



NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, December 6, 2023, 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.

PACIFIC GROVE COUNCIL MEETINGS ARE CONDUCTED IN PERSON AT CITY HALL COUNCIL CHAMBER.

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

**PLEASE NOTE THE MEETING WILL PROCEED AS NORMAL EVEN IF THERE ARE TECHNICAL DIFFICULTIES ACCESSING ZOOM.
THE CITY WILL DO ITS BEST TO RESOLVE ANY TECHNICAL ISSUES AS QUICKLY AS POSSIBLE.**

THE PUBLIC MAY ALSO VIEW THE MEETING ON PENINSULA CHANNEL 25.

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AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE: Mayor Pro Tem Smith

1. APPROVAL OF AGENDA

2. PRESENTATIONS

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.

A. Written General Public Comment

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 October 4, 2023 Closed Session and Regular Meetings **PG 6**

Reference: Bonnie Gawf, Interim City Clerk

Recommended Action: Approve minutes

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

B. Minutes of the October 18, 2023 Closed Session and Regular City Council Meeting **PG 16**

Reference: Bonnie Gawf, Interim 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 Approving City Manager Job Description **PG 26**
Reference: Brian Pierik, City Attorney
Recommended Action: Adopt Resolution Approving City Manager Job Description **CEQA:** Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
7. **ORDINANCES**
Items pulled from this section will be placed under 11. Public Hearings
- A. Second Read of an Ordinance to Amend the Salary Classification Schedule **PG 33**
Reference: Katy Suttorp, Negotiator
Recommended Action: Hold second reading of an ordinance to amend the salary classification schedule or provide alternative direction to staff.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- B. Second Reading of Ordinance to amend the Fiscal Year 23/24 Operating and Capital **PG 43** Improvement Budget
Reference: Tori Hannah, Administrative Services Director/Assistant City Manager
Recommended Action: Hold second reading and adopt an ordinance to amend the Fiscal Year 23/24 Operating and Capital Improvement Budget
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- C. Second Reading of Cannabis Licensing and Zoning Ordinances **PG 48**
Reference: Aaron Campbell, Associate Planner
Recommended Action: Hold second reading and adopt an ordinance amending Municipal Code Section Chapter 11.100 - Cannabis and adding Municipal Code Section 23.92 - Cannabis Businesses.
CEQA: Categorical Exemption, CEQA Guidelines Section 15061(b)(3)
8. **REPORTS – INFORMATION ONLY**
Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business
9. **REPORTS – REQUIRING ACTION**
Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business
10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**
Items pulled from this section will be placed under 13. New Business
- A. August 8, 2023, ARB Minutes **PG 99**

Reference: Laurel O'Halloran, Planner

Recommended Action: Receive the August 8, 2023, ARB Minutes.

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

- B. Planning Commission Meeting Minutes: June 8, 2023; July 13, 2023; August 10, 2023 **PG 104**

Reference: Aaron Campbell, Associate Planner

Recommended Action: Receive the minutes.

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

- C. Historic Resources Committee Meeting Minutes: August 23, September 27, October 25, 2023

Reference: Garrett McCown, Assistant Planner **PG 125**

Recommended Action: Receive the Historic Resources Committee minutes from the regular meetings on August 23, September 27, and October 25, 2023.

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.

- A. Ordinance to Amend the Salary Schedule (Minimum Wage) **PG 151**

Reference: Leticia Livian, Human Resources Director

Recommended Action:

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an ordinance to amend the salary classification schedule modifying salary ranges for Cashier, Intern, Lighthouse Docent Coordinator, Recreation Assistant I, and Recreation Assistant II; and
4. Direct a summary of a proposed ordinance to be published as approved by the City Attorney.

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

12. UNFINISHED AND ONGOING BUSINESS

- A. Market and Economic Evaluation Report for the Pacific Grove Golf Links **PG 155**

Reference: Tori Hannah, Administrative Services Director/City Manager Pro Tempore

Recommended Action: Receive the Market and Economic Evaluation Report for the Pacific Grove Golf Links from Pro Forma Advisors, LLC

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

13. **NEW BUSINESS**

A. Codifying Council's Inquiry Authority **PG 253**

Reference: Councilmember Luke Coletti

Recommended Action:

1. Direct the City Attorney to return within 60 days with a draft ordinance codifying the provisions of Article 21 of the City Charter and other items related to Council’s Inquiry Authority. A proposed draft ordinance is attached (see Attachment-1).
2. Direct the City Attorney to return with a draft council policy establishing procedure to address how council members may make inquiries to staff in a manner consistent with the Charter and the draft ordinance.

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: Bonnie Gawf, Interim City Clerk
MEETING DATE: December 6, 2023
SUBJECT: Minutes of the October 4, 2023 Closed Session and Regular Meetings
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

DISCUSSION

OPTIONS

FINANCIAL IMPACT:

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Draft Closed Session Minutes 10-4-23
Draft Regular Meeting Minutes 10-4-23



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

AMENDED CLOSED SESSION MEETING

Wednesday, October 4, 2023, 5:00 P.M.

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

MEETING HELD IN PERSON AND VIRTUALLY (HYBRID).

Join the Zoom Meeting to view live at:

<https://us02web.zoom.us/j/692219855>

CALL TO ORDER

Mayor Pro Tem Smith called the meeting to order at 5:00 p.m. Interim City Clerk Lindstrom conducted roll call with the following Council present in Chamber: Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri. Mayor Peake absent.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Beck and seconded by Councilmember Amelio, Council voted to approve the agenda.

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

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

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

No public comment received.

1. Written Public Comment
 - A. Conference with Legal Counsel-Anticipated Litigation
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) First potential case (Complaint by employee of discrimination)
 - B. Conference with Legal Counsel-Anticipated Litigation
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) Second potential case (Complaint by employee of discrimination and harassment)
 - C. Pursuant to Government Code Section 54957-Appointment of Assistant City Attorney

Respectfully submitted,

Kerry Lindstrom
Interim City Clerk

Approved by Mayor: _____ Date_____

Attest by City Manager: _____ Date_____

DRAFT



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING

Wednesday, October 4, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

MEETING HELD IN PERSON AND VIRTUALLY (HYBRID).

Join the Zoom Meeting to participate live at:
<https://us02web.zoom.us/j/20979290>

CALL TO ORDER

Mayor Pro Tem Smith called the meeting to order at 6:00 p.m. Interim City Clerk Lindstrom conducted roll call with the following Council present in Chamber: Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri. Mayor Peake absent.

PLEDGE OF ALLEGIANCE:

Councilmember Coletti led the pledge of allegiance.

1. APPROVAL OF AGENDA

Action: Upon motion by Councilmember Beck and seconded by Councilmember Amelio, Council voted to approve the agenda as amended, removing from consideration, Item 2A.

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

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

2. PRESENTATIONS

- A. Mayor's Proclamation: Banned Books Week *This item was removed from consideration*

Reference: Bill Peake, Mayor

Recommended Action: Receive proclamation.

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

- B. Pacific Grove Deer Awareness

Action: Received presentation

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

Pursuant to Government Code Section 54957-Appointment of Assistant City Attorney

Council voted unanimously to appoint Erica Vega as Assistant City Attorney.

Conference with Legal Counsel-Anticipated Litigation

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) First potential case (Complaint by employee of discrimination)

City Attorney Brian Pierik stated there was no reportable action.

Conference with Legal Counsel-Anticipated Litigation

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2) Second potential case (Complaint by employee of discrimination and harassment)

City Attorney Brian Pierik stated there was no reportable action.

B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**

Public comment received from Peter, Dan Miller, Vince Tuminello, Justin LeBlanc, Mike Gibbs, Terrance Zito, Carmelita Garcia, Adam DeBoor, Colleen Ingram, Anthony Ciani, Mari Adams, Marsha, Kim Bui.

A. Written General Public Comment

CONSENT AGENDA

Action: Consent Agenda Items 6A and 10C were considered immediately following the Consent Agenda.

Action: Upon motion by Councilmember Beck and seconded by Councilmember Amelio, Council voted to approve the Consent Agenda.

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

AYES: Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

NOES: None.

ABSENT: Mayor Peake.

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

6. **RESOLUTIONS**

A. Temporary Employment of Retired Annuitant ***This item was pulled and considered immediately following the Consent Agenda.***

Recommended Action: Approve a resolution appointing Bonnie Gawf as a Retired

Annuitant to Provide Special Assistance to the City during the temporary absence of the regular City Clerk.

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

7. **ORDINANCES**

- A. Ordinance Amending Salary Classification Schedule to Include Salary for City Manager Pro Tempore

Action: Held second reading and adopted Ordinance 23-012 to amend the salary classification schedule to include salary for City Manager Pro Tem.

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

8. **REPORTS – INFORMATION ONLY**

- A. August 2023 Check Register

Action: Received the Check Register.

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

- B. Core Revenue Report - August

Action: Received the report.

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

- C. League of California Cities Annual Conference and Expo Summary

Action: Received the report.

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

9. **REPORTS – REQUIRING ACTION**

- A. Designation of Official City Newspapers

Action: Approved Resolution 23-028 authorizing the City Manager Pro Tempore to award the designation of 2023-2024 Official Newspaper to the Monterey Herald, the Monterey County Weekly, and the Carmel Pine Cone

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

- B. City Manager Pro Tempore

Action: Approved the following:

1. Motion to authorize City Manager Pro Tempore Tori Hannah to remove City employees in addition to the authority to appoint City employees and all other City Manager powers and duties.

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

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

- A. Recreation Board Minutes: January 13, January 27, February 24 and March 24, 2022
Action: Received the minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- B. Library Advisory Board Meeting Minutes: July 10, 2023
Action: Received minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- C. Historic Resources Committee Meeting Minutes: July 26, 2023 ***This item was pulled and considered immediately following the Consent Agenda.***
Recommended Action: Receive the minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- D. BNRC Minutes, February, March, and April 2023.
Action: Received Minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

- A. Temporary Employment of Retired Annuitant ***This item was pulled from the Consent Agenda***

Public comment received from Dan Miller.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Poduri, Council voted to approve Resolution 23-027 appointing Bonnie Gawf as a Retired Annuitant to Provide Special Assistance to the City during the temporary absence of the regular City Clerk.

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

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

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

- B. Historic Resources Committee Meeting Minutes: July 26, 2023 ***This item was pulled from the Consent Agenda***

Public comment received from Justin LeBlanc.

Action: Received the minutes.

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

11. **PUBLIC HEARINGS**

A. Ordinance to Amend the Salary Classification Schedule

Public comment received from Dan Miller, Inge Lorentzen Daumer, and Marsha Wright.

1. Councilmember Poduri requested the City Attorney read the title of the ordinance;

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

2. Waive further reading of the ordinance;
3. Introduce and hold a first reading of an ordinance to amend the salary classification schedule; and approved the amendment; and
4. Direct that a summary of a proposed ordinance be published as approved by the City Attorney.

Motion carried 4-2-1, by the following roll call vote.

AYES: Mayor Pro Tem Smith, Councilmembers Amelio, McDonnell, and Poduri.

NOES: Councilmembers Beck and Coletti.

ABSENT: Mayor Peake.

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

B. Ordinance to Approve an Amendment to the Fiscal Year 2023-24 Operating and Capital Improvement Budget

Public comment received from Andy Kubica.

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

1. Approved an amendment to the Fiscal Year 23/24 Operating and Capital Improvement Budget;
2. Mayor Pro Tem Smith requested the City Attorney read the title of the ordinance;
3. Motion to waive further reading of the ordinance;
4. Introduce and hold first reading of an ordinance amending the FY23/24 Budget; and
5. Direct that publication of the ordinance will be satisfied by publication of a summary approved by the City Attorney.

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

AYES: Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

NOES: None.

ABSENT: Mayor Peake.

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

12. **UNFINISHED AND ONGOING BUSINESS**

- A. Planning Commission Recommendations for the Cannabis Regulatory Draft Ordinances
This item is continued from the September 6, 2023 meeting.

Public comment received from Inge Lorentzen Daumer, Mike Gibbs, and Marsha Wright.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Poduri, Council considered and accepted Planning Commission recommendations for the draft Cannabis Zoning Ordinance for Title 23 and the draft Cannabis Licensing Ordinance for Title 11 and recommend staff bring final draft ordinances back to City Council for a first reading/introduction.

Motion carried 5-1-1, by the following roll call vote.

AYES: Mayor Pro Tem Smith, Councilmembers Amelio, Coletti, McDonnell, and Poduri.

NOES: Councilmember Beck

ABSENT: Mayor Peake.

CEQA: Categorical Exemption, CEQA Guidelines Section 15061(b)(3)

- B. Lovers Point Pier Repair

Public comment received from Anthony Ciani and Andy Kubica.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Beck Council voted to receive report and directed staff to proceed with the interim repair design in Fiscal Year 2023-2024.

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

AYES: Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

NOES: None.

ABSENT: Mayor Peake.

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

13. **NEW BUSINESS**

- A. Backstop Replacement Pacific Grove Municipal Ball Park

No public comment received.

Action: Upon motion by Councilmember Beck and seconded by Councilmember Amelio, Council voted to authorize an agreement with Judge netting, Inc. for the design, engineering, and installation of a new backstop at the Pacific Grove Municipal Ball Park in an amount not to exceed \$139,300 plus a 5% contingency.

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

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

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

B. Black Oystercatcher Protection Protocol MOU Between City and Monterey Audubon Society

Action: Upon motion by Councilmember Amelio and seconded by Councilmember McDonnell, Council voted to approve the proposed Black Oystercatcher Protection Protocol Memorandum Of Understanding (MOU) between the City and Monterey Audubon Society (MAS) as recommended by the Beautification and Natural Resource Commission (BNRC).

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

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

CEQA: Categorical Exemption, CEQA Guidelines Section 15308, Class 8, Actions by Regulatory Agencies for Protection of the Environment

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

Council adjourned the meeting at approximately 9:20 PM.

Respectfully submitted,

Kerry Lindstrom
Interim City Clerk

Approved by Mayor: _____

Date _____

Attest by City Manager: _____

Date _____



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Bonnie Gawf, Interim City Clerk
MEETING DATE: December 6, 2023
SUBJECT: Minutes of the October 18, 2023 Closed Session and Regular City Council Meeting
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

DISCUSSION

OPTIONS

FINANCIAL IMPACT:

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Draft Minutes 10-18-23



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

AMENDED CLOSED SESSION MEETING

Wednesday, October 18, 2023, 5:00 P.M.

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

MEETING HELD IN PERSON AND VIRTUALLY (HYBRID).

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CALL TO ORDER

Mayor Peake called the meeting to order at 5:00 p.m. and noted that all Councilmembers were present.

APPROVAL OF AGENDA

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

Motion carried unanimously by the following roll call vote:

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

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

There was no public comment on closed session items.

1. Written Public Comment
2. CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6)
City Negotiators: Tori Hannah, City Manager Pro Tem, Leticia Livian, Human Resources Director, and Katy Suttrop, City Attorney's Office
Employees: Management Employees Association and General Employees Association

3. CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54957
Public Employee Appointment
Title: Interim City Manager
4. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section
54956.9(d)(2)
One potential case: Complaint by employee of discrimination

ADJOURNMENT

Respectfully Submitted,

Bonnie Gawf
Interim City Clerk

Approved by Mayor: _____ Date _____

Attest by City Manager: _____ Date _____



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE
CITY COUNCIL
REGULAR MEETING

Wednesday, October 18, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

MEETING HELD IN PERSON AND VIRTUALLY (HYBRID).

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CALL TO ORDER

Mayor Peake called the meeting to order at 6:00 p.m. and noted for the record that all Councilmembers were present.

PLEDGE OF ALLEGIANCE

Councilmember McDonnell led the pledge of allegiance.

1. **APPROVAL OF AGENDA**

Action: Upon motion by Councilmember Poduri and seconded by Councilmember Coletti, Council voted to approve the agenda.

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

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

NOES: None.

ABSENT: None.

2. **PRESENTATIONS**

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

A. Report on Closed Session by City Attorney

CONFERENCE WITH LABOR NEGOTIATORS (Government Code Section 54957.6)

City Negotiators: Tori Hannah, City Manager Pro Tem, Leticia Livian, Human Resources Director, and Katy Suttorp, City Attorney's Office

Employees: Management Employees Association and General Employees Association

CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54957
Public Employee Appointment
Title: Interim City Manager

City Attorney Brian Pierik said that 2 items were heard and there was no reportable action.

- B. Council made general announcements, and staff had no announcements.

4. **GENERAL PUBLIC COMMENT**

General public comment received from Dan Miller, Mike Gibbs, Vince Tuminello, Janet Wilson, and Inge Lorentzen Daumer.

- A. Written General Public Comment

CONSENT AGENDA

Action: Consent Agenda Items No. 8B, 8E, 8F, and 9B were pulled from Consent and considered immediately after Consent.

Action: Councilmember Beck asked Council to Continue Item 8G to the Regular Agenda of November 1, 2023.

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

Motion carried 7-0, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

NOES: None.

ABSENT: None.

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

- A. Minutes of the September 6, 2023 Regular Meeting

Action: Approved minutes.

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

6. **RESOLUTIONS**

- A. Temporary Employment of Retired Annuitant

Action: Approved Resolution 23-029 appointing Lew Bauman as a Retired Annuitant to temporarily fill the Community Development Director vacancy.

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

7. **ORDINANCES**

- A. Ordinance to Amend the Salary Classification Schedule
Action: Held second reading and adopted Ordinance 23-013 to amend the salary classification schedule
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- B. Second Reading of an Ordinance Amending the Fiscal Year 2023-24 Operating and Capital Improvement Budget
Action: Held second reading and adopted Ordinance 23-014 to amend the Fiscal Year 2023-24 Operating and Capital Improvement Budget
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
8. **REPORTS – INFORMATION ONLY**
- A. September 2023 Check Register
Action: Received the Check Register.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- B. Fourth Quarter FY 22/23 Purchase Order Report ***This item was pulled and considered immediately following the Consent Agenda.***
Action: Received the FY 22/23 Fourth Quarter Purchase Order Report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- C. September 2023 Core Revenue Report
Action: Received the September 2023 Core Revenue Report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- D. Fourth Quarter FY 22-23 Capital Project Report & Update
Action: Received the FY 22/23 Fourth Quarter Capital Project Report & Update
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- E. League of California Cities Travel Report ***This item was pulled and considered immediately following the Consent Agenda.***
Action: Received Report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- F. 2023 League of California Cities Annual Conference Attendance ***This item was pulled and considered immediately following the Consent Agenda.***
Action: Received Report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- G. Water Conservation ad hoc Subcommittee Report
Action: Continued to November 1, 2023 Regular Meeting.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

- A. Amending an Agreement with Robert Half International, Inc.
Action: Authorized the Mayor to sign an amendment to the agreement with Robert Half International, Inc. to provide temporary staffing services in an amount not to exceed \$80,000.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- B. Amending an Agreement with Alvarez Technology Group for Information Technology Services. ***This item was pulled and considered immediately following the Consent Agenda.***
Action: Approved an amendment to the contract with Alvarez Technology Group in amount not to exceed \$99,900.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

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

- A. Recreation Board Meeting Minutes April 28, 2022; May 26, 2022; June 23, 2022; and July 28, 2022
Action: Received minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- B. September 23, 2023 MST Board Meeting Minutes
Action: Received minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- 8.B. Fourth Quarter FY 22/23 Purchase Order Report ***This item was pulled and considered immediately following the Consent Agenda.***
Public comment was heard from Inge Lorentzen Daumer
Action: Received the FY 22/23 Fourth Quarter Purchase Order Report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Action: Upon a motion by Mayor Pro Tem Smith, and seconded by Council Member Amelio, the City Council received the FY 22/23 Fourth Quarter Purchase Order Report.

Motion carried unanimously by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri

NOES: None.

ABSENT: None.

- 8.E. League of California Cities Travel Report *This item was pulled and considered immediately following the Consent Agenda.*
Public comment was heard from Mike Gibbs.

Action: Received Report.

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

- 8.F. 2023 League of California Cities Annual Conference Attendance *This item was pulled and considered immediately following the Consent Agenda.*
Public comment was heard from Mike Gibbs.

Action: Received Report.

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

- 9.B. Amending an Agreement with Alvarez Technology Group for Information Technology Services. *This item was pulled and considered immediately following the Consent Agenda.*
Public comment was heard from Dan Miller and Vince Tuminello.

Action: Approved an amendment to the contract with Alvarez Technology Group in amount not to exceed \$99,900.

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

Action: Upon a motion by Mayor Pro Tem Smith, and seconded by Council Member Amelio, the City Council approved the staff recommendations on Items 8E, 8F, and 9B.

Motion carried unanimously by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri

NOES: None.

ABSENT: None.

REGULAR AGENDA

11. PUBLIC HEARINGS

A. 6th Cycle Draft Housing Element

Mayor Peake opened the Public Hearing.

No Council Members reported ex parte communications.

Contract Senior Planner Joe Sidor, Ryan Russell of Rincon Associates, and Veronica Tam of Veronica Tam and Associates gave the presentation.

Public Comment was received from Dan Miller, Vince Tuminello, Steve Hawk, Geneva, Pamela Karras, Sam Mellon, Barbara Palmer, Mike Palmer, a resident of David Avenue near site 54, a local developer, Mike Gibbs, Planning Commission Chair Steve Lilley, Kai Cater, Rudy Hess, Tyrone Jackson, Rebecca Lee, Lisa Ciana, Chris Tomlinson, Lobo Wolf, Lee Steinberg, Mike, Chriss Dion, Inga Lorenzo Daumer, Roy Walters, Mari Adams, Nancy Parsons, and Sam Eddick.

Mayor Peake closed the Public Hearing.

Action: Upon a motion by Mayor Peake, and seconded by Council Member Amelio, the City Council directed removal of Site 49 and references to “Project Homekey” from the Housing Element.

Motion carried unanimously by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri

NOES: None.

ABSENT: None.

Action: Upon a motion by Mayor Pro Tem Smith and seconded by Council Member Amelio, the City Council directed staff to forward the Housing Element to the California Department of Housing and Community Development with Sites 49, 52, and references to “Project Homekey” removed.

Action: Mayor Peake asked to amend the motion to include further direction to staff to take into consideration the Planning Commission edits and make non-substantial changes as appropriate, and to include the recommendation by Council Member Coletti regarding historic references on page 4 and incorporate that into the transmittal. The motion maker and seconder accepted the amendment.

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

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

12. UNFINISHED AND ONGOING BUSINESS

None.

13. NEW BUSINESS

None.

14. FULL PRESENTATIONS

None.

ADJOURNMENT

Council adjourned the regular meeting to a closed session at 9:36 p.m.

Respectfully Submitted,

Bonnie Gawf
Interim City Clerk

Approved by Mayor: _____ Date _____

Attest by City Manager: _____ Date _____



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Pierik, City Attorney
MEETING DATE: December 6, 2023
SUBJECT: Resolution Approving City Manager Job Description
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Motion to adopt Resolution Approving City Manager Job Description or take other action related to this item.

DISCUSSION

On November 1, 2023, the City Council gave direction to the City Attorney to prepare a Resolution establishing a City Manager Job Description.

A question was raised at the City Council meeting whether the City can include a residency requirement in the City Manager Job Description. The answer is the City may include a requirement that the City Manager reside within a reasonable and specific distance of the City pursuant to California Constitution, Article XI, Section 10 (b).

The attached Resolution Approving City Manager Job Description includes the following language under Conditions of Employment:

- City Manager must reside within the County of Monterey commencing within 90 days of employment with the City unless otherwise agreed in writing by the City Council and City Manager

OPTIONS

Other action as directed by City Council.

FINANCIAL IMPACT:

None

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Draft Resolution Approving City Manager Job Description

RESOLUTION NO. 23 – xxxx

RESOLUTION APPROVING CITY MANAGER JOB DESCRIPTION

FINDINGS

1. The City is currently recruiting for the position of City Manager.
2. On November 1, 2023, the City Council gave direction to the City Attorney to draft a Resolution approving a City Manager Job Description.
3. Attached as Exhibit A to the Resolution is a City Manager Job Description.

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

1. The City 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 Manager Job Description attached to this Resolution as Exhibit A is incorporated by reference and is hereby approved.
3. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE this 6th day of December, 2023 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

Bill Peake, Mayor

ATTEST

DATED: _____

Bonnie Gawf, Interim City Clerk

APPROVED AS TO FORM

Brian A. Pierik, City Attorney

EXHIBIT A

City Manager Job Description

SUMMARY:

To plan, organize, and direct the overall administrative activities and operations of the City. To advise and implement City Council goals and policies. To perform all duties as specified by the City Charter.

Per Article 19 of the City Charter, the powers and duties of the City Manager shall be:

- To see that all ordinances are enforced.
- To appoint all heads of departments, subordinate officials, and employees, and remove the same, and have general supervision and control over the same.
- To exercise general supervision over all privately owned public utilities operating within the City so far as the same are subject to municipal control.
- To see that the provisions of all franchises, leases, contracts, permits and privileges granted by the City are fully observed and to report to the Council any violations thereof.
- To act as purchasing agent for the City. The City Manager shall know the exact condition of the treasury at all times and shall approve all demands before the same have been allowed by the Council if the City Manager is satisfied that the money is lawfully due.
- To attend all meetings of the Council unless excused therefrom by three members thereof or by the Mayor.
- To examine, or cause to be examined, without notice, the conduct, or the official account and records, of any officer or employee of the City.
- To keep the Council advised as to the needs of the City.
- To have supervision over all City property, including public buildings, parks, and playgrounds.
- To appoint such advisory boards as the City Manager may deem desirable to advise and assist the City Manager provided the members of such boards shall receive no compensation.
- To cause a quarterly statement of all funds in the treasury to be submitted to the Council. Such statements shall be submitted not later than the first meeting in November, February, May, and August.
- To assume general control of the City government and all of its branches in case of riot, insurrection or extraordinary emergency, and to be responsible for the suppression of disorders and the restoration of normal conditions.

ADDITIONAL ESSENTIAL FUNCTIONS:

Additional duties may specifically include, but are not limited to, the following:

- Direct and participate in the development and implementation of all City goals, objectives, policies, and procedures;
- Direct the preparation of plans and specifications for work specified by City Council;

- Interpret, analyze, and explain policies, procedures and programs to staff and public as appropriate;
- Confer with residents, taxpayers, businesses, and other individuals, groups and outside agencies having an interest or potential interest in affairs of City concern;
- Respond to public feedback on city operations including requests for information;
- Represent the City in the community and at professional meetings as required;
- Coordinate City activities with other governmental agencies and outside organizations;

MINIMUM QUALIFICATIONS:

Any combination equivalent to experience and education that provides required knowledge and abilities described below.

Education: Equivalent to a Bachelor's degree from an accredited college or university with major course work in public or business administration or a closely related field. A Master's degree is desirable.

Experience: A minimum of 10 years of increasing responsibility in an administrative or managerial capacity in a municipal organization including as a city manager, assistant city manager or department head in a California community of similar size and complexity to Pacific Grove.

KNOWLEDGE AND SKILLS:

Knowledge of:

- Modern municipal management methods and procedures, organizations, and functions; Principles of public and business administration including public finance, personnel administration, and community and economic development;
- Current social, political, and economic trends and operating problems of municipal government;
- Applicable federal and state laws, rules, and regulations regarding local government, land use and zoning regulations;
- Principles of effective public relations and interrelationships with elected and appointed city officials, community groups and agencies, private businesses and firms, and other levels of government.

Ability to:

- Work collaboratively with the City Council.
- Provide effective leadership and coordinate the activities of a large, full service, municipal organization;
- Facilitate teambuilding among City Staff and City Council;
- Analyze, interpret, summarize, and present administrative and technical information and data in an effective manner;
- Take direction from and serve effectively as the administrative agent of the City Council;

- Select, supervise, train, mentor, and evaluate staff.

CONDITIONS OF EMPLOYMENT:

- Take an Oath of Office
- Must be willing to work varied hours, as well as attend evening or weekend meetings and community events, as appropriate
- City Manager must reside within the County of Monterey commencing within 90 days of employment with the City unless otherwise agreed in writing by the City Council and City Manager.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Pierik, City Attorney
MEETING DATE: December 6, 2023
SUBJECT: Second Read of an Ordinance to Amend the Salary Classification Schedule
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold second reading of an ordinance to amend the salary classification schedule.

DISCUSSION

The City Clerk caused a summary of the ordinance to be published on November 30, 2023. The Police Chief classification was listed in the agenda report dated 11/15/2023 as a market adjustment but not in the ordinance. The ordinance has been revised to include Police Chief in the market adjustment.

The City salary classification schedule identifies the job classifications approved by Council (e.g., Office Assistant) and the hourly rates of pay for each classification at each step authorized by the Personnel Rules. Pursuant to Charter Article 25 and Pacific Grove Municipal Code (PGMC) Section 4.20.280, approval and amendment to the classification schedule must be adopted by the Council.

MEA MOU

On November 1, 2023, City Council approved the Management Employees Association (MEA) Memorandum of Understanding (MOU). Approval of the MOU included a 3% cost of living adjustment (COLA) and salary market adjustments for identified classifications effective August 20, 2023. The market adjustments will be spread out over two years, with 50% of the market adjustment provided in FY 23/24 and 50% of the market adjustment in FY 24/25. The salary schedules are amended by Ordinance, therefore this is the administrative process to make changes to the salary schedule that were approved by Council on 11/1/23.

Nonrepresented Management and Confidential and Department Head Groups

On November 1, 2023, City Council approved the changes to the Benefits and Compensation Plan (Plan) for Nonrepresented Management and Confidential and Department Head Groups. Approval of the MOU included a 3% cost of living adjustment (COLA) and salary market adjustments for identified classifications effective August 20, 2023. The market adjustments will be spread out over two years, with 50% of the market adjustment provided in FY 23/24 and 50% of the market adjustment in FY 24/25. The salary schedules are amended by Ordinance, therefore this is the administrative process to make changes to the salary schedule that were approved by Council on 11/1/23.

After further evaluation, with the Council approval of the Benefits and Compensation plan changes for the Department Head Group on 11/1/23, Administrative Services Director/Assistant City Manager and Public Works Director/Deputy City Manager classifications will not receive a market adjustment, instead they will receive the COLA. However, the Community Development Director and Finance Director classifications have been identified as being under market and will receive a market increase. This classification is not budgeted for headcount or salary, however for internal and external equity, it is recommended this salary be revised.

The requested change to the salary classification schedule will only impact the positions listed in this agenda report. All other classification hourly salary ranges will remain the same. To view the entire salary schedule, please refer to the City's website, <http://www.cityofpacificgrove.org/about-city/human-resources/salaries-benefits-and-mous>. To view the revised classification hourly salary ranges for the classifications listed below, please see the related ordinance linked to this agenda report.

	3% COLA or Market Adjustment	
Barg Group/ Align	Classification	Increase Type
MEA	Accountant	COLA
MEA/Align	Accountant, Chief	COLA
MEA/Align	Accountant, Senior	Market Adj.
DH	Administrative Services Director	Market Adj.
DH	Administrative Services Director/ Assistant City Manager	COLA
Nonrep Mgt	Administrative Services Manager	COLA
MEA Align	Assistant Finance Manager	COLA
DH	City Clerk	COLA
DH	City Clerk/DEI Coordinator	COLA
DH	Community Development Director	COLA
MEA	Construction Project Manager	Market Adj.
Nonrep Mgt.	Deputy City Clerk	COLA
Nonrep Mgt.	Deputy City Manager	COLA
DH	Finance Director	Market Adj
MEA	Financial Analyst	COLA
DH	Human Resources Director	Market Adj
Nonrep Mgt.	Human Resources Manager	COLA
MEA	Librarian	COLA
DH	Library Director	COLA
MEA	Management Analyst	Market Adj
MEA	Planner, Principal	Market Adj.
Nonrep Mgt.	Police Adm. Services Manager	COLA

Nonrep Mgt.	Police Adm. Services Manager/ Public Information Officer	COLA
DH	Police Chief	Market Adj
Nonrep Mgt.	Police Commander	COLA
MEA	Program Manager	COLA
Nonrep Mgt.	Program Manager, Senior	COLA
DH	Public Works Director	Market Adj
DH	Public Works Director/ Deputy City Manager	COLA
MEA	Public Works Superintendent	COLA
MEA	Recreation Coordinator, Senior	COLA
MEA	Risk Manager	COLA
MEA	Senior Librarian	COLA

DH - Department Head Group

MEA - Management Employee Group

Nonrep Mgt. – Non-represented Management and Confidential Group

OPTIONS

1. Approve Ordinance
2. Provide alternative direction to staff.

FINANCIAL IMPACT:

The Fiscal Year 23/24 Budget included an estimated 2% COLA for the MEA, Non-Represented Management and Confidential; and the Department Groups. The amounts specifically related to the COLA and market adjustments are listed below:

Group	FY 23/24 Fiscal Impact	Annual Fiscal Impact
MEA	\$ 23,600	\$44,100
Non-Represented Management and Confidential	9,600	34,000
Department Heads	28,900	60,500
Estimated Fiscal Impact	\$ 62,100	\$ 138,600

Additional details regarding the compensation packages and the fiscal impact can be accessed from agenda reports that were presented at the [November 1, 2023 City Council Meeting](#).

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Ordinance

ORDINANCE NO. 23-_____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING THE CLASSIFICATION SCHEDULE**

Findings

1. The City of Pacific Grove (City) entered into a new Memorandum of Understanding (MOU) with the Management Employees Association (MEA); and
2. The MOU is effective from July 1, 2023 through June 30, 2026; and
3. Provisions of the MOU provides for a 3% cost of living adjustment (COLA) in the first year of the agreement, 3% COLA in the second year of the agreement, and 3% COLA in the third year of the agreement; and
4. Accountant, Senior, Construction Project Manager, Management Analyst and Planner, Principal classifications have been identified to receive salary market adjustments with 50% in the first year of the agreement and 50% in the second year of the agreement; and
5. Classifications that align with MEA for salary and benefits will also be included for a COLA and market adjustments which include the Non-represented Management and Confidential and Department Head Groups; and
6. Administrative Services Director, Community Development Director, Finance Director, Human Resources Director, Police Chief, and Public Works Director classifications have been identified to receive salary market adjustments with 50% in FY 23/24 and 50% in FY 24/25; and
7. FY 23/24 3% COLA and salary market adjustments will be effective August 20, 2023.
8. The following Classification salary ranges will be revised to reflect the first year 3% COLA increase, or 50% of the market adjustment for identified classifications:

Accountant

Accountant, Chief

Accountant, Senior

Administrative Services Director

Administrative Services Director/ Assistant City Manager

Administrative Services Manager

Assistant Finance Manager

City Clerk

City Clerk/DEI Coordinator

Community Development Director
 Construction Project Manager
 Deputy City Clerk
 Deputy City Manager
 Finance Director
 Financial Analyst
 Human Resources Director
 Human Resources Manager
 Librarian
 Library Director
 Management Analyst
 Planner, Principal
 Police Adm. Services Manager
 Police Adm. Services Manager/ Public Information Officer
 Police Chief
 Police Commander
 Program Manager
 Program Manager, Senior
 Public Works Director
 Public Works Director/ Deputy City Manager
 Public Works Superintendent
 Recreation Coordinator, Senior
 Risk Manager
 Senior Librarian

9. Modifications to the salary classification plan must be amended to revise hourly rates; and
10. Amendment to the classification plan must be adopted by the City Council pursuant to Charter Article 25 and Pacific Grove Municipal Code (PGMC) Section 4.20.280; and
11. 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. Enactment of this ordinance action does not constitute a “project” as defined by 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 pursuant Section 15378.

Ordinance

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

SECTION 1. The foregoing findings of the City Council are incorporated into this Ordinance as if set forth in full.

SECTION 2. The position classification plan approved and adopted by the City Council pursuant to Charter Article 15 and PGM § 4.20.280 is amended for MEA, Non-represented Management and Confidential and Department Head Groups classifications and MEA aligned classifications, with the following salary schedule:

Hourly Salary Steps								
Classification	Step 1A	Step 2B	Step 3C	Step 4D	Step 5E	Step 6F	Step 7G	Step 8H
Accountant	33.77	35.46	37.23	39.09	41.05	42.07	43.12	44.20
Accountant, Chief	40.37	42.39	44.51	46.73	49.07	50.91	52.82	
Accountant, Senior	37.77	39.66	41.64	43.73	45.91	47.63	49.42	
Administrative Services Director	67.63	71.01	74.56	78.29	82.20	86.31	90.63	
Administrative Services Director/ Assistant City Manager	76.16	79.97	83.96	88.16	92.57	97.20	102.06	
Administrative Services Manager	54.16	56.87	59.71	62.70	65.83	69.12	72.58	
Assistant Finance Manager	36.88	38.73	40.66	42.69	44.83	46.51	48.25	
City Clerk	55.28	58.04	60.9	63.99	67.19	70.55	74.08	
City Clerk/DEI Coordinator	58.04	60.95	63.99	67.19	70.55	74.08	77.79	
Community Development Director	67.66	71.04	74.59	78.32	82.24	86.35	90.67	

Hourly Salary Steps								
Classification	Step 1A	Step 2B	Step 3C	Step 4D	Step 5E	Step 6F	Step 7G	Step 8H
Construction Project Manager	40.90	42.94	45.09	47.34	49.71	51.58	53.51	
Deputy City Clerk	33.28	34.94	36.69	38.53	40.45	42.48	44.60	
Deputy City Manager	64.64	67.87	71.26	74.82	78.57	82.49	86.62	
Finance Director	66.70	70.04	73.54	77.22	81.08	85.13	89.39	
Financial Analyst	32.03	33.63	35.31	37.07	38.93	40.39	41.90	
Human Resources Director	66.70	70.04	73.54	77.22	81.08	85.13	89.39	
Human Resources Manager	48.44	50.86	53.41	56.08	58.88	61.83	64.92	
Librarian	32.03	33.63	35.31	37.07	38.93	40.39	41.90	
Library Director	65.53	68.81	72.25	75.86	79.65	83.64	87.82	
Management Analyst	37.10	38.95	40.90	42.95	45.09	46.79	48.54	
Planner, Principal	47.51	49.88	52.38	55.00	57.75	59.91	62.16	
Police Adm. Services Manager	54.16	56.87	59.72	62.70	65.84	69.13	72.58	
Police Adm. Services Manager/ Public Information Officer	56.87	59.71	62.70	65.83	69.12	72.58	76.21	
Police Chief	75.58	79.36	83.32	87.49	91.86	96.46	101.28	
Police Commander	60.41	63.43	66.60	69.93	73.43	77.10	80.96	
Program Manager	43.91	46.10	48.41	50.83	53.37	55.37	57.45	

Hourly Salary Steps								
Classification	Step 1A	Step 2B	Step 3C	Step 4D	Step 5E	Step 6F	Step 7G	Step 8H
Program Manager, Senior	54.16	56.87	59.71	62.70	65.83	69.12	72.58	
Public Works Director	67.78	71.17	74.73	78.46	82.39	86.50	90.83	
Public Works Director/ Deputy City Manager	73.12	76.77	80.61	84.64	88.88	93.32	97.98	
Public Works Superintendent	47.73	50.12	52.63	55.26	58.02	60.20	62.46	
Recreation Coordinator, Senior	39.44	41.41	43.48	45.66	47.94	49.74	51.60	
Risk Manager	36.88	38.72	40.66	42.69	44.82	46.51	48.25	
Senior Librarian	37.06	38.92	40.86	42.91	45.05	46.741	48.49	

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. In accord with Article 15 of the City Charter, this ordinance shall become effective on August 20, 2023.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this ____ day of November 2023, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

BONNIE GAWF, Interim City Clerk

APPROVED AS TO FORM:

BRIAN PIERIK, City Attorney



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Tori Hannah, Administrative Services Director/Assistant City Manager
MEETING DATE: December 6, 2023
SUBJECT: Second Reading of Ordinance to amend the Fiscal Year 23/24 Operating and Capital Improvement Budget
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold second reading and adopt an ordinance to amend the Fiscal Year 23/24 Operating and Capital Improvement Budget

DISCUSSION

On November 15, 2023, the City Council received a Fiscal Year 22/23 Preliminary Fourth Quarter Budget Report, as well as considered an ordinance to amend the Fiscal Year 23/24 Budget. The Council approved the first reading of the ordinance at that meeting; and a summary of the ordinance was published on November 30, 2023.

The budget amendment ordinance, along with a description of the proposed changes are included in Attachments 1 and 2. The proposed updates reflect items that were approved by the City Council earlier in this fiscal year, as well as administrative adjustments for projects that were carried forward from the prior fiscal year. The estimated available General Fund balance for Fiscal Year 23/24 is projected to be approximately \$11.9 million, which is \$1.05 million above the reserve policy levels. The adjustments to the CIP Fund are anticipated to be cost-neutral.

Additional information regarding city finances, can be accessed from the City's [website](#).

OPTIONS

N/A. This is informational only.

FINANCIAL IMPACT:

The estimated fiscal impact to the General Fund is approximately \$1.28 million. This is anticipated to result in an estimated Fiscal Year 23/24 ending fund balance of 11.9 million, which is approximately \$1.05 million above the reserve policy levels.

The adjustments to the CIP Fund are anticipated to be cost-neutral, while the carry-forward adjustments related to the Local Streets and Roads; and the RMRA Funds reflect an administrative adjustment.

The calculation for the estimated ending fund balances for each fund are included within the ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Budget Amendment Ordinance

Budget Amendment Details

ORDINANCE NO. xx-xxx

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING THE OPERATING AND CAPITAL PROJECTS BUDGET FOR THE
FISCAL YEAR (FY) 2023-24**

FACTS

1. The City Council approved the Fiscal Year 2023-24 Budget on June 21, 2023.
2. It is customary to amend the budget to adjust revenues and expenditures to reflect updated information since the adoption of the Fiscal Year 2023-24 Budget.
3. The City Manager is recommending amendments to the Fiscal Year 2023-24 Budget to reflect the City Council goals for the fiscal year budget.
4. The Council has determined it is appropriate to amend the approved budget for FY 2023-24.
5. Pursuant to Charter Article 15, an amendment of the budget must be approved by ordinance.
6. A summary of the Ordinance, approved by the City Attorney, was published on November 30, 2023.
7. 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.
8. Enactment of this ordinance action does not constitute a “project” as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378 because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

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

SECTION 1. The foregoing facts are adopted as findings of the City Council as set forth fully within the body of this ordinance.

SECTION 2. The revenue budget for the following funds is amended, as stated herein, which by this reference are incorporated as set forth in its entirety.

Revenues		Increase / Decrease
63	CIP Fund – Grant Revenues	\$213,854

SECTION 3. The expenditure budget for the following funds is amended, as stated herein. Which by reference are incorporated as set forth in its entirety.

Expenditures		Increase / Decrease
01	General Fund	\$1,281,711
63	CIP Fund – Grant Expenditures	(168,780)
17	Local Streets and Roads	27,767
47	RMRA	65,000

SECTION 4. The Fiscal Year 2023/24 preliminary estimated fund balances based on this adjustment, are referenced herein:

Fund	Unaudited Preliminary Fund Balance	Revenue FY 23/24	Expenditures FY 23/24	Preliminary Estimated Ending Fund Balance
01	\$14,742,390	\$31,263,187	\$34,131,525	\$11,874,052
63	22,626	1,535,506	1,535,506	22,626
17	1,154,757	760,678	1,895,361	20,074
47	341,174	372,339	702,287	11,226

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective upon adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 6th day of December, 2023, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

Proposed Budget Amendment Details

General Fund

Estimated ending FY 23/24 fund balance prior to adjustments		\$ 13,155,763
Items Approved by Council in FY 22/23		
Council Date	Item	
7/5/2023	Professional Planning Services with Good City	\$ 45,000
7/27/2023	Separation Agreement	438,000
8/2/2023	Formal Selection of a Focused General Plan Update Consultant ⁽¹⁾	589,891
9/6/2023	GEA Agreement	80,000
	<i>Total Items previously approved</i>	<u>1,152,891</u>
Carryforwards Adjustments		
Prior Year	Housing Element	\$ 94,000
Prior Year	Bryce Consulting for City Manager/Human Resources	8,151
Prior Year	Legal costs associated with Nolan, Hamerly	17,297
Prior Year	Library Self-Check Equipment	9,372
	<i>Total carry-forward adjustments</i>	<u>128,820</u>
Combined Proposed Amendment		\$ 1,281,711
Estimated Ending Fund Balance		\$ 11,874,052

CIP Fund

Grant Revenues

New Grants

10/4/2023	PG Municipal Ballpark Backstop	\$ 96,000
CIP Process	George Washington Park Young Children's ADA Compliant Playground	81,952

Carryforward Adjustments

Prior Year	CIP 18-46 Tide Pool and Point Pinos Trail	35,902
	<i>(Adjust to add grant revenues to support the annual monitoring)</i>	

CIP Fund Combined Revenue Adjustments	\$ 213,854
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Expenditures

New Grants

10/4/2023	PG Municipal Ballpark Backstop	\$ 96,000
CIP Process	George Washington Park Young Children's ADA Compliant Playground	81,952

Carryforward Adjustments

Prior Year	CIP 18-46 Tide Pool and Point Pinos Trail	(253,965)
	<i>(Reduction to reflect proposed annual spending on monitoring)</i>	
Prior Year	CIP 23-02 FY 22/23 Crack and Slurry Seal	(92,767)
	<i>(Multi-Fund Allocation Adjustment - Should be in Funds 17 and 47)</i>	

CIP Fund Combined Expenditure Adjustments	\$ (168,780)
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Other Funds

Carryforward Expenditure Adjustments

Local Streets and Roads Fund

Prior Year	CIP 23-02 FY 22/23 Crack and Slurry Seal	27,767
	<i>(Multi-Fund Project Allocation Adjustment - From the CIP Fund)</i>	

RMRA Fund

Prior Year	CIP 23-02 FY 22/23 Crack and Slurry Seal	65,000
	<i>(Multi-Fund Project Allocation Adjustment - From the CIP Fund)</i>	

(1) The agreement for the Focused General Plan Update was \$1,089,891. The amount listed above represents the costs net of \$500,000 which was included in the Fiscal Year 23/24 Adopted Budget



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Erica Vega, Assistant City Attorney
MEETING DATE: December 6, 2023
SUBJECT: Second Reading of Cannabis Licensing and Zoning Ordinances
CEQA: Categorical Exemption, CEQA Guidelines Section 15061(b)(3)

RECOMMENDATION

Hold second reading and adopt an ordinance amending Municipal Code Chapter 11.100 - *Cannabis* and adding Municipal Code Chapter 23.92 - *Cannabis Businesses*.

DISCUSSION

Pacific Grove voters approved Measures M and N at the November 8, 2022 general election. Measure M was an advisory measure asking the voters the following question: “Should the Pacific Grove City Council be authorized to amend the Municipal Code to allow retail sales of medical or recreational cannabis, limited to one single location within the City, at a location no closer than 1000 feet from any existing licensed Daycare/Preschools, Youth Center, and Schools, to engage in commercial cannabis activities?” Measure N established a tax on cannabis businesses at the rate of 6% of gross receipts from the retail sale of cannabis (storefront and delivery sales). Copies of Measure M and Measure N are attached to this report.

At the December 7, 2022 City Council meeting, the Council directed the City Manager and City Attorney to create a cannabis licensing program to authorize one cannabis retail storefront to operate in the City, consistent with the voter approval of Measure M.

Two draft ordinances have been prepared, a licensing ordinance and a zoning ordinance. The City Council previously reviewed the draft ordinances on May 17, 2023 and October 4, 2023. The Planning Commission reviewed the draft ordinances on August 10, 2023 and September 14, 2023 and has recommended approval of the ordinances. The ordinances have been updated to include changes recommended by the Planning Commission.

At the October 4, 2023 City Council meeting, the Council requested that the ordinances be brought forward for introduction and first reading.

Summary of Ordinances

Two ordinances are proposed to create a two-step regulatory framework that requires a proposed cannabis retailer to first obtain a license to operate from the City and then a conditional use permit. This allows the City to have regulations in place that address both the use (conditional use permit) and the user (license).

One license will be available to operate a storefront retail location, consistent with the Measure M advisory measure. Additionally, licenses will be available to medicinal cannabis retailers proposing to operate delivery-only with no walk-in customers allowed. There is no cap proposed on the number of delivery-only retail licenses. SB 1186 goes into effect on January 1, 2024, and prohibits a local agency from adopting or enforcing ordinances that prohibit or have the effect of prohibiting the retail sale by delivery of medicinal cannabis. The City Council will be the approval body for a license. The initial draft presented to the Council provided that the city manager would approve local licenses. Though no formal direction was provided on this subject, this change was made based on the tenor of comments made at the Council meeting.

The licensing process will involve review of the applicant's business operations plan and the conduct of a background check. If approved, the license will be good for one year and must be renewed annually. A licensee will be required to operate in compliance with State law and regulations, and the operational requirements included in the ordinance. The licensing ordinance calls for administrative rules to be approved by the city council that provide more detail on the implementation of the licensing application process and procedures. Draft rules will be brought to Council at a future meeting, and will include the proposed competitive process for selecting the sole licensee to operate a storefront retail location.

Once a license is issued by the City, the applicant can submit an application for a conditional use permit for their proposed location. The zoning ordinance allows the sole storefront retailer to be located in the C-1, C-D, C-FH or C-2 zones. Medicinal delivery-only retailers may be located in the I, C-FH, C-1 or C-2 zones. All retail locations must be at least 1,000 feet from a day care center, a youth center, a preschool, or a public or private school. The ordinance includes some standard conditions of approval, including conditions for odor control. However, conditions may also be applied case-by-case based on what is appropriate for the proposed site and use.

OPTIONS

1. Hold second reading of Cannabis Licensing and Zoning Ordinances
2. Not hold second reading of Cannabis Licensing and Zoning Ordinances

FINANCIAL IMPACT:

Estimated annual revenue up to \$300,000; actual amount of annual revenue may be more or less than this estimate. The administrative costs are unknown, however the City is conducting a fee study with the intent to recover City costs associated with the cannabis program.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Draft Cannabis licensing ordinance
Draft Cannabis zoning ordinance
Combined State Cannabis Regulations
Public Comment

Public Comment
Public Comment
Public Comment

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF PACIFIC GROVE, AMENDING CHAPTER
11.100 TO THE PACIFIC GROVE MUNICIPAL CODE
ESTABLISHING COMMERCIAL CANNABIS
LICENSING REGULATIONS**

FACTS

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.7 et seq., and entitled the Compassionate Use Act of 1996, which intended to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under limited, specified circumstances; and
2. In 2004, the California legislature enacted Senate Bill 420, the Medicinal Marijuana Program (the “MMP”), which, as codified in California Health and Safety Code Section 11362.7 et seq., was intended to clarify the CUA’s scope and immunize from criminal prosecution, under specified state laws, certain activities and conduct related to the provision of medicinal marijuana to qualified patients; and
3. On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the “Control, Regulate and Tax Adult Use of Marijuana Act,” which legalizes and regulates recreational marijuana in California; and,
4. The State has established an integrated licensing and regulatory system for both medicinal and recreational marijuana businesses consistent with Propositions 215 and 64 entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), codified in Business and Professions Code section 26000 et seq.; and
5. Business and Professions Code section 26200 expressly recognizes the ability of cities to completely prohibit all medicinal and recreational cannabis businesses or to allow and regulate such businesses; and,
6. A majority of the voters in Pacific Grove who voted on Measure M at the November 8, 2022 election voted in favor of Measure M, which was an advisory measure asking whether the electors supported amending the Municipal Code to allow one cannabis retailer in the City at a location at least 1000 feet from any existing licensed daycare/preschool, youth center, or school; and
7. In order to protect the public health, safety, and welfare, and consistent with the will of the voters of Pacific Grove, the City desires to amend the Municipal Code to allow one cannabis retailer to be located in the City consistent with Measure M.

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

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. The City Council finds that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the common sense

exemption (CEQA Guideline 15061(b)(3)) because it can be seen with certainty that there is no possibility that permitting one cannabis retail location to operate within the City may have a significant effect on the environment. Cannabis retail operations are small footprint and retailers are likely to operate within an existing vacant location rather than engage in new construction, and would likely qualify for the in-fill development exemption (CEQA Guideline 15332). In the event the sole retailer permitted in Pacific Grove does not qualify for the in-fill development exemption or another CEQA exemption, CEQA review would be conducted concurrently with project processing, ensuring that any environmental impacts are less than significant.

SECTION 3. Pacific Grove Municipal Code Chapter 11.100 shall be amended in its entirety to read as follows:

CHAPTER 11.100 CANNABIS

- 11.100.010 Statement of purpose.
- 11.100.020 Relationship to other laws.
- 11.100.030 Definitions.
- 11.100.040 Local license in addition to business license or other permit.
- 11.100.050 Local license required.
- 11.100.060 Local license application process.
- 11.100.070 Conditions of approval, administrative rules.
- 11.100.080 Changes and modifications of local licenses.
- 11.100.090 Renewal of local license.
- 11.100.100 Cannabis business operational requirements.
- 11.100.110 Limitations on city's liability
- 11.100.120 Inspections
- 11.100.130 Enforcement; Suspension and Revocation of License.
- 11.100.140 Residential cannabis cultivation.
- 11.100.150 Consumption of cannabis.
- 11.100.160 Exceptions.

11.100.010 Statement of purpose.

A. This chapter shall provide for the regulation and licensing of medicinal and adult-use cannabis businesses throughout the city in conformance with applicable state and local laws and regulations pertaining to medicinal and adult-use cannabis.

B. The city council finds that it is necessary for the city to adopt local licensing standards for medicinal and adult-use cannabis businesses for the purpose of controlling and regulating the sale of medicinal cannabis and medicinal cannabis products to qualified patients, and adult-use cannabis and adult-use cannabis products to adults twenty-one years of age and over.

C. The purpose of this chapter is to regulate all commercial cannabis activity in the city, as defined in the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), to the extent authorized by state law and in a manner designed to minimize negative impacts on the city and neighboring uses, and promote the health, safety and general welfare of residents and businesses within the city.

11.100.020 Relationship to other laws.

A. Except as otherwise specifically provided herein, this chapter incorporates the requirements and procedures set forth in MAUCRSA. In the event of any conflict between the provisions of this chapter and the provisions of MAUCRSA or any other applicable state or local law or regulation, the more restrictive provision shall control.

B. Except as expressly stated herein, cannabis businesses must comply with all other city codes and regulations. Nothing in this chapter shall be construed as permitting a cannabis business to operate at any time in a manner that is in violation of other applicable state and local laws.

11.100.030 Definitions.

Unless otherwise defined herein, the terms in this chapter shall have the same meaning as set forth in MAUCRSA and any rules promulgated pursuant thereto. In addition, the following terms shall be defined as follows:

“Adult-use cannabis” means cannabis and cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician’s recommendation, or are intended for use on, or consumption by, animals.

"Cannabis business" means any person engaged in commercial cannabis activity.

"City" means Pacific Grove, California.

"City manager" shall mean the city manager of the city or their designee.

"Identification card" or "ID card" means a valid identification card issued pursuant to Section 11362.7 et seq., of the California Health and Safety Code.

"Identification card holder" or "ID card holder" means an individual who is a qualified patient who has applied for and received a valid ID card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code.

"Licensed premises" means a premises for which a local license has been issued pursuant to this chapter.

"Licensee" means a person who has been issued a local license pursuant to this chapter.

"Local license" means a license issued pursuant to this chapter. A “provisional local license” is a local license issued to a storefront retail cannabis business that has not secured a use permit for a location to operate their storefront retail business.

"Medicinal and Adult-Use Cannabis Regulation and Safety Act" or "MAUCRSA" means Division 10 of the California Business and Professions Code.

“Medicinal cannabis” means cannabis and cannabis products that are intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

"Medicinal cannabis patient" means both a qualified patient without an identification card and an ID card holder.

"Owner" shall have the definition provided in MAUCRSA, as it may be amended from time to time, which as of the date of the adoption of this definition means any of the following:

(1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.

(2) The chief executive officer of a nonprofit or other entity.

(3) A member of the board of directors of a nonprofit.

(4) An individual who will be participating in the direction, control, or management of the person applying for a license.

"Physician," as used in this chapter, shall mean an individual who possesses a license in good standing to practice medicine or osteopathy from the state of California.

"Qualified patient" shall have the meaning set forth in Section 11362.7(f) of the California Health and Safety Code.

"Retail, delivery-only" shall mean a cannabis business that does not allow on-site sales of cannabis to customers, and has or will have a Type 9 license from the California Department of Cannabis Control.

"Retail, storefront" shall mean a cannabis business that has a physical location from which cannabis is sold to retail customers on-site, and has or will have a Type 10 license from the California Department of Cannabis Control.

"State law(s)" shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.85 (Medicinal Marijuana Program Act); the MAUCRSA, and all other applicable laws and regulations of the state of California.

"State license" means a state license issued under MAUCRSA, and includes both an A-license and an M-license, as well as a testing laboratory license.

"State licensing authority" shall mean the state agency responsible for the issuance, renewal, or reinstatement of a state license, or the state agency authorized to take disciplinary action against a state licensee.

11.100.040 Local license in addition to business license or other permit.

The local license required by this chapter shall be in addition and supplemental to any other business registration or any permit required by any ordinance of the city.

11.100.050 Local license required.

A. It is unlawful to operate any cannabis business in the city without first having obtained a local license under this chapter.

B. The City shall not grant a license to any cannabis business proposing to engage in cannabis cultivation, manufacturing, distribution, or laboratory testing. The City may

approve a license for a cannabis business proposing to operate as a cannabis retailer subject to the following limitations:

1. No more than one (1) local license to engage in storefront retail sales shall be active in the City at any time.

2. A license for delivery-only retail sales shall only be granted to a business engaging exclusively in retail sale of medicinal cannabis and medicinal cannabis products. No license shall be granted to a delivery-only retailer for the retail sale of adult-use cannabis or adult-use cannabis products.

C. The city may grant a local license prior to the applicant having obtained a state license. A cannabis business must possess the requisite state and local licenses and a use permit prior to receiving a certificate of occupancy from the city.

11.100.060 Local license application process.

A. For the single storefront retail license, there shall be an initial 60-day application period, the precise days of which shall be determined by the city manager. The city manager may open up subsequent 60-day application periods if there is no active local license for a storefront retail cannabis business in the City.

B. An application for a local license shall be made upon the form prescribed by the city manager and accompanied by the application fee established by resolution of the city council. The application shall include the following basic information, in addition to any additional information that the city manager requests.

1. An operating plan for the proposed cannabis business including the following information:

a. A general description of the types of products and services to be provided by the facility;

b. A statement confirming whether delivery service of cannabis to any location outside the premises will be provided and the extent of such service, and in the event delivery is provided, a detailed delivery plan detailing how the retailer will comply with all requirements of this chapter, MAUCRSA, and any other applicable state or local laws.

2. Authorization for the city manager to seek verification of the information contained within the application and to conduct background checks of the owners of the cannabis business. If the background check shows that any owner has been convicted of a crime listed in Business & Professions Code Section 26057(b)(4)(A)-(E) the application shall be denied.

3. Proof of the nature of the cannabis business's organizational status, such as articles of incorporation, by-laws, organizational minutes, partnership agreements, or such other documentation acceptable to the city.

C. The city manager shall conduct an initial review of an application submitted to determine completeness. All complete applications shall be reviewed under the criteria set forth in administrative rules adopted pursuant to Section 11.100.070.

D. The one (1) storefront retail local license shall be provisionally granted to the applicant who is selected pursuant to the review and selection criteria set forth in the administrative rules. From the date the local license is provisionally approved, the applicant will have twelve (12) months to secure approval of a use permit for a premises, in addition to

any other land use permits or entitlements that may be required by this code for the premises. If the applicant who received a provisional license does not obtain the use permit or any other required land use permits or entitlements for the premises within this time frame, then the provisional license shall become null and void and a provisional license shall be granted to another applicant in the manner specified in the administrative rules.

E. A local license issued pursuant to this chapter shall specify the date of issuance, the expiration date, the name of the licensee, and whether the cannabis business is storefront retail or delivery-only retail. A provisional local license is valid for one (1) year from the date of issuance. A provisional local license shall automatically lose its provisional status once a use permit is granted for a premises to operate the business. The term of the license shall be valid for one (1) year from the date the use permit for the premises is approved.

11.100.070 Conditions of approval, administrative rules.

A. The city council shall have the authority to approve or deny an application for a local license. The city council may place conditions upon the approval of any local license which are, in the opinion of the city council, reasonably related to the protection of the health, safety and welfare of the general public.

B. The city council shall establish by resolution rules, policies and procedures consistent with the intent and spirit of this chapter concerning the applications, the application process, the information required of applicants, the application procedures, and the administration and procedures to be used and followed in the application process, including but not limited to those required by Section 11.100.060.

11.100.080 Changes and modifications of local licenses.

In addition to any applicable requirements in Chapter 23.92 of this code, the following requirements apply for transfers of or changes to the ownership of a licensee,

A. Subsequent to the issuance of a local license, the licensee shall report any transfer of ownership in the cannabis business to the city manager on forms prescribed by the city manager and pay the application fee established by resolution of the city council.

B. A change of ownership that solely involves a previously approved owner no longer being an owner of the cannabis business shall be reported to the city manager within thirty calendar days of the change. The City will administratively remove a previously approved owner from a license only if notarized statements are submitted by all approved owners consenting to the change, or the change is mandated by order of a court of competent jurisdiction.

C. A change in ownership that involves adding a new owner to the previously approved ownership must be approved by the city council in advance and a background check must be conducted on the proposed new owner. The city council shall have the sole and absolute discretion to approve or deny a proposed change of ownership that involves the addition of a new owner. All owners must submit notarized statements agreeing to the addition of a new owner to the business.

11.100.090 Renewal of local license.

A. A cannabis business that desires to renew its license shall apply for the renewal no less than sixty (60) calendar days prior to the local license's expiration date. If the cannabis business files a renewal application within sixty (60) calendar days prior to expiration, the

cannabis business must provide a written explanation detailing the circumstances surrounding the late filing. The city manager may accept or reject such late filing in its discretion. The city manager may elect to administratively continue a local license past its expiration date, provided that the licensee has submitted a renewal application that is pending final action.

B. An application for renewal shall be submitted on forms provided by the city manager, accompanied by the application fee established by resolution of the city council. The following information shall be submitted as a part of the renewal application:

1. Verification that no changes to the ownership of the cannabis business has occurred since last approved by the city manager.

2. Verification that the licensee is still entitled to the possession and use of the premises for which a use permit has been granted.

3. Any other information that the city manager deems necessary to determine whether to renew the local license.

C. The city council shall renew a local license if the licensee has submitted a complete application and paid the application fee, unless the city council finds that there are grounds to suspend or revoke the license as provided in Section 11.100.210. Notwithstanding the foregoing, the city council in its discretion may elect not to renew any local license if it determines that the licensed premises has not been used for a cannabis business, without reasonable cause as determined by the city council, during the term of the license.

D. Unless administratively continued pursuant to subsection A, a local license is immediately invalid upon expiration and the cannabis business shall cease operations. If a local license expires, the city council may approve a renewal of the expired license at any time up to three months from the expiration date of the license. After the license has been expired for three months, the license may not be renewed by the city council, and the holder of the expired license must apply for and obtain a new cannabis license to resume operations.

11.100.100 Cannabis business operational requirements.

All cannabis business must comply with the requirements set forth in this section.

A. General Obligation to Operate in Compliance. A cannabis business shall operate in compliance with all applicable state and local laws and regulations governing cannabis businesses.

B. General Obligation to Pay Taxes. A cannabis business must pay all applicable taxes pursuant to federal, state, and local law, including but not limited to state and local sales and use taxes and state excise taxes.

C. Age Requirement. A cannabis business shall not allow an individual less than twenty-one years of age to work within the licensed premises or handle cannabis and cannabis products.

D. Age Restrictions. A cannabis business may not permit an individual less than twenty-one years of age to enter, or be within, its licensed premises, except that a cannabis business with an M-license from the state may allow persons eighteen years of age or older within the licensed premises if they are an ID card holder or qualified patient with physician's recommendation from a licensed physician.

E. Secure Storage of Product. Cannabis and cannabis products possessed by a cannabis business shall be kept and stored in a secured manner at all times.

F. Cannabis Consumption on Licensed Premises. Smoking, vaporizing, ingesting, or otherwise consuming cannabis and cannabis products at a licensed premises is prohibited. "Licensed premises" as used in this subsection includes the actual building, as well as any accessory structures, common areas and parking areas. A sign shall be posted at each entrance to a licensed premises that clearly and legibly states, "Smoking, vaporizing, ingesting, or otherwise consuming cannabis or cannabis products on these premises or in their vicinity is prohibited and a violation of the Pacific Grove Municipal Code."

G. Prohibition on Alcohol and Tobacco Sales, Distribution, or Consumption on Licensed Premises. A cannabis business shall not sell, provide, store, or distribute any alcoholic beverages or tobacco products, or allow such products to be consumed on the licensed premises.

H. Advertising. A cannabis business shall not advertise in a manner intended to encourage persons under twenty-one years of age to consume cannabis or cannabis products. It shall be unlawful for any cannabis business to make any claims that a product is safe because it is tested. All advertisements, including off-site advertising signs, shall comply with Chapter 15 of MAUCRSA.

I. Display of License. A cannabis business shall display a copy of its local license issued pursuant to this chapter in a conspicuous place at or near the entrance to the licensed premises.

J. No Physician Evaluations on Licensed Premises. A cannabis business shall not permit a physician to evaluate potential medicinal cannabis patients or to provide a physician's recommendation for medicinal cannabis within its licensed premises. Cannabis businesses shall not offer or provide any form of remuneration to a physician who provides physician's recommendations for medicinal cannabis.

K. Community Relations Designee. A cannabis business must provide the city with the name, phone number, facsimile number, and email address of an on-site community relations representative or staff member or other representative whom the city can contact regarding operating concerns associated with the cannabis business. The cannabis business shall report any change in their community relations designee to the city within ten calendar days.

L. Security Requirements. The licensed premises of a cannabis business must comply with all of the following security requirements:

1. Video Surveillance. The licensed premises must be equipped with a video surveillance system that meets all of the requirements set forth in this subsection.

a. Security cameras and digital storage of recordings shall be maintained in good condition and used in an on-going manner, twenty-four hours per day, seven days per week.

b. The security system must maintain at least 90 days of digitally recorded video for each security camera in the licensed premises. Security footage should be stored in an MPEG4, MJPEG, H.264, or another format approved by the city manager in writing.

c. Security cameras must provide adequate and sufficient coverage for the facility, which must include, but need not be limited to, all limited access areas, all areas of

ingress and egress, point of sale, the public areas, storage areas, and any other areas as required by this chapter and the MAUCRSA.

d. The video surveillance system must be equipped with a failure notification system that provides prompt notification to the manager of record of the licensed premises of the cannabis business of any surveillance interruption or complete failure of the surveillance system that lasts longer than fifteen minutes.

e. The video surveillance system shall have sufficient battery backup to support a minimum of twenty-four hours of recording in the event of a power outage.

2. Alarm System. The licensed premises shall have an audible interior and exterior security alarm system installed on all perimeter entry points and perimeter windows, operated, and monitored by a security company licensed by the Department of Consumer Affairs, Bureau of Security and Investigative Services.

3. Signage Requirement. The licensed premises must comply with the following signage requirements.

a. A sign shall be posted in a conspicuous place near each point of public access which shall be not less than twelve inches wide and twelve inches long, composed of letters not less than one inch in height, stating "All Activities Monitored by Video Camera."

b. Limited access areas shall be clearly identified by the posting of a sign which shall be not less than twelve inches wide and twelve inches long, composed of letters not less than one-half inch in height, which shall state, "Limited Access Area—Authorized Personnel Only."

4. Lighting. The business entrance(s) and all window areas shall be illuminated during evening hours. The cannabis business shall comply with the city's lighting standards regarding fixture type, wattage, illumination levels, and shielding.

5. Commercial-Grade Locks. All points of ingress and egress to a licensed premises shall ensure the use of commercial-grade, nonresidential door locks or window locks.

6. Notification of City Manager and Law Enforcement. A cannabis business shall notify the city manager and the appropriate law enforcement authorities within twenty-four hours after discovering any of the following:

- a. Significant discrepancies identified during inventory;
- b. Diversion, theft, loss, or any criminal activity involving the retailer or any employee or agent of the retailer;
- c. The loss or unauthorized alteration of records related to cannabis, cannabis patients, primary caregivers, or retailer employees or agents; or
- d. Any other breach of security.

M. Subletting Prohibited. Licensees are not authorized to sublet any portion of a licensed premises for any purpose.

N. Recordkeeping. Cannabis businesses shall keep and maintain all records specified in Chapter 16 of the MAUCRSA and shall make the same available for inspection and examination of the city manager or their duly authorized representatives during standard business hours of the licensed facility or at any other reasonable time. Cannabis businesses are required to exercise due diligence in preserving and maintaining all required records.

O. Transactions. Licensees shall only do business with cannabis businesses that are licensed or permitted to do business in their respective jurisdictions.

P. Limited Hours of Operation. A retailer may only be open to the public and engage in sales between the hours of 8:00 a.m. and 10:00 p.m.

Q. Window Displays. Cannabis, cannabis products and cannabis paraphernalia shall not be placed in a window display or otherwise placed in a manner primarily intended for individuals outside of the premises to view the products.

R. Cannabis Paraphernalia Sales. Retailers may sell or otherwise provide equipment, supplies, and paraphernalia used to consume cannabis and cannabis products.

S. Electronic Point-of-Sale System Required. Retailers must have an electronic point of sale system. The electronic point of sale system must be capable of producing an electronic or automatic paper record for all transactions associated with any product sold, rented, or otherwise provided to the customer.

T. No Sales of Expired Product. A retailer may not sell any expired products, cannabis or cannabis products. A retailer shall not alter, edit, or adjust in any manner an expiration date on any item or product once affixed by its manufacturer.

U. Handling of Edible Cannabis Products. A retailer that possesses edible cannabis products shall comply with the provisions of all relevant state and local laws regarding the storage, handling, and sale of food.

V. Delivery of Cannabis and Cannabis Products. A retailer that provides delivery service shall comply with the following requirements:

1. The retailer shall not delivery cannabis or cannabis products to any location outside of California or to any location within California where the delivery of cannabis or cannabis products has been prohibited by the city or county.

2. The delivery service must be approved by the city manager as a part of the licensing process. The deliveries must be conducted in accordance with any relevant state laws, this code, any applicable local laws in the delivery location, and any conditions imposed upon the license.

3. The retailer must keep in place standard operating procedures that ensure the safety and security of those individuals engaging in delivery and the and security of all cannabis being delivered, including procedures to prevent diversion.

4. A retailer may only deliver cannabis to a specific street address requested by the purchaser. Delivery to parks, schools or any other public facilities is prohibited.

5. Upon arrival at the delivery address and prior to transferring any cannabis or cannabis products, the delivery person must verify and confirm that the identity of the recipient is the same as the person who requested the delivery and that the person is either twenty-one years of age or a qualified patient or primary caregiver.

6. A retailer shall report to the city manager and local law enforcement any vehicle accidents, diversions, losses, or other reportable incidents such as thefts or suspicious activity, that occur during transportation and delivery, within twenty-four hours.

7. The delivery shall keep a delivery manifest that includes the following information:

- a. All cannabis that will be transported, accurately inventoried;

- b. Departure date and approximate time of departure;
- c. Arrival date and approximate time of arrival;
- d. Name, address, local license number and CUP number of the originating cannabis business;
- e. Name and address of the individual requesting the delivery;
- f. Delivery vehicle make, model, and license plate number; and
- g. Name and signature of the individual transporting the cannabis.

8. Sale of Live Plants. A retailer may sell and offer for sale seeds and immature cannabis plants, but shall not sell or offer for sale live mature cannabis plants. The retailer may provide light and water to immature cannabis plants being offered for sale but may not engage in any other cultivation activity. For the purposes of this provision, an immature cannabis plant is defined as a non-flowering cannabis plant that is shorter and narrower than 18 inches.

11.100.110 Limitations on City's liability.

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any local license pursuant to this chapter or the operation of any cannabis business approved for such local license pursuant to this chapter. As a condition of approval a local license granted under this chapter, the applicant or its legal representative shall:

- A. Indemnify and hold the city harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the cannabis business and delivery of cannabis as provided in this chapter; and
- B. Maintain insurance in the amounts and of the types that are acceptable to the city pursuant to guidelines and policies set forth by the city; and
- C. Name the city as an additionally insured on all city-required insurance policies; and
- D. Defend, at its sole expense, any action against the city, its agents, officers, and employees related to the approval of a local license or the operation of the cannabis business; and
- E. Reimburse the city for any court costs and attorney fees that the city may be required to pay as a result of any legal challenge (or federal enforcement action) related to the city's approval of a local license or use permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

11.100.120 Inspections.

A. Recordings made by security cameras at any cannabis business shall be made immediately available to the city manager upon verbal request for law or regulatory enforcement and criminal investigation purposes. Such recordings shall be considered confidential and shall not be released to the public pursuant to Government Code Section 7923.600 without the consent of the licensee.

B. The city manager shall have the right to enter all cannabis businesses from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter. Such inspections shall be limited to observing the licensed premises for purposes of determining whether the cannabis business is being operated or maintained in compliance with this code, state law, and other applicable laws and regulations. Any cannabis business licensed pursuant to this chapter may be required to demonstrate, upon demand by the city manager that the source and quantity of any cannabis or cannabis products found upon the licensed premises is in full compliance with any applicable local or state law or regulation.

C. The city manager shall have the right to inspect records of medicinal cannabis patients and primary caregivers that have made purchases of medicinal cannabis or medicinal cannabis products from a retailer for the sole purpose of determining whether any and all such individuals are qualified to make such purchases. Such inspections of records shall not be used for any other purposes, nor shall the records be removed off-site by the city without a court order.

D. The city manager may delegate an act required to be performed pursuant to this section to any code enforcement officer or official of the city, including, without limitation, the chief of police, the fire chief, the building official, the finance director, the city attorney, or any designee of such officers or officials.

E. Applicants and licensees must cooperate with the city manager and his designees who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this chapter.

11.100.130 Enforcement; Suspension and Revocation of License.

A. The provisions of this chapter may be enforced by the city manager by any means provided for in Chapter 1.16 or Chapter 1.19 of this code in addition to any and all other remedies, civil, equitable or criminal, afforded to the city under the law. Any use or condition caused, or permitted to exist, in violation of any provision of this chapter is hereby deemed to be a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or by any other remedy available to the city. Any violation of this chapter is declared to be a public nuisance per se contrary to the public interest and will, at the discretion of the city, be subject to a cause of action for injunctive relief.

B. Any violation of this chapter shall constitute a misdemeanor and a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be enforced pursuant to Chapters 1.16 and 1.19 PGMC.

C. In addition to any other remedies available to the city under the law, a license issued under the terms of this chapter may be suspended or revoked by the city council if they conclude any of the following:

1. The cannabis business or licensee has violated any of the requirements of this chapter, Chapter 23.92, or the applicable use permit.
2. The cannabis business is being operated in a manner which constitutes a nuisance.

3. The cannabis business is being operated in a manner which conflicts with or violates State Laws.

4. A licensee's use permit issued pursuant to Chapter 23.92 of this code has been terminated or revoked.

5. A licensee's state license has been suspended, terminated, or revoked.

11.100.140 Residential cannabis cultivation

A. All cannabis cultivation within city limits is prohibited except that a person, 21 years of age or older, may cultivate no more than six living cannabis plants inside a private residence, regardless of the number of persons that reside in the private residence, or inside a fully enclosed and secure accessory structure to a private residence located upon the grounds of that private residence. Such cultivation shall only occur in residences and accessory structures that are fully enclosed and secured against unauthorized entry.

B. The primary use of the property must be for a private residence, and cultivation must not prevent the property owner's primary use as a residential use. The property shall remain at all times a private residence with a legal and functioning kitchen, bathroom(s) and bedroom(s) for their intended use and such cultivation shall not prevent the property's primary use as a residential use. The cultivation activities shall be conducted in a manner that is child resistant.

C. If a private residence is not occupied or inhabited by the owner of the private residence, then no persons living in the residence may cultivate cannabis without written consent signed by the owner expressly allowing cannabis cultivation to occur at the private residence.

D. Persons cultivating cannabis in a residence shall comply with all applicable building code requirements set forth in the Pacific Grove Municipal Code.

E. There shall be no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of cannabis cultivation.

F. All private cannabis cultivation under this section shall comply with Health and Safety Code Section 11362.2.

G. The cannabis cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration or other impacts and shall not be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to cultivation.

H. The outdoor cultivation of cannabis is prohibited within city limits.

11.100.150 Consumption of cannabis

Smoking and vaporizing of cannabis and cannabis products are prohibited in all public places and any place that is open to the public; reference Chapter 11.24 PGMC. Additionally, consumption and the use of any and all forms of cannabis, including edible cannabis product, shall be prohibited in all public places.

11.100.160 Exceptions

A. To the extent that the following activities are permitted by state law, nothing in this chapter shall prohibit a person 21 years of age or older from:

1. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older without compensation whatsoever not more than 28.5 grams of cannabis not in the form of concentrated cannabis; or

2. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older without compensation whatsoever up to eight grams of cannabis in the form of concentrated cannabis; or

3. Possessing, smoking or ingesting cannabis or cannabis products in a manner consistent with California Health and Safety Code Section 11362.3.

B. This chapter shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside of the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

SECTION 4. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 5. 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 6. 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 _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF PACIFIC GROVE, ADDING CHAPTER
23.92 TO THE PACIFIC GROVE MUNICIPAL CODE
ESTABLISHING CANNABIS BUSINESS ZONING
REGULATIONS**

FACTS

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.7 et seq., and entitled the Compassionate Use Act of 1996, which intended to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under limited, specified circumstances; and
2. In 2004, the California legislature enacted Senate Bill 420, the Medicinal Marijuana Program (the “MMP”), which, as codified in California Health and Safety Code Section 11362.7 et seq., was intended to clarify the CUA’s scope and immunize from criminal prosecution, under specified state laws, certain activities and conduct related to the provision of medicinal marijuana to qualified patients; and
3. On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the “Control, Regulate and Tax Adult Use of Marijuana Act,” which legalizes and regulates recreational marijuana in California; and,
4. The State has established an integrated licensing and regulatory system for both medicinal and recreational marijuana businesses consistent with Propositions 215 and 64 entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), codified in Business and Professions Code section 26000 et seq.; and,
5. Business and Professions Code section 26200 expressly recognizes the ability of cities to completely prohibit all medicinal and recreational cannabis businesses or to allow and regulate such businesses; and,
6. A majority of the voters in Pacific Grove who voted on Measure M at the November 8, 2022 election voted in favor of Measure M, which was an advisory measure asking whether the electors supported amending the Municipal Code to allow one cannabis retailer in the City at a location at least 1000 feet from any existing licensed daycare/preschool, youth center, or school; and
7. In order to protect the public health, safety, and welfare, and consistent with the will of the voters of Pacific Grove, the City desires to amend the Municipal Code to allow one cannabis retailer to be located in the City consistent with Measure M.

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

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. The City Council finds that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the common sense

exemption (CEQA Guideline 15061(b)(3)) because it can be seen with certainty that there is no possibility that permitting one cannabis retail location to operate within the City may have a significant effect on the environment. Cannabis retail operations are small footprint and retailers are likely to operate within an existing vacant location rather than engage in new construction, and would likely qualify for the in-fill development exemption (CEQA Guideline 15332). In the event the sole retailer permitted in Pacific Grove does not qualify for the in-fill development exemption or another CEQA exemption, CEQA review would be conducted concurrently with project processing, ensuring that any environmental impacts are less than significant.

SECTION 3. The City Council makes the following findings required for a zoning ordinance amendment.

A. The proposed amendment is consistent with the general plan and, if applicable, the certified local coastal program.

This ordinance is consistent with General Plan Goal 1: “Provide for orderly, well-planned, and balanced development consistent with the historic nature of Pacific Grove, the capacity of the City’s infrastructure, and ability to assimilate new growth.” This ordinance establishes regulations to allow for a new type of commercial use to be established in the City in limited quantities. Cannabis retailers will likely move into existing vacant structures and as such will not create new burdens on existing infrastructure. The ordinance is also consistent with General Plan Policy 2: “Ensure new development is compatible with adjacent existing development.” The ordinance limits cannabis retailers to specific commercial and industrial zones and includes separation requirements to ensure the businesses do not locate in close proximity to sensitive uses.

B. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare.

This ordinance will facilitate access to medicinal and adult-use cannabis in a safe manner consistent with all applicable State regulations. The ordinance limits the number of storefront retailers that may open in the City to one, which ensures there will not be an overconcentration of these uses. Delivery-only retailers will only be permitted to sell medicinal cannabis. The ordinance requires odor control systems to be installed to ensure that nuisance odors do not impact neighbors and the general public.

C. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

This ordinance relies on the existing use permit process as the mechanism for the approval of cannabis retailers. The ordinance incorporates existing enforcement provisions as well. There are no inconsistencies between the proposed ordinance and existing provisions of the zoning code.

SECTION 4. Chapter 23.92 (Cannabis Businesses) is hereby added to the Pacific Grove Municipal Code to read as follows:

CHAPTER 23.92 CANNABIS BUSINESSES

- 23.92.010 Purpose.
- 23.92.020 Relationship to other laws.
- 23.92.030 Definitions.
- 23.92.040 Use permit required.
- 23.92.050 Use permit application.
- 23.92.060 Findings for approval of use permit.
- 23.92.070 Separation requirements.
- 23.92.080 Conditions of approval.
- 23.92.090 Limitations on City's liability.
- 23.92.100 Inspections.
- 23.92.110 Enforcement.

23.92.010 Purpose.

A. The purpose of this chapter is to regulate cannabis business land uses, as permitted by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Section 26200 of the California Business and Professions Code), in a manner designed to minimize negative impacts on the city and neighboring uses, and promote the health, safety and general welfare of residents and businesses within the city.

B. This chapter is further adopted and established pursuant to the specific authority granted to Pacific Grove in Section 7 of Article XI of the California Constitution and Section 26200 of the California Business and Professions Code. This chapter shall govern all cannabis businesses within the jurisdiction of Pacific Grove.

23.92.020 Relationship to other laws.

A. In the event of any conflict between the provisions of this chapter and the provisions of Medicinal and Adult-Use Cannabis Regulation and Safety Act or any other applicable state or local law, the more restrictive provision shall control.

B. Except as expressly stated herein, cannabis businesses must comply with all other city codes and regulations. Nothing in this chapter shall be construed as permitting a cannabis business to operate at any time in a manner that is in violation of all other applicable state and local laws.

23.92.030 Definitions.

Unless otherwise defined herein, the terms in this chapter shall have the same meaning as set forth in Medicinal and Adult-Use Cannabis Regulation and Safety Act and any rules promulgated pursuant thereto. In addition, the following terms shall be defined as follows:

“Adult-use cannabis” means cannabis and cannabis products that are intended for adults who are 21 years of age and older and who do not possess a physician’s recommendation, or are intended for use on, or consumption by, animals.

“Cannabis business” means any person engaged in commercial cannabis activity as defined in California Business and Professions Code Section 26001.

"Local license" means a license granted by the City pursuant to Chapter 11.100 of this code.

"Medicinal and Adult-Use Cannabis Regulation and Safety Act" or "MAUCRSA" means Division 10 of the California Business and Professions Code.

“Medicinal cannabis” means cannabis and cannabis products that are intended to be sold or donated for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found in Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Retail, delivery-only” shall mean a cannabis business that does not allow on-site sales of cannabis to customers, and has or will have a Type 9 license from the California Department of Cannabis Control.

“Retail, storefront” shall mean a cannabis business that has a physical location from which cannabis is sold to retail customers on-site, and has or will have a Type 10 license from the California Department of Cannabis Control.

"State law(s)" shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.85 (Medical Marijuana Program Act); MAUCRSA, and all other applicable laws and regulations of the state of California.

23.92.040 Use permit required.

A. No person may operate a cannabis business of any type in the city unless they are in compliance with the following:

1. A use permit has been approved for the cannabis business and remains valid; and
2. A local license has been approved for the cannabis business and remains valid; and
3. A State license to operate the cannabis business has been approved and remains valid.

B. Section 23.70.080(a) of this code shall govern and apply to use permits for cannabis businesses applied for or obtained pursuant to this chapter unless this chapter expressly states otherwise. All requirements contained in this chapter shall be in addition to the applicable requirements of Section 23.70.080(a).

23.92.050 Use permit application.

A. An application for a use permit shall be filed with the planning director on the official form supplied by the city and shall be accompanied by the application fee established by resolution of the city council, as may be amended from time to time.

B. An application for a use permit shall include, but shall not be limited to, the following information:

1. Proof that the applicant has received a local license, and the local license is in good standing.

3. The address of the proposed cannabis business.
4. A site plan and floor plan of the cannabis business denoting the use of areas within the cannabis business, including storage, employee areas, restrooms, areas of ingress and egress, limited access areas, and restricted access areas, if included. The plans shall also note the locations of proposed exterior lighting and security cameras.
5. The name and address of the person that owns the real property upon which the cannabis business is to be operated. In the event the applicant does not legally own the property, the application must be accompanied by a notarized acknowledgement from the person that owns the property that a cannabis business will be operated on his or her property.
6. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
7. Authorization for the planning director to seek verification of the information contained within the application.
8. Any such additional and further information as is deemed necessary by the planning director to administer this section or this chapter.

C. The planning director and appropriate city staff shall review, verify and investigate all information on the application and prepare a report for the planning commission incorporating the findings of such investigation and verification, including, but not limited to, the suitability of the proposed location, and the applicant's compliance with the requirements of this chapter, Chapter 11.100 and Section 23.70.080(a).

23.92.060 Findings for approval of use permit.

A. The planning commission shall not hold a public hearing on or approve any application for a use permit to operate a cannabis business unless the applicant holds a local license in good standing.

B. In addition to the findings set forth in Section 23.70.080(a)(4) of this code, a use permit for a cannabis business shall only be granted subject to the following additional findings:

1. The cannabis business fully complies with and meets all operating criteria required pursuant to state laws, Chapter 11.100 of this code, any other provisions of this code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in the use permit; and
2. The cannabis business will be located in one of the following zones:
 - a. For storefront retail, the use will be located in the C-1, C-D, C-FH or C-2, zone.
 - b. For delivery-only retail, the use will be located in the I, C-FH, C-1 or C-2 zone.
3. The cannabis business meets the separation requirements in Section 23.92.070.

C. The planning commission may deny an application for a use permit if it determines that one or more of the findings required by Section 23.70.080(a)(4) or Section 23.92.060(b) of this code cannot be made.

D. Based on the information set forth in the application and city staff's report and testimony presented at the public hearing, the planning commission may impose reasonable conditions on the proposed cannabis business in addition to those specified in and required to be included in every use permit granted under this chapter.

23.92.070 Separation requirements.

A. A use permit for a cannabis business shall not be approved unless the proposed cannabis business will be located more than 1,000 feet from a day care center, a youth center, a preschool, or a public or private school.

B. All distances specified in this section shall be measured in a straight line, without regard to intervening structures or topography, from the nearest point on the property line on which the cannabis business is or will be located, to the nearest property line of the parcel where such use is located.

C. For the purposes of this section the following definitions apply:

1. "Day care center" means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers, and includes child care centers licensed pursuant to California Health & Safety Code Section 1596.951.
2. "Youth center" means any facility that is operated by a public agency or non-profit entity with the sole purpose of providing educational and/or recreational services to minors. Dance studios, gymnasiums, martial arts studios, or other similar uses that provide services to both adults and minors shall not be considered a youth center.
3. "Public or private school" means any location appearing in the California Department of Education School Directory as the location of a public or private school.

23.92.080 Conditions of approval.

A use permit for a cannabis business shall be subject to the following conditions of approval.

1. The premises must be equipped with an odor absorbing ventilation and exhaust system so that odor generated inside the cannabis business that is distinctive to its operation is not detected outside the cannabis business, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the cannabis business. As such, cannabis businesses must install and maintain the following equipment or any other equipment which the City determines has the same or better effectiveness:

- a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or

b. An air system that creates negative air pressure between the cannabis businesses' interior and exterior so that the odors generated inside the cannabis business are not detectable outside the cannabis business.

2. The applicant or its legal representative shall indemnify and hold the city harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the cannabis business; defend, at its sole expense, any action against the city, its agents, officers, and employees related to the approval of a use permit or the operation of the cannabis business; reimburse the city for any court costs and attorney fees that the city may be required to pay as a result of any legal challenge (or federal enforcement action) related to the city's approval of a conditional use.

3. All windows on the premises of the cannabis business shall be appropriately secured and cannabis securely stored.

4. All cannabis businesses shall comply with the city's lighting standards in Section 23.31.040, as applicable, including, without limitation, fixture type, wattage, illumination levels, shielding, and secure the necessary approvals and permits as needed.

5. All cannabis businesses and all equipment used in the conduct of the business, must be operated in compliance with all applicable state and local laws and regulations, including all building, electrical, and fire codes, and in compliance with the businesses' state and local licenses.

6. For delivery-only retail, the business will only sell medicinal cannabis and medicinal cannabis products. The sale of adult-use cannabis or adult-use cannabis products is prohibited.

7. The cannabis business shall not engage in cultivation, manufacturing, distribution, or laboratory testing of cannabis, and shall limit its commercial cannabis activities to those permitted by a State retail license.

8. On-site signage for a cannabis business that is viewable from the exterior of the cannabis business shall comply with all local signage laws applicable to the licensed premises, including Chapters 17.251 and 17.254 of this code. Signage may not be designed to appeal to children, or contain any false or misleading statements, or make any misrepresentations.

23.92.090 Limitations on City's liability.

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any use permit pursuant to this chapter or the operation of any cannabis business approved for such permit pursuant to this chapter.

23.92.100 Inspections.

A. Recordings made by security cameras at any cannabis business shall be made immediately available to the planning director or designee upon verbal request for the purposes of determining compliance with this chapter and the cannabis business' use permit.

B. The planning director or designee shall have the right to enter all cannabis businesses from time to time unannounced for the purpose of making reasonable inspections

to observe and enforce compliance with this chapter and the cannabis business' use permit. Such inspections shall be limited to observing the premises for purposes of determining whether the cannabis business is being operated or maintained in compliance with this code, state law, and other applicable laws and regulations.

C. Applicants and permittees must cooperate with employees and investigators of the city who are conducting inspections or investigations relevant to the enforcement of this chapter. No applicant or permittee shall by any means interfere with, obstruct or impede the any city official from exercising their duties under the provisions of this chapter and all rules promulgated pursuant to it.

23.92.110 Enforcement.

The operation of a cannabis business in violation of any conditions of approval or the provisions of this chapter or Section 23.70.080(a) is a violation of this code, and a public nuisance. The city may seek to remedy such violations by any means provided for in law or equity, including but not limited to the enforcement mechanisms and remedies provided for in Chapters 1.16 and 1.19 of this code, or take action to revoke the use permit.

Revocation may be effected by the planning commission after a public hearing to which the operator has had 10 days' notice by certified mail, and in which the planning commission finds that the cannabis business has not complied with one or more use permit conditions or requirements of this chapter. In the event that service by certified mail is not effected, service may be by personal service on an owner, or if personal service is not effected, the property shall be posted with a notice of the hearing, and a copy of the notice shall be published in an official newspaper of this city.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 6. 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 7. 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 _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

§15035. Notification of Criminal Acts, Civil Judgments, Violations of Labor Standards, and Revocation of a Local License, Permit, or Other Authorization After Licensure.

(a) A licensee shall ensure that the Department is notified in writing of a criminal conviction of any owner, either by mail or electronic mail, within 48 hours of the conviction. The written notification to the Department shall include the date of conviction, the court docket number, the name of the court in which the licensee was convicted, and the specific offense(s) for which the licensee was convicted.

(b) A licensee shall ensure that the Department is notified in writing of a civil penalty or judgment rendered against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the verdict or entry of judgment, whichever is sooner. The written notification shall include the date of verdict or entry of judgment, the court docket number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgment rendered against the licensee.

(c) A licensee shall ensure that the Department is notified in writing of an administrative order or civil judgment for violations of labor standards against the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of delivery of the order. The written notification shall include the date of the order, the name of the agency issuing the order, and a description of the administrative penalty or judgment rendered against the licensee.

(d) A licensee shall ensure that the Department is notified in writing of the revocation of a local license, permit, or other authorization held by the licensee or any owner in their individual capacity, either by mail or electronic mail, within 48 hours of receiving notice of the revocation. The written notification shall include the name of the local agency involved, a written explanation of the proceeding or enforcement action, and the specific violation(s) that led to revocation.

(e) For any notification required under this section, licensees shall use and submit to the Department the Licensee Notification and Request Form, Notifications and Requests to Modify a License, DCC-LIC-027 (Amended 2/22), which is incorporated herein by reference.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26030 and 26031, Business and Professions Code.

§15036. Notification of Theft, Loss, and Criminal Activity.

(a) A licensee shall notify the Department and local law enforcement within 24 hours of discovery of any of the following situations:

(1) The licensee discovers a significant discrepancy, as defined in section 15034, in its inventory.

(2) The licensee discovers diversion, theft, loss, or any other criminal activity pertaining to the operations of the licensee.

(3) The licensee discovers diversion, theft, loss, or any other criminal activity by an agent or employee of the licensee pertaining to the operations of the licensee.

(4) The licensee discovers loss or unauthorized alteration of records related to cannabis or cannabis products, customers, or the licensee's employees or agents.

(5) The licensee discovers any other breach of security.

(b) The notification to the Department pursuant to subsection (a) shall be submitted on the Licensee Notification and Request Form, Notifications and Requests Regarding Regulatory Compliance, DCC-LIC-028 (New 2/22), which is incorporated herein by reference, and shall include the date and time of occurrence of the theft, loss, or criminal activity, the name of the local law enforcement agency that was notified, and a description of the incident including, where applicable, the item(s) that were taken or lost.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§15037. General Record Retention Requirements.

(a) Licensees must keep and maintain records in connection with the licensed commercial cannabis business. Records must be kept for at least seven years from the date of creation, unless a shorter time is specified. Records include, but are not limited to:

(1) Financial records including, but not limited to, bank statements, sales invoices, receipts, tax records, and all records required by the California Department of Tax and Fee Administration (formerly Board of Equalization) under title 18, California Code of Regulations, sections 1698 and 4901.

(2) Personnel records, including each employee's full name, Social Security number or individual taxpayer identification number, date employment begins, and date of termination of employment, if applicable.

(3) Training records including, but not limited to, the content of the training provided and the names of the employees who received the training.

(4) Contracts regarding commercial cannabis activity.

(5) Permits, licenses, and other local authorizations to conduct the licensee's commercial cannabis activity.

(6) All other documents prepared or executed by an owner or their employees or assignees in connection with the licensed commercial cannabis business.

(7) Records required by the Act or this division.

(b) Records must be kept in a manner that allows the records to be produced for the Department in either hard-copy or electronic form.

(c) Records must be legible and accurate. No person may intentionally misrepresent or falsify records.

(3) For seeds, immature plants, and other propagated material, no more than six (6) strains to each recipient licensee.

(d) A licensee is limited to providing no more than one (1) individual cannabis and cannabis product line to each recipient employee in a calendar month period.

(e) The limits provided in subsection (c) apply to the transfer of cannabis trade samples from one licensee to each recipient licensee and do not limit the total amount of cannabis trade samples that a licensed distributor may transport.

Authority: Sections 26013 and 26153.1, Business and Professions Code. Reference: Section 26153.1, Business and Professions Code.

Article 5. Security Measures

§15042. Premises Access Requirements.

(a) For a premises that is not open to the public, the licensee shall establish and implement an identification and sign-in/sign-out procedure for all persons accessing the premises, including authorized individuals, suppliers, and visitors.

(b) Licensees shall ensure that only employees of the licensee and other authorized individuals access the licensed premises.

(c) For the purpose of this section, “authorized individuals” include outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

(d) An individual who enters the licensed premises and is not employed by the licensee shall be escorted by an employee of the licensee at all times while within the licensed premises.

(e) A licensee shall maintain a record of all authorized individuals who are not employees of the licensee who enter the licensed premises. The record shall include the name of the individual, the company the individual works for, the reason the individual entered the licensed premises, the date, and the times the individual entered and exited the licensed premises. These records shall be made available to the Department immediately upon request.

(f) A licensee shall not receive consideration or compensation for permitting an individual to enter the licensed premises.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26160, Business and Professions Code.

§15042.1. Security Plan for Licensed Manufacturers.

A licensed manufacturer shall develop and implement a written security plan. At a minimum, the security plan shall include a description of the security measures to:

(a) Prevent access to the manufacturing premises by unauthorized persons and protect the physical safety of employees. This includes, but is not limited to:

- (1) Establishing physical barriers to secure perimeter access and all points of entry into a manufacturing premises (such as locking primary entrances with commercial-grade, non-residential door locks, providing fencing around the grounds and driveway, and securing any secondary entrances including windows, roofs, and ventilation systems);
 - (2) Installing a security alarm system to notify and record incident(s) where physical barriers have been breached;
 - (3) Establishing an identification and sign-in/sign-out procedure for authorized personnel, individuals, suppliers, and visitors;
 - (4) Maintaining the premises such that visibility and security monitoring of the premises is possible; and
 - (5) Establishing procedures for the investigation of suspicious activities.
- (b) Deterring theft or loss of cannabis and cannabis products. This includes, but is not limited to:
- (1) Establishing an inventory system to track cannabis and cannabis products and the personnel responsible for processing it throughout the manufacturing process;
 - (2) Limiting access of personnel within the premises to those areas necessary to complete job duties, and to those timeframes specifically scheduled for completion of job duties, including access by outside vendors, suppliers, contractors or other individuals conducting business with the licensee that requires access to the premises;
 - (3) Supervising tasks or processes with high potential for diversion, including the loading and unloading of cannabis and cannabis products from transportation vehicles; and
 - (4) Providing areas in which personnel may store and access personal items that are separate from the manufacturing areas.
- (c) Securing and backing up electronic records in a manner that prevents unauthorized access and ensures that the integrity of the records is maintained.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Sections 26011.5 and 26051.5, Business and Professions Code.

§15043. Licensee Employee Badge Requirement.

All agents, officers, or other persons acting for or employed by a licensee conducting retail sales or participating in a temporary cannabis event shall display a laminated or plastic-coated identification badge issued by the licensee at all times while engaging in commercial cannabis activity. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

Authority cited: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§15044. Video Surveillance System.

(a) Each licensed premises shall have a digital video surveillance system with a minimum camera resolution of 1280 × 720 pixels on the licensed premises. This requirement does not apply to a licensed premises authorized exclusively for cultivation activities or the cultivation area of a licensed microbusiness premises.

(b) The video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance.

(c) Each camera shall be permanently mounted and in a fixed location. Each camera shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the licensed premises, and allows for the clear and certain identification of any person and activities in all areas required to be filmed under subsection (d).

(d) Areas that shall be recorded on the video surveillance system include the following:

(1) Areas where cannabis or cannabis products are weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;

(2) Limited-access areas;

(3) Security rooms;

(4) Areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and

(5) Entrances and exits to the licensed premises, which shall be recorded from both indoor and outdoor vantage points.

(e) Licensed retailers and licensed microbusinesses authorized to engage in retail sales shall also record point-of-sale areas and areas where cannabis goods are displayed for sale on the video surveillance system. At each point-of-sale location, camera placement must allow for the recording of the facial features of any person purchasing or selling cannabis goods, or any person in the retail area, with sufficient clarity to determine identity.

(f) Cameras shall record continuously 24 hours per day and at a minimum of 15 frames per second (FPS).

(g) The physical media or storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft.

(h) Surveillance recordings shall be kept for a minimum of 90 calendar days.

(i) Surveillance recordings are subject to inspection by the Department and shall be kept in a manner that allows the Department to view and obtain copies of the recordings at the licensed premises immediately upon request. The licensee shall also send or otherwise provide copies of the recordings to the Department upon request within the time specified by the Department.

(j) Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the standards issued by the United States National Institute of Standards and Technology. The displayed date and time shall not cover the view of

recorded images in a manner that prevents the ready identification of any person or activity in the captured image.

(k) The video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the video surveillance system or video surveillance-system storage device.

(l) If multiple licensed premises are contained within the same building or on the same parcel of land, a single video surveillance system covering the entire building or parcel of land may be used by all of the licensees if all licensees have immediate access to the surveillance recordings to produce them pursuant to subsection (i). All licensees sharing a video surveillance system shall be held responsible and subject to discipline for any violations of the video surveillance requirements.

(m) Notwithstanding subsection (a), a licensed distributor transport only licensee engaged in self-distribution whose premises is on the same parcel of land as their licensed cultivation premises shall not be required to comply with the provisions of this section.

Authority: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

§ 15045. Security Personnel.

(a) A licensed retailer or licensed microbusiness authorized to engage in retail sales shall hire or contract for security personnel who are at least 21 years of age to provide onsite security services for the licensed retail premises during the hours of operation. All security personnel hired or contracted for by the licensee shall be licensed by the Bureau of Security and Investigative Services and shall comply with chapters 11.4 and 11.5 of division 3 of the Business and Professions Code.

(b) Notwithstanding subsection (a), a licensed non-storefront retailer or licensed microbusiness who is not engaged in storefront retail sale is not required to hire or contract for security personnel.

(c) If multiple licensed premises are contained within the same building, security personnel may be shared by all of the licensees to cover the entire building. However, all licensees shall be held responsible and subject to discipline for any violations of the security personnel requirements.

Authority cited: Section 26013, Business and Professions Code. Reference: Section 26070, Business and Professions Code.

(e) A delivery employee shall not deliver cannabis goods to a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§15417. Delivery Vehicle Requirements.

(a) A licensed retailer's delivery employee, carrying cannabis goods for delivery, shall only travel in an enclosed motor vehicle. Any vehicle used in the delivery of cannabis goods shall be operated by a delivery employee of the licensee. A vehicle used in the delivery of cannabis goods shall not have any marking or other indications on the exterior of the vehicle that may indicate that the delivery employee is carrying cannabis goods for delivery. Only the licensee or an employee of the retailer licensee for whom delivery is being performed shall be in the delivery vehicle.

(b) While carrying cannabis goods for delivery, a licensed retailer's delivery employee shall ensure the cannabis goods are not visible to the public. Cannabis goods shall be stored in a secure, fully enclosed trunk that cannot be accessed from inside the vehicle, or in a secured area or compartment within the interior of the vehicle. A "secured area" is defined as an area where solid or locking metal partitions, cages, or high-strength shatterproof acrylic can be used to create a secure compartment in the fully enclosed vehicle. The secured area may be comprised on three sides by any part of the body of the vehicle, provided the parts of the vehicle used for the purposes of this section are shatterproof and are not made of glass.

(c) A licensed retailer's delivery employee shall not leave cannabis goods in an unattended motor vehicle unless the motor vehicle is locked and equipped with an active vehicle alarm system. Any cannabis goods left in an unattended vehicle must be stored in a container as required in subsection (b).

(d) A vehicle used for the delivery of cannabis goods shall be outfitted with a dedicated Global Positioning System (GPS) device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee while engaged in delivery. A dedicated GPS device must be owned by the licensee and used for delivery only. The device shall be either permanently or temporarily affixed to the delivery vehicle and shall remain active and inside of the delivery vehicle at all times during delivery. At all times, the licensed retailer shall be able to identify the geographic location of all delivery vehicles that are making deliveries for the licensed retailer and document the history of all locations traveled to by a delivery employee while engaged in delivery. A licensed retailer shall provide this information to the Department upon request. The history of all locations traveled to by a delivery employee while engaging in delivery shall be maintained by the licensee for a minimum of 90 days.

(e) Upon request, a licensed retailer shall provide the Department with information regarding any motor vehicle used for the delivery of cannabis goods, including the vehicle's make, model, color, Vehicle Identification Number, license plate number and Department of Motor Vehicles registration information.

(f) Any motor vehicle used by a licensed retailer to deliver cannabis goods is subject to inspection by the Department. Vehicles used to deliver cannabis goods may be stopped and inspected by the Department at any licensed premises or during delivery.

Authority: Section 26013, Business and Professions Code. Reference: Sections 26070 and 26090, Business and Professions Code.

§15418. Cannabis Goods Carried During Delivery.

(a) A licensed retailer's delivery employee shall not carry cannabis goods in the delivery vehicle with a value in excess of \$10,000 at any time.

(b) For the purposes of this section, the value of cannabis goods shall be determined using the current retail price of all cannabis goods carried by, or within the delivery vehicle of, the licensed retailer's delivery employee.

(c) A delivery employee may only carry cannabis goods, cannabis accessories, branded merchandise of any licensee, or promotional materials in the delivery vehicle and may only perform deliveries for one licensed retailer at a time. A delivery employee must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries.

(d) Before leaving the licensed premises, the licensed retailer's delivery employee must have a delivery inventory ledger of all cannabis goods provided to the licensed retailer's delivery employee. The contents of the delivery inventory ledger must comply with the requirements of section 15049.3. During the delivery trip, as defined in section 15049.3, the delivery employee shall maintain the delivery inventory ledger in hard copy or electronically, the latter of which may be an electronic copy maintained in the track and trace system. The delivery inventory ledger must be updated after each completed delivery to reflect the remaining inventory carried by the delivery employee. The delivery inventory ledger must otherwise be updated in accordance with the requirements of section 15049.3, and then entered into the track and trace system no later than the end of the calendar day on which the delivery trip occurred.

(e) The licensed retailer's delivery employee shall maintain a log that includes all stops from the time the licensed retailer's delivery employee leaves the licensed premises to the time that the licensed retailer's delivery employee returns to the licensed premises, and the reason for each stop. The log shall be turned in to the licensed retailer when the licensed retailer's delivery employee returns to the licensed premises. The licensed retailer must maintain the log as a commercial cannabis activity record as required by this division. The log may be maintained electronically.

(f) Prior to arrival at any delivery location, the licensed retailer must have received a delivery request from the customer and provided the delivery request receipt to the licensed retailer's delivery employee electronically or in hard copy. The delivery request receipt provided to the licensed retailer's delivery employee shall contain all of the information required in section 15420, except for the date and time the delivery was made, and the signature of the customer.

§17223. Waste Management.

(a) A licensee shall dispose of all waste in accordance with the Public Resources Code and any other applicable state and local laws. It is the responsibility of the licensee to properly evaluate waste to determine if it should be designated and handled as a hazardous waste, as defined in Public Resources Code section 40141.

(b) A licensee shall establish and implement a written cannabis waste management plan that describes the method or methods by which the licensee will dispose of cannabis waste, as applicable to the licensee's activities. A licensee shall dispose of cannabis waste using only the following methods:

(1) On-premises composting of cannabis waste.

(2) Collection and processing of cannabis waste by a local agency, a waste hauler franchised or contracted by a local agency, or a private waste hauler permitted by a local agency in conjunction with a regular organic waste collection route.

(3) Self-haul cannabis waste to one or more of the following:

(A) A staffed, fully permitted solid waste landfill or transformation facility;

(B) A staffed, fully permitted composting facility or staffed composting operation;

(C) A staffed, fully permitted in-vessel digestion facility or staffed in-vessel digestion operation;

(D) A staffed, fully permitted transfer/processing facility or staffed transfer/processing operation;

(E) A staffed, fully permitted chip and grind operation or facility; or

(F) A recycling center as defined in title 14, California Code of Regulations, section 17402.5(d) that meets the following:

(i) The cannabis waste received shall contain at least ninety (90) percent inorganic material;

(ii) The inorganic portion of the cannabis waste is recycled into new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace; and

(iii) The organic portion of the cannabis waste shall be sent to a facility or operation identified in subsections (b)(3)(A)-(E).

(4) Reintroduction of cannabis waste back into agricultural operation through on-premises organic waste recycling methods including, but not limited to, tilling directly into agricultural land and no-till farming.

(c) The licensee shall maintain any cannabis waste in a secured waste receptacle or secured area on the licensed premises until the time of disposal. Physical access to the receptacle or area shall be restricted to the licensee, employees of the licensee, the local agency, waste hauler franchised or contracted by the local agency, or private waste hauler permitted by the local agency only. Nothing in this subsection prohibits licensees from using a shared waste receptacle or area with other licensees, provided that the

shared waste receptacle or area is secured and access is limited as required by this subsection.

(d) A licensee that disposes of waste through an entity described in subsection (b)(2) shall do all of the following:

(1) Maintain and make available to the Department upon request the business name, address, contact person, and contact phone number of the entity hauling the waste; and

(2) Obtain documentation from the entity hauling the waste that evidences subscription to a waste collection service.

(e) If a licensee is self-hauling cannabis waste as allowed by the local jurisdiction, the licensee shall be subject to all of the following requirements:

(1) Self-hauled cannabis waste shall only be transported by the licensee or its employees;

(2) Self-hauled cannabis waste shall only be transported to a facility specified in subsection (b)(3); and

(3) The licensee or its employee who transports the waste shall obtain for each delivery of cannabis waste a copy of a certified weight ticket or receipt from the solid waste facility.

(f) A batch of cannabis or cannabis products that is being disposed of because the batch has failed internal quality testing, quality assurance review by a distributor, or regulatory compliance testing shall comply with the following additional requirements:

(1) All cannabis or cannabis products in the batch shall be rendered unusable prior to disposal;

(2) Rendering of the cannabis or cannabis products shall be done under video surveillance, unless the rendering is performed by a licensee engaging in cultivation activities on a licensed premises authorized exclusively for cultivation activities or the cultivation area of a licensed microbusiness premises; and

(3) The reason for disposal and the disposition of the batch shall be noted in the track and trace system.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Sections 26011.5 and 26130, Business and Professions Code.

§17225. Product Complaints.

(a) A licensee shall review all product complaints made to the licensee to determine whether the complaints involve possible misbranding or adulteration of a cannabis good, and shall investigate the complaints to the extent practicable based on the information received and the records the licensee is required to maintain.

(b) For purposes of this section, “product complaint” means any written, electronic, or oral communication received by a licensee that contains any allegation expressing concern, for any reason, with the quality of a cannabis good. Examples of product

(m) Any cannabis product in, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect, or fruit.

(n) Any inhalable cannabis product that is delivered into the lungs through a metered-dose inhaler or dry-powder inhaler. Nothing in this section shall be interpreted to prohibit other dry-powder cannabis products or metered-dose vaporizers containing cannabis or cannabis oil.

(o) Any cannabis product that is administered to the eye or the nasal passages.

(p) Any cannabis product that is injected into the body by piercing the skin.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Sections 26011.5 and 26130, Business and Professions Code.

§17301. Additional Requirements for Edible Cannabis Products.

(a) Except for cannabis, cannabis products, or terpenes, no ingredient or component shall be used in the manufacture of an edible cannabis product unless that ingredient or component is permitted by the United States Food and Drug Administration for use in food or food manufacturing, as specified in *Substances Added to Food in the United States*, available at

<https://www.accessdata.fda.gov/scripts/fdcc/index.cfm?set=FoodSubstances> or is Generally Recognized as Safe (GRAS) under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (codified in 21 U.S.C. 321(s) and 21 U.S.C. 348).

(b) Edible cannabis products that consist of more than a single serving shall be marked or packaged in a manner such that a single serving is readily identifiable or measurable.

(c) An edible cannabis product consisting of multiple servings shall be homogenized so that each serving contains the same concentration of THC.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Sections 26011.5 and 26130, Business and Professions Code.

§17302. Additional Requirements for Topical Cannabis Products.

(a) Except for cannabis, cannabis concentrate, or terpenes, topical cannabis products shall only contain ingredients permitted for cosmetic manufacturing in accordance with title 21, Code of Federal Regulations, part 700, subpart B (section 700.11 et seq.) (Rev. March 2016), which is hereby incorporated by reference.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26011.5, Business and Professions Code.

§17302.1. Additional Requirements for Tinctures.

(a) A tincture shall be no more than 2 fluid ounces and shall include a calibrated dropper or similar device for measuring a single serving.

(b) A tincture, defined at section 15000(rrr), may include ingredients other than cannabis extract and alcohol, vegetable oil, or glycerin provided that the primary ingredient by weight is alcohol, vegetable oil, or glycerin.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26011.5, Business and Professions Code.

§17303. Orally Consumed Products Containing Alcohol.

(a) Any orally consumed product that contains more than 0.5% alcohol by volume as an ingredient, and is not otherwise an alcoholic beverage as defined in Business and Professions Code section 23004, shall be packaged in a container no larger than two (2) fluid ounces and shall include a calibrated dropper or other similar device capable of accurately measuring servings.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26011.5, Business and Professions Code.

§17303.1. Additional Requirements for Inhaled Products.

(a) Cannabis products intended for inhalation shall only contain cannabis, cannabis concentrate, terpenes, rolling paper, leaf, pre-roll filter tips, or ingredients permitted by the United States Food and Drug Administration as an “inactive ingredient” for inhalation, as specified in the United States Food and Drug Administration *Inactive Ingredients Database*, available at <https://www.fda.gov/drugs/drug-approvals-and-databases/inactive-ingredients-database-download>.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26011.5, Business and Professions Code.

Article 2. Cannabinoid Concentration Limits

§17304. THC Concentration Limits.

(a) An edible cannabis product shall not contain more than:

- (1) 10 milligrams THC per serving; and
- (2) 100 milligrams THC per package.

(b) Notwithstanding subsection (a), a package containing an edible product that is an orally dissolving product, such as sublingual lozenges or mouth strips, may contain up to 500 milligrams THC per package, if:

- (1) The cannabis product consists of discrete servings of no more than 10 milligrams THC per piece;
- (2) The cannabis product is labeled “FOR MEDICAL USE ONLY;” and
- (3) The cannabis product is only available for sale to a medicinal-use patient.

(c) A topical cannabis product or a cannabis concentrate shall not contain more than 1,000 milligrams THC per package.

(d) Notwithstanding subsection (c), a topical cannabis product or a cannabis concentrate may contain more than 1,000 milligrams THC per package, but not more than 2,000 milligrams THC per package, if the product is labeled “FOR MEDICAL USE ONLY” and is only available for sale to a medicinal-use patient.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Sections 26011.5, 26120 and 26130, Business and Professions Code.

Article 3. Failed Product Batches

§17305. Failed Product Batches.

(a) A finished cannabis product batch that fails any regulatory compliance laboratory testing requirement established in this division shall be destroyed unless:

(1) The cannabis product batch or harvest batch may be remediated by relabeling pursuant to subsection (d); or

(2) A corrective action plan for remediation is approved by the Department pursuant to subsection (e). The licensed manufacturer or microbusiness authorized to engage in manufacturing who submits a corrective action plan for remediation shall be the manufacturer that remediates the subject batch. The licensed manufacturer shall not receive the batch from the licensed distributor until the Department has approved the corrective action plan.

(b) Remediation of a failed product batch or the use of a harvest batch that has failed any regulatory compliance laboratory test shall comply with the requirements and procedures established by the Department in section 15306, in addition to the requirements of this article.

(c) Except as provided in subsections (d) and (f), edible cannabis products that fail regulatory compliance laboratory testing shall not be remediated and shall be destroyed. If any edible cannabis product that has failed regulatory compliance laboratory testing is remediated or otherwise mixed with another batch of cannabis product in violation of this section, such action shall render the final cannabis product adulterated, regardless of the defect level of the final cannabis product.

(d) A cannabis product batch that fails regulatory compliance laboratory testing for cannabinoid or terpenoid content may be remediated by relabeling the product with the correct information from the certificate of analysis for regulatory compliance, provided that the THC limits in section 17304 are met.

(e) Except as provided in subsection (d), a cannabis product batch or a harvest batch that fails regulatory compliance laboratory testing or quality assurance review shall not be remediated unless the Department has approved a corrective action plan submitted by the licensed manufacturer or microbusiness authorized to engage in manufacturing who will be performing the remediation. Edible cannabis products may only be remediated by relabeling pursuant to subsection (d) or repackaging as provided in subsection (f). Corrective action plans will be reviewed by the Department on a case-by-

Article 2. Cannabis Products Released from Manufacturing

§17401. Release to Distributor as Finished Product.

(a) Cannabis products shall not be transferred to a licensed distributor, or microbusiness authorized to engage in distribution, for regulatory compliance testing unless the cannabis products are in their final form and packaged and labeled for retail sale.

(b) Notwithstanding subsection (a), a product label may exclude labeling of cannabinoid content if the cannabinoid content is to be added to the label at the distribution premises after issuance of a Certificate of Analysis in accordance with section 17407.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Sections 26011.5 and 26130, Business and Professions Code.

Article 3. Labeling Requirements

§ 17402. General Provisions.

(a) Any information required to be listed on a label shall be written in English.

(b) A label shall be unobstructed and conspicuous so that it can be read by the consumer.

(c) All required label information shall be located on the outside container or wrapper of the finished product to be sold at a retailer, or be easily legible through the outermost container or wrapper. If the immediate container holding the cannabis goods is separable from the outermost packaging, such as a container placed inside of a box, the immediate container shall be labeled with the universal symbol as described in section 17410.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26120, Business and Professions Code.

§ 17403. Primary Panel Labeling Requirements: Nonmanufactured Cannabis Goods.

(a) The label for a package of nonmanufactured cannabis goods shall include a primary panel that includes the following information in a type size no smaller than 6 point and proportional to the size of the primary panel and container:

(1) The identity of the product;

(2) The net weight of cannabis in the package, listed in both metric and U.S. customary units; and

(3) The universal symbol described in section 17410.

(b) The label for a package of nonmanufactured cannabis goods shall include an informational label that includes the following information in a type size no smaller than 6 point and proportional to the size of the informational panel and container:

(1) The UID;

(2) The name of the licensed cultivator or licensee packaging the product (either the legal

business name or the listed on the license certificate) and that licensee's contact number or website address;

(3) The date of packaging for retail sale; and

(4) The following statement in bold print: "GOVERNMENT WARNING: THIS PACKAGE CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(c) Nothing in this section prohibits the inclusion of additional information on the primary panel, provided that the label does not violate the requirements of section 17408.

(d) The cannabinoid content for a package of nonmanufactured cannabis goods shall be labeled as specified in section 17407.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26120, Business and Professions Code.

§17404. Primary Panel Labeling Requirements: Manufactured Cannabis Products.

(a) The label for a manufactured cannabis product shall include a primary panel that includes the following information in a type size no smaller than 6 point and proportional to the size of the primary panel and container:

(1) The identity of the product in a text size reasonably proportional to the most prominent printed matter on the panel;

(2) The universal symbol as described in section 17410; and

(3) The net weight or volume of the contents of the package, listed in both metric and U.S. customary units.

(b) Nothing in this section prohibits the inclusion of additional information on the primary panel, provided that the label does not violate the requirements of section 17408.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26120, Business and Professions Code.

§17405. Additional Primary Panel Labeling Requirements: Edible Products.

(a) In addition to the requirements of section 17404, the primary panel of an edible cannabis product shall include the words "cannabis-infused" or "cannabis infused" immediately above the identity of the product in bold type and a text size larger than the text size used for the identity of the product.

Authority cited: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26120, Business and Professions Code.

§17406. Informational Panel Labeling Requirements.

(a) The label for a manufactured cannabis product shall include an informational panel that includes the following:

(1) The name of the licensed manufacturer (either the legal business name or the name listed on the license certificate) that manufactured the cannabis product and the manufacturer's contact number or website address;

(2) The date the cannabis product was packaged for retail sale;

(3) The following statement in bold print: "GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION;"

(4) The statement: "FOR MEDICAL USE ONLY" if the package contains an amount of THC that exceeds the level allowed for adult-use cannabis goods, as specified in section 17304;

(5) A list of all product ingredients in descending order of predominance by weight or volume. If any product ingredient contains subingredients, the list shall either:

(A) Include the common name of the ingredient followed by a parenthetical listing of all ingredients in descending order by weight or volume; or

(B) List all subingredients as individual ingredients in descending order of predominance; however,

(C) This subsection shall not apply to flavoring, which shall instead comply with title 21, Code of Federal Regulations, Part 101.22 (Rev. Jan. 2009), hereby incorporated by reference;

(6) For cannabis products containing an ingredient, flavoring, coloring, or an incidental additive that bears or contains a major food allergen, the word "contains," followed by a list of the applicable major food allergens. The list shall conform with the requirements for food allergen labeling set forth in 21 U.S.C. §343(w), paragraph (1)(A) or (1)(B);

(7) The names of any artificial colorings contained in the product;

(8) For edible cannabis products, the amount, in grams or milligrams, of sodium, sugar, carbohydrates, and total fat per serving;

(9) Instructions for use, such as the method of consumption or application, and any preparation necessary prior to use;

(10) The UID;

(11) The batch or lot number; and

(12) The statement: “KEEP REFRIGERATED” or “REFRIGERATE AFTER OPENING,” as applicable, if the cannabis product is perishable or perishable after opening.

(b) The informational panel text shall be in a type size no smaller than 6 point and proportional to the size of the primary panel and container.

(c) Except for the information required by subsections (a)(1), (a)(10) and (a)(11), the requirements of subsection (a) may be fulfilled through the use of supplemental labeling, which may include, but is not limited to, a package insert, fold-out or booklet label, or a hanging tag.

(d) Cannabinoid content may be included on the informational panel. Cannabinoid content for manufactured cannabis products shall be labeled as specified in section 17407.

(e) Nothing in this section prohibits the inclusion of additional information on the informational panel provided that the label does not violate the requirements of section 17408.

Authority: Sections 26013 and 26130, Business and Professions Code. Reference: Section 26120, Business and Professions Code.

§17407. Cannabinoid Content Labeling.

(a) Each package for retail sale of cannabis goods shall be labeled with the cannabinoid content on either the primary panel or an informational panel. For manufactured products, cannabinoid content may be included on the label prior to release to a distributor or it may be added to the label at the distribution premises after issuance of a regulatory compliance testing Certificate of Analysis for the batch as described in subsection (d).

(b) Cannabinoid content labeling shall include the following:

(1) For an edible product or a cannabis concentrate for which the manufacturer has established serving designations, THC and CBD content expressed in milligrams per serving and milligrams per package.

(2) For a topical cannabis product or a cannabis concentrate without serving designations, THC and CBD content expressed in milligrams per package.

(3) For nonmanufactured cannabis goods, Total THC content expressed as a percentage.

(4) Packages of infused pre-rolls shall be labeled with either:

(A) The cannabinoid content in milligrams; or

(B) The cannabinoid content of the dried flower expressed as a percentage and the added cannabinoid content in milligrams.

PUBLIC COMMENT AGENDA #12A CANNABIS ORDINANCES

Inge Lorentzen Daumer <ilwd50@gmail.com>

Fri 10/27/2023 4:42 PM

To: City Council Members <citycouncil@cityofpacificgrove.org>

[**NOTICE:** This message originated outside of the City of Pacific Grove email system -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

Dear City Council,

Our PGLibrary excels with Children's Programming and has robust participation, much like "child-care". The Library also has some homeless individuals sleeping and hanging-out on the premises. Our City Parks are indeed, Playgrounds and family recreation. It doesn't matter if the impact of expanding an exclusion zone further impacts available locations!

I also would welcome use of a State Data Base to confirm where Licensed Daycare Facilities are actually located. The City of Pacific Grove has been lax in updating locations and maps.

Please add to the Ordinance:

4. **Expanding Separation Requirements:** Comments were raised to consider adding a requirement that a retailer be located at **least 1,000 feet from a library or park**. This is a policy decision within the Council's purview. However, the Council should be cognizant of the impact such changes will have to the available sites.

10. Specific Language Regarding Checking **State Daycare Licensing Database:** Language referencing the specific database that must be checked (the Department of Social Services Facility Lookup) to **confirm a site is not within 1,000 feet of a licensed day care facility may be added.**

Thank you for your consideration,

Inge Lorentzen Daumer
(in absentia due to my Health Conditions)



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Upcoming Council Meeting Item #12A

Nico Enea <nico@nug.com>

Sun 10/29/2023 8:54 PM

To: City Council Members <citycouncil@cityofpacificgrove.org>; Pierik, Brian A. <bpierik@bwslaw.com>; Aaron Campbell <ACampbell@cityofpacificgrove.org>

 1 attachments (44 KB)

PG Council Meeting Item #12.pdf;

[**NOTICE:** This message originated outside of the City of Pacific Grove email system -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

Dear Honorable Mayor, Council Members and City Staff,

My name is Nico Enea and I am a Pacific Grove resident and a cannabis business owner.

My family has owned and operated businesses and maintained a residence in Pacific Grove all the way back to the John Steinbeck “*Cannery Row*” days. Some of the more recent developments my family has spearheaded include the renovations of the Old Bath House at Lovers Point and the Berwick Park apartment redevelopment on Ocean View Blvd.

In addition to being a resident of Pacific Grove I am the co-founder and partner of NUG which is a vertically integrated cannabis company which owns and operates eight (8) successful and profitable cannabis retail dispensaries in Northern California. We employ over 400 employees and have obtained cannabis licenses to operate all facets of the cannabis business, including but not limited to retail store-front dispensaries, delivery, cultivation, distribution, extraction and manufacturing operations. NUG and its four (4) co-founding partners (including myself) have been successfully operating in California for over a decade. During our tenure, the NUG has developed a highly successful “best in breed” track record in cannabis regulatory compliance, an impressive history of taxes paid to the state & local municipalities while providing community benefits to the cities we operate in and a safe environment for our employees and customers.

NUG currently has licensed dispensaries in Sacramento, San Leandro, El Cerrito, Alameda, Oakland, Vallejo, Redding and Red Bluff. In all these municipalities NUG is the number 1 or in the top 5 cannabis businesses based on the amount of cannabis tax revenue generated. As a fully vertically integrated cannabis business we are able to provide the highest quality products at the lowest possible prices. Our competitors simply don’t have the production capabilities or flexibility in competitive pricing that NUG has because they do not control the entire process from “Seed to Sale”. NUG looks at each city we operate in as a partner and our business cannot thrive unless our goals are aligned in tandem with the community.

Based on my experience I will briefly address the following outstanding Items open for discussion:

Items # 2, 3, 6, 7, 11, 12, 13

The State has already put significant time and resources into determining allowable THC levels, serving size, child resistant packaging and health warnings. Anything contrary to the states regulations in these categories would significantly complicate and potentially reduce the product offerings currently allowed in other competing markets. Specialized third party waste handling of expired products is currently done at NUG retail locations.

Item #5 - Security Cameras

Providing security and safety to our customers, employees and community is a constant focus and main priority of NUG’s current business model. Having onsite security personnel & best in class security systems is integral in running a successful storefront dispensary and delivery service. Having a well-thought out, tried and true security plan is a cornerstone of NUG’s success. Ensuring customer, employee and community safety with the use of the latest technological advancements in security are constantly reviewed and updated.

Having the newest camera systems and effective camera placement vetted by the local Police Department is always a process NUG engages in. Regulations stipulate that cameras be present everywhere cannabis or cash is present and the ability to store ninety (90) days of past security camera footage is required. NUG currently follows this protocol at all its locations. In some instances where the local ordinance requires it NUG does provide the local Police Department with the ability to view all our cameras both historical and real-time footage.

References to local police departments where NUG operates are available upon request.

Item # 8 - Operating hours

The competitive advantages the city allows in the ordinance comes full circle and allows NUG to generate the most cannabis tax revenue as possible. The City of Pacific Grove allowing its single dispensary to be open from 8AM - 10PM would allow an even playing field with Seaside Dispensaries that are already allowed to be open from 8AM - 10PM. In the near future the single Pacific Grove dispensary will be competing with two City of Monterey dispensaries; one on Lighthouse Ave and one on Alvarado St that are within a 1.5 mile radius to Forest Hill.

Item #9 - Electronic Payments

NUG currently banks at a FDIC insured bank. This gives us the ability to make all payments electronically i.e. taxes, W2 wages, vendor payments, rent, etc. NUG utilizes armored car cash pickups twice per week so that the amount of cash on hand never gets too large.

Item #14 - No Cash payments at Delivery

Historically and currently at NUG's Delivery businesses which are operated out of all our dispensaries; cash payments represent 40% of our transactions. No municipality we operate in disallows cash payments. This is viewed as a discrimination issue that would prohibit lower income individuals without bank accounts to be able to access the products they need. For some customers cash payment is typically the main payment method. NUG does offer ACH and credit card transaction solutions which represent 60% of our transactions. If Pacific Grove were to mandate cash only for deliveries it would lose a large part of the customer market.

Unlimited Delivery Licenses - NO

No delivery licenses should be allowed except for the winner of the single storefront license. The City should not carry the burden of regulating and permitting multiple cannabis licenses. The city should take a simple approach to the application, licensing and permitting process. By adding unlimited delivery licenses it will be adding 2-3X the amount of resources needed vs. just one storefront with a delivery license. So here again there should be a single delivery license given and it should go to the winner of the single storefront license. Why complicate the process by regulating multiple licenses? Granting both a retail and delivery license to one applicant will further ensure that applicant's success in competing with neighboring dispensaries.

I appreciate the opportunity to share my thoughts with you and will make myself available to answer and questions and or address your comments.

Sincerely,

Nico S. Enea
(925) 683 - 1037
1312 Pico Ave
Pacific Grove
CA 93950

Marina officer was in the 300 block of Reservation Road when he noticed a green sedan had collided with a parked vehicle. He observed two individuals running away from the vehicle. With the assistance of nearby citizens, he was able to stop them. The driver was identified as 18-year-old Dylan Scott of Salinas. His passenger was a juvenile female who was transported to the hospital with minor injuries.

Scott was arrested for suspicion of DUI. During a search of the vehicle, several flavored e-cigarettes and marijuana vapes were discovered. Also found was a large amount of psilocybin mushrooms, several THC edibles and several large bags of marijuana.

Scott was booked into the Monterey County Jail for violation of 11357 (b) HS- Underaged Possession of Over 1 Ounce of Marijuana, 11360 (a) HS- Transport/Sale of Marijuana, 11351 HS- Sale of Controlled Substances, 272 PC- Contributing to the Delinquency of Minor, and 23152 (c) VC- DUI.

As shown in the images below, many of these marijuana edibles resemble actual candies that children may be receiving when they go out Trick or Treating on Halloween night. The types of THC edibles seized in our investigation use trademarked and recognizable brand logos that make it difficult to differentiate from regular candy. We are urgently reminding parents to check children's candy before they eat it. Do not allow your children to eat candy before it gets checked out. If anything looks suspicious or is open/unsealed, TOSS IT OUT.

< Marina Police Department's p...

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Message Marina Police Department

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Message Marina Police Department

CANNABIS ORDINANCE...

Inge Lorentzen Daumer <ilwd50@gmail.com>

Wed 11/1/2023 9:59 PM

To:City Council Members <citycouncil@cityofpacificgrove.org>

[**NOTICE:** This message originated outside of the City of Pacific Grove email system -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

Council,

I really wish you had added a 1000' buffer-zone around our PG.Public Carnegie Library (along-side our kid-friendly Natural History Museum). The Library has more children's programs than our Youth Center seems to have.

Inge Lorentzen Daumer



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Laurel O'Halloran, Associate Planner/Economic Development Coordinator
MEETING DATE: December 6, 2023
SUBJECT: August 8, 2023, ARB Minutes
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the August 8, 2023, ARB Minutes.

Attachments

August 8, 20023 ARB Minutes



NOTICE OF MEETING
CITY OF PACIFIC GROVE
**ARCHITECTURAL REVIEW
BOARD
MINUTES**

Tuesday, August 8, 2023, 3:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific
Grove, CA

AGENDA

1. **CALL TO ORDER & ROLL CALL**
Chair Boyle called the meeting to order at 3:00 p.m. Planner Laurel O'Halloran conducted roll call with the following Board members present in Chamber: Sarah Boyle, Hunter Eldridge, Anna Bornstein, Scott Brooks, Christi Sutphen.
2. **APPROVAL OF THE AGENDA**

Action: Upon motion by Member Brooks and seconded by Vice Chair Eldridge, the Board voted to approve the agenda.

Motion carried 5-0, by the following roll call vote:

AYES: Chair Sarah Boyle, Vice Chair Hunter Eldridge, Anna Bornstein, Scott Brooks, Christi Sutphen

NOES: None.

ABSENT: None.
3. **BOARD AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
4. **COUNCIL LIAISON ANNOUNCEMENTS**
Council member Beck gave a Council update.
5. **GENERAL PUBLIC COMMENT**
 - A. Written General Public Comment
Reference: Laurel O'Halloran, Associate Planner

Recommended Action: Receive public comment.

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

CONSENT AGENDA

Action: Upon motion by Chair Boyle and seconded by Vice Chair Eldridge, The Board voted to approve the Consent Agenda.

Motion carried 5-0, by the following roll call vote:

AYES: Chair Sarah Boyle, Vice Chair Hunter Eldridge, Anna Bornstein, Scott Brooks, Christi Sutphen.

NOES: None.

ABSENT: None.

6. APPROVAL OF THE JULY ARB Minutes

A. Draft July ARB Minutes

Reference: Laurel O'Halloran, Planner

Recommended Action: Review and approve the Draft July ARB Minutes

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

REGULAR AGENDA

7. PUBLIC HEARINGS

A. Architectural Permit (AP) and Coastal Development Permit (CDP) 23-0061 for 121 10th Street (APN 006-218-009)

Zoning District/General Plan Designation: R-3-PGR / HDR (19.8 du/ac)

Coastal Zone: Yes

Historic Resources Inventory: No

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

Recommended Action: Staff recommends that the Architectural Review Board recommend approval of AP/CDP 23-0061 to the Planning Commission, subject to findings, conditions of approval, and a Class 1 CEQA categorical exemption.

Reference: Garrett McCown, Assistant Planner

Garrett McCown, project Planner introduced the project.
The Chair allowed the architect, Anatoly Ostretsov, to speak to the project.

The Chair opened the floor to public comment:

Kathleen Huff

Chrystal Bianci

Charles Huff

Inge Lorentzen Daumer

Member Borstein made a motion, seconded by Secretary Sutphen to recommend the Planning Commission approve Architectural Permit 23-0126 including the following conditions:

- 1. Install mechanized shades for the new skylights.**
- 2. Reduce the stucco wall height to 42” for the Bar BQ area.**
- 3. Reduce the upper balcony height of the railing to 42”.**

and subject to the recommended findings, conditions of approval and a

Class 1

CEQA exemption. The Board voted 5-0 to approve the motion.

Motion passed.

**B. Boards and
Commissions Joint
Working Group**

Zoning

District/General

Plan Designation:

N/A Coastal Zone:

N/A

Historic Resources Inventory: N/A

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

Recommended Action: Recommend one Board member to
voluntarily join the new Boards and Commissions Joint Working
Group

Reference: Laurel O'Halloran, Planner

The Chair opened the floor to public comment:

Lisa Ciani
Inge Lorentzen Daumer

The Chair closed public comment.

Chair Boyle made a motion, seconded by member Borstein to continue the item to September.

ARB meeting and request a presentation from the chief of police to clarify the purpose, the meeting schedule and the parameters of the new Joint Working Group.

The Board voted 5-0 to approve the motion.

Motion passed.

8. **CONTINUED AND ONGOING BUSINESS**

9. **NEW BUSINESS**

10. **PRESENTATIONS**

11. **NEXT MEETING - September 12, 2023**

12. **ADJOURNMENT**

The Board adjourned the regular meeting at 5:00 p.m.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Aaron Campbell, Associate Planner
MEETING DATE: December 6, 2023
SUBJECT: Planning Commission Meeting Minutes: June 8, 2023; July 13, 2023; August 10, 2023
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the minutes.

Attachments

Approved PC Minutes 06-08-23
Approved PC Minutes 07-13-23
Approved PC Minutes 08-10-23



CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, June 8, 2023, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove,
CA

This meeting was held in the Council Chamber and via Zoom webinar.

AGENDA

1. **CALL TO ORDER & ROLL CALL-** Chair Lilley called meeting to order at 6:00 p.m.
Members Present: Chair Lilley, Vice Chair Murphy, Commissioner Sawyer, Commissioner Davison, Commissioner Kubica, Commissioner Nodzenski
Members Absent: Commissioner Fredrickson
Staff Present: Aaron Campbell (Associate Planner), Garrett McCown (Assistant Planner), Alyssa Kroeger (Housing Program Manager), and Dara Sanders (Good City Contract Planner)
2. **APPROVAL OF AGENDA**
Chair Lilley asked if any Commissioners wanted to make changes to the agenda.
Commissioner Sawyer requested to pull the minutes from the consent agenda, and Assistant Planner McCown announced that the applicant for item 8B (1060 Jewell Ave) has requested the item be continued to the July 13th PC meeting.
On a motion by Commissioner Sawyer, seconded by Commissioner Nodzenski, the Commission voted 6-0-1 (Fredrickson absent) to approve the motion with the following amendment: Pull the May 11th Draft PC minutes and continue item 8B to the July 13th PC meeting.
3. **COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
Commissioner Sawyer announced that she had written a letter with photographs to Public Works Director Gho, City Council, and City Attorney Pierik concerning public safety concerns and environment protection at the Great Tide Pools. Commissioner Sawyer also reported that she had attended two events: (1) Best Complete Street Policies for 2023 and (2) Community Wildfire Protection Plan community workshop hosted by Dudek and the Monterey Fire Department.

Chair Lilley announced, with great sadness, the passing of Maureen Mason former Historic Resources Committee member. Chair Lilley attended the May 17th Housing Committee meeting (along with Commissioner Sawyer and Vice Chair Murphy) where Rincon consultants provided more detailed information concerning the housing plan development process. Chair Lilley also attended the May 17th City Council meeting as a private citizen.

Brian Pierik announced that he would be filling in for Assistant City Attorney, Greg Rubens, and that Erica Vega will be addressing the Cannabis issue.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council member Colletti announced that, as part of the adoption of the budget for the Fiscal Year 2024 amendments were made to include a George Washington Park Enhancement Project, Urban Canopy Improvement Project, funds to update and implement the 1999 George Washington Park Master Plan, and funds for the Parklet Sidewalk Extension. The City Council Parklet Subcommittee will be bringing forward concept drawings to the June 21st regular meeting. Council also approved the addition of a new special event, ‘Pints on the Peninsula,’ to the Special Events Calendar.

5. **GENERAL PUBLIC COMMENT**

A. Public Comment

Recommended Action: Receive public comment.

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

The following individuals submitted written public correspondence:

Inge Lorentzen Daumer, Luke Colletti, Tony Ciani, Carol Olson, Stephen Lilley, Michael Gibbs, Lisa Ciani, Jane Haines, Marion Trentman-Morelli, Mariana Filip, Janet Cohen

The following individuals provided verbal public comment at the meeting:

Mike Gibbs, Inge Lorentzen Daumer, Lisa Ciani

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

A. Archaeological Resource Review and Tribal Monitoring Protocol Update

From: Joyce Halabi, Deputy Public Works Director

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive update.

Reference: Joyce Halabi, Deputy Public Works Director

Commissioner Sawyer asked to pull this item and moved to Regular Agenda, Public Hearing, 8B.

B. Planning Commission 2023 Work Plan

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive the revised 2023 Work Plan

Reference: Steven Lilley, Planning Commission Chair

Chair Lilley requested to pull Item 6B from the Consent Agenda to Regular Agenda, Public Hearing, item 8A.

The Consent Agenda was open for public comment. The following individual provided public comment: Lisa Ciani.

7. REPORTS REQUIRING ACTION

A. Minutes of the May 11, 2023, Planning Commission Regular Meeting

Recommended Action: Approve the Minutes of the May 11, 2023, Planning Commission Regular Meeting.

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

This item was continued to the July 13th meeting.

REGULAR AGENDA

8. PUBLIC HEARINGS

A. Planning Commission 2023 Work Plan

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive the revised 2023 Work Plan **Reference:** Steven Lilley, Planning Commission Chair

Chair Lilley stated that the work plan is typically updated between each Planning Commission Meeting, and he would like to add *Coastal Development Protocol and Processes* to the work plan, but needs to first discuss timing with Public Works and CDD staff.

B. Archaeological Resource Review and Tribal Monitoring Protocol Update

From: Joyce Halabi, Deputy Public Works Director

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive update.

Reference: Joyce Halabi, Deputy Public Works Director

Deputy Director Halabi announced that she will be bringing the full protocol forward to the Planning Commission in July or August and is available for questions.

Chair Lilley opened the public hearing and the following individuals provided public comment: Lisa Ciani, Inge Lorentzen Daumer.

Chair Lilley closed the public comment and returned the item to the Commission for discussion. No further action taken.

C. Architectural Permit (AP) and Coastal Development Permit (CDP) 22-0305, 129 Forest Avenue, Pacific Grove (APN 006-057-017).

Zoning District/General Plan Designation: R-3-PGR / Medium High Density Residential 10 - 20 du/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

CEQA: Categorical Exemption, CEQA Guidelines 15331, Historical Resources Restoration/Rehabilitation

Recommended Action: Staff recommends the Planning Commission approve the proposed Architectural Permit and Coastal Development Permit (AP/CDP 22-0305), subject to the findings, conditions of approval, and Class 1 and Class 31 categorical exemptions for existing facilities and historical restoration/rehabilitation, respectively.

Reference: Aaron Campbell, Associate Planner

Chair Lilley introduced the item. After receiving an oral report by Associate Planner Campbell, testimony from the applicant’s architect (Bill Medford), applicant Doug White, and Dana Supernowciz (soil testing) was received.

Chair Lilley opened the public hearing and the following individuals provided public comment: Lisa Ciani, Inge Lorentzen Daumer. Chair Lilley closed the public comment portion and returned the item for discussion.

Action: Vice Chair Murphy made a motion, seconded by Commissioner Nodzenski to approve the project with the following conditions:

1. Complete plan set requirement to include lighting, front porch steps, existing structures, fences, curb cuts, and eaves.
2. New walkways and private sidewalks to be pervious materials.
3. Demonstration of the ownership of property.

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davison, Kubica, Nodzenski, and Sawyer.

NOES: None.

ABSENT: Commissioner Fredrickson.

- D. Architectural Permit (AP) and Use Permit (UP) 23-0033 for 1060 Jewell Avenue (APN 006-121-030).

From: Garrett McCown, Assistant Planner

Zoning District/General Plan Designation: R-1/ Medium Density Residential (7.3 du/ac)

Coastal Zone: No

Historic Resources Inventory: No

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

Recommended Action: Staff recommends that the Planning Commission approve AP/UP 23-0033, subject to findings, conditions of approval, and a Class 1 CEQA categorical exemption.

Reference: Garrett McCown, Assistant Planner

This item was continued to the July 13th meeting.

- E. Concept Review of Draft Cannabis Ordinance/Regulations

From: Aaron Campbell, Associate Planner

Zoning District/General Plan Designation: Land Use/Health and Safety

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: It is recommended that the Planning Commission review and discuss the draft cannabis zoning ordinance and provide input to City staff.

Reference: Aaron Campbell, Associate Planner

Chair Lilley introduced the item. Erica Vega, who assisted the City in drafting the proposed ordinance, presented the item.

Chair Lilley opened public hearing and the following individuals provided public comment: Mike Gibbs, Lisa Ciani, and Inge Lorentzen Daumer.

Chair Lilley closed the public comment portion and returned the item to the Commission for discussion. Chair Lilley and staff will coordinate a special meeting to meet public noticing requirements, legal requirements, and allow staff time to prepare additional exhibits.

F. Create Subcommittee of the Planning Commission to address Story Poles

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Create a new Story Pole Subcommittee, appoint members, and establish the charter of the subcommittee.

Reference: Steven Lilley, Planning Commission Chair

Chair Lilley introduced the item and opened public hearing and the following individuals provided public comment: Inge Lorentzen Daumer, Tony Ciani, Lisa Ciani.

Chair Lilley closed the public comment portion of the meeting and returned the item to the Commission for discussion.

Action: Commissioner Sawyer made a motion to create a subcommittee of the Planning Commission to address story poles, consisting of two to three members, for four months seconded by Vice Chair Murphy. Commissioners Sawyer, Kubica, and Nodzenski volunteered to be on the subcommittee.

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davison, Kubica, Nodzenski, and Sawyer.

NOES: None.

ABSENT: Commissioner Fredrickson.

G. Housing Element and General Plan Updates

From: Anastacia Wyatt, Community Development Director

Zoning District/General Plan Designation: All

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive an oral report on the Housing Element and General Plan Updates.

Reference: Anastacia Wyatt, Community Development Director

Chair Lilley introduced the item. After receiving an update from Alyssa Kroeger, Housing Program Manager, Chair Lilley opened the public hearing and the following individual provided public comment: Tony Ciani.

Chair Lilley closed the public comment portion of the meeting and returned the item to the Commission for discussion.

9. **CONTINUED AND ONGOING BUSINESS**

A. Parklet Program Subcommittee

From: Claudia Sawyer, Planning Commissioner

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive an oral report on the activities of the Parklet Program Subcommittee.

Reference: Claudia Sawyer, Planning Commissioner

Chair Lilley introduced the item. Commissioner Sawyer made a motion to dissolve the Parklet Subcommittee.

Chair Lilley opened public comment and the following individual provided public comment: Tony Ciani.

Chair Lilley closed the public comment portion of the meeting and returned the item to the Commission for discussion. Commissioner Sawyer made a motion to discontinue the parklet subcommittee, seconded by Commissioner Nodzenski. The Commission voted 6-0-1 (Fredrickson absent) to approve the motion.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING - July 13, 2023**

13. **ADJOURNMENT** - By order of the Chair, the meeting was adjourned at 10:36 p.m.



CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, July 13, 2023, 6:00 P.M.

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

This meeting was held in the Council Chamber and via Zoom webinar.

1. **CALL TO ORDER & ROLL CALL**

Chair Lilley called the meeting to order at 6:00 p.m. Associate Planner Campbell conducted roll call with the following Commissioners present in Chamber: Chair Lilley, Vice Chair Murphy, Commissioners Davison, Fredrickson, Kubica, Nodzenski, and Sawyer.

2. **APPROVAL OF AGENDA**

Action: Commissioner Sawyer requested to move item 9A from Continued and Ongoing Business to Reports Requiring Action item 7A.

Action: Upon motion by Commissioner Fredrickson and seconded by Commissioner Kubica, Commission voted to approve the agenda as modified.

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

AYES: Chair Lilley, Vice Chair Murphy, Commissioners Davison, Fredrickson, Kubica, Nodzenski, and Sawyer.

NOES: None.

ABSENT: None.

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

A. Assistant City Attorney Greg Rubens reported that he will be leaving Burke, Williams & Sorensen and another Assistant Attorney will be present at the next meeting.

B. Commissioner Sawyer announced that she sent a letter with photos to Public Works Director Gho, City Council, Mr. Pierik, and Mr. Ruebens, and Mr. Rubens concerning public safety concerns and environmental protection at the Great Tide Pools area. Commissioner Sawyer inquired about the status of the following projects: Title 23 amendments, hotel parking ordinance amendment, NOAA historic assessment, the Coastal Commission grant funding to update our coastal hazard section of the LCP. Commissioner Sawyer attended 4 webinars put on by the CA Coastal Commission: Public Trust Lands, LCP Grant Funds, Smart Growth, SB9 and the Coastal Act.

Vice Chair Murphy announced that the Monterey Bay Economic Partnership released their white paper on housing and Land Watch Monterey County published their formal responses to draft housing elements by the other local cities (Carmel, Seaside, Marina, Salinas).

Commissioner Nodzenski announced he attended the June 23rd Planning Commission training along with Commissioner Kubica. Commissioner Nodzenski also announced attending Strong Towns 101 course.

Chair Lilley reported that the hotel parking, Chapter 23 code revision has been deferred due to the size of the agenda. Chair Lilley announced that he has not forgotten that a special meeting concerning the proposed draft cannabis ordinance still needs to be scheduled.

C. Contract Planner Sidor announced that we should receive a draft document from Integral Consulting proposing updates to the Coastal Hazards section of the LCP by the end summer or early fall.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Action: No announcements were received from the Council Liaison.

5. **GENERAL PUBLIC COMMENT**

Spoken general public comment received from Jane Haines, Mike Gibbs, Inge Lorentzen Daumer, Tony Ciani, and Lisa Ciani.

A. Written General Public Comment

Recommended Action: Receive public comment.

Action: Received written public comment.

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

Written Comments received are kept in the Planning Commission binder at the CDD.

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

A. Planning Commission 2023 Workplan

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive the revised 2023 Workplan.

Reference: Steven Lilley, Planning Commission Chair

7. REPORTS REQUIRING ACTION

A. Minutes of the May 11, 2023, Planning Commission Regular Meeting

Recommended Action: Approve the minutes of the May 11, 2023, Regular Planning Commission Meeting. **CEQA:** Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the June 8, 2023, Planning Commission Regular Meeting - *This item was continued to the August 10, 2023 Planning Commission Regular Meeting.*

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

Action: Commissioner Sawyer made a motion to correct her earlier motion moving Item 9A to Item 7A by moving Item 9A to Item 8A. Motion was seconded by Commissioner Kubica.

Action: Upon a substitute motion by Vice-Chair Murphy and seconded by Commissioner Kubica, the Commission voted to approve the consent agenda with the following amendments: Move item 9A – *Housing Element & General Plan Updates* to Item 8C of the regular agenda and continue Item 7B to the August 10th Planning Commission Regular meeting.

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davidson, Fredrickson, Kubica, Nodenski, and Sawyer.
NOES: None
ABSENT: None

REGULAR AGENDA

8. PUBLIC HEARINGS

A. Architectural Permit (AP) and Coastal Development Permit (CDP) No. 23-0023, 100 Asilomar Avenue, Pacific Grove (APN 007-031-004)

Zoning District/General Plan Designation: R-1-B-4/ Low Density 2.0 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: No

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

Recommended Action: The Planning Commission approve the proposed Architectural Permit and Coastal Development Permit (AP/CDP 23-0023), subject to the findings, conditions of approval, Class 1 Categorical Exemption for Existing Facilities (CEQA Guidelines Section 15301).

Reference: Aaron Cambell, Associate Planner

Staff report received from Mr. Sidor, Senior Contract Planner.

Applicant, Mark Porter, commented on the project.

Public comment was received from Tony Ciani and Lisa Ciani.

Action: On a motion by Commissioner Fredrickson and seconded by Vice Chair Murphy, the Commission voted to approve the project as presented subject to the findings, conditions of approval, Class 1 Categorical Exemption for Existing Facilities (CEQA Guidelines Section 15301).

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davison, Fredrickson, Kubica, Nodzenski, and Sawyer
NOES: None.
ABSENT: None.

- B. Architectural Permit (AP) and Use Permit (UP) 23-0033 for 1060 Jewell Avenue (APN 006-121-030).

From: Garrett McCown, Assistant Planner

Zoning District/General Plan Designation: R-1/ Medium Density Residential (7.3 du/ac)

Coastal Zone: No

Historic Resources Inventory: No

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

Recommended Action: Staff recommends that the Planning Commission approve AP/UP 23-0033, subject to the findings, conditions of approval, and a Class 1 CEQA categorical exemption.

Reference: Garrett McCown, Assistant Planner

Staff report received from Mr. Sidor, Senior Contract Planner.
Applicant, Steve Olson, provided project comments.
No public comment was received.

Action: On a motion by Commissioner Sawyer and seconded by Commissioner Kubica, the Commission voted to approve the project as presented subject to the findings, conditions of approval, and a Class 1 CEQA categorical exemption.

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davison, Fredrickson, Kubica, Nodzenski. And Sawyer.
NOES: None.
ABSENT: None.

- C. Housing Element and General Plan Updates

From: Anastacia Wyatt

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive written and oral progress reports on the Housing Element and General Plan Updates.

Reference: Anastacia Wyatt, Community Development Director

Public Comment was received from Janes Haines, Inge Lorentzen Daumer, Lisa Ciani and Tony Ciani.

Action: None.

- D. Coastal Development Permit No. 22-0318, multiple locations in the Coastal Zone (including 214 Asilomar Blvd/APN 007-041-004), Pacific Grove

From: Joseph Sidor, Contract Planner

Zoning District/General Plan Designation: O, R-1-B-4, and unclassified / Low Density Residential 1.0 du/ac, Open Space, and undesignated

Coastal Zone: Yes

Historic Resources Inventory: N/A

CEQA: Initial Study, Negative Declaration

Recommended Action: Staff recommends the Planning Commission adopt a Negative Declaration pursuant to CEQA Guidelines Section 15074, and approve the Coastal Development Permit (CDP 23-0318), subject to the findings and conditions of approval.

Reference: Joseph Sidor, Contract Planner

Staff report received from Mr. Sidor, Senior Contract Planner.

Mr. Gho, Director of Public Works, provided project comments.

Public Comment was received by Tony Ciani and Lisa Ciani.

Action: On a motion by Commissioner Fredrickson and seconded by Commissioner Nodzenski, the Planning Commission voted to adopt a Negative Declaration pursuant to CEQA Guidelines Section 15074, and approve the Coastal Development Permit (CDP 23-0318), subject to the findings and conditions of approval.

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davison, Fredrickson, Kubica, and Nodzenski.

NOES: Commissioner Sawyer.

ABSENT: None.

- E. Coastal Development Permit No. 23-0171 Temporary Special Event in the Coastal Zone (Pints on the Peninsula)

From: Aaron Campbell, Associate Planner

Zoning District/General Plan Designation: R-3-M & Unclassified/V-C, Open Space, Undesignated

Coastal Zone: Yes

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15323, Class 23, Normal Operations of Facilities for Public Gatherings

Recommended Action: Staff recommends the Planning Commission approve the Coastal Development Permit (CDP 23-0171), subject to the findings, conditions of approval, and Class 23 Categorical Exemption for Normal Operations of Facilities for Public Gatherings (CEQA Guidelines Section 15323).

Reference: Aaron Campbell, Associate Planner

Staff report presented by Mr. Campbell, Associate Planner.

Applicant testimony provided by Mr. Gho, Director of Public Works, and Veronica Camp, Seltzer Co. Owner.

Public comment received from Lisa Ciani, Inge Lorentzen Daumer, Chris Barlow, and Tony Ciani.

Action: On a motion by Vice Chair Murphy and seconded by Commissioner Sawyer, the Planning Commission voted to deny the project on the grounds that the project does not meet the requirements of the LCP regarding Coastal Access and the LCP goal of providing visitor-serving needs, including low and no cost visitor and recreation facilities.

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

AYES: Chair Lilley, Vice-Chair Murphy, Commissioners Davison, Fredrickson, Kubica, Nodzenski, and Sawyer.
NOES: None.
ABSENT: None.

F. Ordinance on Call-Up Procedures

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Consider and identify changes to the ordinance regarding call-up procedures, as found in Chapter 23.74 PGMC.

Reference: Steven Lilley, Planning Commission Chair

Public comment was received by Lisa Ciani and Tony Ciani

Action: Continued to the next Planning Commission meeting on August 10, 2023

9. **CONTINUED AND ONGOING BUSINESS**

A. Housing Element and General Plan Updates - *This item was moved to the regular agenda as Item 8C.*

From: Anastacia Wyatt

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive written and oral progress reports on the Housing Element and General Plan Updates.

Reference: Anastacia Wyatt, Community Development Director

Public comment was received by Janes Haines, Inge Lorentzen Daumer, and Tony Ciani.

Action: None.

B. Story Pole Subcommittee

From: Claudia Sawyer, Planning Commissioner

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive an oral report on the activities of the Story Pole Subcommittee.

Reference: Claudia Sawyer, Planning Commissioner

Public comment was received by Lisa Ciani and Tony Ciani.

Action: Receive an oral report from Commissioner Sawyer.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

A. Presentation regarding the Coastal Development Permit Determination/Exemption Process

Reference: Joseph Sidor, Contract Planner

Recommended Action: Receive an oral presentation regarding the Coastal Development Permit Determination/Exemption process.

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

Public comment was received by Lisa Ciani and Tony Ciani.

Action: No action taken.

12. **NEXT MEETING - August 8, 2023**

13. **ADJOURNMENT** – By order of the Chair, the meeting was adjourned at 10:34 p.m.



CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, August 10, 2023, 6:00 P.M.

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

1. CALL TO ORDER & ROLL CALL

Chair Lilley called the meeting to order at 6:00 p.m. Associate Planner Campbell conducted roll call with the following Commissioners present in Chamber: Chair Lilley, Vice Chair Murphy, Commissioners Davison, Kubica, Nodzenski, and Sawyer. Commissioner Fredrickson was absent.

2. APPROVAL OF AGENDA

Action: Upon a motion by Commissioner Nodzenski and seconded by Commissioner Murphy, Commission voted to approve the agenda.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison,
Kubica, Nodzenski, and Sawyer.

Noes: None

Absent: Commissioner Fredrickson

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

A. Commission Announcements

Commissioner Sawyer provided an oral report on the activities of the Story Pole Subcommittee. They have met twice since the July 13th Planning Commission Meeting (July 20th & August 3rd), and have finished with the comparisons to other municipalities and completed work on a certification letter. They are now working on completing a story pole content outline, and policies regarding waivers, exceptions, and alternatives. Their next meeting is August 16th.

Commissioner Sawyer announced that she sent a third letter with photos to Public Works Director Gho, City Council, and Mr. Pierik concerning public safety concerns and environmental protection at the Great Tide Pools area. Brian Pierik suggested that if the Commission would like to discuss the Great Tide Pool area, they should include it in a future agenda.

Chair Lilley announced that the Coastal Development Permit (CDP 22-0318) for the multi-location City sewer project has been appealed to the City Council.

B. Staff Announcements

Associate Planner, Aaron Campbell, reported that Chief Madalone will be presenting the new Boards and Commissions Joint Working Group at the next Planning Commission meeting.

C. City Attorney Announcements

No announcements.

4. COUNCIL LIAISON ANNOUNCEMENTS

Council member Coletti reported that at the August 2nd City Council meeting the Council heard the first read of the amended ADU ordinance, selected Rincon as contractor for Phase I of the Focused General Plan Update, and appointed Tori Hannah as City Manager Pro Tempore. Also at that meeting, Rincon announced that the Housing Element administrative draft was submitted to staff for review.

5. GENERAL PUBLIC COMMENT

General public comment was received from Vince Tuminello, Adam Pinterits, Judy Cole, Mike Gibbs, Inge Lorentzen Daumer, Tony Ciani, David O’Neil, Marsha, and Lisa Ciani.

A. Written General Public Comment

Reference: Aaron Campbell, Associate Planner

Recommended Action: Receive correspondence.

Action: Received written public comment. Written public comment can be found in the Planning Commission Binder at the Community Development Department at City Hall.

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

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

A. Information on Community Land Trusts (CLT) - *This item was pulled from the consent agenda at the request of Chair Lilley and Lisa Ciani, and moved to 8B.*

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive information on Community Land Trusts (CLT).

Reference: Steven Lilley, Planning Commission Chair

B. Planning Commission 2023 Workplan

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive the updated Planning Commission 2023 Work Plan.

Reference: Steven Lilley, Planning Commission Chair

7. REPORTS REQUIRING ACTION

- A. Minutes of the June 8, 2023, Planning Commission Regular Meeting – *At the request of Commissioner Sawyer, this item was pulled from the agenda and continued to the September 14th Planning Commission meeting.*

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approve the minutes of the June 8, 2023, Planning Commission Regular Meeting.

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

- B. Minutes of the July 13, 2023 Planning Commission Regular Meeting – *At the request of Commissioner Sawyer, Inge Lorentzen Daumer, and Lisa Ciani, this item was pulled from the agenda and continued to the September 14th Planning Commission meeting.*

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approved the Minutes of the July 13, 2023 Planning Commission Regular Meeting.

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

Public comment was received by Lisa Ciani and Inge Lorentzen Daumer.

Action: On a motion by Commissioner Murphy and Seconded by Commissioner Nodzenski the Commission voted to approve the consent agenda with the following amendments: Pull items 7A & 7B from the Consent Agenda and pull item 6A from the Consent Agenda and move to New Business .

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison, Kubica, Nodzenski, and Sawyer.

Noes: None

Absent: Commissioner Fredrickson

Action: On a motion by Commissioner Sawyer and Seconded by Commissioner Kubicka the Commission voted to continue items 7A and 7B to the September 14th Planning Commission Regular Meeting.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison,

Kubica, Nodzenski, and Sawyer.
Noes: None
Absent: Commissioner Fredrickson

REGULAR AGENDA

8. PUBLIC HEARINGS

A. Draft Cannabis Zoning Ordinance Review

From: Aaron Campbell, Associate Planner

Zoning District/General Plan Designation: Land Use/Health and Safety

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: It is recommended that the Planning Commission (PC) review and provide recommendations to the City Council to address the following three questions in the draft ordinance:

- 1) Which specific zones does the PC recommend retailers be allowed (23.92.060(B)(2))?
- 2) Should any additional separation requirements be recommended for a cannabis business (23.92.070)?
- 3) The proposed ordinance will meet SB 1186. Should additional parameters be considered on delivery-only retailers beyond limitations in Industrial/Commercial zones?

Reference: Aaron Campbell, Associate Planner

Staff report provided by Mr. Campbell.

Comments provided by City Attorney, Mr. Pierik.

Public Comment was received by Vince Tuminello, Mike Gibbs, Inge Lorentzen Daumer, Tony Ciani, Marsha, Melinda DeRouen Mueller.

Action: On a motion by Commissioner Nodzenski and Seconded by Commissioner Sawyer the Commission voted to accept the staff recommendation to allow storefront cannabis retail in the Commercial Downtown (C-D), Light Commercial (C-1), Heavy Commercial (C-2), and Forest Hill Commercial (C-FH) districts.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison,
Kubica, Nodzenski, and Sawyer.
Noes: None
Absent: Commissioner Fredrickson

Action: On a motion by Commissioner Sawyer and Seconded by Vice Chair Murphy, the Commission voted that there be no additional separation requirements (beyond the 1,000 feet from day care centers, youth centers, preschools, or public or private schools) recommended for all cannabis retail businesses.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison,
Kubica, Nodzenski, and Sawyer.
Noes: None
Absent: Commissioner Fredrickson

Action: On a motion by Commissioner Davison and Seconded by Commissioner Nodzenski the Commission voted to allow medicinal cannabis delivery-only retail locations in the Industrial (I), Light Commercial (C-1), Heavy Commercial (C-2), Forest Hills Commercial (C-FH) zones and restrict medicinal cannabis delivery-only retail locations from the Downtown Commercial (C-D) zone.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison,
Kubica, Nodzenski, and Sawyer.
Noes: None
Absent: Commissioner Fredrickson

Action: On a motion by Commissioner Murphy and Seconded by Commissioner Nodzenski the Commission voted to remove the requirement for an applicant to obtain a location prior to obtaining the license and to move any language concerning the exterior of the property from Title 11 to Title 23 where necessary.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison,
Kubica, Nodzenski, and Sawyer.
Noes: None
Absent: Commissioner Fredrickson

9. CONTINUED AND ONGOING BUSINESS

A. Housing Element and General Plan Updates

Reference: Anastacia Wyatt, Community Development Director

Recommended Action: Receive written and oral progress reports on the Housing Element and General Plan Updates.

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

Public comment was received by Adam Pinterits, Jose Torres, Jane Haines, Inge Lorentzen Daumer, Tony Ciani.

10. NEW BUSINESS

A. Information on Community Land Trusts (CLT)

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive information on Community Land Trusts (CLT).

Reference: Steven Lilley, Planning Commission Chair

Public Comment was received by Tony Ciani.

Action: On a motion by Commissioner Murphy and Seconded by Commissioner Nodzenski the Commission voted to continue item 6A to coincide with the review of the Draft Housing Element.

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

Ayes: Chair Lilley, Vice Chair Murphy, Commissioners Davison, Kubica, Nodzenski, and Sawyer.

Noes: None

Absent: Commissioner Fredrickson

11. **PRESENTATIONS**
12. **NEXT MEETING - September 14, 2023**
13. **ADJOURNMENT** – By order of the Chair Lilley, the meeting was adjourned at 10:27p.m.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Garrett McCown, Assistant Planner & RFP Coordinator
MEETING DATE: December 6, 2023
SUBJECT: Historic Resources Committee Meeting Minutes: August 23, September 27, October 25, 2023
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the minutes.

Attachments

Approved HRC Minutes 08-23-23
Approved HRC Minutes 09-27-23
Approved HRC Minutes 10-25-23



NOTICE OF MEETING

CITY OF PACIFIC GROVE

HISTORIC RESOURCES COMMITTEE MEETING MINUTES

Wednesday, August 23, 2023, 3:00 P.M.

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

1. **CALL TO ORDER & ROLL CALL**

Chair Anton called the meeting to order at 3:00pm. Assistant Planner McCown conducted roll call with the following members present in the Chamber: Chair Anton, Vice Chair Steres, committee members Grannis, Greening, and Bicket. Member Kleiss was absent and one vacancy.

2. **APPROVAL OF AGENDA**

Chair Anton moved item 7B to 8C and moved the other items in 8 down one respectively.

ACTION: Upon motion by Member Grannis and seconded by Member Bicket, the committee voted to approve the agenda.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Member Kleiss.

VACANCY: 1

3. **COMMITTEE AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
None

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Mayor Peake delivered the following announcements:

Approved a proposal for Rincon to work on a focused General Plan Update.

Tori Hannah was appointed City Manager Pro Tem.

Upcoming Council topics: parklets, cannabis shop, housing element update, update on the capital improvement programs.

City manager recruiting is ongoing.

5. **GENERAL PUBLIC COMMENT**
General public comment received from:
Vince Tuminello
Mike Gibbs
Lisa Ciani
Inge Lorentzen Daumer

- A. Written General Public Comment

CONSENT AGENDA

ACTION: Upon motion by member Bicket and seconded by member Greening, the committee voted to approve the consent agenda as modified.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Kleiss.

VACANCY: 1

6. **REPORTS FOR INFORMATION ONLY**
None

7. **REPORTS REQUIRING ACTION**

- A. Minutes of the July 26, 2023 Historic Resources Committee Regular Meeting.
Reference: Garrett McCown, Assistant Planner
Recommended Action: Approve the Minutes of the July 26, 2023 Historic Resources Committee Meeting.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Review and approve the proposal from Page & Turnbull
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A

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

Recommended Action: Review and Approve the proposal from Page & Turnbull in an amount not to exceed \$9,000.00 plus reimbursable expenses not to exceed \$1,000.

Reference: Anastacia Wyatt, Community Development Director

Chair Anton pulled item 7B and moved it to Regular agenda 8C.

Anastacia Wyatt presented the staff report.

Public comment received from:

Lisa Ciani

Inge Lorentzen Daumer

ACTION: Upon motion by member Bicket and seconded by member Greening, the committee voted to approve the Page & Turnbull proposal as well as the addition of forming a sub-committee to meet with Page & Turnbull.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Member Kleiss.

VACANCY: 1

ACTION: Upon motion by member Bicket and seconded by member Grannis, the committee voted to appoint Chair Anton and Member Bicket to be on the sub-committee for the Page & Turnbull project.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Member Kleiss.

VACANCY: 1

- C. Initial Historic Screening (IHS) 23-0205 for 1113 Piedmont Avenue (APN 007-585-009).

Zoning District/General Plan Designation: R-1/ Medium Density Residential (9.7 du/ac)

Coastal Zone: No

Historic Resources Inventory: No

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

Recommended Action: Staff recommends that the Historic Resources Committee find the property known as 1113 Piedmont Avenue not eligible for the Historic Resources Inventory.

Reference: Garrett McCown, Assistant Planner

REGULAR AGENDA

8. PUBLIC HEARINGS

- A. Architectural Permit (AP) & Coastal Development Permit (CDP) 22-0264, 111 10th St (APN 006-218-001)

Zoning District/General Plan Designation: R-3-PGR

Coastal Zone: Yes

Historic Resources Inventory: Yes

CEQA: Categorical Exemption, CEQA Guidelines 15331, Historical Resources Restoration/Rehabilitation

Recommended Action: Recommend approval of the proposed Architectural Permit (AP 22-0264), subject to the findings, conditions of approval, and CEQA Class 1 and Class 31 categorical exemptions for existing facilities and historical restoration/rehabilitation, respectively.

Reference: Aaron Campbell, Associate Planner

Community Development Department Associate Planner Aaron Campbell presented staff report.

Applicant Claudio Ortiz (Architect) provided 10 minutes to present to HRC.

Public comment received from:

Claudio Oritz (Architect)

Tyler Rizway

Donna Tuma

Crystal Bianchi

Lisa Ciani

Inge Lorentzen Daumer

Tony Ciani

Charles Huff

Upon motion by member Grannis and seconded by member Greening, the committee voted to continue item 8a to a date uncertain.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Kleiss

VACANCY: 1

B. Boards, Committees, and Commissions Joint Working Group

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Recommend one Committee member to voluntarily join the new Boards, Committees, and Commissions Joint Working Group.

Reference: Garrett McCown, Assistant Planner

Police of Chief, Cathy Madalone presented report.

Public comment received from:

Inge Lorentzen Daumer

Upon motion by member Grannis and seconded by member Greening, the committee voted to appoint Jill Kleiss as the Historic Resources Committee representative for the Boards, Committees, and Commissions Joint Working Group.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Kleiss

VACANCY: 1

C. Deletion of 718 Grove Street (APN 006-143-015) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

Not enough members for a Quorum; Member Greening and Member Grannis recused.

ACTION: Upon motion by Chair Anton and seconded by member Bicket, the committee voted to continue 718 Grove Street, 184 Pacific Avenue, and 172

Avenue to a date uncertain.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, and Greening.

NOES: None.

ABSENT: Kleiss

VACANCY: 1

- D. Deletion of 128 Caledonia Street (APN 006-145-009) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

Community Development Department Assistant Planner Garrett McCown presented staff report.

Public comment received from:

John Larry Soars (Owner)

ACTION: Upon motion by member Greening and seconded by Vice Chair Steres, the committee voted to delete the property at 128 Caledonia Street from the HRI.

Motion carried 4-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, and Bicket.

NOES: None.

ABSENT: Kleiss

RECUSED: Greening

VACANCY: 1

- E. Deletion of 112 Caledonia Street (APN 006-145-005) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

Garrett McCown presented the staff report.

Public comment received from:

Nancy Schiffer

Goldman Smith

Lisa Ciani

Inge Lorentzen Daumer

ACTION: Upon motion by member Bicket and seconded by Vice Chair Steres, the committee voted to continue to the next meeting (09.27.2023).

Motion carried 4-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, and Bicket.

NOES: None.

ABSENT: Kleiss

RECUSED: Greening

VACANCY: 1

- F. Deletion of 184 Pacific Avenue (APN 006-142-036) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: No

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

Not enough members for a Quorum; Member Greening and Member Grannis recused.

ACTION: Upon motion by Chair Anton and seconded by member Bicket, the committee voted to continue 718 Grove Street, 184 Pacific Avenue, and 172 Pacific Avenue to a date uncertain.

Motion carried 5-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, and Bicket.

NOES: None.

ABSENT: Kleiss

VACANCY: 1

- G. Deletion of 172 Pacific Avenue (APN 006-142-034) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: No

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

Not enough members for a Quorum; Member Greening and Member Grannis recused.

ACTION: Upon motion by Chair Anton and seconded by member Bicket, the committee voted to continue 718 Grove Street, 184 Pacific Avenue, and 172 Pacific Avenue to a date uncertain.

Motion carried 5-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, and Bicket.

NOES: None.

ABSENT: Kleiss

VACANCY: 1

9. **CONTINUED AND ONGOING BUSINESS**
None

10. **NEW BUSINESS**
None

11. **PRESENTATIONS**
None

12. **NEXT MEETING - September 27, 2023**

13. **ADJOURNMENT**

4:55 pm



NOTICE OF MEETING

CITY OF PACIFIC GROVE

HISTORIC RESOURCES COMMITTEE MEETING MINUTES

Wednesday, September 27, 2023, 3:00 P.M.

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

THIS MEETING WAS HELD IN PERSON AND VIRTUALLY (HYBRID).

1. **CALL TO ORDER & ROLL CALL**

Chair Anton called the meeting to order at 3:00pm. Associate Planner Campbell conducted roll call with the following members present in the Chamber: Chair Anton, , committee members Grannis, Greening, Bicket and Kleiss Vice Chair Steres was absent and one vacancy.

2. **APPROVAL OF AGENDA**

Chair Anton moved item 7A to 8K..

ACTION: Upon motion by Member Grannis and seconded by Member Greening, the committee voted to approve the agenda.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Committee members Grannis, Kleiss, Bicket, and Greening.

NOES: None.

ABSENT: Vice Chair Steres

VACANCY: 1

Vice Chair Steres arrived at 3:05

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

None

4. **COUNCIL LIAISON ANNOUNCEMENTS**

None

5. **GENERAL PUBLIC COMMENT**

General public comment received from:

Vince Tuminello

Lisa Ciani

Inge Lorentzen Daumer

A. General Correspondence

Reference: Garrett McCown, Assistant Planner

Recommended Action: Receive correspondence.

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

CONSENT AGENDA

ACTION: Upon motion by member Bicket and seconded by member Vice Chair Steres, the committee voted to approve the consent agenda as modified.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Bicket, Kleiss and Greening.

NOES: None.

ABSENT: None.

VACANCY: 1

6. **REPORTS FOR INFORMATION ONLY**

None

7. **REPORTS REQUIRING ACTION**

A. Minutes of the August 23, 2023 Historic Resources Committee Regular Meeting.

Reference: Garrett McCown, Assistant Planner

Recommended Action: Approve the Minutes of the August 23, 2023 Historic Resources Committee Meeting.

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

- B. Initial Historic Screening (IHS) 23-0224 for 243 17-Mile Drive (APN 006-349-009). **Zoning District/General Plan Designation:** R-1-H/ Medium Density (12.1 du/ac) **Coastal Zone:** No
Historic Resources Inventory: No

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

Recommended Action: Staff recommends that the Historic Resources Committee find the property known as 243 17-Mile Drive, not eligible for the Historic Resources Inventory.

Reference: Garrett McCown, Assistant Planner

REGULAR AGENDA

8. PUBLIC HEARINGS

- A. Architectural Permit (AP) 23-0097, 143 8th Street (APN 006-204-019).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: No

Historic Resources Inventory: Yes

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

Recommended Action: Staff recommends the Historic Resources Committee (HRC) approve AP 23-0097 subject to the findings, conditions of approval, and Section 15301, Class 1 and Section 15331, Class 31 categorical exemptions for existing facilities and historical restoration/rehabilitation, respectively.

Reference: Garrett McCown, Assistant Planner

Associate Planner, Aaron Campbell presented the staff report.

Paul Simpson, Architect for the project presented the project.

Public comment received from:

Lisa Ciani

Inge Lorentzen Daumer

ACTION: Upon motion by Vice Chair Steres and seconded by member Greening, to approve the project as submitted with a condition to protect the neighbor’s view.

Motion failed 3-3-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee member Greening.

NOES: Members Kleiss, Bicket and Grannis.

ABSENT: None

VACANCY: 1

ACTION: Upon motion by member Bicket and seconded by Vice Chair Steres, to continue the project to a date uncertain.

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

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Kleiss, Bicket,

and Greening.

NOES: None.

ABSENT: None

VACANCY: 1

- B. Architectural Permit (AP) & Coastal Development Permit (CDP) 22-0264, 111 10th St (APN 006-218-001)

Zoning District/General Plan Designation: R-3-PGR

Coastal Zone: Yes

Historic Resources Inventory: Yes

CEQA: Categorical Exemption, CEQA Guidelines 15331, Historical Resources Restoration/Rehabilitation

Recommended Action: Recommend approval of the proposed Architectural Permit (AP 22-0264), subject to the findings, conditions of approval, and CEQA Class 1 and Class 31 categorical exemptions for existing facilities and historical restoration/rehabilitation, respectively.

Reference: Aaron Campbell, Associate Planner

Associate Planner, Aaron Campbell presented the staff report.

Claudio Ortiz, Architect for the project presented the project.

Public comment received from:

Lisa Ciani

Inge Lorentzen Daumer

Dale Ellis

ACTION: Upon motion by member Kleiss and seconded by Vice chair Steres, to recommend the Planning Commission deny the project as presented

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

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Kleiss, Bicket, and Greening.

NOES: None.

ABSENT: none

VACANCY: 1

- C. Deletion of 112 Caledonia Street (APN 006-145-005) from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the property from the HRI due to loss of historic integrity.
Reference: Garrett McCown, Assistant Planner
- D. Deletion of 718 Grove Street (APN 006-143-015) from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the property from the HRI due to loss of historic integrity.
Reference: Garrett McCown, Assistant Planner
- E. Deletion of 184 Pacific Avenue (APN 006-142-036) from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: No
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the property from the HRI due to loss of historic integrity.
Reference: Garrett McCown, Assistant Planner
- F. Deletion of 172 Pacific Avenue (APN 006-142-034) from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: No
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the property from the HRI due to loss of historic integrity.
Reference: Garrett McCown, Assistant Planner
- G. Deletion of 111 Grand Avenue from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the subject property from the HRI.
Reference: Garrett McCown, Assistant Planner

H. Deletion of 115 Grand Avenue from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the subject property from the HRI.
Reference: Garrett McCown, Assistant Planner

I. Deletion of 118 Grand Avenue from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the subject property from the HRI.
Reference: Garrett McCown, Assistant Planner

J. Deletion of 122 Grand Avenue from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the subject property from the HRI.
Reference: Garrett McCown, Assistant Planner

ACTION: Upon motion by Chair Anton and seconded by member Bicket, to continue the Deletions to the October 25, 2023 HRC meeting.

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

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Kleiss, Bicket, and Greening.

NOES: None.

ABSENT: none

VACANCY: 1

9. **CONTINUED AND ONGOING BUSINESS**

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING - October 25, 2023**

13. **ADJOURNMENT: 5:05**



NOTICE OF MEETING

CITY OF PACIFIC GROVE

HISTORIC RESOURCES COMMITTEE

MEETING MINUTES

Wednesday, October 25, 2023, 3:00 P.M.

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

1. **CALL TO ORDER & ROLL CALL**
Chair Anton called the meeting to order at 3:00pm. Assistant Planner McCown conducted roll call with the following members present in the Chamber: Chair Anton, committee members Grannis, Greening, Kleiss, and Vice Chair Steres. Member Bicket was absent and one vacancy.

2. **APPROVAL OF AGENDA**
ACTION: Upon motion by Member Grannis and seconded by Vice Chair Steres, the committee voted to approve the agenda.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Committee members Steres, Grannis, Kleiss, and Greening

NOES: None

ABSENT: Bicket

VACANCY: 1

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

Staff introduced the new Interim Community Development Director, Lew Bauman.

Member Kleiss announced her resignation from the Historic Resources Committee.

November HRC Regular meeting will be cancelled and a Special Meeting on Wednesday, November 15, 2023, at 1:00pm-3:00pm will be held in the City Hall Chamber.

December HRC Regular meeting will be cancelled and a Special Meeting on Wednesday, December 20, 2023, at 1:00pm-3:00pm will be held in the City Hall Chamber.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Mayor Peake had the following announcements:

Directed staff to transmit the draft Housing Element to the states Housing and Community Development (HCD) Department for review.

Council will be discussing and possibly passing a cannabis ordinance.

Council will be introducing a new Interim City Manager next council meeting.

Housing Element available on City website for viewing.

GENERAL PUBLIC COMMENT

- A. Written General Public Comment

CONSENT AGENDA

ACTION: Upon motion by Vice Chair Steres and seconded by member Greening, the committee voted to approve the consent agenda.

Motion carried 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee members Grannis, Kleiss and Greening.

NOES: None.

ABSENT: Bicket

VACANCY: 1

5. REPORTS FOR INFORMATION ONLY
None

6. REPORTS REQUIRING ACTION

A. Minutes of the August 23, 2023 Historic Resources Committee Regular Meeting

Reference: Garrett McCown, Assistant Planner

Recommended Action: Approve the Minutes of the August 23, 2023 Historic Resources Committee Meeting.

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

B. Minutes of the September 27, 2023 Historic Resources Committee Regular Meeting

Reference: Garrett McCown, Assistant Planner

Recommended Action: Approve the Minutes of the September 27, 2023 Historic Resources Committee Meeting.

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

C. Initial Historic Screening (IHS) 23-0270 for 909 Weldon Grove Place (APN 006-621-036). **Zoning District/General Plan Designation:** R-1/ Medium Density Residential (7.3 du/ac)

Coastal Zone: No

Historic Resources Inventory: No

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

Recommended Action: Staff recommends that the Historic Resources Committee find the property known as 909 Weldon Grove Place, not eligible for the Historic Resources Inventory.

Reference: Garrett McCown, Assistant Planner

REGULAR AGENDA

7. PUBLIC HEARINGS

- A. Architectural Permit (AP) 23-0097, 143 8th Street (APN 006-204-019).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: No
Historic Resources Inventory: Yes
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities
Recommended Action: Staff recommends the Historic Resources Committee (HRC) approve AP 23-0097 subject to the findings, conditions of approval, and Section 15301, Class 1 and Section 15331, Class 31 categorical exemptions for existing facilities and historical restoration/rehabilitation, respectively.
Reference: Garrett McCown, Assistant Planner

Assistant Planner, Garrett McCown presented the staff report.

Jeannie Byrne, Architect for the project.

Paul Simpson, Architect for the project.

Public comment received from:

Donna Phillips (Owner)

Tony Ciani

Inge Lorentzen Daumer

ACTION: Upon motion by Vice Chair Steres and seconded by member Greening, to approve the project as submitted.

Motion Passed 5-0-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee member Greening, Kleiss, and Grannis.

NOES:

ABSENT: Bicket

VACANCY: 1

- B. Deletion of 112 Caledonia Street (APN 006-145-005) from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

“Rule of Necessity” Randomly choose member Grannis to remain with the committee to obtain a quorum.

Member Greening recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Goldwin Smith

Inge Lorentzen Daumer

Lisa Ciani

Tony Ciani

ACTION: Upon motion by Member Kleiss and seconded by Vice Chair Steres, that 112 Caledonia remain on Historic Resources Inventory.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee member Kleiss and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Greening

VACANCY: 1

- C. Deletion of 718 Grove Street (APN 006-143-015) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

“Rule of Necessity” Randomly choose member Grannis to remain with the committee to obtain a quorum.

Member Greening recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Tony Ciani

Lisa Ciani
Inge Lorentzen Daumer

ACTION: Upon motion by member Kleiss and seconded by member Grannis, to keep 718 Grove Street on the Historic Resources Inventory.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee member Kleiss and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Greening

VACANCY: 1

- D. Deletion of 184 Pacific Avenue (APN 006-142-036) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: No

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

"Rule of Necessity" Randomly choose member Grannis to remain with the committee to obtain a quorum.

Member Greening recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Lisa Ciani

Inge Lorentzen Daumer

Tony Ciani

ACTION: Upon motion by Vice Chair Steres and seconded by member Grannis, to remove 184 Pacific Street from the Historic Resources Inventory.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee member Kleiss and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Greening

VACANCY: 1

- E. Deletion of 172 Pacific Avenue (APN 006-142-034) from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: No

Historic Resources Inventory: Yes

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

Recommended Action: Remove the property from the HRI due to loss of historic integrity.

Reference: Garrett McCown, Assistant Planner

“Rule of Necessity” Randomly choose member Grannis to remain with the committee to obtain a quorum.

Member Greening recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Tony Ciani

ACTION: Upon motion by Vice Chair Steres and seconded by member Grannis, to remove 172 Pacific Street from the Historic Resources Inventory.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Chair Anton, Vice Chair Steres, Committee member Kleiss and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Greening

VACANCY: 1

- F. Deletion of 111 Grand Avenue from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the subject property from the HRI.

Reference: Garrett McCown, Assistant Planner

“Rule of Necessity” Randomly choose member Grannis to remain with the committee to obtain a quorum.

Member Greening returned to the Committee from being recused.

Chair Anton recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Lisa Ciani

Inge Lorentzen Daumer

Tony Ciani

ACTION: Upon motion by member Kleiss and seconded by member Grannis, to keep 111 Grand Ave. on the Historic Resources Inventory.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Vice Chair Steres, Committee member Kleiss, Greening and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Chair Anton

VACANCY: 1

- G. Deletion of 115 Grand Avenue from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Remove the subject property from the HRI.
Reference: Garrett McCown, Assistant Planner

"Rule of Necessity" Randomly choose member Grannis to remain with the committee to obtain a quorum.

Chair Anton recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Jeannie Anton

Tony Ciani

Lisa Ciani

ACTION: Upon motion by member Grannis and seconded by member Greening, to keep 115 Grand Ave. on the Historic Resources Inventory.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Vice Chair Steres, Committee member Kleiss, Greening and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Chair Anton

VACANCY: 1

H. Deletion of 118 Grand Avenue from the City's Historic Resources Inventory (HRI).

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the subject property from the HRI.

Reference: Garrett McCown, Assistant Planner]

"Rule of Necessity" Randomly choose member Grannis to remain with the committee to obtain a quorum.

Chair Anton recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Tony Ciani

Lisa Ciani

Inge Lorentzen Daumer

ACTION: Upon motion by member Kleiss and seconded by Vice Chair Steres, to keep 118 Grand Ave. on the Historic Resources Inventory.

Motion Failed 3-1-1-1-1, by the following roll call vote:

AYES: Vice Chair Steres, Committee member Kleiss and Greening

NOES: Grannis

ABSENT: Bicket

RECUSED: Chair Anton

VACANCY: 1

ACTION: Upon motion by member Kleiss and seconded by Vice Chair Steres, to continue 118 Grand Avenue to a date uncertain.

Motion Passes 4-0-1-1-1, by the following roll call vote:

AYES: Vice Chair Steres, Committee member Kleiss and Greening

NOES:

ABSENT: Bicket

RECUSED: Chair Anton

VACANCY: 1

- I. Deletion of 122 Grand Avenue from the City's Historic Resources Inventory (HRI).
Zoning District/General Plan Designation: R-3-PGR/High Density Residential 19.8 DU/ac

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Remove the subject property from the HRI.

Reference: Garrett McCown, Assistant Planner

"Rule of Necessity" Randomly choose member Grannis to remain with the committee to obtain a quorum.

Chair Anton recused.

Assistant Planner, Garrett McCown presented the staff report.

Public comment received from:

Lisa Ciani

Tony Ciani

Inge Lorentzen Daumer

ACTION: Upon motion by member Grannis and seconded by Vice Chair Steres, to remove 122 Grand Ave. from the HRI and consider it for the Neighborhood Character List.

Motion Passed 4-0-1-1-1, by the following roll call vote:

AYES: Vice Chair Steres, Committee member Kleiss, Greening and Grannis.

NOES:

ABSENT: Bicket

RECUSED: Chair Anton

VACANCY: 1

8. **CONTINUED AND ONGOING BUSINESS**

None

9. **NEW BUSINESS**

None

10. **PRESENTATIONS**

None

11. **NEXT MEETING - Special Meeting on November 15, 2023 at 1:00pm**

12. **ADJOURNMENT**
4:47pm

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: Leticia Livian, Human Resources Director
MEETING DATE: December 6, 2023
SUBJECT: Ordinance to Amend the Salary Schedule (Minimum Wage)
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an ordinance to amend the salary classification schedule modifying salary ranges for Cashier, Intern, Lighthouse Docent Coordinator, Recreation Assistant I, Recreation Assistant II and Recreation Supervisor; and
4. Direct a summary of a proposed ordinance be published as approved by the City Attorney.

DISCUSSION

The City salary classification schedule identifies the job classifications approved by Council (e.g., Office Assistant) and the hourly rates of pay for each classification at each step authorized by the Personnel Rules. Pursuant to Charter Article 25 and Pacific Grove Municipal Code (PGMC) Section 4.20.280, approval and amendment to the classification schedule must be adopted by the Council.

Increase to State Minimum Wage

Staff is proposing changes to the salary schedule to comply with an increase to California State Minimum Wage. California's minimum wage will increase from \$15.50 to \$16 per hour for all employers on January 1, 2024.

The salary ranges in the following classifications need to be adjusted to meet the State's minimum wage requirements:

- Cashier
- Intern
- Lighthouse Docent Coordinator
- Recreation Assistant I

The recommended approach is to increase the range of the entire classification, which preserves the City's ability to hire personnel in the future at the lowest step, while complying with the new minimum wage law.

Additionally, to avoid salary compaction issues within the effected classification series: Recreation

Assistant I, and Recreation Assistant II, it is also recommended that Recreation Assistant II salary range be adjusted accordingly. Salary compaction is the situation that occurs when there is only a small difference in pay between classifications regardless of their skills, experience, and responsibility levels.

Proposed New Salary Ranges:

Classifications	Step 1A	Step 2B	Step 3C	Step 4D	Step 5E
Cashier	16.00	16.80	17.64	18.52	19.45
Intern	16.00	16.80	17.64	18.52	19.45
Lighthouse Docent Coordinator	16.00	16.80	17.64	18.52	19.45
Recreation Assistant I	16.00	16.80	17.64	18.52	19.45
Recreation Assistant II	19.62	20.60	21.63	22.71	23.85

The requested change to the salary classification schedule will only impact the classifications listed in this agenda report. All other classification hourly salary ranges will remain the same. To view the entire salary schedule, please refer to the City's website,

<http://www.cityofpacificgrove.org/about-city/human-resources/salaries-benefits-and-mous>.

OPTIONS

Provide alternative direction to staff.

FINANCIAL IMPACT:

There is minimal impact to the budget since the lowest hourly rate on the City's salary schedule is \$15.50 for positions recommended for a salary change in this report.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Ordinance

ORDINANCE NO. 23-0XX

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING THE SALARY CLASSIFICATION SCHEDULE TO COMPLY WITH CALIFORNIA MINIMUM WAGE

Findings

1. The State of California has increased minimum wage to \$16.00 per hour effective January 1, 2024; and
2. Cashier, Intern, Lighthouse Docent Coordinator, and Recreation Assistant I, falls below the \$16.00 per hour minimum requirement at the first step; and
3. Amending the salary schedule will meet the State requirements; and
4. Amending the salary schedule by adjusting the range preserves the City's full flexibility for future hiring decisions and observes the intent of the state requirements; and
5. Amending the salary schedule for Recreation II in the classification job family avoids salary compaction issues; and
6. Amending the salary schedule will allow for the new salary rates to take effect; and
7. Amendment to the salary schedule classification plan must be adopted by the City Council pursuant to Pacific Grove Municipal Code (PGMC) Section 4.20.280; and
8. 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. Enactment of this ordinance action does not constitute a "project" as defined by 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 pursuant Section 15378.

Ordinance

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

SECTION 1. The foregoing findings of the City Council are incorporated into this Ordinance as if set forth in full.

SECTION 2. The position classification plan approved and adopted by the City Council pursuant to PGMC § 4.20.280 is amended for Cashier, Intern, Lighthouse Docent Coordinator, Recreation Assistant I, and Recreation Assistant II classifications with the following salary schedule:

Classifications	Step 1A	Step 2B	Step 3C	Step 4C	Step 5E
Cashier	16.00	16.80	17.64	18.52	19.45
Intern	16.00	16.80	17.64	18.52	19.45
Lighthouse Docent Coordinator	16.00	16.80	17.64	18.52	19.45
Recreation Assistant I	16.00	16.80	17.64	18.52	19.45
Recreation Assistant II	19.62	20.60	21.63	22.71	23.85

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. Upon approval at second reading, this ordinance shall be given an effective date of 12/24/2023.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this __ day of December 2023, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN PIERNIK, City Attorney



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Tori Hannah, Administrative Services Director/City Manager Pro Tempore
MEETING DATE: December 6, 2023
SUBJECT: Market and Economic Evaluation Report for the Pacific Grove Golf Links
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Receive the Market and Economic Evaluation Report for the Pacific Grove Golf Links from Pro Forma Advisors, LLC
2. Alternatively, discuss and take other action related to this item

DISCUSSION

On February 15, 2023, Council Subcommittee Members, Mayor Bill Peake and Council Member Coletti brought forward an item to retain a consultant to perform an analysis on the Pacific Grove Golf Links. This was in relation to potential real property negotiations with the Golf Course lessee, CourseCo., and sustainability discussions regarding the Local Water Project. Additional details can be found in the [February 15, 2023 Agenda Report](#).

As a result of the recommendation, the City Manager received direction to enter into an agreement with Pro Forma Advisors, LLC to prepare a Market and Economic Evaluation Report. The requested scope of work included the following components:

- Prepare a description of the Pacific Grove Golf Links (PGGL) facilities and a historical operating review.
- Provide an overview of the golf market, including national and regional demographics and trends.
- Complete a comparative performance review of regional golf courses, including rounds of play, average revenues per round, revenues, operational costs, and maintenance.
- Describe and compare various operating models employed by municipal golf courses in California, including PGGL.
- Review the economics of alternative operating models related to PGGL.

Gene Kerkorian from Pro Forma Advisors, LLC conducted a site visit; and met with City staff, CourseCo. representatives, and the Golf Course restaurant lessee to gather information for the report. The resulting Market and Economic Evaluation is attached for reference. Mr. Kerkorian will be presenting an overview of the report at the Council Meeting.

OPTIONS

- Receive the report
- Alternatively, discuss and take other actions related to this item

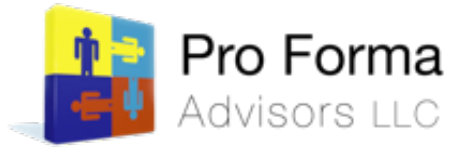
FINANCIAL IMPACT:

There is no financial impact with receiving this report.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Market and Economic Evaluation Pacific Grove Golf Links



Market & Economic Evaluation

Pacific Grove Golf Links

Pacific Grove, California

Prepared for: **City of Pacific Grove**
Prepared by: **Pro Forma Advisors, LLC**

September 2023
PFAID: 11-630

Version: 1.1

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General Limiting Conditions

Certain information included in this report contains forward-looking estimates, projections and/or statements. Pro Forma Advisors LLC has based these projections, estimates and/or statements on expected future events. These forward-looking items include statements that reflect our existing beliefs and knowledge regarding the operating environment, existing trends, existing plans, objectives, goals, expectations, anticipations, results of operations, future performance and business plans.

Further, statements that include the words "may," "could," "should," "would," "believe," "expect," "anticipate," "estimate," "intend," "plan," "project," or other words or expressions of similar meaning have been utilized. These statements reflect our judgment on the date they are made and we undertake no duty to update such statements in the future.

No warranty or representation is made by Pro Forma Advisors that any of the projected values or results contained in this study will actually be achieved.

Although we believe that the expectations in these reports are reasonable, any or all of the estimates or projections in this report may prove to be incorrect. To the extent possible, we have attempted to verify and confirm estimates and assumptions used in this analysis. However, some assumptions inevitably will not materialize as a result of inaccurate assumptions or as a consequence of known or unknown risks and uncertainties and unanticipated events and circumstances, which may occur. Consequently, actual results achieved during the period covered by our analysis will vary from our estimates and the variations may be material. As such, Pro Forma Advisors accepts no liability in relation to the estimates provided herein.

In the production of this report, Pro Forma Advisors has served solely in the capacity of consultant and Pro Forma Advisors has not rendered any "expert" opinions and does not hold itself out as an "expert" (as the term "+" is defined in Section 11 of the Securities Act of 1933).

This report is not to be used in conjunction with any public or private offering of securities, and may not be relied upon without the express written consent of Pro Forma Advisors.

This study is qualified in its entirety by, and should be considered in light of, these limitations, conditions, and considerations.

I. Introduction and Background

Background

The City of Pacific Grove's municipal golf course, Pacific Grove Golf Links (PGGL), has served the community of Pacific Grove and Monterey Peninsula since 1932. PGGL provides the Pacific Grove community, residents and visitors alike, with a high quality, relatively affordable recreation experience on a well-designed and maintained golf course facility. The golf course is an 18-hole regulation length layout offering two distinct nine hole routings. The front nine, developed in 1932, winds through the inland forested areas of Pacific Grove, while the back nine, developed in 1960, sits on a spectacular ocean front site reminiscent of wind-swept dunes similar to those of traditional Scottish golf links.

PGGL was managed, operated, and maintained by the City through an "enterprise" fund until October 2014, when the City elected to lease operation of the municipal golf course to a private sector professional management company (CourseCo Inc.). The golf course food and beverage operation is leased to a separate independent private sector restaurant operator. The golf course lease extends through 2029, with one remaining 5-year option, and the food and beverage lease extends through October 2025, with two 5-year options to extend the lease term.

As a public access facility, the golf course offers a high quality recreation experience for community residents and visitors to the Monterey Peninsula. About one-half of the golf course play is generated by area residents, and one-half attributed to visitors, of which approximately one-half are day visitors mostly residing in the Bay Area, and one-half to overnight visitors to the area. PGGL is competitively priced, and operates at a relatively high utilization level.

Basic Assignment Objectives

Key objectives of the assignment include:

- ▶ Prepare a description of PGGL facilities and historical operating review.
- ▶ Provide an overview of the golf market, including national and regional demographics and trends.
- ▶ Complete a comparative performance review of PGGL relative to selected competitive California golf courses, including rounds of play, average revenue per round, revenues, and operational costs.
- ▶ Describe and compare various operating models employed by municipal golf courses in California.
- ▶ Review the economics of alternative operating models related to PGGL.
- ▶ Estimate the current value of PGGL both encumbered and unencumbered by the existing lease agreement.

Overall Work Process

The overall work process for this assignment has occurred over about a three-month time frame, extending from April through June 2023. The work tasks completed during this study process included the following:

- ▶ Discussions and interviews with City of Pacific Grove staff charged with overseeing the lease agreement, representatives of the current golf course lessee (CourseCo) and The Grill at Point Pinos (Le Creme Hospitality), and management staff at regional public access golf courses.
- ▶ A review of historical operating and financial statements for PGGL.
- ▶ Inspection of the golf course and support facilities.
- ▶ Analysis of current and anticipated future golf course market conditions.
- ▶ A review of future capital improvement requirements at the golf facility.
- ▶ Identification and analysis of the various operating models employed by municipal golf courses.
- ▶ Projections of near- and mid-term operating performance of PGGL.
- ▶ Comparative review of strengths, weaknesses, and economics of prospective operating models for PGGL.
- ▶ Evaluation of the economics related to the various golf course operating models.
- ▶ An assessment of the current golf course asset value.

The City of Pacific Grove contracted with Pro Forma Advisors LLC to compile and analyze data and information contained in this report. Gene Krekorian, a Principal with Pro Forma Advisors, served as the project manager, and conducted the analysis. Mr. Krekorian is well qualified for this effort having undertaken numerous similar assignments for other municipal golf courses throughout California. City of Pacific Grove staff, and representatives of CourseCo, as well as assisted Pro Forma Advisors in compiling data and other information employed in the analysis.

II. Summary of Findings

The following section presents a summary of principal findings related to a market and economic review of the City of Pacific Grove's Pacific Grove Golf Links (PGGL). The analysis examined the market environment in which PGGL operates, the course's market positioning, historical and current performance, future operating options available to the City, and the overall value of the City's asset. Substantiation and documentation of these summary findings are contained in the subsequent sections of the report.

Background

Pacific Grove Golf Links (PGGL) has served as the City's municipal golf course since 1932, when the first nine hole routing through the inland pine forest area opened. The second nine, developed on the coastal dunes, opened in 1960. PGGL is an 18-hole regulation length public access course, operated as an enterprise fund within the City's overall financial structure.

PGGL was operated and maintained by the City through 2014, at which time the City elected to lease the golf course to a private golf course management company (CourseCo) for a 10-year term, with two 5-year options to extend the agreement.

During the period of self-operation, PGGL typically operated at close to breakeven, until 2011 and 2012 when the course recorded losses of \$200,000 to \$400,000 annually, mostly due to rising operating expenses. With the conversion to a facility lease, the City has insulated itself from operating losses with annual fixed rent offsetting the City's obligation for water costs exceeding the annual threshold established in the lease agreement. Over the past several years, improvement in golf course performance has generated overage rent which has exceeded City expenses by \$200,000 to \$300,000 per year. Gross revenue has increased due to a combination of improved operator performance and the beneficial impact of COVID-19 on overall golf participation. It is important to note that the improvement in golf course performance in recent years has not been achieved through substantial reduction in resident access to the course or affordable golf provided to resident golfers through discount programs.

While golf course performance has improved sharply in recent years, the golf course will continue to face a series of challenges going forward. Extremely high, and rising, golf course irrigation water cost is probably the single biggest issue, but the availability and cost of labor, and ongoing capital improvements of an aging facility, will need to be continuously addressed.

It should also be noted that the City has a current liability of \$1.9 million related to the Golf Course Site Lease.

CourseCo Agreement

The City of Pacific Grove and CourseCo Golf Management entered into an agreement in 2014 to lease the golf course maintenance, operations, and management of the PGGL for a period of 10 years, with two 5-year options to extend the term, subject to mutual approval by the parties. One of the 5-year options has already been exercised, extending the current agreement to September 30, 2029, with a second 5-year option

remaining. The food and beverage operations at PGGL are provided under a separate concession agreement with a restaurant operator.

The existing lease agreement appears equitable, and compares favorably with most California public golf course lease agreements negotiated over the past 5 to 10 years. The following elements of the current lease agreement are noted:

Length of Term--The initial fixed term of the agreement is ten years, with two 5-year options. The term of the lease generally is a function of the required level of lessee-funded capital improvements. The greater the private investment in the course, the longer the term required to amortize the improvements, and satisfy the length of term requirements of lenders financing improvements. Many lease agreements involving \$2-\$3 million, or more, in front-end capital improvements have lease terms of 25 to 40 years. CourseCo's initial capital improvement contributions were less than \$200,000. As such, a 10-year minimum term is reasonable and appropriate.

Term Extension Options--There are two 5-year options to extend the length of the term, subject to mutual agreement by both parties. As documented in Amendment #1 of the lease agreement, the first 5-year option was exercised in December 2016, with the City agreeing to extend the term early in the lease in exchange for the lessee bearing golf course irrigation water costs that exceeded the amount specified in the initial lease agreement. Both parties benefited by the terms of the amendment.

Base Rent--The base rent was set at \$300,000 per year, with increases of \$5,000 per year commencing in Year 3 of the agreement. The base rent at the time the lease was initiated appears reasonable given the historical performance of the golf course, savings accruing to the operator related to private labor rates, typical management oversight expenses, the anticipated cost of golf course irrigation water, and the gross revenue threshold used in calculating overage rent.

Upside Revenue Participation--It is important to recognize that a golf course generally is regarded as a fixed cost business--that is, operating expenses do not vary significantly with changes in operating revenue. Most existing golf course lease agreements have a rent structure which calls for the greater of a minimum rent amount versus a percentage of gross revenues. This provision generally favors the lessee to the extent that most of the incremental revenue generated which exceeds budgeted performance is retained by the lessee. By comparison, the PGGL/CourseCo lease agreement provides for the lessor to share significantly in the upside revenue, with 65 percent of revenues exceeding the budgeted threshold accruing to the City. This has allowed the City to share greatly in the outstanding performance of the golf course over the past two years. Most golf facility lease agreements do not have a sharing agreement of this nature such that the operator typically would receive 70 to 80 percent of the upside revenue generated, and the owner (public agency) only 20 to 30 percent.

Irrigation Water Cost Cap--An important provision of the golf course lease agreement addresses golf course irrigation water. The lessee's obligation for reclaimed water currently is capped at \$443,300 per year, with the City responsible for costs above this threshold. Over the 2017-2022 period, the water rate was subject to a 2.0 percent average annual increase. However, over the past year, the cost of the reclaimed water has

escalated sharply such that the City's obligation in the near term will likely be in the range of \$300,000-\$400,000 annually for water above this threshold.

The terms of the agreement reflect the water costs in place at the time the agreement was negotiated. Because of the significant uncertainty regarding future increases in irrigation water rates, the agreement required the lessor to bear most of the risk related to unforeseen increases in costs over which the lessee had limited control. Such protections related to water costs are not unusual in California municipal golf course lease agreements.

Capital Improvements Replacement Reserve--The lease provides for each party to contribute to a reserve fund for future ongoing capital improvements equal to 1.5 percent of "golf" gross revenue. A total contribution equal to 3.0 percent of "golf" gross revenue is generally in-line with the experience at similar courses. Given the likely continuing need for capital improvements, and the length of the contract term, sharing the reserve contribution equally appears to be equitable.

Golf Market Overview

The national and Monterey Peninsula regional golf markets steadily improved between the mid-1980s and 2000. Golf rounds played increased at an average annual rate of 2.0-3.0 percent. This unprecedented growth in golf play during this period was due to a number of factors including:

- ▶ An increase in the number of golfers;
- ▶ The increasing importance of golf-oriented real estate;
- ▶ Expansion of the golf tourism industry;
- ▶ One of the longest economic expansions in the nation's history.

The increase in golf demand and the popularity of golf-related housing development during the 1990s stimulated extraordinary expansion of the national golf course inventory, primarily between 1995 and 2002.

Beginning in about 2001, the first signs of industry problems surfaced, and persisted through 2019. Most individual golf courses experienced a steep decline in utilization and revenue generation, with net operating income declining sharply. New golf course construction virtually ceased while the number of courses closing significantly increased. The impact of market softness was widespread during this period and affected all segments of the market and all geographic areas. Importantly, the industry problems went well beyond cyclical trends, as there appeared to be fundamental shifts in recreational preferences and other underlying factors affecting long-term demand for golf. The golf participation rate, after rising steadily through 2003, fell precipitously from 12.4 percent in 2004 to a 8.0 percent in 2019. The combination of lower rounds and a lower average effective rate substantially adversely impacted revenue at virtually all golf courses, regardless of market positioning.

Then, in early 2020, the emergence of COVID-19 dramatically changed the golf industry. The impact of COVID-19 on market area golf course play levels has been extraordinary. With a major shift in the number of employees working at home rather than in an office, and with golf offering an attractive form of safe outdoor

recreation, golf participation has increased markedly which, in turn, has translated into a large increase in play levels and revenues at both public access and private golf courses.

Golf rounds played in the State of California, as reported by industry analyst Golf Datatech, increased 20-25 percent at public access courses between 2019 and 2022.

Not unlike virtually every golf market in the country, the Monterey Peninsula public golf market has improved significantly over the past three years primarily due to the beneficial impact of COVID-19 on golf participation rates. The COVID-19 impact dissipated slightly in 2022, but play on most courses remains well above pre-pandemic levels. Golf play in 2023 is expected to decline somewhat as well due to an unusually high number of rain days. While it is likely there will be some further dissipation of the COVID-19 impact, golf play at most courses is expected to remain above 2019 levels. At the same time, it is highly unlikely that there will be many, if any, golf course development opportunities in the region due to lack of available land suitable for golf course development and the very high cost of development. Thus, it is anticipated that market area demand will remain stable or improve somewhat, such that the long-term outlook remains reasonably favorable.

Historical PGGL Performance

In the 2010-2013 period, when the City was self-operating PGGL, the course produced 50,000 to 55,000 rounds annually at a relatively low average greens fee below \$30.00 per round. As much as one-half the play was generated by club members and residents at well below posted rates.

Annual play and gross revenue since the golf course was converted from City self-operation to a facility lease agreement with its current operator (CourseCo) is summarized as follows:

Table II-1: Summary of PGGL Historical Play and Gross Revenue							
Year	Rounds	Gross Revenue (\$000)			Revenue per Round		
		Golf*	Other	Total	Golf*	Other	Total
2018	47,332	\$2,324.6	\$527.9	\$2,852.4	\$49.11	\$11.15	\$60.26
2019	48,240	2,414.4	557.3	2,971.7	50.05	11.55	61.60
2020	57,796	2,618.3	338.6	2,956.8	45.30	5.86	51.16
2021	65,593	3,204.6	604.1	3,808.7	48.85	9.21	58.07
2022	62,371	3,464.4	770.7	4,235.1	55.55	12.36	67.90

* Includes greens fees, member dues, discount cards, and golf carts.

While annual play levels under private operation are somewhat higher than during the latter years of City self-operation, the average golf revenue per round is substantially higher. This improvement is attributed primarily to the sharp reduction in discounted/member rounds in favor of full rate play. Again, the impressive improvement in golf course performance has been accomplished while still offering Monterey Peninsula

residents significant discounts ranging from 30 percent to well over 50 percent relative to the standard greens fees charged at the golf course.

The golf course lessee reports gross revenue, but is not required to divulge its operating expenses and net earnings.

Comparative Metrics

Annual gross revenue by department for selected municipal golf courses extending from Ventura County on the south to the San Francisco South Bay on the north for fiscal year 2021-2022 is shown in Table II-2. The revenues relate to golf functions only, and specifically exclude food and beverage operations.

Table II-2: Gross Revenue at Selected California Regional Municipal Golf Courses (FY2021-22) (thousands of dollars)							
		Annual Gross Revenue					
Course	Annual Rounds^{2/}	Greens Fees^{1/}	Cart Fees	Range	Merch	Other	Total
PGGL	62,371	\$2,781.5	\$682.9	\$148.0	\$450.0	\$172.7	\$4,235.1
Salinas Fairways	45,000 ^{3/}	1,106.2	302.9	143.8	113.9	---	1,666.8
DeLaveaga	58,800	2,026.7	499.7	475.0	450.6	305.2	3,757.2
Santa Barbara	75,100	2,372.5	697.4	327.9	330.0	227.0	3,954.9
Los Robles	82,800	2,624.0	796.2	512.5	205.2	122.0	4,259.9
Buenaventura	61,370	1,733.2	476.2	---	87.0	---	2,485.9
Olivas Links	61,990	1,935.0	483.8	253.0	125.7	---	2,914.7
Simi Hills	83,970	2,598.6	919.5	280.2	214.4	54.5	4,067.2
Shoreline	82,200	1,837.6	434.0	599.2	134.3	73.0	3,077.7
Poplar Creek	83,960	2,950.0	670.0	400.0	380.0	50.0	4,450.0
^{1/} Includes passholders and/or annual membership play. ^{2/} Includes paid and complimentary/employee rounds. ^{3/} Estimated play level based on greens fees and membership fees.							

PGGL's performance ranks among the most successful municipal properties surveyed, including those courses in strong more urbanized market areas such as the San Francisco southern peninsula and Los Angeles County northwest suburban markets. On a revenue per round basis, PGGL outperforms all of the surveyed municipal courses in every department with the exception of the golf practice range.

Golf Course Operating Options

There are four basic golf course operating options employed by municipalities.

- ▶ Golf Facility Lease (current model)
- ▶ Management Agreement
- ▶ Self-Operation (City or other public agency)
- ▶ Hybrid: Golf Operations Concessionaire/With City or Contract Maintenance

In addition to these basic options, there are numerous permutations which would create alternative hybrid models. These alternative hybrid models combine some form of self-operation, concession agreements, and/or management/contract agreement. As noted, PGGL is operated under a golf facility lease agreement.

It is important to point out that while there are alternative operating options available to the City, there are six years remaining on the existing lease agreement between the City of Pacific Grove and CourseCo, with one option which, if exercised, would extend the agreement five additional years. As well, transition from the current facility lease format to any of the alternative operational models would entail significant front end capital funding for maintenance equipment (\$1.5 million) and needed golf course capital improvements (\$1.0 million).

The following table provides an overview of the responsibilities for each function in the various models.

Table II-3: Golf Function Responsibility Under Alternative Operating Models				
Model	Course Maintenance	Golf Operations	Food & Beverage	Administration/ Management
Golf Facility Lease (current PGGL model)	Private	Private	Priv/Concession	Private
Management Agreement	Private	Private	Private	Private
Hybrid	City/Private	Priv/Concession	Concession	City/Private
Full Self-Operation	City	City	Concession	City

Golf Facility Lease (current PGGL model)--Under the “golf facility lease” model, the City enters into a mid-to long-term facility lease with a private golf course operator who provides course maintenance, golf operations, and overall facility management. The food and beverage operation may be included or provided by another concessionaire. Typically, the lease model has been utilized when a private entity will be investing significant capital into the facility. Most agreements call for the greater of a minimum rental payment versus a schedule of percentages applied to gross revenues from various departments. The lessee receives 100 percent of the revenue and is obligated to fund required front-end capital improvements, operating expenses, rent, and a capital improvement reserve. While the facility lease model dominated the municipal market between 1970 and 2000, management agreements gained popularity during the first part of the new century.

In recent years, however, many municipalities which had previously employed the management agreement operating format have elected to reemploy the facility lease model.

Management Agreement--Under the “management agreement” model, the municipality enters into a fee-for-service agreement with an outside management company. Under a typical management agreement, the facility owner (City) receives all revenues and is responsible for funding all capital improvements, operating expenses and capital reserves. In addition, the City pays the operator a fee for management of the facility. In effect, the professional operator serves as the City's agent in managing, operating and maintaining the golf facility. Management compensation typically consists of a base fee, plus performance incentives. Management agreements often project the highest net earnings to the City on a pro forma basis, but it is important to note that the owner (City) bears all of the operating and financial risk, as well as much greater legal liability associated with golfer/spectator personal injury or property damage. Moreover, the City is responsible for funding all of the capital needs of the golf course and support facilities.

Self-Operation--Under the self-operation model, the public agency receives all revenues and is responsible for all operating expenses, capital improvements, and capital reserves. While employed relatively frequently in the past, the “self-operation” model, whereby the facility is operated fully by the public agency with a city workforce, is observed infrequently in today's market, and movement away from this model continues given higher public employee labor costs. Pacific Grove employed this model prior to its conversion to a facility lease in 2014.

Hybrid--The “hybrid” model consists of a combination of concession agreements and service contracts. The most common form is structured utilizing a private golf operations concessionaire responsible for all golf operations, with the municipality responsible for golf course maintenance through its parks and recreation department. The food and beverage function is generally provided by a second independent concessionaire. The golf operations and food and beverage concessionaires typically pay the municipality the greater of a fixed rental amount or a percentage of gross revenue.

There are economic and non-economic advantages and disadvantages of the various types of operating structures, and the most appropriate structure generally is influenced by the objectives of the owner (City). Most of the advantages and disadvantage of each approach are summarized in Table II-4.

In general, there are three factors which influence the preferred structure:

- ▶ Level of control desired by public entity in terms of setting fee structure, establishing policies, and implementing operating procedures.
- ▶ Ability and/or willingness to fund significant capital improvements required.
- ▶ Degree of financial risk tolerance related to market conditions and other events.

Table II-4: Strengths and Weaknesses of Golf Course Operating Options

Facility Lease	Management Agreement	Self Operation	Hybrid
STRENGTHS			
• Provides reasonably strong financial return to City • Produces guaranteed minimum rent payment to City • Minimizes financial risk • Minimizes political influence with less direct involvement of City with setting fees, policies, and practices • Offers potential benefits in golf management expertise and specialized maintenance support services • Provides private capital investment in facilities • Protects City from golfer/spectator liability	• May provide strong upside potential financial return to City. • Provides high level of City control • Greater potential quality assurance • Opportunity to provide shorter term contracts • Provides opportunity to retain specialists in professional golf management • Captures benefits of private sector wage and benefit structure	• Provides highest level of City control over rates, policies, practices, and overall golf experience • Availability of City overhead support functions • Strong participation in upside financial performance • Preserves option to convert to alternative operating option	• Provides high level of City control over rates, policies, practices, and overall golf experience • Availability of City overhead support functions • Strong participation in upside financial performance • Provides opportunity to retain specialists in golf operations and food and beverage • Preserves option to convert to alternative operating option
WEAKNESSES			
• More limited operational and quality control • May involve long-term contractual commitment • May minimize financial upside • Limited number of potential candidates, particularly when substantial private investment is required • Potential conflicts over capital reinvestment responsibilities of contracting parties	• Requires more City involvement than facility lease option • Minimizes private capital investment, if any, in facilities. • Entails greatest level of City operating and financial risk • City bears substantial liability risk related to golfer and spectator injury	• May constrain ability of management to adapt and respond to dynamic market conditions • Entails high level of financial risk • Involves higher public sector wage and benefit structure • Reduces opportunity to attract private capital due to reduced lessee control • Relatively high City monitoring requirements	• Constrains ability of management to adapt and respond to dynamic market conditions • Entails high level of financial risk • May involve higher public sector wage and benefit structure for maintenance • Reduces opportunity to attract private capital due to reduced lessee control • Potential conflicts of multiple concessionaires • Relatively high City monitoring requirements

While PGGL is operated under a facility lease agreement, the structure of the agreement incorporates key features of both a lease agreement and a management agreement. CourseCo bears all of the operating and financial downside risk--an important feature of the lease option. At the same time, the City shares significantly in the upside performance of PGGL (the City receives 65 percent of gross golf revenue exceeding a threshold which is set at a level whereby the operator receives a reasonable, but not excessive, rate of return for their invested capital and operating services)--an important feature of the management agreement option.

Economics of Operating Options

Table II-5 illustrates the economics of the various models from the City's perspective if implemented in Pacific Grove. In general, the primary difference in net operating income and net cash flow under each model derives from whether golf course maintenance is provided by a City employee workforce or a private entity.

It is important to note that in the case of Pacific Grove, the golf course lessee reports gross revenue, but is not required to share its operating expenses and net earnings, which is normally the lessee's right under facility lease agreements. Consequently, in estimating the economics of the various models, representative operating expenses for PGGL are employed based on a review of the operating expense profile at a series of other California mid- to upper-mid market oriented municipal golf courses.

With regard to the facility lease model (currently employed at PGGL), the current agreement structure is compared with a contemporary "market" agreement which reflects the current performance level and other factors and conditions present at PGGL. As shown, the City's rental revenue under the current agreement is consistent with a **representative** "market" agreement, suggesting that the current agreement is equitable. This finding reflects the upside participation feature of the current agreement, whereby the City receives 65 percent of the gross "golf" revenue exceeding the established gross revenue threshold. While PGGL current agreement has significant City upside participation in performance, it is likely that upside participation would be reduced from 65 percent to 50 percent in order to reflect higher lessee funded initial capital improvements and higher operating expenses primarily related to higher water costs.

The City's annual income estimated at just over \$600,000 under the management agreement model is the highest among the various models shown, which compares with the facility lease model which yields an estimated \$430,000 annually. Importantly, however, the management agreement model (and self operation) carries the highest level of City operating, financial and liability risk, requires City capital improvement funding, and involves greater City oversight resources. As well, under the management model, operating expenses often tend to be less aggressively controlled than some of the alternative options, resulting in lower than projected net operating income.

Golf Course Asset Value

Pacific Grove Golf Links is a valuable City asset, offering a desirable recreation activity for residents and visitors, providing community open space, and funding most of the cost of operating the City's reclaimed water plant. From a pure market perspective, the golf course also is an important and valuable economic asset.

Table II-5: Comparative City Operating Options Economics (thousands of constant 2023 dollars)						
	Facility Lease		Management Agreement	Self-Operation	Hybrid	
	Current Contract	Market Contract			City Maintenance	Contract Maintenance
Gross Revenue	---	---	\$4,380	\$4,380	\$2,376	\$2,376
City Revenue/Rent						
Minimum	\$350	\$450	---	---	---	---
Overage/Concession	<u>527</u>	<u>5</u>	---	---	<u>154</u>	<u>154</u>
Total	\$877	\$455	---	---	\$154	\$154
Total	\$877	\$455	\$4,380	\$4,380	\$2,530	\$2,530
Less: Cost of Sales	---	---	\$315	\$315	---	---
Gross Profit/Rent	\$877	\$455	\$4,065	\$4,065	\$2,530	\$2,530
Operating Expenses						
Course Maintenance	---	---	\$1,720	\$1,970	\$1,970	\$1,720
Golf Operations	---	---	530	660	---	---
Clubhouse/Undistrib	---	---	100	150	75	75
General & Admin	---	---	595	845	---	---
Management Fee	---	---	<u>200</u>	---	---	---
Total	---	---	\$3,145	\$3,625	\$2,045	\$1,795
Net Income (EBITDA)	\$877	\$455	\$920	\$440	\$485	\$735
Less: Other Costs						
CIP Repl. Reserve	\$57	---	\$114	\$114	\$114	\$114
Initial Capital Amort	---	---	87	87	87	87
Irrigation Water Cost	300	---	---	---	---	---
Citywide OH Alloc	25	25	<u>100</u>	<u>75</u>	<u>100</u>	<u>75</u>
Total	\$382	\$25	\$301	\$276	\$301	\$276
Net Cash Flow	\$495	\$430	\$619	\$164	\$184	\$459

The market value of a golf course asset is principally based on its income producing potential. With regard to PGGL, the value is significantly influenced by the cost of irrigation water, which is set at the discretion of the City. There clearly is a tradeoff between the economics of the Pacific Grove Local Water Project (PGLWP) and those of the golf course. That is, improvement in the operating economics of the water plant through higher reclaimed water rates decreases the economic performance of PGGL which, in turn, reduces the value of the golf asset. Similarly, lower water costs increase operating performance of PGGL and asset value.

The market value of a golf course is based primarily on its income earning potential. For an income producing asset operating at a stable level, the standard approach employed in valuation is to capitalize earnings before interest, taxes, depreciation and amortization (EBITDA). When an allowance for a management fee and capital improvement replacement reserve are included in the calculation of EBITDA, a capitalization rate in the 9.0 percent range provides a reasonable indication of market value.

In the case of PGGL, asset value ranges widely depending on the commodity rate charged by PGLWP. For example, at the 2022 rate of \$0.0176 per gallon, and based on annual water consumption of 84 acre feet, normal year water costs are approximately \$470,000. However, as of July 1, 2023, the reclaimed water commodity rate is now set at a full cost recovery level (\$0.029 per gallon), PGGL's annual water cost balloons to about \$820,000.

An indication of PGGL asset value in an open market environment at the low and high end of the reclaimed water commodity rate is summarized in Table II-6. As shown, the PGGL asset value ranges from about \$7.8 million to \$11.3 million.

Table II-6: Indication of PGGL Asset Value		
	\$0.017/gallon	\$0.030/gallon
Gross Revenue	\$4,380,000	\$4,380,000
Less: Cost of Sales	<u>315,000</u>	<u>315,000</u>
Gross Operating Profit	\$4,065,000	\$4,065,000
Operating Expenses		
Irrigation Water	\$470,000	\$820,000
All Other Expenses	<u>2,541,000</u>	<u>2,501,000</u>
Total	\$3,011,000	\$3,321,000
Net Operating Income (EBITDA)	\$1,016,000	\$706,000
Direct Capitalization Rate	9.0%	9.0%
Capitalized Asset Value	\$11,290,000	\$7,845,000

The values of the PGGL asset expressed above assume that current annual greens fees revenue is at a market level. While it appears that such revenue is maximized in the context of the resident programs currently in place at PGGL, operated as an unrestricted public access daily fee course might produce somewhat higher greens fees revenue which, in turn, would generate higher net operating income and a higher asset value.

III. Description of Facilities and Historical Operating Review

The following section contains a description of Pacific Grove Golf Links (PGGL) and a review of historical operating performance.

Facilities

PGGL has an interesting and rich history, extending over 90 years. The 18-hole regulation length, par 70, golf course is comprised of two distinct nine-hole routings, each developed during separate time frames. The front nine was designed in 1932 by H. Chandler Egan, a renowned American amateur golfer and well respected golf course architect, opening shortly thereafter. This first phase, developed on the inland forested areas of Pacific Grove, is a par-35 layout measuring 2,927 yards from the back tees. The back nine was developed on oceanfront land surrounding the Point Pinos Lighthouse leased by the City from the U.S. Coast Guard. This second phase opened in 1960, was designed by Jack Neville, who was the principal golf architect for the famous Pebble Beach Golf Links. The back nine is a par 35, 2,800 yard regulation layout which cuts through windswept dunes reminiscent of a traditional Scottish Links golf course.

The 18-hole golf course envelope is relatively small at approximately 86 acres, of which only about 40 acres is irrigated turf. This irrigated turf area is extremely small, with most 18-hole regulation length golf courses designed with 80 to 100 irrigated turf acres. There are 19 bunkers on the golf course. An aerial photo of the golf course is presented in Figure III-1.

The amenities of the course include two practice putting greens, a golf cart storage facility located underneath the Grill at Point Pinos restaurant, pro shop/office, restrooms, an unlighted warm-up driving range which can accommodate about 10 golfers. The clubhouse complex is comprised of a freestanding pro shop totaling approximately 2,500 square feet, and the two-level restaurant/cart storage building with a total of about 12,000 square feet.

The golf course maintenance yard is located on the north side of hole #5, with an enclosed building area of approximately 5,000 square feet.

Existing Golf Course Operating Agreement

The golf course was managed, operated, and maintained by the City of Pacific Grove Parks and Recreation Department through 2014, at which time the City elected to solicit proposals for outsourcing the golf course operation to a professional golf course management company. CourseCo, Inc., a California based golf course management company, was selected to manage, operate and maintain PGGL. Following a brief period starting on April 1, 2014 when the golf course was operated under an interim management contract, a lease agreement between the City of Pacific Grove and CourseCo was finalized. The lease agreement commenced on October 1, 2014 for a 10-year term, expiring on September 30, 2024. The agreement included two five-year options to extend the term, subject to mutual agreement of both parties.

An initial capital investment of \$100,000 by CourseCo was required, with the lessee also responsible for the cost to complete the “dune restoration project” up to a maximum contribution of \$75,000. The lease agreement calls for base rent of \$300,000 per year, which increases \$5,000 in the third year of operation, and annually thereafter. In addition to base rent, the City receives participation percentage rent equal to 65 percent of annual gross “golf” revenue from all sources (excluding food and beverage, merchandise, lessons, and other non-golf related revenues) which exceeds a gross golf revenue baseline. The “golf” gross revenue baseline was established at \$2.35 million for 2015, with annual consumer price index (CPI) adjustments applied. The agreement also requires the lessee to contribute 1.0 percent of total gross “golf” revenue to a capital improvement Program (CIP) fund in years 1 and 2, increasing to 1.5 percent beginning in year 3. The City is required to match the tenant’s CIP funding obligation.

An important term in the original lease specified that, during the first three years of the agreement, the tenant is responsible for irrigation water costs up to \$600,000 per year for up to 27.2 million gallons (83 acre feet) per year, with the City funding amounts over the \$600,000 limit for up to the 27.2 million gallon threshold. The lessee is responsible for any water costs related to consumption which exceeds the annual consumption threshold. After the third year of the agreement, the tenant’s maximum obligation is reduced to \$443,300 per year, with the City responsible for costs exceeding this maximum amount. If consumption is reduced below 27.2 million annual gallons, the savings in cost is split evenly between the two parties.

In December 2016, a 5-year extension to the lease term was negotiated (effectively representing the first 5-year option), with the lease now expiring on September 30, 2029. The basic terms of the agreement are maintained for the extended term, with the exception of irrigation water cost obligations. The tenant’s annual water cost cap was maintained at \$443,300 for consumption up to 27.2 million annual gallons, subject to 2.0 percent annual adjustments, with the City responsible for costs above the cap. The tenant is responsible for irrigation water costs associated with utilization over 27.2 million annual gallons, if any. Further, the tenant is obligated to remit a minimum of \$375,000 annually toward golf course irrigation water expenses.

Restaurant Lease

The PGGL restaurant, known as The Grill at Point Pinos, is operated under a separate lease, independent of the golf course lease. The basic terms of the lease agreement are summarized below:

Restaurant: The Grill at Point Pinos

Lessor: City of Pacific Grove

Lessee: Le Creme Hospitality, Inc.

Lease Start: November 1, 2020

Term: 5 years (expires October 31, 2025)

Renewal Options: two 5-Year extensions, at lessee’s discretion

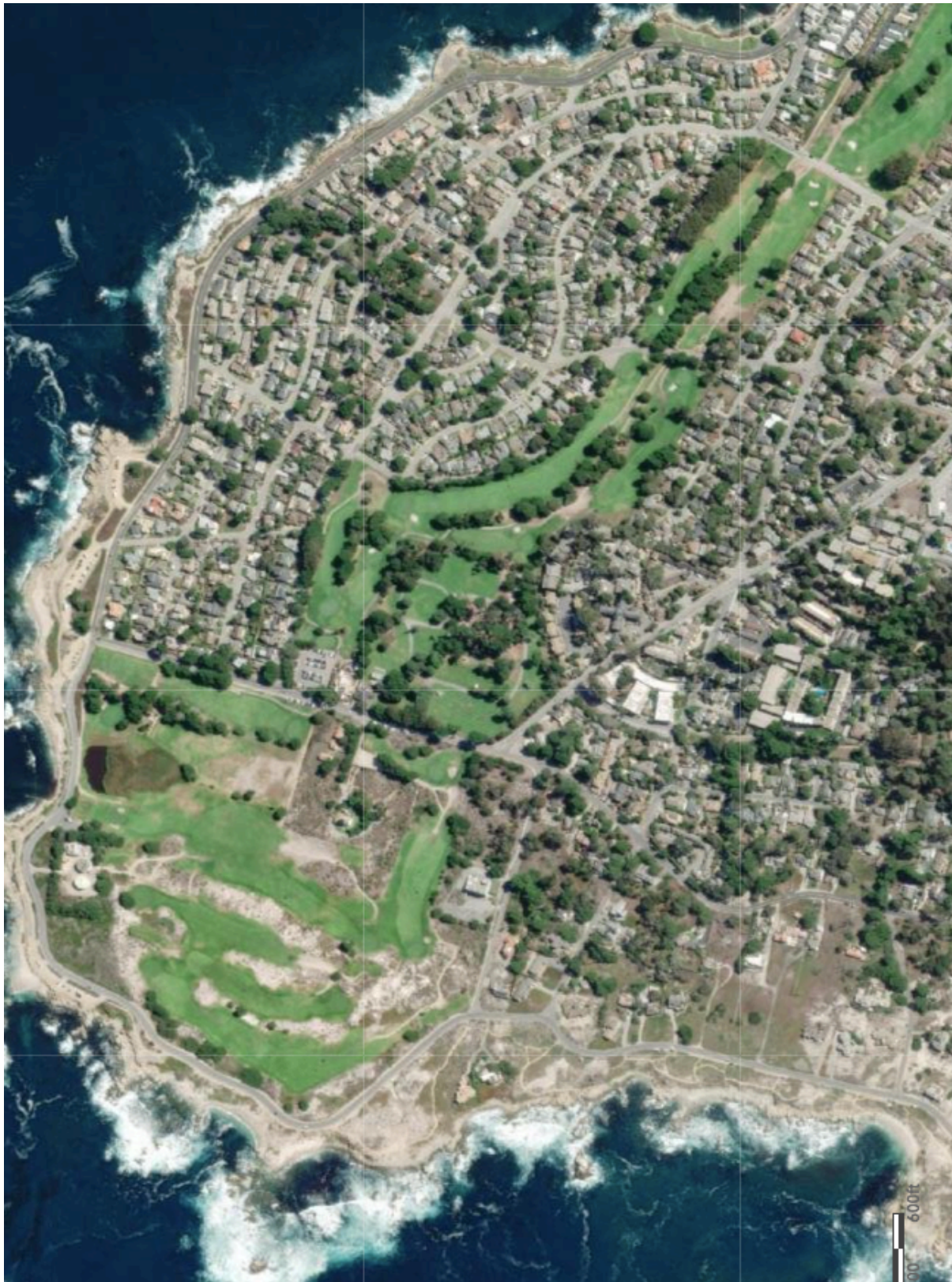


Figure III-1: Pacific Grove Golf Links Aerial Photograph

Rent:

Minimum: None

Percentage:

11/1/20 4% of gross sales

11/1/21 5% of gross sales

11/1/22 6% of gross sales

11/1/23+. 7% of gross sales

Repair and replacement of restaurant fixtures and equipment--split evenly between lessor and lessee.

Lessor is responsible for building exterior maintenance and repair.

Rent and other contract terms remain unchanged during option term extension periods.

Management and Operation

PGGL is managed, maintained, and operated by CourseCo Golf Management. The Grill at Point Pinos is operated by Le Creme Hospitality, Inc., an independent restaurant lessee.

Golf operations' staff are responsible for pro shop operations, merchandising, the starting function and golf cart services. The golf course maintenance staff, consisting of four full- and four part-time staff (7.0 full time equivalent), maintains the golf course and warm-up practice range. As previously noted, the golf course area totals about 86 acres, with only 40 irrigated acres.

Golf Course Irrigation Water

The source of golf course irrigation water is treated effluent produced at the City's Pacific Grove Local Water Project recycling facility located adjacent to the golf course's number 15 tee complex. Opening in 2018, the plant's production capacity currently is about 125 acre feet (40.8 million gallons) per year. Annual water consumption and PGGL costs of the irrigation water over the past five years is summarized in Table III-1.

Table III-1: PGGL Historical Golf Course Irrigation Water Cost					
Fiscal Year	Consumption (millions of gallons)	Average Rate per Gallon	Annual Cost (\$000)	CourseCo Cost Cap (\$000)	City Cost (\$000)
2018	23.85	\$0.01630	\$388.8	\$461.2	---
2019	24.65	0.01660	409.2	470.4	---
2020	23.59	0.01700	401.0	479.8	---
2021	28.66	0.01730	495.8	489.4	\$6.4
2022	27.50	0.01764	485.1	499.2	---

As indicated, through 2022 all or most of the reclaimed golf course irrigation water cost was covered by the lessee. The City was responsible for a small amount in FY2021. Water consumption was relatively consistent, averaging about 25.6 million gallons (80 acre feet) per year. The reclaimed water is delivered directly into the golf course irrigation system such that there is no electrical pumping expense. The cost of the water at \$0.0179 per gallon (\$5,850 per acre foot) in 2022-2023 is relatively high compared with the cost of similar water utilized at other California golf courses, and as of July 1, 2023, the rate was increased sharply to \$.03 per gallon (\$9,780 per acre foot).

A PGLWP "Business Plan" was prepared by Pacific Grove City staff in July 2021. The plan cited the then current cost California American Water Company, a private water purveyor on the Monterey Peninsula, charges for delivery of water used for irrigation uses at approximately \$.029 per gallon, when all surcharges, fees, and taxes are included. This rate compares with the 2021 PGLWP rate for reclaimed water of \$0.0173 per gallon.

A "peer review" of the "business plan" was conducted by DTA management consultants in January 2022. DTA concluded that proposed rate increases of 35% in FY2022, 21% in FY2023 and 3% per year for the subsequent five years are necessary to achieve positive fund balances, while accumulating a fund balance of just under \$500,000 by FY2028, to be used to fund future capital improvements. The steep increases in FY2022, FY2023 and FY2024 will increase the rate levels from 0.0179 per gallon in FY2023 to \$0.03 per gallon by FY2026. The review stated that a rate level of around \$0.03 per gallon, with modest annual increases thereafter, would enable the City to not only achieve a break-even operation but allow fund balances to accumulate so that by FY2028 these balances would carry forward to help fund future capital improvement projects.

Implementation of these recommended rates would increase the annual cost of PGGL irrigation water to \$820,000 by FY2024 compared with current average cost of about \$470,000. Based on the existing golf course lease agreement between the City of Pacific Grove and CourseCo, most of the increase in cost would be borne by the City.

Golf Course Play Levels

Play at PGGL derives from general public daily fee play, annual memberships, discount card holders, golf tournaments, and junior/school programs.

Annual revenue rounds at PGGL over the 2018 through 2022 period are summarized in Table III-2. As shown, play levels have increased sharply over the past five years, with rounds played in 2022 up nearly 32 percent over this period. Clearly, much of the gain in course utilization is attributed to the positive impact of COVID-19, where golf represented an accessible safe outdoor recreation activity available to an expanded home work force. Play at PGGL increased 36 percent over the 2019-2021 period, when most public access California golf courses experienced play volume increases of about 20-25 percent, suggesting PGGL outperformed the market over this period. Golf rounds in 2022 were down about 4.9 percent at PGGL, consistent with the experience of most other California public golf facilities, as there was some dissipation of the COVID-19 surge.

Table III-2: PGGL Historical Annual Play Level by Source (rounds)

Round Type	2018	2019	2020	2021	2022
General Public (retail)	25,067	26,855	29,794	34,164	31,898
Annual Member	6,712	6,469	9,779	12,216	12,264
Discount Card Holder	10,935	10,492	13,910	12,692	11,690
Tournament	3,580	3,366	2,224	4,492	4,456
Junior/School	<u>1,038</u>	<u>1,058</u>	<u>2,089</u>	<u>2,029</u>	<u>2,063</u>
Total	47,332	48,240	57,796	65,593	62,371

Based on play levels through May, annual play at PGGL in 2023 is projected at about 58,000 rounds. This volume reflects the extraordinary number of rain days in the early part of the year. With normal year precipitation, golf play at PGGL in 2023 would likely be in the range of 61,000 to 62,000 rounds.

Annual play at PGGL is comprised of general public daily fee play, accounting for approximately 50 percent of the total rounds, annual members at 20 percent, and discount card holders at about 20 percent of total play. The remaining 10 percent is comprised of some loc tournament play and special programs offered to juniors and area schools.

It is estimated that about one-half of total play at PGGL is attributed to Monterey Peninsula resident golfers, and one-half to non-residents. Of the non-resident play, about one-half of the play is generated by day visitors, the majority of which reside in the San Francisco/Oakland/San Jose Bay Area. The other one-half of non-resident play derives from overnight visitors to the Monterey Peninsula. Many of these visitors play multiple courses during their stay.

Not surprisingly, the vast majority of Monterey Peninsula resident play is generated by golfers participating in the annual membership and discount card programs offered by PGGL. In part, this reflects the relatively low cost to participate in these programs.

The distribution of 2022 play, by month, is presented in Table III-3. Monthly play levels are reasonably consistent throughout the year, reflecting the favorable year round climate on the Monterey Peninsula. Resident monthly play is particularly uniform throughout the year, while visitor play tends to be somewhat more concentrated during the summer months. As well, monthly play is somewhat higher in the summer months of June-August which is attributable to the longer daylight hours during this period.

Golf tournament play represents about 7 percent of total play. This is a substantially higher percentage of total play than observed at most public access municipal courses, where tournaments generally account for about 4 percent of total play levels.

Table III-3: PGGL Monthly Rounds Distribution by Source of Play--2022						
Month	Public Access	Annual Member	Discount Card Holder	Tournament	Junior/School	Total
January	1,932	1,189	1,175	151	88	4,535
February	2,702	1,082	976	235	103	5,098
March	2,512	1,123	983	343	127	5,088
April	2,725	1,156	992	278	241	5,392
May	2,739	1,112	1,015	382	178	5,426
June	3,053	1,052	1,036	379	217	5,737
July	3,462	1,093	1,105	460	327	6,447
August	3,303	1,084	1,096	294	241	6,018
September	3,185	978	968	537	156	5,824
October	2,711	869	863	883	109	5,435
November	2,108	8,52	828	391	174	4,353
December	<u>1,467</u>	<u>674</u>	<u>653</u>	<u>123</u>	<u>101</u>	<u>3,018</u>
Total	31,899	12,264	11,690	4,456	2,062	62,371
Percent Distribution	51.1%	19.7%	18.7%	7.1%	3.3%	100.0%

Golf Fees

Golf fees for PGGL over the 2018-2023 period are shown in Table III-4. In addition to retail “rack” rates charged for general public play, PGGL offers annual pass and discount card programs, available to both Pacific Grove residents and non-residents. The Monarch Card, which provides for greens fees discounts of about \$20, costs \$55 per year for residents and \$150 per year for non-residents. There are approximately 1,000 members participating in this program. The Lighthouse Card program is an annual membership which allows unlimited play seven days per week. The annual fee for Pacific Grove residents is \$1,350, with non-residents charged \$1,500. The cost of power carts is in addition to the fees charged. There are approximately 150 annual cardholders.

Power golf carts are \$21 per rider. Cart utilization is relatively low at 40-45 percent of players, reflecting the limited topography, as well as course length and short distance between greens and tees on most holes.

PGGL Revenue

Annual gross revenue for PGGL, by major component, is shown in Table III-5 for the 2018-2022 period. Total gross revenue from all sources has increased sharply over the past five years, in part due to the positive impact of COVID-19 in overall golf participation. Gross revenue at PGGL has increased from \$2.8 to \$4.2 million over this period, or nearly 50 percent, while the play level has increased by 32 percent over this same time frame. Golf fees, consisting of greens fees, annual and discount card fees, and cart rental account for the majority of total fees. Typically, golf revenue accounts for about 85 percent of total annual PGGL gross revenue. Other revenue is comprised of practice range revenue, pro shop merchandise sales, instruction fees, club rentals, and other miscellaneous sources. Again, food and beverage revenue accrues to the independent operator of The Grill at Point Pinos.

Table III-4: PGGL Historical Greens Fees						
	2018	2019	2020	2021	2022	2023
Monday-Thursday						
Public (retail)	\$50	\$51	\$53	\$56	\$59	\$62
Twilight	30	31	33	36	39	42
9;-Holes	30	31	33	36	39	42
Monarch Discount Card	29	30	31	32	34	36
Lighthouse Annual	19	20	21	22	---	---
Junior	20	20	20	20	20	20
Friday-Sunday						
Public (retail)	\$55	\$56	\$58	\$70	\$75	\$78
Twilight	32	33	35	40	45	49
9;-Holes	32	33	35	42	49	55
Monarch Discount Card	34	35	36	37	39	41
Lighthouse Annual	24	25	26	27	---	---
Junior	20	20	20	20	25	25
Cart Fee/Rider						
18-holes	\$18	\$18	\$18	\$19	\$20	\$22
9-Holes	12	12	12	13	13	14

Table III-5: PGGL Annual Gross Revenue (\$000)					
Department	2018	2019	2020	2021	2022
Golf Fees					
Greens Fees	\$1,655.9	\$1,742.9	\$1,917.6	\$2,293.0	\$2,499.9
Cart Rental Fees	503.3	489.0	494.1	654.2	682.9
Annual Dues	}165.4	}182.5	144.9	193.0	214.8
Discount Card Program			61.7	64.4	66.8
Subtotal Golf Fees	\$2,324.6	\$2,414.4	\$2,618.3	\$3,204.6	\$3,464.4
Range	71.7	78.2	74.9	111.8	148.0
Merchandise	271.2	280.6	200.9	387.6	450.0
Instruction	58.4	58.5	48.1	52.4	67.5
Other Revenue	126.6	140.0	14.7	52.3	105.2
Total	\$2,852.4	\$2,971.7	\$2,956.8	\$3,808.7	\$4,235.1

The average revenue per round over the 2018 to 2022 period is summarized in Table III-6. As indicated, the average golf revenue per round has increased from \$48.69 in 2018 to \$57.92 in 2022, nearly 20 percent. Thus, the 57 percent increase in gross golf revenue at PGGL over the past five years reflects both an increase in play (32 percent) and an increase in the average revenue per round (20 percent).

Table III-6: PGGL Average Revenue per Round					
Department	2018	2019	2020	2021	2022
Golf/Cart Fees	\$49.11	\$50.05	\$45.30	\$48.86	\$55.54
Practice Range	1.51	1.62	1.30	1.70	2.37
Merchandise	5.73	5.82	3.48	5.91	7.21
Other	<u>3.91</u>	<u>4.11</u>	<u>1.09</u>	<u>1.60</u>	<u>2.77</u>
Total	\$60.26	\$61.60	\$51.16	\$58.07	\$67.90

The warmup practice range revenue for 2022 is relatively modest at \$148,000 (\$2.37 per round), with nearly all of the usage attributed to same-day golfers. The range is small, and not designed to service non-playing golfers using the range for golf practice.

Merchandise revenue has increased sharply as well over the past five years, while other miscellaneous revenues have generally remained unchanged. These revenue categories are much less important than golf not only because they represent a small percentage of total PGGL gross revenue, but also due to their corresponding high cost of sales/expense margins.

PGGL Rent

Annual rent paid by CourseCo to the City of Pacific Grove consists of base rent plus overage rent. As previously noted, the operator is obligated to pay base rent at \$300,000 per year (with a \$5,000 annual increase), plus “overage” rent calculated based on 65 percent of annual gross revenue which exceeds an annually CPI adjusted \$2.35 million “golf” revenue threshold. As shown in Table III-7, substantial overage rent was generated in 2021 and 2022 due to the strong revenue performance of the golf complex. Based on year-to-date performance, substantial overage rent in the range of \$350,000 is expected in 2023 as well.

In 2022, rent totaled about \$775,000, equal to 18 percent of total revenue (21 percent of golf/cart revenue). Annual projected rent (base and overage rent) for 2023 will represent a similar percentage of golf/cart revenue. The projected 2023 overage rent reflects the unusual number of rain days affecting annual play levels, although this decline in utilization is substantially offset by the increase in the 2023 greens fees structure.

Table III-7: PGGL Annual Rent			
Year	Base Rent	Overage Rent	Total
2015 (9 months)	\$235,000	---	\$235,000
2016	300,000	---	300,000
2017	300,000	---	300,000
2018	273,250	---	273,250
2019	338,900	---	338,900
2020	239,400 ^{1/}	---	239,400
2021	344,400	---	344,400
2022	323,500	256,500	580,000
2023	338,900	399,700	728,500
^{1/} Base rent adjusted due to course closure during initial COVID-19 response.			

The Grill at Point Pinos

The Grill at Point Pinos is operated independently from the golf course by Le Creme Hospitality. The Grill serves both PGGL golfers and non-golfer patrons. The restaurant operating hours typically extend from 7:00 a.m. to 7:00 p.m. daily. The operator indicated that about one-half of their customers are same-day golfers, and one-half non-golfing area residents. However, in terms of gross revenue, same-day golfers represent well under one-half of the total revenue as golfer per capita expenditures are substantially below non-golfer restaurant patrons.

It is estimated that the average food and beverage revenue generated by golfers through the quick service and in-restaurant post-golf round activity is \$5.00 to \$6.00 per round. This average per round golfer revenue is consistent with similarly positioned golf courses.

PGGL Operating Expenses

Under the terms of the lease agreement between the City of Pacific Grove and CourseCo Golf Management, the PGGL operator is not required to report their operating expenses, other than irrigation water costs. This provision is standard for golf course lease agreements between public agencies and private operators.

IV. Capital Improvements

The following section presents a summary of the capital improvements program for Pacific Grove Golf Links. Many components and features of a golf course have a limited life expectancy, and thus a golf course requires a capital improvement replacement program in order to remain competitive in the marketplace. In particular, components requiring improvements or replacement include cart paths, tees, bunkers, greens, clubhouse FF&E, parking lot surfaces, and, perhaps the most important and costly, the golf course irrigation system. As well, golf course maintenance equipment requires continuous replacement.

PGGL Capital Improvement Program

The lease agreement between the City of Pacific Grove and its lessee (CourseCo) establishes a Capital Improvement Reserve Fund as the primary mechanism for funding golf course capital improvements. The fund is intended to be used for capital items or the repair/replacement of capital items in accordance with a Capital Improvement Plan prepared by CourseCo and approved by the City. The fund specifically is not intended for acquisition of golf course maintenance equipment.

Upon commencement of the lease agreement on July 1, 2014, the lessee was obligated to contribute a relatively nominal amount of \$100,000 to the fund, and assume responsibility for the cost to complete the “dune restoration project” up to a maximum contribution of \$75,000.

Between July 1, 2014 and March 30, 2016, the lessee was required to contribute 1.0 percent of total gross revenue generated by the golf course to the Capital Improvement Fund, with the City also contributing 1.0 percent. Commencing April 1, 2016, the contribution was increased to 1.5 percent for both parties, or a total annual contribution of 3.0 percent of total gross revenue.

Over the past five years, annual contributions to the Capital Improvement Fund have ranged from \$100,000 to \$125,000. The industry standard for annual contributions to the capital improvement replacement reserve fund typically are in the range of 3.0% to 3.5%. Again, as noted above, in order to remedy years of deferred maintenance, a one-time commitment of about \$1.0 million in capital improvements is needed in the near term. Excluding the clubhouse, the replacement cost new of all of the various depreciable components at PGGL is estimated in the range of \$5-\$6 million.

Capital improvements completed over the past five years are shown in Table IV-1. Over this period, capital improvements totaling about \$285,000 were completed at the golf course, or an average of about \$55,000 per year. Over the next five years, another \$520,000 are scheduled for the course, as shown in Table IV-2. Improvements in 2020 were curtailed due to the onset of COVID-19, which substantially disrupted play and revenue for the year.

Capital Improvements

Table IV-1: Pacific Grove Golf Links Capital Improvements Completed--2018-2022					
Project	2018	2019	2020	2021	2022
Tree Maintenance	\$6,480	\$29,118	\$19,925	\$9,600	\$17,000
Net Replacement	---	---	---	---	9,700
Tee Box Renovation (#4)	---	---	---	---	19,933
Clubhouse Landscape	---	---	---	---	10,800
Drainage Renovation (#6)	---	---	---	54,532	---
Cart Path Addition (#2)	---	---	---	28,064	---
Asilomar Fence Renovation	---	14,401	---	---	---
Range Netting	21,400	---	---	---	---
Cart Path Addition (#9)	25,435	---	---	---	---
Irrigation Control Equipment	16,782	---	---	---	---
Total	\$70,097	\$43,519	\$19,925	\$92,196	\$57,433

Capital Improvements

Table IV-2: Pacific Grove Golf Links Scheduled Capital Improvements--2023-2027					
Project	2023	2024	2025	2026	2027
Tree Maintenance	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Crespi Pond Dredge	25,000	---	---	---	---
Driving Range Path Resurface	20,000	---	---	---	---
Maintenance Equipment Lift	29,547	---	---	---	---
Greens Heads Replacement	15,200	---	---	---	---
Tee Renovation (#18)	---	20,000	---	---	---
Cart Path Addition (#3)	---	25,000	---	---	---
Tee & Bunker Renovation (#16)	---	30,000	---	---	---
Cart Path Addition (#6)	---	---	70,000	---	---
DG Walk-Up Path--Tee Boxes	---	---	---	20,000	---
Driving Range Tee Line Repl.	---	---	---	---	15,000
Bunker/Tee Renovations	---	---	---	50,000	50,000
Total	\$119,747	\$105,000	\$100,000	\$100,000	\$95,000

Future Capital Improvement Requirements

While the improvements completed over recent years, and those planned in coming years, result in a positive impact on playing conditions and the overall golfer experience, in several areas, PGGL's current condition reflects some degree of deferred maintenance. Generally, if a golf course has been well maintained and benefited from sufficient and timely capital improvement expenditures, an annual capital improvement reserve allowance on the order of \$125,000-\$150,000 per year is sufficient to maintain a quality golf product. However, if golf course capital improvements have been deferred over an extended period of time and/or appropriate reserves have not been set aside, this annual commitment will be insufficient.

PGGL is considered to be in a relatively favorable situation with respect to many near- and mid-term capital improvement requirements. The pro shop, restaurant and cart storage facilities are less than 15 years old and in very good condition. Moreover, the major capital improvement facing most golf courses, other than the clubhouse related capital expenditures, is the golf course irrigation system. Typically, the cost to fully replace a system in the current market environment is in the range of \$2.0 to \$2.5 million, although PGGL has a more limited system with only about 40 acres of irrigated turf. The current operator indicated that there have not been any extraordinary issues related to the irrigation system, and there does not appear to be any major repairs or replacement of the system in the foreseeable term.

Based on discussions with current management, along with inspection of the course, it appears that to address deferred maintenance would likely require about \$1.0 million in near term capital improvements. The principal improvements relate to bunker renovation, major tree trimming, tee renovations, cart path network repair/expansion, protective netting, and driving range improvements. Following this significant infusion of capital, continued funding of a reserve equal to about 3.0 percent of gross revenue (\$125,000 per year) should be sufficient to sustain a quality product.

Maintenance Equipment

The golf operator owns and maintains a full complement of golf course maintenance equipment. This equipment was purchased from the City when the conversion from self-operation to a lease agreement operating structure occurred. Most equipment components have a useful life expectancy of 5 to 10 years, and a full complement of equipment costs in the range of \$1.5 million.

Replacement of maintenance equipment is not regarded as capital improvements, and the PGGL capital improvement program specifically is not intended to fund replacement of such equipment. Most operators either lease their fleet of maintenance equipment, or establish a replacement reserve for periodic equipment replacement. At this time, most operators lease the majority of their maintenance equipment for a term of five years, with an affordable buy-out for most of the components at the conclusion of the lease term. A typical annual allowance for lease payments and/or reserves for maintenance equipment replacement is in the range of \$120,000 per year.

V: Golf Market Overview

The following section presents an overview of the demographic makeup of the Pacific Grove market area and an analysis of national, regional and local golf market conditions.

Market Area Demographics

The primary market area for a golf course is influenced by a number of factors including course quality, rate structure, transportation network and access, location and characteristics of competitive facilities, resident demographic attributes, and other such factors. The primary market area for PGGL, from which 70 to 80 percent of total play is expected to derive, is defined as the region extending from Carmel Valley on the south to Castroville on the north, and inland to Salinas on the east. This region is generally within about a 30- to 40-minute drive time (20 miles) of the PGGL complex. Most of the balance of support derives from residents from the San Francisco/Oakland/San Jose metropolitan market area and overnight visitors to the Monterey Peninsula.

Comparative demographics of the Pacific Grove resident market area are presented in Table V-1, which is segmented into 20-, 40- and 60-minute drive time bands (see Figure V-1). As noted, the 20-minute drive time population is reported at about 80,000 currently, with another 165,000 population residing in the 20-40 minute drive time band. Expanding the drive time out to 60-minutes adds about 365,000 additional residents. These market area segments have experienced very modest growth over the past 12 years, and there is effectively no growth forecast over the next five years.

Residents within the 20-minute drive time area are substantially older and somewhat more affluent than the statewide benchmark, while residents in the 20-40 and 40-60 minute bands are slightly younger and less affluent than statewide residents.

The senior population in the market area is particularly important with regard to golf demand, as the participation rate and frequency of play for the 60-79 year old age group is much higher than other age groups. As shown in Table V-2, Monterey County's current 60-79 age cohort, as a percentage of the total population, is slightly smaller than the statewide average (17.3% versus 18.8%), although this age cohort in the more immediate Pacific Grove area (20-minute drive time from PGGL) is much larger than for the County as a whole. Over the next 10 years, this age cohort in Monterey County is forecast to increase its share of total population compared, while all other age cohorts will experience a decline. The Monterey County senior cohort rate of increase, however, is much lower than for the State as a whole and neighboring counties.

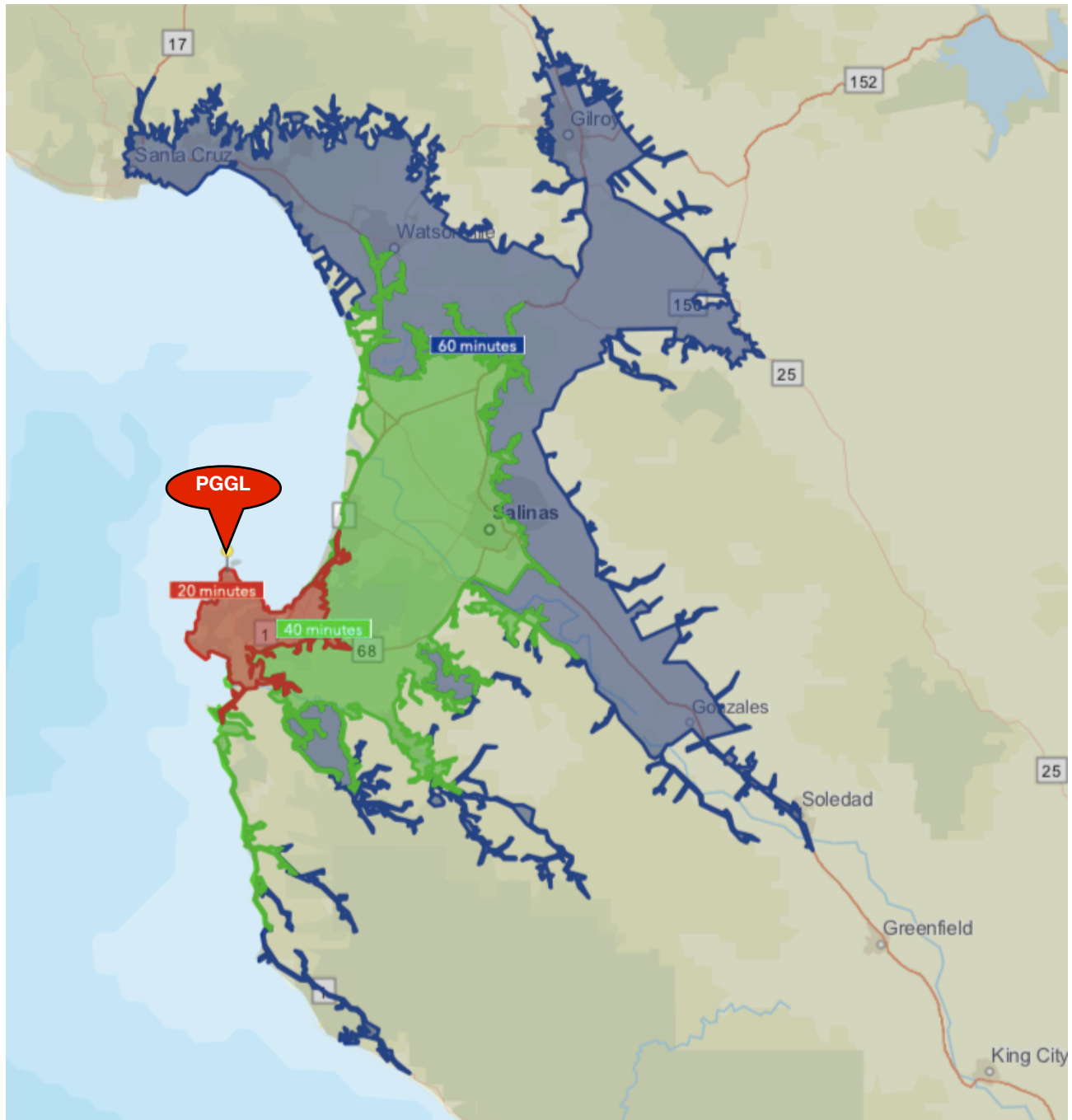


Figure V-1: PGGL Market Areas Defined by Drive Time

Table V-1: Pacific Grove Golf Links Market Area Demographics

	0-20 Minute Drive Time	20-40 Minute Drive Time	40-60 Minute Drive Time	State of California
Population				
2010	79,158	148,023	346,538	37,253,900
2022	80,004	165,111	367,686	39,770,200
2027 (projected)	79,736	166,806	366,237	39,648,300
Average Annual Growth				
2010-2022	0.09%	0.91%	0.49%	0.55%
2022-2027	(0.07%)	0.20%	(0.08%)	(0.06%)
Population Characteristics (2022)				
Median Age	42.1	34.1	34.2	36.7
Population 65+	23.0%	14.8%	13.2%	15.5%
Average HH Size	2.34	3.04	3.25	2.86
Median HH Income	\$98,889	\$82,884	\$88,299	\$88,930
% HH Exceeding \$100,000	49.5%	39.6%	44.5%	45.3%
Source: ESRI forecasts for 2022 and 2027. U.S. Census Bureau 2010 and 2020 decennial Census data converted by ESRI into 2020 geography.				

Table V-2: Projected Monterey County Senior Population Growth						
Monterey County Population				State of California		
	Age 60-79 Cohort	Other Cohorts	Total	Age 60-79 Cohort	Other Cohorts	Total
Population						
2022 Estimate	77,486	369,814	447,300	7,556,200	32,589,800	40,146,000
2032 Projection	85,256	382,114	467,370	8,739,400	33,492,200	42,231,600
10-Year Increase						
Number	7,770	12,300	20,070	1,183,200	902,400	2,085,600
Percent	10.0%	3.3%	4.5%	15.7%	2.8%	5.2%
Source: California Department of Finance, "County Population Projections by Age and Sex, 2020-2060", and Pro Forma Advisors.						

The Monterey Peninsula has relatively mild climate, as indicated in Table V-3, which compares favorably with most other areas of Central California. Moderate year-round temperatures, and rainfall of about 18 inches annually, provide for year-round golf.

Table V-3: Summary of Climate Statistics--Pacific Grove			
Month	Average Daily Temperature (F)		Average Rainfall (inches)
	High	Low	
January	60	45	3.5
February	61	47	3.8
March	61	48	2.8
April	62	49	1.2
May	63	52	0.4
June	65	53	0.1
July	65	55	---
August	68	56	---
September	68	55	0.2
October	67	53	0.8
November	63	49	2.0
December	60	45	<u>3.2</u>
Total	---	---	18.0

National Golf Market Trends

Nationwide, golf play increased steadily between the mid-1980s and 2000. As shown in Table V-4, for the 1990-2000 period, the total number of annual rounds played nationally increased at an average rate of just over 2.5 percent per year. Golf balls sold, perhaps the best indicator of play, increased at a similar rate (2.3 percent per year). This unprecedented growth in golf play during this period was due to a number of factors including:

- ▶ An increase in the number of golfers;
- ▶ The increasing importance of golf-oriented real estate;
- ▶ Expansion of the golf tourism industry;
- ▶ One of the longest economic expansions in the nation's history.

The increase in golf demand and the popularity of golf-related housing development during the 1990s stimulated extraordinary expansion of the national golf course inventory, primarily between 1995 and 2002, as summarized in Table V-5. Over the 1990-2010 period, the inventory of golf courses in the United States increased by 34 percent, while the U.S. population registered only a 24 percent gain, and golf demand (play) increased only 12 percent over this same period.

Right after the new century started, the first signs of industry problems surfaced, and persisted through 2019. While total golfers and rounds played during this period were down industrywide, most individual golf courses experienced steeper declines in utilization, along with revenue contraction and falling net operating income, as the market totals were spread over an increased supply of facilities. Further, golf course transaction prices declined precipitously, bankruptcies and foreclosures became routine, and new golf course construction virtually ceased while the number of courses closing significantly exceeded new openings. The impact of market softness was widespread during this period and affected all segments of the market and all geographic areas. Importantly, the industry problems went well beyond cyclical trends, as there appeared to be fundamental shifts in recreational preferences and other underlying factors affecting long-term demand for golf.

The National Golf Foundation (NGF) reported that since 2000, annual golf play in the United States declined from 518 million in 2000 to 441 million rounds in 2019, or about 15 percent. Other independent sources indicate a more severe contraction, which is borne out by golf ball sales and other market indicators. The golf participation rate, after rising steadily through 2003, fell precipitously from 12.4 percent in 2004 to a 8.0 percent in 2019. (It should be noted that the golfer participation rate is based on the number of golfers relative to the population over the age of 6 years old). The golf market also was significantly impacted by the 2008 national economic recession. Revenue contraction in many instances was more pronounced than the decline in rounds due to intense price competition which, in many cases, resulted in declining effective golf rates. The combination of lower rounds and a lower average effective rate substantially adversely impacted revenue at virtually all golf courses, regardless of market positioning.

Table V-4: Indicators of U.S. Golf Demand (1990-2022)

Year	Rounds (millions)	# of Golfers ¹ (millions)	Participation Rate	Golf Ball Sales ^{2/} (millions of dozens)
1990	400	27.8	13.5	42.0
1995	420	25.0	11.6	46.0
2000	518	28.8	11.7	52.2
2005	489	29.3	11.2	43.6
2006	493	29.4	11.2	44.0
2007	490	29.5	11.1	43.5
2008	481	28.6	10.7	42.2
2009	477	27.1	10	40.1
2010	475	26.1	9.6	-- ^{4/}
2011	463	25.7	9.2	-- ^{4/}
2012	490	25.3	9.0	-- ^{4/}
2013	465	24.7	8.9	-- ^{4/}
2014	457	24.7	8.5	-- ^{4/}
2015	465	24.1	8.2	-- ^{4/}
2016	468	23.8	8.0	-- ^{4/}
2017	456	23.8	7.9	-- ^{4/}
2018	434	24.2	8.0	-- ^{4/}
2019	441	24.3	8.0	-- ^{4/}
2020	502	24.8	8.2	-- ^{4/}
2021	530	25.1	8.3	-- ^{4/}
2022	510	25.6	8.3	-- ^{4/}
Average Annual Growth				
1990-1995	1.0%	(2.1)%	---	1.8%
1995-2000	4.3%	2.9%	---	2.6%
2000-2005	(1.1%)	0.3%	---	(3.5%)
2005-2010	(0.6%)	(2.3%)	---	(2.1%) ^{3/}
2010-2015	(0.4%)	(1.6%)	---	--- ^{4/}
2015-2019	(1.3%)	(0.2%)	---	--- ^{4/}
2019-2022	5.0%	1.8%	---	--- ^{4/}

1/ Represents golfers over 6 years of age. 2/ Estimated by PFA based on "soft goods" sales recorded by Data Tech and golf ball manufacture sales. 3/ For period 2005-2009. 4/ Data for 2010-2020 not available in comparable format.
Source: National Golf Foundation; Golf Data Tech; and Pro Forma Advisors LLC.

Table V-5: Number of Golf Courses¹ - U.S.

Year	Annual Courses Added	Annual Courses Closed	Total Golf Courses ²	Average Annual Percent Change
1990	---	---	11,105	---
2002	315	15	14,725	2.96%
2006	120	60	14,968	0.8%
2007	115	95	14,988	0.13%
2008	70	105	14,953	(0.23%)
2009	50	100	14,903	(0.33%)
2010	45	110	14,838	(0.44%)
2011	35	140	14,733	(0.71%)
2012	14	155	14,592	(0.96%)
2013	14	157	14,449	(0.98%)
2014	11	174	14,289	(1.13%)
2015	17	177	14,129	(1.12%)
2016	15	211	13,933	(1.39%)
2017	15	206	13,743	(1.36%)
2018	12	198	13,557	(1.35%)
2019	10	202	13,355	(1.49%)
2020	8	193	13,170	(1.40%)
2021	10	130	13,050	(0.99%)
2022	20	105	12,965	(0.99%)

^{1/} 18-hole equivalents.^{2/} Includes courses added, less courses closed., 2006-2022

Source: National Golf Foundation; and Pro Forma Advisors

Beginning in 2020 with the onset of COVID-19, golf participation and rounds have increased sharply. Rounds played surged 20 percent over the 2020-2021 period, with strong growth in golf course revenue and net operating income. Nationally, rounds in 2022 declined about 5 percent from 2021 as there has been some dissipation of the COVID-19 impact, and play in 2023 is down somewhat as well, although this is in part due to unusual bad weather impacts.

Since 2002, the construction of new courses in the country has declined sharply, and the rate at which courses have closed has accelerated. Between 2006 and 2022, for example, the number of courses closed substantially exceeded new course openings. New courses have been added to the inventory since 2006 at an annual rate of 40-50 courses per year, while course closings have averaged about 145 per year over this period. Over 1,700 golf courses have closed over the past 10 years. The rate at which golf courses are closing has decelerated in recent years with the onset of COVID-19. In 2021, 130 golf courses closed nationwide, with 105 course closures in 2022.

The outlook for the golf industry is somewhat unclear at this time. Most golf analysts believe that there will be continued erosion of the COVID-19 impact on golf participation and play levels. Nonetheless, it is anticipated that there will be some sustained positive impact as there has been a substantial increase in the number of new golfers introduced to the sport over the past three years.

The one trend which has been observed is the emergence of significant movement toward recreational activities associated with golf entertainment and family-oriented golf activities. The success of TopGolf facilities and TopTracer Technology is particularly noteworthy. As well, golf-oriented miniature golf, such as the Tiger Woods' PopStroke product have been extremely well received in the market.

Monterey Peninsula Golf Market

Pacific Grove Golf Links (PGGL) is located within the City of Pacific Grove on the Monterey Peninsula. The Monterey Peninsula anchors the northern portion of California's central coast region, and is comprised of the cities of Monterey, Carmel, and Pacific Grove, as well as the resort community of Pebble Beach. The Monterey Peninsula golf market is well established and world renowned, and is home to five of Golf Digest's top 100 golf courses in the country. The market is broadly defined as the area extending from Carmel Valley on the south to Castroville on the north, and from the Pacific Coast on the west inland about 10 miles to Salinas on the east.

The inventory of public access and private golf courses is shown in Table V-6. As noted, while there was some expansion between 1995 and 2010 in both the public and private inventory, the increase in the public golf supply (conversion of Blackhorse and Bayonet 36-hole complex from military to high end daily fee in 2006/2008) was only 13%, and there has been contraction since 2015 related to the closing of the 36-hole Rancho Canada golf complex in the Carmel Valley in 2016/2017. This compares with an expansion of the public supply in the Bay Area golf market of 40% between 1990 and 2015, and the closure of only three courses in the San Francisco Bay Area southern peninsula.

Table V-6: Monterey Peninsula Inventory of Regulation Length Golf Courses			
	Number of Courses (18-Hole Equivalent)		
Year End	Public Access	Private	Total
1990	15.0	5.0	20.0
1995	15.0	5.0	20.0
2000	15.0	8.0	23.0
2005	15.0	8.0	23.0
2010	17.0	8.0	25.0
2015	17.0	8.0	25.0
2020	15.0	8.0	23.0
2023	15.0	8.0	23.0

The location of Monterey Peninsula market area public access golf courses is depicted in Figure V-2, and selected characteristics of these course are presented in Table V-7. Table V-8 provides a summary of golf fees and current play levels at the market area public access courses. The golf fees shown are “rack” rates, which in some cases are subject to discounting and golf play specials at the discretion of the operator. Further, some courses employ a “dynamic” pricing structure which varies according to prevailing demand relative to the available inventory of tee times.

It also should be noted that play levels refer to calendar year 2022, or fiscal year 2021-2022. In many instances the play levels shown are estimates based on historical play, adjusted based on current market conditions, as well as information derived from interviews with operators of the facilities. For these facilities, actual play levels are regarded as proprietary information which is not disclosed.

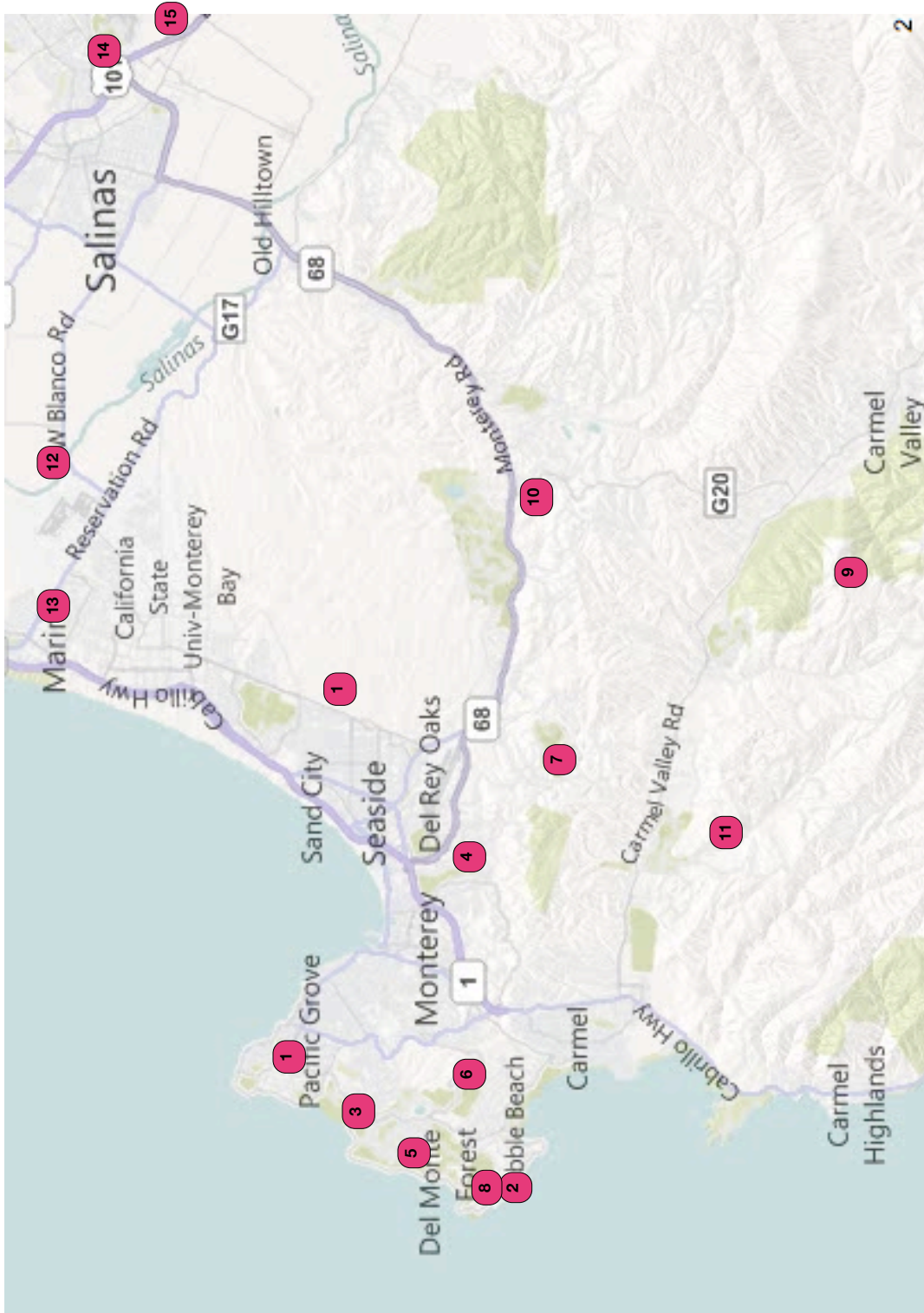


Figure V-2: Location of Market Area Public Access Golf Courses

Table V-7: Selected Characteristics of Monterey Peninsula Public Access Golf Courses

Course	PGGL	Pebble Beach	Spanish Bay	Del Monte
Location	Pacific Grove	Pebble Beach	Pebble Beach	Monterey
Course Type	Reg-Muni	Reg-Resort	Reg-Resort	Reg-Resort
Architect	Egan/Neville	Jack Neville	RT Jones II	Chas Maud
Owner	City of Pac Grove	Pebble Beach Co	Pebble Beach Co	Pebble Beach Co
Operator	City of Pac Grove	Pebble Beach Co	Pebble Beach	Pebble Beach
Year Opened	1932	1919	1988	1897
Number of Holes	18	18	18	18
Par	70	72	72	72
Course Length (back)	5732	7040	6821	6357
Rating (back)	67.7	75.5	74.2	71.5
Slope (back)	119	145	142	127
Greens Fees				
Standard (18 holes)				
Weekday	\$62	\$625	\$335	\$125
Weekend	78	625	335	125
Mid-Day				
Weekday	\$42	---	---	---
Weekend	49	---	---	---
Twilight				
Weekday	---	---	---	---
Weekend	---	---	---	---
Senior (18 holes)				
Weekday	---	---	---	---
Weekend	---	---	---	---
Cart Fees (18/9 holes)	\$21	\$55	\$55	\$25
Mandatory	no	no	no	no
Percent Using Carts	50%	90%	90%	90%
Facilities				
Clubhouse Size (sq. ft.)*	6,000	15,000	1,200	4,000
Banquet Seating Capacity	yes	---	---	---
Snack Bar	yes	yes	yes	yes
Driving Range	yes	yes	no	no
Number of Tees	10	20	--	---
Annual Number of Rounds	62,400	45,000	45,000	45,000
% Twilight/9-Hole Play	15%	15%	10%	5%

Table V-7 (continued): Selected Characteristics of Monterey Peninsula Public Access Golf Courses				
Course	Monterey Pines	Poppy Hills	Spyglass	Laguna Seca
Location	Monterey	Pebble Beach	Pebble Beach	Carmel
Course Type	Reg-Daily Fee	Reg-Daily Fee	Reg-Daily Fee	Reg-Daily Fee
Architect	Graves/Messier	RT Jones I	RT Jones I	RT Jones I & II
Owner	Navy	NCGA	Pebble Beach Co	Rancho Canada
Operator	Navy Golf Prog	NCGA	Pebble Beach Co	Rancho Canada
Year Opened	1963	1986	1966	1970
Number of Holes	18	18	18	18
Par	69	72	72	71
Course Length (back)	5556	6857	6953	6174
Rating (back)	66.9	74.3	75.5	70.6
Slope (back)	114	144	147	132
Greens Fees				
Standard (18 holes)				
Weekday	\$53	\$55/200	\$465	\$55
Weekend	53	72/200	465	75
Mid-Day				
Weekday	43	---	---	---
Weekend	43	---	---	---
Twilight				
Weekday	35	\$35/60	---	\$35
Weekend	35	40/65	---	45
Senior (18 holes)				
Weekday	---	---	---	\$41
Weekend	---	---	---	---
Cart Fees (18/9 holes)	\$23	\$18/12	\$55	\$20/12
Mandatory	no	no	no	no
Percent Using Carts	40%	65%	95%	50%
Facilities				
Clubhouse Size (sq. ft.)*	8,000	20,000	8,000	10,000
Banquet Seating Capacity	yes	yes	yes	yes
Snack Bar	yes	yes	yes	yes
Driving Range	yes	yes	yes	yes
Number of Tees	15	18	16	15
Annual Number of Rounds	50,000	45,000	45,000	35,000
% Twilight/9-Hole Play	15%	15%	5%	5%

Table V-7-Concl: Selected Characteristics of Monterey Peninsula Public Access Golf Courses

Course	Carmel Valley Ranch	Quail Lodge	Black Horse/Bayonet	Pajaro Valley
Location	Carmel Valley	Carmel	Seaside	Royal Oaks
Course Type	semi-private/resort	semi-private/resort	Reg-Daily Fee	semi-private
Architect	Pete Dye	RM Graves	Gene Bates	MacFar/Graves
Owner	Pritzker	Quail Lodge	Diamond/Pitt	---
Operator		Quail Lodge	Troon Golf	---
Year Opened	1981	1963	2008	1922
Number of Holes	18	18	36	18
Par	70	71	72	72
Course Length (back)	6234	6449	7024	6664
Rating (back)	70.5	71.4	74.8	69.5
Slope (back)	134	129	136	118
Greens Fees				
Standard (18 holes)				
Weekday	---	\$295	\$100	\$60
Weekend	---	295	140	65
Mid-Day				
Weekday	150	\$145	\$60	---
Weekend	150	145	95	---
Twilight				
Weekday	\$98	---	\$40 (incl cart)	\$38
Weekend	98	---	40 (incl cart)	43
Senior (18 holes)				
Weekday	---		\$60	\$50
Weekend	---		60	---
Cart Fees (18/9 holes)	included	Included	Included	\$20/15
Mandatory	no	no	no	no
Percent Using Carts	95%	60%	95%	60%
Facilities				
Clubhouse Size (sq.ft.)*	10,000	7,000	9,500	6,500
Banquet Seating Capacity	yes	250	100	
Snack Bar	double ended	yes	yes	yes
Driving Range	yes	yes	Double End	yes
Number of Tees	20	15	60	20
Annual Number of Rounds	45,000	45,000	75,000	40,000
% Twilight/9-Hole Play	10%	10%	15%	15%

Table V-8: Monterey Peninsula Golf Courses--Summary of Rounds and Rack Rates					
	Regular 18-Hole		Loyalty Club/Resident		
	Weekday	Weekend	Weekday	Weekend	Rounds
PGGL	\$62	\$78	\$42	\$58	62,400
Forest Courses					
Pebble Beach	\$625	\$625	---	---	45,000
Spanish Bay	335	335	---	---	45,000
Del Monte	125	125	---	---	45,000
Spyglass	465	465	---	---	45,000
Monterey Pines	53	53	17-31 (military)	17-31 (military)	50,000
Poppy Hills	200	200	55	72	45,000
Carmel Valley/Other Course					
Carmel Valley Ranch	\$150*	\$150*	---	---	45,000
Laguna Seca	55	75	---	---	35,000
Quail Lodge	295	145	---	---	45,000
Salinas Area					
Bayonet/Blackhorse	\$100	\$140	\$60	\$95	75,000
Pajaro Valley	60	65	---	---	40,000
Salinas Fairways	43	56	---	---	50,000
* Includes cart.					

The impact of COVID-19 on market area golf course play levels has been extraordinary in most markets. With a major shift in the number of employees working at home rather than an office, and with golf offering an attractive form of outdoor recreation, golf participation has increased markedly which, in turn, has translated into a large increase in play levels at both public access and private golf courses. The Monterey Peninsula public access courses, in general, have benefited, although the improvement in utilization has not been as significant as in most other markets.

Golf rounds played in the United States and State of California, as reported by industry analyst Golf Datatech, document the COVID-19 impact:

Year	Change in Annual Golf Rounds	
	California	United States
2019	(4.7%)	1.5%
2020	5.6%	13.9%
2021	13.6%	5.5%
2022	(4.2%)	(3.7%)
2023*	(12.1%)	3.1%
* Through April.		

As shown, California golf rounds played increased nearly 20 percent over the 2019-2021 period, before declining 4.2 percent in 2022. The large increase for 2023 (January-April period) is primarily attributable to a very unusual number of rain days for this period. The national rounds played numbers show a similar pattern of increase over 2019-2021, with 2022 rounds down 3.7 percent.

Based on the review of characteristics, and discussions with regional golf course managers, observations regarding the Monterey Peninsula golf market are presented below:

- ▶ There are 15 regulation length 18-hole public-access golf courses serving the Monterey Peninsula, of which 6 are regarded as resort courses--that is, a lodging component is linked to the golf course.
- ▶ The three Pebble Beach Resort courses (Pebble Beach, Spyglass Hill, Links at Spanish Bay) and Carmel Valley Ranch have very high greens fees (\$335-\$625) and offer limited public access.
- ▶ Although subjective, most knowledgeable golf professionals regard Pebble Beach Golf Links, because of its rich history and legacy, as among the premier golf courses in the country, followed by Spyglass Hill, and Spanish Bay. The Bayonet/Blackhorse golf courses, along with Poppy Hills, Carmel Mountain Ranch and Quail Lodge, fall into the next tier. Pacific Grove Golf Links is slightly below this second tier in terms of golf course design quality and condition, but benefits from its spectacular sand dunes/coastal frontage.

- ▶ PGGL competes most directly with Monterey Pines Golf Club in Monterey, Poppy Hills in Pebble Beach, and Laguna Seca in Monterey. At the same time, PGGL often is played by resort/visiting golfers who elect to play multiple courses during their visit to the Monterey Peninsula.
- ▶ Monterey Pines is a U.S. Navy owned par-70 course which is available to both military current personnel and veterans, as well as the general public. The golf course was fully renovated in 2009/2010. The course accommodates about 50,000 rounds annually, one-half attributed to the general public and on-half to military personnel (current or veterans). Greens fees are \$53 daily for the public, with military rates ranging from \$17 to \$31 depending on rank. Golf carts are \$23 per player, with utilization low at 40 percent.
- ▶ Poppy Hills greens fees are \$200 daily for the general public, but NCGA members play at greens fees of \$55 weekdays and \$72 weekends, plus \$18 per player cart fees, with carts optional. The vast majority of the play, estimated at 85 percent, at Poppy Hills is NCGA member play, with only about 15 percent general public daily fee play. Poppy Hills accommodates about 45,000 annual rounds.
- ▶ Laguna Seca is an 18-hole regulation length course located in the Monterey hills, on the north side of Highway 68, about 5 miles inland from the Monterey coastline. The golf course has a fair amount of topography (difficult to walk), relatively short, and in good condition. Although similarly priced to PGGL, the course generates only 35,000 rounds annually.
- ▶ Several clubs offer loyalty programs with substantially reduced greens fees including Bayonet/Blackhorse, Poppy Hills (NCGA members), and Laguna Seca Golf Club.
- ▶ Annual play on most courses on the Monterey Peninsula declined 20-30% over the 2001-2019 period, depending on the market positioning and rate strategy. Then, the impact from COVID-19 triggered about a 10-15 percent surge in play levels over the 2020-2021 period, with play levels retrenching 3-5 percent in 2022.
- ▶ There are plans to redevelop the 18-hole Pajaro Valley Golf Course with a completely new land use plan which calls for 27 holes of golf and 230 residential units. This proposed plan will be subject to a very rigorous approval process such that the likelihood and timing of this project are uncertain at this time.
- ▶ There has been increased competition for higher quality daily fee golf course like PGGL, Poppy Hills and Bayonet/Blackhorse stemming from the increased availability of golf at a few of the private clubs in the market. For example, Quail Lodge and Carmel Valley Ranch now offer daily fee play, although the fee structure is relatively high.

Golf Industry Challenges

Despite the recent COVID-19 related surge in the demand for golf, golf property owners/operators in California will face a number of challenges affecting golf course operating economics in the coming years. In particular, the sharp increase in the cost of irrigation water and the impact of recent increases in the California minimum

wage, along with golf course maintenance worker shortages, will adversely impact operating costs and profitability.

Irrigation Water Costs

Regulation length 18-hole golf courses generally have 90-110 acres of cultivated turf area. Typical irrigation consumption for Central California golf courses averages in the range of 250-300 acre feet, or more, per year. PGGL water consumption is much lower at about 84 acre feet per year due primarily to the small number of irrigated acres and the course's coastal location. While the source and cost of irrigation water varies from course to course, nearly all golf courses have experienced extraordinary increases in their water costs over recent years.

Rates for irrigation water generally have doubled for many water agencies in California over the past 10 years. Continued increases in water rates which substantially exceed the general cost of living are expected going forward due to limited resources and the need to repair/replace aging infrastructure. Water costs for many courses are in the range of \$300,000-\$500,000 annually, often representing 15-20 percent of total operating expenses.

Pacific Grove Golf Links irrigation water costs are very high as well, despite its much lower consumption, due primarily to the very high water commodity rates at PGGL.

California Minimum Wage

Labor related expenses typically represent approximately 50-60 percent of total golf course operating expenses. Most golf course employees (maintenance, pro shop and food and beverage) earn at or somewhat above the minimum wage. Increases in the minimum wage in California over the past six years were as follows:

Table V-9: California Minimum Wage	
Year	Minimum Hourly Wage
2016	\$10.00
2017	10.50
2018	11.00
2019	12.00
2020	13.00
2021	14.00
2022	15.00

Over the 2016-2022 period, the California minimum wage increased 50 percent, equal to an average annual rate of about 7 percent. The increase in the California minimum wage has impacted golf course economics for most golf courses.

Labor Availability

Even at the elevated minimum wage levels, labor availability has been extremely limited, particularly maintenance staff. Over the past few years, most operators have been forced to rely on some level of casual maintenance labor, which is more costly than permanent labor. It is expected that this could lead to further marked increases in maintenance labor cost.

Golf Market Outlook

Not unlike virtually every golf market in the country, the Monterey Peninsula public golf market has improved significantly over the past three years primarily due to the beneficial impact of COVID-19 on golf participation rates. The COVID-19 impact dissipated slightly in 2022, but play on most courses remains well above pre-pandemic levels. Golf play in 2023 is expected to decline somewhat as well due to an unusually high number of rain days. While it is likely there will be some further dissipation of the COVID-19 impact, golf play at most courses is expected to remain above 2019 levels. At the same time, it is highly unlikely that there will be many, if any, golf course development opportunities in the region due to lack of available land suitable for golf course development and the very high cost of development. Thus, as the population continues to grow and mature, it is anticipated that market area demand will remain stable or improve somewhat, such that the long-term outlook remains reasonably favorable.

The consensus among recognized golf authorities is that golf demand, in real terms, will increase modestly at about a 1.0-1.5 percent average annual growth rate over the next 10- to 20-year term. Most of this growth will result from the aging population trends previously discussed, where the propensity to, and frequency of, play increase compared to younger age cohorts.

VI: Comparative Operating Revenues and Expenses

Pacific Grove Golf Links (PGGL) performance is compared with a series of market area courses, as well as selected California municipal courses extending from Ventura on the south to the San Francisco South Bay on the north.

PGGL Market Share

A golf course's market share is determined by a number of factors including golf course design quality and conditioning, pricing structure and play policies, market orientation, overall market conditions, sales and marketing efforts, and property management. Pacific Grove's market share, defined as PGGL rounds divided by total rounds played at public access golf courses in the Monterey County market area, is estimated over the 2005-2022 time frame in Table VI-1.

Table VI-1: PGGL Historical Market Share			
Year	PGGL Rounds	Market Rounds*	PGGL Market Share
2005	77,500	730,000	10.6%
2010	56,000	627,000	8.9
2015	54,400	622,000	8.8
2020	57,800	605,000	9.6
2022	62,400	648,000	9.6
* Total rounds played at the 15 public access golf courses serving the Monterey County region.			

PGGL's market share declined sharply over the 2005-2015 period when the golf facility was under City management (golf operations and course maintenance). CourseCo, the current course manager, assumed golf course operation and maintenance in 2014/2015, when the course market share was at its low point (8.8 percent market share). By 2020, PGGL's market share had increased modestly to 9.6 percent, and has been maintained at this level over the past two years. Importantly, PGGL's improved market share was achieved while the greens fee structure at the course escalated sharply.

Operating Revenues

Annual gross revenue by department for selected municipal golf courses extending from Ventura County on the south to the San Francisco South Bay on the north for fiscal year 2021-2022 is shown in Table VI-2. The revenues relate to golf functions only, and specifically exclude food and beverage operations. The average revenue per round is calculated in Table VI-3.

Table VI-2: Gross Revenue at Selected California Regional Municipal Golf Courses (FY2021-22) (thousands of dollars)							
		Annual Gross Revenue					
Course	Annual Rounds ^{2/}	Greens Fees ^{1/}	Cart Fees	Range	Merch	Other	Total
PGGL	62,371	\$2,781.5	\$682.9	\$148.0	\$450.0	\$172.7	\$4,235.1
Salinas Fairways	45,000 ^{3/}	1,106.2	302.9	143.8	113.9	---	1,666.8
DeLaveaga	58,800	2,026.7	499.7	475.0	450.6	305.2	3,757.2
Santa Barbara	75,100	2,372.5	697.4	327.9	330.0	227.0	3,954.9
Los Robles	82,800	2,624.0	796.2	512.5	205.2	122.0	4,259.9
Buenaventura	61,370	1,733.2	476.2	---	87.0	---	2,485.9
Olivas Links	61,990	1,935.0	483.8	253.0	125.7	---	2,914.7
Simi Hills	83,970	2,598.6	919.5	280.2	214.4	54.5	4,067.2
Shoreline	82,200	1,837.6	434.0	599.2	134.3	73.0	3,077.7
Poplar Creek	83,960	2,950.0	670.0	400.0	380.0	50.0	4,450.0
^{1/} Includes passholders and/or annual membership play. ^{2/} Includes paid and complimentary/employee rounds. ^{3/} Estimated play level based on greens fees and membership fees.							

Table VI-3: Revenue per Round at Selected California Regional Municipal Golf Courses (FY2021-2022)							
Course	Annual Rounds	Average Revenue Per Round					
		Greens Fees ^{1/}	Cart Fees	Range	Merch	Other	Total
PGGL	62,371	\$44.60	\$10.95	\$2.37	\$7.21	\$2.77	\$67.90
Salinas Fairways	45,000	24.58	6.73	3.11	2.53	---	37.04
DeLaveaga	58,800	34.47	8.50	8.08	7.66	5.19	63.90
Santa Barbara	75,100	31.59	9.29	4.37	4.39	3.02	52.66
Los Robles	82,800	31.69	9.71	6.18	2.48	1.47	51.45
Buenaventura	61,370	28.24	7.76	---	1.42	---	40.51
Olivas Links	61,990	31.21	7.80	4.08	2.03	---	47.02
Simi Hills	83,970	30.95	10.95	3.34	2.55	0.65	48.44
Shoreline	82,200	22.35	5.28	7.29	1.63	,89	37.44
Poplar Creek	83,960	35.14	7.98	4.76	4.53	0.60	53.00

Annual Play Levels--Annual play at a municipal golf course depends on a number of factors including course design and maintenance quality, market area strength, competition, greens fees, resident discounts, among other factors. PGGL play at 62,371 rounds is within the middle of the range for the municipal golf courses shown. This play volume, however, is considered relatively favorable given that PGGL commands the highest pricing structure of the golf courses shown.

Greens Fees--At \$4.2 million, PGGL greens fees revenue is at the top of the range for the 10 courses shown in the comparative table. The other top courses--such as Los Robles, Simi Hills, and Poplar Creek--are located in very strong market areas. On a per round basis, the average PGGL greens fee revenue is \$44.60, by far the highest among the courses shown. While not shown, PGGL's average greens fees would be in-line with the higher quality public access courses such as Poppy Hills and Laguna Seca.

Cart Fees--The PGGL cart fee is slightly higher than the comparative courses shown, and in-line with most public access courses on the Monterey Peninsula. The average cart revenue per round depends primarily on cart utilization which, in turn, depends on course policies and course design (topography, course length, green-to-tee distance). PGGL is easy to walk, yielding relatively low cart utilization, and an average per round cart fee.

Range Revenue--PGGL driving range revenue at \$148,000 per year (\$2.37 per round) is very low compared with most other courses surveyed. The low revenue results from PGGL's small, poorly designed warmup range which services primarily same-day golfers. As well, the golf driving range is difficult to access for same day golfers and is not lighted for night use.

Merchandise--Pro shop merchandising at golf courses is very difficult in a retail environment where there are large retail superstores and online merchants which offer very competitively price golf related products. Merchandising revenue at PGGL in 2022 totaled \$450,000 (\$7.21 per round), at the top of the range for the comparative sample shown.

The total PGGL revenue, excluding food and beverage sales, is at the top of the range for the comparative courses both on a total annual volume and per round basis. Again, at the top of the range are several courses in extremely strong golf markets.

Food & Beverage--As noted, The Grill at Point Pinos is independently operated from the golf course. Nonetheless, it is interesting to note that the average food and beverage revenue at the grill averages about \$5 to \$6 per round of golf played. This average per golfer expenditure is in-line with most municipal and mid-market golf courses. It would appear that there may be some revenue upside for the restaurant related to golfer food and beverage purchases.

Operating Expenses

Annual operating expenses by department are shown in Table VI-4 for a series of selected mid-market oriented California municipal golf courses. It should be noted that all of the golf courses shown are operated and maintained by private sector employees, with the exception of Poplar Creek and DeLaveaga which are maintained by City staff. The current concessionaire at PGGL is not required to disclose operating expenses.

Table VI-4: Comparative On-Site Operating Expenses--FY 2021-2022 (\$000)				
Course	Santa Barbara	Olivas Links	Buena	Los Robles
Location	Santa Barbara	Ventura	Ventura	Thousand Oaks
Course Maintenance				
Payroll and Benefits	\$606.9	\$575.7	\$395.6	\$639.8
Services and Supplies	327.6	296.8	219.4	452.2
Utilities	403.6	132.5	120.0	750.0
Maintenance Equipment	156.4	---	---	65.0
Subtotal	\$1,494.5	\$1,005.0	\$735.0	\$1,907.0
Golf Operations				
Payroll and Benefits	\$175.0	\$217.6	\$192.0	\$225.0
Cart Leasing	80.0	85.0	75.0	85.0
Outside Services	150.0	291.6	115.7	280.0
Range	50.0	89.0	---	85.1
Services and Supplies	109.6	31.5	16.3	68.1
Subtotal	\$564.6	\$714.7	\$399.0	\$743.2
Undistributed/Clubhouse	\$125.0	---	---	433.0
General and Admin				
Payroll and Benefits	\$175.0	\$143.6	\$144.1	\$197.6
Insurance	39.7	45.0	40.0	172.4
Property Taxes	---	---	---	8.2
Marketing/Promotion	25.0	69.7	58.9	350.8
Services and Supplies	300.7	276.7	264.7	362.0
Management Fee	288.9	104.8	77.0	259.8
City Overhead Allocation	56.7	---	---	---
Subtotal	\$886.0	\$639.8	\$584.7	\$1,350.8
Total	\$3,070.1	\$2,359.5	\$1,718.7	\$4,434.0
1 Excludes food and beverage. Source: PFA.				

Table VI-4: Comparative On-Site Operating Expenses--FY 2021-2022 (\$000)				
Course	Simi Hills	Poplar Creek	Shoreline	DeLaveaga
Location	Simi Valley	San Mateo	Mountain View	Santa Cruz
Course Maintenance				
Payroll and Benefits	\$740.0	\$1,100.0	\$463.0	\$1,006.0
Services and Supplies	300.0	735.0	145.0	495.0
Utilities	856.0	110.0	545.0	725.0
Maintenance Equipment	37.0	125.0	---	25.0
Subtotal	\$1,933.0	\$2,070.0	\$1,153.0	\$2,251.0
Golf Operations				
Payroll and Benefits	\$175.0	---	\$191.0	---
Cart Leasing	90.0	---	97.0	---
Outside Services	125.0	---		---
Range	55.0	---	164.0	---
Services and Supplies	35.0	---	24.0	---
Subtotal	\$480.0	---	\$476.0	---
Undistributed/Clubhouse	\$100.0	---	\$113.0	---
General and Admin				
Payroll and Benefits	\$200.0	---	\$131.0	---
Insurance	109.0	---	---	---
Property Taxes	---	---	---	---
Marketing/Promotion	25.0	---	106.0	---
Services and Supplies	180.0	---	55.0	---
Management Fee	---	---	150.0	---
City Overhead Allocation	---	---	46.0	---
Subtotal	\$514.0	\$300.0	\$489.0	---
Total	\$3,027.0	\$2,370.0	\$2,231.0	\$2,251.0
1 Excludes food and beverage. Source: PFA.				

VII: Golf Course Operating Options

The following section presents a description and information regarding various forms of golf course operation and management available to the City of Pacific Grove. Presently, PGGL is operated under a golf facility lease agreement whereby the operator/lessee (CourseCo) is responsible for all golf course functions. The Point Pinos Grill is operated by an independent restaurant concessionaire under a separate lease agreement. The current golf course lessee (CourseCo) receives all revenues from golf operations, and is responsible for all operating expenses, with the exception of water which is under a cost sharing agreement. The lessee is required to make annual lease payments to the City.

There are five basic golf course operating options that are available to the City of Pacific Grove:

- ▶ Golf Facility Lease (current model)
- ▶ Management Agreement
- ▶ Full Self-Operation (City or Recreation District)
- ▶ Golf Operations Concessionaire/City Maintenance
- ▶ Golf Operations Concessionaire/Contract Maintenance

The distribution of the 177 municipal golf facilities (204 golf courses) located in the State of California by type of operating model is indicated as follows (based on golf facilities, regardless of number of holes):

Table VII-1: Distribution of California Municipal Golf Facilities by Operating Format				
Operating Model	Number of Facilities			Percentage Distribution
	Southern CA	Northern CA	Total	
Self-Operation	5	3	8	5%
Recreation District	2	5	7	4
Concession W/ Muni Maintenance	5	8	13	7
Concession W/Contract Maintenance	5	8	13	7
Management Agreement	19	30	49	28
Facility Lease	47	40	87	49
Total	83	94	177	100%

The above distribution presents a snap shot of the current situation. Nearly one half of the golf facilities are operated under a facility lease agreement, including Pacific Grove Golf Links. The lessee is typically a private sector golf course operating company, responsible for all golf course operating functions. The lessee generally pays the public agency the greater of a minimum rent payment or a percentage of gross revenue. Food and beverage facilities usually are operated by the lessee, although sometimes there is a separate private sector food and beverage concessionaire. The “leased facility” numbers shown above are skewed somewhat by Los

Angeles County where 13 golf facilities are the County of Los Angeles' municipal golf courses and four are the City of Long Beach golf courses, all of which are leased.

There are 49 California municipal golf courses operated under management agreements, representing 28 percent of the total. These courses are operated by private companies specializing in golf operations and maintenance. All of the revenues and expenses are borne by the public agency, with the management company receiving a fee for their management services.

There are eight municipal golf courses in the State which are self-operated, with the public agency providing all golf course maintenance and golf operation services. In virtually all instances, food and beverage facilities are operated under a concessionaire agreement. In terms of municipal self-operation, five of the eight facilities shown are owned and operated by the Los Angeles City Department of Recreation and Parks properties, two by the City of San Francisco, and one by the City of Sunnyvale.

In addition to the eight golf facilities which are self-operated, there are 13 other municipal facilities in the State which retain concessionaires for golf operations, but utilize City Parks and Recreation staff for golf course maintenance. The golf operations concessionaire is responsible for the starting function, cart rental, practice range operation, and pro shop merchandise sales. Again, food and beverage operations are operated either by the golf operations concessionaire or by a dedicated food and beverage concessionaire.

There also are a few hybrid operations involving a mix of public and/or private service providers. For example, there are some golf courses where operations are provided by a golf management company with golf course maintenance provided on a contract basis by a separate company.

The distribution shown in the exhibit does not present a clear picture of the trends established over the past 10-20 years. For example, nearly all of the 49 municipal management agreements at golf courses in California have been put in place within the past 20 years. Over this time span, there have been numerous other golf courses which have converted from City maintenance to private sector maintenance through fee-for-service maintenance contracts, facility leases or management agreements.

Responsibility for the basic maintenance, operation and management functions for each of these operating models is summarized as follows:

Table VII-2: Golf Function Responsibility Under Alternative Operating Models				
Model	Course Maintenance	Golf Operations	Food & Beverage	Administration/ Management
Golf Facility Lease (current PGGL model)	Private	Private	Priv/Concession	Private
Management Agreement	Private	Private	Private	Private
Hybrid	City/Private	Priv/Concession	Concession	City/Private
Full Self-Operation	City	City	Concession	City

In addition to the basic options outlined above, there are numerous other permutations which would create alternative hybrid models. These alternative hybrid models, discussed later in this section, combine some form of self-operation, concession agreements, and/or management/contract private party agreements. All of the operating options require City oversight responsibilities including contract monitoring, budget preparation and review, management oversight, and the like. The degree of City participation varies by operating model.

Facility Lease Model

Pacific Grove Golf Links currently is operated and maintained under a standard facility lease. Under this option, the golf course is leased to a private golf course operator who provides course maintenance, golf operations, and overall facility management services. The food and beverage operation may be included under the golf course facility lease or provided under a separate lease to a dedicated food and beverage operator. In most California municipal golf facility leases, the operator's lease payments typically are equal to the greater of a minimum rental payment versus a percentage of golf, merchandise, lessons, and food and beverage departmental gross revenue. Under a typical facility lease, the lessee receives 100 percent of the revenue and is obligated to fund some level of required front-end capital improvements, all operating expenses, rent, and contribute to a reserve for ongoing capital improvements. As such, the financial risk is largely borne by the lessee. The term of the lease is negotiable, although the length generally is related to operator capital improvement levels and rental payment terms.

There are many examples of the facility lease model. All of the Los Angeles County courses, the City of Long Beach courses, City of San Jose courses, and numerous other municipal golf facilities in the State are operated under a facility lease. The leases are structured with a minimum versus a percentage of gross revenue (different percentages for the various revenue departments such as golf (greens, carts and range), merchandise, food and beverage, and lessons. More recently negotiated facility leases often are structured with more revenue sharing at greater than expected gross revenue levels. The PGGL agreement has this feature, with the City receiving a share of revenue above a specified golf gross revenue threshold.

Tables VII-3 and VII-4 contain a summary of golf course “turnkey” facility lease terms — facilities where all operations are leased to a contract operator – for selected Southern and Northern California public properties, respectively. There has been extensive facility lease activity in recent years, with a number of public agencies converting from management agreements to facility leases. In addition to Pacific Grove Golf Links in Pacific Grove, Chuck Corica Golf Course in Alameda, Alhambra Golf Course in Alhambra, the City of San Jose courses (Los Lagos, San Jose Muni, and Rancho del Pueblo), Valley Oaks in Visalia, Green River in Orange County, Las Positas in Livermore, Redwood Canyon and Tilden Park in the San Francisco East Bay, and several Los Angeles County golf courses have been leased in recent years, many of these conversions from a management agreement operating format to a facility lease. In addition, there have been a number of municipal golf course lease agreements renewed or extended over the past several years, mostly ones located in Southern California.

Table VII-3: Regulation Length Public Golf Course Facility Lease Terms						
Course	Pacific Grove	Salinas Fairways	Soule Park	Oceanside	Costa Mesa CC	Mountain Meadows
Location	Pacific Grove	Salinas	Ojai	Oceanside	Costa Mesa	Pomona
Number of Holes	18	18	18	18	36	18
Lessor	City of Pacific Grove	City of Salinas	Ventura County	Oceanside	Costa Mesa	L.A. County
Lessee	CourseCo	Sierra Golf Mgmt	Highlands Golf	Bellows/ Landscapes Un.	Mesa Verde Partners	American Golf
Agreement Date	2014	2008	2007	2007	1992	2020
Lease Term (years)						
Initial	9.5	20	10	30	18	15
Option Extension	Two 5-year	1-10	1-5	1-10	2-5 + 10 yr. ext	1-5
Minimum Rent	\$300,000	\$100,000	\$180,000	None	\$630K/720K	\$890,000
CPI Adjusted	No	No	No	---	No	No
Percentage Rents						
Greens	---	7.5%	11.5%/50% ^{1/}	20%	35%	28%
Carts	---	7.5%	11.5%/50% ^{1/}	20%	35%	28%
Range	---	7.5%	11.5%/50% ^{1/}	20%	35%	28%
Merchandise	---	7.5%	5%	20%	6%	6%
Lessons	---	7.5%	---	---	5%	10%
Food and Beverage	---	7.5%	5%	20%	11%	8%
Liquor	---	7.5%	5%	20%	11%	10%
Banquet Room Rental	---	7.5%	5%	20%	25%	25%
Revenue Sharing	Min + 65% of total golf revenue exceeding \$2.35M					
Required Capital Imps	\$100,000	none	None	---	\$1.938M	\$150,000
Repl Reserve Require	1.5% of total gross revenue	none	\$1/round	---	5% of greens	--- ^{2/}
Cost of Water	Lessee	Lessee	Lessee	Lessee	Lessee	County

^{1/} Percentage rent increases to 50% for gross greens fees exceeding \$1,650,000, cart revenue of \$425,000 and range revenue of \$125,000.

^{2/} County contributes an amount equal to 10 percent of greens fees.

Table VII-3 (continued): Regulation Length Public Golf Course Facility Lease Terms--Southern California						
Course	La Mirada	Los Verdes	Meadowlark	Los Amigos	Diamond Bar	Los Lagos/San Jose Muni
Location	La Mirada	Palos Verdes	Huntington Beach	Downey	Pomona	San Jose
Number of Holes	18	18	18	18	18	36
Lessor	L.A. County	L.A. County	Huntington Bch	L.A. County	L.A. County	City of San Jose
Lessee	American Golf	American Golf	American Golf	Los Amigos GP	American Golf	CourseCo
Agreement Date	2020	1994 ^{2/}	1993	2012	2020	2023
Lease Term (years)						
Initial	15	15	25	20	15	15
Option Extension	1-5	---	15 (city)	5 (county)	1-5	two 5-year
Minimum Rent	\$890,000	\$970,000	\$500,000	--- ^{3/}	\$890,000	None
CPI Adjusted	No	No	No	No	No	Yes
Percentage Rents						
Greens	28%	40%	25%	5%-43% ^{4/}	28%	
Carts	28%	40%	25%	5%-43% ^{4/}	28%	
Range	28%	30%	25%	5%-43% ^{4/}	28%	
Merchandise	6%	5%	4%	6%	6%	5.0%
Lessons	10%	---	---	---	10%	5%
Food and Beverage	8%	10%	10%	8%	8%	---
Liquor	10%	12%	10%	12%	10%	---
Banquet Room Rental	25%	10%	25%	25%	25%	---
Revenue Sharing						10% up to \$8.0M; 20% \$8.0-\$12.0M. 35% over 12.0
Required Capital Imps	\$150,000	\$800,000	\$3,500,000	\$500,000	\$150,000	\$2,000,000
Repl Reserve Require	--- ^{1/}	--- ^{1/}	---	--- ^{1/}	--- ^{1/}	---
Cost of Water	County	Lessee	Lessee	Lessee	County	Lessee

^{1/} County contributes an amount equal to 10 percent of greens fees.
^{2/} Term extended for an additional 15 years with commitment of additional capital improvements.
^{3/} None in first 5 years; then 80% of year 5 percentage rent.
^{4/} Years 1-2 / 3+.

Table VII-4: Regulation Length Public Golf Course Facility Lease Terms					
Course	Alondra Park	Chuck Corica	Crystal Springs	Alhambra G.C.	Metropolitan
Location	Lawndale	Alameda	Burlingame	Alhambra	Oakland
Number of Holes	18	45	18	18	18
Lessor	L.A. County	City of Alameda	City/County of San Francisco	City of Alhambra	City of Oakland
Lessee	American Golf	Greenway Golf	Crystal Springs Golf Partners	Billy Casper Golf	Oakland Golf, LLC
Agreement Date	2020	2012	1997	2019	2001
Lease Term (years)			(revised 2004)		
Initial	15	20	20	5	25
Option Extension	1-5	One 5-year; extended to 50 yr	None	Three 5-year	Three 5-year
Minimum Rent	\$890,000	\$300,000	\$1.25 million ^{11/}	\$100,00 (yrs 1-5) increasing to \$175K over term	\$400,000 ^{2/}
CPI Adjusted	No	No	Yes	No	Yes
Percentage Rents					
Greens	28%	Years 1-20: 8% of total gross revenue up to \$4.0M (cpi adjusted), 10% above; Years 21-40: 10% up to \$4.0, 12% above	25/35/32% ^{12/}		0/15/17.5/20/22.5/25/27.5 ^{3/}
Carts	28%		25/35/32%		
Range	28%		25/35/32%		
Merchandise	6%		8%	---	0/4% ^{4/}
Lessons	10%		25/35/32% ^{12/}	---	0/4%
Food and Beverage	8%	7.5%	8%	n.a.	0/4%
Liquor	10%	NA	8%	n.a.	0/4%
Banquet Room Rental	25%	NA	25/35/32% ^{12/}	n.a.	0/4%
Revenue Sharing				40% of gross golf revenue exceeding \$1.9 million (2% annual escalation)	
Required Capital Imps	\$150,000	\$5.7 million	\$1.98 million	\$183K, plus maint. equipment	\$8.0 million
Repl Reserve Require	--- ^{1/}	3.0% of total gross revenue	6% (yrs.1-5); 2%(yr.6+) of total gross revenue	\$30,000 per year	0% (1-2), 2% (3-4); 4% (5+) of total gross
Cost of Water	County	Lessee	Lessee	Lessee (\$200,000 cap)	Lessee

^{1/} County contributes an amount equal to 10 percent of greens fees.
^{2/} Increases to \$500,000 by Year 4.
^{3/} Years 1-2 / 3-5 / 6-10 / 11-15 / 16-20 / 21-25 / 26+.
^{4/} Years 1-5 / 6-10 / 11-15 / 16+.

In general, the facilities are leased to a golf management company with a minimum lease payment versus percentage rents. The contract specifies performance standards, required capital improvements and a range of contractual terms. It is important to note the agreement date, as the improving economics of the golf market and competitiveness in the golf management industry during the 1990-2000 period are reflected in more favorable lease terms to the lessor, with the most recent agreements somewhat adversely influenced by soft golf market conditions from 2001 through 2019 (pre-COVID-19).

The various terms of the leases are interrelated and the lease payments must be considered in the context of all the terms of the lease.

- ▶ **Lease Term.** The term of the facility leases shown generally ranges from 15-30 years. When front-end lessee capital improvements are required, which generally is the case, the term of the lease must be long enough to amortize these capital expenditures. The length of the term normally is a function of the level of capital improvements. Occasionally a short-term agreement (less than five years) is negotiated, but these are generally related to the continuation of an agreement with an operator where minimum capital improvements are required or where an option is exercised to extend the lease term.
- ▶ **Minimum Rent.** The minimum rent typically is established at about 75 to 80 percent of the expected “percentage rent” amount. The minimum often is adjusted annually to reflect about 80 percent of the average of percentage rents paid during the prior three to four years operation, but never less than the preceding minimum rent level.
- ▶ **Percentage Rents.** Percentage rents vary by golf department, although often a composite rate is applied to greens fees, cart revenue, and driving range revenue. Merchandise, food and beverage, and other minor departments generally have lower individual percentage rents primarily due to the relatively small operating profit margins on these goods and services. The percentage rents are a function of the length of term, required capital improvements, utility sharing agreements, and the replacement reserve requirements. The rent percentage may increase over the term of the lease. The higher the capital expenditure requirement, replacement reserve, and costs associated with utilities and other course operations, the lower the percentage rent structure. Also, the market strength and potential profitability of the course strongly influence percentage rents.
- ▶ **Fees and Operating Policies.** Under most municipal facility leases, the lessor (City) retains substantial control over setting fees and establishing operating policies. As well, specific guidelines such as maintenance standards are in-place or negotiated as an integral part of the lease terms. While changes in fees and policies normally require City approval, in practice, the lessee has greater influence in modifying fees and terms which financially benefit the lessee. Moreover, regardless of the rigor of the lease agreement, a number of “gray” areas, such as level of course conditioning, generally remain which may be exploited by the lessee.
- ▶ **Capital Improvements.** Most facility leases call for capital improvements to be funded by the lessee. A list of improvements is specified and a time frame for their implementation is established. The capital

improvements requirement varies widely for the facilities shown, from less than \$1 million to over \$8 million.

- ▶ Capital Improvement Replacement Reserve. Generally, some provision for establishing a reserve for ongoing future capital improvements is stipulated. The replacement reserve is normally a percentage of greens fee revenue, with the percentage depending on anticipated future capital requirements, the age of the course, and the front-end capital expenditure requirement. Usually, the replacement reserve is in addition to percentage rents, but sometimes the reserve funds are credited against rent payments.
- ▶ Utilities. Typically, the lessee is responsible for utility costs. However, due to the high cost of water in California, there may be some cost sharing of utilities, or some protection provided the lessee in terms of ceilings or caps on utility rate increases.

For facility lease agreements, the market potentials, specific course maintenance requirements, areas of lessor/lessee responsibility, and other contract terms must all be considered in establishing an equitable lease structure. Thus, while the experience of other courses can serve as a general guideline, specific consideration should be given to the unique characteristics of a city's golf course, such as the location and market strength. Further, the overall objectives of the City will influence the structure of contract terms.

The primary advantages of the facility lease option include a guaranteed minimum rent payment to the City, potential benefits of professional golf management, limited required participation by the lessor (City), minimum financial risk to the City, and significant levels of private capital improvement funding availability. The primary disadvantages of the facility lease option include waiving some control over operating policies and procedures, commitment to longer term agreements and, depending on the structure of the agreement compensation, limited participation in upside financial performance.

Management Agreement

This option relates to a fee-for-service agreement with a Director of Golf, General Manager or an outside management company. Golf and food and beverage functions may be combined or separated, but the structure is the same. All functions would be under the authority of the contract golf director, General Manager or management firm. Under a typical management agreement, the facility owner (City) receives all revenues and is responsible for funding all capital improvements, operating expenses, and reserves for ongoing capital reinvestment. In addition, the owner (City) pays the operator a fee for management of the facility. In effect, the professional operator serves as the City's agent in managing, operating, and maintaining the golf facility. Management compensation typically consists of a base fee, plus performance incentives.

While there was a period in the early part of the new century when a number of public agencies employed a management contract approach to operations and maintenance, in more recent years movement back to a facility lease structure has occurred. A summary of selected management agreement terms and conditions relating to moderate and high quality municipal golf course operations in California is contained in Table VII-5.

As previously indicated, under this structure, the City receives all revenue and is obligated to fund all maintenance, operating and administrative expenses, including a management fee. The management fee is in addition to all on-site salaries and expenses. The basic terms and conditions of the agreements are discussed below.

Term

Generally, management terms are five years in length, long enough to allow a firm to amortize its initial efforts to establish policies, procedures, and systems, and to ensure sufficient job security for key employees. Longer terms offer little advantage to the owner. The renewal of an agreement typically is for a period of three to five years. The terms may be influenced by conditions dictated by the financing instrument used such as tax-exempt bond IRS regulations. For example, the IRS has a number of stipulations imposed to ensure a management contract does not result in private business use of a bond-financed facility. Among other things, the IRS restricts contracts which give the service provider an ownership or leasehold interest or provide compensation for services rendered based in whole, or in part, on a share of net profits from operations of the facility. In recent years, the IRS has relaxed the restrictive provisions of public management contracts to some degree.

Compensation Structure

For moderate volume courses (\$2.0-\$2.5 million in annual golf/greens, carts, range) revenue, the base fee generally ranges from \$100,000 to \$140,000 per year. Compensation typically consists of a base, or guaranteed fee, plus an incentive fee. Incentive fees are structured such that expected performance would result in additional compensation of \$20,000 to \$60,000. Total compensation, assuming budgets are met or slightly exceeded, for moderate volume 18-hole public courses, generally ranges from \$150,000 to \$180,000 per year. For high volume courses (\$3+ million in golf revenue), the base fee generally ranges from \$150,000

Table VII-5: Management Agreement Terms at Selected California Public Golf Courses				
Golf Course	Buenaventura/ Olivas Links	Los Robles	Carlsbad Crossings	Callippe Preserve
Location	Ventura	Thousand Oaks	Carlsbad	Pleasanton
Course Type	Mid-market Muni	Municipal	Upscale Municipal	Upscale Municipal
Number of Holes	36	18	18	18
Owner	City of Ventura	City of Thousand Oaks	City of Carlsbad	City of Pleasanton
Manager	Kemper Sports	EAGLE Golf	JC Resorts	CourseCo
Agreement Date	2020	2006	2019	2021
Term (years)	5	10	5	5
Options	Two 5-year	Four 5-year	None	One 3+One 2 year
Options Holder	City	City	---	City
Annual Gross Revenue	\$5,500,000	\$5,000,000	\$7,500,000	\$4,700,000
Base Annual Fee	\$136,000	\$100,000	\$135,000	\$120,000
CPI Adjusted	Yes	2%/year	No	Yes
Incentive Structure	3.5% of gross "golf "revenue exceeding \$5,000,000 (not to exceed fixed	12% of NOI: ex depreciation	5.5% of gross revenue exceeding \$5.0 million (not to exceed fixed fee)	15% of golf gross revenue exceeding \$3.0 M + 15% of f&b and merchandise exceeding \$1.1 M. (max total \$150K
Management Functions				
Course Maintenance	X	X	X	X
Golf Operation	X	X	X	X
Food and Beverage	X	X	X	X
Annual Compensation				
Base	\$136,000	\$140,000	\$135,000	\$128,000
Incentive	17,500	75,000	135,000	102,000
Total	\$153,500	\$215,000	\$270,000	\$230,000
% of Total Gross Rev	3.1%	4.3%	3.6%	4.9%
Reimbursements	Out-of-Pocket	Accounting	None	Accounting/Out of Pocket
Performance/Other Deposit	None	None	None	None
Non-Compete Restrictions	None	None	None	None

Table VII-5 (continued): Management Agreement Terms at Selected California Public Golf Courses				
Golf Course	Shoreline	Baylands Golf	Boundary Oak	Black Gold
Location	Mountain View	Palo Alto	Walnut Creek	Yorba Linda
Course Type	Mid-Market Municipal	Upscale Municipal	Mid-Market Municipal	Upscale Municipal
Number of Holes	18	18	18	18
Owner	City of Mountain View	City of Palo Alto	City of Walnut Creek	City of Yorba Linda
Manager	Touchstone Golf	OB Sports	CourseCo Inc	Kemper Sports Mgmt.
Agreement Date	2021	2021	2022	2020
Term (years)	5	3	10	5
Options	None	One 3-year	None	None
Options Holder	---	City	---	---
Annual Gross Revenue	\$3,200,000	\$4,400,000	\$6,000,000	\$6,200,000
Base Annual Fee	\$120,000	\$108,000	\$175,000	\$170,000
CPI Adjusted	No	Yes	Yes	No
Incentive Structure	10% of golf gross revenue in excess of \$2,600,000	20% of gross revenue (ex F & B) exceeding \$3,655,000	15% of golf gross revenue exceeding prior year; 720% of F & B gross exceeding prior year. Not more than 20% of total fee.	7.0% of gross revenue in excess of \$4,800,000. 9% in excess of \$6,000,000
Management Functions				
Course Maintenance	X	X	X	X
Golf Operation	X	X	X	X
Food and Beverage		Leased to OB	X	X
Annual Compensation				
Base	\$120,000	\$108,000	\$175,000	\$170,000
Incentive	<u>60,000</u>	<u>60,000</u>	<u>\$45,000</u>	<u>102,000</u>
Total	\$180,000	\$168,000	\$220,000	\$272,000
% of Total Gross Rev	5.6%	3.8%	3.7%	4.4%
Reimbursements	None	Out-of-Pocket	None	None
Performance/Other Deposit	None	None	None	\$50,000
Non-Compete Restrictions	None	None	None	No

Table VII-5 (conc): Mgmt. Agreement Terms at Selected California Public Golf Courses			
Golf Course	Santa Barbara Mun	Encinitas Ranch	DeBell
Location	Santa Barbara	Encinitas	Burbank
Course Type	Mid-Market Municipal	Mid-Market Municipal	Mid-market Muni
Number of Holes	36	18	18
Owner	City of Santa Barbara	Encinitas Ranch Golf Auth.	City of Burbank
Manager	CourseCo	J.C. Resorts	Touchstone
Agreement Date	2016	2012	2019
Term (years)	5	10	5
Options	One 5-year	None	5
Options Holder	City	---	City
Annual Gross Revenue	\$3,950,000	\$4,500,000	\$3,000,000
Base Annual Fee	\$98,000	\$220,000	\$96,000
CPI Adjusted	Yes	Yes	No
Incentive Structure	15% of golf gross revenue in excess of \$2,800,000	.75% of gross golf revenue Accounting reimbursement direct	15% of gross oper profit exceeding \$2,550,000, or prior year's GOP
Management Functions			
Course Maintenance	X	X	X
Golf Operation	X	X	X
Food and Beverage		X	X
Annual Compensation			
Base	\$96,000	\$238,000	\$96,000
Incentive	172,000	25,000	100,000
Total	\$268,000	\$263,000	\$196,000
% of Total Gross Rev	6.8%	5.8%	4.3%
Reimbursements	Accounting, Out-of-Pocket	Accounting - \$48K/year	Yes
Performance/Other Deposit	None	None	No
Non-Compete Restrictions	None	None	None
			None

to \$180,000 per year for 18-hole courses. Incentive fees are structured such that expected performance would result in additional compensation of \$30,000 to \$75,000. Total compensation, assuming budgets are met or slightly exceeded, for high volume 18-hole public courses, generally ranges from \$150,000 to \$225,000 per year.

While there are many ways of structuring incentive agreements, it is generally more effective to key them off of net operating income, or gross revenue above established threshold levels, with incentive payments equaling anywhere from 25 to 100 percent of the base fee.

The compensation noted above relates to agreements where all management staff, including day-to-day accounting, are provided onsite, and there are no reimbursements for corporate support functions, marketing, or other normal offsite management services, including routine travel. The cost of some extraordinary services (e.g., legal, specialty agronomical consulting, etc.) may be borne by the golf course owner. There are many agreements where out-of-pocket expenses such as travel are reimbursed, and a few where the accounting function is provided off-site for an additional fee.

Incentive compensation normally is triggered by performance which exceeds predetermined levels of net operating income (defined as "earnings before interest, taxes, depreciation, and amortization," or EBITDA) or gross revenue. Since expenses are reasonably predictable, incentive payments based on gross revenue exceeding specified threshold levels often are workable.

It should be noted that golf revenue (greens, carts, and range) has little associated variable cost, whereas merchandise and food and beverage have very high variable costs. Given this, each revenue category should be treated independently, and incentive clauses should more greatly reward extraordinary golf revenue compared with merchandise, food and beverage, lessons, and other miscellaneous sources.

Overall, total compensation should represent about 4 percent of total gross revenue. The 4 percent allowance is an industry standard which most professional golf management firms utilize when allocating home office services for courses they own and operate.

It is generally desirable for at least one-quarter to one-third of total compensation to be incentive-based. Again, the type of financing may influence the structure of the compensation and limit the portion which is incentive-based.

Over the past two years, with the extraordinary improvement in golf course performance resulting from the positive impact of COVID-19 on golf participation, a number of management agreements have yielded significant windfall gains for golf course management companies. Those agreements with incentive provisions related to gross revenue or net income performance generated substantial incentive fees. Many agreements have a cap on total management compensation, which prevents these high windfall gains.

Base Fee Adjustments

In many agreements, the base fee is inflation-adjusted. This is a negotiable point, and typically relates to the structure of incentive compensation, which often serves as an inflation hedge.

Management Services

Offsite management services covered under the management fee include, although are not necessarily limited to, the following functions:

- ▶ Personnel/Human Resources
- ▶ Training
- ▶ Payroll and Benefit Administration
- ▶ Management Reporting and Accounting Systems
- ▶ Internal Audits
- ▶ Budgeting Support
- ▶ Marketing Support
- ▶ Agronomical Support

Typically, all of these services are included under the management fee. If not, an accordingly lower management fee would be expected.

While the management company provides these services, they do so, in effect, as the agent for the City. The City determines the fee structure, establishes policies, and has the right to approve compensation, employment practices, and other similar items. Clearly, the management firms provide input and recommendations, but ultimately the City retains near-full control over all operating decisions.

Other Provisions

Daily accounting and management system reports are an integral part of the golf course operation. This daily function can be provided on-site by golf course administrative staff, or at the home office of the management company. When provided by on-site staff, the expense is borne by the course like any other operating expense. When provided off-site by the management company, there often is a separate charge to the City, in addition to the basic management fee.

There may be other services provided by the management company which are reimbursed by the City separately from the management fee. Examples include travel expenses by home-office management staff, outside agronomical evaluations, and the like. All of these elements of the management agreement are negotiable, and clearly, the overall compensation consists of the sum of the base fee, incentive fee, and reimbursements.

The primary advantages of the management agreement structure include the benefits related to professional golf course management, lower wage and benefit structure related to private sector employment, shorter term contractual commitments, more control over the overall golfer experience and operations, and greater participation in upside financial performance. The major disadvantages of this form of operation include greater participation required on the part of the contractor (City), financial risk, inability to attract private capital, and significant operating and financial risk. Effectively, while the public agency retains substantial upside

revenues, it bears all of the financial risk related to economic downturns and extraordinary events such as COVID-19, heavy rainfall, flood damage, and golfer liability exposure.

Self-Operation

Until 2015, Pacific Grove Golf Links was self-operated by the City of Pacific Grove. The City provided all golf operations and golf course maintenance, with the food and beverage operations provided by a private sector concessionaire.

The principal advantage of the self-operation model is control--the public agency maintains full control over pricing, service levels, maintenance quality, play policies, and virtually all other aspects of the operation. As well, under self-operation, the public agency receives all revenues generated at the facility and retains all of the net operating income.

There are numerous disadvantages associated with self-operation which have lead to the clear trend to convert to alternative forms of golf course management. Some of the most notable disadvantages are summarized below:

Higher Labor Costs--Generally, public sector employees command higher compensation than comparable private sector labor, with higher benefits accounting for a major component of the variance. Public sector labor often is 20-30 percent higher than private sector labor. In addition, the private sector generally has greater flexibility in labor scheduling than the public sector. This is particularly important in the use of part time employment for both course maintenance and golf operations.

Financial Risk--While the public agency receives all revenues, it is also responsible for all operating expenses, and thus is solely responsible for all operating losses. As golf is primarily a fixed cost operating business, a decline in operating revenue can result in sharp operating losses.

Management Expertise--The private sector offers specialization in golf course management which may or may not be available through public sector employment. Management specialization is not only important in planning, organizing and delivering quality and efficient golf programs and services, expert management is particularly important in reacting to market changes. The public sector often is less responsive to market shifts, and implementing changes to minimize financial losses.

Political Influence--Public sector operation is somewhat more vulnerable to political influence than private sector operation. That is, private sector management may insulate the City from constituent interference and influence, and allow decisions to be made which benefit the golf course in terms of operating efficiency and profitability.

Liability--Golf course operations carry some degree of personal injury liability. While the owner of the enterprise may always have some exposure to liability (primarily related to the golf course design safety), a private operator typically bears a substantial portion of such exposure. One of the responsibilities of a private operator is to conduct safety inspections relative to both the golf course layout, as well as maintenance and operating practices.

Due to these disadvantages, most public sector agencies have elected to outsource their golf courses to private sector operators in the form of facility leases or management agreements. Over the past 20-30 years, there have not been any instances where a California public agency has assumed operation and maintenance of a golf course.

Hybrid Model

Hybrid models basically refer to bifurcation of the golf operations and golf course maintenance functions. There are two basic situations observed. First, there may be golf course management company which operates golf operations either through a concession agreement, or through a management service agreement, with golf course maintenance provided by the public agency. Alternatively, golf operations can be provided by a private management company, with course maintenance provided by a private landscape management company on a contract basis.

Golf operations concessionaire agreements normally involve payment of rent to the City based on a percentage of gross revenue (percentage varies by revenue category). Sometimes the percentage rental rates are adjusted downward to reflect the concessionaire responsibility for reservation, greens fees collections, and starting, but in other cases a separate fee is paid to the concessionaire by the City for these services. In these cases, the City receives rent from the concessionaire, and also pays the concessionaire a fee for services. A summary of representative golf operations concession agreements is provided in Table VII-6).

Historically, there have been many public agencies which have elected to maintain the golf course through their parks and recreation department, while retaining concessionaires for golf and food and beverage operations. In most of these instances, the reservations, starting, marshaling, and greens fees collection function is the responsibility of the concessionaire, although in some instances (e.g. City of San Diego) the municipality fills this role, creating some level of redundancy in staffing. An examples of the hybrid model is DeLaveaga Golf Course in Santa Cruz, whereby maintenance is provided by City Parks and Recreation staff and golf operations – pro shop merchandise, cart rentals, driving range, instruction – are provided by the concessionaire. Food and beverage operations may be provided by the golf operations concessionaire, but more often are the responsibility of a separate concessionaire.

The primary advantage of the self-operation and hybrid models is the level of control retained by the City in terms of setting policies, prices and standards. A case can also be made that under these structures, the City has substantial overhead support functions at its disposal from other City departments. It also is often argued that a portion of the entrepreneurial compensation (profit for services rendered) is retained by the public agency under this model, and most of the financial upside related to better than anticipated performance accrues to the City. The validity and value of these advantages is subjective.

There are several firms which provide contract golf course maintenance on a fee-for-service basis. The contractors employ private sector employees, paying private sector prevailing wages and benefits, which generally are well below the corresponding public sector wage/benefit scale. Maintenance is provided by a private landscape provider, such as Bright View or International Golf Management (IGM), on a fixed fee basis subject to standards and practices established by the public agency.

Table VII-6: Golf Operations Concession Agreements, Selected California Courses				
Course	DeLaveaga	San Clemente	Manteca Pak	Diablo Creek
Location	Santa Cruz	San Clemente	Manteca	Concord
Lessor	City of Santa Cruz	City of San Clemente	City of Manteca	City of Concord
Lessee	Loustalot	Dave Cook	DeBenedetti Golf	J. Fernandez
Agreement Date	2016	2021	2017	1998
Lease Term (years)				
Initial	10	5	3	5
Options	Two 5-Year	None	1/ 2-year	2 / 5-year
Discretion	Cocessionaire	---	Lessor	Lessee
Concession Services				
Reservation	X	X	X	X
Starter	X	X	X	X
Green Fee Collect	X	X	X	X
Marshals	X	X	X	X
Range	X	X	X	X
Carts	X	X	X	X
Pro Shop	X	X	X	X
Lessons	X	X	X	X
Food and Beverage	X		O	O
Minimum Rent	n.a.	n.a.	\$50K	None
CPI Adjusted	---	---		
Percentage Rent				
Carts	7%	33-35% ^{1/}	12%/20% (\$425K)	35% (0-450K)
Range	15%	25%	10%/20% (\$75K)	25% (450K+)
Merchandise	7%	5%	5%	30% (0-400K)
Lessons	5%	10%	10%	25% (6-500K)
Food and Beverage		---	---	5% (0-500K)
Liquor	8%	---	---	---
Other	6%	---	---	---
Investment Requirements		None	None	None
Utilities	Lessee	Lessee	Lessor	Lessor
Incentive / Lessor Pymts	6% of greens fees	None	---	Per Round ^{2/}
Reinvestment/Reserve	None	None	---	\$10,000/year

¹ Years 1-5 at 20%; increases 2% points annually beginning in year 6. ² \$1/round 93,000-98,000; \$2/round 98,000-103,000; \$3/round 103,000-108,000; \$4/round (108,000+).

Many of the disadvantages associated with the self-operation model also apply to the hybrid model, particularly where services are provided by public sector employees. In addition, the hybrid model involves multiple providers of service which potentially may create conflicts and inconsistent service levels. Most golf analysts strongly believe that there are significant advantages to controlling the entire golfer experience through providing all of the functions at the golf course under one management entity.

Summary of Operating Options Strengths and Weaknesses

The strengths and weaknesses of the four basic options are outlined in Table VII-7. Each option offers advantages and disadvantages relative to economic performance, operating and financial risk, legal liability from golfer/spectator injury, the cost of payroll and employee benefits, city control, maintenance, influence on policy-making, operator responsiveness, efficiencies relating to one operating entity, required city involvement, and other factors. As stated above the Modified Hybrid model would have the same strengths and weaknesses as the full management services.

The hybrid model, while having some benefits in terms of quality control, support from other City departments, and upside financial participation, has many deficiencies. There are higher costs associated with public sector employment, financial risk, and absence of professional golf management “best practices.” The most significant disadvantage, at least in the current structure, is the City’s inability to operate in a business-oriented, entrepreneurial manner which allows management to adapt and respond to dynamic market conditions. As well, the absence of an on-site manager with the authority to manage and coordinate the various functions provided by multiple providers is problematic, potentially resulting in lower revenues, less efficient operations and a diminished golfer experience.

The strengths and weaknesses of a modified hybrid model would depend on the specific model. Contracting the maintenance function offers clear cost savings, but must be considered in the context of the City’s policies with respect to outsourcing jobs. Retaining a fee-for-service golf operations management entity/individual offers similar advantages and disadvantage associated with the “management model”--principally offering greater City control and participation in upside revenues, while increasing operating and financial risk to the City.

The turnkey facility lease generally yields a reasonable guaranteed financial return to the City and requires the least City involvement. However, the City typically relinquishes at least some control over maintenance levels, golfer service levels, and operating policies, much of which may be due to contract “gray” areas. The major advantages of the turnkey facility lease operation are that normally substantial capital funds can be attracted from the private sector for course improvements, with the amount directly related to the length of the lease term, and the shifting of financial and operating risk away from the public sector to the private operator. As well, the municipality is generally relieved of much of the liability related to golfer/spectator injury from errant golf balls or other activities at the site.

Table VII-7: Strengths and Weaknesses of Golf Course Operating Options

Facility Lease	Management Agreement	Self Operation	Hybrid
STRENGTHS			
• Provides reasonably strong financial return to City • Produces guaranteed minimum rent payment to City • Minimizes financial risk • Minimizes political influence with less direct involvement of City with setting fees, policies, and practices • Offers potential benefits in golf management expertise and specialized maintenance support services • Provides private capital investment in facilities • Protects City from golfer/spectator liability	• May provide strong upside potential financial return to City. • Provides high level of City control • Greater potential quality assurance • Opportunity to provide shorter term contracts • Provides opportunity to retain specialists in professional golf management • Captures benefits of private sector wage and benefit structure	• Provides highest level of City control over rates, policies, practices, and overall golf experience • Availability of City overhead support functions • Strong participation in upside financial performance • Preserves option to convert to alternative operating option	• Provides high level of City control over rates, policies, practices, and overall golf experience • Availability of City overhead support functions • Strong participation in upside financial performance • Provides opportunity to retain specialists in golf operations and food and beverage • Preserves option to convert to alternative operating option
WEAKNESSES			
• More limited operational and quality control • May involve long-term contractual commitment • May minimize financial upside • Limited number of potential candidates, particularly when substantial private investment is required • Potential conflicts over capital reinvestment responsibilities of contracting parties	• Requires more City involvement than facility lease option • Minimizes private capital investment, if any, in facilities. • Entails greatest level of City operating and financial risk • City bears substantial liability risk related to golfer and spectator injury	• May constrain ability of management to adapt and respond to dynamic market conditions • Entails high level of financial risk • Involves higher public sector wage and benefit structure • Reduces opportunity to attract private capital due to reduced lessee control • Relatively high City monitoring requirements	• Constrains ability of management to adapt and respond to dynamic market conditions • Entails high level of financial risk • May involve higher public sector wage and benefit structure for maintenance • Reduces opportunity to attract private capital due to reduced lessee control • Potential conflicts of multiple concessionaires • Relatively high City monitoring requirements

A fee-for-service management agreement offers many advantages such as maintaining greater authority managing the facility. Since the City would receive all revenues and expenses under this option, the financial return to the City may exceed that of a turnkey facility lease, but carries with it additional financial exposure. The City bears all of the operating and financial risk under the management option, and generally is subject to full legal liability for accidents and injury on the property. At present, service contracts are more prevalent in the private sector (management of daily fee golf courses).

A full self-operation model, which is an extension of the current City hybrid model to include additional golf operations functions (merchandise, carts, and driving range), offers some advantages over the current model. The principal advantage is the ability to coordinate the various functions to a greater degree and potentially to achieve some operating expense efficiencies in golf operations. There are potentially additional disadvantages of moving from the existing hybrid to a full self-contained model, primarily higher payroll and benefits related to public employees in the golf operations department. As stated earlier, cities who self-operate are beginning to make certain that they are staffed appropriately with experienced “golf operators” in order to react to changing market conditions, driving both rounds and revenue to the facilities while maintaining the required golfer experience.

VIII. Economics of Golf Course Operating Options

The following section illustrates the comparative economics of the various golf course operating options available to the City of Pacific Grove. It is recognized that the current lease agreement extends through 2029, with one remaining 5-year option to extend the agreement through 2034. The options evaluated include the following:

- ▶ Facility Lease (current form of operation)
- ▶ Management Agreement
- ▶ Hybrid Model, assuming golf operations concessionaire, food and beverage concessionaire, and City/contract maintenance
- ▶ Self-Operation

The economics related to each of the operating options is estimated from the perspective of the City of Pacific Grove. An allowance for maintenance equipment costs, an annual capital improvements replacement reserve, and a Citywide Overhead Allocation, if applicable, are deducted from net operating income, yielding annual net cash flow to the City under each option.

PGGL Baseline Revenues

A baseline revenue estimate is first established in evaluating each of the golf course operating options. The revenue estimate is employed uniformly for the various options. The baseline revenue employed in the analysis is slightly below actual FY2022 revenues, based on the expectation that there will be some continued regression of the COVID-19 beneficial impact related to golf participation. Golf course baseline revenue assumes that annual play at PGGL stabilizes at 60,000 rounds, down slightly from the 62,000 rounds accommodated in 2022. Moreover, based on the analysis of market conditions and current performance of PGGL, no real improvement in revenue generation is reflected in the baseline revenue projections.

As shown in Table VIII-1, annual baseline revenue is indicated at \$4.38 million, excluding the food and beverage function. Again, these revenues, expressed in constant 2023 dollars, are applied uniformly to each of the operating options evaluated.

Table VIII-1: PGGL Baseline Annual Revenue (constant 2023 dollars)

Component	Annual Amount*	Revenue/Round
Golf Revenue**	\$3,660,000	\$61.00
Practice Range	<u>150,000</u>	<u>2.50</u>
Subtotal Golf	\$3,810,000	\$63.50
Merchandise	450,000	7.50
Miscellaneous	<u>120,000</u>	<u>2.00</u>
Total	\$4,380,000	\$73.00
* Based on 60,000 annual rounds.		
** Includes daily fee greens fees, annual memberships, discount card fees, tournament revenue, and golf carts.		

PGGL Operating Expenses

Pacific Grove Golf Links operating expenses are estimated for some of the operating options. The annual expenses vary by option depending primarily on whether public or private sector employees provide the golf course service.

Table VIII-2 presents stable year annual golf course operating expenses, expressed in constant 2023 dollars, for the various options where applicable. It should be noted that the current PGGL lessee is not required to provide their operating expenses to the City, with the exception of water expenses. The projected stable year expenses for the various operating options is based on the experience of a set of comparable municipal golf courses, adjusted to reflect specific factors and conditions present at PGGL which may influence operating expenses levels. In particular, operating expenses reflect PGGL's source, usage and cost of golf course irrigation water.

Table VIII-2: PGGL Estimated Operating Expenses (thousands of constant 2023 dollars)		
	Public Provider	Private Provider
Course Maintenance		
Payroll and Benefits	\$750.0	\$550.0
Services and Supplies	300.0	250.0
Utilities	800.0	800.0
Maintenance Equipment	120.0	120.0
Subtotal	\$1,970.0	\$1,720.0
Golf Operations		
Payroll and Benefits	\$250.0	\$185.0
Cart Leasing	85.0	85.0
Outside Services	225.0	160.0
Range	50.0	50.0
Services and Supplies	50.0	50.0
Subtotal	\$660.0	\$530.0
Undistributed/Clubhouse	150.0	100.0
General and Admin		
Payroll and Benefits	\$300.0	\$185.0
Insurance	45.0	45.0
Possessory Interest Property Taxes	---	18.0
Marketing/Promotion	100.0	65.0
Services and Supplies	300.0	300.0
Management Fee	---	200.0
City Overhead Allocation	\$100.0	---
Subtotal	\$845.0	\$813.0
Less: Capital Improvement Repl. Reserve	\$114.0	\$114.0
Total	\$3,739.0	\$3,277.0

Facility Lease

Based on the recent experience with municipal facility leases, the characteristics and anticipated performance of PGGL, and typical lessee operating economics, the economics related to a facility lease for all functions, excluding food and beverage operations, are based on the following representative lease terms.

Table VIII-3: Summary of Facility Lease Terms (constant 2023 dollars)		
	Current Agreement	Market Agreement
Term (years)	10	20
Renewal Options	two 5-year	two 5-year
Initial Lessee Capital Improvements	\$175,000	\$1,000,000
Lessee Water Cost Cap	\$500,000	\$800,000
Annual Base Rent	\$350,000	\$450,000
Overage Rent*		
Annual Threshold (golf revenue)	\$3,000,000 (CPI adjusted to 2023)	\$3,800,000
Distribution		
City	65%	50%
Lessee	<u>35%</u>	<u>50%</u>
Total	100%	100%
Capital Improvement Replacement Reserve	1.5% of golf revenues (greens, memberships, carts, range)	3.0% of golf revenues (greens, memberships, carts, range)
* Percent of "golf" gross revenue exceeding baseline.		

Note that, given the current conditions of the golf course, a moderate level of initial lessee-funded capital improvements is anticipated. To the extent that such improvements are more than required, the minimum and percentage overage rental rate would be accordingly adjusted downward. Similarly, if initial capital improvements are less than indicated under the baseline, the minimum and percentage overage rental rate would be adjusted upward.

Under this option, the rent paid by the lessee is equal to the sum of the minimum rent plus the percentage overage rent, if any, based on applying the overage rental rate factor to gross revenue exceeding the set threshold.

As shown in Table VIII-4, applying the “market” agreement terms to the baseline revenues produces total rent to the City of \$455,000, about \$420,000 less than the “current” facility lease agreement would generate. However, after deducting the City’s expense obligations, which are substantially higher under the “current” lease structure than the “market” agreement, the net rent to the City under the “market” agreement is slightly lower than the current facility lease agreement. This suggests that under the baseline revenue projections, the current facility lease agreement is reasonable and equitable.

The facility lease option typically produces somewhat less net earnings to the City than under the management model, but is accompanied by less financial risk. Under the facility lease model, the level of City control and influence on the golf course operations and maintenance is clearly less than under the management model, although the City still retains control of greens fees and can set standards for maintenance. It should be noted that over recent years, many municipalities have moved away from management agreements and towards facility leases, primarily to insulate the public agency from operating and financial risk, and to attract more private capital.

Table VIII-4: PGGL Projected City Annual Net Earnings Facility Lease (thousands of constant 2023 dollars)		
Department	Current Agreement	Market Agreement
Gross Golf Revenue		
Golf Fees	\$3,660,000	\$3,660,000
Practice Range	<u>150,000</u>	<u>150,000</u>
Subtotal-Golf	\$3,810,000	\$3,810,000
Merchandise	450,000	450,000
Instruction/Other	<u>120,000</u>	<u>120,000</u>
Total Gross Revenue	\$4,380,000	\$4,380,000
City Net Earnings		
Income		
Baseline Annual Rent	\$350,000	\$450,000
Overage Rent	<u>527,000^{1/}</u>	<u>5,000^{2/}</u>
Total Rent	\$877,000	\$455,000
Expenses		
CIP Reserve	\$57,000 ^{3/}	---
Irrigation Water Expense	300,000	---
Amortization of Initial Capital Contribution	---	---
City Contract Administration	<u>25,000</u>	<u>25,000</u>
Total Expenses	\$382,000	\$25,000
City Net Operating Income	\$495,000	\$430,000
^{1/} Based on 65% of golf revenue exceeding \$3.0 million baseline. ^{2/} Based on 50% of golf revenue exceeding \$3.8 million baseline. ^{3/} Equal to 1.5% of golf gross revenue (represents City obligation for 50% of total capital improvement reserve)		

Management Agreement

The economics of the management agreement operating option, whereby the City retains an outside management company to administer all golf course functions (excluding food and beverage), is presented in Table VIII-5.

Based on estimated stable year play levels, annual gross revenue from all revenue departments totals \$4,380,000. Cost of sales related to merchandise are deducted, resulting in gross operating profit of \$4,065,000.

Annual operating expenses by major expense classification are deducted (derived from previously presented Table VIII-2), with the elimination of possessory interest property tax, yielding net operating income of \$920,000. An annual deduction of \$87,000 for the amortization of \$1.0 million in initial capital improvements (6% cost of capital, 25 year term) is included. Finally, deducting a \$100,000 annual allowance for allocated City overhead support services yields net earnings under the management option of \$619,000.

The management agreement model produces the highest net operating income among the various models, due to the financial savings associated with private employment payroll and benefit packages, along with the expertise of professional golf course management. The model also provides for a relatively high level of City control as the policies and fee structure are entirely set by the City, with input from the retained management firm. The principal weakness of this model is that the City bears most, if not all, of the financial risk and legal liability.

Table VIII-5: PGGL Management Agreement Net Earnings (thousands of constant 2023 dollars)	
Gross Revenue	
Golf Revenues (60,000 rounds @ \$61.00)	\$3,660,000
Practice Range	<u>150,000</u>
Subtotal Golf Revenue	\$3,810,000
Merchandise	450,000
Miscellaneous	<u>120,000</u>
Total	\$4,380,000
Less: Cost of Sales--70% (merchandise)	<u>\$315,000</u>
Gross Operating Profit	\$4,065,000
Operating Expenses	
Golf Course Maintenance ^{1/}	\$1,720,000
Golf Operations	530,000
Undistributed/Clubhouse	100,000
General & Administrative (ex property tax)	595,000
Management Fee (base + incentive)	<u>200,000</u>
Total	\$3,145,000
Net Operating Income	\$920,000
Less: Contract Administration	\$100,000
CIP Replacement Reserve (3% of golf revenue)	114,000
Amort of Initial \$1,000,000 Capital Contribution	<u>87,000</u>
Net City Earnings	\$619,000
^{1/} Includes "total" irrigation water expenses.	

Self Operation

The economics of the self operation option, whereby the City is responsible for all golf operations, maintenance and management of the golf course, is presented in Table VIII-6. As shown, annual gross revenue, at \$4,065,000, is the same as under the management agreement option. With public sector staffing, however, maintenance, operating and management expenses are substantially higher than under the management agreement option (refer to comparative operating expense detail presented earlier in Table VIII-2).

Deducting operating expenses yields City net operating income of \$440,000. Then, deducting an annual capital improvement reserve of \$114,000, a citywide overhead services allocation of \$75,000 and amortization of the City's responsibility for amortizing an initial \$1.0 million capital improvement contribution (\$87,000 per year), yields net City net annual operating income of \$164,000.

A key assumption in the analysis is that the revenue projections under self operation are equal to those under the private operation models. While there are many municipally operated golf courses that perform well, most industry analysts would argue that the expertise of specialty golf management companies generally produce superior revenue results. From an expense perspective, while municipal employees generally can competently provide golf services, the labor cost of public sector employees is typically significantly higher than private sector employees, predominantly due to more costly benefits.

Table VIII-6: PGGL Self-Operation Net Earnings (thousands of constant 2023 dollars)	
Gross Revenue	
Golf Revenues (60,000 rounds @ \$61.00)	\$3,660,000
Practice Range	<u>150,000</u>
Subtotal Golf Revenue	\$3,810,000
Merchandise	450,000
Miscellaneous	<u>120,000</u>
Total	\$4,380,000
Less: Cost of Sales--70% (merchandise)	<u>\$315,000</u>
Gross Operating Profit	\$4,065,000
Operating Expenses	
Golf Course Maintenance	\$1,970,000
Golf Operations	660,000
Undistributed/Clubhouse	150,000
General & Administrative	845,000
Management Fee	---
Total	\$3,625,000
Net Operating Income	\$440,000
Less: Contract Administration	\$75,000
CIP Replacement Reserve (3% of golf revenue)	114,000
Amort of Initial \$1.0 million Capital Contribution	<u>87,000</u>
Net City Operating Income	\$164,000

Hybrid Agreement

There are numerous forms of operating agreements which combine aspects of the facility lease, management agreement, and self-operation models. The two most common “hybrid” models are: (1) golf operations concessionaire with City maintenance and overall administration; and (2)--golf operations concessionaire with private contract golf course maintenance. Most golf course management companies provide golf operations services, and there are a number of private contractors which provide golf course maintenance on a fee-for-service basis.

Table VIII-7 illustrates the economics of these two hybrid options. The projected revenue accruing to the City is shown with both continued City maintenance and with private contract maintenance. Note that “golf revenue” is segmented into two subcategories--greens fees and cart fees. Total gross revenue is the same for both hybrid versions at \$4.38 million. Although not shown, the concessionaire’s annual gross revenue, after deducting cost of merchandise sales, is projected at about \$1.0 million annually, a sufficient sum to cover golf operations, pro shop maintenance and selective golf management services.

Based on similar golf concession agreements, along with the operating profile of PGGL, the City is assumed to capture 80 percent of greens fees, 15 percent of gross revenues from carts and practice range, and 5 percent from merchandise and miscellaneous revenue sources. Based on these percentages, the City’s share of greens fees and other revenues totals about \$2.53 million per year under the hybrid model.

Under the “hybrid” model with City maintenance, golf course maintenance, clubhouse related expenses, general and administrative expenses, an allowance for capital improvements/equipment, and contract administration/Citywide overhead are deducted, yielding \$184,500 per year in net operating income. As with some of the other models, the City would be obligated to amortize the \$1.0 million front end capital investment in the facility.

Under the “hybrid” model with “contract” maintenance, the golf course maintenance expenses are much lower due to lower cost maintenance payroll and benefits. The golf course maintenance expenses under contract maintenance are approximately \$250,000 per year below City maintenance expenses. Deducting operating expenses, CIP reserves, and an allowance for contract administration/Citywide overhead results in net income of \$459,500.

While there are some strengths of the hybrid model such as specialization in the various operating functions (maintenance, golf operations, food and beverage) and the City retains substantial control over operating policies, fees and maintenance quality, the hybrid model has a number of key weaknesses. Most notably is the absence of benefits related to a single coordinated operating entity where efficiencies of operation can be achieved and a more seamless and consistent product can be offered.

Table VIII-7: PGGL Projected Annual Net Operating Income Hybrid Agreement With Golf Concessionaire (thousands of constant 2023 dollars)		
Department	City Maintenance	Contract Maintenance ^{2/}
Gross Revenue		
Greens Fees (60,000 @\$49.50 per rd)	\$2,970,000	\$2,970,000
Golf Carts (@\$11.50 per round)	<u>690,000</u>	<u>690,000</u>
Subtotal Golf	\$3,660,000	\$3,660,000
Practice Range	150,000	150,000
Merchandise	450,000	450,000
Miscellaneous	<u>120,000</u>	<u>120,000</u>
Total	\$4,380,000	\$4,380,000
City Revenue/Rent		
Greens Fees @80%	\$2,376,000	\$2,376,000
Cart Rentals @ 15%	103,500	103,500
Practice Range @15%	22,500	22,500
Merchandise @5%	22,500	22,500
Lessons/Other Pro Shop (@5%)	<u>6,000</u>	<u>6,000</u>
Total Revenue/Rent	\$2,530,500	\$2,530,500
Less: Golf Course Maintenance	\$1,970,000	\$1,720,000
Clubhouse Maint/Undistributed	75,000	75,000
CIP Reserve	114,000	114,000
Amort of Initial \$1.0 million Capital Imps	87,000	87,000
Citywide Overhead Allocation	<u>100,000</u>	<u>75,000</u>
Subtotal	\$2,346,000	\$2,071,000
City Net Operating Income	\$184,500	\$459,500

Summary of Options Economics

A comparative summary of the various operating models is presented in Table VIII-8. In comparing the economics of the various options, it is important to recognize that revenues are uniformly the same for each of the options--that is, all of the operating alternatives are assumed to be equally efficient, which may not be the case. Moreover, there clearly are varying degrees of risk, as well as upside participation, among the various alternatives.

A comparative summary of the economics related to each of the operating options outlined above is presented below. The economics illustrate the net cash flow accruing to the City under each option. An allowance for capital improvements/equipment costs, an annual capital improvements replacement reserve, and a Citywide Overhead Allocation are deducted from net operating income, yielding net cash flow to the City for each option.

Table VIII-8: Comparative City Operating Options Economics (thousands of constant 2023 dollars)						
	Facility Lease		Management Agreement	Self-Operation	Hybrid	
	Current Contract	Market Contract			City Maintenance	Contract Maintenance
Gross Revenue	---	---	\$4,380	\$4,380	\$2,376	\$2,376
City Revenue/Rent						
Minimum	\$350	\$450	---	---	---	---
Overage/Concession	<u>527</u>	<u>5</u>	---	---	<u>154</u>	<u>154</u>
Total	\$877	\$455	---	---	\$154	\$154
Total	\$877	\$455	\$4,380	\$4,380	\$2,530	\$2,530
Less: Cost of Sales	---	---	\$315	\$315	---	---
Gross Profit/Rent	\$877	\$455	\$4,065	\$4,065	\$2,530	\$2,530
Operating Expenses						
Course Maintenance	---	---	\$1,720	\$1,970	\$1,970	\$1,720
Golf Operations	---	---	530	660	---	---
Clubhouse/Undistrib	---	---	100	150	75	75
General & Admin	---	---	595	845	---	---
Management Fee	---	---	<u>200</u>	---	---	---
Total	---	---	\$3,145	\$3,625	\$2,045	\$1,795
Net Income (EBITDA)	\$877	\$455	\$920	\$440	\$485	\$735
Less: Other Costs						
CIP Repl. Reserve	\$57	---	\$114	\$114	\$114	\$114
Initial Capital Amort	---	---	87	87	87	87
Irrigation Water Cost	300	---	---	---	---	---
Citywide OH Alloc	25	25	<u>100</u>	<u>75</u>	<u>100</u>	<u>75</u>
Total	\$382	\$25	\$301	\$276	\$301	\$276
Net Cash Flow	\$495	\$430	\$619	\$164	\$184	\$459

IX. Asset Value

The following presents a brief analysis in arriving at an approximate value of the Pacific Grove Golf Link market value in an open market environment. It is important to note that this value indication is **not** intended to be a fair market value appraisal of the property, but rather to provide a general indication of asset value.

Pacific Grove Golf Links is a valuable City asset, offering a desirable recreation activity for residents and visitors, providing community open space, and funding most of the cost of operating the City's reclaimed water plant. From a pure market perspective, the golf course also is an important and valuable economic asset.

Valuation Methodology

The market value of a golf course asset is principally based on its income producing potential. That is the value of most income producing properties is determined primarily based on their net earning potential. The direct capitalization approach assumes that a property's revenues, expenses, and net income do not vary over time, other than due to the effects of inflationary increases. Simply, a property's asset value is determined by dividing the projected annual net operating income by a capitalization rate.

Net operating income is defined as earnings before interest, taxes, depreciation and amortization (EBITDA). A capitalization rate is defined as the ratio of net operating income divided by a property's current market value. This approach is a standard method employed in determining the value of an income producing real estate asset.

The income approach to value is clearly the principal methodology employed in valuing daily fee golf courses. Every golf course has its own distinct characteristics which are reflected in its income producing potential. A sales comparison approach is unreliable to the extent that every golf property is unique requiring extraordinary adjustments to create comparable values. The cost approach also is unreliable as the cost to develop a golf course generally overstates a course's value given the high cost of current construction.

The direct income capitalization rate is generally based on the observation of golf course transactions. For an income producing asset operating at a stable level, the standard approach employed in valuation is to capitalize EBITDA. When an allowance for a management fee and capital improvement replacement reserve are included in the calculation of EBITDA, a capitalization rate in the 9.0 percent range provides a reasonable indication of market value.

With regard to PGGL, the value is significantly influenced by the cost of irrigation water, which is set at the discretion of the City. There clearly is a tradeoff between the economics of the Pacific Grove Local Water Project (PGLWP) and those of the golf course. That is, improvement in the operating economics of the water plant through higher reclaimed water rates decreases the economic performance of PGGL which, in turn, reduces the value of the golf asset. Similarly, lower water costs increase operating performance of PGGL and asset value.

In the case of PGGL, asset value ranges widely depending on the commodity rate charged by PGLWP. For example, at the 2022 rate of \$0.017 per gallon, and based on annual water consumption of 84 acre feet, normal year water costs are approximately \$470,000. However, if the reclaimed water commodity rate is set at a full cost recovery level (\$0.030 per gallon), PGGL's annual water cost balloon to about \$820,000.

PGGL Asset Value

For valuation purposes, stable year net operating income, expressed in constant 2023 dollars, at both ends of the irrigation water cost range, is presented in Table IX-1. The EBITDA estimate is based on the management operating model, and includes a provision for a professional management fee, capital improvement replacement reserve, and property taxes.

An indication of PGGL asset value in an open market environment at the low and high end of the reclaimed water commodity rate is summarized in Table IX-2. As shown, the PGGL asset value ranges from about \$7.8 million to \$11.3 million.

Table IX-2: Indication of PGGL Asset Value		
	\$0.017/gallon	\$0.030/gallon
Gross Revenue	\$4,380,000	\$4,380,000
Less: Cost of Sales	<u>315,000</u>	<u>315,000</u>
Gross Operating Profit	\$4,065,000	\$4,065,000
Operating Expenses		
Irrigation Water	\$470,000	\$820,000
All Other Expenses	<u>2,541,000</u>	<u>2,501,000</u>
Total	\$3,011,000	\$3,321,000
Net Operating Income (EBITDA)	\$1,016,000	\$706,000
Direct Capitalization Rate	9.0%	9.0%
Capitalized Asset Value	\$11,290,000	\$7,845,000

Table IX-1: PGGL Net Operating Income (thousands of constant 2023 dollars)		
	Reclaimed Water Cost per Gallon	
	\$0.017/gallon	\$0.030/gallon
Gross Revenue		
Golf Revenues (60,000 rounds @ \$61.00)	\$3,660,000	\$3,660,000
Practice Range	150,000	150,000
Subtotal Golf Revenue	\$3,810,000	\$3,810,000
Merchandise	\$450,000	\$450,000
Miscellaneous	120,000	120,000
Total	\$4,380,000	\$4,380,000
Less: Cost of Sales--70% (merchandise)	\$315,000	\$315,000
Gross Operating Profit	4,065,000	4,065,000
Operating Expenses		
Golf Course Maintenance		
Irrigation Water	470,000	820,000
All Other Maintenance Expenses	920,000	920,000
Subtotal Maintenance	\$1,390,000	\$1,740,000
Golf Operations	530,000	530,000
Undistributed/Clubhouse	100,000	100,000
General & Administrative	595,000	595,000
Property Taxes	120,000	80,000
Management Fee (base + incentive)	200,000	200,000
CIP Replacement Reserve	114,000	114,000
Total	\$3,049,000	\$3,359
Net Operating Income	\$1,016,000	\$706,000



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: December 6, 2023
SUBJECT: Codifying Council's Inquiry Authority
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Direct the City Attorney to return within 60 days with a draft ordinance codifying the provisions of Article 21 of the City Charter and other items related to Council's Inquiry Authority. A proposed draft ordinance is attached (see Attachment-1).
2. Direct the City Attorney to return with a draft council policy establishing procedure to address how council members may make inquiries to staff in a manner consistent with the Charter and the draft ordinance.

DISCUSSION

I. HISTORY OF INCLUSION OF "PURPOSE OF INQUIRY" LANGUAGE IN PACIFIC GROVE CITY CHARTER

The City of Pacific Grove is a charter city [organized under the constitution](#) of the State of California. Pacific Grove became a charter city on April 22, 1927. New Charters were adopted in 1955, 1969, and 1974.

The [Pacific Grove City Charter](#), in Article 21, currently provides, in part: "**Except for the purpose of inquiry** the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately." (**emphasis added**)

The language of Article 21, which recognizes Council's inquiry authority, has continuously appeared in the City Charter since the City's first adopted Charter in 1927. It was taken verbatim from the charter of Sacramento, filed January 24, 1921.

Per the City Charter, Council and its members are entitled to contact staff for the purpose of inquiry, but are not allowed to give orders; only the City Manager is authorized to perform the latter function. This provision is a hallmark of the council-manager form of city government, as established under the City Charter.

II. MOST CHARTER CITIES IN CALIFORNIA INCLUDE LANGUAGE SIMILAR TO ARTICLE 21 IN THEIR CHARTERS

There are approximately [121 Charter Cities](#) within the State of California. Approximately 85% of these cities recognize “for the purpose of inquiry” as an exception to the rule requiring Council to “deal with the administrative service solely through the City Manager.” (See Attachment-2).

III. IN JUNE 2015, THE MONTEREY COUNTY CIVIL GRAND JURY ISSUED A REPORT CRITIQUING THE CARMEL CITY COUNCIL FOR ALLEGEDLY FAILING TO ADEQUATELY EXERCISE THEIR “POWER OF INQUIRY”

A cautionary tale of what can happen when a city council refrains from making inquiries about City administration can be found in the [Monterey County Civil Grand Jury Report](#) - Carmel-by-the-Sea A Governance Review (2015). The Monterey County Civil Grand Jury report was released on June 30, 2015. The report results from a request by the City of Carmel-by-the-Sea for the Grand Jury to review the City and make recommendations, due to complaints from the residents that the City’s governance and administration had substantially failed. The Grand Jury investigated the clash between the long-term employees and the new City Administrator, a lack of knowledge and attention by the City Council members, and other issues such as departmental irregularities and allegations of misconduct. The report includes the following commentary and findings:

“The [Carmel Municipal Code](#) also provides that the City Council deals with administrative services and department heads only through the City Administrator, *except for purposes of inquiry*. The MCCGJ understands this exception to mean that the Council members may—and indeed should when needed— inquire of those engaged in the City’s administration concerning City affairs. How the City Council and the City Administrator are permitted to interact is severely constrained by the Ralph M. Brown Act, which mandates that, with certain limited exceptions, the only meetings of a majority of the Mayor and City Council with the City Administrator to discuss City business must be held during a duly convened, public Council meeting” (emphasis added);

“Answers by Council members varied widely when asked what they believed were their responsibilities as a City Council member. Though some failed to mention oversight, the critical item consistently missing in the answers was the power of inquiry...”

FINDINGS “F7. The Mayor and City Council did not fully execute their responsibilities of inquiry and oversight.”

FINDINGS “F21. The City Council seriously failed to exercise its power of inquiry in its decision-making process regarding rehires, by excluding the City’s outside defense counsel from the process and by negotiating hasty settlements of claims in the early or pre-litigation stages, which precluded any meaningful scrutiny of these employment issues.”

RECOMMENDATIONS “R1. The City require all elected officials to undergo The League of California Cities “New Mayors & Council Members Academy” formal training, for each new term of office.”

RECOMMENDATIONS “R2. The Mayor and City Council conduct a structured review of the City’s departments each month, to ensure proper oversight of City operations and more aggressive use of their power of inquiry.”

IV. IN AUGUST 2015, PACIFIC GROVE THEN-CITY MANAGER TOM FRUTCHEY PREPARED AN AGENDA REPORT ENTITLED, “THE COUNCIL’S INQUIRY ROLE”

On August 19, 2015, Pacific Grove’s City Manager at the time, Tom Frutchey, brought forward an agenda item entitled “The Council’s Inquiry Role” (See Attachment-3). His agenda report includes the following commentary:

“One of the primary tools of the Council in conducting its oversight of the City Manager and City operations is its right of inquiry. Article 21 of the Charter specifically notes the Council’s ability to conduct inquiry, and to direct that inquiry to any employee or contractor, not just to the City Manager.”

“Periodically, it is appropriate for the Council to review its options and determine if there are changes to the nature and scope of inquiry that it wishes to undertake. Without exercising this authority there are program activities that aren’t likely to come to the Council’s attention during a two-year Councilmanic term, even when of a high priority. As such, inquiry serves as a key set of tools to ensure the Council can fully perform its oversight role. Inquiry is best undertaken on both a planned and ad hoc basis, to verify that the trust placed in administrative operations continues to be deserved and that the public knows that its government is an appropriate steward of the community resources and trust.”

This item never returned to City Council.

V. THE CALIFORNIA PUBLIC RECORDS ACT INCLUDES PROVISIONS RECOGNIZING ELECTED OFFICIALS’ ENTITLEMENT TO ACCESS PUBLIC RECORDS PERMITTED BY LAW IN THE ADMINISTRATION OF THEIR DUTIES

The California Public Records Act provides in relevant part:

[7921.305\(a\)](#) “Notwithstanding the definition of “member of the public” in Section [7920.515](#), an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.”

[7921.310](#) “Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section [54951](#), shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.”

California Government Code Sections 7921.305 and 7921.310 are included as Attachment-4.

IV. LEVY. VS. CITY OF SANTA MONICA

In *Levy v. City of Santa Monica* (2004) 14 Cal.App.4th 1252, the California Second District Court of Appeal [ruled against](#) plaintiffs who sought an injunction to prevent Santa Monica City Council members from engaging in acts allegedly designed to influence the city’s administrative staff through direct communication with city staff. The plaintiffs failed to show that the city council member gave any orders to city’s administrative staff, as opposed to simply having made an inquiry that was permissible under the city’s charter and consistent with his First Amendment rights. This important ruling allows us to further understand and appreciate Council’s inquiry role and the protection it finds under the [First Amendment](#),

and [published case law](#). Some key points, as quoted from the published opinion, are provided below:

The purpose of Section 6.10 is to define the lines of authority within City government, not to prohibit protected speech. Interpreting this section to prohibit "orders" to city staff is a bright line consistent with the purpose of Section 6.10 and the First Amendment. Counsel [sic] members "are entitled to speak as they please on matters vital to them; errors in judgment ... may be exposed, of course, but not through punishment for contempt for the expression." (*Levy, supra*, 114 Cal.App.4th at 1262, quoting *Wood v. Georgia* (1962) 370 U.S. 375, 389.)

Section 6.10 allows direct contact [with the administrative service] "for the purpose of inquiry." (*Id.* at 1260.)

Under the First Amendment, legislators are "given the widest latitude to express their views" and there are no "stricter 'free speech' standards on [them] than on the general public." (*Id.* at 1261, quoting *Eller Outdoor Advertising Co. v. Board of Supervisors* (1979) 89 Cal.App.3d 76, 80.)

The published opinion in *Levy v. City of Santa Monica* is included as Attachment-5.

VII. CODIFYING COUNCIL'S INQUIRY AUTHORITY

Amending the Municipal Code to clarify the meaning of Article 21 is consistent with the City Charter, the California Public Records Act, the First Amendment, and published case law; assists City elected officials in conducting oversight of the City Manager and City operations; and would provide further guidance concerning Pacific Grove's council-manager form of city government in practice, as established under the City Charter.

The Pacific Grove Municipal Code (PGMC) sets forth rules regarding Administration and City Government in Title 2. [Chapter 2.04](#) sets forth processes related to the City Council. The PGMC does not include a section addressing Council Inquiry.

The proposed PGMC code amendments are as follows:

Section 2.04.110 Inquiry

(a) The following definitions shall be used to interpret Article 21 of the City Charter and shall control for the purposes of this Section.

(1) "the administrative service" means all officers and employees of the City that are under the City Manager's supervision and control.

(2) "inquiry" means a specific question from a member of the Council to a member of the administrative service which can be answered by furnishing information available from, or by providing, existing City records to the extent permitted by law, and which does not require a member of the administrative service to discuss or express an opinion concerning any existing or proposed policy of the Council, individual Council member(s), or the City Manager.

(3) "orders" means command, direction, or instruction to do something or not do something by a member of the Council to a member of the administrative service, with or without an expectation by the member of Council that the member of the administrative service will comply.

(b) Pursuant to Article 21 of the City Charter, the Council and its members are authorized to

make inquiries to anyone in the administrative service of the City.

(c) Pursuant to the California Public Records Act, members of Council are entitled to access public records on the same basis as any other person. When Council and its members are authorized to access a City record, as permitted by law in the administration of their duties, the City shall not discriminate between or among any of those members as to which record or portion thereof is made available or when it is made available.

(d) An inquiry that communicates a grievance against the government of the City is protected by the First Amendment.

(e) Members of the administrative service are not required, as a term or condition of employment, to respond to an inquiry made by a council member or the Council acting as a body. This limitation does not apply to orders made by the City Manager to a member of the administrative service concerning an inquiry from a council member or the Council acting as a body.

(f) If a council member does not receive a response to an inquiry from a member of the administrative service, nothing in this provision shall prevent the council member from communicating with the City Manager concerning the inquiry, or from the Council, acting as a body during a duly convened public meeting, to direct the City Manager to provide the outstanding information in response to the inquiry.

(g) The City Council, acting as a body during a duly convened public meeting, may order the City Manager to furnish information or provide City records to the extent permitted by law, or direct the City Manager to create City records with the requested information to the extent permitted by law. Individual Council members may not make such orders of the City Manager.

(h) If a member of the administrative service declines to provide information in response to an inquiry, then the council member may request that the City Attorney or a designee of the City Attorney review the determination.

(i) The City Council may adopt a council policy for submitting inquiries to members of the administrative service provided such policy does not conflict or interfere with (1) this Section, (2) the City Charter, (3) the California Public Records Act, or (4) the First Amendment.

The proposed ordinance does not constitute a Project as that term is defined by Section 15378 of the California Environmental Quality Act (CEQA) as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

OPTIONS

Provide alternative direction.

FINANCIAL IMPACT:

There is no fiscal impact related to enactment of the Ordinance.

GOAL ALIGNMENT: Not Applicable.

Attachments

Proposed Ordinance

Charter Cities that Authorize an Inquiry Role for City Council
The Council's Inquiry Role (8/19/2015 Council Agenda Report)
California Government Code Sections 7921.305 and 7921.310.
Levy v. City of Santa Monica (2004)

ORDINANCE NO. 2024 -

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE ADDING
SECTION 2.04.110 TO THE PACIFIC GROVE MUNICIPAL CODE
CODIFYING THE PROVISIONS OF ARTICLE 21 OF THE
CITY CHARTER AND OTHER ITEMS RELATED TO
THE CITY COUNCIL’S INQUIRY AUTHORITY**

FACTS

1. The City of Pacific Grove is a charter city organized under the constitution of the State of California.
2. Pacific Grove became a charter city on April 22, 1927. New Charters were adopted in 1955, 1969, and 1974.
3. The Pacific Grove City Charter, in Article 21, currently provides as follows: “Neither the Council nor any of its committees or members shall dictate or attempt to dictate, either directly or indirectly, the appointment of any person to office or employment by the City Manager, or in any manner interfere with the City Manager or prevent the City Manager from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.”
4. The language of Article 21 has continuously appeared in the City Charter since the City’s first adopted Charter in 1927.
5. Article 21 allows direct contact with the administrative service for the purpose of inquiry. The purpose of Article 21 is to define the lines of authority within city government, not to prohibit protected speech. Interpreting Article 21 to prohibit "orders" to city staff is a bright line consistent with the purpose of Article 21 and the First Amendment. “Council members ““are entitled to speak as they please on matters vital to them; errors in judgment ... may be exposed, of course, but not through punishment for contempt for the expression.”” (See *Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1262, quoting *Wood v. Georgia* (1962) 370 U.S. 375, 389.)
6. Council members have First Amendment protection when they comment individually, or respond to inquiries from the public, about the City's actions. Under the First Amendment, ““legislators “are given the widest latitude to express their views” and there are no “stricter ‘free speech’ standards on [them] than on the general public.”” (See *Levy v. City of Santa Monica* (2004) 114 Cal.App.4th 1252, 1261, quoting *Eller Outdoor Advertising Co. v. Board of Supervisors* (1979) 89 Cal.App.3d 76, 80.)
7. The First Amendment to the United States Constitution provides as follows: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

8. The California Public Records Act, in Government Code Section 7921.305(a), currently provides as follows: “Notwithstanding the definition of ‘member of the public’ in Section 7920.515, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.”

9. The California Public Records Act, in Government Code Section 7921.310, currently provides as follows: “Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency... shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.”

10. The Pacific Grove Municipal Code (PGMC) sets forth rules regarding Administration and City Government in Title 2. Chapter 2.04 sets forth processes related to the City Council. The PGMC does not include a Section addressing the City Council’s Inquiry Authority, as provided under Article 21 of the City Charter.

11. Amending the Municipal Code to clarify the meaning of Article 21 and to authorize preparation of a city council policy establishing procedures and guidelines for submitting inquiries to members of the City’s administrative service is consistent with the City Charter, the California Public Records Act, the First Amendment, and related published case law; assists City elected officials in conducting oversight of the City Manager and City operations; and promotes clarity regarding Pacific Grove’s Council-Manager form of city government, as established under the City Charter.

12. This ordinance does not constitute a Project as that term is defined by Section 15378 of the California Environmental Quality Act (CEQA) as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

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

SECTION 1. Facts.

The facts set forth above are true and correct and are adopted as findings of the City Council as though set forth fully within the body of this ordinance.

SECTION 2. Amendment of Pacific Grove Municipal Code to Add Section 2.04.110

The following Section shall be added to the Pacific Grove Municipal Code:

Section 2.04.110 Inquiry

(a) The following definitions shall be used to interpret Article 21 of the City Charter and shall control for the purposes of this Section.

(1) “the administrative service” means all officers and employees of the City that are under the City Manager’s supervision and control.

(2) “inquiry” means a specific question from a member of the Council to a member of the administrative service which can be answered by furnishing information available from, or by providing, existing City records to the extent permitted by law, and which does not require a member of the administrative service to discuss or express an opinion concerning any existing or proposed policy of the Council, individual Council member(s), or the City Manager.

(3) “orders” means command, direction, or instruction to do something or not do something by a member of the Council to a member of the administrative service, with or without an expectation by the member of Council that the member of the administrative service will comply.

(b) Pursuant to Article 21 of the City Charter, the Council and its members are authorized to make inquiries to anyone in the administrative service of the City.

(c) Pursuant to the California Public Records Act, members of Council are entitled to access public records on the same basis as any other person. When Council and its members are authorized to access a City record, as permitted by law in the administration of their duties, the City shall not discriminate between or among any of those members as to which record or portion thereof is made available or when it is made available.

(d) An inquiry that communicates a grievance against the government of the City is protected by the First Amendment.

(e) Members of the administrative service are not required, as a term or condition of employment, to respond to an inquiry made by a council member or the Council acting as a body. This limitation does not apply to orders made by the City Manager to a member of the administrative service concerning an inquiry from a council member or the Council acting as a body.

(f) If a council member does not receive a response to an inquiry from a member of the administrative service, nothing in this provision shall prevent the council member from communicating with the City Manager concerning the inquiry, or from the Council, acting as a body during a duly convened public meeting, to direct the City Manager to provide the outstanding information in response to the inquiry.

(g) The City Council, acting as a body during a duly convened public meeting, may order the City Manager to furnish information or provide City records to the extent permitted

by law, or direct the City Manager to create City records with the requested information to the extent permitted by law. Individual Council members may not make such orders of the City Manager.

(h) If a member of the administrative service declines to provide information in response to an inquiry, then the council member may request that the City Attorney or a designee of the City Attorney review the determination.

(i) The City Council may adopt a council policy for submitting inquiries to members of the administrative service provided such policy does not conflict or interfere with (1) this Section, (2) the City Charter, (3) the California Public Records Act, or (4) the First Amendment.

SECTION 3. Implementation.

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

SECTION 4. Interpretation.

This Ordinance shall be liberally construed to implement its purposes.

SECTION 5. 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 6. Effective Date.

In accord with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following adoption on second reading by the City Council.

SECTION 7. No Sunset Date.

This ordinance shall have continuing effect and shall not expire.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS
____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

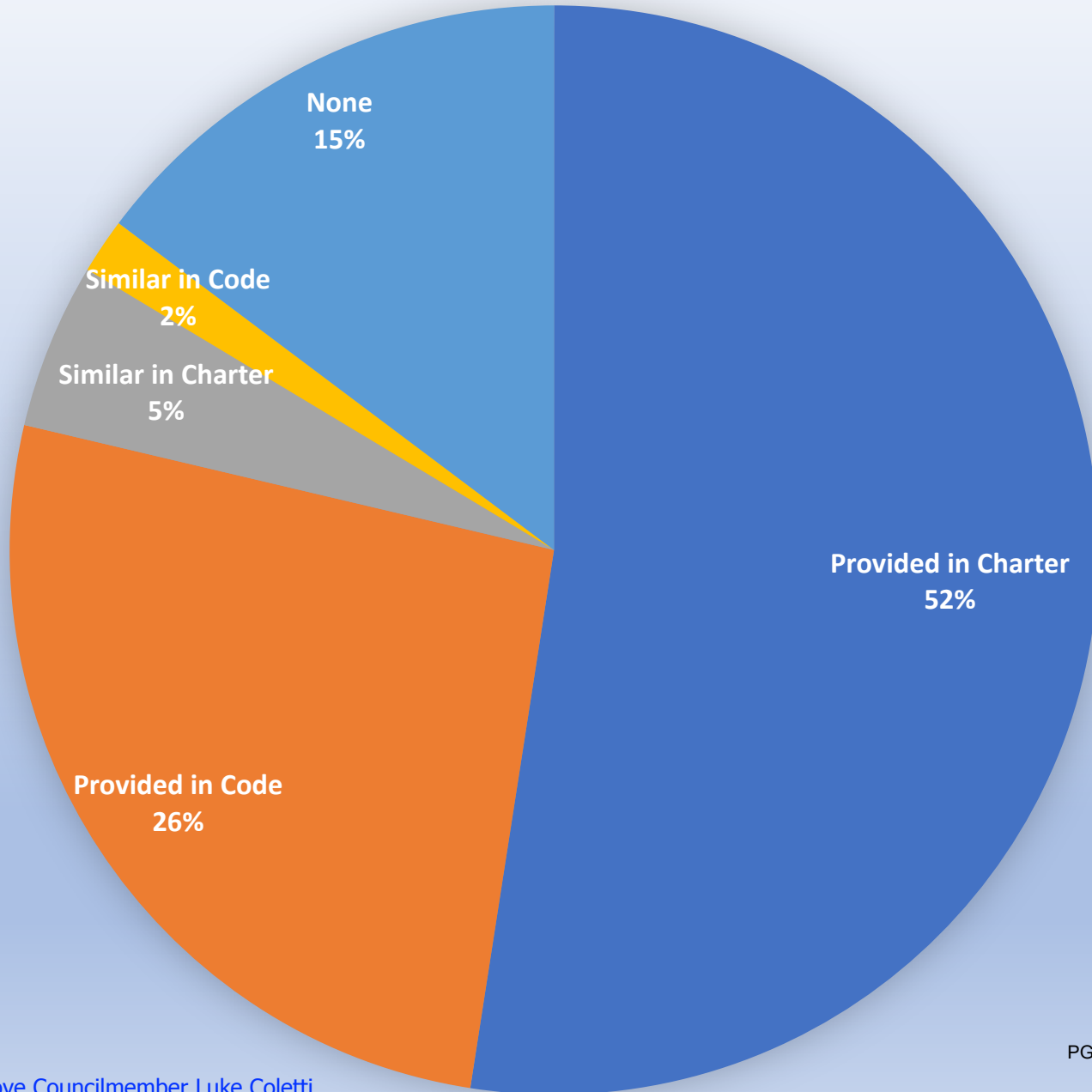
ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

JENICA MALDONADO,
Special Counsel, Atkinson Andelson Loya Ruud & Romo

California Charter Cities That Authorize an Inquiry Role for City Council



California Charter Cities That Authorize an Inquiry Role for City Council								
Charter Cities	Provided in Charter	Provided in Code	Similar in Charter	Similar in Code	None	Implementation	Title	Form of City Government
Adelanto	1	0	0	0	0	Charter Article VI - Section 609	Interference With Administrative Service	Council-manager
Alameda	1	0	0	0	0	Charter Article VII - Section 7-3	City Manager	Council-manager
Albany	0	0	1	0	0	Charter Article III - Section 3.05	City Manager	Council-manager
Alhambra	0	0	0	0	1	None	None	Council-manager
Anaheim	1	0	0	0	0	Charter Article VI - Section 607	Non-interference With Administrative Service	Council-manager
Arcadia	1	0	0	0	0	Charter Article IV - Section 406 (b)	Interference in Administrative Service	Council-manager
Bakersfield	0	0	0	0	1	None	None	Council-manager
Bell	1	0	0	0	0	Charter Article VI - Section 608	Non-Interference With Administrative Service	Council-manager
Berkeley	1	0	0	0	0	Charter Article VII - Section 28 (b)	Powers and duties of City Manager.	Council-manager
Big Bear Lake	0	1	0	0	0	Municipal Code Section 2.04.190	Council-manager relations	Council-manager
Buena Park	0	1	0	0	0	Municipal Code Section 2.16.330	Relations with council and administrative services	Council-manager
Burbank	0	0	0	0	1	None	None	Council-manager
Carlsbad	0	1	0	0	0	Municipal Code Section 2.12.110	Council-manager relations	Council-manager
Carson	1	0	0	0	0	Charter Article III - Section 307	Interference in Administrative Service	Council-manager
Cerritos	1	0	0	0	0	Charter Article IV - Section 406	Interference In Administrative Service	Council-manager
Chico	0	0	0	0	1	None	None	Council-manager
Chula Vista	1	0	0	0	0	Charter Article III - Section 305 (C)	Limitations on Authority.	Council-manager
Compton	1	0	0	0	0	Charter Article VI - Section 602	Interference In Administrative Service	Council-manager
Culver City	1	0	0	0	0	Charter Article VII - Section 701	Non-interference By City Council	Council-manager
Cypress	1	0	0	0	0	Charter Article IV - Section 406 (b)	Prohibitions	Council-manager
Del Mar	0	1	0	0	0	Municipal Code Section 2.24.010 (C)	Office of City Manager Created.	Council-manager
Desert Hot Springs	0	1	0	0	0	Municipal Code 2.08.110	Council to deal with administrative matters through City Manager	Council-manager
Dinuba	1	0	0	0	0	Charter Article II - Section 2.08 (B)	Restriction on Interference With City Manager	Council-manager
Downey	1	0	0	0	0	Charter Article VI - Section 608	Non-Interference With Administrative Service	Council-manager
El Cajon	0	0	1	0	0	Charter Article II - Section 205	Interference With Performance of Duties of City Manager	Council-manager
El Centro	0	1	0	0	0	Municipal Code Section 2-83	Relation between city council and administrative services.	Council-manager
Eureka	1	0	0	0	0	Charter Article VI - Section 605	Interference With City Manager	Council-manager
Exeter	0	1	0	0	0	Municipal Code Section 2.08.070	Relations with council.	Council-administrator
Folsom	1	0	0	0	0	Charter Article II - Section 2.07 (C)	Restriction on Interference With City Manager	Council-manager
Fortuna	0	1	0	0	0	Municipal Code Section 2.08.200	Council-manager relations	Council-manager
Fresno	1	0	0	0	0	Charter Article VII - Section 706	Interference In Administrative Service	Council-manager
Gilroy	1	0	0	0	0	Charter Article IV - Section 407	Interference in Administrative Matters Prohibited	Council-administrator
Glendale	0	0	0	0	1	None	None	Council-manager
Grass Valley	0	1	0	0	0	Municipal Code Section 2.05.050	Relations with city council.	Council-administrator
Hayward	1	0	0	0	0	Charter Article VII - Section 705	Non-Interference With Administrative Service	Council-manager
Huntington Beach	1	0	0	0	0	Charter Article III - Section 3.07	Non-Interference With Administration	Council-manager
Indian Wells	0	1	0	0	0	Municipal Code Section 2.04.100	Council to deal through City Manager	Council-manager
Industry	0	1	0	0	0	Municipal Code Section 2.08.100	Relations with city council.	Council-manager
Inglewood	0	0	0	0	1	None	None	Council-manager
Irvine	0	1	0	0	0	Municipal Code Section 1-3-109	Council-Manager relations	Council-manager
Irwindale	1	0	0	0	0	Charter Article VI - Section 609	Interference In Administrative Service	Council-manager
King City	1	0	0	0	0	Charter Article IV - Section 406 (C)	Prohibitions	Council-manager
Kingsburg	1	0	0	0	0	Charter Article II - Section 2.07 (B)	Prohibitions on City Council	Council-manager
Lancaster	0	1	0	0	0	Municipal Code Section 2.08.060 (O)	Council-Manager Relations	Council-manager
La Quinta	0	1	0	0	0	Municipal Code Section 2.08.070	Relations with Council.	Council-manager
Lemoore	0	1	0	0	0	Municipal Code Section 1-6A-5 (A)	Council-Manager Relations	Council-manager
Lindsay	0	0	0	0	1	None	None	Council-manager
Loma Linda	0	1	0	0	0	Municipal Code Section 2.04.180	Council-Manager Relations	Council-manager
Long Beach	1	0	0	0	0	Charter Article II - Section 2.08	City Council's Authority over City Employees	Council-manager
Los Alamitos	1	0	0	0	0	Charter Article VII - Section 708	Noninterference with Administrative Service	Council-manager
Los Angeles	0	0	1	0	0	Charter Article II - Section 291 (i)	Powers and Duties	Mayor-Council-Commission
Marina	0	1	0	0	0	Municipal Code Section 2.08.080	Council-manager relations	Council-manager
Marysville	0	1	0	0	0	Municipal Code Section 2.10.045	Relations with city council	Council-mayor
Merced	1	0	0	0	0	Charter Article IV - Section 406	Interference in administrative service	Council-manager
Modesto	0	1	0	0	0	Municipal Code Section 2-1.22	Council Not to Interfere in Administrative Service	Council-manager
Monterey	0	0	0	0	1	None	None	Council-manager
Mountain View	1	0	0	0	0	Charter Article VI - Section 607	Noninterference with administrative service	Council-manager
Napa	0	0	0	1	0	Municipal Code Section 2.04.040 (C)	Powers of Council	Council-manager
Needles	1	0	0	0	0	Charter Article VI - Section 608	Noninterference with administrative service	Council-manager
Newport Beach	1	0	0	0	0	Charter Article IV - Section 406	Interference in Administrative Service	Council-manager
Norco	0	0	0	0	1	None	None	Council-manager
Oakland	1	0	0	0	0	Charter Article II - Section 218	Non-Interference in Administrative Affairs	Mayor-Council
Oceanside	1	0	0	0	0	Charter Article II - Section 2.11	Councilmanic dealings with employees, etc	Council-manager
Oroville	0	0	0	0	1	None	None	Constitutional Republic
Pacific Grove	1	0	0	0	0	Charter Article 21	Interference with or by City Manager	Council-manager
Palm Desert	0	1	0	0	0	Municipal Code Section 2.04.060	Council-manager relations	Council-manager
Palm Springs	1	0	0	0	0	Charter Article III - Section 306	Interference in Administrative Service	Council-manager
Palmdale	0	1	0	0	0	Municipal Code Section 2.04.090	Orders and directions	Council-manager
Palo Alto	0	1	0	0	0	Municipal Code Section 2.04.160	Council not to interfere in administrative service	Council-manager
Pasadena	1	0	0	0	0	Charter Article IV - Section 411 (B)	Prohibitions	Council-manager
Petaluma	1	0	0	0	0	Charter Article VI - Section 24 (B)	Powers and duties of city manager	Council-manager
Piedmont	1	0	0	0	0	Charter Article II - Section 2.10	Administrative Relations	Council-administrator
Placentia	1	0	0	0	0	Charter Article VI - Section 610	Legislative-administrative relationship	Council-administrator
Pomona	1	0	0	0	0	Charter Article VI - Section 601 (d)	Separation of Powers	Council-manager
Port Hueneme	0	0	0	0	1	None	None	Council-manager
Porterville	1	0	0	0	0	Charter Section 67	Interference With Performance of Duties of City Manager	Council-manager
Rancho Mirage	0	0	0	1	0	Municipal Code Section 2.02.200	Questions to the staff	Council-manager
Redondo Beach	1	0	0	0	0	Charter Article IX - Section 9.1	Departmental interference	Council-manager
Redwood City	1	0	0	0	0	Charter Article Section 27-2	No Interference Between Council And City Manager	Council-manager
Richmond	0	0	0	0	1	None	None	Mayor-council
Riverside	1	0	0	0	0	Charter Article IV - Section 407	Interference in administrative service	Council-manager
Roseville	1	0	0	0	0	Charter Article II - Section 2.09	Council-manager relationships	Council-manager
Sacramento	1	0	0	0	0	Charter Article V - Section 62	Non-interference with City Manager	City Council
Salinas	1	0	0	0	0	Municipal Code Section 2-02.01	Interference with administrative matters by council prohibited	Council-manager
San Bernardino	0	0	1	0	0	Charter Article III - Section 306 (d)	Prohibitions - Interference with Administration	Council-manager
San Diego	1	0	0	0	0	Charter Article XV - Section 270 (g)	The Council	Strong-Mayor
San Francisco	1	0	0	0	0	Charter Article II - Section 2.114	Non-Interference In Administration	Strong-Mayor
San Jose	1	0	0	0	0	Charter Article IV - Section 411	The Council; Interference With Administrative Matters	Council-manager
San Leandro	1	0	0	0	0	Charter Article III - Section 345	Interference In Administrative Service	Mayor-Council-Manager

San Luis Obispo	0	0	1	0	0	Charter Article VII - Section 703	City Manager	Council-Mayor-Manager
San Marcos	0	1	0	0	0	Municipal Code Section 2-20.120	City Council to Deal With Administrative Matters Through the City Manager	Council-manager
San Mateo	1	0	0	0	0	Charter Article II - Section 2.06 (c)	Prohibitions - Interference with Administration	Council-manager
San Rafael	0	1	0	0	0	Municipal Code Section 2.08.040	Council to deal through city manager	Council-manager
San Ramon	0	1	0	0	0	Municipal Code Section A4-17 (A)	Internal relations	Council-manager
Sand City	0	1	0	0	0	Municipal Code Section 2.50.080	Council-Administrator Relations	Council-manager
Santa Ana	1	0	0	0	0	Charter Article IV - Section 408	Interference in administrative matters	Council-manager
Santa Barbara	1	0	0	0	0	Charter Article VI - Section 607	Non-interference with Administrative Service	Council-administrator
Santa Clara	1	0	0	0	0	Charter Article VIII - Section 807	Prohibition against Councilmanic interference	Council-manager
Santa Cruz	1	0	0	0	0	Charter Article VIII - Section 809	No Interference Between The Council And City Manager	Council-manager
Santa Maria	0	0	0	0	1	None	None	Council-manager
Santa Monica	1	0	0	0	0	Charter Article VI - Section 610	Interference in administrative service	Council-manager
Santa Rosa	0	0	0	0	1	None	None	Council-manager
Santee	0	1	0	0	0	Municipal Code Section 2.18.010 (A)	Council-Manager relations	Council-manager
Seal Beach	1	0	0	0	0	Charter Article IV - Section 406	Interference In Administrative Service	Council-manager
Shafter	1	0	0	0	0	Charter Article IV - Section 407 (B)	Restriction on Interference With City Manager	Council-manager
Signal Hill	1	0	0	0	0	Charter Article III - Section 306	Interference In Administrative Service	Council-manager
Solvang	0	1	0	0	0	Municipal Code Section 1-5A-6 (B)	Relationship Between City Council and Administrative Services	Council-manager
Stockton	1	0	0	0	0	Charter Article IV - Section 408	Interference With City Manager	Council-manager
Sunnyvale	0	0	1	0	0	Charter Article VIII - Section 807	Prohibition Against Councilmanic Interference	Council-manager
Temple	1	0	0	0	0	Charter Article VI - Section 609	Interference With Administrative Services	Council-manager
Torrance	0	0	0	0	1	None	None	Council-manager
Truckee	0	1	0	0	0	Municipal Code Section 2.08.070	Relations with Council.	Council-manager
Tulare	0	0	0	0	1	None	None	Council-manager
Vallejo	1	0	0	0	0	Charter Article V - Section 503	Noninterference	Council-manager
Ventura	1	0	0	0	0	Charter Article VII - Section 709	Interference In Administration	Council-manager
Vernon	0	0	0	0	1	None	None	Council-manager
Victorville	0	1	0	0	0	Municipal Code Section 2.04.210	Council-manager relations	Council-manager
Visalia	0	0	0	0	1	None	None	Council-manager
Vista	0	1	0	0	0	Municipal Code Section 2.12.190	Relation between Council and City Manager	Council-manager
Watsonville	1	0	0	0	0	Charter Article IV - Section 407	Interference In Administrative Matters Prohibited	Council-manager
Whittier	1	0	0	0	0	Charter Article IV - Section 406	Interference in Administrative Service	Council-manager
Woodlake	0	1	0	0	0	Municipal Code Section 2.08.160	Council-administrator relations	Council-manager
Charter Cities	Provided in Charter	Provided in Code	Similar in Charter	Similar in Code	None	Implementation	Title	Form of City Government
Total	64	32	6	2	18			112
Percent of Total	52.5%	26.2%	4.9%	1.6%	14.8%			91.8%

Compiled by Pacific Grove Councilmember Luke Coletti



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

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Thomas Frutchey, City Manager
MEETING DATE: August 19, 2015
SUBJECT: The Council's Inquiry Role
CEQA: Does not Constitute a "Project" per California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Provide overall direction on the nature and scope of Council inquiry into City operations that the Council desires. This direction will assist staff in further developing information collection and management systems to support the Council's efforts.

DISCUSSION

The City operates under the Council/Manager form of local government. This system combines the political and policy-making leadership of the elected Council with the managerial expertise of an appointed local-government manager. The Council establishes policy, approves all ordinances and resolutions, adopts the budget, places items on the ballot for the public's consideration, and performs other legislative and quasi-judicial functions. The City Council appoints the City Manager, who serves solely at the pleasure of the Council and functions as the city's top executive officer. The Manager has overall responsibility for hiring and supervising staff, conducting the day-to-day administration of municipal affairs, and ensuring the satisfactory implementation of adopted Council policy.

One of the primary tools of the Council in conducting its oversight of the City Manager and City operations is its right of inquiry. Article 21 of the Charter specifically notes the Council's ability to conduct inquiry, and to direct that inquiry to any employee or contractor, not just to the City Manager. The Council has the right to a full spectrum of types of inquiry, falling within two broad categories:

At any time, by any Council member, or within the bounds of any Council meeting agenda:

- Asking questions regarding specific agenda items (e.g., how would a proposed sign ordinance impact existing businesses; what are the criteria used to determine which streets shall receive surface treatments such as slurry seal; what actions does staff take in response to a citizen complaint)
- Asking for brief updates on issues of current community interest (e.g., status of a recent sewer spill; participation rates over time in summer Recreation programs)

Requiring an initiated agenda item:

- Asking for in-depth program updates, including performance metrics and other hard data (e.g., budget status, by fund and program; crime statistics, by type of crime and area of the community; status of staffing vacancies, with milestones for their successful filling;

investment performance, including each investment vehicle, the amount invested, the term, and the return on investment; building permit activity, by type of occupancy and permit, with trends over time)

- Asking for items under the City's purview to be brought to Council (i.e., agenda setting) for its consideration (e.g., an analysis of the future of fire protection services; the status of the Ground Water Recharge project, projected costs, and impacts on sewer rates)
- Asking for an analysis and recommendations on the City's approaches to governance (e.g., the nature and scope of decision-making authority exercised by boards and commissions serving as advisory bodies to the Council; the transparency of City operations and data, including placing permit activity on the City's website or placing that data on the website in machine-readable format, to facilitate independent analysis by the public; the nature and scope of communication with the general public)
- Commissioning formal inquiries and audits of selected City operations, such audits to be conducted by recognized, outside experts (e.g., the annual fiscal audit)

The above list provides only major examples of the types of inquiry available to the Council; the Council has full authority to undertake these and other approaches to inquiry (with some limits on process due to the Brown Act) on any subject within the City's purview.

Periodically, it is appropriate for the Council to review its options and determine if there are changes to the nature and scope of inquiry that it wishes to undertake. Without exercising this authority, there are program activities that aren't likely to come to the Council's attention during a two-year Councilmanic term, even when of a high priority. As such, inquiry serves as an key set of tools to ensure the Council can fully perform its oversight role. Inquiry is best undertaken on both a planned and ad hoc basis, to verify that the trust placed in administrative operations continues to be deserved and that the public knows that its government is an appropriate steward of the community resources and trust.

It is also worth noting that city organization have a certain capacity at any time to respond to inquiries. The more formal options involve considerable effort, have not consistently been undertaken in PG throughout at least the recent past, and require performance data and analytic skills that are currently in short supply within the organization. This is clearly an area where general improvement is needed, and already recognized. It is a goal throughout the City's programs this year to significantly improve the collection and management of performance metrics. Proficiency in all areas will require significant emphasis and time.

OPTIONS

1. Do nothing.
2. Provide alternative direction to staff.

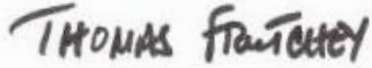
FISCAL IMPACT

Unknown; depends on the nature and scope of inquiry undertaken.

ATTACHMENTS

1. John Nalbandian Article

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink that reads "THOMAS FRUTCHEY". The signature is written in a cursive, slightly slanted style.

Thomas Frutchey
City Manager

Preparing Councils for Their Work

by Julia Novak and John Nalbandian

The legitimacy of an individual councilmember's power comes directly from the electorate, but respect and influence cannot be presumed; they have to be earned through action. The manager's position, however, comes from professional qualifications to manage and provide policy guidance. In contrast with members of the council, the local government manager and professional staff benefit from a long-term familiarity with issues, specialization, and technical expertise and also from an organizational structure familiar to all.

As we know, linking politics and the work of a governing body with the management of government involves an ongoing set of tasks and challenges. The idea of council-manager government is that political and administrative realms can be in partnership and not dependent on the system of checks and balances that characterizes our state and federal governments, where separation of legislative and executive powers is valued.

The relationship between the manager and the elected officials sets a tone for the entire local government. Although some elected officials shy away from acknowledging a team or partner relationship between and among members of council and between the council and the staff, it is critical

that the professional manager prepares the council for its work.

In part, this takes place as the manager helps the council build its capacity to work as a body, earning respect for one another and in an effective partnership with staff. In this article, we set out some of the ways the manager can facilitate the building of council capacity.

2009 ICMA Conference

How managers can help build council capacity is going to be the topic of the authors' presentation at the Eldon Fields Colloquium, which will be held at ICMA's 2009 Annual Conference in Montréal, Québec, Canada, Sept. 13–16.

CENTRAL TASKS OF A GOVERNING BODY

In a formal sense, the role of a governing body is set out in a typical statement such as “the council is charged with providing overall leadership for the local government by enacting laws and allocating resources for programs, services, and activities.” Individuals are elected by voters who, in turn, expect the council to listen to their concerns and address their individual issues.

As accurate as these phrases are, they do not fully convey the work of the council, and they are insufficient to help new councilors understand what is expected of them. In fact, short phrases only rarely capture the council’s work. Local norms and tradition are as important as any charter when it comes to understanding the council’s work. In addition, the composition of a council can influence how the council and the individual members see their roles.

To be effective, councilmembers must talk about their work, what they think is expected of them, and what they expect of each other.

OBSTACLES TO EFFECTIVE GOVERNANCE

Although councils differ, three obstacles to council effectiveness are fundamental. First, councils that are willing to deal with big issues will have to confront conflicting political values. These values include representation, efficiency, social equity, and individual rights. Choices among values are not choices between right and wrong, and councils searching for “correct” answers to policy issues are bound to become frustrated.

Second, councilors must confront the difficult values work they are responsible for in the absence of hierarchy—the mayor is not the boss. How many jobs have you had where no one was in charge?

The third obstacle is the difference in perspective between council and staff—differences that are often difficult to understand because while

council and staff use the same words, they speak a different language.

The tools we identify below are intended to enable a willing council to deal with difficult issues by building council capacity. An important piece of that capacity is an effective partnership with staff.

TOOLS TO BUILD GOOD GOVERNANCE

Adopting policy in open session where political values are constantly colliding is not for the faint at heart. What can the manager do to prepare the council, largely made up of amateur politicians (no disrespect intended), for its work?

It is essential to put new members in contact with former councilmembers who are regarded as exemplars and, if possible, make them part of the orientation.

First, we want to emphasize that staff can *help* prepare the council for its work, but the council is responsible for that work, and the council bears a good deal of responsibility for building its own capacity. The goal is a partnership, and staff members who take too much responsibility for the council’s work may actually create a dependency rather than an effective partnership.

In our collective 50 years of experience working with and for elected and appointed local government professionals, we have seen several practices that are effective tools in managers’ tool kits to help overcome the barriers to council and staff working effectively.

ORIENTATION

Ideally, the orientation process begins before the election, when individuals declare their candidacy for council. The manager’s opportunity to prepare them begins then: open the doors of city hall to the candidates and provide them with nonconfidential correspondence and copies of agenda materials. After the election, meet individually with those elected to find out their concerns; offer to allow them to explore areas of community business of particular interest.

As soon as practical after the election, the manager should arrange for a full orientation for new members of the governing body—invite the continuing members to attend as well—and provide them with “Government 101.” Brief them on current issues, the status of long-range plans and capital projects, and the budget process. In its orientation, Shoreline, Washington, covers both the basics of members’ service on the council as well as specific government projects (see the box on page 26).

Provide tours of operational facilities. Let them see the garage where the city cares for its fleet and even the shop where it stores and maintains its lawnmowers. A tour of water and wastewater treatment facilities is fascinating and allows the behind-the-scene workers who do the city’s business every day to shine.

But also remember that if staff prepare the agenda for the orientation, the agenda likely will be based on what staff members think the council needs to know in order to be effective. Every new councilmember must face two crucial questions: How do I get my issues on the political agenda of other councilmembers and staff? How do I influence other councilmembers effectively? Rarely do staff-developed orientations include discussion of these kinds of questions.

That is why it is essential to put new members in contact with former councilmembers who are regarded as exemplars and, if possible, make



New Councilmember Orientation Shoreline, Washington

Part I: Nuts & Bolts

1. Council meetings
 - Open Public Meetings Act
 - E-meetings/public records
2. Council rules and procedures
 - Various types of council meetings: Business meeting, study session, workshop dinner meeting, and executive sessions
 - Agenda process
 - First council meeting: Swearing-in ceremony and election of mayor
3. Council-staff communications
4. Council office
 - Council correspondence process: E-mail, letters
 - Business expense policy
 - Miscellaneous: Council voice mail, Web site, e-mail, payroll, health benefits, conferences, council photo

Part II: Council Goals, Boards & Commissions, Projects, Issues

5. Council goals
 - Council goal-setting process: Retreat
 - 2008–09 council goals/council work plan
 - Council Work Plan quarterly reports
6. Council boards and commissions
 - Council of Neighborhoods
 - Library Board
 - Parks Board
 - Economic Development Advisory Committee
 - Planning Commission
7. Projects and emerging issues
 - Long-range financial planning
 - City Hall project
 - Point Wells
 - Aurora corridor project
 - Parks bond projects
8. Wrap-up
 - Additional information/briefings/tours?

a body, during its time in office. The most effective councils hold annual sessions where goals are revisited, updated, and validated.

These sessions, like the orientation, should be seen as annual events so there is no debate on whether they should take place. Goal setting occurs most effectively in a retreat environment where the entire day (or two) is set aside for the purpose of reaching consensus on council priorities. Having department heads attend these discussions provides staff with important context for understanding the “why” behind the priorities.

As part of setting goals, the council and staff should come to an agreement on how the council wants to be informed about progress on goals and objectives. During the retreat the council can also focus on improving working relationships within the council by discussing norms and behavior and exploring personal styles in a guided discussion with a trainer and facilitator.

An exploration of styles should not be minimized. It is important because all councilmembers are equals. The unintended consequence of equality is that no one has the power and authority to resolve conflict or set or legitimize plans and direction.

In the absence of the hierarchical structure we are all accustomed to day in and day out, a gathering of equals who are dealing with problems for which there are no correct answers highlights differences in ways individual members exercise influence, how much information they need, the extent to which they see themselves as a group, how they deal with conflict, and even the kinds of concerns individually they think are worth considering.

REGULAR ONE-TO-ONE MEETINGS

Although the formal relationship is between the manager and the councilmembers as a body, nurturing individual relationships is an important component of creating a productive working relationship between council

them part of the orientation. Importantly, these exemplars should represent a range of styles so new members can become acquainted with and relate to at least one former councilmember.

RETREATS AND GOAL SETTING

During a council retreat, probably the most important activity of the governing body is spending time articulating what it wants to accomplish, as

and staff. At a minimum, the manager should have one-to-one time with members of council at least once each quarter. Many managers visit much more frequently with individual councilmembers.

This is especially important when the council itself is divided. If the manager meets only with members of the majority, the manager plays into the perception that the staff is supporting the majority at the expense of the minority. Although the manager is bound to implement the policy adopted by the majority, the relationship the manager develops must be with the body as a whole as well as with each individual who makes up the body.

Local government managers clearly are spending more time than ever with councilmembers. What is not clear is the changing role of department heads in light of the new allocation of the manager's time. It used to be a bonus to find department heads who could understand the council's politics and the work of the manager's office.

Today, that need has become imperative because the manager does not have sufficient time to spend with department heads.

APPROPRIATE ACCESS TO DEPARTMENT HEADS

Having the council interact directly with staff can be a touchy issue for some managers, but it is a direct consequence of managers having to spend more time on the politics of the jurisdiction. The primary council-staff relationship should be with the manager, but allowing councilmembers access to department heads can actually build trust between the council and the manager.

Open dialogue between the manager and the department heads about how that interaction happens and what is shared back with the manager ensures that the manager is properly informed and the council is well served. Shoreline, Washington, has developed written guidelines for council-staff communications that strike an appropriate balance (see the box on this page).



Council-Staff Communications Guidelines Shoreline, Washington

Governance of a city relies on the cooperative efforts of elected officials, who set policy and priorities, and city staff, who analyze problems and issues, make recommendations, and implement and administer the council's policies. Here are general guidelines to help facilitate effective communications between the city council and city staff.

- Channel communications through the appropriate city staff.
- All council members should have the same information with which to make decisions.
- Depend upon the staff to respond to citizen concerns and complaints as fully and as expeditiously as practical.
- The city council sets the direction and policy—city staff are responsible for administrative functions and city operations.
- In order to provide the council with timely information, please strive to submit questions on council agenda items ahead of the meeting.
- Respect the will of the “full” city council.
- Depend upon the staff to make independent and objective recommendations.
- The city manager and staff are supporters and advocates for adopted council policy.
- Refrain from publicly criticizing an individual employee. Criticism is differentiated from questioning facts or the opinion of staff.
- Seeking political support from staff is not appropriate.

DOCUMENTED BUSINESS PRACTICES

The day-to-day business of government involves responding to correspondence, e-mails, and constituent requests. Establishing a practice of how to handle these items ensures fair treatment among all members of the governing body. Some jurisdictions call these rules of procedure, and they are adopted by resolution and govern how the council conducts itself.

Topics include everything from receiving and responding (or not) to public comment at public meetings and when it is appropriate to use official letterhead, to how items get placed on agendas and how many logo shirts each councilmember receives—and everything in between.

THE COUNCIL MUST MANAGE ITSELF

The manager's job is to create opportunities for the council to be prepared so the members can operate in an environment of mutual understanding. Each of the steps outlined in this article can help create the environment for effective governance, but there will be exceptions.

Individuals sometimes ignore rules, and toxic personalities sometimes create challenges for professionals. But do not forget—difficult personalities on the council create a challenging and uncomfortable environment for the council itself. This is not just a staff problem, and often there is no silver bullet.

In the end, the council must manage its own behavior and seek compli-

ance from its own members. Staff can do only a limited amount to support a dysfunctional council, and inviting councilmembers to vent to the manager and staff about other councilors at worst can create an expectation that it is the manager's job to somehow fix the council. That simply cannot happen.

BENEFITS OF LEADERSHIP

In their training video, *Leadership: An Art of Possibility*, Ben and Rosamond Zander talk about the art of leadership as creating a possibility to live into rather than a standard to live up to. Preparing the council for its work lays the groundwork for establishing an environment where the council-staff partnership can flourish and good governance can be supported by good management. **PM**

Julia Novak, ICMA-CM, is regional vice president, Management Partners, Inc., Cincinnati, Ohio, and is a former city manager (jnovak@managementpartners.com). John Nalbandian is a faculty member in the Public Administration Department at the University of Kansas, Lawrence, Kansas. He is a former councilmember and mayor in Lawrence, Kansas (nalbandj@gmail.com).

Upcoming **PM**

Contents:

- **Public Safety Communication Systems**
- **No Pre-Existing Conditions**

PM What's Your Elevator Speech?

In the May 2009 issue of *PM*, readers were asked to submit their "two-minute elevator speech" that explains to someone they've just met or that helps a citizen quickly understand what they do for a living. Here are the replies that were received:

My two-minute elevator speech does not last two minutes. I tell the public that any success I have had comes from having the ability to do what I am told. In my role as a city manager, the city council sets the policy direction, and it is my job to use the resources of the city, in partnership with the city employees, other governmental agencies, not-for-profits, businesses, and citizens to carry out that policy with the highest degree of success possible.

—Michael Van Milligen
City Manager
Dubuque, Iowa
ctymgr@cityofdubuque.org

Being part of a team of ethical professionals dedicated to facilitating our community's success—that is my role in local government as a deputy city manager.

My job is to assist the city manager in her efforts to implement tangible policies and programs that will shape the progress our city council seeks to achieve.

Day to day, I apply best management practices to ensure that public resources are being used effectively and efficiently for the community's benefit. I do that by leading a department focused on neighborhood services—the municipal functions that directly affect residents, like solid waste, transit, code enforcement, and animal services.

As a professional manager, I maintain open lines of communication with division supervisors and field staff about the city council's goals and objectives and the city manager's direction. As a neighborhood services team, our common mission is to ensure that the work we do every day complements and is consistent with the direction that our elected officials wish to lead the community.

The work is fun, exhilarating, and very challenging. The best reward comes when we hear from a resident that a job is "well done!" and we see in our performance measurements that progress is being made in providing the highest quality services at the best value to taxpayers. Local government management is a great field, and I hope to pursue my career in it for years to come.

—Cody Tubbs
Deputy City Manager
Elk Grove, California
ctubbs@elkgrovecity.org

ICMA CONSULTING SERVICES

Agenda No. 13A Attachment 1
Page 6 of 6

A Holistic Approach to Local Government Management Consulting



If you need help addressing the most critical issues in your jurisdiction, from community problem-solving, to police and fire mergers to smart growth codes, consider ICMA. If you want a team of local government management experts who can provide your community with a solution that will improve the lives of your residents, hire ICMA.



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State of California

GOVERNMENT CODE

Section 7921.305

7921.305. (a) Notwithstanding the definition of “member of the public” in Section 7920.515, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

(b) This section does not constitute a change in, but is declaratory of, existing law.

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)



State of California

GOVERNMENT CODE

Section 7921.310

7921.310. Notwithstanding Section 7921.305 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

(Added by Stats. 2021, Ch. 614, Sec. 2. (AB 473) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 7931.000.)

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by [Cox v. Mariposa County](#), E.D.Cal., May 1, 2020

114 Cal.App.4th 1252
Court of Appeal, Second District, Division 6,
California.

David **LEVY** et al., Plaintiffs and Respondents,
v.

CITY OF **SANTA MONICA** et al., Defendants
and Appellants;
Tunde Garai, Real Party in Interest.

No. B157587.

Jan. 20, 2004.

Review Denied March 30, 2004.

Synopsis

Background: Homeowners brought action against city and city council member seeking permanent injunction, declaratory judgment, and other relief, after city issued notice of violation regarding backyard playhouse that homeowners had built for their child. City and council member brought anti-SLAPP (strategic lawsuit against public participation) motion to strike lawsuit. The Superior Court, Los Angeles County, [Cesar C. Sarmiento](#), J., denied motion to strike and city and council member appealed.

Holdings: The Court of Appeal, [Gilbert](#), P.J., held that:

[1] anti-SLAPP statute applied to homeowners' action;

[2] homeowners failed to meet burden of demonstrating probable success on merits with regard to cause of action seeking declaratory judgment that playhouse conformed to applicable zoning ordinance;

[3] homeowners failed to meet burden of demonstrating probable success on merits with regard to federal civil rights cause of action; and

[4] homeowners failed to meet burden of demonstrating probable success on merits with regard to cause of action that sought permanent injunction and declaratory judgment that city council members were precluded by city charter from engaging in acts designed to influence

city administrative staff.

Reversed.

West Headnotes (18)

- [1] **Constitutional Law**  Right to Petition for Redress of Grievances
Constitutional Law  Zoning and Land Use
Pleading  Frivolous pleading
Torts  Resort to or conduct of legal remedies

Anti-SLAPP (strategic lawsuit against public participation) statute applied to action brought by homeowners against city and a city council member, after city issued notice of violation regarding backyard playhouse that homeowners had built for their child, inasmuch as the action arose from constitutionally-protected speech or petitioning activity of homeowners' neighbor and city council member; action alleged that neighbor complained to city council member about playhouse on homeowners' property that had been approved by city building officials, and neighbor's act of contacting her representative, and city council member's act of contacting city planning staff, were petitions for grievances against the government protected by the First Amendment. [U.S.C.A. Const.Amend. 1](#);  [West's Ann.Cal.C.C.P. § 425.16](#).

See 5 Witkin, *Cal. Procedure* (4th ed. 1997) *Pleading*, § 962 et seq.; *Cal. Jur. 3d, Pleading*, § 295.

14 Cases that cite this headnote

- [2] **Pleading**  Frivolous pleading
Torts  Resort to or conduct of legal remedies

A "SLAPP suit" (strategic lawsuit against public participation) is a lawsuit that chills a party's constitutional right of petition or free speech.

 West's Ann.Cal.C.C.P. § 425.16.

[3] **Pleading** Frivolous pleading

Courts must broadly construe provisions of the anti-SLAPP (strategic lawsuit against public participation) statute.  West's Ann.Cal.C.C.P. § 425.16.

2 Cases that cite this headnote

[4] **Pleading** Frivolous pleading

To determine whether the plaintiff has demonstrated a probability of prevailing on a claim, on motion to strike under anti-SLAPP (strategic lawsuit against public participation) statute, the plaintiff must show that the complaint is both legally sufficient and supported by facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.  West's Ann.Cal.C.C.P. § 425.16.

2 Cases that cite this headnote

[5] **Pleading** Application and proceedings thereon

The trial court may not weigh the evidence in deciding whether the plaintiff meets the burden of demonstrating a probability of prevailing on a claim, on motion to strike under anti-SLAPP (strategic lawsuit against public participation) statute.  West's Ann.Cal.C.C.P. § 425.16.

1 Case that cites this headnote

[6] **Appeal and Error** Anti-SLAPP laws

The appellate court reviews the record de novo on appeal from motions to strike under the anti-SLAPP (strategic lawsuit against public participation) statute.  West's Ann.Cal.C.C.P. § 425.16.

[7] **Declaratory Judgment** Zoning ordinances
Declaratory Judgment Grounds of motion

In response to a motion to strike their lawsuit under the anti-SLAPP (strategic lawsuit against public participation) statute, homeowners failed to meet their burden of demonstrating probable success on the merits with regard to their cause of action against city and city council member seeking a declaratory judgment that playhouse that homeowners built for their child conformed to applicable zoning ordinance; issue became moot after city rescinded notices of violation for playhouse, and therefore there was no actual, present controversy requiring resolution by the court, which was a necessary element of proving cause of action for declaratory relief.  West's Ann.Cal.C.C.P. § 425.16.

4 Cases that cite this headnote

[8] **Declaratory Judgment** Necessity

The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.

1 Case that cites this headnote

[9] **Declaratory Judgment** Zoning ordinances

A plaintiff may seek declaratory relief to resolve a dispute about the impact of a zoning

ordinance.

 42 U.S.C.A. § 1983.

1 Case that cites this headnote

[10] Pleading Application and proceedings thereon

In response to a motion to strike their lawsuit under the anti-SLAPP (strategic lawsuit against public participation) statute, homeowners failed to meet their burden of demonstrating probable success on the merits with regard to their federal civil rights cause of action against city and city council member after homeowners were issued a notice of violation with regard to a backyard playhouse they had built for their child; homeowners failed to show that they suffered damages inasmuch as city had rescinded its notice of violation, and homeowners failed to show that city threatened to move playhouse in the future, or that city had an official policy that deprived homeowners of due process notice.

 42 U.S.C.A. § 1983;  West's Ann.Cal.C.C.P. § 425.16.

2 Cases that cite this headnote

[11] Civil Rights Complaint in general

A plaintiff may state a claim for violation of federal civil rights by alleging facts showing a deprivation of a right protected by federal law.

 42 U.S.C.A. § 1983.

[12] Civil Rights Governmental Ordinance, Policy, Practice, or Custom

Local governments may be sued under the statute providing for a federal civil rights cause of action where their official policies or practices violate procedural due process rights.

[13] Civil Rights Acts of officers and employees in general; vicarious liability and respondeat superior in general

Local governments have no liability under the statute providing for a federal civil rights cause of action simply because their employees may have violated a plaintiff's constitutional rights; the doctrine of respondeat superior does not apply.  42 U.S.C.A. § 1983.

1 Case that cites this headnote

[14] Declaratory Judgment Grounds of motion

In response to motion to strike under anti-SLAPP (strategic lawsuit against public participation) statute, homeowners failed to meet their burden of demonstrating probable success on merits on their cause of action against city and city council member that sought permanent injunction and declaratory judgment that city council members were precluded by city charter from engaging in acts designed to influence city administrative staff; although charter prohibited orders from city council members to subordinates of city manager, homeowners failed to show that city council member gave any orders to city's director of planning and community development regarding legality of homeowners' backyard playhouse that they built, as opposed to simply having made an inquiry that was permissible under charter, and homeowners' complaint sought to enjoin advocacy and other communication that would have constituted an overly broad restraint on speech. U.S.C.A. Const.Amend. 1;

 West's Ann.Cal.C.C.P. § 425.16.

6 Cases that cite this headnote

[15] **Constitutional Law** 🔑 Public officials in general

Under the First Amendment, legislators are given the widest latitude to express their views, and there are no stricter free speech standards on them than on the general public. U.S.C.A. Const.Amend. 1.

3 Cases that cite this headnote

[16] **Constitutional Law** 🔑 Narrow tailoring

Laws that restrict freedom of speech must be narrowly construed. U.S.C.A. Const.Amend. 1.

[17] **Constitutional Law** 🔑 Public officials in general

City officials have First Amendment protection when they respond to inquiries from the public about the city's actions on construction projects. U.S.C.A. Const.Amend. 1.

[18] **Declaratory Judgment** 🔑 Grounds of motion

In response to motion to strike under anti-SLAPP (strategic lawsuit against public participation) statute, homeowners failed to meet their evidentiary burden with regard to their cause of action for injunctive and declaratory relief, so as to demonstrate probability of prevailing on merits in seeking permanent injunction and declaratory judgment that city council members were precluded by city charter from engaging in acts designed to influence city administrative staff; although complaint alleged an ongoing "pattern of intervention" by council members in city staff's

performance, homeowners made these general allegations on information and belief and did not produce admissible evidence to support them, and conclusory statement of former city council member that problem that homeowners experienced was not an isolated incident was insufficient, inasmuch as former council member failed to state facts, name the council members, or show his personal knowledge.

West's Ann.Cal.C.C.P. § 425.16.

5 Cases that cite this headnote

Attorneys and Law Firms

****510 *1254** Marsha Jones Moutrie, City Attorney, Joseph Lawrence, Assistant City Attorney, Cara E. Silver, Deputy City Attorney for Defendants and Appellants.

Bannan, Green, Frank & Terzian and Richard R. Terzian, Los Angeles, for the Cities of Burbank, Cathedral City, Fresno, Hermosa Beach, Newport Beach, Riverside, ***1255** Sonoma, Torrance and West Hollywood as Amici Curiae on behalf of Defendants and Appellants.

Harding, Larmore, Kutcher & Kozal, Christopher M. Harding, Kenneth L. Kutcher, Santa Monica; Isaacs, Clouse & Crose, James B. Isaacs, Jr., Santa Monica, and John A. Crose, Jr., for Plaintiffs and Respondents.

No appearance for Real Party in Interest.

Opinion

GILBERT, P.J.

Santa Monica City Charter section 6.10 states, "Except for the purpose of inquiry, the City Council and its members shall deal with the administrative service under the City Manager solely through the City Manager and neither the City Council nor any member shall give orders to any subordinates of the City Manager, either publicly or privately."

Here we conclude, among other things, that a city council member did not violate section 6.10 by speaking with city planning department employees on behalf of a constituent to inquire about a structure built on a neighbor's property. An injunction to prevent such communication violates the

First Amendment. The First Amendment protects everyone, even politicians. (See  *Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 52 Cal.Rptr.2d 357.)

The City of **Santa Monica** (City) and council member Ken Genser (City) appeal an order denying their “SLAPP” (Strategic Lawsuit Against Public Participation) motion to strike the lawsuit filed against them by David and Beth **Levy** (the Levys). ( *Code Civ. Proc.*, § 425.16.) We reverse because City’s activity is protected under SLAPP and the Levys did not demonstrate a probability of prevailing on any of their causes of action.

FACTS

The Levys spent \$11,000 to build a large elevated backyard playhouse for their four-year-old son. City building inspector Mike Gruett advised the Levys that their neighbor Tunde Garai had complained about the playhouse. Gruett told them they had to remodel it to meet city building standards and “relocate [] [it] so that it was at least five feet from the rear lot line.” The Levys spent \$2,000 to modify the structure to comply with the City’s specifications. The completed structure was 13 feet high. It was located near a tree and supported by wooden posts which extended approximately seven feet *1256 from the ground. Robert Flowers, a city inspector, checked it and told the Levys that it “was in full compliance with ... City regulations.”

****511** Garai complained to the City’s building and safety department about the playhouse. She also complained to Genser who was both her city council representative and the mayor.

On March 15, 2000, Genser sent an e-mail on behalf of Garai to Suzanne Frick, the City’s director of planning and community development, that said, “[C]ould you look into this? Is this structure being built without permits? And could it be built with a permit? Please feel free to contact [Garai] directly.”

On April 2, 2000, Genser sent another e-mail to Frick to find out “the status of the complaint [he] forwarded” to her. He said, “I just did a ‘quick’ review of the code. I can’t say that I am necessarily accurate ... but: Mike’s letter said a 5–ft. rear setback was required. I think the code requires the same rear setback as the rear yard—generally 15 feet (?) [¶] ... [¶] I wonder if the space

under the first floor should be considered a story. (I haven’t found a citation to support this—yet.)”

Frick “did not consider these e-mails to be orders.” She treated them as “citizen complaints” and referred them to the zoning administrator. Genser simultaneously e-mailed copies to Susan McCarthy, the city manager, who did not consider the e-mails to be orders to City staff.

On August 4, 2000, Gruett sent the Levys a “Notice of Violation” which “directed [them] to remove” or modify the playhouse because it was an “unapproved structure[.]” The notice said the playhouse was a two-story structure that had to be “15 feet from the property line[.]” This notice did not mention appeal rights.

Prior to filing their lawsuit, the Levys’ attorney, Christopher Harding, had a discussion with Marsha Moutrie, the city attorney, who told him “that City staff did not intend to take any enforcement action of any kind against the Levys prior to discussing their claim with the City Council...” She said, “I would recommend to the City Council that the City forego enforcement based on the equities of the case, and that I anticipated the City Council would follow my recommendation.” She said, “it would not be necessary to file a lawsuit, that the City would carefully review the matter, and that the dispute could be informally resolved.”

The Levys did not wait for the city council meeting and filed a complaint for injunctive, declaratory relief and damages against the City and Genser. They included Garai as a “Real Party in Interest.” Later they filed an *1257 amended complaint alleging that the City “confirmed in writing that the Levys may keep their son’s playhouse but asserted that it constitutes a legal *non-conforming structure*[.]” (Italics added.) Their first cause of action sought a declaratory judgment that the playhouse was a “conforming structure.”

The second cause of action sought a permanent injunction and a declaratory judgment that the city council members “are precluded by Section 6.10 [of the City Charter] *from engaging in acts designed to influence* City administrative staff through direct communication with City staff (other than the City Manager), with respect to zoning enforcement matters such as the **Levy** playhouse matter.” (Italics added.)

The third cause of action sought damages under the federal civil rights statute ( 42 U.S.C. § 1983) for the violation of the Levys’ “due process right to a hearing ... before being required to modify or remove their son’s playhouse.”

The City moved to strike the complaint under the SLAPP statute and contended the first and third causes of action were moot because the City rescinded the notice of violation.

****512** The Levys opposed the motion with several declarations. A declaration by attorney Christopher Harding stated the City “continues to maintain ... that the **Levy** playhouse is a non-conforming structure[.]” Another declaration by Gruett said the notice of violation should have advised the Levys about their appeal rights. But his supervisor Timothy McCormick, the City’s chief building officer, told him the notices did not contain such advisements because “the City did not want to encourage appeals by giving people notice of their rights.” Gruett said that the playhouse “conformed to the Zoning Ordinance [.]” He and McCormick determined it was “a lawful one-story ancillary structure.” But they were told by the chief City planners to “treat [it] as a two-story structure[.]”

Robert Sullivan, a real estate broker, said the City’s classification of the playhouse as a “non-conforming” structure has an “adverse effect on the marketability of [the Levys’] home.” Former city council member Paul Rosenstein declared, “I am concerned ... that the **Levy** playhouse matter is not an isolated incident, but rather an example of what has become ‘business as usual’ for one or more members of the **Santa Monica** City Council.”

The Court denied the motion. It ruled SLAPP was not applicable, but even if it were, the Levys met their burden to demonstrate a probability of success on all their causes of action.

***1258 DISCUSSION**

I. The Applicability of SLAPP

^[1] The City contends that the Levys’ action arose from Genser’s and Garai’s “constitutionally-protected speech or petitioning activity.” It argues the trial court erred by ruling that SLAPP did not apply. We agree.

^[2] ^[3] A SLAPP suit is a lawsuit that chills “a party’s constitutional right of petition or free speech.”  (State Farm General Insurance Company v. Majorino (2002) 99

Cal.App.4th 974, 975, 121 Cal.Rptr.2d 719.) The SLAPP statute permits the defendant to file a motion to strike a cause of action that interferes with those rights.  Code Civ. Proc., § 425.16.) To prevail, the defendant must show “that the plaintiff’s claims arise from an act of the defendant in furtherance of the defendant’s right of petition or free speech.”  (State Farm General Insurance Company, at p. 977, 121 Cal.Rptr.2d 719.) Such acts include any written or oral statement made before a legislative, executive or judicial body, or “any other official proceeding authorized by law.”  (Navellier v. Sletten (2002) 29 Cal.4th 82, 88, 124 Cal.Rptr.2d 530, 52 P.3d 703;  Code Civ. Proc., § 425.16, subd. (e).) Courts must construe these provisions broadly.  (Navellier, at p. 92, 124 Cal.Rptr.2d 530, 52 P.3d 703.)

^[4] ^[5] ^[6] If an action falls within SLAPP, the court “must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim.”  (Navellier v. Sletten, supra, 29 Cal.4th at p. 88, 124 Cal.Rptr.2d 530, 52 P.3d 703.) To do this, he or she must show “ ‘that the complaint is both legally sufficient and supported by ... facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’ ”  (Id. at pp. 88–89, 124 Cal.Rptr.2d 530, 52 P.3d 703.) The trial court may not weigh the evidence in deciding whether the plaintiff meets the burden, and we review the record de novo.  (Matson v. Dvorak (1995) 40 Cal.App.4th 539, 548, 46 Cal.Rptr.2d 880;  Lafayette Morehouse Inc. v. Chronicle Publishing Co. (1995) 37 Cal.App.4th 855, 867, 44 Cal.Rptr.2d 46.)

Here the City met its burden to show that the Levys’ action arose from Genser’s ****513** and Garai’s constitutionally protected speech. The complaint alleges that Garai complained to Genser about the playhouse that had been approved by City building officials. Genser contacted the City’s planning staff on her behalf because of Garai’s disagreement with the City’s action. The Levys incorporated these allegations into each cause of action and sued Garai and Genser.

^[7] Garai’s act of contacting her representative and Genser’s act of contacting planning staff are petitions for grievances against the government protected by the First Amendment.  ***1259** (Bradbury v. Superior Court (1996) 49 Cal.App.4th 1108, 1116, 57 Cal.Rptr.2d 207;  American Civil Liberties Union of Southern California v. Board of Education (1961) 55 Cal.2d 167, 178, 10 Cal.Rptr. 647, 359 P.2d 45; Nelson v. City of Selma (9th

Cir.1989) 881 F.2d 836, 839.) The court erred by ruling that SLAPP did not apply. The Levys did not meet their burden of demonstrating probable success on their causes of action. (Navellier v. Sletten, supra, 29 Cal.4th at p. 88, 124 Cal.Rptr.2d 530, 52 P.3d 703.)

[10] [9] The first cause of action seeks a declaratory judgment that the playhouse “conforms with the Zoning Ordinance[.]” “ ‘The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.’ ” (City of Cotati v. Cashman (2002) 29 Cal.4th 69, 79, 124 Cal.Rptr.2d 519, 52 P.3d 695.) A plaintiff may seek declaratory relief to resolve a dispute about the impact of a zoning ordinance. (Alameda Co. Land Use Assn. v. City of Hayward (1995) 38 Cal.App.4th 1716, 1723, 45 Cal.Rptr.2d 752; Toso v. City of Santa Barbara (1980) 101 Cal.App.3d 934, 948, 162 Cal.Rptr. 210.)

The City contends the issue is moot and there is no actual controversy. We agree. The city attorney informed the Levys that “the City has rescinded the Notices of Violation for the playhouse.... The rescission is unequivocal. The City has no intention of reissuing notices.” Because of this there is no “actual, present controversy” which requires resolution by the court. (City of Cotati v. Cashman, supra, 29 Cal.4th at p. 79, 124 Cal.Rptr.2d 519, 52 P.3d 695.) This element was necessary to prove a cause of action for declaratory relief. Moreover, real estate broker Sullivan’s conclusory declaration on the home’s marketability was inadequate to show damages. The Levys did not meet their burden to show a probability of success on the merits.

II. The Federal Civil Rights Cause of Action

[10] The City contends the trial court erred because the Levys did not meet their burden to show a probability of prevailing on the federal civil rights cause of action (1983 claim). (42 U.S.C. § 1983.) We agree.

[11] [12] A plaintiff may state a 1983 claim by alleging “facts showing a deprivation of a right” protected by federal law. (Green v. Obledo (1984) 161 Cal.App.3d 678, 682, 207 Cal.Rptr. 830.) Local governments may be sued under 42 United States Code section 1983 where their official policies or practices violate procedural due process rights. (Carey v. Piphus (1978) 435 U.S. 247, 266, 98 S.Ct. 1042, 55 L.Ed.2d 252.)

[13] The City argues that this cause of action is moot because it rescinded the notice of violation. As the City notes, it “revamped its procedure for issuing orders and provided an extensive appeal and hearing process.” The Levys did *1260 not show that the City has threatened to remove the playhouse in the future or that it would do so without proper notice. They **514 did not produce sufficient evidence to show that they suffered damages. Real estate broker Sullivan’s declaration fares no better in this cause of action. Nor did they show that the City had an official policy that deprived homeowners of due process notice. Even if Gruett and McCormick did not provide them proper notice of appeal rights, that by itself is insufficient to impose liability on the City. “Local governments have no liability under 42 United States Code section 1983 simply because their employees may have violated a plaintiff’s constitutional rights; the doctrine of respondent superior does not apply. [Citation.]” (Choate v. County of Orange (2000) 86 Cal.App.4th 312, 328, 103 Cal.Rptr.2d 339.) The Levys are not entitled to “an abstract trial on the constitutionality” of the past actions of some City employees that cause no damage. (Id. at pp. 329–331, 103 Cal.Rptr.2d 339.) The Levys did not meet their burden.

III. Injunctive and Declaratory Relief Against the City Council

[14] The City contends that the court erred by ruling that the Levys met their burden to show they would prevail on their second cause of action to enforce City Charter section 6.10 (Section 6.10) by declaratory and injunctive relief. We agree.

The Levys seek a permanent injunction and a declaratory judgment that “the City Council and its individual members are precluded by Section 6.10 from engaging in acts designed to influence City administrative staff through direct communication with City staff (other than the City Manager), with respect to zoning enforcement matters such as the Levy playhouse matter.” (Italics added.) They also allege they “are entitled to issuance of a permanent injunction prohibiting members of the City Council [and their staffs] from violating Section [6.10.]” They state the injunction is necessary “to allow city administrative personnel to carry out their administrative duties free from direct pressure or influence by ” city council members. (Italics added.)

The Levys contend the purpose of Section 6.10 is to prevent city council members from interfering with administrative staff. They claim they should make complaints on behalf of constituents directly through the city manager. But Section 6.10 allows direct contact “for the purpose of inquiry.” That is what Genser did. He made an inquiry on behalf of Garai.

The Levys contend Genser violated Section 6.10 by what he said to City staff. But this section prohibits “orders to any subordinates.” The Levys did not show that Genser gave orders. Genser’s declaration states he “never instructed or ordered” any City staff “to take any specific enforcement action[.]” Frick said she did not consider the e-mails to be orders.

***1261** The Levys contend Genser violated Section 6.10 by “advocating” on behalf of Garai. “Government officials are frequently called upon to be ombudsmen for their constituents. In this capacity, they intercede, lobby, and generate publicity to advance their constituents’ goals....” (Manistee Town Center v. City of Glendale (9th Cir.2000) 227 F.3d 1090, 1093.) “This kind of petitioning may be nearly as vital to the functioning of a modern representative democracy as petitioning that originates with private citizens.” (Ibid.)

[15] [16] [17] Under the First Amendment, legislators are “given the widest latitude to express their views” and there are no “stricter ‘free speech’ standards on [them] than on the general public.” (Eller Outdoor Advertising Co. v. Board of Supervisors (1979) 89 Cal.App.3d 76, 80, 152 Cal.Rptr. 358.) Laws that restrict that freedom must be narrowly construed. (Ibid.) ****515** City officials have First Amendment protection when they respond to inquiries from the public about the city’s actions on construction projects. (Nizam-Aldine v. City of Oakland (1996) 47 Cal.App.4th 364, 376–377, 54 Cal.Rptr.2d 781.)

The Levys seek to enjoin council members from advocating their constituents’ positions, applying “direct pressure” or “engaging in acts designed to influence” City administrative staff. But that is an overly broad restraint on speech which would inhibit constitutionally protected activity. (Bond v. Floyd (1966) 385 U.S. 116, 136, 87 S.Ct. 339, 17 L.Ed.2d 235; Baggett v. Bullitt (1964) 377 U.S. 360, 372, 84 S.Ct. 1316, 12 L.Ed.2d 377; American Civil Liberties Union of Southern California v. Board of Education, supra, 55 Cal.2d at pp. 179–180, 10 Cal.Rptr. 647, 359 P.2d 45.)

It is not easy to distinguish between inquiry and “acts” designed to influence decision. “General words create different and often particular impressions on different minds.” (Thomas v. Collins (1945) 323 U.S. 516, 534, 65 S.Ct. 315, 89 L.Ed. 430.)

For example, in *Thomas*, a labor leader was held in contempt for violating a restraining order which prevented him from soliciting people to join a union. The Supreme Court ruled that his conviction violated the First Amendment because the trial court’s order “chilled” free speech. Under the order he could discuss the attributes of the union, but was prohibited from soliciting or inviting the audience to join it. The court noted it would be difficult for the speaker to distinguish between prohibited and protected speech. He would have to anticipate how the audience might interpret his remarks. There was no guarantee that “anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker ... wholly at the mercy of the varied understanding of his hearers....” (Thomas v. Collins, supra, 323 U.S. at p. 535, 65 S.Ct. 315.) “Such a distinction offers no security for free discussion.” (Ibid.)

That is the case here. For some, a council member’s inquiry for a constituent is advocacy simply because it calls attention to the constituent’s position. To the head of a city agency, a council member’s act of faxing citizen complaints about the agency might be considered an “act designed to influence” or “direct pressure.” For the Levys, an inquiry is advocacy where it could change the status quo or influence the result. Under their definition, virtually all inquiries would be suspect. Council members who may make inquiries under Section 6.10 might refrain from doing so because of fear of being sued or held in contempt. For example, council members could be inhibited from calling City agencies about matters crucial to the community such as securing help for families living in substandard housing. “Free speech may not be so inhibited.” (Baggett v. Bullitt, supra, 377 U.S. at p. 372, 84 S.Ct. 1316.)

The purpose of Section 6.10 is to define the lines of authority within City government, not to prohibit protected speech. Interpreting this section to prohibit “orders” to City staff is a bright line consistent with the purpose of Section 6.10 and the First Amendment. Council members “are entitled to speak as they please on matters vital to them; errors in judgment ... may be exposed, of course, but not through punishment for

contempt for the expression.” (Wood v. Georgia (1962) 370 U.S. 375, 389, 82 S.Ct. 1364, 8 L.Ed.2d 569.) “[E]rroneous statements must be protected to give freedom of expression the breathing space it needs to survive.” **516 (Bond v. Floyd, supra, 385 U.S. at p. 136, 87 S.Ct. 339.) There are better ways to discourage improper conduct. “Under our system of government, counterargument and education are the weapons available to expose these matters, not abridgment of the rights of free speech.” (Wood, at p. 389, 82 S.Ct. 1364.)

[18] Moreover, the Levys did not meet their evidentiary burden for injunctive and declaratory relief. Their complaint alleged an ongoing “pattern of intervention” by council members in “City staff’s performance.” But they made these general allegations on information and belief and did not produce admissible evidence to support them. Rosenstein stated, “the Levy playhouse matter is not an isolated incident, but ... ‘business as usual’ for one or more [Council] members[.]” But this conclusory

statement is insufficient. (Evans v. Unkow (1995) 38 Cal.App.4th 1490, 1497–1498, 45 Cal.Rptr.2d 624.) He did not state facts, name the council members or show his personal knowledge. (Ibid.) Other declarations the Levys filed regarding Genser’s conduct rely on hearsay and speculation.

***1263** The order denying the City’s motion to strike the Levy’s action is reversed. Costs to appellants.

We concur: YEGAN and COFFEE, JJ.

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