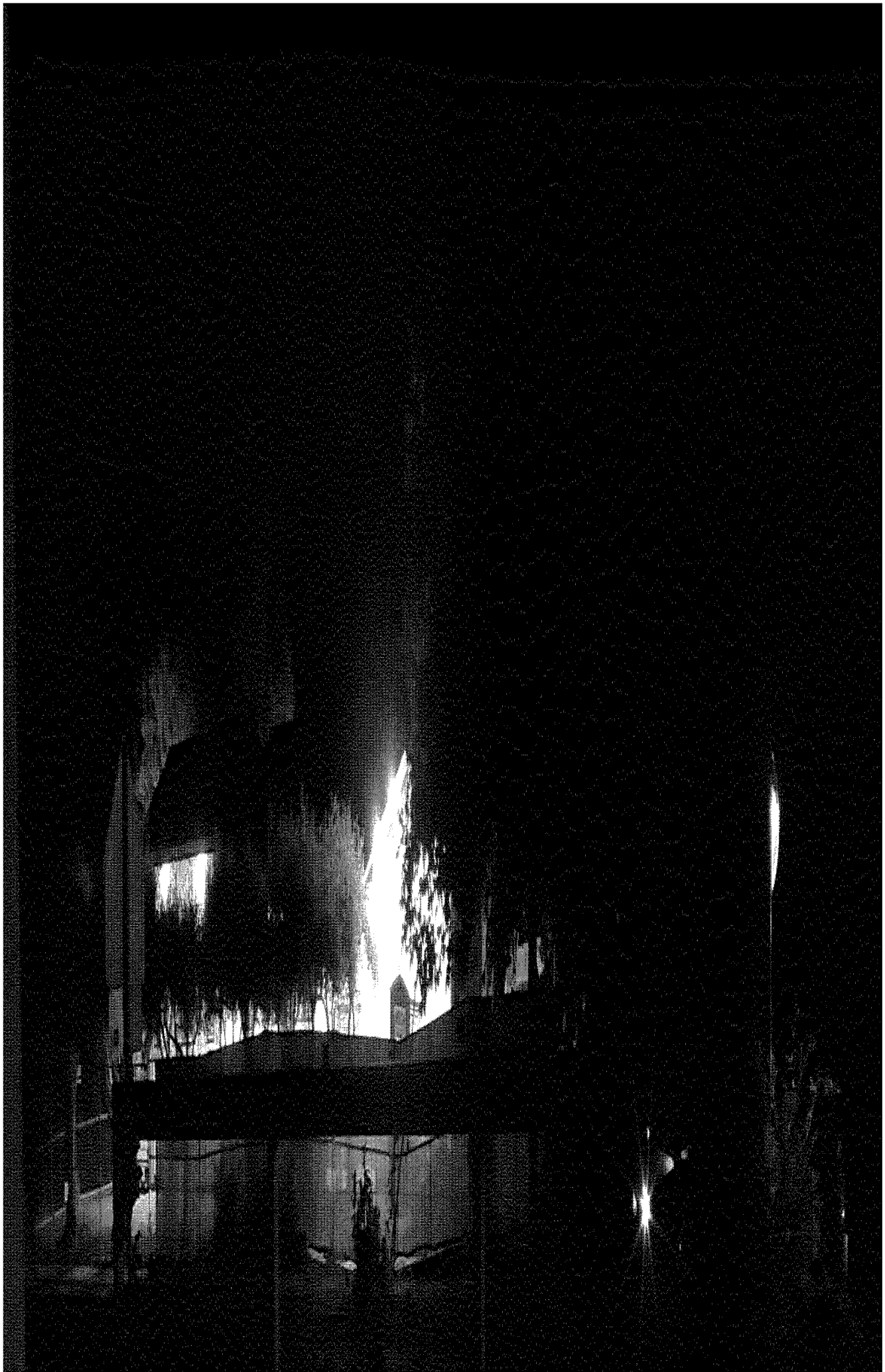
I have a follow-up question. Do you know who I should address it to?

The Pacas house building on Kearney across the street from us has installed lights under the roofline that are on all night and installed in such a way they shine straight into our house, especially my daughter's bedroom.

Are there any ordinances that I could refer to that help me ask them to please cover / redirect those lights or at least turn them off after 10 p.m?

Thank you!

Best
Mari



Sent from Yahoo Mail on Android

On Tue, Jun 8, 2021 at 7:12 AM, Anna Chouteau <AChouteau@cityofsthelena.org> wrote:

> Hi Mari,
>
> Thank you for your email. I forwarded your email to City staff about the specific permitting questions. Our planning director is out of the office this week.
>
> We are defending ourselves in the lawsuit. Our City Attorney filed an anti-SLAPP motion that is now public information and the hearing will be coming up this summer.
>
> All my best,
> Anna
>
> Sent from my iPad
>
> On Jun 7, 2021, at 6:01 PM, Mari Jansdotter <mjansdotter@yahoo.com> wrote:
>
> To clarify, do they have permit allowing the new structure going up at 1242 Madrona?
>
> The rendering from original sales listing shows a trellis (see attached) but a structure looking like a live-on unit close to (and taller than) the Oak neighbour' fence is being built. See pictures from today
>
> <20210607_175202.jpg>
>
> <20210607_175219.jpg>

Sent from Yahoo Mail on Android

On Mon, Jun 7, 2021 at 5:38 PM, Mari Jansdotter <mjansdotter@yahoo.com> wrote:

> Thank you for doing all you can to stop Pacaso!
>
> I am not o.k. with Pacaso's violation of city ordinance and I support the city's legal fight.
>
> In addition to signing the petition and putting a No Pacaso sign outside my home, what else can we on the community do to help, please?

I finally afforded my dream home after moving several times the last 10 years, only to a year later have 4! of these Pacaso 'time share' like vacation LLC/commercially owned houses popping up in my neighborhood.

I'm devastated - this is supposed to be a residential area!!

I am very worried about my family's safe & peaceful living situation, now that I'll be impacted by 4 of these houses (one across the street) - each with 8 groups of owners and/or their guests circulating in and out all year round.

Many Pacaso have 4 bedrooms that easily accommodate 8+ people, and pool in the backyards with outdoor areas for gatherings/parties.

It's a huge difference having your neighbor throwing an occasional party versus non-stop having a new group of people next door visiting for thier token time of vacation / partying.

Pacaso houses also come with increased parking problems as these properties tend not have garages or driveways (often transformed into addl bedroom).

Specifically would you mind looking into building code the one at 1242 Madrona / Oak? Looks like they're adding a guest house with vary narrow set back from the oak side neighbor. Is that an approved building? Maybe they're getting around that by making it a partial garage?

Add to that, the 4 Pacaso houses are all in close proximity of RLS with kids walking / biking to and from school.

What are the safety concerns that this is imposing with new people circulating in and out all year round and increased car traffic? Worst case scenario there will be a liability situation that will put a stop to Pacaso.

Please, please stop Pacaso before we even get close to that.

Respectfully,

Mari Jansdotter

Sent from Yahoo Mail on Android

PACASO = PARTY HOUSES!

Debbie Polverino 5/11/2021

To the members of the City Council. In the recent Napa Register article, Austin Allison agrees that short term rentals are a problem, that commercial Timeshares are a problem- that's not what Pacaso is he said. Yet, Pacaso listed the Valley View Street "Pool House" as a 1/8 Timeshare Ownership property. After the city was notified by several concerned citizens and myself regarding "timeshares" listed for sale in residential zoned areas, Pacaso changed its online marketing from "1/8 Timeshare Ownership to 1/8 Shared Ownership. Owners who purchase still share the property in available time slots just like a timeshare.

Living next door to a Pacaso home has been living next door to a full-time party house! The constant music with speakers blaring, loud conversations until 2 am and later, noise violations along with excessive vehicles parked on the street or in front of our homes. The additional noise of gardeners blowing dirt and leaves into our yard, Pool service, catering trucks, housekeeping scheduled more frequently. Open houses are held with statements made with, "this is a great place for pool parties and entertaining, it's a perfect place to bring friends and extended family."

This home on Valley View Street was a weekend getaway home for the previous owners who had loud weekend parties. It was a constant nightmare and all the homes nearby complained. Now the property has been split up to 8 owners. The Saint Helena P.D. has already been to this home at least 3 times for noise violations after 10pm. There must be a way to stop these repeated violations and offenders.

Pacaso's has written policies for its owners on their website that they must adhere to. No parking on the street, no parties, no noise after 9pm to 7am, no dogs over 80 pounds. Policies have been broken several times already from each group including the Pacaso's owners.

According to Mr. Allison, Saint Helena is running a dishonest campaign against Pacaso. Pacaso claims discrimination of outside ownership which is not the case. As we all know we welcome all people the opportunity to live in our quiet small town. Pacaso selling an 1,100 square foot home which is smallest of any home on our street for $1.7M is dishonest in my opinion. This is what he says is affordable housing for second home buyers who are paying in full, plus maintenance fees?

When commercial companies buy a dozen homes in Napa Valley and plans additional purchases to be split up to 8 shares it is not committed to the community or our quiet neighborhoods. Zoning is in place for a reason. Commercial companies operating in full time residential streets should adhere to the rules that are in place and only buy up in areas where other vacation homes are abundant and not a disruption.

What happens should we decide to sell our home? How will people feel about buying next door to a home owned by 8 owners who don't know each other and all come at different time slots for as little as 2 days at a time? We will have to disclose this information. This put a negative mark on our property. This is something I want you to think about! Say NO to Pacaso! Thank you.

From: Amy Caldarola <amycal@comcast.net>
To: Paul Dohring
CC: Anna Chouteau; Lester Hardy; Eric Hall
Sent: 5/23/2021 1:04:24 PM
Subject: [External] Picaso

Dear Council Members,

This is Amy Caldarola here. I am very concerned about Picaso buying property in our residential neighborhoods under the guise of democratizing home ownership. This is not affordable housing. Picaso properties are time-shares and short-term rentals which violate municipal code provisions. The presence of these properties in residential neighborhoods is inappropriate and will degrade the quality of life. It has already done so with Picaso's property on Valley View; those neighbors are suffering with loud noise, music, and parties that go on to after midnight; even calling the police does not seem to stop them. I support the city in doing everything possible to defeat them. I also support a counter law suit against them if it makes legal sense. With that said, we are fighting for the soul of our community and this needs to be a number one priority. Picaso is in Napa, Sonoma, Healdsburg, and probably will move into Calistoga and Yountville. This is a fight worth fighting. It might be helpful for the affected counties and municipalities to join their resources together to oppose them. Please outline for me what the city is doing and what the plan is.

Thank you. I really appreciate you taking the time to keep me informed on this very important and pressing issue. We must act now!

Sincerely,
Amy Caldarola

May 11, 2021

Good evening City Council members. My name is Clare Barr and I live in St. Helena. Tonight I would like to speak about the Pacaso Vacation Share homes.

I listened carefully to the public comments of Pacaso Share owners made at our last City Council meeting. They sounded sincere in their desire to be a part of the St. Helena community. The problem is they have bought into a business model that will make that nearly impossible.

To be a part of a real community means forming bonds with neighbors. How can that come about with a home next door that has possibly dozens of strangers coming and going, with visits no longer than 14 days at a time, a few times a year? And with the likelihood of visits gifted by other share owners, and a cleaning crew who appears before each arrival, the number swells. With the result that a Pacaso share owner, is viewed by their neighbors as only one in a sea of unfamiliar faces.

And though the intentions of some of the share buyers might be good, can we say the same for all 7 of the remaining shareowners? One of whom might gift a weekend to his brother for a blowout bachelor party? Or as was the case in Napa, a single shareowner who conducted retreats in which close to a dozen visitors would come and go within one stay. That particular shareowner was charging her guests, which is a complication on an entirely different level.

Pacaso would have us believe that their sharebuyers are families who simply want a quiet, lovely getaway. But in actuality, a Pacaso home is built for partying. Their own website says of one offering “This home takes entertaining to new heights”. And yet another listing says that a

particular home “has been completely re-imagined to accommodate families, friends, and large groups”. Another listing offers “year round fun and adventure”.

Now, none of us resent the visitor who wants to have fun. Indeed, our beautiful valley is an ideal place for celebration. And we all do that on occasion. But when you realize that every single visitor owning a Pacaso share has been wooed with the promise of “fun and adventure” within a house “built for entertaining”, then you have the possibility of major partying with each and every visitor, all crammed into stays that last from 2-14 days. This is transient occupancy in our residential neighborhoods that cannot possibly be regulated under the Pacaso system.

There is a reason why we have ordinances in place that designate where tourists and visitors can stay. It allows us to appreciate our visitors, giving them the space and accommodations in which to party and celebrate, while we ourselves can conduct our daily lives in the sanctuary of our residential neighborhoods. Which in turn, are places where we know our neighbors so well that we trust them with our keys, our pets, and even our children. With whom we share joy and sometimes sorrow, and whom are quick to lend a hand in times of crisis.

And if we have learned anything in the last few years, it is that the ability to know and rely on our neighbors is the very thing that sustains our community through thick and thin. A vacation home with a parade of visitors coming and going, does not belong in our residential neighborhoods. Please Say No to Pacaso.

Clare Barr
St. Helena

From: Beth Gray <bgray14@gmail.com>
To: Geoff Ellsworth
Sent: 5/22/2021 3:01:13 PM
Subject: [External] Pacaso

Dear Mr. Mayor,
I am writing to express my strong opposition against the infiltration of Pacaso and their timeshare strategy in the city of Saint Helena. As a full-time resident here in the city (and as your neighbor), I find it atrocious that the city has not been able to stop the infiltration of this community destroying business model. This business will do nothing but destroy our community. As an example, I witnessed the dumping of water from the pool into the creekbed from a home purchased by Pacaso right on the corner of Sylvaner/Reisling as they began to redevelop the home and expect to list it as fractional ownership. Illegal dumping of the pool water with disregard to any of the environmental consequences demonstrates their utter lack of care about the community. Similarly, hearing from the neighbors who live next to a Pacaso home on Valley View, I can only shake my head and sympathize with the poor neighbors having to deal with multiple cars showing up and loud music being played at all hours.

One of the reasons I moved from San Francisco to Saint Helena was to enjoy the quiet sounds of nature, the beautiful outdoors - not to listen to vacationers who only want to party for the two weeks that they have their time in the home. Please protect our city from these timeshares.

I understand the city is being sued. I hope that we can collectively put the necessary resources behind this lawsuit to stop Pacaso from any more timeshares in St. Helena.

Respectfully,
Beth Gray

Report to the City Council
Regular City Council - 14 Jul 2020

Agenda Section: **NEW BUSINESS**

Subject: **Discussion Regarding Timeshare Issues**

CEQA Determination: **Not a CEQA project**

Prepared By: Kara Ueda, City Attorney

Reviewed By: April Mitts, Finance Director

Approved By: Maya DeRosa, Planning & Building Director/Acting City Manager

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BACKGROUND

This agenda item is for informational purposes only to guide and facilitate a policy discussion amongst the City Council regarding timeshare uses and fractional ownership of residences in the City. The issue is being discussed following concerns raised by both City residents and Council members after some residents discovered a real estate listing for a fractional or partial ownership interest in a residential home in town.

The St. Helena Municipal Code currently prohibits creation of a timeshare project as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house within the City. (SHMC § 17.112.130) The prohibition is based, in part, on findings made by the City Council that timeshare uses are commercial or quasi-commercial uses that serve to reduce available residential housing and increase traffic and noise impacts. (See SHMC § 17.112.130(A).) As explained further below, though, a timeshare use differs from a fractional or partial ownership of a property.

DISCUSSION

What is a timeshare?

State law and the California Department of Real Estate regulate the advertising and sale of timeshares pursuant to "The Vacation Ownership and Time-Share Act of 2004." (Bus. & Prof. Code, § 11210 et seq.). That law defines a "time-share plan" to mean "any arrangement, plan, scheme, or similar device, other than an exchange program,

whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years." (Bus. & Prof. Code, § 11212(z).) The law mandates certain registration and advertising requirements for timeshare plans and regulates the information and terms that must be included in a sale in order to protect consumers who may purchase time-share interests. However, the law does not regulate the location and use of timeshare plans, and it expressly does not invalidate or modify local "zoning, subdivision, or building code" ordinances. (Bus. & Prof. Code, § 11280.)

The St. Helena Zoning Code prohibits the creation of a timeshare project as a means of ownership of any single-family, two-family, or multi-family dwelling or apartment house. (SHMC § 17.112.130). The Code has a fairly circuitous definition to determine if a project is a prohibited timeshare or not. A "time-share project" means any real property subject to a "time-share program." A "time-share program" is defined as "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years." (SHMC § 17.112.130(A).) A "time-share estate" is defined in the Code to mean "an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) or a time-share lease. (Id.) What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, is not identical to a fractional or partial ownership; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses.

Timeshares, thus, are somewhat similar to short-term rentals and fractional ownership hotels but differ from both in important ways. The City defines short-term rentals as a use in which overnight accommodations are provided to guests for compensation for periods of less than thirty (30) days in a single-family dwelling and are only authorized with a short-term rental permit. (SHMC § 17.04.160.) Short-term rentals are generally rented by guests on a short-term basis. After the guest leaves, they have no further obligation or ownership of the property. A timeshare, on the other hand, means that the person has an ongoing ownership interest in the property for a limited duration of time.

The City defines fractional ownership hotels as hotels with a minimum of 40 rooms, in which 75% or more of the rooms may be made available to individuals as "time-share estates," "which is defined as a time-share interest, which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof, pursuant to Section 11212(x)(1) of the California Business and Professions Code, and subject to obtaining

permission required to do so obtained from the California Department of Real Estate." (SHMC § 17.112.150.) The Zoning Code provides that fractional ownership hotels are conditionally permitted in the Service Commercial district. Timeshares as discussed herein, by comparison, may be for any particular interval of time and are a type of fractional/partial ownership. But not all fractional/partial ownership interests are considered timeshare interests. For purposes of much of the discussion in this report, timeshares are discussed in the context of a single-family home rather than, for example, a large condominium project or converted hotel.

What are the challenges and limitations to regulating partial ownership in single-family residences?

City staff and the City Attorney's office have reviewed a small sample of other jurisdictions' ordinances regulating timeshares. What emerges as a theme from this limited review is that other jurisdictions appear to regulate timeshare uses as commercial uses, such as timeshare units in high-rise condominium buildings or something akin to fractional ownership hotels. The City's code appears to try to similarly regulate timeshare uses as a commercial use.

The most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by law zoning regulations must focus on the use of land. (See, e.g., O'Loane v. O'Rourke, 231 Cal.App.2d 774, 780 (1965) [zoning is "the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land."].) State law enumerates the specific types of permissible zoning regulations, which are likewise focused on "the use of buildings, structures, and land" and related physical requirements, such as the location and size of signs, buildings and structures. (Gov. Code, § 65850.) Thus, the City's Zoning Code focuses on the types of uses, including, for example, different types of residential uses, winery uses, and commercial uses.

While there may be a concern that non-permanent City residents are purchasing property in St. Helena as a second home(s) either for themselves or their guests, zoning regulations may not target individuals. In other words, the City may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides. See, e.g., Friends of Davis v. City of Davis, 83 Cal.App.4th 1004, 1013 (2000) ["a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like"].) City ordinances also may not regulate or define what constitutes a "family" for purposes of limiting the number of unrelated people who live together in a dwelling. (City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980).)

There are also significant practical challenges to implementing and enforcing the existing timeshare regulations. Absent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties. The City does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements. Additionally, there may be a

number of joint ownership scenarios that do not necessarily trigger the same concerns as commercial transient uses or that do not qualify as a prohibited timeshare under the City's ordinance. For example, multiple members of an extended family may all wish to purchase a residence together. The family members may not all necessarily live in the home together at the same time, but they also did not set up an arrangement where they each have a timeshare interval. While this residence may be owned by multiple people who each do not choose to live in the residence, the joint or partial ownership of the residence would not be considered a timeshare as each family member could have equal access to the residence (as opposed to purchasing a limited amount of time). These challenges do not necessarily preclude regulating or prohibiting timeshare uses but should be considered in determining whether additional or amended regulations are desired.

What may the City regulate with respect to timeshares?

For the above reasons, zoning based solely on ownership, as opposed to the use of land, is impermissible. Timeshare regulations should, thus, focus on the type and use of the property and its related impacts, such as specific intervals of exclusive occupancy that render the use more akin to a transient commercial use.

If the City Council is concerned about the potential neighborhood impacts timeshare uses may create, the City has existing regulations in place to address such impacts. For example, if the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction. The City's Municipal Code also addresses nuisances generally and has parking standards in place. However, these regulations all regulate the impacts of certain activities on the land, not the land uses themselves.

FISCAL IMPACT

None at this time. Additional staff time and research will be required if zoning amendments are proposed.

RECOMMENDED ACTION

Receive this report, discuss, and provide direction to staff if desired. City staff is seeking guidance and clarification from the City Council concerning the specific problem(s) a Zoning Code amendment could help resolve, but with the limitations noted above for regulating timeshares and partial ownership.

City of Sonoma

Agenda Item Summary

Meeting: City Council - 19 Jan 2022

Department	Staff Contact
Planning and Community Services	David A. Storer, AICP, Director, David J. Ruderman, Assistant City Attorney

Agenda Item Title

Discuss, Consider, and Take Possible Action on Introduction and Adoption of an Urgency Ordinance Amending the Sonoma Municipal Code to Add Section 19.50.140 – Timeshares – and Finding the Ordinance exempt from the California Environmental Quality Act (CEQA) under the general rule pursuant to Guidelines Section 15061(b)(3) because CEQA only applies to projects that have the potential for causing a significant effect on the environment and the Ordinance does not involve a commitment to any specific project that may result in a potentially significant physical effect on the environment.

Summary

Currently, the Municipal Code does not contain any regulation governing the use of properties as time-shares, meaning that, as a non-enumerated use, time-shares currently are prohibited throughout the City. However, due to the rise in fractional home ownership, there may be ambiguity regarding whether fractional home ownership uses constitutes a prohibited time-share or an allowed residential use. The urgency ordinance is intended to define time-shares broad enough to encompass fractional home ownership and ensure that their essentially commercial use is confined to those parts of the City that are planned for commercial uses. This will avoid losing valuable land zoned for residential purposes from being usurped by fractional home ownership and time-share uses. The proposed urgency ordinance thus continues the prohibition on time-shares in all residential zones and as the residential component of a Commercial or Mixed Use development. The following findings can be made by the City Council to support the adoption of the Urgency Ordinance:

1. A severe housing crisis exists in the state with the demand for housing outpacing the supply;
2. The City of Sonoma is particularly experiencing a housing emergency due to its relative isolation, limited housing supply, and desirable location;
3. Time-share uses threaten to reduce the housing supply in the City by turning long-term housing in the City into vacation rentals and reducing the affordable housing stock in the City;
4. Time-shares increase traffic and noise impacts and have the same character as commercial hotels, motels, and other transient occupancy uses due to their transient nature making them inappropriate for residential zones;
5. California Government Code Sections 36934 and 36937 authorizes the City of Sonoma to adopt an urgency ordinance by a four-fifths vote (4/5ths) necessary to protect the public peace, health, or safety;
6. An urgency ordinance adopted pursuant to Government Code Sections 36934 and 36937 is warranted on an urgency basis to allow regulations to govern how time-share are regulated. Without such ordinance, the issues raised above pose a significant threat to the public peace, health and safety.

The attached Urgency Ordinance will add Section 19.50.140 – Timeshares into Title 19 and will be effective upon adoption. The attached Urgency Ordinance was presented to the

Planning Commission on January 13th, 2022, for comment and direction to staff, which will be reported to the City Council at the meeting.

It is anticipated that the Planning Commission will review a regular ordinance at its meeting on February 10th, 2022, that will be later introduced to the City Council on February 23rd, 2022, and adopted by the City Council on March 2, 2022 to supersede the Urgency Ordinance; however the Urgency Ordinance would be in effect until a regular ordinance becomes effective.

The attached Urgency Ordinance creates provisions for allowing timeshares with the approval of a Use Permit as part of the commercial component in a Commercial zoning district as defined in Section 19.10.020(B) or as a part of the commercial component in a Mixed Use zoning district as defined in Section 19.10.020(C).

Recommended Council Action

Introduce and adopt an Urgency Ordinance entitled “AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA ADDING TITLE 19, SECTION 19.50.140 (TIME-SHARES) TO THE CITY OF SONOMA MUNICIPAL CODE.”

Note: A 4/5 vote of the City Council is required to adopt an urgency ordinance and it takes effect immediately

Alternative Actions

1. Take no action
2. Direct staff to amend urgency ordinance to only allow time-shares in commercial zones, but not as part of the residential component (i.e., also prohibiting them as part of the commercial component in MX)
3. Direct staff to amend urgency ordinance to prohibit time-shares in all zones in the City.

Financial Impact

None, other than the time necessary for staff to prepare this report and the accompanying urgency ordinance.

Environmental Review

- ☐ Environmental Impact Report
- ☐ Negative Declaration
- ☑ Exempt
- ☐ Not Applicable

Status

- ☐ Approved/Certified
- ☐ No Action Required
- ☐ Action Requested

Attachments

Urgency Ordinance No. XX-2022

Alignment with Council Goals:

Not Applicable

Compliance with Climate Action 2020 Target Goals:

CC:

n/a

City of Sonoma

DRAFT ORDINANCE #_____ -2022

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA ADDING TITLE 19, SECTION 19.50.140 (TIME-SHARES) TO THE CITY OF SONOMA MUNICIPAL CODE

WHEREAS, the City has recently become aware of time-share companies operating in the City; and

WHEREAS, this Ordinance is adopted as an urgency ordinance pursuant to Government Code Sections 36934 and 36937. The facts constituting the urgency are as follows:

a) A severe housing crisis exists in the state with the demand for housing outpacing the supply;

b) The City of Sonoma is particularly experiencing a housing emergency due to its relative isolation, limited housing supply, and desirable location;

c) Time-share uses threaten to reduce the housing supply in the City by turning long-term housing in the City into vacation rentals and reducing the affordable housing stock in the City;

d) Time-shares increase traffic and noise impacts and have the same character as commercial hotels, motels, and other transient occupancy uses due to their transient nature making them inappropriate for residential zones;

e) California Government Code Sections 36934 and 36937 authorizes the City of Sonoma to adopt an urgency ordinance by a four-fifths vote (4/5ths) vote where necessary to protect the public peace, health, or safety;

f) An urgency ordinance adopted pursuant to Government Code Sections 36934 and 36937 is warranted on an urgency basis to allow regulations to govern how time-share are regulated. Without such ordinance, the issues raised above pose a significant threat to the public peace, health and safety.

WHEREAS, the City Council find and determines that the immediate preservation of the public health, safety, and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36934 and 36937, and such that Ordinance take effect immediately upon adoption – therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

WHEREAS, the City Council desires to amend the City's municipal code to address the impact that time-shares are having on the City's housing supply.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SONOMA DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS.

The above set forth recitals and findings are true and correct and incorporated herein by reference, as if set forth herein in full.

SECTION 2. URGENCY ORDINANCE.

The urgency ordinance is necessary for the immediate preservation of the public peace, health, and safety because the operation of time-share companies in the City threatens to reduce the supply of affordable and market-rate housing in the City, increase site development conflicts and incompatibilities related to public safety, visual, privacy, and aesthetic impacts which would negatively impact the public welfare and the unique quality and character of the City of Sonoma.

SECTION 3. MUNICIPAL CODE AMENDMENTS.

Section 19.50.140 of the Sonoma Municipal Code is added to read as follows:

19.50.140 Time-Shares.

This section sets forth requirements for the establishment and operation of time-share uses.

A. Definitions.

1. "Accommodation" means any dwelling unit, multifamily dwelling, apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals.

2. "Owner" means owner of a time-share interest.

3. "Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, or other legal entity, or any combination thereof.

4. "Time-share instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan and includes the declaration dedicating accommodations to the time-share plan.

5. "Time-share interest" means and includes either of the following:

a. The right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.

b. The right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property or a specified portion thereof.

6. “Time-share plan” means any arrangement, plan, scheme, or similar device, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives the right to exclusive use of an accommodation or accommodations, whether through the granting of ownership rights, possessory rights or otherwise, for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

7. “Time-share property” means one or more accommodations subject to the same time-share instrument, together with any other property or rights to property appurtenant to those accommodations.

8. “Time-share use” means the use of one or more accommodations or any part thereof, as a time-share property pursuant to a time-share plan.

B. Permitted zones. A time-share use shall only be permitted as part of the commercial component in a Commercial Zoning District, as defined by SMC § 19.10.020(B), or as part of the commercial component in a Mixed Use Zoning District, as defined by SMC § 19.10.020(C).

C. Use Permit Required. The establishment and operation of a time-share use shall require the approval of a conditional use permit in compliance with SMC § 19.54.040.

D. Violations, Enforcement and Civil Penalties

1. Any responsible person, including but not limited to an owner of a time-share interest, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published, advertised or disseminated in any way and through any medium, the availability for sale or use of an accommodation in violation of this section is guilty of a misdemeanor for each day in which such accommodation is used, allowed to be used, or advertised for sale or use in violation of this chapter. Such violation shall be punishable pursuant to Chapter 1.12 (General Penalty).

2. Any responsible person, including by not limited to an owner of a time-share interest, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published advertised or disseminated in any way and through any medium, the availability for sale or use of an accommodation in violation of this section is subject to administrative fines and/or penalties as set forth in Chapter 1.28 (Administrative Citations).

3. Time-share use, and/or advertisement for time-share use, of an accommodation in violation of this section is a threat to public health, safety or welfare and is thus declared to be unlawful and a public nuisance and may be abated pursuant to Chapter 1.12 (General Penalty), Chapter 1.30 (Administrative Notice and Order Proceedings), Chapter 9.56 (Noise), and any other relevant provision of this code as it may be amended from time to time.

4. Each day a violation of this chapter occurs shall constitute a separate offense.

5. The remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

SECTION 4. CEQA.

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the city. City Planning Staff has determined that the adoption and implementation of the Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a text amendment and addition without any physical project being approved, it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment. The proposed Ordinance is therefore exempt from the provisions of CEQA because it does not involve a commitment to any specific project that may result in a potentially significant physical impact on the environment. The City Council concurs in these findings and adopts them as its own. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Sonoma in accordance with CEQA Guidelines.

SECTION 5. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE.

This Ordinance is an urgency ordinance enacted under California Government Sections 36934 and 36937, subdivision (b). The urgency ordinance is effective upon adoption by a 4/5 vote of the Sonoma City Council, and shall take effect immediately upon its adoption.

SECTION 7. PUBLICATION.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933(c)(1).

SECTION 8. THIS ORDINANCE PREVAILS WHERE THERE IS CONFLICT.

To the extent that this Ordinance conflicts with any other provision in the Sonoma Municipal Code or city ordinance (urgency or otherwise), policy or regulation, this Ordinance will control.

APPROVED:

_____

Jack Ding, Mayor

ATTEST:

_____
Rebekah Barr, MMC, City Clerk

* * * * *

I HEREBY CERTIFY the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Sonoma held on the _____, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Rebekah Barr, MMC, City Clerk

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Luke Coletti, Councilmember
MEETING DATE:	May 18, 2022
SUBJECT:	Consider transitioning from six (6) to four (4) Councilmembers
CEQA:	Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Direct City staff to return in July with all necessary documents for Council consideration for placing a City Charter amendment on the November 8, 2022, general election ballot to transition from six (6) to four (4) Councilmembers.

DISCUSSION

Historic Context

On July 5, 1889, with 1300 permanent residents and an area of one square mile, Pacific Grove was incorporated as a city of the sixth class under the Municipal Corporation Act of 1883 (Stats, 1883, p. 93). Section 851 of the Act established: "The government of such a city or town shall be vested in a Board of Trustees, to consist of five members…"

Pacific Grove continued to be governed by a five-member Board of Trustees until April, 1927, when Pacific Grove voters adopted a city charter that established, in part, a seven-member city council (Stats, 1927, p. 2329). This transition was not without controversy. The recently published memoir by W.R. Holman, one of the fifteen freeholders elected to prepare and propose the charter, includes an entire section that describes the saga (see *My Life in Pacific Grove: A Memoir, p. 199*).

The Pacific Grove City Charter was/is largely based upon the "Model City Charter" published in 1926 by the League of California Municipalities (see *Municipal Handbook for Fifth and Sixth Class Cities, p. 119).* However, when it came to establishing the size of the city council, most freeholders, including Julia Platt, were willing to abandon the Model Charter (see Holman memoir, pp. 243-244). The League's Model City Charter recommended the following:

> THE COUNCIL. The legislative body of the city shall consist of five persons elected at large, which body shall be known as the Council.

The League also provided an interesting *and humorous* set of reasons for a five-member council:

> Note. - Five members are sufficient for a city up to fifty thousand population, especially in view

of the fact that the people now have the right of the initiative. A larger council increases the tendency to divide into factions. Besides, citizens having business before a city council are invariably given plenty of opportunity to press their views, and a large council usually means more “hot air” and less accomplishment.

Note. - Representative government does not necessarily mean a large number of representatives, but rather that number which, beyond a reasonable doubt, will assure proper consideration of all classes and localities.

With That Said

We continue the discussion with the following points, which come from an article published in the *California Journal of Politics and Policy* (Attachment #1):

- The size and composition of a city council is a reflection of political values that include representativeness, responsiveness, effectiveness, efficiency, and accountability.

- California city councils vary greatly in size from four to 15 members. When we plot the year of incorporation against the total number of city council seats in a city, two key findings are clear. The first is that five-member city councils are dominant throughout California. An overwhelming majority of California cities (89.4 percent) have a council composed of five members. The next most occurring size, a seven-member council, represents only 6.44 percent of all California cities.

- The second finding is that cities that incorporated earlier tend to have more variation in council size. Only two cities incorporated after World War II have city councils with more than five members. Portola (incorporated 1946) has eight councilors and Woodside (incorporated 1956) has seven. While our dataset is limited to the current council size and does not consider when changes to city structure were made, older cities likely have faced greater demographic shifts and political pressures that encouraged structural changes than younger cities.

- Charter cities have consistently higher than expected rates of larger councils, with charter cities comprising all of the cities with councils larger than eight members. In fact, only five general law cities have a council with more than five members.

- Population size is related to the adoption of a charter in almost linear fashion. Cities with more than 100,000 residents were much more likely (21.94 percent) to have a charter than we would expect. Cities with a population of between 100,000 and 50,001 were more likely (5.2 percent) to have a charter than we would expect. Cities with a population between 50,000 and 25,001 were less likely (7.84 percent) to have a charter than we would expect. The smallest cities with a population less than 25,000 were much less likely (19.3 percent) to have a charter than we would expect.

- Despite the fact that California cities are racially and ethnically diverse, only a small proportion of cities in the state depart from the five-member at-large council model of governance. Our findings show that race and ethnicity play little to no role in determining whether cities have changed to single member districts or larger-sized councils. In fact, the factors that seem to influence the adoption of single-member districts or larger councils are other features of structural home rule and city age.

Conclusion

From this, and other information, the following observations are made:

- For whatever reason(s), the freeholders proposed a charter with a seven-member council.
- On April 9, 1927, Pacific Grove voters adopted the proposed charter. There were 613 votes cast in favor and 571 votes cast against.
- The conventional wisdom at the time favored a five-member council (see League's 1926 Model City Charter and Monterey's 1925 City Charter, which was also used as a model).
- Prior to being submitted to the voters, the freeholders apparently "reconsidered" establishing a seven-member council - a draft copy of the charter, handwritten by Julia Platt, includes both initial text and revisions for establishing a five-member council. (Attachment #2)
- Pacific Grove is a charter city with a small population and a seven-member council. This makes us an oddity, both on the peninsula and throughout the state.
- Should Pacific Grove be requested/ordered to transition to district-based elections, a five-member council (four voting districts) would likely result in a better implementation than a seven-member council (six voting districts).
- A five-member council could be more effective and efficient.

The attached ballot question and charter amendment (Attachment #3) is provided for council consideration. The proposed ballot question is as follows:

> Shall the City Charter, which currently requires the City Council be comprised of six Councilmembers, be changed to four Councilmembers, and become effective under the following municipal election sequence: (1) in 2024 two Councilmembers with four-year terms, and one Councilmember with a single two-year term, shall be elected, and (2) in 2026 two Councilmembers with four-year terms shall be elected.

The attached chart (Attachment #4) illustrates the transition from six to four councilmembers over the two election cycles described in the proposed ballot question.

Finally, should the voters adopt the proposed charter amendment, several sections of the Pacific Grove Municipal Code will need to be amended, e.g., PGMC 2.04.070, 2.06.020, 3.02.030, 3.04.030, etc.

OPTIONS

1. Take no action.
2. Provide alternate direction.

FINANCIAL IMPACT:

There is no financial impact in directing City staff to return with a future City Council agenda item.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Stone, S & Tucker, J. (2016) Structural Home Rule Variation

Handwritten draft of 1927 City Charter (Officers, Council)

Proposed Ballot Question & City Charter Amdt
PG Municipal Elections Chart (2018-2026)

THE CALIFORNIA *Journal of*
Politics & Policy

Variation in Structural Home Rule: Evidence from California City Councils

Samuel Stone
California State University, Fullerton

Justin Tucker
California State University, Fullerton

Introduction

Local governments are the most prevalent and accessible means through which citizens exercise political power. Participation in local government, via voting or holding office, has the most direct impact on an average citizen's everyday life and immediate community. Variations in the electoral structure of a city can expand or restrict the political power of citizens and should be of significant concern for state and local governments as communities change. In most states, cities are granted some power to alter their governing structure either via provisions in the state constitution or by adopting a charter.

As they change, cities decide how they will exercise these powers of self-rule and the extent to which citizens will be represented in local government. The extent to which variations in city structure are correlated to variations in the populations served or some other factor is unclear. The relationship is unexplored in the literature. The 481 cities of California provide an excellent case for exploring this relationship.

Local government in California has had to overcome significant obstacles throughout the history of the state, but never at the depth and range faced today. State efforts to mitigate the effects of the recent economic crisis removed substantial financial resources that had helped subsidize city operations, including redevelopment funds. Foreclosures, short sales, and the precipitous decrease of home values compounded cities' reduced share of property tax revenues due to Proposition 13. While four new cities (Wildomar, Menifee, Eastvale, and Jurupa Valley) won the right to incorporate between 2008 and 2011, others filed for bankruptcy or were on the brink of bankruptcy or disincorporation (Stockton, San Bernardino, Vallejo, Mammoth Lakes, and Jurupa Valley).

Revelations of corrupt city of Bell officials receiving exorbitant salaries (Hogen-Esch 2011; Gottlieb 2014), reports of poor oversight and back door deals to subvert the open contract process (Blume 2014), police violence and shootings (Carcamo 2012), and race riots have focused public attention on the performance of local government. Lawsuits and legislation have forced local governments to consider adapting or modifying procedures, laws, and structure. The California Voting Rights Act exposes any government jurisdiction to the costs of a lawsuit if racially

polarized voting is present and municipal elections are conducted using any at-large voting method. Many local jurisdictions, including cities and school districts, are moving to district elections simply to prevent lawsuits.

California has undergone significant demographic change since World War II. Suburban expansion, urbanization of agricultural areas, and increased racial and ethnic diversity has reshaped areas throughout the state. As cities incorporate, most have adopted one of two predominant models of political governance, a city council with five at-large elected members and a rotating mayor or a generally elected mayor and a professional city manager (Ting and Stone 2015). While these models may serve a relatively homogeneous population well, they may not suit California cities as they have grown more diverse in the postwar period. Throughout the country, city councils have grown more racially diverse and included more women over the past several decades (Svara 2003). Yet, minority representation on city councils in California is far below their proportion of the population, especially for Hispanics (Hajnal 2010).

State law governs the creation, structure, and disincorporation of cities. California's state constitution allows cities to function under a general law structure and procedures or to craft their own charters adapted to local preferences. Charter cities can change many features such as the size of the city council, the election cycle, at-large or district-based elections, and contracting requirements.

One major benefit for a city to adopt a charter is that rather than having to gain approval for each structural change via a vote under general law provisions, all of the structural changes take place at once via a single vote to adopt or amend the charter. While charter reform is a politically contentious process with a low success rate (Sonenshein 2011), we posit that adopting a charter can hypothetically minimize the frequency, if not the magnitude of political conflicts over changes to municipal government by constraining conflicts to a single choice of adoption or non-adoption. Otherwise, all changes to government structure have to be made piecemeal. Which course California charter cities have taken is another matter.

Even though a city can make significant changes to its structure via the adoption of a charter, only a small number of California cities have elected to become charter cities and exercise that power of structural home rule. Even in the face of significant sociodemographic change throughout the state, few cities have modified their initial structure via changes allowed under general law provisions. In this study, we investigate the role of charters, incorporation date, population, and race in influencing the size of California city councils and their method of electing city councilors.

Two relatively disparate bodies of literature provide insight into city structural self-determination as well as the consequences of these choices. The literature on municipal home rule provides context for our study of governmental structure and elections. Generally this work revolves around the city adopting and following the general law provisions of the state constitution or adopting a charter.

The research on council size and election method investigates their role in granting racial and ethnic minorities access to local elected office. While this scholarship generally finds that council size and election method do matter for racial and ethnic minority representation, it does not attempt to draw a connection between these electoral features and the ability to change them that may or may not be granted to municipal governments in a given state.

To provide context for analysis of electoral structure in California cities we first review the literature on municipal home rule and local government autonomy as well as the consequences of

differences in council size, election method, and form of government. We then explain our data, methodology, and results, and conclude with a summary of findings and some implications.

Variations in City Government

Home Rule

As elected officials and citizens make their determinations about structural features for representation in city governance, they must consider the composition of the citizenry as well as the powers granted to the city in the state constitution. The authority of a city to alter its institutions is generally referred to as home rule.

Home rule can be seen as a form of municipal empowerment or a mechanism to restrain state legislatures from interfering in strictly local affairs (Richardson 2011). This is in contrast to Dillon's Rule, which asserts the inherent right of the state to dictate powers exercised by local governments. Which narrative prevails depends on how the state constitution establishes the relationship between the state (through the legislature) and its municipalities.

At one end of the spectrum, constitutions may specify a Dillon's Rule relationship, where cities only possess those powers affirmatively granted by the legislature. At the opposite end, constitutions may grant cities any powers that are not purely state powers, legislatures have a circumscribed role in local affairs, and the courts are the arbiters of what legislature may or may not compel cities to do (Zimmerman 1995). With the exception of fiscal matters, California is much closer to this latter end of the spectrum (Sonenshein and Hogen-Esch 2006).

Home-rule powers can be categorized as structural, functional and fiscal, regulatory, personnel, or other (Zimmerman 1995; Krane, Rigos, and Hill 2001; Wood 2011). Structural home rule usually includes items such as incorporation, council size, council election method (district vs. at-large vs. hybrid), mayor election method, form of government, length of terms and whether they are staggered or cotemporaneous, and the presence of other elected offices. The combination of home-rule powers is critical for cities because they often compensate for limits in one area by exercising powers in another (Krueger and Bernick, 2009).

California municipalities enjoy a substantial degree of structural home-rule powers with respect to council size, election method, and form of government. The reforms to local government powers in the 1879 California Constitution embody the principles of home rule and local self-government (Ostrom, Bish, and Ostrom 1988). There are two classes of cities in the state: general law and charter. General law cities are governed by Article XI of the state constitution, while charter cities are governed by their citizen-designed and approved charters.

The California Constitution distinguishes between statewide affairs and municipal affairs, though the definition of what constitutes municipal affairs may be redefined by the state legislature (League of California Cities 2007). Charter cities are granted power over municipal affairs with the state constitution providing a nonexhaustive list of four municipal affairs over which charter cities explicitly have power. These include the police force, subgovernment of the city, conduct of elections, and the manner in which municipal officers are elected, provided municipal laws do not conflict with the U.S. and California Constitutions (League of California Cities 2007).

The last three of these enumerated municipal affairs are the core and represent aspects of structural home rule. Charter cities are not bound by the California Elections Code, whereas general law cities are (League of California Cities 2011). In practice, there are few differences in the

powers afforded to charter cities versus general law cities, due in large part to the permissiveness of the constitution and state code toward general law cities (Ting and Stone 2015).

Some increased structural powers drive charter adoption (Sokolow and Detwiler 2001). The default structure of general law cities is a five-member city council, elected at-large, with a council-manager form of government. General law cities can change this structure without adopting a charter.

Council Size and Election Methods

The size and composition of a city council is a reflection of political values that include representativeness, responsiveness, effectiveness, efficiency, and accountability. Though city officials may not be aware of the academic literature concerning the effects of changes to city council size and electoral structure when considering changes to the governing structure, these structural choices change the "rules of the game" and differentially benefit certain portions of the population. There is no consensus on optimal council size. Nationwide, council size generally demonstrates a nonlinear relationship to population, with council size generally growing and varying much more for very large cities (Muzzio and Tompkins 1989).

The most salient issue is the relationship between council size and the presence or proportion of underrepresented groups on city councils. Some studies find that city council size affects representation of underrepresented groups. For example, Alozie and Manganaro (1993b) demonstrate that council size, especially when cities use at-large elections significantly improves the odds of the presence of women on the city council, though these structural features have no effect on the actual share of women on a city council. The presence of black or Hispanic council members is related to council size and election method (Alozie and Manganaro 1993a; Brouthers and McClure 1985). Trounstine and Valdini (2008) however, find that council size does not matter nearly as much as election method for minority representation. Whereas Hispanics require larger councils to secure a seat, election method rather than council size has a greater effect on minority representation.

The literature broadly demonstrates that election method is much more crucial to minority representation than council size. District elections significantly advantage black representation on councils, though not necessarily Hispanic representation (Brouthers and McClure 1985). At-large elections and hybrid elections significantly reduce the proportion of blacks and especially Hispanics (Alozie and Manganaro 1993a).

The use of district elections is a very strong predictor of the presence of blacks or Hispanics on city councils and council size does not matter nearly as much once election method is taken into account (Trounstine and Valdini 2008). Hispanics, generally require larger councils to secure a seat. These effects are much more pronounced when taking residential racial/ethnic concentration into account.

Women do better in at-large elections because they are aided by the lack of a zero-sum contest. When taking race/ethnicity and gender into account, only black men and white women seem to be aided by government structure (Trounstine and Valdini 2008). Both groups are only aided insomuch as they gain a presence on councils and not in terms of their proportionate share of councils.

A variety of electoral institutions, including at-large elections, have a small but statistically significant effect on minority representation on councils (Hajnal 2010). Many cities use a hybrid method in which some council members are elected at-large and others by district. In a nation-

wide survey, Svara (2003) finds that 45 percent of cities use at-large elections, 29 percent use district elections, and another 26 percent use a hybrid system.

Findings on the impact of election method on policy are mixed. The election method does produce different policy results for most programs. Council members elected at-large still have constituencies, but their constituencies are functional rather than geographic (Langbein, Crewson and Brasher, 1996. Geographically concentrated poor and minorities are better served by the policies in a city with district elections. Cities using district rather than at-large elections spend more per capita, and the number of council seats in these cities results in increased spending (Baqir 2002).

This pattern does not hold in cities with a strong mayor form of government. County commission size is positively related to government spending (Bradbury and Stephenson 2003). Councils that use district elections, including those that use a hybrid of district and at-large, are more likely to integrate citizen input in budget preparation throughout the year (Ebdon 2000). However, another study indicates that election method may have little to no effect on policy outcomes, which are influenced to a much greater degree by the political positions of citizenry (Tausanovitch and Warshaw 2014).

City population is inversely related to measures of civic engagement including contacting local officials, attending council meetings, and voting in local elections (Oliver 2000). City council size proportionately increases the use and number of committees, but findings on the impact on policymaking of these committees are mixed. Pelisserro and Krebs (1997) find little impact, but Johnson (2007) finds that larger city councils are more able to form committees that are then able to secure intergovernmental aid for their cities.

The state of California grants all municipalities a great deal of structural home-rule powers whether they are charter or general law. A minority of California cities use these powers to alter their structure. This is hardly surprising given the political hurdles involved. For example; citizens may resist having a larger city council because it means more politicians in the city, businesses may oppose district elections because they fracture support for their causes compared to at-large elected officials, and politicians may calculate that they will always do better under the system that elected them rather than some new system.

Regardless of the political obstacles involved, the homogeneity of city council structure is curious simply because California is so racially and ethnically diverse. The literature on city council size and elections clearly demonstrates that structural features of city councils are crucial to minority representation, yet, throughout the state, most cities use the same model of representation on city councils. In the rest of this study we investigate the extent to which cities' powers of home rule and racial and ethnic composition affect their governance structures.

Data and Methods

The structural features most relevant to our research question include council size, election method, and form of government. Since there are no known studies of council size and election method that cover all of the cities in California, we collected those data ourselves using publicly available information from each city's official website. Data on form of government came from the International City/County Management Association (ICMA 2011). Data on whether a city is governed through general law or has a charter came from the League of California Cities (2011).

To understand the diverse and significant impacts of different racial and ethnic groups, we included a variety of measures. We include independent measures of the proportions of the census's three largest racial groups (white, black, and Asian/Pacific Islander) and for ethnicity (His-

panic). These measures of demographic diversity allow us to estimate the individual effects of each of these groups on city structure. This is of significant concern given that different groups may have regionalized effects throughout California.

Since a number of racial or ethnic groups may jointly exert political influence, we constructed an overall racial measure using an inverse Hirschman-Herfindahl Index (HHI). This index allows us to estimate the effects of general racial diversity. Rather than use the raw population count for each city, we use the log of the population number. We did this in order to reduce the overall magnitude differences in city size from the large variations that exist in the dataset. Data on population, race, and ethnicity came from the U.S. Census Bureau (Census 2012).

There is no obvious way to treat hybrid councils that have a combination of members elected by district and at-large. Langbein et al. (1996) do not create a separate category for hybrid councils. Rather, they use a dichotomous variable and code cities as having district elections if a majority of members are elected by district and at-large if a majority of members are elected at-large. For this variable, we chose, instead, to use a count of the number of district seats. In models using all the cities, completely at-large councils are coded as 0.

Results and Analysis

Council Size

California city councils vary greatly in size from four to 15 members. When we plot the year of incorporation against the total number of city council seats in a city, two key findings are clear. The first is that five-member city councils are dominant throughout California. An overwhelming majority of California cities (89.4 percent) have a council composed of five members. The next most occurring size, a seven-member council, represents only 6.44 percent of all California cities.

The second finding is that cities that incorporated earlier tend to have more variation in council size. Only two cities incorporated after World War II have city councils with more than five members. Portola (incorporated 1946) has eight councilors and Woodside (incorporated 1956) has seven. While our dataset is limited to the current council size and does not consider when changes to city structure were made, older cities likely have faced greater demographic shifts and political pressures that encouraged structural changes than younger cities.

Home-rule status is a primary concern of our study. Of the 481 cities in our dataset, 357 (or 74.2 percent) are governed by general law provisions of the California Constitution and 124 (or 25.8 percent) have adopted a charter. Rather than delve into the differences among the charters, we simply note that only about a quarter of California cities have chosen this method of exerting the home-rule provisions of the constitution to make changes to city structure.

Population size is related to the adoption of a charter ($X2=77.367$, $p<0.000$), in almost linear fashion. Cities with more than 100,000 residents were much more likely (21.94 percent) to have a charter than we would expect. Cities with a population of between 100,000 and 50,001 were more likely (5.2 percent) to have a charter than we would expect. Cities with a population between 50,000 and 25,001 were less likely (7.84 percent) to have a charter than we would expect. The smallest cities with a population less than 25,000 were much less likely (19.3 percent) to have a charter than we would expect.

When we compare cities using our home rule metric (general law vs. charter) we find that 98.0% of general law cities have a five-member council, while 64.5% of charter cities have a

Figure 1. The Number of City Council Seats by Incorporation Year

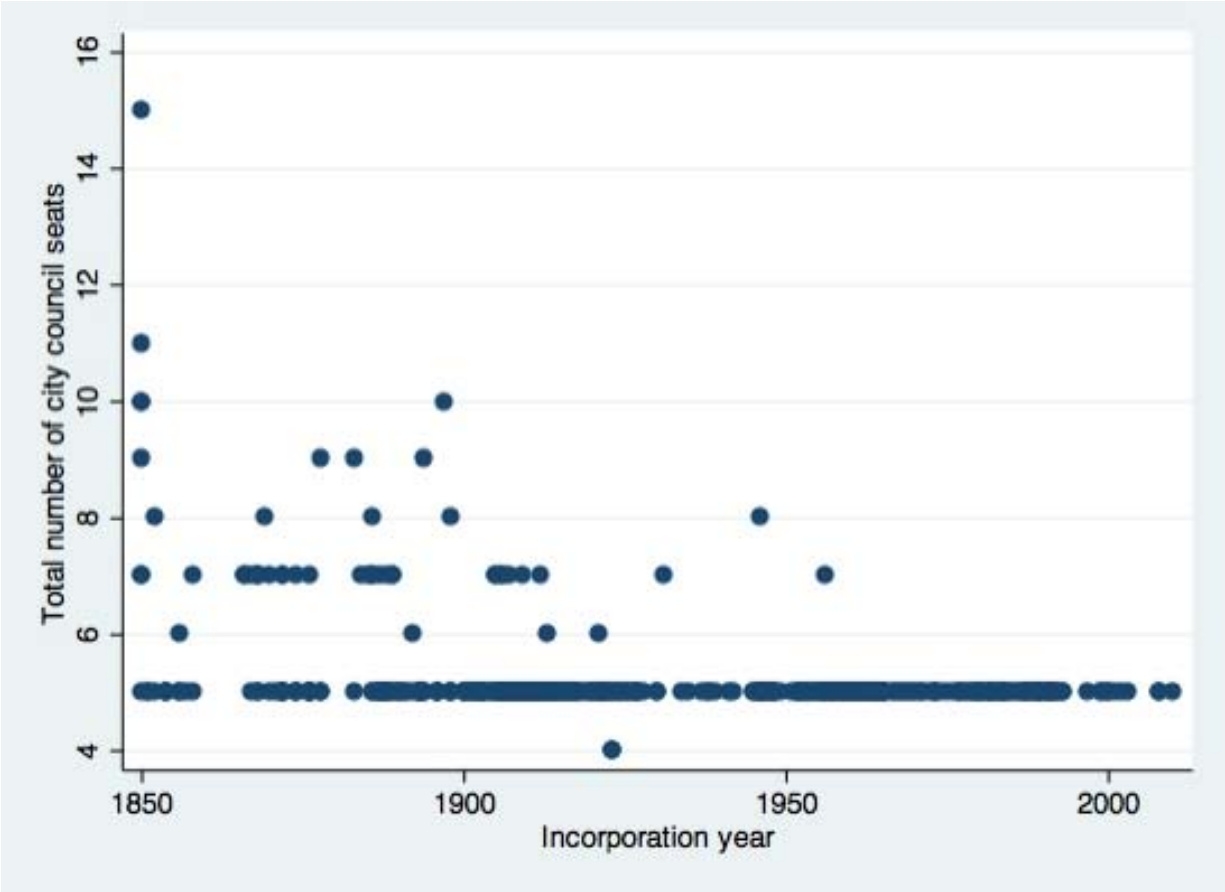


Table 1. Distribution of General Law and Charter Cities by Population

Population	General Law	Charter	Total
>100,000	6.72%	36.29%	14.35%
100,000 – 50,001	19.61%	26.61%	21.41%
50,000 – 25,001	21.85%	11.29%	19.13%
<25,000	51.82%	25.81%	45.11%
Total	357	124	481

Chi-Square	77.367
Df	3
p	0.000

Table 2. Size of City Council by Home Rule Status

Total Seats on Council	General Law	Charter	Total
4	0.56%	0.00%	0.42%
5	98.04%	64.52%	89.40%
6	0.00%	3.23%	0.83%
7	1.12%	21.77%	6.44%
8	0.28%	3.23%	1.04%
9	0.00%	3.23%	0.83%
10	0.00%	2.42%	0.62%
11	0.00%	0.81%	0.21%
15	0.00%	0.81%	0.21%
Total	357	124	481
	Chi-Square	118.289	
	df	9	
	p	0.000	

five-member council. This difference is statistically significant (X2=118.289, p<0.001). Charter cities have consistently higher than expected rates of larger councils, with charter cities comprising all of the cities with councils larger than eight members. In fact, only five general law cities have a council with more than five members.

Election Method

Turning to election method, only eight cities elect all of their council members using a district system with no at-large seats. Of these, Los Angeles has 15 districts, four (Alhambra, Dinuba, Downey, Bradbury) have five-member councils, and three (Watsonville, Newport Beach, Woodside) have seven-member councils. All other cities have at least one member of the council who represents an at-large constituency.

Separating these cities by home-rule status, we again find a difference between general law and charter cities. Within both types there is a majority of cities with zero districts: 98.0 percent of general law cities and 77.4 percent of charter cities. There is a statistically significant difference between charter and general law cities (X2 = 65.164, p<0.00) with charter cities having higher than expected rates of more districts than general law cities. In fact, only charter cities have more than seven seats elected by district.

We find that 86.9 percent of the cities in California have a five-member city council where all members are elected in at-large elections. For general law cities, 96.6 percent follow this model. For charter cities, 58.9 percent have a five-member city council elected at-large. The difference is statistically significant (X2=115.334, p<0.001). Most cities that do not have a five-member council with at-large elections are charter cities.

Table 3. Number of District Seats by Home Rule Status

District Seats	General Law	Charter	Total
0	98.04%	77.42%	92.72%
3	0.00%	0.81%	0.21%
4	1.12%	2.42%	1.46%
5	0.28%	3.23%	1.04%
6	0.28%	4.84%	1.46%
7	0.28%	4.84%	1.46%
8	0.00%	2.42%	0.62%
9	0.00%	1.61%	0.42%
10	0.00%	0.81%	0.21%
11	0.00%	0.81%	0.21%
15	0.00%	0.81%	0.21%
Total	357	124	481

Chi-Square	65.164
Df	10
P	0.000

Table 4. Relationship between Home Rule Status and Council Composition

	General Law	Charter	Total
Five Member Council elected at-large	96.6%	58.9%	86.9%
Other	3.4%	41.1%	13.1%
Total	357	124	481

Chi Sq	115.334
P	0.000

Mayor Selection

Mayors pose a unique complication for our study. While a few cities have a mayor-council form of government, mayors in most California cities are chosen from within the city council. In many cities, the position of mayor rotates among members of the council. A rotating mayor from a council elected at-large has the same constituency as the other members of the council, which is the entire city.

Table 5. Mayor Selection Process by Home Rule Status

Mayoral Election Process	Charter	General Law	Total
Chosen From Council	50.8%	72.5%	66.9%
Directly Elected	49.2%	27.5%	33.1%
Total	124	357	481
	Chi-Square	19.661	
	df	1	
	p	0.000	

In other instances, the mayor is separately elected in an at-large election and has the same constituency as the council, the entire city. It is possible a scenario exists where the mayor could be a rotating position in a city council where they have been elected in a district election. Functionally, a mayor elected by a district, rather than at-large, does not have the same constituency as the city council. Having a rotating mayor system of city council members elected by district elections could complicate city government. When cities make decisions about city government, the choice between district elections and the electoral process for the mayor may be more closely tied than one might imagine.

The majority of mayors are chosen from the body of city council members for both general law (72.5 percent) and charter cities (50.8 percent). Charter cities are split nearly evenly between mayors chosen in a direct election and chosen from the city council. Slightly more than a quarter of general law cities have a mayor who is directly elected. The differences between charter and general law cities are statistically significant ($X2=19.661$, $p<0.001$)

Model and Results

To better understand the determinants of city council structure, we estimated a series of regression models with different dependent variables. First, we estimated a series of OLS regressions to identify the determinants of the total number of city council seats in a city. We estimated multiple models, replacing our various measures of racial and ethnic diversity in each model. Each of the models was statistically significant and had a similar interpretation regardless of which racial or ethnic diversity measure was used.

Across all models, we found that the structural variables (i.e., having a charter, direct election of the mayor) were significantly related to an increased number of city council seats. The year of incorporation was consistently related to council size, with the older cities having more seats. While increased population size was related to an increase in total council size, our demographic variables did not generally have statistically significant relationships with the overall size of city council. The exception here is the percent Hispanic negatively related to council size. This suggests that no particular racial group, nor overall diversity of racial groups, was related to city council size after holding all other variables constant.

Table 6. Regression of the Total Number of Seats on the City Council

	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.
Charter	0.568	0.087	***	0.568	0.087	***	0.561	0.087	***	0.569	0.087	***	0.570	0.087	***
Mayor Directly Elected	0.172	0.079	**	0.172	0.079	**	0.172	0.079	**	0.166	0.080	**	0.166	0.079	**
Population	0.432	0.069	***	0.428	0.067	***	0.408	0.062	***	0.388	0.064	***	0.400	0.064	***
Incorporation year	-0.006	0.001	***	-0.006	0.001	***	-0.006	0.001	***	-0.006	0.001	***	-0.006	0.001	***
Diversity index	-0.267	0.215													
Percent White				0.301	0.221										
Percent Latino							-0.272	0.139	*						
Percent Black										0.130	0.703				
Percent Asian													-0.130	0.291	
constant	15.176	1.804	***	14.783	1.826	***	15.339	1.802	***	15.176	1.807	***	15.060	1.823	***
n	481			481			481			481			481		
F	47.990			48.080			48.670			47.540			47.590		
p	0.000			0.000			0.000			0.000			0.000		
R2	0.336			0.336			0.339			0.334			0.334		
adjR2	0.329			0.329			0.332			0.327			0.327		

Table 7. Regression of Number of District Seats on the City Council (Entire Sample)

	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.
Charter	0.886	0.179	***	0.887	0.179	***	0.895	0.179	***	0.879	0.179	***	0.889	0.179	***
Mayor Directly Elected	0.392	0.163	**	0.390	0.163	**	0.392	0.163	**	0.365	0.164	**	0.391	0.163	**
Population	0.581	0.143	***	0.571	0.138	***	0.606	0.128	***	0.570	0.131	***	0.646	0.133	***
Incorporation year	-0.009	0.002	***	-0.009	0.002	***	-0.009	0.002	***	-0.009	0.002	***	-0.009	0.002	***
Diversity index	0.286	0.445													
Percent White				-0.449	0.456										
Percent Latino							0.298	0.289							
Percent Black										2.207	1.449				
Percent Asian													-0.323	0.600	
constant	13.969	3.732	***	14.553	3.775	***	13.791	3.734	***	14.109	3.725	***	13.707	3.766	***
n	481			481			481			481			481		
F	28.07			28.22			28.24			28.57			28.04		
p	0.000			0.000			0.000			0.000			0.000		
R2	0.228			0.229			0.229			0.231			0.228		
adjR2	0.220			0.221			0.221			0.223			0.220		

In a similar manner as before, we estimated a series of OLS regressions using the number of district seats as the dependent variable. Each of the models was statistically significant and had a similar interpretation regardless of which diversity measure was used. Once again, charter cities, direct mayoral elections, and log of population were positively and statistically significantly related to the number of district seats on the city council. The relation between incorporation year and number of district seats was negative and significant. None of the diversity or race demographic variables was statistically significantly related to the number of district seats on the city council.

Because of the large number of cities that have a five-member at-large elected city council (446 out of 481 cities), we estimate a number of regressions modeling the number of district seats using only the 35 cities that have at least one seat elected via a district election. While this reduces our sample, it allows us to better understand the variation in number of electoral districts for those cities with districts. Each of the models was statistically significant and revealed two robust relationships. The log of population was statistically significantly related to an increase in the number of districts, suggesting that larger cities have more seats elected by district elections. Second, having a directly elected mayor was associated with a reduced number of district seats on the city council.

The models provided insight into the relationship between the racial composition of the city and the number of electoral districts. In two of the models, the racial composition measures were statistically significant. Holding all other variables constant, cities with a higher percentage of whites were statistically significantly related to an increased number of district seats. Holding all other variables constant, cities with a higher percentage of Hispanics were statistically significantly related to a decreased number of seats elected by district. No other measures of diversity or racial composition achieved levels of statistical significance in the models.

Because of the dominance of five-member city councils elected at-large, we estimate a number of logistic regression models to identify the relationships between our variables and the adoption of any alternative structure. In essence, we are trying to identify the correlates of adopting a system that is not the apparent default structure throughout the state. In our models we find similar support for previous findings. Specifically, across all models, having a charter and a directly elected mayor were significantly and positively related to adopting some other model for the city council. Incorporation year was significantly and negatively related to adopting a non five-member elected at-large city council. None of the racial composition variables were statistically significant in any of the models.

Chief among our findings is that there is very little variation of both council size and election method among California cities. This is somewhat of a puzzle given that the size and composition of California cities are about as heterogeneous as possible for any state in the United States. Among the minority of cities that use something other than the five-member council with at-large elections, there appears to be more variation. The most consistent factors in predicting whether a city has a larger council or uses district election are not measures of racial composition or diversity, but adoption of a charter, population size, and direct election of a mayor.

Conclusion

The California constitution grants cities broad powers of structural home rule, and cities may exercise these powers whether they have a charter or not. Despite these powers and the stagger

Table 8. Regression of the Number of District Seats for Only Those Cities in the Sample with Districts

	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.
Charter	-0.388	0.961		-0.216	0.912		-0.761	0.874		-0.281	0.966		-0.594	0.931	
Mayor Directly Elected	-1.652	0.920	*	-1.692	0.848	*	-1.771	0.817	**	-1.533	0.929		-1.614	0.895	*
Population	2.089	0.581	***	2.049	0.555	***	1.976	0.539	***	2.097	0.576	***	2.041	0.576	***
Incorporation year	-0.019	0.013		-0.022	0.012	*	-0.019	0.011		-0.016	0.012		-0.014	0.012	
Diversity index	-1.781	2.771													
Percent White				4.088	2.268	*									
Percent Latino							-2.734	1.169	**						
Percent Black										-3.317	3.578				
Percent Asian													2.960	2.823	
constant	34.087	26.090		36.991	24.185		35.092	23.148		27.028	24.818		24.620	24.986	
n	35			35			35			35			35		
F	6.190			7.340			8.250			6.370			6.460		
p	0.001			0.000			0.000			0.004			0.000		
R2	0.516			0.559			0.587			0.523			0.527		
adjR2	0.433			0.483			0.516			0.441			0.446		

Table 9. Logistic Regressions of Not Having a Council Size of Five Seats All Elected At-Large

	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.	B	s.e.	Sig.
Charter	2.547	0.392	***	2.551	0.393	***	2.561	0.394	***	2.539	0.395	***	2.535	0.395	***
Mayor Directly Elected	0.909	0.374	***	0.921	0.375	**	0.926	0.374	**	0.846	0.380	**	0.915	0.375	**
Population	-0.028	0.357		-0.027	0.347		0.126	0.321		0.096	0.324		0.182	0.338	
Incorporation year	-0.026	0.005	***	-0.026	0.006	***	-0.025	0.005	***	-0.025	0.005	***	-0.025	0.005	***
Diversity index	1.331	1.189													
Percent White				-1.560	1.166										
Percent Latino							0.790	0.735							
Percent Black										3.046	2.894				
Percent Asian													-0.244	1.522	
constant	44.812	10.705	***	47.538	11.214	***	44.206	10.682	***	43.820	10.440	***	42.961	10.585	***
n	481			481			481			481			481		
Likelihood Ratio	147.62			148.14			147.48			147.49			146.37		
Prob > Chi2	0.000			0.000			0.000			0.000			0.000		
Pseudo R2	0.395			0.397			0.395			0.395			0.392		

ing amount of diversity in size and racial composition of California cities, the vast majority has a five-member city council entirely elected at-large. Variations from this model are largely correlated with the adoption of a charter, direct election of a mayor, and population. While the literature on election method and council size demonstrates that these structural features are important factors in producing minority representation on city councils, racial and ethnic diversity are not generally correlated with these features in California cities.

We acknowledge that our study does not attempt to measure minority representation on councils. Rather, we are concerned with the structural features of cities that expand or restrict opportunities for representation on city councils. It is possible that prior to the passage of the California Voting Rights Act in 2001, not many cities had even considered making changes to their elections or city council size simply because there were few polarizing events that would have argued for change, or the political pressures inside the city significantly reduced the impetus for change.

At this level of analysis we can only speculate as to why individual cities have made clear choices to vary from the predominant model. As indicated in the beginning, a significant amount of resistance to charter reform may have simply prevented changes to city council elections. While it is beyond the scope of our current aggregate analysis, we anticipate that some of these effects are correlates to variables we include in the analysis.

Where these reforms have actually taken place, we believe the adoption of a charter or expanding the size of a council is most likely perceived to be necessary only for very large or extremely diverse cities. It is possible that citizens have not called for change because of a lack of tension between neighborhoods or minority and majority communities in the city.

Finally, Langbein et al. (1996) point out that functional constituencies may be just as politically relevant as geographic ones. Local government in California is extremely fragmented. In addition to the state's 58 counties and 482 cities, there are over 13,000 school districts and 2,000 independent special districts.

This patchwork of governments across the state provides a wide range of public goods and services. California's counties perform many functions that, in other places, are performed by municipal governments (Hoene, Baldasarre and Shires 2002). It could be that structures that help produce racial or ethnic representation are less relevant for city government than they are for the many other local governments.

Despite the fact that California cities are racially and ethnically diverse, only a small proportion of cities in the state depart from the five-member at-large council model of governance. Our findings show that race and ethnicity play little to no role in determining whether cities have changed to single member districts or larger-sized councils. In fact, the factors that seem to influence the adoption of single-member districts or larger councils are other features of structural home rule and city age.

We anticipate that this homogeneity of city structure will diminish as citizen groups access the courts under the provisions of the California Voting Rights Act. Recently, many local governments have been threatened with lawsuits if they do not move away from at-large elections or reduce racially polarized voting in their jurisdictions. This external impetus will likely create sufficient pressure to overcome any internal resistance to change in a city and increase the variation in city structure throughout the state. What results from this process will likely differ from the predominant model of a five-member city council elected at-large.

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Sec 6. Officers and Employees.

The officers of the City of Pacific Grove shall consist of four Councilmen and a Mayor, a City Manager, a City Clerk, a City Treasurer, a City Attorney, a City Assessor, a City Tax Collector, a City Engineer, a Street Superintendent, a Judge of the Police Court, a Chief of Police, a Fire Chief, a Health Officer, a Board of five Library Trustees, and a Board of five Museum Trustees; provided, the Council may by ordinance provide for such subordinate officers, assistants, deputies, clerks, and employees as they deem necessary, and provided further that the City Clerk shall be ex-officio Assessor and the City Treasurer ex-officio City Tax Collector, and that the Council may, at any time, when in its judgment the interests of the city so demands, consolidate by ordinance the powers and duties of two or more city officers and place the same in charge of one such officer. The Mayor, the members of the Council, the City Clerk, and the City Treasurer shall be elected from the city at large. All other officers, assistants, deputies, clerks and employees shall be appointed as provided in this Charter, or as the Council

(Reconsidered)

The Council (Model of S. B. P.)

The legislative body of the city shall consist of the Mayor and ~~four~~ Councilmen each of whom including the Mayor shall have the right to vote upon all questions coming before the Council.

~~Three~~ Two Councilmen shall be elected at each general municipal election and shall hold office for the term of four years each from and after the Monday next succeeding the day of such election, and until their successors are elected and qualified; provided, however, that ~~four~~ Councilmen shall be elected at the first general municipal election held under the provisions of this charter. The ~~three~~ two Councilmen receiving the highest number of votes at said first election shall hold office for the full term of four years each, and the ~~three~~ two councilmen elected by the lowest number of votes shall hold office for two years each. In the event that two or more persons shall be elected by the same number of votes, their term shall be fixed by lot.

The activities of the Council shall be divided into ~~six~~ four departments; namely, (1) ~~Finance~~, (2) Ordinance, (3) Street, (4) ~~Police~~, (5) Park, (6) ~~Public Safety~~ Fire, ~~Light & Water~~, and at the first regular meeting of the Council following the installation of officers after a general municipal

election, the Mayor, with the approval of the Council, shall assign each of said departments of the City to the special interest of a particular Councilman, whose duty it shall be to inform himself regarding the conduct of said department both in Pacific Grove and in other cities, that he may advise the Council relative to legislative acts that tend to the betterment thereof.

Upon request of ~~such~~ any Councilman the Council may appoint two citizens chosen because of their knowledge of the department to act with said Councilman, without compensation, as an advisory board; provided that the Councilman interested in the City Parks shall be ex-officio chairman of a City Planning Board.

The Councilmen ~~man~~ shall receive no compensation, and no Councilman shall be eligible to hold any other office or employment with the city except as a member of any board, commission or committee thereof, of which he is constituted such member by the general laws of the state.

Ballot Question:

Shall the City Charter, which currently requires the City Council be comprised of six Councilmembers, be changed to four Councilmembers, and become effective under the following municipal election sequence: (1) in 2024 two Councilmembers with four-year terms, and one Councilmember with a single two-year term, shall be elected, and (2) in 2026 two Councilmembers with four-year terms shall be elected.

Charter Amendment effective from November 1, 2024 to Oct 31, 2026:

Article 12 Council

Beginning November 1, 2024, Two ~~Three~~ Councilmembers shall be elected at each general municipal election and shall hold office for the term of four years each from and after the Tuesday next succeeding the day of such election, and until their successors are elected and qualified. Exclusively for the election to be held in November 2024, a single councilmember shall be elected and hold office for a term of two years.

A vacancy in an elective office shall be filled by appointment by the Council, such appointee to hold office until the next general municipal election and until a successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election and until his successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election next succeeding such appointment. Should the Council fail to fill any such vacancy within thirty days after the same occurs, then it shall be filled by appointment by the Mayor; provided, however, that if the offices of a majority, or more, of the Council shall become vacant, then the City Clerk shall call a special election at once to fill the vacancies for the unexpired terms, and the same shall be conducted substantially in the manner provided for general municipal elections.

If any Councilmember of the City shall be absent for more than two consecutive regular meetings without good cause as determined by the Council, or shall cease to be a resident or elector of the City, or shall fail to qualify, or shall resign or be convicted of a felony, or be adjudged mentally incompetent, the Councilmember's office shall thereupon become vacant.

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.

No Councilmember shall be eligible to hold any other office or employment with the City except as a member of any board, commission, or committee thereof, of which the Councilmember is constituted such member by the General Law of the State.

The term of office for a Councilmember who files as a candidate for the Office of Mayor shall automatically expire on the Tuesday next succeeding the general municipal election held following that filing. The filing period for candidates to fill such Councilmember's term shall be extended an additional five days.

Charter Amendment effective November 1, 2026 and thereafter.

Article 6 Officers and Employees

The officers of the City of Pacific Grove shall consist of ~~six~~ four Councilmembers and a Mayor, a City Manager, a City Clerk, a City Treasurer, a City Attorney, other officers as provided by ordinance, and members of Commissions, Boards and Committees as provided by Charter and by ordinance; provided, the Council may by ordinance provide for such subordinate officers, assistants, deputies, clerks and employees as it deems necessary, and that the Council may at any time, when in its judgment the interest of the City so demands, consolidate by ordinance the powers and duties of two or more City officers, and place the same in charge of one such officer. The Mayor and the members of the Council shall be elected from the City at large. All other officers, assistants, deputies, clerks, and employees shall be appointed as provided in this Charter, or as the Council may provide by ordinance in case no provision for their appointment is herein made, and they shall hold their respective offices or positions at the pleasure of the appointing power, except as otherwise herein provided.

Article 12 Council

~~Beginning November 1, 2024,~~ Two Councilmembers shall be elected at each general municipal election and shall hold office for the term of four years each from and after the Tuesday next succeeding the day of such election, and until their successors are elected and qualified. ~~Exclusively for the election to be held in November 2024, a single councilmember shall be elected and hold office for a term of two years.~~

A vacancy in an elective office shall be filled by appointment by the Council, such appointee to hold office until the next general municipal election and until a successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election and until his successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election next succeeding such appointment. Should the Council fail to fill any such vacancy within thirty days after the same occurs, then it shall be filled by appointment by the Mayor; provided, however, that if the offices of a majority, or more, of the Council shall become vacant, then the City Clerk shall call a special election at once to fill the vacancies for the unexpired terms, and the same shall be conducted substantially in the manner provided for general municipal elections.

If any Councilmember of the City shall be absent for more than two consecutive regular meetings without good cause as determined by the Council, or shall cease to be a resident or elector of the City, or shall fail to qualify, or shall resign or be convicted of a felony, or be adjudged mentally incompetent, the Councilmember's office shall thereupon become vacant.

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.

No Councilmember shall be eligible to hold any other office or employment with the City except as a member of any board, commission, or committee thereof, of which the Councilmember is constituted such member by the General Law of the State.

The term of office for a Councilmember who files as a candidate for the Office of Mayor shall automatically expire on the Tuesday next succeeding the general municipal election held following that filing. The filing period for candidates to fill such Councilmember's term shall be extended an additional five days.

NOTE – Additions to the text are underlined and deletions are shown in ~~strikethrough~~.

Transitioning from Six to Four Councilmembers in Four Years

