



NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

SPECIAL MEETING AGENDA

Wednesday, August 7, 2024, 5:00 P.M.

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

Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. This is a warning that if a member of the public attending this meeting remotely or in-person violates the Brown Act by failing to comply with these requirements of the Brown Act, then the Mayor or Chair may request that speaker be muted. If a member of the public attending this meeting in-person engages in disruptive behavior that disturbs the orderly conduct of the meeting, they may be removed from the meeting after a warning, pursuant to Council Policy 000-17.

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

**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.**

Join the Zoom Meeting to participate live at:

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AGENDA

CALL TO ORDER

APPROVAL OF AGENDA

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

Comments from the public will not receive Council action. Comments must deal with matters on the Closed Session agenda and will be limited to three minutes

1. Written Public Comment

- A. Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9 (d)(1)
Name of Case Enayati v. City of Pacific Grove
Case No. 21CV002786

ADJOURNMENT



NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, August 7, 2024, 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.

Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. This is a warning that if a member of the public attending this meeting remotely or in-person violates the Brown Act by failing to comply with these requirements of the Brown Act, then the Mayor or Chair may request that speaker be muted. If a member of the public attending this meeting in-person engages in disruptive behavior that disturbs the orderly conduct of the meeting, they may be removed from the meeting after a warning, pursuant to Council Policy 000-17.

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

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

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https://www.cityofpacificgrove.org/Zoom_CC

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AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE: Councilmember Poduri

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 July 17, 2024 Regular and Special Meetings **PG 10**

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve minutes.

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

6. **RESOLUTIONS**

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

7. **ORDINANCES**

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

A. Ordinance Approving Lease at Lover's Point Grill **PG 17**

Reference: Matt Mogensen, City Manager

Recommended Action: Hold second reading of an Ordinance of the City Council of Pacific Grove approving a five-year lease between Sunset Hospitality Group, Inc., a California corporation, and the City of Pacific Grove for the use of City owned property including approximately 270 square feet of building space located at Lover's Point Park and Beach in the City of Pacific Grove, and authorizing and directing the City Manager to execute the same.

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

8. **REPORTS – INFORMATION ONLY**

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

A. Housing Element Monthly Status Update **PG 61**

Reference: Alyssa Kroeger, Housing Program Manager

Recommended Action:

1. Receive the report.
2. Alternatively, discuss and take other action related to this item.

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

9. **REPORTS – REQUIRING ACTION**

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

A. Amendment to the Fire Services Agreement with the City of Monterey to add Emergency Medical Services Including Advance Life Support Services **PG 63**

Reference: Andrew Miller Fire Chief

Recommended Action: Adopt a resolution amending the current Fire Services Agreement with the City of Monterey to add Emergency Medical Services (EMS) to include Advanced Life Support (ALS) services.

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

B. Agreement with the Society for the Prevention of Cruelty to Animals of Monterey County for Sheltering Services **PG 67**

Reference: Brian Anderson, Acting Chief of Police

Recommended Action: City Council approval of motion authorizing the Mayor to sign an agreement with the Society for the Prevention of Cruelty to Animals of Monterey County for Sheltering Services Agreement

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

C. Adopt Policy Update Regarding Vehicle Miles Traveled (VMT) and CEQA Compliance

Reference: Joseph Sidor, Contract Planner **PG 80**

Recommended Action: Adopt, by resolution, the proposed amendments to the City's VMT Implementation Policy.

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

D. Tree Maintenance Services Agreement **PG 160**

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action:

1. Authorize an agreement with Topes Tree Service Inc. to provide Tree Maintenance Services for trees in the public right-of-way and on City-owned properties in an amount not-to-exceed \$250,000 per fiscal year, with up to four (4) annual, one-year extensions by mutual letter
2. Authorize the Mayor to execute all letters of extension associated with this agreement
3. Alternatively, take other action related to this item

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

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

A. Planning Commission Meeting Minutes: September 2023 through December 2023

Reference: Aaron Campbell, Senior Planner **PG 163**

Recommended Action: Receive minutes.

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

REGULAR AGENDA

11. **PUBLIC HEARINGS**

For public hearings involving a quasi-judicial determination by the Council, the proponent of an item may be given 10 minutes to speak and others in support of the proponent's position may be given three minutes each. A designated spokesperson for opposition to the item may be given 10 minutes to speak and all others in opposition may be given three minutes each. Very brief rebuttal and surrebuttal may be allowed in the sole discretion of the Council. In public hearings not involving a quasi-judicial determination by the Council, all persons may be given three minutes to speak on the matter.

- A. First Reading of Ordinance Amending Section 2.06.010 (a) of the Pacific Grove Municipal Code Relating to Residency Requirement for City Manager **PG 199**

Reference: Brian Pierik, City Attorney

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 Amending Section 2.06.010 (a) of the Pacific Grove Municipal Code Relating to Residency Requirement for City Manager; and
4. Direct a summary of a proposed ordinance be published as approved by the City Attorney.

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

- B. First Reading of an Ordinance Approving an Amendment to the Lease between Lighthouse Fellowship and the City of Pacific Grove **PG 203**

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

Recommended Action:

1. Request the City Attorney to read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an Ordinance approving an amendment to the lease between Lighthouse Fellowship and the City of Pacific Grove for the use of City owned property located at 515 Junipero Avenue, commonly known as the Community Center, in the City of Pacific Grove, and authorizing the Mayor to execute Amendment #2 and any Letters of extension of the Lease.
4. Direct that publication of the Ordinance will be satisfied by publication of a summary approved by the City Attorney.

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

12. **UNFINISHED AND ONGOING BUSINESS**

- A. Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60 (*This item was continued from Council's July 19, 2024 Regular Meeting.*) **PG 222**

Reference: Luke Coletti, Councilmember

Recommended Action:

1. Direct the City Manager to return within 60 days with a draft ordinance amending Chapter 7.40 of the City's Municipal Code to increase short-term rental penalties in accordance with SB 60; and
2. Direct the City Manager to return with a comprehensive list of "infractions that pose a threat to public health or safety," including those that are a violation of the building and safety code.

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

- B. Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four **PG 232**

Reference: Brian Pierik, City Attorney

Recommended Action: Motion to adopt Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four

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

13. **NEW BUSINESS**

- A. Resolution Amending Policy 000-5 to Add Section and Regarding Recommendations by Boards, Committees, and Commissions **PG 250**

Reference: Bill Peake, Mayor

Recommended Action:

1. Motion to approve Resolution Amending Policy 000-5 to Add Section 7 Regarding Recommendations of Boards, Committees and Commissions
2. Motion to approve Protocol for recommendations to the City Council by Boards, Committees and Commissions
3. Other action related to this item.

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

- B. League of California Cities (LoCC) Annual Conference Voting Delegate and Alternate(s)

Reference: Sandra Kandell, City Clerk

Recommended Action: **PG 259**

1. Discuss, designate, and adopt by resolution a voting delegate and up to two alternates to represent the City on policy matters at the League of California Cities (LoCC) Annual Conference on October 16-18 in Long Beach, California.
2. Alternatively, discuss and take other action related to this item.

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: Sandra Kandell, City Clerk/DEI Coordinator
MEETING DATE: August 07, 2024
SUBJECT: Minutes of the July 17, 2024 Regular and Special Meetings
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes 7-17-24



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR AND SPECIAL MEETING

Wednesday, July 17, 2024, 6:00 P.M.

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

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CALL TO ORDER

Mayor Peake called the noticed regular and special meetings to order at 6:00 p.m. Present in Chamber: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Smith led the pledge of allegiance.

1. APPROVAL OF AGENDA

Action: Mayor Peake recommended that the noticed regular and special meeting agendas be approved and further recommended the item noticed in the Special Meeting Agenda be heard at the conclusion of the Regular Meeting agenda items.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted 7-0, to approve the Regular and Special Meeting agendas.

2. PRESENTATIONS

A. Community Human Services Presentation by Chief Executive Officer Robin McCrae

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)

4. GENERAL PUBLIC COMMENT

General public comment received from Jane Haines, Dan Miller, Kris Lindstrom, Mike Gibbs, and Inge Lorentzen Daumer.

A. Written General Public Comment

CONSENT AGENDA

Action: Consent Agenda items 8A, 8D, and 9A were pulled and considered immediately following the Consent Agenda.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Beck, Council voted 7-0, to approve the Consent Agenda as modified.

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

- A. Minutes of the July 3, 2024 Special and Regular Meetings

Action: Approved minutes.

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

6. **RESOLUTIONS**

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

- A. Core Revenue Report for June 2024 *This item was pulled and considered immediately following the Consent Agenda.*

Reference: Lori Frati, Finance Manager

Recommended Action:

1. Receive the report.
2. Alternatively, discuss and take other action related to this item.

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

- B. Check Register for June 2024

Action: Received the Check Register.

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

- C. Housing Element Monthly Status Update

Action: Received the report.

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

- D. City of Pacific Grove Informational Report on Demographics *This item was pulled and considered immediately following the Consent Agenda.*

Reference: Matthew Mogensen, City Manager

Recommended Action:

1. Receive and file the City of Pacific Grove informational report on demographics prepared by National Demographic Corporation.
2. Direct City Manager to take an alternative action related to this item

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

- E. Monterey-Salinas Transit Minutes of June 10, 2024

Action: Received minutes.

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

9. **REPORTS – REQUIRING ACTION**

- A. FY24/25 CIP Engineering Services *This item was pulled and considered immediately following the Consent Agenda.*

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action:

1. Authorize an agreement with Neill Engineers Corp for FY23/24 Capital Improvement Plan engineering services in an amount not to exceed \$545,871 plus a 15% contingency.
2. Alternatively, discuss and take other action on this item.

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

- B. Contract Amendment for Professional Services

Action: Approved Amendment #1 to the Professional Services Agreement with Catacutan Consulting, LLC., increasing the previously approved contract by \$60,000 for a total not to exceed amount of \$100,000.

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

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

- A. Beautification and Natural Resources Commission Minutes: May 21, 2024

Action: Received minutes.

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

- B. Library Board Minutes: May 7, 2024

Action: Received minutes.

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

- 8.A. Core Revenue Report for June 2024 *This item was pulled from the Consent Agenda.*
Public comment received from Mike Gibbs.

Action: Received the report.

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

- 8.D. City of Pacific Grove Informational Report on Demographics *This item was pulled from the Consent Agenda.*

Public comment received from Andrew Kubica and Carmelita Garcia.

Action: Received and filed the City of Pacific Grove informational report on demographics prepared by National Demographic Corporation.

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

- 9.A. FY24/25 CIP Engineering Services *This item was pulled from the Consent Agenda.*
Public comment received from Dan Miller, Andrew Kubica, and Inge Lorentzen Daumer.

Action: Upon motion by Councilmember Poduri and seconded by Councilmember Amelio, Council voted 7-0 to authorize an agreement with Neill Engineers Corp for FY23/24 Capital Improvement Plan engineering services in an amount not to exceed \$545,871 plus a 15% contingency.

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

REGULAR AGENDA

11. PUBLIC HEARINGS

12. UNFINISHED AND ONGOING BUSINESS

- A. Cedar, Sunset & Congress Intersection Improvements Project
Public comment received from Daniel Miller, Kris Lindstrom, Christie Thomas, Andrew Kubica, Thom Akeman, Inge Lorentzen Daumer, Carmelita Garcia, Kim Akeman, and Lisa Ciani.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Poduri, Council voted 4-3, Councilmembers Beck, Coletti, and McDonnell dissenting, to select Single Build Alternative, option 1, a roundabout with Cedar access relocated, for the Congress, Cedar, and Sunset Intersection.

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

- B. Adopt the Community Wildfire Protection Plan Completed for the Cities of Monterey, Pacific Grove, and Carmel-by-the-Sea (Exempt from CEQA per Article 18, Section 15262)
Public comment received from Peggy Gibbs, Mike Gibbs, Thom Akeman, Kim Akeman, and Lisa Ciani.

Action: Upon motion by Councilmember Coletti and seconded by Mayor Peake, Council voted 7-0, to pass Resolution No. 24-031 adopting the Community Wildfire Protection Plan.

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

- C. Housing Element Update - Consider Alternative Sites and Methods to Achieve the City's Regional Housing Needs Assessment (RHNA) Requirements
No public comment received.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted 6-0-1, Councilmember Poduri recusing, to approve alternative sites referenced as Option 1 for the Housing Element Update to accommodate the City's RHNA requirements.

Action: Upon motion by Councilmember Coletti and seconded by Mayor Pro Tem Smith, Council voted 6-0-1, Councilmember Beck recusing, to approve alternative sites referenced as Option 2 for the Housing Element Update to accommodate the City's RHNA requirements.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember

Poduri, Council voted 7-0, to approve alternative sites referenced as Option 3 in the Housing Element Update to accommodate the City's RHNA requirements.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember McDonnell, Council voted 7-0, to approve alternative sites referenced as Option 6 in the Housing Element Update to accommodate the City's RHNA requirements.

Action: Upon motion by Councilmember Coletti and seconded by Mayor Pro Tem Smith, Council voted 6-0-1, Councilmember Beck recusing, to not include alternative sites referenced as Option 8 in the Housing Element Update to accommodate the City's RHNA requirements.

CEQA: Environmental Impact Report

Action: Upon motion by Mayor Peake and seconded by Mayor Pro Tem Smith, Council voted 7-0 to continue past 10:00 p.m., hear the noticed Special Agenda item 1A City Position Regarding Assembly Bill 2560 and continue the Regular Agenda item 13A Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accord with SB60.

13. **NEW BUSINESS**

- A. Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accord with SB60 *Due to time constraints, this item was continued.*

Reference: Luke Coletti, Councilmember

Recommended Action: Direct the City Manager to return within 60 days with a draft ordinance amending Chapter 7.40 of the City's Municipal Code to increase short-term rental penalties in accordance with SB60. A proposed draft ordinance is attached (see Attachment-1).

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

- 1.A. City Position Regarding Assembly Bill 2560
No public comment received.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted 7-0 to direct the City Manager to advise Cal Cities that the City of Pacific Grove wishes to join in the opposition to AB 2560.

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

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

Council adjourned the regular and special meetings at 10:31p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____ Date _____

Attest by City Manager: _____ Date _____

DRAFT



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Matt Mogensen, City Manager
MEETING DATE: August 07, 2024
SUBJECT: Ordinance Approving Lease at Lover's Point Grill
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

RECOMMENDATION

Hold second reading of an Ordinance of the City Council of Pacific Grove approving a five-year lease between Sunset Hospitality Group, Inc., a California corporation, and the City of Pacific Grove for the use of City owned property including approximately 270 square feet of building space located at Lover's Point Park and Beach in the City of Pacific Grove, and authorizing and directing the City Manager to execute the same.

DISCUSSION

No changes were made between the first and second readings of this ordinance. The City Clerk caused a summary of the ordinance to be published on July 11th and again on August 1, 2024

The City of Pacific Grove ("City") owns that certain portion of real property situated at the northeast corner of the intersection of Ocean View Boulevard and 17th Street, at the southerly end of Lover's Point Park and Beach, improved with an approximately 270 square foot building (the "Premises"), located in the City of Pacific Grove.

The Premises are improved with a restaurant, including a kitchen, configured for walk-up ordering and take-out service only.

The City operates the Premises through a lease agreement for operation of restaurant food and beverage services.

The City issued a Request for Proposal (RFP) on March 19, 2024, and the City received proposals from three entities. A panel of staff reviewed the proposals and interviewed each proposer. As a result of the selection process, the proposal submitted by Sunset Hospitality, Inc. was selected as the highest rated proposal for their unique qualifications and vision for the Premises.

The lease form allows Sunset Hospitality, Inc. the exclusive use of Premises for the sale of food, beverages, and related services.

The proposed Lease (Attachment 1) provides that the use will be for a snack bar including beverages,

sandwiches and light fare. The term of the Lease is five (5) years with one option extension for an additional five-year term if both parties agree to the extension. The rent for the Premises will be:

Base Rent: The initial monthly base rent shall be \$1,500 plus an annual payment equal to a proportion of annual gross sales in the following amounts:

0% for annual gross sales under \$300,000
2% for annual gross sales \$300,000 - \$399,999
3% for annual gross sales \$400,000 - \$499,999
4% for annual gross sales \$500,000 - \$599,999
5% for annual gross sales \$600,000 - \$699,999
6% for annual gross sales \$800,000 and above.

Tenant is separately responsible for paying for utilities and services (including electric, water and sewer).

The Lease will be approved by Ordinance (Attachment 2). The proposed timeline for the Ordinance is a first reading of the Ordinance on July 3, 2024 and a second reading on July 20, 2024 and 30 days thereafter will be August 19, 2024 which, if the Ordinance is adopted, would be the Rent Commencement Date.

In order to allow Sunset Hospitality access to the Premises before August 19, 2024 when the Lease will become effective, there is a License Agreement proposed which is Attachment 3.

The proposed menu of food and beverages to be offered by Sunset Hospitality at the Premises is Attachment 4.

The License Agreement and Lease of the Premises will not have a significant effect on the environment and is found to be exempt from the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines which allows for the leasing, licensing, repair, and maintenance of public or private structures.

OPTIONS

Other action related to this item.

FINANCIAL IMPACT:

There is no fiscal impact on the enactment of this ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Ordinance of the City Council of the Pacific Grove approving a five-year lease between Sunset Hospitality Group, Inc., a California corporation, and the City of Pacific Grove for the use of City owned property

Lease Agreement

TENANT LEASE

By and Between

CITY OF PACIFIC GROVE
a California charter city
("Landlord")

and
SUNSET HOSPITALITY GROUP, INC.
a California corporation
("Tenant")

Dated: August __, 2024

TENANT LEASE

BASIC LEASE PROVISIONS

1. Tenant: Sunset Hospitality Group, Inc.
 500 Hartnell Street
 Monterey, California 93933
 Phone: (310) 403-0210

2. Landlord: City of Pacific Grove
 300 Forest Avenue
 Pacific Grove, California 93950
 Phone: (831) 648-3174
 Attention: City Manager

3. Premises: That certain building of approximately 270 square feet in
 interior floor space located generally on the southwest portion
 of the City's Lover's Point Park and Beach, as depicted in
 Exhibit B attached hereto

4. Use: Snack bar (e.g., beverages, sandwiches, and light fare)

5. Term: Five (5) years, with one optional extension for an additional
 five-year term, if both parties agree to such extensions

6. Lease Commencement August __, 2024 ("**Commencement Date**").
Date:

7. Rent Commencement August __, 2024 ("**Rent Commencement Date**").
Date:

8. Base Rent: The initial monthly base rent shall be \$1,500 plus an annual
 payment equal to a proportion of annual gross sales in the
 following amounts:

 0% for annual gross sales under \$300,000
 2% for annual gross sales \$300,000 - \$399,999
 3% for annual gross sales \$400,000 - \$499,999
 4% for annual gross sales \$500,000 - \$599,999
 5% for annual gross sales \$600,000 - \$699,999
 6% for annual gross sales \$800,000 and above.

Tenant is separately responsible for paying for utilities and services (including electric, water and sewer).

The Basic Lease Information set forth above and the Exhibits listed below and attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease section pertaining to such information. In the event of any conflict between the Basic Lease Information and the provisions of the Lease, the latter shall control.

The following Exhibits are attached to this Lease and incorporated herein by this reference:

- Exhibit A** – Premises Description
- Exhibit B** – Rules and Regulations
- Exhibit C** – Ongoing Maintenance Schedule
- Exhibit D** – List of Lessor-owned Furnishings
- Exhibit E** – Initial Improvement Schedule
- Exhibit F** – Insurance Certificate

This Lease Agreement (this “**Lease**”) is made and entered into effective as of August __, 2024 (“**Effective Date**”) by and between the City of Pacific Grove, a California charter city (“**Landlord**”) and Sunset Hospitality Group, Inc., a California corporation (“**Tenant**”).

1. PREMISES.

1.1 Premises. Landlord is the owner of certain real property developed into a municipal park and beach commonly known as Lover’s Point Park and Beach, located generally at the northeast intersection of Ocean View Boulevard and 17th Street, situated in the City of Pacific Grove, Monterey County, State of California (“**Property**”). The Property is also improved with an approximately 270 square foot building (“**Premises**”) owned by Landlord and located in the southwest portion of the Property, and described and depicted in **Exhibit A**, attached hereto and incorporated herein by this reference. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, on the terms and subject to the covenants, conditions and uses stated herein, the Premises. The Premises are leased to Tenant in their “as is” condition. The Premises are leased on an “AS-IS” basis, “WITH ALL FAULTS,” with all furniture, fixtures and equipment located within the Premises as of the Commencement Date (except such as are already owned by Tenant), also being subject to this Lease. Tenant shall also be permitted to use the locked storage area located at the beach level of the Property to store items associated with the operation of the Premises.

1.2 Public Area. Tenant may, subject to rules made by Landlord, and on a non-exclusive basis, use those areas on the Property exterior to the Building designated by Landlord from time to time for the common use of Landlord and members of the public, such as patio and other public areas adjacent to the Building (the “**Public Area**”). Landlord has sole discretion to determine the design and location of the Public Area and to determine the manner in which the Public Area is maintained and operated. The Public Area does not include space within Tenant’s Premises.

1.3 Parking. During the Term, Tenant shall be entitled to utilize the number of parking spaces within the parking area for the Property as designated by Landlord from time to time. Landlord shall at all times have the right to establish and modify the nature and extent of the parking areas for Premises. Tenant shall not use more parking spaces than its allotment and shall not use any parking spaces specifically assigned by Landlord to other tenants, if any, or for such other uses such as visitor, handicapped or other special purpose parking.

1.4 Reserved Rights.

1.4.1 Landlord’s Right of Entry. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; and (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign in or about the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord

may exercise this right of entry without any rent credit to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

1.4.2 Additional Reserved Rights. In addition, Landlord reserve(s) the right upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) to undertake the following: (i) install, use, maintain, repair, alter, relocate or replace any improvements in the Public Area; (ii) grant easements encumbering the Property which do not unreasonably interfere with Tenant's use of the Premises and dedicate for public use portions thereof; and (iii) affix reasonable signs and displays.

1.5 Compliance with ADA. Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that responsibility for compliance with the Americans With Disabilities Act of 1990, as amended (the "ADA") shall be allocated as follows: (i) Landlord shall be responsible for compliance with the provisions of Title III of the ADA for all Public Areas not included within the Premises; (ii) Landlord shall be responsible for compliance with the provisions of Title III of the ADA for any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations or repairs are made by Landlord, its employees, agents or contractors, at the direction of Landlord or done pursuant to plans and specifications prepared or provided by Landlord or Landlord's architect or space planner; (iii) Tenant shall be responsible for compliance with the provisions of Title III of the ADA for any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations and repairs are made by Tenant, its employees, agents or contractors, at the direction of Tenant or done pursuant to plans and specifications prepared or provided by Tenant or Tenant's architect or space planner.

1.5.1 Accessibility Disclosure. Landlord hereby advises Tenant that the Premises has not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CAsp inspection shall be conducted in compliance with reasonable rules in effect at the Building with

regard to such inspections and shall be subject to Landlord's prior written consent.

2. TERM.

2.4 Lease Commencement Date. The initial term of this Lease shall be for a period of five (5) years commencing on the Effective Date ("**Initial Term**"). Any reference to "**Term**" in this Lease shall include the Initial Term and the Extension Term where Tenant and Landlord have extended the Lease pursuant to Section 2.2.

2.5 Optional Extension.

2.5.1 Provided that (i) Tenant is not in default under the terms of this Lease at the time the optional extension is exercised or at the commencement of the Extension Term (defined below), and (ii) Tenant has not been in default more than twice in any 12-month period, Landlord and Tenant may mutually agree to renew this Lease for an additional five-year period ("**Extension Term**"). The Extension Term shall commence, if at all, upon the expiration of the Initial Term and end sixty months later. There shall be no additional extension term beyond the Extension Term set forth herein.

2.5.2 The Extension Term shall be on all the terms and conditions of this Lease.

2.5.3 Base Rent for the Extension Term shall be determined as set forth in section 3.5 below.

2.5.4 Tenant must exercise its option to extend this Lease by giving Landlord a minimum of six (6) months written notice prior to the end of the Initial Term. If Tenant fails to give notice in a timely manner, Tenant shall lose the ability to exercise its extension option. Landlord may in its discretion waive such failure.

2.5.5 The extension option set forth herein is personal to Tenant and shall not be included in any assignment of this Lease without prior written approval from Landlord.

3. RENT.

3.4 Rent Commencement Date. Tenant's obligation to pay Rent under this Lease shall commence as of the Effective Date. Rent shall be paid as set forth in this Section 3.

3.5 Base Rent; Rent Adjustment. The monthly Base Rent for the Initial Term shall be \$1,500, for a total of \$18,000 per year. Base Rent shall be adjusted as set forth in this Section 3.2 and may be adjusted as set forth in Section 3.5, below. Tenant shall pay to Landlord, at Landlord's Address designated in Item 2 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent herein defined, without notice, demand, offset or deduction, in advance, on the first day of each calendar month. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent due as of the Rent Commencement Date. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent

("Additional Rent") due on the same date as Base Rent unless otherwise specified hereunder or otherwise requested by Landlord. Notwithstanding the foregoing, late charges under Section 3.3.4 shall be due and payable immediately as incurred. The term "Rent" means the Base Rent and all Additional Rent payable hereunder. If Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month. On the first anniversary of the commencement date of this Lease, and annually thereafter, the rent payable by Tenant shall be increased to an amount determined by multiplying the basic monthly rental by a fraction, the denominator of which shall be the most recent Consumer Price Index figure, as hereinafter defined, published prior to the date of this Lease, and the numerator of which shall be the most recent Consumer Price Index figure published prior to the particular anniversary date; provided, however, that in no event shall the rent for any month after such anniversary be less than the rent for the month immediately preceding such anniversary. As used herein, the term "Consumer Price Index" shall mean Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco- Oakland-San Jose Average for All Items, 1982-84=100, or the successor of that Index, as published by the Bureau of Labor Statistics, U.S. Department of Labor. Tenant shall make the rent payment on or before the 10th day of each month. Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

3.6 Percentage Rent.

3.6.1 *Payment.* In addition to the Base Rent, Tenant agrees to pay to Landlord, as Rent for each Lease Year or partial Lease Year, the amount by which the percentage of Tenant's Gross Sales from the Premises set forth in Paragraph 8 of the Basic Lease Provisions for such Lease Year or partial Lease Year (the "Percentage Rent"). Percentage Rent will be determined and paid, without any prior demand within forty-five days (45-days) after the end of such Lease Year, including the last Lease Year of the term of the Lease, and Tenant's obligation will survive the expiration of the Lease Term. Each Lease Year will be considered as an independent accounting period for the purpose of computing the amount of Percentage Rent due. The amount of Gross Sales of any Lease Year will not be carried over into any other Lease Year.

3.6.2 *Gross Sales Reports.* Tenant agrees to submit to Landlord on or before the forty-fifth day (45th) day following the end of each Lease Year or partial Lease Year (including the last Lease Year hereof, as to which Tenant's obligation will survive the expiration of the Lease Term) a written statement signed and verified by an authorized representative of Tenant as true and correct, showing the amount of such Gross Sales during the preceding Lease Year or partial Lease Year and an itemization of all permissible deductions from Gross Sales. The annual statement will also be duly certified by Tenant or an officer of Tenant to be true and correct in compliance with the definition of Gross Sales in this Lease in accordance with sound and accepted accounting practice consistently applied. The statements referred to in this Section 3.3.2 of this Lease must be in such form and style and contain such details and information as Landlord may reasonably designate and will be delivered to the address set forth in Paragraph 2 of the Basic Lease Provisions or such other address as Landlord may from time to time designate. The acceptance by Landlord of payments of Percentage Rent or Gross Sales reports is without prejudice and does not constitute a waiver of Landlord's right to claim a deficiency in the payment of Percentage Rent or to audit Tenant's books and records. The Gross Sales for any

portion of a calendar month prior to the commencement of the first full calendar month, will be included in the report due for the next succeeding month.

3.6.3 *Records and Audit Reports.* Tenant agrees to prepare and keep for a period of at least thirty-six (36) months following the end of each Lease Year, true and accurate books of account and records, conforming to generally sound and accepted accounting principles consistently applied, including, but not limited to, sales tax and other reports filed with governmental agencies, all purchases and receipts of merchandise, inventories and all sales and other transactions by Tenant from which Gross Sales at, upon or from the Premises can be determined. Tenant agrees to record all sales, at the time each sale is made, and to retain cumulative cash register tapes or such other cumulative records concerning such Gross Sales as are approved by Landlord. Notwithstanding the foregoing, Landlord agrees that it will not unreasonably refuse to allow Tenant to maintain its books and records in computerized form, provided: (i) that Tenant's computerized books and records provide the same level of information as the print books and records described in this Section 3.3.3 of the Lease; (ii) such computerized books and records are retained for the full thirty-six (36) month retention period, and are made accessible for Landlord's inspection on request; (iii) print copies are made available to Landlord's representatives engaged in inspecting Tenant's books and records upon request. Landlord's consent to computerized record keeping, once given, may be revoked by Landlord on not less than sixty (60) days' prior written notice to Tenant, if Tenant fails to comply with the foregoing requirements.

If Tenant's Gross Sales are required to be reported on any federal, state or local sales tax return, and Gross Sales so reported on any of the sales tax returns exceed the Gross Sales as reported by Tenant under this Lease, then the Gross Sales will be taken at the highest figure so reported. If any governmental authority increases the Gross Sales reported by Tenant on any such tax return for any Lease Year for which such Gross Sales have been reported, then Tenant will notify Landlord promptly of such increase, supply to Landlord a true copy of such governmental action and pay any additional Percentage Rent due under this Lease together with interest at the late rent Interest Rate set forth in Section 3.3.4 of the Lease from the date such Percentage Rent was due.

Landlord has the right, upon thirty (30) days' notice to Tenant to cause a complete audit of all statements of Gross Sales and in connection with such audit, to examine Tenant's books of account and records (including all supporting data and any other records from which Gross Sales may be tested or determined) of Gross Sales disclosed in any statement provided or required to be provided to Landlord by Tenant. Tenant will make all such records available for such examination at the location set forth in Paragraph 1 of the Basic Lease Provisions. Landlord will have the right to copy and duplicate such information as Landlord may require. If any such audit discloses that the actual Gross Sales transacted by Tenant exceed those reported, then Tenant will pay Landlord such additional Percentage Rent as may be payable together with interest at the late rent Interest Rate pursuant to Section 3.3.4 of the Lease from the date such additional Percentage Rent was due. If the excess so disclosed is ten percent (10%) or more, Tenant will also pay the reasonable costs of Landlord's audit and examination. If the excess is less than ten percent (10%), then Landlord will pay for the services of its auditors. The furnishing by Tenant of any fraudulent statement will constitute a non-curable Event of Default. If an audit is commenced by Landlord, all supporting data and any other records from which Gross Sales may

be tested or determined will be preserved and retained by Tenant until a final resolution of such audit, dispute or difference. Any information obtained by Landlord as a result of such audit will be treated as confidential, except in any litigation or proceeding between the parties.

For purposes of this lease, the term “gross sales” means sum of the full sale price at which all beverages, food stuffs, catering services and other such goods, room rental fees charged by Tenant, specialty contracted services, wares and merchandise are sold at any time during the term of the Agreement by Tenant, its employees or agents in. Gross sales shall exclude credit card service charges that are not included in the sale price to customers.

3.6.4 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service (“Delinquency Costs”). If Landlord has not received any installment of Rent within five (5) calendar days after such amount is due, Tenant shall pay a late charge in the amount of One Hundred Twenty Five Dollars (\$125.00) immediately. This late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum (“Applicable Interest Rate”) equal to the lesser of (a) the maximum interest rate permitted by law, or (b) five percent (5%) above the rate publicly announced by JPMorgan Chase Bank, N.A. (or if JPMorgan Chase Bank, N.A. ceases to exist, the largest bank then headquartered in the United States of America) (“Bank”) at its “Reference Rate.” If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant’s failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord’s acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant’s default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of law.

3.7 Additional Rent. In addition to paying the Base Rent specified in Item 8 of the Basic Lease Information and in Section 3.2, and pursuant to any Addendum or Amendment to this Lease that Landlord and Tenant may execute, Tenant shall pay as Additional Rent all Utilities and Services, defined and described in Section 4, not directly paid by Tenant to the utility company, and any other amounts of any kind that become due or payable by Tenant to Landlord under the terms of this Lease. Unless Landlord elects otherwise pursuant to this Lease, all amounts due under this section as Additional Rent are payable for the same periods and in the same manner, time and place, as the Base Rent. Tenant’s obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during that Term.

3.8 Renegotiation of Base Rent Amount Upon Leasehold Improvements. If Tenant anticipates undertaking significant and costly renovations to the Property during the Term, upon the issuance of a building permit by City to commence such renovations, City and Tenant may meet to discuss a renegotiation of the rent amount to account for the improvements.

3.9 Security Deposit. Tenant shall not be required to deposit any sums with Landlord as security for Tenant's performance of its obligations under this Lease. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and agrees that the provisions of this Section 3.5 shall govern the treatment of Tenant's Security Deposit in all respects for this Lease.

4. UTILITIES AND SERVICES.

4.4 Utilities and Services. Tenant shall be solely responsible for contracting for, and shall promptly pay any and all shall pay when due any and all water, heat, gas, electricity, telephone and other utilities and services ("collectively, "**Services**") provided to or for the Premises, including taxes thereon. Tenant shall establish its own accounts for all utility Services, including garbage collection services, to the extent such Services can be separately metered and billed. In the case of any Services that are not separately metered and billed directly to Tenant, but are metered jointly with other premises, Tenant shall pay Landlord upon demand a pro rata share, as determined by Landlord, of all charges. Landlord shall bill Tenant its pro rate share of any Services that are not separately metered within one hundred twenty (120) days of the date that Landlord receives such bills from the Service provider (e.g., utility company). Tenant will also procure, or cause to be procured without cost to Landlord, any and all necessary permits, licenses, or other authorization s required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to and upon the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

4.2 Pest Control. Tenant, at Tenant's cost, shall at all times keep the Premises free of pests, including the obligation to maintain a pest control service contract with a licensed pest control operator. If Tenant fails to promptly and fully comply with this Section, Landlord shall have the right, but not the obligation, to enter the Premises to perform such spraying or inspections at Tenant's expense. Performance of such work by Landlord shall not constitute a waiver of Tenant's default in failing to do the same nor shall it entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent. Tenant shall reimburse Landlord for any cost incurred by Landlord pursuant to this Section upon demand therefor.

4.3 Exculpation of Liability. Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord's failure to furnish any of the Services, or furnishing reduced Service; no such failure or reduction shall constitute or be construed as a constructive or other eviction of Tenant, nor shall Landlord be liable for loss of business or injury to property however occurring, through or in connection with or incidental to such failure to furnish or reduction of any of the Services. Should Landlord elect to provide a security patrol or system, Landlord shall not be responsible for any damage or injury to Tenant, Tenant's officers, agents, employees, independent contractors, invitees, customers, visitors, licensees, assignees or subtenants (individually and collectively, "Tenant's Parties"), or the Premises or property due to failure, action or inaction of such patrol or system. Landlord reserves the right to stop Services when necessary, by reason of accident or emergency or for inspection, repairs, alterations, decorations, additions or improvements which, in the judgment of Landlord, are

desirable or necessary to be made, until same shall have been completed, and shall further have no responsibility or liability for failure to supply any Services in such instance. Landlord shall use reasonable efforts to minimize the inconvenience to Tenant from any such disruptions or interruptions of Services and shall provide Tenant with reasonable notice of such disruptions or interruptions to the extent that Landlord is aware of or has been provided with advance notice of the disruptions or interruptions. The exculpation of liability under this Section shall not apply to the extent claims are caused by Landlord's sole or active negligence.

4.4 No Representation. Landlord makes no representation with respect to the adequacy or fitness of any heating, air conditioning or ventilation equipment in the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

4.5 Conservation and Use Policies. In the event of imposition of federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

5. TAXES.

5.3 Taxes. As used in this Lease "Taxes" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

5.4 Statement Regarding Possessory Interest Tax. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes are referred to herein as "Possessory Interest Taxes".

5.5 Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and other personal property located and/or installed on the Premises by Tenant. Such taxes are referred to herein as "Personal Taxes".

5.6 Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill together with Landlord's proposed allocation between Landlord and Tenant. Tenant shall pay the amount reasonably allocated to Tenant no later than ten (10) business days prior to the date on which such Taxes are due. Taxes attributable to any of Tenant's personal property situated within the Public Area shall be charged to Tenant. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf. Tenant will thereafter be required to reimburse Landlord for such Taxes together with interest at

the Applicable Interest Rate, from the date Landlord tendered payment, until the date Tenant fully reimburses Landlord.

5.5 Records and Accounting.

5.5.1 Tenant shall keep proper records and accounts of the gross sales. Such records and accounts, including any sales tax reports that Tenant is required to furnish to any governmental authority, shall be open at all reasonable times to the inspection of Landlord or Landlord's auditor or authorized representative, with prior notice and during business hours.

5.5.2 Monthly accounting of gross sales shall be compiled and furnished to Landlord and attached to the payment of Monthly Gross Sales Rent as described in Section 3.2.

5.5.3 Tenant shall provide to Landlord annual compiled financial statements of Tenant's business at the premises. The annual financial statements shall be due to Landlord within three (3) months after the end of each twelve (12) month operating period

6. INSURANCE.

6.3 Landlord. Landlord may elect to maintain insurance or an insurance equivalent (including but not limited to, e.g., that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Premises on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine.

6.4 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance, and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith:

6.4.1 Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal injury, death and advertising injury coverage, with deletion of (a) the exclusion for operations within fifty (50) feet of a railroad property (railroad protective liability), if applicable, and (b) the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit.

6.4.2 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance that complies with all applicable state statutes and regulatory requirements, and, if Tenant hires any employees, employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

6.4.3 Property Insurance. “All risk” property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any improvements, personal property, fixtures and equipment of Tenant (collectively “Tenant’s Property”) (and coverage for the full replacement cost thereof including business interruption of Tenant), together with, if the property of Tenant’s invitees is to be kept in the Premises, warehouse’s legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Premises.

6.5 General.

6.5.1 Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in California and having a “General Policyholders Rating” of at least A:VIII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of “Best’s Insurance Guide.”

6.5.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant pursuant to this Lease, in the form of the ACORN standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or “binders” thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days’ prior written notice to the parties named as additional insureds as required in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days’ notice has been given to the parties named as additional insureds). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.5.3 Additional Insureds. Landlord shall be named as an additional insured on the policy as required by Section 6.2.1. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

6.5.4 Primary Coverage. All insurance to be maintained by Tenant shall be primary without right of contribution from insurance of Landlord.

6.5.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy (which shall be in “following form”) shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant’s liability under this Lease,

6.5.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant’s Property to the extent covered (or required by this Lease to be covered) by Tenant’s insurance. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

6.5.7 Notification of Incidents. Tenant shall notify Landlord within twenty four (24) hours after the occurrence of any accident or incident in/at Property or any portion thereof which could give rise to a claim against Landlord, its coverage, Tenant or Tenant’s

insurance. Tenant's notice shall be accompanied by a copy of any accident/incident form prepared by Tenant, reporting and/or relating to the accident/incident.

6.3.8 Adjustment of Insurance Levels. Landlord reserves the right at any time during the term of this Lease to change the amounts and types of insurance required hereunder upon giving Tenant three (3) months prior written notice.

7. INDEMNITY; LIABILITY EXEMPTION.

7.3 Indemnity. Except with respect to claims solely caused by Landlord's active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected and appointed officers, officials, employees, volunteers, lenders, agents, and contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term directly or indirectly as a result of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's use of the Premises or the Property, including the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the Public Area, or other portions of the Property; (iii) any act, error or omission of Tenant or of any invitee, licensee or guest of Tenant, in or about the Premises, the Public Area, or other portions of the Property; (iv) loss of, injury, or damage to or destruction of property (including loss of use resulting from that loss, injury, damage or destruction); (v) all resulting economic losses, consequential and/or exemplary damages; and (vi) any subleases, assignments and related activities, (all of the foregoing, collectively, the "Indemnification"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section shall survive the expiration or sooner termination of this Lease.

7.4 Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's fixtures, equipment, furniture and alterations or injury to persons in, upon or about the Premises, the Public Area, or other portions of the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct, Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises, the Public Area, or the Property, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises, the Public Area, or other portions of the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Premises, the Public

Area or other portions of the Property or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

8. REPAIRS AND MAINTENANCE.

8.3 Landlord's Obligations.

8.3.1 At Landlord's Election on Tenant's Behalf, Landlord shall not be required to make or bear the costs of any repair resulting from (i) any alteration or modification to the Premises or to mechanical equipment within the Premises performed by, for or because of Tenant or to special equipment or systems installed by, for or because of Tenant, (ii) the installation, use or operation of Tenant's property, fixtures and equipment, (iii) the moving of Tenant's property in or out of the Premises, or the Property, or in and about the Premises, (iv) Tenant's use or occupancy of the Premises in violation of Section 10 of this Lease or in the manner not contemplated by the parties at the time of the execution of this Lease, (v) the acts or omissions of Tenant or Tenant's Parties, (vi) fire and other casualty, except as provided by Section 12 of this Lease, (vii) condemnation, except as provided in Section 13 of this Lease, or (viii) or any condition which might require repair. If Landlord elects to undertake repairs and maintenance necessitated by causes set forth in the preceding sentence, then Tenant shall pay as Additional Rent, Landlord's actual costs paid or incurred in connection therewith.

8.3.2 Tenant's Waiver. Notwithstanding anything to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights to make repairs at Landlord's expense or deduct such expenses from Rent, except as expressly stated in this Lease.

8.4 Tenant's Obligations. Tenant, at Tenant's expense, shall maintain the Premises in good order, condition and repair, including, without limitation, interior floor surfaces and floor coverings, interior walls and wall coverings, Signs and Graphics, and any items required for compliance with applicable laws, rules and regulations. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in good order, condition and repair, Landlord shall, upon five (5) days' written notice to Tenant, have the right to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within that five-day period.

8.3 Beginning Condition. On the Commencement Date, Tenant shall accept the Premises in its "AS IS" condition. Tenant acknowledges that it has inspected the Premises and agrees that the Premises are suitable for Tenant's intended use and Tenant agrees that it is not relying on any warranty or representation made by Landlord or its officers concerning the use of the Premises or the Property. Landlord does not represent or warrant that the Premises or the Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, or other matters that may relate to Tenant's intended use.

8.4 Condition Upon Surrender. Upon the expiration of termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean, and, subject to reasonable wear and tear, in the condition which Tenant shall have been required to maintain the Premises under this Lease with the heating, ventilation, plumbing, electrical, lighting, man doors, dock doors,

levelers, shelters, seals and bumpers (if any), windows and floors serving the Premises in good operating condition. Tenant shall repair all damage to the Premises caused by the installation or removal of its trade fixtures and other property of Tenant. Tenant shall restore the Premises to the same condition or better as existed immediately prior to the installation of any item removed.

9. ALTERATIONS.

9.3 Condition of Premises. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises, Public Area, or Property except as specifically stated in this Lease.

9.3.1 Landlord Improvements to Premises. The Premises are leased in an as-is condition.

9.4 Tenant Improvements to Premises. Tenant, at Tenant's sole cost and expense, may install interior improvements, subject to Landlord's prior written approval ("Work"). Plans, specifications, and drawings for the Work shall be subject to prior written approval by Landlord's Public Works Director, and Tenant shall be responsible for obtaining any and all required permits. Tenant may perform those components of the Work which constitute minor cosmetic alterations (i.e., painting), are non-structural, do not require a permit, and are not typically performed by a licensed contractor or tradesperson. Any other Work shall be performed by licensed contractors and in accordance with all applicable laws, including without limitation, any applicable State laws regarding prevailing wage requirements. In no event shall Tenant undertake any structural, electrical or plumbing work in connection with, or work on the exterior of, the Building, the Property or the Premises without Landlord's advance written consent.

9.5 Trade Fixtures: Alterations. Subject to Section 9.6, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises. For purposes of this Lease, the term "trade fixture" shall mean specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations or physical additions in, about or to the Premises without the prior written consent of Landlord.

9.6 Standard of Work. All work to be performed by or for Landlord or Tenant pursuant hereto shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all Laws applicable to the Premises and insurance carrier requirements. Landlord shall have the right, but not the obligation, to inspect periodically the Work, and Landlord may require changes in the method or quality of the Work. In no event shall the Work obstruct access to the Property and/or Public Area.

9.7 Damage; Removal. Tenant shall repair all damage to the Property and the Premises caused by the installation or removal of Tenant's fixtures, equipment, furniture and alterations. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, improvements and partitions made or installed by Tenant and restore the Premises to their condition existing prior to the construction of any such items and perform any closure work, investigation and environmental remedial work required by any Hazardous Materials Laws (as

hereinafter defined) or by any other applicable laws, ordinances, regulations or permits by any governmental authority having jurisdiction; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration of the Term, any such items (except trade fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, the Public Area, or the Property whatsoever and in strict accordance with all applicable laws, regulations and governmental orders.

9.8 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished, and services rendered at the request of Tenant and shall keep the Property and the Premises free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it (unless Tenant has commenced an action to contest, dispute or defend the claims of lienholders and has provided Landlord with written notice of the pendency of the action), and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

9.9 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to (i) installation in or about the Premises or Property of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "Transmission Devices") or (ii) any assignment or subletting which permits or contemplates installation of such Transmission Devices.

10. USE.

10.3 Usage. The Premises will be used for the operation of a snack bar serving sandwiches, other light menu items, and beverages, and for no other uses without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, the Public Area, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force ("Laws"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining any permit or business license required by any governmental agency permitting Tenant's use of the Premises. Tenant shall comply with the Rules and Regulations, including observance of prohibited uses, attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as

Landlord may from time to time prescribe. Tenant shall not commit waste, overload the floors or structure of the building, subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the rules and regulations or any other terms or provisions of such tenant's or occupant's lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

10.4 Quiet Enjoyment. Tenant, upon paying Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease, and any mortgage, deed of trust, lease, or other agreement to which this Lease may be subordinate. Tenant acknowledges that the Premises are adjacent to a City-owned public park and beach. Tenant acknowledges that Tenant is leasing the Premises with full awareness of this adjacent use.

10.5 Access. Tenant shall be permitted 24-hour a day access to the Premises.

10.6 Operations.

10.6.1 Hours of Operation. Tenant agrees that the hours of operation shall be posted at the location and any Tenant website that is primarily used for the space. Hours of operation shall be in compliance with the Rules and Regulations attached hereto as Exhibit B.

10.4.2 General Method of Operation. Tenant shall operate the business on the Premises continuously during the entire term of this Lease with such due diligence and efficiency as will reasonably produce the maximum return to Tenant.

10.4.3 Management. A manager shall be present during all times the facility is open for business.

10.4.4 Licenses and Permits. Tenant shall obtain all permits and licenses required by the laws of any federal, state, or other governmental agency to allow Tenant to meet the obligations under this Lease. All permits and licenses shall be maintained in Tenant's name. Tenant shall pay, at Tenant's own expense, all charges and fees incidental to the lawful conduct of the services, and keep fully informed on all existing Federal, State and local laws, ordinances, and regulations which in any manner affect the fulfillment of this agreement. Tenant shall pay, when due, all taxes and assessments levied upon the Premises and personal property situated in the Premises. Tenant recognizes and understands that this Lease may create a real property possessory interest tax that may subject the Tenant to real property taxes. Nonpayment of taxes may result in Tenant being in default under Section 5.4.

10.4.5 Restaurant Name. The restaurant name shall be "Lover's Point Snack

Bar.” Any change to this name shall require the advance written approval of Landlord. This name shall attach to the Premises and be exclusively available to Landlord and any successor restaurant operator, upon termination of the Lease.

10.4.6 Health and Sanitation. Tenant shall insure that all its employees are neatly attired in clean and appropriate uniforms whenever on duty. The Landlord requires that all Tenant’s employees engaged in the preparation, handling, serving, and storage of food meet both State of California and Monterey County Health Department requirements and the Landlord’s health requirements for such activity.

10.4.7 Recycling Program. Tenant, at Tenant’s cost, shall participate in any and all recycling programs in which Landlord is obligated to participate by law or if Tenant is otherwise required to do so pursuant to any federal, state or local law, rule or regulation

10.5 Sewer Damage. Tenant agrees not to discharge any harmful or dangerous chemicals into the sewer system, whether it be inside the Premises area or inside the main system leading from the Premises to the main sewer line. Should Tenant discharge any harmful chemicals into the sewer system, Tenant shall be fully responsible for the cost and repair of such damage. Landlord reserves the right to select an expert of its choosing to inspect any damage at Tenant’s cost. Tenant shall not be responsible for cost of expert if it is determined such damage is not caused by Tenant. Tenant accepts responsibility for any damage if the following conditions exist: (i) the damage to the sewer system is determined to be due to the chemicals used in the operation of Tenant’s business; or (ii) the damage exists only in the designated portion of the sewer system connecting to the Premises.

11. ENVIRONMENTAL MATTERS.

11.3 Environmental Compliance. Tenant shall, at its sole cost and expense, comply with all federal, state and local laws from time to time in effect (“Hazardous Materials Laws”) concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes (“Hazardous Materials”). Neither Tenant nor its agents, employees, contractors, sublessees, assignees or invitees shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged in the Premises to be removed from the Premises and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant’s compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of any voluntary clean-up or removal action instituted or proposed by Tenant, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by any person against Tenant, the Premises relating to Hazardous Materials or Hazardous Materials Laws, Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant’s use thereof and concerning Hazardous Materials or Hazardous Materials Laws.

11.4 Tenant's Indemnification. Except to the extent caused by Landlord's sole or active negligence, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses) caused or alleged to have been caused by the presence, use or release of Hazardous Materials in or about the Premises, including, without limitation, any personal injury, death, property damage, decrease in value of the Premises, caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against Landlord with respect to personal injury, death or property damage sustained by third parties caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials in violation of Tenant's obligations under this Lease. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

12. DAMAGE AND DESTRUCTION.

12.3 If, during the Term, the building and other improvements that are part of the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, and at least one (1) year of the Term remains, Landlord shall restore said building and improvements to substantially the same condition as they were in immediately before destruction, if the restoration can be made under then existing laws and can be completed within 180 working days after obtaining all necessary permits therefore, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Tenant's Insurance pursuant to Section 6 above, on account of such damages. Such destruction shall not terminate this Lease. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, based on the extent to which the destruction actually interferes with Tenant's use of the Premises. Tenant hereby waives the provisions of Sections 1932, Subdivision 2, and 1933, Subdivision 4, of the Civil Code of California. If the restoration cannot be made in the time stated in this paragraph, then within 15 days after the parties determine that the restoration cannot be made in the time stated in this paragraph, Tenant can terminate this Lease immediately by giving written notice to Landlord. If Tenant fails to terminate this Lease and if restoration is permitted under the existing laws, Landlord, at its election, can either terminate this Lease or restore the building and other improvements that are part of the Premises within a reasonable time and this Lease shall continue in full force and effect. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. In the event of the giving of such notice of termination by Landlord or Tenant as provided herein, this Lease and all interest of Tenant in the Premises shall terminate 15 days after receipt of such notice by the other party.

12.4 Uninsured or Underinsured Casualty. In the event that the Premises are (i) damaged to the extent Tenant is unable to use the Premises and such damage is not covered by insurance proceeds received by Landlord, (ii) the Premises are damaged to the extent that the estimated repair cost exceeds the insurance proceeds, if any, available for such repair (not including the deductible(s), if any, on Landlord's property and other applicable insurance) plus any amount that Tenant is obligated or elects to pay for such repair, (iii) the estimated repair cost, even though covered by insurance, exceeds fifty percent (50%) of the full replacement cost

of the Premises, or (iv) in the event that the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right at Landlord's option either (a) to repair such damage as soon as reasonably possible at Landlord's expense, or (b) to give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to terminate this Lease as of the date of the occurrence of such damage.

12.5 Tenant's Fault; Repair Limitation. If the Premises are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds. Notwithstanding anything in this Lease to the contrary, and except to the extent caused by Landlord's sole or active negligence, Landlord shall not be required to repair any injury or damage, by fire or other cause to the property of Tenant or to make repairs or replacements of any decorations, or any improvements installed on the Premises by or for Tenant, unless Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 6.2.3 above, and neither Tenant nor Landlord have opted to terminate this Lease as provided in Section 19.13.

13. EMINENT DOMAIN.

13.3 Effect on Rights and Obligations. If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if 15% or more of the total number of square feet in the Premises is taken or if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within 30 days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than 30 days nor later than 90 days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the 30-day period, this Lease shall continue in full force and effect, except that the monthly Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

14. DEFAULT.

14.3 Events of Default. When used in this Lease with reference to Tenant, the term "default" refers to any breach of Tenant's obligations under this Lease, however brief. When any such default continues for the applicable period specified below, such default shall constitute an Event of Default hereunder, entitling Landlord to exercise the remedies set forth in Sections 14.2 and 14.3 of this Lease. The occurrence of any of the following events shall constitute an "Event of Default":

14.3.1 Failure to comply with Assignment and Subletting provisions as set forth in Section 15.1;

14.3.2 Abandonment of or vacating the Premises for a period of thirty (30) consecutive days;

14.3.3 Failure to pay Rent on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

14.3.4 Failure to perform Tenant's covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

14.3.5 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold; Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; Tenant taking any action toward the dissolution or winding up of Tenant's affairs; the cessation or suspension of Tenant's use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold; or

14.3.6 The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

14.4 Remedies.

14.4.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date is at least two (2) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

A. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or re-let the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

B. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the

worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (c) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the Applicable Interest Rate, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

14.4.2 Continuation. Landlord shall have the remedy described in California Civil Code section 1951.4 (as amended from time to time, and successor statutes thereto) and Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due. In the event and for so long as Landlord elects this remedy, Tenant shall have the right to sublet its Premises, assign its interest in the Lease, or both, subject to Landlord's prior written consent, which shall not be unreasonably withheld. In addition, even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and re-let the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in re-letting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Re-letting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to re-let the Premises, the rent that Landlord receives from re-letting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in re-letting; and, third, Base Rent and Additional Rent. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from re-letting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the re-letting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, which Landlord incurred in re-letting the Premises that remain after applying the rent received from re-letting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

14.5 Remedies Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

14.6 Default of Landlord. Except to the extent caused by reasons beyond Landlord's reasonable control, Landlord's failure to perform any obligation required of it pursuant to the terms of this Lease within thirty (30) days following written notice from Tenant or, in the case of any obligation which cannot reasonably be performed within thirty (30) days, Landlord's failure to commence such performance within said thirty (30) day period and thereafter diligently pursue such performance to completion, shall constitute a default by Landlord under the terms of this Lease. In the event of a default by Landlord, Tenant shall have the right to seek any and all remedies provided for in this Lease or otherwise existing at law.

15. ASSIGNMENT AND SUBLETTING.

15.3 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof, without Landlord's prior written approval, which shall not be unreasonably withheld. Any sublease or assignment or other transfer agreements shall be subject to Landlord's prior written approval. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. The parties agree that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or subletting if the proposed assignee or sublessee or the nature of its business would require Landlord to incur additional expense in construction work or other work to the Premises that would not otherwise be required if Tenant remained, for example, if the proposed assignee or sublessee is subject to compliance with additional requirements of the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (including related regulations) beyond those requirements which are applicable to the tenant desiring to assign or sublease, if the proposed assignee's or sublessee's activities in, on or about the Premises or the Property involve the use, analysis, handling, storage, transport, discharge, release, generation or disposal of any Hazardous Materials, or if the proposed assignment or subletting would violate any section of this Lease.

15.4 Notice. If Tenant desires to assign this Lease or sublet any or all of the Premises, Tenant shall give Landlord written notice thereof ("Tenant's Transfer Request") with copies of all related documents and agreements associated with the assignment or sublease, including without limitation, a description of the space Tenant proposes to assign or sublet, the anticipated effective date of the assignment or sublease, the financial statements of any proposed assignee or sublessee, at least forty-five (45) days prior to the anticipated effective date of the assignment or sublease. A condition to Landlord's consent to any Transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord. Landlord shall have a

period of thirty (30) days following receipt of Tenant's Transfer Request and all related documents and agreements to notify Tenant in writing of Landlord's election to disapprove the Sublease or Assignment. In any event, if Landlord fails to notify Tenant in writing of Landlord's election, Landlord shall be deemed to have disapproved such assignment or subletting, nor shall failure by Landlord to approve a proposed tenant shall cause a termination of this Lease. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord's election and shall constitute an Event of Default hereunder.

15.5 Subject to Lease. Any assignments or sublets must be subject to and in accordance with the terms and conditions of this Lease, and must be consistent with the use requirements provided in Section 10 herein. In no event may any sublessee encumber this Lease. Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

15.6 Indemnification. Tenant shall ensure that any sublessees or assigns through their subleases or assignment agreements shall indemnify, protect, defend, and hold harmless Landlord and its elected and appointed officers, officials, employees, volunteers, lenders, agents, contractors and each of their successors and assigns to the same extent that Tenant shall so indemnify Landlord as set forth in this Lease.

15.7 Relocation Waiver. Each sublease or rental agreement shall contain a relocation waiver in substantially the following form: "Relocation Waiver. Sublessee fully releases and discharges the City of Pacifica (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the Property, Building, Premises, or the Subleased Premises, the full or partial termination of Sublessee's leasehold interest as permitted under this Sublease, or the relocation of Sublessee's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Subleased Premises, including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code sections 7260 et seq. ("Relocation Assistance Law"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal law. Sublessee acknowledges and agrees that the release and waiver set forth in this section is material consideration for Landlord's consent to the sublease by Sublandlord of the Subleased Premises to Sublessee on the terms set forth herein and that, but for this release and waiver, Landlord would not have consented to the sublease of the Subleased Premises by Sublandlord to Sublessee. It is hereby intended that the above release relates to both known and unknown claims that the Sublessee may have, or claim to have, against the Landlord or the City of Pacifica with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Sublessee expressly waives any rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT

TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

15.8 Liability. Landlord may, without waiving any rights or remedies, collect rent from the assignee, sublessee or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant (and successor tenants) shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. In addition, Tenant shall make all legally required disclosures to the proposed assignee or sublessee. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent; Landlord’s consent shall not be construed as relieving Tenant or any successor tenant of any liability or obligation under the Lease. No transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant (and if applicable, successor tenants) for the payment of Rent pertaining to the Premises and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer. No transfer will release Tenant of Tenant’s obligations under this Lease or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. In the event of default by any transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed transfer or otherwise has breached its obligations under this Section, Tenant’s and such transferee’s only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of itself and, to the extent permitted by law, such proposed transferee waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease.

16. ESTOPPEL, ATTORNMENT AND SUBORDINATION.

16.3 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed (and acknowledged if required by any lender or purchaser) to any proposed mortgagee, purchaser or Landlord, in a form substantially similar to that requested by the proposed mortgagee, purchaser or Landlord. Tenant’s failure to deliver said estoppel certificate in such time period shall be an Event of Default hereunder and shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord’s performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one month’s Base Rent has been paid in advance. In addition, except to the extent caused by Landlord’s sole or active negligence, Tenant shall indemnify and hold Landlord harmless from and against any and all damages, penalties, fines, taxes, costs, liabilities, losses and expenses (including, without limitation, reasonable attorneys’ fees and court costs) which Landlord may sustain or incur as a result of or in connection with Tenant’s failure or delay in delivering such

estoppel certificate. Landlord reserves the right to substitute a different form of estoppel certificate upon the request of any proposed mortgagee or purchaser. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the Permitted Uses, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute and deliver to Landlord the tendered Lease supplement,

16.4 Subordination. This Lease shall be subject and subordinate to all Leases, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this section.

Notwithstanding anything to the contrary set forth herein, Tenant acknowledges and agrees that this Lease is subordinate and subject to any Lease, license, or other property right or permission the Landlord has obtained from the Commission authorizing the occupancy and use of the Property and the Premises by the Landlord. In the event of a conflict between this Lease and any lease, license, or other similar document between the Landlord and the Commission, the document between the Landlord and the Commission shall control.

16.5 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a Lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for by operation of law.

17. RELOCATION.

17.3 Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the Property, Building, or Premises, the full or partial termination of Tenant's leasehold interest as permitted under this Lease, or the relocation of Tenant's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Premises including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code sections 7260 et seq. ("**Relocation Assistance Law**"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal law. Tenant acknowledges and agrees that the release and waiver set forth in this section is material consideration for Landlord's lease of the Premises to Tenant on the terms set forth herein and that, but for this release and waiver, Landlord would not have

leased the premises to Tenant. It is hereby intended that the above release relates to both known and unknown claims that the Tenant may have, or claim to have, against the Landlord or the City of Pacifica with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Tenant expressly waives any rights under California Civil Code section 1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

18. NON-DISCRIMINATION COVENANT. Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein leased

19. MISCELLANEOUS.

19.1 General.

19.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property, the Premises, the Building and the Public Area; and there are no agreements either oral or written other than as set forth herein.

19.1.2 Time of Essence. Time is of the essence of this Lease.

19.1.3 Attorneys' Fees. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

19.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

19.1.5 Governing Law; Venue. This Lease shall be construed and enforced in accordance with the laws of the state of California without regard to principles of conflicts of

laws. Any action filed to enforce or interpret this Lease shall be filed and heard exclusively in the Superior Court of Monterey County or the federal district court for the Northern District of California.

19.1.6 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

19.1.7 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 15, Tenant.

19.1.8 Third Party Beneficiaries. Nothing herein is intended to create any third-party benefit.

19.1.9 Memorandum of Lease. Landlord may elect to have either this either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises, Building, and/or Property, as required, in recordable form, designating Landlord as transferee or grantee.

19.1.10 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

19.1.11 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing sub tenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such sub tenancies.

19.1.12 Headings. Section headings have been inserted solely as a matter of convenience and are not intended to define or limit the scope of any of the provisions contained herein.

19.2 Signs. All signs and graphics of every kind visible in or from public view or corridors, the exterior of the Premises, the exterior of the Building, or on monuments installed or caused to be installed by, for the benefit of, or at the request of Tenant ("Signs and Graphics") shall be subject to Landlord's prior written approval, shall be in keeping with the character of the Building and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program, Tenant shall remove all such Signs and Graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and

removal of Signs and Graphics. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice. Notwithstanding anything in this Lease to the contrary, Landlord is not required to provide Signs and Graphics beyond the standards set forth in the Rules and Regulations. Under no circumstances shall Tenant install or operate lighted signage.

18.3 Proprietary and Governmental Roles; Actions by City. Except where clearly and expressly provided otherwise in this Lease, the capacity of the City in this Lease shall be as owner and lessor of property only (“Proprietary Capacity”), and any obligations or restrictions imposed by this Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law (“Governmental Capacity”). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided for in this Lease. In addition, nothing in this Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable law, nor guarantee that the City, in its Governmental Capacity, will grant any particular request for a license, permit or other regulatory approval. Lessee understands that the City may grant or deny such request in its sole discretion and may impose such terms and conditions as it deems consistent with that discretion and applicable law.

18.4 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

18.5 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of the individual officials, officers, agents or employees of Landlord, and Tenant shall look solely to the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual officials, officers, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord’s interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

18.6 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord’s Address and Tenant’s Address, as applicable, as set forth in Item 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written

notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

18.7 Brokerage Commission. Landlord and Tenant each represents that neither has been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation ("Commission") is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of Tenant.

18.8 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

18.9 Holding Over; Surrender.

18.9.1 Holding Over. If Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy, at a rent equal to one hundred thirty percent (130%) of the Base Rent in effect immediately prior to such holding over and shall otherwise be on all the other terms and conditions of this Lease. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term except as specifically set forth above. If Tenant fails to surrender the Premises upon expiration or earlier termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or earlier termination of this Lease and any related attorneys' fees and brokerage commissions.

18.9.2 Surrender. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

18.10 Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

18.10 Compliance with Law. Tenant and its officers, employees, agents and assigns shall be bound by and comply with all applicable federal, state and local laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations, rights and performance under the terms of this Lease.

18.11 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails

to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

18.12 Force Majeure. A Party shall not be considered to be in default or breach of this Agreement, and shall be excused from performance or liability for damages to the other Party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Lease, arising out of or from any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over the construction anticipated to occur thereon or over any uses thereof, or by fire, flood, inclement weather, strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of either party hereto engaged in the construction of the Premises), civil disturbance, epidemic, pandemic, quarantine, order of any government, court or regulatory body claiming jurisdiction or otherwise, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of hazardous or toxic materials, earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (*excluding financial inability*) of the party whose performance is required, or any of its contractors or other representatives, whether or not similar to any of the causes hereinabove stated.

Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. A Party suffering a Force Majeure event ("Affected Party") shall notify the other Party ("Non-Affected Party") in writing ("Notice of Force Majeure Event") as soon as reasonably practicable specifying the cause of the event, the scope of commitments under the Agreement affected by the event, and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the Notice of Force Majeure Event, the Affected Party shall not be relieved of its responsibility to fully perform as to all other commitments in the Agreement. If the Force Majeure event continues for a period of more than 90 days from the date of the Notice of Force Majeure Event, the Non-Affected Party shall be entitled, at its sole discretion, to terminate the Agreement.

For the avoidance of doubt, Force Majeure shall not include a party's financial inability to perform its obligations hereunder. Notwithstanding the preceding, upon the occurrence of a Force Majeure event, Landlord may, at Landlord's sole discretion, reduce the amount of rent due during the Force Majeure event, provided, however, that the amount of any such reduction shall be repaid in monthly installments during the remainder of the term of the Lease following the cessation of the Force Majeure event. Any unpaid balance at the end of the term of the Lease shall be due and payable in full. In the event of a Force Majeure event that limits or prevents Tenant's access to the Premises, Rent shall be abated for the duration of such Force Majeure event.

18.13 Rights to Terminate. Both Tenant and Landlord may terminate this Lease upon sixty (60) days' prior written notice, only on the grounds of a material default of the Lease. Notwithstanding the foregoing, Landlord may terminate this Lease absent a material default in the event that Landlord determines that the Premises require repair or restoration, Landlord may terminate this Lease upon sixty (60) days prior written notice to Tenant. Landlord shall also have the right to terminate this Lease upon thirty (30) days prior written notice to Tenant in the event that the California Coastal Commission (i) prohibits commercial activity on the Property or (ii) takes any other action that would materially conflict with Tenant's use of the Premises.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date,

City of Pacific Grove,
a California charter

Sunset Hospitality Group, Inc., a
California corporation

Name: _____
Bill Peake, Mayor

By: _____

Title: _____

By: _____

Title: _____

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A
PREMISES DESCRIPTION AND DEPICTION



Approximate 270 square foot building located at the northeast corner of the intersection of Ocean View Boulevard and 17th Street, at the southerly end of Lover's Point Park and Beach, located in the City of Pacific Grove.

EXHIBIT B

RULES AND REGULATIONS

Tenant shall comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules and Regulations.

1. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, escalators or stairways of the Building. The halls, passages, exits, and entrances are not for the general public, and CITY shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of CITY would be prejudicial to the safety, character, reputation and interests of the Building and its tenants; provided, that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant and no employee, invitee, agent, licensee or contractor of Tenant shall go upon or be entitled to use any portion of the roof of the Building unless authorized by the City.
2. CITY will furnish Tenant, free of charge, two keys to each door lock in the Premises. CITY may impose a reasonable charge for any additional keys. Tenant may not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. Tenant, upon termination of its tenancy, shall deliver to CITY the keys of all doors which have been furnished to, or otherwise procured by Tenant, and, in the event of loss of any keys, shall pay CITY the cost of replacing the same or of changing the lock or locks opened by such lost key if CITY shall deem it necessary to make such change.
3. IT cables and equipment, telephone lines and security systems shall not be installed in the Premises except with the approval and under the direction of CITY.
4. No furniture or equipment of any kind shall be brought into the Building without prior notice to CITY and all moving of the same into or out of the Building shall be done at such time and in such manner as CITY shall designate. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No deliveries shall be made which impede or interfere with other tenants or the operation of the Building.
5. Tenant shall not use or keep in the Premises any hazardous materials, kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of food service equipment. Tenant shall not use the Premises in a manner offensive or objectionable to CITY or other occupants of the Project by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any animals.
6. The normal hours of operation shall be 10:30 am until sunset, unless otherwise approved in writing by the CITY. CITY reserves the right to exclude from the Building between the hours of 7:00 p.m. and 6:00 a.m., or such other hours as may be established from time to time by CITY, and on legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. CITY shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any

person. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to CITY for all acts of such persons.

7. Tenant shall close and lock all doors of its Premises and entirely shut off all water faucets or other water apparatus, and, except with regard to Tenant's computers and other equipment which reasonably require electricity on a 24-hour basis, all electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by CITY for noncompliance with this rule.

8. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed.

9. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in or on the Premises.

10. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

11. Except as expressly permitted in the Lease, Tenant shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or plaster, or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from noncompliance under this rule.

12. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in and around the Project or the Buildings are expressly prohibited, and each tenant shall cooperate to prevent same.

13. CITY reserves the right to exclude or expel from the Buildings any person who, in CITY's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Project.

14. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by CITY.

15. The Premises shall not be used for (a) the storage, use, or sale of marijuana, (b) any repair, servicing, or storage of vehicles or (c) lodging or for manufacturing of any kind.

16. Tenant shall not use in any space any hand trucks except those equipped with rubber tires and side guards, or such other material-handling equipment as CITY may approve.

17. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by CITY, and Tenant also shall provide CITY with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security

regulations. Tenant shall cooperate fully with CITY in all matters concerning fire and other emergency procedures.

18. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.

19. CITY may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by CITY shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other such tenant, nor prevent CITY from thereafter enforcing any such Rules and Regulations against any and all of the tenants in the Building.

20. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Buildings.

21. CITY reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Buildings and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

22. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees or guests.

23. Tenant shall not without CITY's consent, which may be given or withheld in CITY's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises.

24. EXCEPT WITH THE PRIOR WRITTEN PERMISSION OF CITY, NO OVERNIGHT PARKING IS PERMITTED AT THE PREMISES. A VIOLATION SHALL CONSTITUTE A DEFAULT HEREUNDER AND A DAILY FEE OF (\$100) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

25. SMOKING IS NOT PERMITTED ON THE PROPERTY EXCEPT IN SPECIFIC AREAS DESIGNATED BY CITY SHALL CONSTITUTE A DEFAULT HEREUNDER AS ALSO A FEE OF (\$50) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

EXHIBIT C
ONGOING MAINTENANCE SCHEDULE

EXHIBIT D
LIST OF LESSOR-OWNED FURNISHINGS

EXHIBIT E
INITIAL IMPROVEMENT SCHEDULE

EXHIBIT F
INSURANCE CERTIFICATE



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Alyssa Kroeger, Housing Program Manager
MEETING DATE: August 07, 2024
SUBJECT: Housing Element Monthly Status Update
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Receive the report.
2. Alternatively, discuss and take other action related to this item.

DISCUSSION

On December 20, 2023, City Council approved the first amendment to the contract with Rincon Consultants, initiating the preparation of the Housing Element Update (HEU), along with related General Plan Amendments, Zoning Amendments, and Environmental Impact Report (EIR). Subsequently, City Staff and Rincon Consultants continued/commenced work and provided the [sixth monthly progress report update](#) to Council on July 17, 2024. Since then, the following tasks have been undertaken:

- **June 28, 2024:** Housing Element Team meeting to discuss next steps regarding the Housing Element Update and associated Zoning, Land Use, and Health and Safety Element amendments, and Program EIR.
- **July 1, 2024:** Project management call.
- **July 2, 2024:** Housing Element Team meeting to review public meeting content and strategize for the July 17th CC meeting, addressing potential conflicts of interest with the new sites inventory options.
- **July 9-10, 2024:** Housing Element Team preparation of July 17th CC meeting presentation.
- **July 11, 2024:** Housing Element Team meeting to review public meeting content and discuss updated project timeline. Contract management.
- **July 15, 2024:** Staff updated the Housing Element webpage and developed a second version of the [new Housing Element Half Sheet Handout \(V2\)](#) and ordered prints for distribution.
- **July 16, 2024:** Staff delivered new Housing Element Half Sheet Handouts to the Library, Goodies Deli, and Youth Center for community distribution, and posted one at the Community Center.
- **July 17, 2024:** Staff and Rincon presented Planning Commission's recommendations for the alternative sites and methods to accommodate the City's RHNA at the City Council meeting.
Council authorized alternative sites and methods (Option 1, Option 2, Option 3, and Option

6) for the Housing Element Update to accommodate the City's RHNA requirements.

- **Please note:** that neighborhood rezone Option #7 regarding the First Addition/Fourth Addition neighborhood was removed from consideration prior to the June 13th Planning Commission meeting. Ordinance No. 1007 (1978) rezoned the First Addition and portions of the Fourth Addition to R-2, based on a citizen initiative. Because of this, the City cannot consider rezoning this area without a vote of the people.
- **July 18, 2024:** Staff updated the Housing Element webpage with the newest monthly status report and removed expired information under the upcoming meetings and events table.
- **July 22, 2024:** Staff updated the Housing Element webpage with the July 19th City Manager's Report publication.
- **July 23, 2024:** Staff drafted the next monthly Housing Element update for Council and began prepping follow-up letters to the owners of the 552 neighborhood rezone site options to provide clarification on options that were removed from consideration and that were approved for inclusion in the updated Housing Element sites inventory. Letters were mailed out by July 31, 2024.
- **July 25, 2024:** Housing Element Team meeting to discuss updated project timeline and next steps including finalizing the EIR project description, work on the draft Land Use Element and Safety Element, and review of housing permit processes.
- **July 26, 2024:** Staff updated the Housing Element webpage with the [PG Public Library's newsletter update](#) about Planning Commissioners' availability in August to answer questions and provide public information on the Housing Element.

Housing Element Team includes City Planning, Housing, and City Manager staff, City legal representation, and Rincon/subconsultant staff.

Staff will provide a monthly status update to the Council throughout the process, leading to an adopted and certified Housing Element. For more information, please visit the Housing Element Webpage: www.cityofpacificgrove.org/HousingElement

OPTIONS

N/A - This is information only.

FINANCIAL IMPACT:

There is no fiscal impact associated with receiving this report.

FOCUSED PRIORITY AREA: Affordable Housing



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Andrew Miller, Fire Chief
MEETING DATE: August 07, 2024
SUBJECT: Amendment to the Fire Services Agreement with the City of Monterey to add Emergency Medical Services Including Advance Life Support Services
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Adopt a resolution amending the current Fire Services Agreement with the City of Monterey to add Emergency Medical Services (EMS) to include Advanced Life Support (ALS) services.

DISCUSSION

The Monterey Fire Department (MFD) has provided contractual fire and emergency response services to the City of Pacific Grove since December 16, 2008. These services include responses to fire, medical, hazardous conditions, and other emergency situations. In 2023, there was a total of 2,109 fire call responses for Pacific Grove. A total of 1,058 of the calls were for medical emergencies. A response to a medical emergency typically includes a response by one engine company staffed with three Emergency Medical Technicians (EMTs) and one ambulance staffed by a Paramedic and an EMT. The ambulance is provided by American Medical Response (AMR) under a contract with Monterey County. AMR staffs an ambulance that is stationed at the Pacific Grove Fire Station, but that ambulance is often dispatched to areas outside of Pacific Grove. If a medical emergency is reported in Pacific Grove while that ambulance is outside of the area, another ambulance is dispatched; that ambulance may be coming from a considerable distance. Monterey Fire maintains an engine company in service at the Pacific Grove Fire Station or, when that one is busy, another engine company will respond from Fire Station 12 on Hawthorne Street in New Monterey. If both engines are busy, another engine is moved into the area to be available for a call for service. Using this system, Monterey has an engine response to an emergency in Pacific Grove within six minutes over 90% of the time.

Currently, the engine in Pacific Grove is staffed with three personnel trained to the level of EMT. Even if one or more of the personnel are trained to the level of Advanced Life Support (ALS) Paramedic, they are not allowed to provide that level of service under Monterey County EMS Agency (MCEMSA) regulations. EMT's receive about 120 hours of initial training and are trained to provide basic life support services. Paramedics receive over 1400 hours of initial training and can provide additional services such as advanced airway management, use of a non-automatic external cardiac defibrillator, initiating intra-venous lines and administering medications, and other related interventions. Essentially, paramedics bring all services of the hospital emergency room to the scene of a medical emergency, enabling those interventions to be provided much sooner.

MFD has been providing ALS paramedic services in Monterey since 2018 and has sufficient resources to transition the Pacific Grove engine from Basic Life Support (BLS) to ALS. MFD's Paramedic ALS program has a proven track record of improved outcomes and saved lives due to the higher level of care provided by paramedics. The cost to increase services to Pacific Grove is estimated at around \$70,000 per year.

Increasing the level of service from BLS to ALS will both provide a higher level of care and a more equitable level of care throughout MFD's response area. Since the eastern portion of Pacific Grove is closer to Monterey's Fire Station 12, which provides ALS paramedic services, some residents in Pacific Grove are already frequently receiving ALS paramedic services. Additionally, when a paramedic engine crew is temporarily moved to the Pacific Grove Fire Station, those services are provided out of that station as well.

Staff recommends that the City Council adopt the attached resolution authorizing the City Manager to amend the current fire services agreement with the City of Monterey to add Emergency Medical Services (EMS) to include Advanced Life Support (ALS) services.

Pacific Grove City Council authorization is contingent upon reciprocal authorization by the City of Monterey's City Council. If Monterey's City Council does not adopt a resolution to amend the agreement, the Monterey Fire Department (MFD) will not add EMS services to include ALS for the City of Pacific Grove.

OPTIONS

1. Adopt a resolution amending the current Fire Services Agreement with the City of Monterey to add Emergency Medical Services (EMS) to include Advanced Life Support (ALS) services.
2. Do not adopt a resolution amending the Fire Services Agreement with Monterey to add ALS services. This is not recommended as adding EMS services to include ALS services benefits the residents and visitors of the City of Pacific Grove to receive a higher level of care.

FINANCIAL IMPACT:

The 2024/2025 Fiscal Year budget includes an allocation of \$70,000 for the recommended increases in the Fire Services Contract for adding ALS services. Currently, the City of Pacific Grove reimburses the City of Monterey for all actual direct and indirect costs incurred in providing contractual fire services to the City of Pacific Grove. By increasing contract services to include ALS services, the cost to provide services is anticipated to increase approximately \$70,000 per year. This amount includes supplies, paramedic premium pay for paramedics, certification/training costs for paramedics to maintain their licenses, costs for quality improvement/quality insurance of ALS calls and a 10% administrative fee. There will be minimal startup costs in the first year since the Monterey Fire Department (MFD) applied for and was awarded a grant for a heart monitor (valued around \$24,000) in March 2024. The City of Pacific Grove will continue to reimburse the City of Monterey for all costs in providing contractual fire services, including the addition of providing ALS services.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Resolution

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE COUNCIL OF THE CITY OF PACIFIC GROVE ADOPTING A RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE FIRE SERVICES AGREEMENT WITH THE CITY OF MONTEREY TO ADD EMERGENCY MEDICAL SERVICES TO INCLUDE ADVANCED LIFE SUPPORT (ALS)

FINDINGS

1. The City of Monterey has been providing fire services to the City of Pacific Grove since December 16, 2008; and
2. The City of Pacific Grove has requested to increase the level of service in the agreement from Basic Life Support (BLS) services to Advanced Life Support (ALS) Services; and
3. The current “Agreement to Provide Fire Services Between the Cities of Monterey and Pacific Grove” requires that the Monterey and Pacific Grove City Councils take action by resolution to amend the agreement; and
4. The cost to add service to include ALS is estimated to be approximately \$70,000 per year;
5. The City of Pacific Grove determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA)(CCR, Title 14, Chapter 3 (“CEQA Guidelines), Article 20, Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or any reasonably foreseeable indirect physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

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

1. That the above recitals are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

2. That it hereby authorizes the City Manager to amend the fire services agreement with the City of Monterey to add Emergency Medical services to include Advanced Life Support (ALS) services (Ag-8164).

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 7th day of August, 2024, 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



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Anderson, Acting Chief of Police
MEETING DATE: August 07, 2024
SUBJECT: Agreement with the Society for the Prevention of Cruelty to Animals of Monterey County for Sheltering Services
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

City Council approve a motion authorizing the Mayor to sign an agreement with the Society for the Prevention of Cruelty to Animals of Monterey County for Sheltering Services

DISCUSSION

The City is required by state law to provide for the capture, impoundment, sheltering and disposition of certain animals within the city limits. The Pacific Grove Police Department has qualified personnel to perform field services but does not operate an animal shelter. To provide the animal shelter services, the City has long contracted with the Society for the Prevention of Cruelty to Animals for Monterey County (SPCA).

The Agreement with SPCA has expired and now needs to be renewed. The attached Agreement will continue to provide animal services for the City. If approved, the Agreement would take effect July 1, 2024, and shall remain in effect for three years, until June 30, 2027, with an option to extend the Agreement for an additional two years.

The services to be provided by the Society are identified in Section 3 of the Agreement. The fees for the services are specified in Section 4 of the Agreement.

The recommendation is for the City Council to approve a motion to Authorize the Mayor to Sign a Sheltering Services Agreement with the Society for the Prevention of Cruelty to Animals for Monterey County.

OPTIONS

1. City Council approve a motion authorizing the Mayor to sign an agreement with the Society for the Prevention of Cruelty to Animals of Monterey County for Sheltering Services Agreement
2. Other action as directed by the City Council.

FINANCIAL IMPACT:

The cost for this Agreement will depend upon the number of animals the SPCA receives from the City of Pacific Grove. Typically, in a fiscal year the City expends approximately \$12,000 on animal services provided by the SPCA.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Sheltering Agreement with SPCA

SHELTERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Pacific Grove hereinafter referred to as “City”, which has duly executed, pursuant to resolution or ordinance, a counterpart hereof and the Society for the Prevention of Cruelty to Animals for Monterey County, hereinafter referred to as “Society”.

WHEREAS, City is required by state law to provide for the capture, impoundment, sheltering and disposition of certain non-human vertebrates within the corporate limits of the City and City has qualified personnel to perform field services but does not operate an animal shelter, City desires to contract for the humane sheltering, impoundment and disposition of said non-human vertebrates, including stray and unwanted animals, pursuant to the provisions of applicable California State Code, Agency Rules, County Ordinances, Judicial Orders and City Codes; and

WHEREAS, Society owns and operates an animal shelter and represents itself as being willing and able to provide the services required by City and to carry out the provisions of the aforesaid California Codes and City Ordinances pertaining to the shelter, impoundment, humane care, and disposition of stray and unwanted animals covered by said codes, rules, ordinances, and judicial orders; and

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and provisions herein contained, the parties hereto agree as follows:

1. DEFINITIONS. The following definitions shall apply to this Agreement:

a. Terms defined in the City’s codes shall have the meanings described in said Codes except for the following:

- i. “Animal” means all non-human vertebrates;
 - a) “Domestic Animal” means animals that are habituated to live in or about the habitations of humans and includes livestock.
 - b) “Exotic Animal” means animals not commonly habituated to live in or about the habitations of humans.
 - c) “Wild Animal” means native and non-native animals in California, which retain their wild nature and which have not been held in captivity.

- ii. “Animal Control Business Hours” means those hours enumerated in section 3

(c) during which Society staff members will assist City's Animal Control Officers in the intake to Society of impounded animals without City incurring additional fees for these services.

iii. "A nuisance animal control operator" means a private individual or other non-governmental entity that removes animals from structures or other areas for a fee;

iv. "Field services" means stray animal pickup, owned animal pickup, injured animal pick up, animal nuisance, and animal complaint investigations and similar services.

v. "Animal Control Officer" is a role provided by Cities and not by the Society.

The person in the role (who may have the title Animal Control Officer, Community Services Officer, Police Officer, or another similar title depending on the City) has multiple functions which include pick-up of strays in their city and delivering these strays to the Society

2. TERM AND TERMINATION. This Agreement shall take effect on July 1, 2024 and shall remain in full force and effect for thirty-six (36) months, ending on June 30, 2027, with an option to extend the Agreement an additional two (2) years, so long as City and Society agree upon fees and terms within sixty (60) days of the expiration of this agreement.

In addition, either party may terminate this Agreement by presentation to the other party hereto a written notice of said termination thirty (30) days prior to the effective date of said termination.

Notwithstanding any other provision to the contrary, failure to provide humane care, handling, or treatment of animals shall constitute a material breach of this Agreement that must be remedied within 24 hours of written notice delivered to the authorized representative of the breaching party. Failure to remedy such a breach of contract within the 24 hours shall terminate this Agreement without further notice.

In the event of termination, regardless of the type of termination, the parties shall fulfill their obligations to the other party up to and including the day of termination.

3. SERVICES TO BE PERFORMED BY SOCIETY.

a. Society shall operate and maintain at 1002 Monterey-Salinas Highway, Salinas, California, an animal shelter in a secure and sanitary manner adequate for the confinement, treatment, and disposition of all animals which may be delivered to it from City, and, except as otherwise agreed, shall furnish at its sole expense all supervision, labor, animal food, tools, supplies and other things necessary for satisfactory performance of the services herein agreed. Society shall maintain on its property all animal food, tools, supplies, etc. and said items may not be removed from Society's property without authorization of the Society's Executive Director or his/her designee.

b. Society shall provide the means to accept during Animal Control Business Hours, and without charge to the person delivering the animal, all stray, abandoned and surrendered dogs, cats, and other domestic and exotic animals delivered to the animal shelter by City's Animal Control or Police Department personnel. Society shall also provide the means to accept during its public business hours, and without charge to the person delivering the same, all live, stray or abandoned dogs, cats, and other domestic or exotic animals delivered to the animal shelter from within the corporate limits of City by the City's residents or others.

c. Animal Control Business Hours for receiving animals from Animal Control or Police Department personnel are 8:00 am until 4:00 pm daily. As always, your staff have access to our shelter outside of these hours, but we can't provide regular assistance after 4:00 pm. A surcharge of \$25.00 per animal will be assessed if SPCA staff members assist City's employee or representative in receiving impounded animals at the SPCA shelter between 4:00 pm and 5:00 pm. After 5:00 pm, SPCA staff generally won't be available at all. SPCA staff must have completed paperwork in hand by 4:00 pm or the surcharge will be assessed.

d. Society shall require all such persons who deliver domestic and exotic animals to give their names and present home or post office address and, if they deliver a stray, abandoned, or injured animal, to identify the place where the animal was found. Failure to provide part or all of the required information shall not prevent Society from accepting an animal.

e. Any animal taken into custody by an employee of City shall be delivered to the Society at its shelter in a humane manner or held in a humane way at City's designated holding area until it is delivered to the Society or returned to its owner. Society shall maintain a listing for the public of all stray dog/cat-holding facilities in the County, including location, telephone number and hours of operation, in accordance with state and local laws.

f. Society shall maintain a quarantine section within the animal shelter facility for the confinement and care of any dogs, cats, or ferrets that have bitten persons for a ten day observation period at the discretion of City. Disposition of those animals that have bitten a person and are exhibiting neurological symptoms shall be disposed of in accordance with instructions of the Monterey County Health Officer (MCHO) as listed in the Health Department's Rabies Protocols (updated copies to be provided to Society by City). If kennel or cage space is not available in the isolation/quarantine sections of the shelter facility, Society will consult with the County Health Officer to determine how the animal(s) shall be housed and isolated. If directed by the City or the Monterey County Health Officer that the brain of an animal must be tested for rabies, Society shall euthanize the animal and turn over the carcass to County or City personnel who will remove the brain and deliver it to the County Health Department Laboratory for testing. Regardless of the test results, City shall be responsible for the disposal of the remains and reimbursement of any fees charged by County Health

Department. Society will not be responsible for removal of the brain or costs attendant thereto.

g. With respect to domestic livestock animals and exotic animals, Society shall use its best efforts to provide these animals with shelter and care. However, the parties acknowledge that Society is not equipped to handle significant numbers of such animals and may decline to provide services if Society in its sole discretion believes that it is unable to provide for the humane sheltering and care for such animals in a cost effective manner. In the event that Society must decline such animals, Society shall cooperate with and assist City in locating other sheltering and care options for those animals.

h. When an impounded domestic or exotic animal bears a license tag from any jurisdiction or other identification tag or can otherwise be identified as to its ownership, Society shall notify the owner in the manner provided by law and include in such notice information regarding the procedure whereby the owner can recover the animal. Any animal suspected of rabies or which has bitten or otherwise exposed any person shall not be released to its owner prior to the end of the quarantine period without express approval of City and MCHO.

i. Before releasing an impounded animal to its owner, Society shall (1) determine, using reasonable prudence, the owner's identity, (2) collect the redemption and maintenance fees prescribed by City's Fee Schedule unless otherwise waived by City, and any other fees set by the Society, (3) provide owner with a receipt for fee payment and (4) obtain a receipt for the return of the animal.

j. Society shall assist City to the extent provided herein in the enforcement of the licensing and anti-rabies vaccination provisions of City's ordinances. Society shall require a redeeming owner to provide proof of a current dog license or anti-rabies vaccination before releasing the impounded dog to its owner. If a redeeming owner does not provide proof of a current dog license or rabies vaccination, Society will administer the rabies vaccination at the owner's expense. If a qualified Society staff member is not available to administer the vaccination, the owner redeeming the dog will be required to pay for a license and anti-rabies vaccination. The license tag will not be issued and information will be forwarded to City for follow-up to assure compliance. This will also apply to animals released that are under the age to be vaccinated. The Society is not responsible for enforcement or failure to vaccinate or license once the animal leaves its property. The Society will not issue license renewals or assess late fees unless provided for under separate agreement. The above provisions apply to cats if City requires that cats be licensed.

k. Any animal may be redeemed by the owner or owners thereof or adopted in accordance with applicable law, ordinances, and Society policies. The disposition of domestic animals not redeemed by their owner shall be at the sole discretion of Society at the end of any

legally mandated holding period. No animal taken into custody within City's jurisdiction and delivered to Society shall be sold, loaned or given to any person, firm, group, society, hospital, corporation, institution, or university for research purposes.

l. Subject to the provisions of Sub-paragraph (h.) above, Society may dispose of currently licensed dogs and identified cats and otherwise identified animals which are not redeemed by their owners after the legally mandated notice has been given. The holding period for such animals shall be that period mandated by law. Animals which are not reclaimed, are relinquished by their owner, or cannot be identified as to ownership, may be disposed of by whichever of the following methods Society may elect:

1. Adoption at such price as Society may determine, subject to licensing requirements and laws pertaining to the sale or transfer of animals.
2. Euthanasia at a time and in a manner that is in accordance with applicable laws pertaining to impounding, housing, and disposition of animals.
3. Transfer to a rescue group.

m. City shall be responsible for emergency treatment of animals in accordance with Sections 597f and 597.1 of the California Penal Code for the mandated holding period. City personnel or agent shall transport injured or sick domestic or exotic animals to the shelter only after they have been seen by a veterinarian. In what in its sole discretion Society considers to be a medical emergency, Society may transport domestic or exotic animals to a veterinarian designated by City. City shall provide Society with a list of the approved veterinarians. If an animal becomes sick or injured at the shelter during the legally mandated holding period, Society shall arrange for the treatment of the animal by Society's veterinarian staff or by one of City's approved veterinary providers at City's expense. If City does not designate approved veterinarians or if those veterinarians are unavailable, Society will transport the animal to a veterinarian of its choosing on behalf of City at City's expense. After the mandated holding period, Society shall be responsible for the cost of any veterinary treatment it chooses to provide to the animal. If the owner of an injured or sick stray animal redeems the animal, the owner shall be responsible for reimbursing City and Society for all costs incurred; Society shall not be required to collect City's reimbursement from the owner or withhold returning the animal to its owner. Society shall notify City if the animal is redeemed.

n. To facilitate redemption and adoption of impounded animals, Society shall provide a section of the shelter facility for viewing animals by prospective adopters and a section of the shelter office for redemption and adoption administration. The shelter office and viewing area hours of operation shall coincide with the hours the kennels are open to the public.

o. Society shall collect and remit to City not later than the fifteenth (15th) working day of each month following the end of a quarter those fees enumerated in City Code and collected by

Society on behalf of City pursuant to this Agreement during the prior month. The nomenclature of these fees may vary from jurisdiction to jurisdiction but in general they include impound fees, license fees, quarantine fees and maintenance or board fees. Society shall be entitled to retain a \$5.00 processing fee for each license sold for City and any other fees not mandated by City Code that it may collect. The City is responsible for providing Society with the most current fee schedule in writing in a timely manner.

p. Society shall keep complete and accurate records on the receipt, source, holding time and disposition of all dogs, cats, and other domestic and exotic animals delivered into its custody at the Animal Shelter. Said record shall be delivered to the City each month by the twentieth (20) working day of the month for the prior month's activity. All relevant records and accounts shall be made physically or electronically available for viewing at the animal shelter on Society's premises at reasonable times by an authorized representative of the City with 24 hours notice.

q. Society shall use its best efforts to provide opportunities for City's residents to adopt, vaccinate, and microchip dogs and cats. Society shall retain all fees for services and adoptions other than licensing which shall be handled as provided in Paragraph 3(o) above.

r. Society and City believe that neither party has an obligation to subsidize fee based nuisance animal control operators. Consequently, Society shall not charge City for wild animals brought to it by nuisance animal control operators and City shall support Society's protocols requiring nuisance animal control operators to pay a fee to Society for wild animals they bring to Society.

s. Society shall not be responsible for any animal control field services mandated by City ordinance.

4. PAYMENT. Except for animals held in protective custody or as otherwise noted, the financial obligation of City under this Agreement shall be to pay a fee to Society for each domestic and exotic animal brought to Society from within the corporate limits of City and accepted by Society irrespective of what agency or individual brings the animal to Society based on the following schedule;

For the Year Ending June 30,	<u>2025</u>	<u>2026</u>	<u>2027</u>
Dogs and Cats	\$245	\$260	\$275
Small Domestic Animals	\$150	\$150	\$150

A surcharge of \$25 per animal will be assessed if SPCA staff members assist City's employee or representative in receiving impounded animals at the Society shelter outside of the Animal Control Business Hours set forth in Section 3 (c) above. After holding for five (5) days, a charge to City of \$30 per additional day will be made for animals held in protective custody by

Society at the request of City, District Attorney, or pursuant to a judicial order. Any animals held longer than 60 days from the intake date at the direction of the City or Courts will be billed at a rate of 150% of the daily boarding rate.

On a limited basis and for a fee Society will accept from City's Animal Control, Police, or Public Works Departments, animal carcasses for disposal. The agreed upon fee for the period of July 1, 2024 through June 30, 2027 is \$28.12 for mammal and wildfowl carcasses weighing from five pounds to two hundred pounds and \$6.49 for mammal or wildfowl carcasses weighing less than five pounds. Society will not accept livestock carcasses or carcasses weighing in excess of two hundred pounds.

Society shall invoice City monthly for the number of animals sheltered for city under this Agreement in the previous month. The invoice shall be accompanied by an activity report listing individual animals by a control number, their origin, and the billing for each animal. City shall pay said invoice within 30 days of the invoice date and will incur a late fee of one and a half (1 ½) percent per month on amounts more than fifteen (15) days past due. Payments made will apply to current billings first and arrears second.

Failure of the parties to negotiate fees and terms within sixty (60) days of the expiration of the existing agreement may result in Society's election, at its sole discretion, to continue services after the end of the term at the then rate charged City per animal per day plus ten (10) percent.

5. CONTRACT SUPERVISION. City shall designate an official assigned to represent the interest of the City and to ensure that the terms and conditions of this Agreement are carried out. That official will be identified to the Society upon execution of this Agreement. Society's Executive Director or his/her designee shall administer this Agreement on behalf of Society.

6. INDEPENDENT SOCIETY STATUS. Society understands and agrees that the services performed hereunder by its and its directors, officers, agents, employees or contracting persons or entities are performed in an independent capacity and not in the capacity of officers, agents or employees of the City. All personnel, supplies, equipment, furniture, quarters, and operating expenses of any kind required for on premise performance of this Agreement shall be provided by Society in performance of the contracted services. It is also understood that Society shall have control of its work and the manner in which it is performed, provided Society meets all legal requirements. While under contract with City, the Society shall be free to contract for similar shelter services to be performed for other agencies and/or jurisdictions.

Society employs Level 2 Humane Officers who are empowered under California Corporations Code Section 14502 to investigate and prepare for prosecution cases involving animal neglect

and cruelty within Monterey County. City agrees to cooperate fully with SPCA Humane Officers during the performance of their duties in City. If requested by City, Society may, at its sole discretion and upon request by City assist in an investigation initiated by City. Society's Humane Officers will provide technical assistance to City at no charge. Society will shelter animals seized during the course of an investigation under the terms and conditions set forth in Section 3 of this agreement. Where City and Society have each incurred costs in the successful prosecution of a case, each will request and make a good faith effort to secure restitution for both City and Society and will ask that any order of restitution require that funds be allocated proportionally to City and Society based on actual costs incurred by each.

7. INDEMNIFICATION AND INSURANCE. Each party agrees to indemnify, defend and save harmless the other party, their directors, officers, agents, and employees, from and against any and all claims and losses whatsoever accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement and from any and all claims and losses accruing or resulting to any person, firm, or corporation for damage, injury or death arising out of or connected with the indemnifying party's performance of this Agreement.

To this end, Society shall maintain in force at all times during the performance of this Agreement a policy of insurance covering all of its operations (including public liability and property damage coverage but not including contingent malpractice) with not less than \$1,000,000.00 single limit liability and motor vehicle insurance, covering all motor vehicles (whether or not owned) used in providing services under the Agreement with a combined single limit of not less than \$1,000,000.00. A certificate evidencing the maintenance of such insurance shall be filed with the City. City shall be given notice in writing at least thirty (30) days in advance of cancellation or any modification thereof. Insurance shall be in a company authorized by law to transact insurance business in the State of California. All policies shall provide an endorsement naming City, its officers, agents, and employees as Additional Insured, and shall further provide thirty (30) days written notice to the City in advance of cancellation or non-renewal of said policies.

Policies shall also be endorsed to provide such insurance as Primary Insurance and that no insurance of the additional insured shall be called on to contribute to a loss covered by Society's insurance.

City shall maintain in force at all times a Comprehensive Liability Insurance including automobile liability in the amount of \$1,000,000. Proof of such coverage will be a Certificate of Insurance with written notice to the Society of not less than 30 days prior to cancellation. The Society shall be named as an additional insured for acts or failure to act, arising out of the performance of this Agreement. Any required insurance may be provided by a plan of

self-insurance at the option of the City.

8. WORKERS' COMPENSATION. Society shall, throughout the period of this Agreement, maintain in full force and effect a policy of Workers' Compensation insurance, with employers' liability limits of not less than \$100,000.00, covering all of its employees and shall furnish to City evidence of said insurance.

9. INSURANCE COVERAGE CHANGE. If City requires the Society to increase its insurance coverage within a contract year, the City agrees to pay any additional premium cost resulting from that change.

10. SECTION 504 COMPLIANCE. Section 504 of the Federal Rehabilitation Act of 1973, as amended, requires that all benefits, aids and services are made available to handicapped persons on an equivalent basis with those received by non-handicapped persons. The Society shall agree to be in compliance with Section 504 requirements.

11. COOPERATION. City and Society shall cooperate with each other in carrying out the terms of this Agreement and in order to be in compliance with state law and local ordinances or regulations. City and Society shall each make available to the other all knowledge and information each has that may be of benefit to the other party. City's Animal Control or Police Department personnel shall be subject to the rules, regulations and requirements of Society while at the Shelter. City and Society agree that results of their joint proactive programs will not be immediately evident and that each will make a good faith effort to eliminate the euthanasia of adoptable animals from within City's jurisdiction.

12. ENABLING ACTS. City shall enact all necessary and reasonable Codes, resolutions and/or regulations to the extent permitted by applicable law, to enable Society to carry out all of its performances and functions under the terms and conditions of this Agreement and incidental thereto.

13. NOTICE. In addition to all other notices provided for herein, City shall give Society notice of any Code, resolution, or regulation changes contemplated by it relating to any matters affecting Society's performance or the well-being or humane treatment of animals in the community and/or functions under the terms and conditions of the Agreement. All notices herein provided to be given, or which may be given, by either party to the other, shall be in writing and be given by personal service or by United States mail postage prepaid, certified mail return receipt requested, and addressed.

14. NONDISCRIMINATION CLAUSE. During the performance of this Agreement, Society and its subcontractors shall not unlawfully discriminate against any employee or

applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. Society and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Society and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made a part of as if set forth in full. Society shall also abide by the Federal Civil Right Act of 1964 (42 U.S.C. Section 1981 et seq.) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. Society and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Society shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

15. SOLICITATION BY SOCIETY. Throughout the term of this Agreement, Society shall be free to solicit and accept donations from any person or organization to defray the cost of any of Society's programs, including sheltering services for government organizations and general education.

16. ASSIGNMENT AND SUBCONTRACTING. This Agreement shall not be assigned or subcontracted by Society, either in whole or in part, without the prior written consent of the City, and any assignment without such consent shall automatically terminate this Agreement.

17. TIMELINESS: Time is of the essence in this Agreement.

18. AGREEMENT PREPARATION: It is agreed and understood by the parties hereto that this Agreement has been arrived at through thorough negotiation and that neither party is to be deemed that party which prepared this Agreement within the meaning of Civil Code Section 1654.

19. ATTORNEYS' FEES AND COSTS: The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover from the other party its reasonable costs and attorneys' fees expended in connection with such an action.

20. AMENDMENT: This Agreement may only be modified or amended by the written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto, by and through their respective duly authorized representatives, have executed this Agreement on the date(s) so indicated.

SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a California
nonprofit public benefits corporation

By: _____
Scott Delucchi
Executive Director

Date: _____

CITY OF PACIFIC GROVE

Date: _____

By: _____

Its: _____

Attest: _____

By: _____
City Clerk

By: _____
City Attorney, Brian Pierik

By: _____
City Administrative Services Director,
Tori Hannah



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Joseph Sidor, Contract Planner
MEETING DATE: August 07, 2024
SUBJECT: Adopt Policy Update Regarding Vehicle Miles Traveled (VMT) and CEQA Compliance
CEQA: Categorical Exemption, CEQA Guidelines Section 15308, Class 8, Actions by Regulatory Agencies for Protection of the Environment

RECOMMENDATION

Adopt, by resolution, the proposed amendments to the City's VMT Implementation Policy.

DISCUSSION

BACKGROUND

In September 2013, the California Legislature adopted, and the Governor approved Senate Bill 743 (SB 743), which updated the way transportation impacts are measured for new development projects. In December 2018, pursuant to SB 743, the Office of Planning and Research (OPR) adopted changes to the California Environmental Quality Act (CEQA) Guidelines that identified new metrics for transportation analysis, including Vehicle Miles Traveled (VMT). The prior metric evaluated the impact of projects based on increased traffic Levels of Service (LOS) according to a letter grade system of A through F. The intent of this change was to:

1. reduce greenhouse gas measures;
2. facilitate the development of multimodal transportation networks; and
3. promote diversification of land uses including housing.

According to the OPR, the underlying intent of the VMT methodology is to:

1. balance the needs of congestion management with statewide goals;
2. ensure the environmental impacts of traffic (e.g., noise, air pollution, and safety) continue to be addressed and mitigated through CEQA; and
3. encourage the development of jobs, housing, and commercial uses in closer proximity to each other and to transit (i.e., provide better access to daily destinations such as jobs and services).

On July 11, 2024, the Planning Commission reviewed the proposed updates to the VMT Policy and voted 6-0-1 (6 yes, 0 noes, and 1 absent) to recommend the City Council adopt the proposed amendments to the City's VMT policy.

More information on SB 743 can be found on the OPR website, and the 2018 OPR Technical Advisory has been attached to this report for reference.

DISCUSSION

The City adopted the current VMT policy and threshold on August 4, 2021. Since that time, the Association of Monterey Bay Area Governments (AMBAG) updated its Travel Demand Model and methodology. Because the City's VMT policy relies upon AMBAG's model, the policy needs to be amended to incorporate updated information. This policy update is technical in nature and will not change the approach City staff uses to evaluate traffic impacts for projects. AMBAG's update includes a change to the methodology used to determine VMT thresholds used for CEQA analysis based on the updated model. The proposed method combines data from Replica, a tour-based transportation analytics platform, with the AMBAG model, which is a trip-based travel demand model. This combination will provide the benefits of using a big data-based approach to represent existing conditions with the forecasting abilities of the AMBAG model to represent the changes resulting from land use development.

In general, VMT considers the distance residents or employees would travel on average as the result of the new development. VMT favors compact, mixed use development within an established urban limit because it “rewards” a project for being in proximity to daily needs such as schools, grocery stores, jobs, and services. Such projects result in lower VMT because car trips generated tend to be shorter, and it is easier to access local services without reliance on a personal vehicle. Projects located on the outskirts of town or considered “greenfield” development (undeveloped areas with little to no existing infrastructure or services) would likely have higher VMT because daily destinations are further away and alternatives to auto transport such as mass transit or active transportation (walk, cycle) are less feasible. If a project generates a VMT above the stated thresholds of significance, mitigation measures to reduce the amount of VMT must be considered. Potential mitigation measures include investments in Transportation Demand Management (TDM) tools such as transit passes, bike and pedestrian programs, car share, on-site childcare facilities, and similar means. Other potential mitigation measures may include the construction or contribution to bike and pedestrian or high occupant vehicle projects.

SB 743 does not prevent the City from continuing to analyze auto delay or LOS as part of other plans (i.e., the General Plan), studies, congestion mitigation, fee collection, or ongoing network monitoring; however, these metrics no longer constitute the basis for CEQA impacts. Of note, the City would continue to retain its LOS standards as a local policy within the General Plan, outside CEQA. Development projects triggering LOS impacts will be required to mitigate those impacts consistent with the City’s current policy, but will not be part of CEQA mitigations. Staff’s recommendations include VMT thresholds and mitigation to ensure consistency with CEQA Guidelines in place of the former LOS thresholds.

The proposed draft policy (attached - both clean and redlined versions) would update the established environmental review process for evaluating transportation impacts with VMT criteria. This action would ensure a consistent methodology for the City’s transportation analysis in environmental review that continues to align with State law and regional partners. The process and proposed thresholds are described further in the draft implementation policy.

CEQA

In reviewing this action, the City has followed the CEQA statute adopted by the State of California as published in the California Public Resources Code, Division 13, §21000, et seq., and the associated guidelines as published in the California Code of Regulations, Title 14, §15000, et seq. (i.e., CEQA Guidelines). The proposed policy update to address transportation related impacts is consistent with CEQA Guidelines Section 15064.7 (Threshold of Significance) and is found to be categorically exempt under CEQA Guidelines section 15308, Class 8 (Actions by Regulatory Agencies for Protection of the Environment). Also, the exceptions to exemptions in Section 15300.2 of the CEQA Guidelines pertaining to location, cumulative impacts, significant effects, scenic highways, hazardous waste sites, and historical resources do not apply to this project.

OPTIONS

1. The City Council could opt not to adopt an updated threshold policy which would result in every project with the potential to result in a significant impact on the environment in terms of transportation being required to conduct an individual VMT analysis in compliance with CEQA;
or
2. The City Council could discuss the item and provide alternative direction to staff.

FINANCIAL IMPACT:

There is no fiscal impact.

FOCUSED PRIORITY AREA: Environmental Stewardship

Attachments

Draft Resolution

Draft VMT Policy Update (Clean Version)

Draft VMT Policy Update (Redline Version)

OPR Technical Advisory

RESOLUTION NO. 24-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ADOPTING AMENDMENTS TO THE CITY'S VEHICLE MILES TRAVELED POLICY.

WHEREAS, the State legislature of the State of California adopted the California Environmental Quality Act of 1970 (CEQA), as amended and codified in Sections 21,000 et seq. of the Public Resources Code;

WHEREAS, the Legislature directed the Secretary of the Natural Resources Agency to prepare State guidelines for the implementation of said act by public agencies;

WHEREAS, Senate Bill 743, codified in Public Resources Code section 21099, required changes to the CEQA Guidelines requiring the criteria for determining the significance of transportation impacts of projects;

WHEREAS, CEQA Guidelines section 15064.3 went into effect on July 1, 2020, and it identifies vehicle miles traveled (VMT) as the most appropriate metric to evaluate a project's transportation impacts;

WHEREAS, automobile delay, as measured by level of service (LOS), generally no longer constitutes a significant environmental effect under CEQA. SB 743 does not prevent a city or county from continuing to analyze delay or LOS as part of development standards, but it may no longer constitute the basis for CEQA impact and mitigation. (Public Resources Code section 21099(e)(4).);

WHEREAS, CEQA Guidelines section 15064.7(a) defines a threshold of significance as "an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant";

WHEREAS, CEQA Guidelines section 15064.7(b) requires that threshold of significance be adopted by ordinance, resolution, rule or regulations, developed through a public review process and be supported by substantial evidence;

WHEREAS, the City adopted a VMT Policy (Resolution No. 21-026) on August 4, 2021, to bring the City's transportation analysis methodology in line with state goals pursuant to SB 743;

WHEREAS, in 2022, the State legislature of the State of California has amended Senate Bill 743, Public Resources Code section 21099, and CEQA Guidelines section 15064.7;

WHEREAS, the Association of Monterey Bay Area Governments (AMBAG) has updated technical parameters of the Travel Demand Model used to measure and evaluate potential project traffic impacts;

WHEREAS, the City adopts this amendment to the City's VMT Policy to bring the City's transportation analysis methodology in line with state goals pursuant to SB 743 and with the current AMBAG Travel Demand Model methodology;

WHEREAS, the amendments comply with SB 743 and OPR’s “Technical Advisory on Evaluating Transportation Impacts in CEQA”;

WHEREAS, at a public meeting on July 11, 2024, the Planning Commission reviewed the policy, as amended, and provided a unanimous recommendation that Council adopt the proposed changes to the VMT Policy;

WHEREAS, the Council finds and determines, based upon staff and consultant reports and research as well as testimony in the record, that the revised CEQA thresholds of significance under consideration are consistent with State requirements as to how transportation impacts should be evaluated for purposes of CEQA review of projects. The revised thresholds are based upon the VMT metric that is specifically required in CEQA Guidelines section 15064.3. Additionally, the City’s policy is consistent with and based upon review of OPR guidance; and

WHEREAS, the proposed amendments are consistent with CEQA Guidelines Section 15064.7 (Threshold of Significance), are categorically exempt per CEQA Guidelines section 15308, Class 8 (Actions by Regulatory Agencies for Protection of the Environment), and the exceptions to the exemptions in Section 15300.2 of the CEQA Guidelines do not apply.

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

1. The above recitals are incorporated herein as findings for approval.
2. The Vehicle Miles Traveled Policy, as amended, attached hereto as Exhibit A, designating Vehicle Miles Traveled (VMT) as the metric for conducting transportation analyses pursuant to the California Environmental Quality Act (CEQA), establishing CEQA thresholds of significance related to VMT, and identifying screening criteria to limit review for projects presumed to have less than significant VMT impact, is hereby adopted.
3. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 7th day of August, 2024, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN PIERIK, City Attorney

DRAFT Vehicle Miles Traveled (SB 743) Implementation Policy

City of Pacific Grove

July 2024

1.0 Background

In 2013, SB 743 was signed into law by California Governor Jerry Brown with a goal of reducing Greenhouse Gas (GHG) emissions, promoting the development of infill land use projects and multimodal transportation networks, and to promote a diversity of land uses within developments. One significant outcome resulting from this statute is the removal of automobile delay and congestion, commonly known as level of service (LOS), as a basis for determining significant transportation impacts under the California Environmental Quality Act (CEQA).

The Governor's Office of Planning and Research (OPR) has documented recommended analysis guidelines for SB 743 in its *Technical Advisory on Evaluating Transportation Impacts in CEQA* (2018 OPR Guidance) which provides for Vehicle Miles Traveled (VMT) as the principal measure to replace LOS for determining significant transportation impacts. VMT is a measure of total vehicular travel that accounts for the number of vehicle trips and the length of those trips. OPR selected VMT, in part, because jurisdictions are already familiar with this metric. VMT is already used in CEQA to study other potential impacts such as GHG, air quality, and energy impacts and is used in planning for regional Sustainable Communities Strategies (SCS).

VMT also allows for an analysis of a project's impact throughout the jurisdiction rather than only in the vicinity of the proposed project allowing for a better understanding of the full extent of a project's transportation-related impact. It should be noted that SB 743 does not disallow the use of LOS for other planning purposes outside the scope of CEQA (e.g., for determining consistency with LOS-based General Plan policies).

2.0 Use of This Document

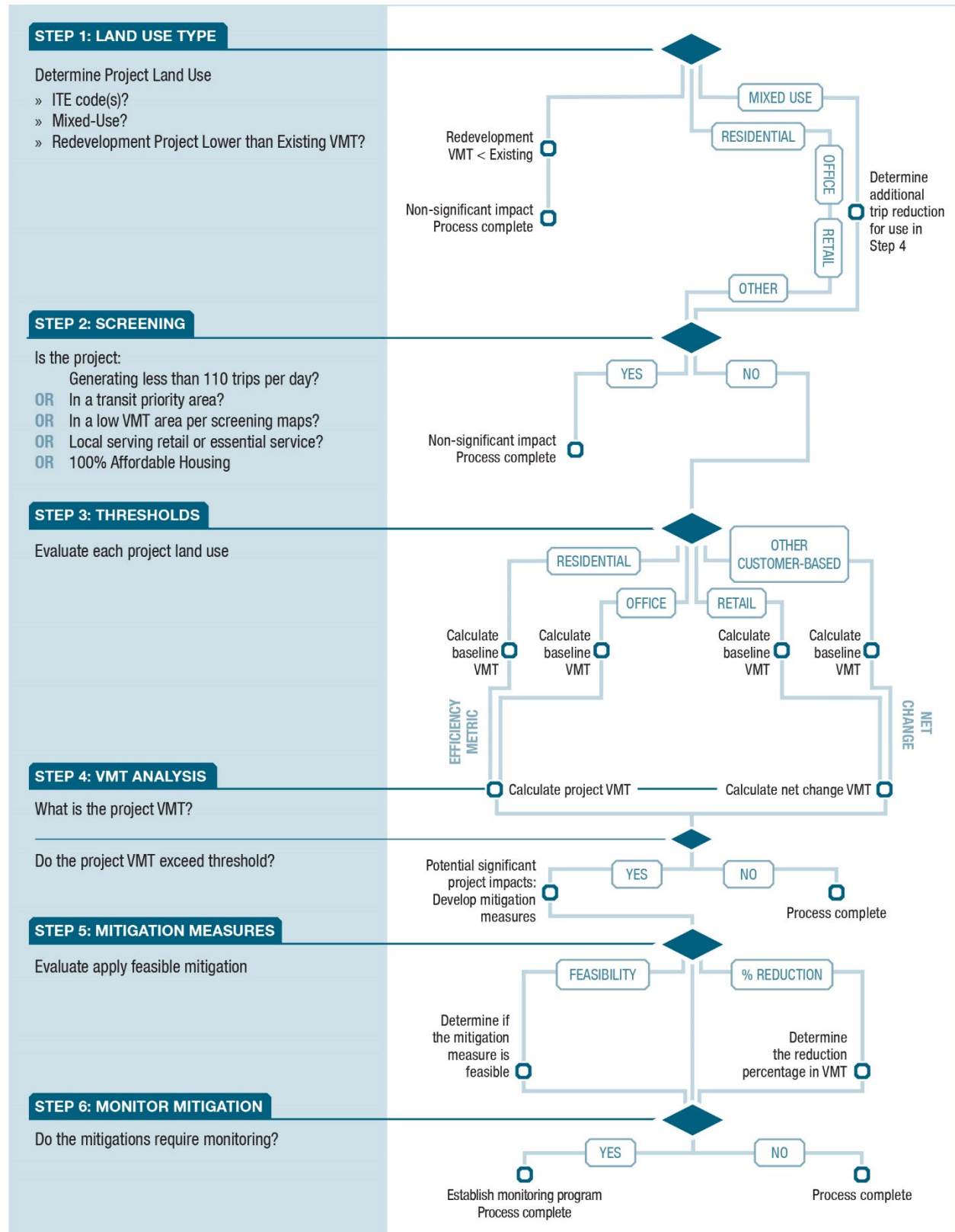
Note that although this document includes footnotes and references to other documents, this document has been developed to serve both as the basis of SB 743 implementation and VMT analysis within the City. Accordingly, the document does not require the reader to reference the footnotes unless they are interested in understanding the technical basis of elements of this document's preparation. Analysis guidelines are separated into two distinct approaches, those that relate to land use projects (Section 3.0) and those that relate to transportation improvement projects (Section 4.0). If a project includes both land use and transportation improvement elements, analysis would be required to be carried out for both. Projects not subject to CEQA are not required to follow these guidelines.

3.0 Land Use Projects

This section provides an approach to identify transportation impacts under CEQA for land use projects that closely aligns with guidance provided within the OPR *Technical Advisory on Evaluating Transportation Impacts in CEQA* (2018). While the 2018 OPR Guidance has been a helpful introduction to

using VMT to evaluate projects, it does not provide a complete solution. There are a multitude of complex practical issues that are not addressed by the 2018 OPR Guidance. For example, the 2018 OPR Guidance does not specifically address land uses beyond residential, office and retail, and it provides latitude on some elements of implementation. In response to this, a specific series of analytical steps have been developed for SB 743 project evaluation to clarify requirements and reduce potential confusion. **Exhibit 1** provides a graphical flowchart representation of these analytical steps.

Exhibit 1 – Process for CEQA VMT Analysis for Land Use Projects



Step 1: Determine ITE Land Use Type

If it is determined that this policy applies to a land use project, the second step will be to evaluate the project for the following considerations:

- **Land use type.** For the purposes of analysis, the Institute of Transportation Engineers (ITE) land use codes serve as the basis of land use definitions. Although it is recognized that VMT evaluation tools and methodologies are typically not fully sensitive to some of the distinctions between some ITE categories, the use of ITE land use codes is useful for maintaining consistency across analyses, determining trip generation for other planning level tools, and maintaining a common understanding of trip making characteristics amongst transportation professionals. The ITE land use code is also used as an input into the VMT Analysis Tool described in Step 4 of this Section.
- **Mixed Use.** If there are multiple distinct land uses within the project (*e.g.*, residential, office, retail, *etc.*), they will be required to be analyzed separately unless they are determined to be insignificant to the total VMT. Mixed use projects are permitted to account for internal capture which depending on the methodology may require a distinct approach not covered in this documentation. The methodology outlined in the current ITE Trip Generation Manual¹ is appropriate, however other approaches may be acceptable if approved by the City. This analysis would be the responsibility of the applicant and will need to be prepared by a qualified transportation professional and approved by the City of Pacific Grove.
- **Redevelopment projects.** As described under the Non-Significant Screening Criteria section, redevelopment projects which have lower VMT than the existing on-site use can be determined to have a non-significant impact.

Once the land use type(s) are determined, the next step is to screen the project to determine if further CEQA transportation analysis is necessary.

Step 2: Screen for Non-Significant Transportation Impact

The purpose of this step is to determine if a presumption of a non-significant transportation impact can be made on the facts of the project. The guidance in this section is primarily intended to avoid unnecessary analysis and findings that would be inconsistent with the intent of SB 743. A detailed CEQA transportation analysis will not be required for land use elements of a project that meet the screening criteria shown in **Exhibit 2**. If a project has multiple distinct uses (*e.g.*, residential, office, retail, *etc.*), only those elements of the project that are not screened out would require further evaluation to determine transportation significance for CEQA purposes.

¹ ITE Trip Generation Manual, 11th Edition, September 2011

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
Small Projects² This applies to projects with low trip generation per existing CEQA exemptions. Note that this includes any land use type (residential, office, open space, neighborhood parks, <i>etc.</i>)	Presumed to cause a less-than-significant impact: - Project generation is less than 110 trips per day per the ITE Manual or other acceptable source determined by the City of Pacific Grove Unless: - It is inconsistent with the Sustainable Communities Strategy as determined by the City of Pacific Grove
Projects Near High Quality Transit³ High quality transit provides a viable option for many to replace automobile trips with transit trips resulting in an overall reduction in VMT.	Presumed to cause a less-than-significant impact: - Within a ½ mile of an existing major transit stop⁴; and - Maintains a service interval frequency of 15 minutes or less during the morning and afternoon peak commute periods). Unless: - Has a Floor Area Ratio (FAR) of less than 0.75; or - Includes more parking, excluding on-street parking, for use by residents, customers, or employees of the project than required by the City of Pacific Grove zoning code; or - It is inconsistent with the Sustainable Communities Strategy as determined by the City of Pacific Grove; or - Replaces affordable residential units with a smaller number of moderate- or high-income residential units.
Local-Serving Retail⁵ The introduction of new Local-serving retail has been determined to reduce VMT by shortening	Presumed to cause a less-than-significant impact: - No single store on-site exceeds 50,000 square feet; and - Project is local-serving as determined by the City of Pacific Grove Unless:

² 2018 OPR Guidance, page 12

³ 2018 OPR Guidance, page 13

⁴ Refer to CEQA definition in PRC 21064.3

⁵ 2018 OPR Guidance, page 16

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
trips that will occur out of necessity (groceries, other essentials, etc.).	The nature of the service is regionally focused as determined by the City of Pacific Grove
Affordable Housing⁶ Lower-income residents make fewer trips on average, resulting in lower VMT overall.	Presumed to cause a less-than-significant impact: - A high percentage of affordable housing is provided as determined by the City of Pacific Grove Unless: - The percentage of affordable housing is determined by the City of Pacific Grove to not be high in relation to the residential element of a project
Local Essential Service⁷ As with Local-Serving Retail, the introduction of new Local Essential Services shortens non-discretionary trips by putting those goods and services closer to residents, resulting in an overall reduction in VMT.	Presumed to cause a less-than-significant impact: Building is less than 50,000 square feet: and Land Use is: - Day care center; or - Public K-12 School; or - Police or Fire facility; or - Medical/Dental office building; or - Government offices (in-person services such as post office, library, and utilities) Unless: - The nature of the service is regionally focused as determined by the City of Pacific Grove
Map-Based Screening This method eliminates the need for complex analyses, by	Presumed to cause a less-than-significant impact: Area of development is under threshold as shown on screening map as allowed by the City of Pacific Grove

⁶ 2018 OPR Guidance, page 14. As described, “Evidence supports a presumption of less than significant impact for a 100 percent affordable residential development (or the residential component of a mixed-use development) in infill locations. Lead agencies may develop their own presumption of less than significant impact for residential projects (or residential portions of mixed-use projects) containing a particular amount of affordable housing, based on local circumstances and evidence.”

⁷ Based on assumption that, like local-serving retail, the addition of necessary local in-person services will reduce VMT given that trips to these locations will be made irrespective of distance given their non-discretionary nature.

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
allowing existing VMT data to serve as a basis for the screening smaller developments. Note that screening is limited to residential and office projects utilizing the maps.	Unless: ▪ Represent significant growth as to substantially change regional travel patterns as determined by the City of Pacific Grove
Redevelopment Projects⁸ Projects with lower VMT than existing on-site uses, can under limited circumstances, be presumed to have a non-significant impact. In the event this screening does not apply, projects should be analyzed as though there is no existing uses on site (project analysis cannot take credit for existing VMT).	Presumed to cause a less-than-significant impact: ▪ Project replaces an existing VMT-generating land use and does not result in a net overall increase in VMT Unless: ▪ The project replaces an existing VMT-generating land use and results in a net overall increase in VMT

⁸ 2018 OPR Guidance, Page 18

Step 3: Determine Significance Threshold and Methodology

The purpose of this step is to determine the applicable threshold of significance for land use projects that do not get screened out in Step 2, or if further analysis is necessary to determine VMT impacts. Significance thresholds are based on land use type, broadly categorized as efficiency and net change metrics. Efficiency metrics include VMT/Capita and Work VMT/employee⁹. As described in **Exhibit 3**, “Net Change” refers to the net change in regional VMT. “Net Change” is used for elements that include a significant customer base, such as commercial uses, although it can extend to a variety of uses that have similar characteristics.

Exhibit 3 - Significance Threshold and Methodology

Example Details	Threshold Basis	
	Efficiency	Net Change
Example Land Use	Residential, Professional Office, Industrial	Retail, Medical Office, Sports Venue
Example VMT Thresholds	Per capita, per employee	Region VMT change
Customer Component	No	Yes
Allowable Methods	Non-Significant Screening Criteria, The City of Pacific Grove VMT Analysis Tool, Travel Demand Model	Non-Significant Screening Criteria, Travel Demand Model

For projects with a significant customer base (retail, medical offices, sports venue, etc.) it is typically appropriate to separate employee trip characteristics from the customer base unless the customer base is minimal in nature. Under these circumstances, it is most appropriate to evaluate the total of the delta in regional VMT resultant from the customer base plus the delta of VMT resultant from employees based on the following formula:

$$(\text{number of employees}) \times (\text{estimated VMT/employee} - \text{threshold VMT/employee})$$

The threshold of significance will accordingly correspond to the “Net Change” threshold as described in **Exhibit 3**. Under these circumstances, it is most appropriate to evaluate this total Net Change as the basis for evaluating the outcome of mitigations in terms of determining transportation significance although each element of the project should be tallied separately for the purposes of clarity.

⁹ Work VMT specifically applies to commute trips as represented by the attractions in the Travel Demand Model. Refer to Appendix A for additional information

VTM Thresholds of Significance

OPR recommends a 15-percent VMT reduction relative to existing local or regional average VMT levels. While the 2018 OPR Guidance is not binding on public agencies, CEQA allows lead agencies to “consider thresholds of significance...recommended by other public agencies, provided the decision to adopt those thresholds is supported by substantial evidence.”¹⁰

According to OPR, achieving 15-percent lower per capita VMT (for residential development) or per employee (for employment-based development) compared with VMT resulting from existing development is both generally achievable and is supported by evidence that connects this level of reduction to the State’s emissions goals.¹¹ The thresholds of significance recommended by OPR, as they relate to the City of Pacific Grove, are summarized in **Exhibit 4**.

Exhibit 4 - OPR suggested VMT Thresholds of Significance

Land Use	OPR Guidance ¹²
Residential	15% below existing county-wide average VMT per capita
Office	15% below existing county-wide average VMT per employee
Retail	Net increase in regional VMT

Based on these criteria, the VMT thresholds of significance shown in **Exhibit 5** have been established.

Exhibit 5 - VMT Thresholds of Significance

Land Use	VMT Threshold	Basis
Residential	14.3 VMT/capita ¹³	15% below existing county-wide average VMT per capita.
Office	18.9 Work VMT/Employee ¹⁴	15% below existing county-wide average Work VMT per employee
Retail	Net regional change	Using the county geographical area as the basis
Other Employment	Work VMT/Employee ¹⁵	15% below existing county-wide average Work VMT per employee for similar land uses
Other Customer	Net regional change	Using the county or another geography deemed appropriate by the City of Pacific Grove as the basis

*Current as of March 2024. Note that the values in this table will be updated periodically based on the availability of new information as determined by the City of Pacific Grove. As such, care should be taken in the use of this document to verify the then current values for **Exhibit 5**.

¹⁰ CEQA Guidelines, § 15064.7(c).

¹¹ 2018 OPR Guidance, pp. 10-12.

¹² 2018 OPR Guidance, Pages 15-16

¹³ Residential VMT specifically applies to all Home-Based trips residential trips. Refer to Appendix A for additional information.

¹⁴ Work VMT specifically applies to commute trips. Refer to Appendix A for additional information

¹⁵ Work VMT specifically applies to commute trips. Refer to Appendix A for additional information

Note that the inclusion of “Other Employment” and “Other Customer” refers to all other service and goods providers that are not included in the office/retail categories. As shown, they follow a similar approach to the office/retail categories with the principal difference being that the average/basis for the threshold would be the aggregation of the specific “other” land use across the county (*i.e.*, an industrial project would use industrial uses).

Based on the availability of new information and/or improvements to calculation methods, there will be periodic updates to the numerical threshold values shown in **Exhibit 5**. As such, care should be taken in the use of this document to verify the then current values for **Exhibit 5**. However, the relative approach for calculating the thresholds should remain the same. Furthermore, the values in the City’s current VMT analysis tool, discussed in the next section, will supersede the information provided in **Exhibit 5**.

The VMT Analysis methodology is summarized in **Appendix A**.

Step 4: Develop Scope Agreement and Complete VMT Analysis

Prior to undertaking VMT analysis, a scope compliant with the City of Pacific Grove’s requirements must be prepared by the project applicant and submitted to the City for approval. Given the potential complexities of some uses, particularly those not clearly identified as residential, retail, or office, a scope agreement regarding the threshold and methodology is important to avoid analysis that is not compliant with the City of Pacific Grove’s requirements.

Step 5: Identify Mitigation Measures

During this step, the analysis agreed to under Step 4 should be completed and approved by the City of Pacific Grove. Relevant documentation providing enough detail that assumptions are clearly understandable, and methods that can be replicated should be provided along with the results of the VMT analysis for the proposed project.

If a significant transportation impact is identified, feasible mitigation measures to avoid or reduce the impact must be identified. CEQA requires that mitigation measures are included in the project’s environmental assessment. The 2018 OPR Guidance provides a list of potential measures to reduce VMT but gives the lead agency (the City of Pacific Grove in this case) full discretion in the selection of mitigation measures.

The type and size of the project will determine the most appropriate mitigation strategies for VMT impacts. For large projects such as general plans or specific plans, VMT mitigations should concentrate on the project’s density and land use mix, site design, regional policies, and availability of transit, bicycle, and pedestrian facilities. For smaller projects such as an individual development project, VMT mitigations will typically require the preparation of a transportation demand management (TDM) program. A TDM program is a combination of strategies to reduce VMT. The program is created by an applicant for their land use project based on a list of strategies agreed to with the City of Pacific Grove.

Step 6: Mitigation Monitoring

As required by CEQA, the City of Pacific Grove will require ongoing mitigation monitoring and reporting. The specifics of this will be developed on a project basis.

4.0 Transportation Projects

Depending on the specific nature of a transportation project, it can alter trip patterns, trip lengths, and even trip generation. Research has determined that roadway capacity-enhancing projects can and often do increase VMT. This phenomenon is commonly referred to as “induced demand.” These increases in VMT often lead to both congestion increases and negative impacts to air quality, including GHG emissions. While methods are generally less developed for the analysis of VMT associated with induced demand compared to other areas of transportation analysis, there is still the need to quantify and understand its impact to the transportation system considering the requirements of SB 743.

Similar to land use projects, the approach to transportation project analysis closely aligns with the 2018 OPR Guidance. In terms of analysis, the analyst should first determine whether the transportation project has been prescreened and determined to have a non-significant impact as described in the following section.

Screen for Non-Significant Transportation Impact

At the discretion of the City of Pacific Grove, the following improvements may be presumed to result in a non-significant impact¹⁶:

1. Rehabilitation, maintenance, replacement, safety, and repair projects designed to improve the condition of existing transportation assets (*e.g.*, highways; roadways; bridges; culverts).
2. Transportation Management System field elements such as cameras, message signs, detection, or signals; tunnels; transit systems; and assets that serve bicycle and pedestrian facilities and that do not add additional motor vehicle capacity.
3. Roadside safety devices or hardware installation such as median barriers and guardrails.
4. Roadway shoulder enhancements to provide “breakdown space,” dedicated space for use only by transit vehicles, to provide bicycle access, or to otherwise improve safety, but which will not be used as automobile vehicle travel lanes.
5. Addition of an auxiliary lane of less than one mile in length designed to improve roadway safety.
6. Installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, two-way left turn lanes, or emergency breakdown lanes that are not utilized as through lanes.
7. Addition of roadway capacity on local or collector streets, based on the City’s functional classification, provided the project also substantially improves conditions for pedestrians, cyclists, and, if applicable, transit.
8. Conversion of existing general-purpose lanes (including ramps) to managed lanes or transit lanes, or changing lane management in a manner that would not substantially increase vehicle travel.

¹⁶ 2018 OPR Guidance, Page 20

9. Addition of a new lane that is permanently restricted to use only by transit vehicles.
10. Reduction in the number of through lanes.
11. Grade separation to separate vehicles from rail, transit, pedestrians or bicycles, or to replace a lane in order to separate preferential vehicles (*e.g.*, HOV [high occupancy vehicle], HOT [high occupancy toll], or trucks) from general vehicles.
12. Installation, removal, or reconfiguration of traffic control devices, including Transit Signal Priority (TSP) features.
13. Installation of traffic metering systems, detection systems, cameras, changeable message signs and other electronics designed to optimize vehicle, bicycle, or pedestrian flow.
14. Timing of signals to optimize vehicle, bicycle, or pedestrian flow.
15. Installation of roundabouts or traffic circles.
16. Installation or reconfiguration of traffic calming devices.
17. Adoption of or increase in tolls.
18. Addition of tolled lanes, where tolls are sufficient to mitigate VMT increase.
19. Initiation of new transit service.
20. Conversion of streets from one-way to two-way operation with no net increase in number of traffic lanes.
21. Removal or relocation of off-street or on-street parking spaces.
22. Adoption or modification of on-street parking or loading restrictions (including meters, time limits, accessible spaces, and preferential/reserved parking permit programs).
23. Addition of traffic wayfinding signage.
24. Rehabilitation and maintenance projects that do not add motor vehicle capacity.
25. Addition of new or enhanced bike or pedestrian facilities on existing streets/highways or within existing public rights-of-way.
26. Addition of Class I bike paths, trails, multi-use paths, or other off-road facilities that serve non-motorized travel.
27. Installation of publicly available alternative fuel/charging infrastructure.
28. Addition of passing lanes, truck climbing lanes, or truck brake-check lanes in rural areas that do not increase overall vehicle capacity along the corridor.

Significance Threshold and Methodology

For projects that increase roadway capacity and do not fall under one or more of the Non-Significant Screening Criteria in the prior section, the significance criterion should be if a transportation project

results in a net increase in regional VMT. As a practical matter, any roadway with more than a quarter mile in new roadway travel lane (through lanes) should be evaluated for induced demand. A qualified transportation professional will be required to provide a basis for this evaluation that considers available data, roadway context, and tools. Depending on the location and nature of the roadway this may be best accomplished using the Association of Monterey Bay Area Governments (AMBAG) Travel Demand Model. CEQA requires mitigation monitoring so if a transportation project is required to implement VMT mitigation measures, the City of Pacific Grove is required to monitor whether the project is implementing the mitigation measures. Mitigation monitoring will be determined and implemented on a case-by-case basis by the City of Pacific Grove.

Appendix A

VMT Analysis Methodology

The following methodology was used to establish the City's VMT thresholds summarized in **Exhibit 5**. In addition, this methodology outlines how projects are evaluated using the City's VMT Analysis Tool and the underlying data used in the evaluation process.

The City's VMT thresholds were developed using trip data for Monterey County supplied by the Replica platform. Replica is a transportation analytics platform that collects anonymized trip data from a variety of data sources including location-based data from cell phones and in-dash GPS units throughout the United States. The residential VMT for the City was computed by summing the trip distance for every production trip for all home-based trip purposes (home-based work, home-based shopping, home-based school, *etc.*). The VMT for employee-based land uses for the City was computed by totaling the trip distances for every commute trip within Monterey County. The total residential and work VMT was divided by the total population or employees within the County to determine the average VMT per capita and VMT per employee for Monterey County.

The City's VMT thresholds were determined by setting them 15-percent lower than the baseline countywide average VMT per capita and VMT per employee. As shown in **Exhibit 5**, the 15-percent lower than baseline VMT thresholds were calculated to be 14.3 VMT per capita for residential uses and 18.9 VMT per employee for employment uses based on countywide averages of 16.81 VMT per capita and 22.3 VMT per employee, respectively.

Due to the limitations with the City's VMT Analysis Tool, not all projects can be evaluated using the Tool. Therefore, the following methodology describes how to evaluate those projects that cannot use the City's VMT Analysis Tool. This methodology builds on the previous one underlying the City's VMT Analysis Tool but incorporates data from the AMBAG Travel Demand Model to calibrate VMT data obtained from Replica.

VMT calibration should be completed by first calculating the percent difference in VMT per capita and VMT per employee for each Traffic Analysis Zone (TAZ) and each employment type within the AMBAG RTDM representing the project being analyzed. As the data obtained from Replica does not separate VMT per employee by employment type, a weighted average VMT per employee percent difference should be calculated based on the number of employees in each project TAZ. The Replica data is also provided at the Census Block Group level rather than at the TAZ level, so an association must be established between the AMBAG RTDM TAZ and its representative Block Group. A VMT per capita and VMT per employee percent difference for each Block Group is calculated using a weighted average based on the total population and employment, respectively, for the TAZs within each Block Group. This percent difference is then applied to the VMT per capita and VMT per employee for each Block Group obtained from the Replica platform to determine a calibrated VMT per capita and VMT per employee for the project.

Exhibit “A”

DRAFT Vehicle Miles Traveled (SB 743) Implementation Policy

City of Pacific Grove

~~Planning Commission – May 13, 2021~~

July 2024

1.0 Background

In 2013, SB 743 was signed into law by California Governor Jerry Brown with a goal of reducing Greenhouse Gas (GHG) emissions, promoting the development of infill land use projects and multimodal transportation networks, and to promote a diversity of land uses within developments. One significant outcome resulting from this ~~statue~~ statute is the removal of automobile delay and congestion, commonly known as level of service (LOS), as a basis for determining significant transportation impacts under the California Environmental Quality Act (CEQA).

The Governor’s Office of Planning and Research (OPR) has documented recommended analysis guidelines for SB 743 in its *Technical Advisory on Evaluating Transportation Impacts in CEQA* (2018 OPR Guidance) which provides for Vehicle Miles Traveled (VMT) as the principal measure to replace LOS for determining significant transportation impacts. VMT is a measure of total vehicular travel that accounts for the number of vehicle trips and the length of those trips. OPR selected VMT, in part, because jurisdictions are already familiar with this metric. VMT is already used in CEQA to study other potential impacts such as GHG, air quality, and energy impacts and is used in planning for regional Sustainable Communities Strategies (SCS).

VMT also allows for an analysis of a project’s impact throughout the jurisdiction rather than only in the vicinity of the proposed project allowing for a better understanding of the full extent of a project’s transportation-related impact. It should be noted that SB 743 does not disallow the ~~City of Pacific Grove to~~ use of LOS for other planning purposes outside the scope of CEQA (e.g., for determining consistency with LOS-based General Plan policies).

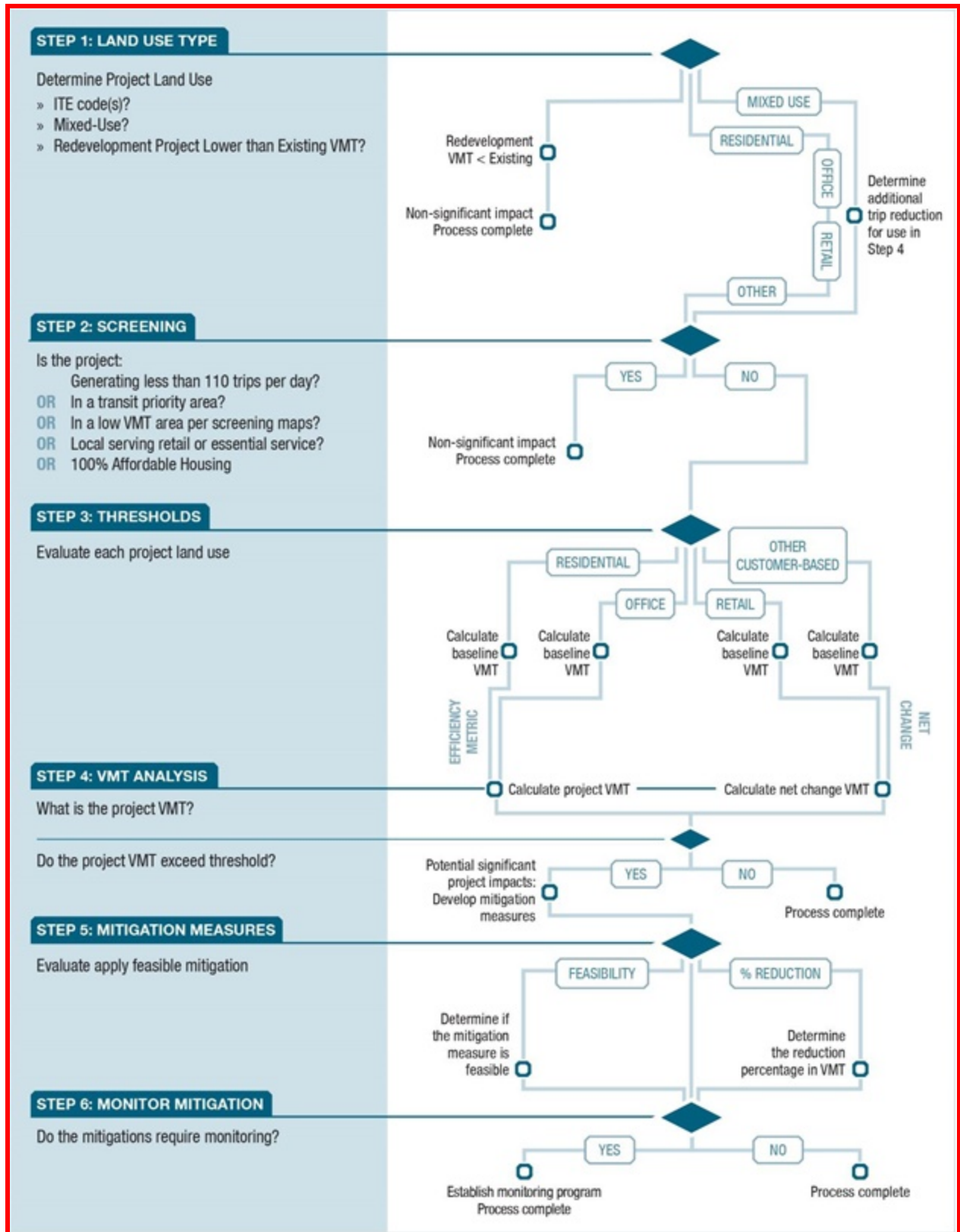
2.0 Use of This Document

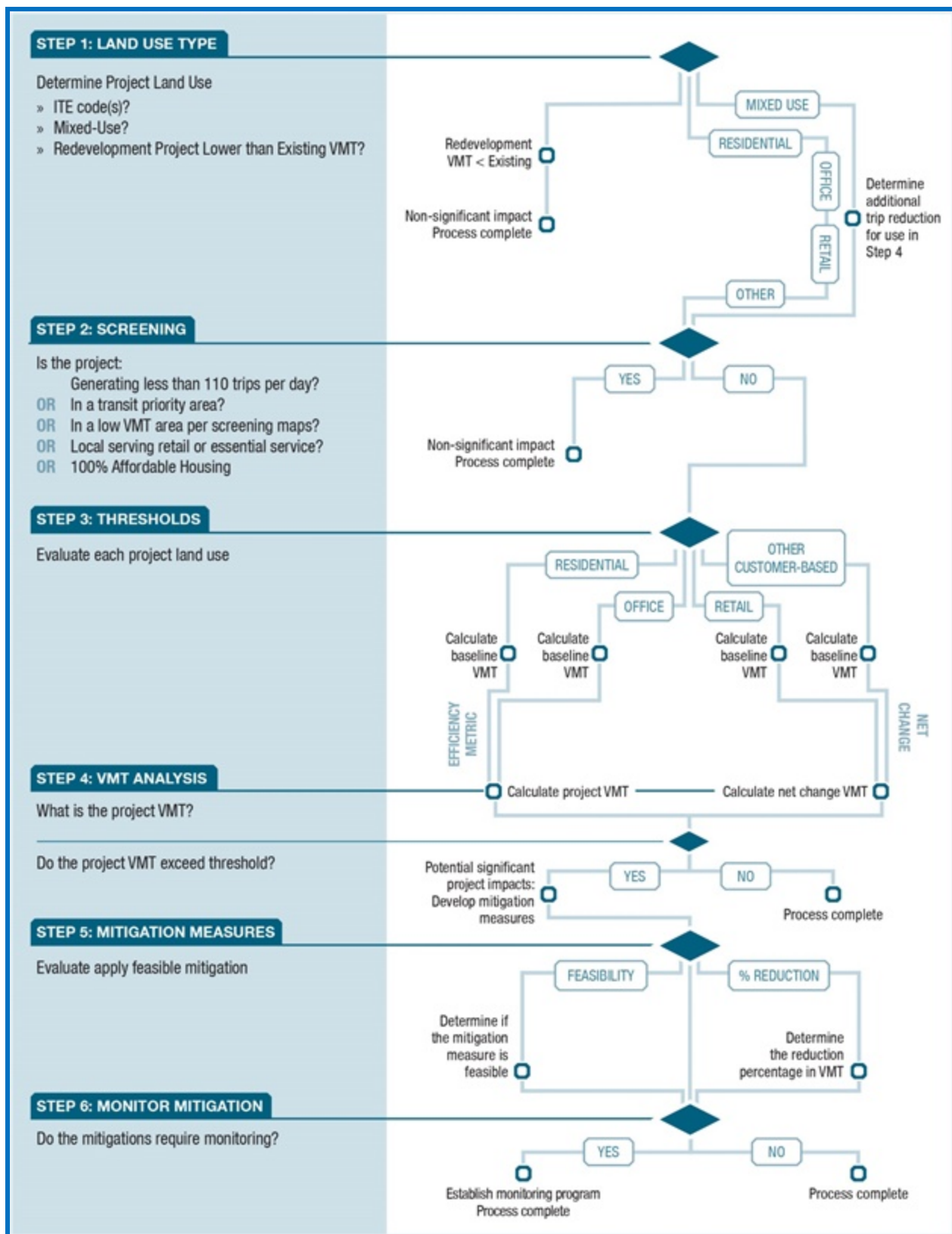
Note that although this document includes footnotes and references to other documents, this document has been developed to serve both as the basis of SB 743 implementation and VMT analysis within the City. Accordingly, the document does not require the reader to reference the footnotes unless they are interested in understanding the technical basis of elements of this document’s preparation. Analysis guidelines are separated into two distinct approaches, those that relate to land use projects (Section 3.0) and those that relate to transportation improvement projects (Section 4.0). If a project includes both land use and transportation improvement elements, analysis would be required to be carried out for both. Projects not subject to CEQA are not required to follow these guidelines.

3.0 Land Use Projects

~~An~~ This section provides an approach to identify transportation impacts under CEQA for land ~~use~~ use projects that closely ~~align~~ aligns with guidance provided within the OPR *Technical Advisory on Evaluating Transportation Impacts in CEQA* (2018). While the 2018 OPR ~~guidance related to SB 743~~ Guidance has been a helpful introduction to using VMT to evaluate projects, it does not provide a complete solution. There are a multitude of complex practical issues that are not addressed by the 2018 OPR ~~guidance~~ Guidance. For example, the 2018 OPR Guidance does not specifically address land uses beyond residential, office and retail, and it provides latitude on some elements of implementation. In response to this, a specific series of ~~analysis~~ analytical steps have been developed for SB 743 project evaluation ~~have been developed~~ to clarify requirements and reduce potential confusion. **Exhibit 1** provides a graphical flowchart representation of ~~this analysis process~~ these analytical steps.

Exhibit 1 – Process for CEQA VMT Analysis for Land Use Projects





Step 1: Determine ITE Land Use Type

If it is determined that this policy applies to a land use project, the second step will be to evaluate the project for the following considerations:

- **Land use type.** For the purposes of analysis, the Institute of Transportation Engineers (ITE) land use codes serve as the basis of land use definitions. Although it is recognized that VMT evaluation tools and methodologies are typically not fully sensitive to some of the distinctions between some ITE categories, the use of ITE land use codes is useful for maintaining consistency across analyses, determining trip generation for other planning level tools, and maintaining a common understanding of trip making characteristics amongst transportation professionals. The ITE land use code is also used as an input into the VMT Analysis Tool described in Step 4 of this Section.
- **Mixed Use.** If there are multiple distinct land uses within the project (*e.g.*, residential, office, retail, *etc.*), they will be required to be analyzed separately unless they are determined to be insignificant to the total VMT. Mixed use projects are permitted to account for internal capture which depending on the methodology may require a distinct approach not covered in this documentation. [The methodology outlined in the current ITE Trip Generation Manual¹ is appropriate, however other approaches may be acceptable if approved by the City.](#) This analysis would be the responsibility of the applicant and will need to be prepared by a qualified transportation professional and approved by the City of Pacific Grove.
- **Redevelopment projects.** As described under the Non-Significant Screening Criteria section, redevelopment projects which have lower VMT than the existing on-site use can be determined to have a non-significant impact.

Once the land use type(s) are determined, the next step is to screen the project to determine if further CEQA transportation analysis is necessary.

Step 2: Screen for Non-Significant Transportation Impact

The purpose of this step is to determine if a presumption of a non-significant transportation impact can be made on the facts of the project. The guidance in this section is primarily intended to avoid unnecessary analysis and findings that would be inconsistent with the intent of SB 743. A detailed CEQA transportation analysis will not be required for land use elements of a project that meet the screening criteria shown in **Exhibit 2**. If a project has multiple distinct uses (*e.g.*, residential, office, retail, *etc.*), only those elements of the project that are not screened out would require further evaluation to determine transportation significance for CEQA purposes.

¹ [ITE Trip Generation Manual, 11th Edition, September 2011](#)

Exhibit 2 – Screening Criteria

[Exhibit 2 – Screening Criteria](#)

Screening Criteria	OPR Guidance
Small Projects¹² This applies to projects with low trip generation per existing CEQA exemptions. Note that this includes any land use type (residential, office, open space, neighborhood parks, etc.)	Presumed to cause a less-than-significant impact: - Project generation is less than 110 trips per day per the ITE Manual or other acceptable source determined by the City of Pacific Grove Unless: - It is inconsistent with the Sustainable Communities Strategy as determined by the City of Pacific Grove
Projects Near High Quality Transit²³ High quality transit provides a viable option for many to replace automobile trips with transit trips resulting in an overall reduction in VMT.	Presumed to cause a less-than-significant impact: - Within a ½ mile of an existing major transit stop⁴; and - Maintains a service interval frequency of 15 minutes or less during the morning and afternoon peak commute periods). Unless: - Has a Floor Area Ratio (FAR) of less than 0.75; or - Includes more parking, excluding on-street parking, for use by residents, customers, or employees of the project than required by the City of Pacific Grove zoning code; or - It is inconsistent with the Sustainable Communities Strategy as determined by the City of Pacific Grove; or - Replaces affordable residential units with a smaller number of moderate- or high-income residential units.
Local-Serving Retail³⁵ The introduction of new Local-serving retail has been	Presumed to cause a less-than-significant impact: - No single store on-site exceeds 50,000 square feet; and - Project is local-serving as determined by the City of Pacific Grove

¹² 2018 OPR Guidance, page 12

²³ 2018 OPR Guidance, page 13

⁴ Refer to CEQA definition in PRC 21064.3

³⁵ 2018 OPR Guidance, page 16

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
determined to reduce VMT by shortening trips that will occur out of necessity (groceries, other essentials, etc.) .	Unless: The nature of the service is regionally focused as determined by the City of Pacific Grove
Screening Criteria	OPR Guidance
~~of necessity (groceries, other essentials, etc.)~~	~~■ The nature of the service is regionally focused as determined by the City of Pacific Grove~~
Affordable Housing⁴⁶	Presumed to cause a less-than-significant impact:
Lower-income residents make fewer trips on average, resulting in lower VMT overall.	- A high percentage of affordable housing is provided as determined by the City of Pacific Grove Unless: - The percentage of affordable housing is determined by the City of Pacific Grove to not be high in relation to the residential element of a project
Local Essential Service⁵²	Presumed to cause a less-than-significant impact:
As with Local-Serving Retail, the introduction of new Local Essential Services shortens ~~non-~~ non- discretionary trips by putting those goods and services closer to residents, resulting in	Building is less than 50,000 square feet: and Land Use is: - Day care center; or - Public K-12 School; or - Police or Fire facility; or - Medical/Dental office building; or - Government offices (in-person services such as post office, library, and utilities)

⁴⁶ 2018 OPR Guidance, page 14. As described, “Evidence supports a presumption of less than significant impact for a 100 percent affordable residential development (or the residential component of a mixed-use development) in infill locations. Lead agencies may develop their own presumption of less than significant impact for residential projects (or residential portions of mixed-use projects) containing a particular amount of affordable housing, based on local circumstances and evidence.”

⁵² Based on assumption that, like local-serving retail, the addition of necessary local in-person services will reduce VMT given that trips to these locations will be made irrespective of distance given their non-discretionary nature.

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
an overall reduction in VMT.	Unless: ▪ The nature of the service is regionally focused as determined by the City of Pacific Grove
Map-Based Screening This method eliminates the need for complex analyses, by allowing existing VMT data to serve as a basis for the screening smaller developments. Note that screening is limited to residential and office projects utilizing the maps.	Presumed to cause a less-than-significant impact: ▪ Area of development is under threshold as shown on screening map as allowed by the City of Pacific Grove Unless: ▪ Represent significant growth as to substantially change regional travel patterns as determined by the City of Pacific Grove
Redevelopment Projects⁶⁸ Projects with lower VMT than existing ~~on-~~ on-site uses, can under limited circumstances, be presumed to have a non-significant impact. In the event this screening does not apply, projects should be analyzed as though there is no existing uses on site (project analysis cannot take	Presumed to cause a less-than-significant impact: ▪ Project replaces an existing VMT-generating land use and does not result in a net overall increase in VMT Unless: ▪ The project replaces an existing VMT-generating land use and results in a net overall increase in VMT

⁶⁸ [2018 OPR Guidance](#), Page 18

[Exhibit 2 – Screening Criteria](#)

Screening Criteria	OPR Guidance
credit for existing VMT).	

~~Exhibit 2 – Screening Criteria~~

Step 3: Determine Significance Threshold and Methodology

The purpose of this step is to determine the [applicable](#) threshold of significance for ~~application to a~~ land use ~~project if it is~~ [projects that do](#) not [get](#) screened out in Step [32](#), or if further analysis is necessary to determine VMT impacts. Significance thresholds are based on land use type, broadly categorized as efficiency and net change metrics. Efficiency metrics include VMT/Capita and Work VMT/employee⁷⁹. As described in **Exhibit 3**, “Net Change” refers to the net change in regional VMT. “Net Change” is used for elements that include a significant customer base, such as commercial uses, although it can extend to a variety of uses that have similar characteristics.

Exhibit 3 - Significance Threshold and Methodology

Example Details	Threshold Basis	
	Efficiency	Net Change
Example Land Use	Residential, Professional Office, Industrial	Retail, Medical Office, Sports Venue
Example VMT Thresholds	Per capita, per employee	Region VMT change
Customer Component	No	Yes
Allowable Methods	Non-Significant Screening Criteria, The City of Pacific Grove VMT Analysis Tool, Travel Demand Model	Non-Significant Screening Criteria, Travel Demand Model

For projects with a significant customer base (retail, medical offices, sports venue, *etc.*) it is typically appropriate to separate employee trip characteristics from the customer base unless the customer base is minimal in nature. Under these circumstances, it is most appropriate to evaluate the total of the delta in regional VMT resultant from the customer base plus the delta of VMT resultant from employees based on the following formula:

$$(\text{number of employees}) \times (\text{estimated VMT/employee} - \text{threshold VMT/employee})$$

The threshold of significance will accordingly correspond to the “Net Change” threshold as described in **Exhibit 3**. Under these circumstances, it is most appropriate to evaluate this total Net Change as the basis for evaluating the outcome of mitigations in terms of determining transportation significance although each element of the project should be tallied separately for the purposes of clarity.

⁷⁹ Work VMT specifically applies to commute trips as represented by the attractions in the Travel Demand Model. Refer to Appendix A for additional information

VTM Thresholds of Significance

OPR ~~suggests-recommends~~ a 15-percent VMT reduction relative to existing local or regional average VMT levels. While the 2018 OPR Guidance is not binding on public agencies, CEQA allows lead agencies to “consider thresholds of significance...recommended by other public agencies, provided the decision to adopt those thresholds is supported by substantial evidence.”¹⁰

According to OPR, achieving 15-percent lower per capita VMT (for residential development) or per employee (for employment-based development) compared with VMT resulting from existing development is both generally achievable and is supported by evidence that connects this level of reduction to the State’s emissions goals.¹¹ The thresholds of significance recommended by OPR, as they relate to the City of Pacific Grove, are summarized in **Exhibit 4**.

Exhibit 4 - OPR suggested VMT Thresholds of Significance

Land Use	OPR Guidance ¹²
Residential	15% below existing ~~city-wide~~ <u>county-wide</u> average VMT per capita
Office	15% below existing county-wide average VMT per employee
Retail	Net increase in regional VMT

Based on these criteria~~-~~, the VMT thresholds of significance shown in **Exhibit 5** have been established.

Exhibit 5 - VMT Thresholds of Significance

Land Use	VMT Threshold	Basis
Residential	~~9.7~~ <u>14.3</u> VMT/capita ⁹¹³	15% below existing ~~city-wide~~ <u>county-wide</u> average VMT per capita.
Office	~~6.6~~ <u>18.9</u> Work VMT/Employee ¹⁰¹⁴	15% below existing county-wide average Work VMT per employee
Retail	Net regional change	Using the county geographical area as the basis
Other Employment	Work VMT/Employee ¹¹¹⁵	15% below existing county-wide average Work VMT per employee for similar land uses
Other Customer	Net regional change	Using the county or another geography deemed appropriate by the City of Pacific Grove as the basis

¹⁰ CEQA Guidelines, § 15064.7(c).

¹¹ 2018 OPR Guidance, pp. 10-12.

⁸¹² 2018 OPR Guidance, Pages 15-16

⁹¹³ Residential VMT specifically applies to all Home-Based trips residential trips ~~as represented in the Travel Demand Model~~. Refer to Appendix A for additional information.

¹⁰¹⁴ Work VMT specifically applies to commute trips ~~as represented in the Travel Demand Model~~. Refer to Appendix A for additional information

¹¹¹⁵ Work VMT specifically applies to commute trips ~~as represented in the Travel Demand Model~~. Refer to Appendix A for additional information

*Current as of March 2024. Note that the values in this table will be updated periodically based on the availability of new information as determined by the City of Pacific Grove. As such, care should be taken in the use of this document to verify the then current values for Exhibit 5.

Note that the inclusion of “Other Employment” and “Other Customer” refers to all other service and goods providers that are not included in the office/retail categories. As shown, they follow a similar approach to the office/retail categories with the principal difference being that the average/basis for the threshold would be the aggregation of the specific “other” land use across the county (i.e., an industrial project would use industrial uses, etc.).

Based on the availability of new information and/or improvements to calculation methods ~~and data as well as other modeling modifications~~, there will be periodic updates to the numerical threshold values shown in Exhibit 5. As such, ~~however care should be taken in the use of this document to verify the then current values for Exhibit 5~~. However, the relative approach for calculating ~~them the thresholds~~ should remain the same. ~~The~~ Furthermore, the values in the City’s current VMT ~~Analysis Tool~~ analysis tool, discussed below in the next section, will supersede the information provided in ~~the table above Exhibit 5~~. ~~Additional thresholds for various employment types are also provide in the VMT Analysis Tool.~~

~~VMT Analysis Tool~~

~~The City of Pacific Grove has developed a VMT Analysis Tool for use in SB 743 land use project analysis. The purpose of the tool is to calculate VMT for a land use project. As with any VMT Analysis Tool, there are distinct limitations in terms of its application including limits on the type and size of development that can be applied to. Note that it is anticipated that the tool will continue to evolve in response to data or methodological changes and as such it is important that the most current version of the tool be utilized. Broadly, the VMT Analysis Tool provides the following information:~~

- ~~■ Institute of Transportation Engineers (ITE) Trip Generation~~
- ~~■ VMT Threshold Analysis~~
- ~~■ Greenhouse Gas (GHG) Estimation~~
- ~~■ Transportation Demand Management (TDM) Evaluation~~

The VMT Analysis methodology is summarized in **Appendix A**.

Step 4: Develop Scope Agreement and Complete VMT Analysis

Prior to undertaking VMT analysis, a scope compliant with the City of Pacific Grove’s requirements must be prepared by the project applicant and submitted to the City for approval. Given the potential complexities of some uses, particularly those not clearly identified as residential, retail, or office, ~~an a~~ scope agreement regarding the threshold and methodology is important to avoid analysis that is not compliant with the City of Pacific Grove’s requirements.

Step 5: Identify Mitigation Measures

During this step, the analysis agreed to under Step ~~5~~⁴ should be ~~complete~~^{completed} and approved by the City of Pacific Grove. Relevant documentation providing enough detail that assumptions are clearly understandable, and methods that can be replicated should be provided along with the results of the VMT analysis for the proposed project.

If a significant transportation impact is identified, feasible mitigation measures to avoid or reduce the impact must be identified. CEQA requires that mitigation measures are included in the project's environmental assessment. [The 2018 OPR Guidance](#) provides a list of potential measures to reduce VMT but gives the lead agency (the City of Pacific Grove in this case) full discretion in the selection of mitigation measures.

The type and size of the project will determine the most appropriate mitigation strategies for VMT impacts. For large projects such as general plans or specific plans, VMT mitigations should concentrate on the project's density and land use mix, site design, regional policies, and availability of transit, bicycle, and pedestrian facilities. For smaller projects such as an individual development project, VMT mitigations will typically require the preparation of a transportation demand management (TDM) program. A TDM program is a combination of strategies to reduce VMT. The program is created by an applicant for their land use project based on a list of strategies agreed to with the City of Pacific Grove.

~~The City of Pacific Grove has developed a list of potential TDM strategies appropriate for their jurisdiction and what magnitude of VMT reduction could be achieved. The selection process was guided by the California Air Pollution Control Officers Association (CAPCOA) recommendations found in the 2010 publication Quantifying Greenhouse Gas Mitigation Measures. The area context of the City of Pacific Grove also influenced the type of TDM strategies that were selected. CAPCOA has found strategies with the largest VMT reduction in rural areas include vanpools, telecommute or alternative work schedules, and master planned communities with design and land use diversity to encourage intra-community travel. Based on empirical evidence, CAPCOA found the cross-category maximum for all transportation-related mitigation measures is 15% for suburban settings.~~

~~Appendix B summarizes available TDM strategies along with the maximum VMT reduction, applicable land use application, and complementary strategies. The City of Pacific Grove's VMT Analysis Tool includes the TDMs summarized in Appendix B.~~

Step 6: Mitigation Monitoring

As required by CEQA, the City of Pacific Grove will require ongoing mitigation monitoring and reporting. The specifics of this will be developed on a project basis.

4.0 Transportation Projects

Depending on the specific nature of a transportation project⁴, it can alter trip patterns, trip lengths, and even trip generation. Research has determined that [roadway](#) capacity-enhancing projects can and often do increase VMT. This phenomenon is commonly referred to as "induced demand". ~~The result of these.~~ ^{These} increases in VMT ~~can~~ often ~~lead to~~ both ~~be measured in~~ congestion increases and

negative impacts to air quality¹²¹⁶, including GHG emissions. While methods are generally less developed for the analysis of VT associated with induced demand compared to other areas of transportation analysis, there is still the need to quantify and understand its impact to the transportation system considering the requirements of SB 743.

~~Similarly,~~ Similar to land use projects, the approach to transportation project analysis closely align aligns with the 2018 OPR Guidance. In terms of analysis, the analyst should first determine whether the transportation project has been prescreened and determined to have a non-significant impact as described in the following section.

Screen for Non-Significant Transportation Impact

At the discretion of the City of Pacific Grove, the following improvements ~~maybe~~ may be presumed to result in a non-significant impact¹²¹⁶:

1. Rehabilitation, maintenance, replacement, safety, and repair projects designed to improve the condition of existing transportation assets (e.g., highways; roadways; bridges; culverts¹²¹⁶).
2. Transportation Management System field elements such as cameras, message signs, detection, or signals; tunnels; transit systems; and assets that serve bicycle and pedestrian facilities¹²¹⁶ and that do not add additional motor vehicle capacity.
3. Roadside safety devices or hardware installation such as median barriers and guardrails.
4. Roadway shoulder enhancements to provide “breakdown space,” dedicated space for use only by transit vehicles, to provide bicycle access, or to otherwise improve safety, but which will not be used as automobile vehicle travel lanes.
5. Addition of an auxiliary lane of less than one mile in length designed to improve roadway safety.
6. Installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, two-way left turn lanes, or emergency breakdown lanes that are not utilized as through lanes.
7. Addition of roadway capacity on local or collector streets, based on the City’s functional classification, provided the project also substantially improves conditions for pedestrians, cyclists, and, if applicable, transit.
8. Conversion of existing general-purpose lanes (including ramps) to managed lanes or transit lanes, or changing lane management in a manner that would not substantially increase vehicle travel.
9. Addition of a new lane that is permanently restricted to use only by transit vehicles.
10. Reduction in the number of through lanes.

¹²¹⁶ 2018 OPR Guidance, Page 20

11. Grade separation to separate vehicles from rail, transit, pedestrians or bicycles, or to replace a lane in order to separate preferential vehicles (e.g., HOV [\[high occupancy vehicle\]](#), HOT [\[high occupancy toll\]](#), or trucks) from general vehicles.
12. Installation, removal, or reconfiguration of traffic control devices, including Transit Signal Priority (TSP) features.
13. Installation of traffic metering systems, detection systems, cameras, changeable message signs and other electronics designed to optimize vehicle, bicycle, or pedestrian flow.
14. Timing of signals to optimize vehicle, bicycle, or pedestrian flow.
15. Installation of roundabouts or traffic circles.
16. Installation or reconfiguration of traffic calming devices.
17. Adoption of or increase in tolls.
18. Addition of tolled lanes, where tolls are sufficient to mitigate VMT increase.
19. Initiation of new transit service.
20. Conversion of streets from one-way to two-way operation with no net increase in number of traffic lanes.
21. Removal or relocation of off-street or on-street parking spaces.
22. Adoption or modification of on-street parking or loading restrictions (including meters, time limits, accessible spaces, and preferential/reserved parking permit programs).
23. Addition of traffic wayfinding signage.
24. Rehabilitation and maintenance projects that do not add motor vehicle capacity.
25. Addition of new or enhanced bike or pedestrian facilities on existing streets/highways or within existing public rights-of-way.
26. Addition of Class I bike paths, trails, multi-use paths, or other off-road facilities that serve ~~non-~~
[non-](#)motorized travel.
27. [Installation of publicly available alternative fuel/charging infrastructure.](#)
- ~~27. — 27. — Installation of publicly available alternative fuel/charging infrastructure~~
28. Addition of passing lanes, truck climbing lanes, or truck brake-check lanes in rural areas that do not increase overall vehicle capacity along the corridor.

Significance Threshold and Methodology

For projects that increase roadway capacity and ~~are do not identified fall~~ under [one or more of](#) the Non-Significant Screening Criteria in the prior section, the significance criterion should be ~~change in regional VMT. A finding of a significant impact would be determined~~ if a transportation

project results in a net increase in regional VMT. As a practical matter, any roadway with more than a quarter mile in new roadway travel lane (through lanes) should be evaluated for induced demand. A ~~competent~~qualified transportation professional will be required to provide a basis for this evaluation that considers available data, roadway context, and tools. Depending on the location and nature of the roadway this may be best accomplished using ~~a the~~the Association of Monterey Bay Area Governments (AMBAG-) Travel Demand Model. CEQA requires mitigation monitoring. ~~If a~~so if a transportation project is required to implement VMT mitigation measures, the City of Pacific Grove is required to monitor whether the project is implementing the mitigation measures. Mitigation monitoring will be determined and implemented on a case-by-case basis by the City of Pacific Grove ~~staff~~.

Appendix A

VTM Analysis Methodology

Travel Demand Models (TDMs) are broadly considered to be amongst the most accurate of available tools to assess regional and sub-area VMT. The Association of Monterey Bay Area governments (AMBAG) maintains the regional travel demand model as a part of the Metropolitan Transportation Plan/Sustainable Communities Strategy program (MTP/SCS) that includes Monterey County and the City of Pacific Grove. The latest available version of the AMBAG TDM was developed in 2018.

The 2018 Base Year model scenario was used for the baseline conditions and 2040 Future Year model scenario was used for the cumulative conditions in the City. The incorporated cities included in the model are major contributors of the trips throughout Monterey County during a typical weekday.

As many of AMBAG Region's daily trips originate from or are destined for areas outside of the County such as the Bay area and Santa Clara County (external trips), their total length could not be computed solely using the AMBAG TDM, additional analysis was required. The length of these trips was determined using two main processes, using Big Data and AMBAG TDM output files. Data was obtained from Teralytics that summarized the number of trips to and from the AMBAG Region to the surrounding Counties at the Census Tract level for the entire month of October 2019. The distance between each Census Tract was determined by using the TransCAD software, the modeling platform the AMBAG TDM runs on. The multipath analysis function within the TransCAD software was used to determine the point to point distance between the centroid of each Census Tract using the internal pathing algorithm that determines the shortest path along the roadway network between the centroid of each Census Tract pair. The shortest path between each AMBAG Region Census Tract and each non-AMBAG Region Census Tract that contained at least one trip was multiplied by the share of the total trips to and from each Census Tract within the AMBAG Region to determine the average trip length to and from Census Tracts. The average trip length was applied to each TAZ based on the TAZ to Census Tract association and multiplied by the number of external trips to and from that TAZ to determine the total external VMT by TAZ.

Model Zone Structure

VTM was computed at Traffic Analysis Zone (TAZ) level to determine the thresholds as well as to allow for comparisons among different areas throughout the County.

Socio-Economic Data

Socioeconomic data (SED) and other model inputs are associated with each TAZ. Out of several different variables in the model SED, the VMT analysis mainly focused on population, the number of households, the number of students, and types of employment that are used in the trip generation component. VMT computation was

~~focused on the number of households in each TAZ and employment variables by 6 industries to determine rest of the trips. Employment variables used in the model are listed below.~~

~~Employment by Industry type:~~

- ~~1.—— Agriculture~~
- ~~2.—— Construction~~
- ~~3.—— Industrial and Manufacturing~~
- ~~4.—— Retail and Food~~
- ~~5.—— Service (White Collar, non-government jobs)~~
- ~~6.—— Public Administration (Government jobs)~~

Trip Generation

~~The AMBAG TDM runs a series of complex steps to estimate daily trip productions and attractions by various trip purposes for each TAZ. The trip purposes are listed below.~~

~~Model Trip Purpose:~~

- ~~1.—— Home-Based Work (HBW)~~
- ~~2.—— Home-Based Shopping (HBShop)~~
- ~~3.—— Home-Based School, K-12 (HBSchool)~~
- ~~4.—— Home-Based University (HBUniv)~~
- ~~5.—— Home-Based Other (HBOther)~~
- ~~6.—— Non-Home-Based Work (NHBW)~~
- ~~7.—— Non-Home-Based Other (NHBO)~~
- ~~8.—— Visitor Shop~~
- ~~9.—— Visitor Tourist~~

~~The production model uses several variables such as number of workers, household income, age, household size and car availability depending on the trip purpose. Trip productions for every TAZ in the model were compiled separately by each trip purpose. The attraction model uses employment categories for the HW trip purpose, whereas it uses the employment categories and number of students (K-12 and University) for all non-HW trip purposes. The attraction model estimates trip attractions to each TAZ by regression coefficients that vary by employment type. Trip attractions for every TAZ were compiled by each purpose and by each employment type based on these regression coefficients.~~

Person Trips, Vehicle Occupancy, Trip Distance

~~Trip productions and attractions were compiled after the mode choice step, and only auto trips were used for the analysis. After the vehicle trip productions and attractions were computed for each trip purpose, trip lengths were applied for each zone pair from the skim matrices in the model to compute the production and attraction VMT by purpose.~~

VMT by Land Use Type

~~The residential VMT was computed by combining the production VMT for all the Home-Based trip purposes. VMT for non-residential land uses was computed from the attraction VMT by appropriate trip purposes and regression coefficients used in the attraction model.~~

~~Residential and non-residential VMT by each TAZ were computed and average VMT were determined by City, County and Region levels to determine the City's thresholds.~~

Appendix B

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
Parking Strategies					
1	Reduce Parking Supply	Changes on-site parking supply to provide less than the amount required by municipal code. Permitted reductions could utilize mechanisms such as TOC, Density Bonus, Bike Parking ordinance, or locating in a Specific Plan Area.	Infrastructure	12.5%	All
2	Unbundle Parking	Unbundles parking costs from property costs, requiring those who wish to purchase parking spaces to do so at an additional cost.	Incentive	26%	Residential
3	Parking Cash-Out	Provide employees a choice of forgoing current parking for a cash payment to be determined by the employer. The higher the cash payment, the higher the reduction.	Incentive	7.7%	Commute
4	Price Workplace Parking	Implements workplace parking pricing for employees at employment locations for all land-use contexts and all types of development that include employment where trips originate at home and terminate at work.	Incentive	19.7%	Commute
5	Residential Area Parking Permits	Implementation of residential permit parking zones for long-term use of on-street parking in residential areas.	Incentive	0.25%	All
6	Parking Management Strategies	Strategies to encourage efficiency in parking facilities and improve the quality of service to parking users	X	X	X

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
Transit Strategies					
7	Reduce Transit Headways	Makes transit service more appealing by reducing headways, reducing overall transit trip time, and encouraging riders to switch from auto to transit use.	Incentive/ Infrastructure	2%	All
8	MST Trolley	Implement project-operated or project-sponsored neighborhood shuttle serving residents, employees, and visitors of the project site	Incentive	2%	All
9	Transit Rerouting	Coordinate with local transit agency to provide or reroute existing transit services near the site	Infrastructure	1%	All
10	Transit Stops	Coordinate with local transit agency to provide bus stop near the site. Real time transportation information displays support on-the-go decision making to support sustainable trip making. Only get a reduction on a non-HQT line, cannot get both.	Infrastructure	1%	All
11	Safe and Well-Lit Access to Transit	Enhance the route for people walking or bicycling to nearby transit (typically off-site). Provide Emergency 911 phones along these routes to enhance safety.	Infrastructure	1%	All
12	Transit Subsidies	Involves the subsidization of transit fare for residents and employees of the project site. This strategy assumes transit service is already present in the project area.	Incentive	5%	All

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
Communication & Information Strategies					
13	Voluntary Travel Behavior Change Program	Involves the development of a travel behavior change program that targets individuals' attitudes, goals, and travel behaviors, educating participants on the impacts of their travel choices and the opportunities to alter their habits. Provide a web site that allows employees to research other modes of transportation for commuting. Employee-focused travel behavior change program that targets individuals' attitudes, goals, and travel behaviors, educating participants on the impacts of their travel choices and the opportunities to alter their habits.	Incentive		All
14	Promotions & Marketing	Involves the use of marketing and promotional tools to educate and inform travelers about site-specific transportation options and the effects of their travel choices with passive educational and promotional materials. Marketing and public information campaign to promote awareness of TDM program with an on-site coordinator to monitor program.	Incentive	2%	All
15	On-site TDM Program Manager and TDM Marketing Materials	Marketing and public information campaign to promote awareness of TDM program with an on-site coordinator to monitor program.	Infrastructure		All

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
16	Required Commute-Trip Reduction Program	Employee-focused travel behavior change program that targets individuals' attitudes, goals, and travel behaviors, educating participants on the impacts of their travel choices and the opportunities to alter their habits.	Incentive		Commute
Commuting Strategies					
17	Employer Sponsored Vanpool or Shuttle	Implementation of employer-sponsored employee vanpool or shuttle providing new opportunities for access to connect employees to the project site.	Incentive / Infrastructure	3%	Commute
18	Passenger Loading Zones for Carpool / Vanpool	Provide easy access for carpools or vanpools.	Infrastructure	1%	All
19	On-site Carts or Shuttles	Provide on-site cart or shuttle for employees to travel across campus.	Incentive / Infrastructure	1%	All
20	Emergency Ride Home (ERH) Program	Provides an occasional subsidized ride to commuters who use alternative modes. Guaranteed ride home for people if they need to go home in the middle of the day due to an emergency or stay late and need a ride at a time when transit service is not available. This	Incentive	4%	Commute
		supplemental to the other trip reduction strategies.			
21	Alternative Work Schedule	Flextime, Compressed Work Week (CWW), and staggered shifts	Incentive		All

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
22	Telework (Telecommuting, Distance-Learning, etc.)	Use of telecommunications as a substitute for physical travel.	Incentive	20%	All
23	On-site Childcare	Provides on-site childcare to remove the need to drive a child to daycare at a separate location.	Infrastructure	2%	All
Shared Mobility Strategies					
24	Ride Amigos-Share Program	Increases vehicle occupancy by providing ride-share matching services, designating preferred per City of Pacific Grove for ride-share participants, designing adequate passenger loading/unloading and waiting areas for ride-share vehicles, and providing a website or message board to connect riders and coordinate rides. Need a point person from the business on-site	Incentive	5%	Commute
25	Employee/Employee Car Share	Implement car sharing to allow people to have on-demand access to a vehicle, as-needed. This may include providing membership to an existing program located within 1/4 mile, contracting with a third-party vendor to extend membership-based service to an area, or implementing a project-specific fleet that supports the residents and employees on-site.	Incentive / Infrastructure	1%	All

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM-Type	Max VMT Reduction	VMT Reduction Type
26	School-Carpool Program	Implements a school carpool program to encourage ridesharing for students.	Incentive	15%	School
Bicycle Infrastructure Strategies					
27	Bike Share	Implement bike share to allow people to have on-demand access to a bicycle, as-needed.	Incentive / Infrastructure	0-25%	All
28	Include Bike Parking in excess of City Code	Implements long-term bicycle parking to support safe and comfortable bicycle travel by providing parking facilities at destinations	Infrastructure	1%	All
29	Include Secure Bike Parking and End-of-Trip Facilities (Showers, ex.) in excess of City Code	Implements additional end-of-trip bicycle facilities to support safe and comfortable bicycle travel.	Infrastructure		
30	Bicycle Repair Station / Services	On-site bicycle repair tools and space to use them supports on-going use of bicycles for transportation.	Infrastructure		
Neighborhood Enhancement Strategies					

City of Pacific Grove					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
31	Traffic Calming Improvements	Implements traffic-calming measures throughout and around the perimeter of the project site that encourage people to walk, bike, or take transit within the development and to the development from other locations.	Infrastructure	1%	All
32	Pedestrian Network Improvements	Implements pedestrian network improvements throughout and around the project site that encourages people to walk.	Infrastructure	2%	All
Miscellaneous Strategies					
33	Virtual Care Strategies for Hospitals	Resources to allow patients to access healthcare services or communicate with healthcare staff through online or off-site programs.	Infrastructure	6%	Hospital Visitors
34	On-site Affordable Housing	Provides on-site affordable housing close to TOD or work place/business	Land Use	30%	All
35	Commute Assistance Center	Provide a computer kiosk that allows employees to research other modes of transportation for commuting.	Infrastructure	X	X
36	Delivery Services	Provide delivery services by bicycle, on foot, or in a delivery vehicle that makes multiple stops.	Incentive	1%	Delivery

[The following methodology was used to establish the City's VMT thresholds summarized in Exhibit 5. In addition, this methodology outlines how projects are evaluated using the City's VMT Analysis Tool and the underlying data used in the evaluation process.](#)

[The City's VMT thresholds were developed using trip data for Monterey County supplied by the Replica platform. Replica is a transportation analytics platform that collects anonymized trip data from a variety of data sources including location-based data from cell phones and in-dash GPS units throughout the](#)

United States. The residential VMT for the City was computed by summing the trip distance for every production trip for all home-based trip purposes (home-based work, home-based shopping, home-based school, etc.). The VMT for employee-based land uses for the City was computed by totaling the trip distances for every commute trip within Monterey County. The total residential and work VMT was divided by the total population or employees within the County to determine the average VMT per capita and VMT per employee for Monterey County.

The City's VMT thresholds were determined by setting them 15-percent lower than the baseline countywide average VMT per capita and VMT per employee. As shown in **Exhibit 5**, the 15-percent lower than baseline VMT thresholds were calculated to be 14.3 VMT per capita for residential uses and 18.9 VMT per employee for employment uses based on countywide averages of 16.81 VMT per capita and 22.3 VMT per employee, respectively.

Due to the limitations with the City's VMT Analysis Tool, not all projects can be evaluated using the Tool. Therefore, the following methodology describes how to evaluate those projects that cannot use the City's VMT Analysis Tool. This methodology builds on the previous one underlying the City's VMT Analysis Tool but incorporates data from the AMBAG Travel Demand Model to calibrate VMT data obtained from Replica.

VMT calibration should be completed by first calculating the percent difference in VMT per capita and VMT per employee for each Traffic Analysis Zone (TAZ) and each employment type within the AMBAG RTDM representing the project being analyzed. As the data obtained from Replica does not separate VMT per employee by employment type, a weighted average VMT per employee percent difference should be calculated based on the number of employees in each project TAZ. The Replica data is also provided at the Census Block Group level rather than at the TAZ level, so an association must be established between the AMBAG RTDM TAZ and its representative Block Group. A VMT per capita and VMT per employee percent difference for each Block Group is calculated using a weighted average based on the total population and employment, respectively, for the TAZs within each Block Group. This percent difference is then applied to the VMT per capita and VMT per employee for each Block Group obtained from the Replica platform to determine a calibrated VMT per capita and VMT per employee for the project.

TECHNICAL ADVISORY

ON EVALUATING TRANSPORTATION IMPACTS IN CEQA



April 2018

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A. Introduction

This technical advisory is one in a series of advisories provided by the Governor’s Office of Planning and Research (OPR) as a service to professional planners, land use officials, and CEQA practitioners. OPR issues technical assistance on issues that broadly affect the practice of land use planning and the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). (Gov. Code, § 65040, subds. (g), (l), (m).) The purpose of this document is to provide advice and recommendations, which agencies and other entities may use at their discretion. This document does not alter lead agency discretion in preparing environmental documents subject to CEQA. This document should not be construed as legal advice.

[Senate Bill 743](#) (Steinberg, 2013), which was codified in Public Resources Code section 21099, required changes to the guidelines implementing CEQA (CEQA Guidelines) (Cal. Code Regs., Title 14, Div. 6, Ch. 3, § 15000 et seq.) regarding the analysis of transportation impacts. As one appellate court recently explained: “During the last 10 years, the Legislature has charted a course of long-term sustainability based on denser infill development, reduced reliance on individual vehicles and improved mass transit, all with the goal of reducing greenhouse gas emissions. Section 21099 is part of that strategy” (*Covina Residents for Responsible Development v. City of Covina* (Feb. 28, 2018, B279590) __Cal.App.5th__, ordered pub. Mar. 22, 2018.) Pursuant to Section 21099, the criteria for determining the significance of transportation impacts must “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.” (*Id.*, subd. (b)(1).) To that end, OPR has proposed changes to the CEQA Guidelines that identify vehicle miles traveled (VMT) as the most appropriate metric to evaluate a project’s transportation impacts. Once the California Natural Resources Agency adopts these changes to the CEQA Guidelines, automobile delay, as measured by “level of service” and other similar metrics, generally will no longer constitute a significant environmental effect under CEQA.

This advisory contains technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. Again, OPR provides this Technical Advisory as a resource for the public to use at their discretion. OPR is not enforcing or attempting to enforce any part of the recommendations contained herein. (Gov. Code, § 65035 [“It is not the intent of the Legislature to vest in the Office of Planning and Research any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs.”].)

This April 2018 technical advisory is an update to the advisory it published in November 2017. OPR will continue to monitor implementation of these new provisions and may update or supplement this advisory in response to new information and advancements in modeling and methods.

B. Background

VMT and Greenhouse Gas Emissions Reduction. Senate Bill 32 (Pavley, 2016) requires California to reduce greenhouse gas emissions 40 percent below 1990 levels by 2030, and Executive Order B-16-12

provides a target of 80 percent below 1990 emissions levels for the transportation sector by 2050. The transportation sector has three major means of reducing greenhouse gas emissions: increasing vehicle efficiency, reducing fuel carbon content, and reducing the amount of vehicle travel. The California Air Resources Board (CARB) has provided a path forward for achieving these emissions reductions from the transportation sector in its 2016 Mobile Source Strategy. CARB determined that it will not be possible to achieve the State's 2030 and post-2030 emissions goals without reducing VMT growth.

VMT and Other Impacts to Health and Environment. Beyond greenhouse gas emissions, increases in VMT also impact human health and the natural environment. Human health is impacted as increases in vehicle travel leads to more vehicle crashes, poorer air quality, increases in chronic diseases associated with reduced physical activity, and worse mental health. Increases in vehicle travel also negatively affects other road users, including pedestrians, cyclists, other motorists, and many transit users. The natural environment is impacted as higher VMT leads to more collisions with wildlife and fragments habitat. Additionally, development which leads to more vehicle travel also tends to consume more energy, water, and open space (including farmland and sensitive habitat). This increase in impermeable surfaces raises the flood risk and pollutant transport into waterways. ([Fang et al., 2017.](#))

VMT and Economic Growth. While it was previously believed that VMT growth was a necessary component of economic growth, data from the past two decades shows that economic growth is possible without a concomitant increase in VMT. (Figure 1.) Recent research shows that requiring development projects to mitigate LOS may actually reduce accessibility to destinations and impede economic growth.^{1,2}

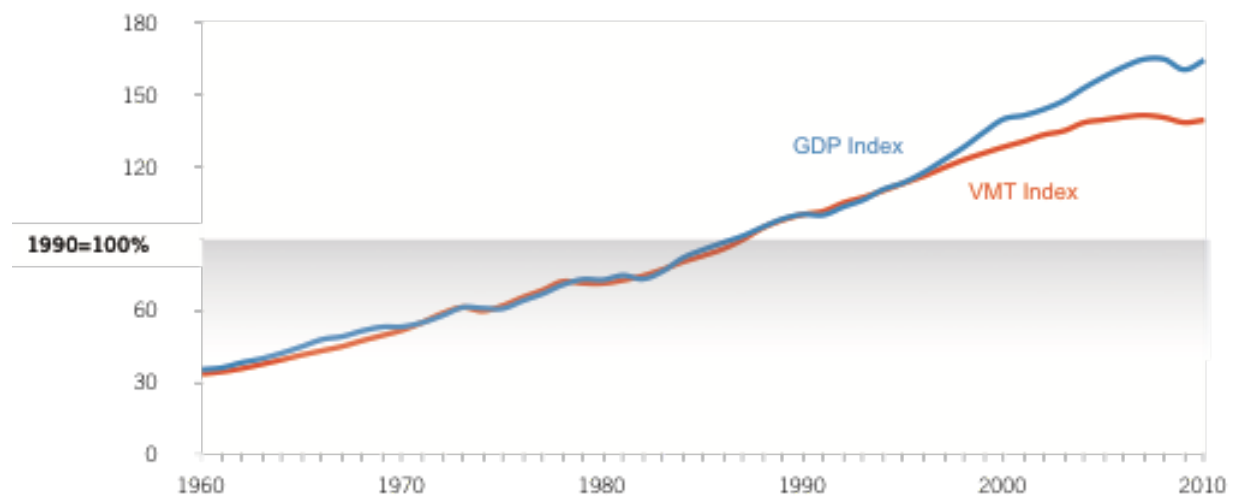


Figure 1. VMT and Gross Domestic Product (GDP), 1960-2010 ([Kooshian and Winkelman, 2011](#))

¹ Haynes et al., [Congested Development: A Study of Traffic Delays, Access, and Economic Activity in Metropolitan Los Angeles](#), Sept. 2015.

² Osman et al., [Not So Fast: A Study of Traffic Delays, Access, and Economic Activity in the San Francisco Bay Area](#), March 2016.

C. Technical Considerations in Assessing Vehicle Miles Traveled

Many practitioners are familiar with accounting for VMT in connection with long-range planning, or as part of the CEQA analysis of a project's greenhouse gas emissions or energy impacts. This document provides technical information on how to assess VMT as part of a transportation impacts analysis under CEQA. Appendix 1 provides a description of which VMT to count and options on how to count it. Appendix 2 provides information on induced travel resulting from roadway capacity projects, including the mechanisms giving rise to induced travel, the research quantifying it, and information on additional approaches for assessing it.

1. Recommendations Regarding Methodology

Proposed Section 15064.3 explains that a "lead agency may use models to estimate a project's vehicle miles traveled" CEQA generally defers to lead agencies on the choice of methodology to analyze impacts. (*Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546; see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409 ["the issue is not whether the studies are irrefutable or whether they could have been better" ... rather, the "relevant issue is only whether the studies are sufficiently credible to be considered" as part of the lead agency's overall evaluation].) This section provides suggestions to lead agencies regarding methodologies to analyze VMT associated with a project.

Vehicle Types. Proposed Section 15064.3, subdivision (a), states, "For the purposes of this section, 'vehicle miles traveled' refers to the amount and distance of automobile travel attributable to a project." Here, the term "automobile" refers to on-road passenger vehicles, specifically cars and light trucks. Heavy-duty truck VMT could be included for modeling convenience and ease of calculation (for example, where models or data provide combined auto and heavy truck VMT). For an apples-to-apples comparison, vehicle types considered should be consistent across project assessment, significance thresholds, and mitigation.

Residential and Office Projects. Tour- and trip-based approaches³ offer the best methods for assessing VMT from residential/office projects and for comparing those assessments to VMT thresholds. These approaches also offer the most straightforward methods for assessing VMT reductions from mitigation measures for residential/office projects. When available, tour-based assessment is ideal because it captures travel behavior more comprehensively. But where tour-based tools or data are not available for all components of an analysis, a trip-based assessment of VMT serves as a reasonable proxy.

Models and methodologies used to calculate thresholds, estimate project VMT, and estimate VMT reduction due to mitigation should be comparable. For example:

³ See Appendix 1, *Considerations About Which VMT to Count*, for a description of these approaches.

- A tour-based assessment of project VMT should be compared to a tour-based threshold, or a trip-based assessment to a trip-based VMT threshold.
- Where a travel demand model is used to determine thresholds, the same model should also be used to provide trip lengths as part of assessing project VMT.
- Where only trip-based estimates of VMT reduction from mitigation are available, a trip-based threshold should be used, and project VMT should be assessed in a trip-based manner.

When a trip-based method is used to analyze a residential project, the focus can be on home-based trips. Similarly, when a trip-based method is used to analyze an office project, the focus can be on home-based work trips.

When tour-based models are used to analyze an office project, either employee work tour VMT or VMT from all employee tours may be attributed to the project. This is because workplace location influences overall travel. For consistency, the significance threshold should be based on the same metric: either employee work tour VMT or VMT from all employee tours.

For office projects that feature a customer component, such as a government office that serves the public, a lead agency can analyze the customer VMT component of the project using the methodology for retail development (see below).

Retail Projects. Generally, lead agencies should analyze the effects of a retail project by assessing the change in total VMT⁴ because retail projects typically re-route travel from other retail destinations. A retail project might lead to increases or decreases in VMT, depending on previously existing retail travel patterns.

Considerations for All Projects. Lead agencies should not truncate any VMT analysis because of jurisdictional or other boundaries. CEQA requires environmental analyses to reflect a “good faith effort at full disclosure.” (CEQA Guidelines, § 15151.) Thus, where methodologies exist that can estimate the full extent of vehicle travel from a project, the lead agency should apply them to do so. Analyses should also consider a project’s both short- and long-term effects on VMT.

Any project that includes in its geographic bounds a portion of an existing or planned Transit Priority Area (i.e., the project is within a ½ mile of an existing or planned major transit stop or an existing stop along a high quality transit corridor) may employ VMT as its primary metric of transportation impact for the entire project. (See Pub. Resources Code, § 21099, subds. (a)(7), (b)(1).)

⁴ See Appendix 1, *Considerations About Which VMT to Count*, “Assessing Change in Total VMT” section, for a description of this approach.

D. General Principles to Guide Consideration of VMT

SB 743 directs OPR to establish specific “criteria for determining the significance of transportation impacts of projects[.]” (Pub. Resources Code, § 21099, subd. (b)(1).) In establishing this criterion, OPR was guided by the general principles contained within CEQA, the CEQA Guidelines, and applicable case law.

To assist in the determination of significance, many lead agencies rely on “thresholds of significance.” The CEQA Guidelines define a “threshold of significance” to mean “an identifiable **quantitative, qualitative⁵ or performance level** of a particular environmental effect, non-compliance with which means the effect will **normally** be determined to be significant by the agency and compliance with which means the effect **normally** will be determined to be less than significant.” (CEQA Guidelines, § 15064.7, subd. (a) (emphasis added).) Lead agencies have discretion to develop and adopt their own, or rely on thresholds recommended by other agencies, “provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.” (*Id.* at subd. (c); *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (*Id.* at § 15384 (emphasis added); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-1109.)

Additionally, the analysis leading to the determination of significance need not be perfect. The CEQA Guidelines describe the standard for adequacy of environmental analyses:

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to **make a decision which intelligently takes account of environmental consequences**. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is **reasonably feasible**. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The **courts have looked not for perfection** but for **adequacy, completeness**, and a **good faith effort** at full disclosure.

(CEQA Guidelines, § 15151 (emphasis added).)

These general principles guide OPR’s recommendations regarding thresholds of significance for VMT set forth below.

⁵ Because the amount of a project’s VMT is needed (and is currently being used in practice) to assess the environmental impacts on a variety of resources (such as air quality, greenhouse gases, energy, and noise), qualitative analysis should only be applied when models or methods do not exist for undertaking a quantitative analysis.

E. Recommendations Regarding Significance Thresholds

As noted above, lead agencies have the discretion to set or apply their own thresholds of significance. (*Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 218-223 [lead agency had discretion to use compliance with AB 32's emissions goals as a significance threshold]; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th at p. 1068.) However, Section 21099 of the Public Resources Code states that the criteria for determining the significance of transportation impacts must promote: (1) reduction of greenhouse gas emissions; (2) development of multimodal transportation networks; and (3) a diversity of land uses. It further directed OPR to prepare and develop criteria for determining significance. (Pub. Resources Code, § 21099, subd. (b)(1).) This section provides OPR's suggested thresholds, as well as considerations for lead agencies that choose to adopt their own thresholds.

Various legislative mandates and state policies establish quantitative greenhouse gas emissions reduction targets. For example:

- [Assembly Bill 32](#) (2006) requires statewide greenhouse gas reductions to 1990 levels by 2020 and continued reductions beyond 2020.
- [Senate Bill 32](#) (2016) requires at least a 40 percent reduction in greenhouse gas emissions by 2030.
- Pursuant to [Senate Bill 375](#) (2008), the California Air Resources Board establishes greenhouse gas reduction targets for metropolitan planning organizations (MPOs) to achieve based on land use patterns and transportation systems specified in Regional Transportation Plans and Sustainable Community Strategies. Current targets for the largest metropolitan planning organizations range from 13% to 16% reductions by 2035.
- [Executive Order B-30-15](#) (2015) sets a GHG emissions reduction target of 40 percent below 1990 levels by 2030.
- [Executive Order S-3-05](#) (2005) sets a GHG emissions reduction target of 80 percent below 1990 levels by 2050.
- [Executive Order B-16-12](#) (2012) specifies a GHG emissions reduction target of 80 percent below 1990 levels by 2050 specifically for transportation.
- [Senate Bill 391](#) requires the [California Transportation Plan](#) to support 80 percent reduction in GHGs below 1990 levels by 2050.
- The [California Air Resources Board Mobile Source Strategy](#) (2016) describes California's strategy for containing air pollutant emissions from vehicles, and quantifies VMT growth compatible with achieving state targets.
- The California Air Resources Board's [2017 Climate Change Scoping Plan Update: The Strategy for Achieving California's 2030 Greenhouse Gas Target](#) describes California's strategy for containing

greenhouse gas emissions from vehicles, and quantifies VMT growth compatible with achieving state targets.

Considering these various targets, the California Supreme Court observed:

Meeting our statewide reduction goals does not preclude all new development. Rather, the Scoping Plan ... assumes continued growth and depends on increased efficiency and conservation in land use and transportation from all Californians.

(*Center for Biological Diversity v. California Dept. of Fish & Wildlife*, *supra*, 62 Cal.4th at p. 220.) Indeed, the Court noted that when a lead agency uses consistency with climate goals as a way to determine significance, particularly for long-term projects, the lead agency must consider the project's effect on meeting long-term reduction goals. (*Ibid.*) And more recently, the Supreme Court stated that "CEQA requires public agencies . . . to ensure that such analysis stay in step with evolving scientific knowledge and state regulatory schemes." (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504.)

Meeting the targets described above will require substantial reductions in existing VMT per capita to curb greenhouse gases and other pollutants. But those targets do not translate directly into VMT thresholds for individual projects for many reasons, including:

- Some, but not all, of the emissions reductions needed to achieve those targets could be accomplished by other measures, including increased vehicle efficiency and decreased fuel carbon content. The CARB's *First Update to the Climate Change Scoping Plan* explains: "Achieving California's long-term criteria pollutant and GHG emissions goals will require four strategies to be employed: (1) improve vehicle efficiency and develop zero emission technologies, (2) reduce the carbon content of fuels and provide market support to get these lower-carbon fuels into the marketplace, (3) **plan and build communities to reduce vehicular GHG emissions and provide more transportation options**, and (4) **improve the efficiency and throughput of existing transportation systems**." (CARB, *First Update to the Climate Change Scoping Plan*, May 2014, p. 46 (emphasis added).) In other words, vehicle efficiency and better fuels are necessary, but insufficient, to address the greenhouse gas emissions from the transportation system. Land use patterns and transportation options also will need to change to support reductions in vehicle travel/VMT.
- New land use projects alone will not sufficiently reduce per-capita VMT to achieve those targets, nor are they expected to be the sole source of VMT reduction.
- Interactions between land use projects, and also between land use and transportation projects, existing and future, together affect VMT.
- Because location within the region is the most important determinant of VMT, in some cases, streamlining CEQA review of projects in travel efficient locations may be the most effective means of reducing VMT.

- When assessing climate impacts of land use projects, use of an efficiency metric (e.g., per capita, per employee) may provide a better measure of impact than an absolute numeric threshold. (*Center for Biological Diversity, supra.*)

Public Resources Code section 21099 directs OPR to propose criteria for determining the significance of transportation impacts. In this Technical Advisory, OPR provides its recommendations to assist lead agencies in selecting a significance threshold that may be appropriate for their particular projects. While OPR's Technical Advisory is not binding on public agencies, CEQA allows lead agencies to "consider thresholds of significance . . . recommended by other public agencies, provided the decision to adopt those thresholds is supported by substantial evidence." (CEQA Guidelines, § 15064.7, subd. (c).) Based on OPR's extensive review of the applicable research and literature on this topic, **OPR finds that in most instances a per capita or per employee VMT that is fifteen percent below that of existing development may be a reasonable threshold.**

First, as described above, Section 21099 states that the criteria for determining significance must "promote the reduction in greenhouse gas emissions." SB 743 also states the Legislature's intent that the analysis of transportation in CEQA better promotes the State's goals of reducing greenhouse gas emissions. It cites in particular the reduction goals in the Global Warming Solutions Act (AB 32) and the Sustainable Communities and Climate Protection Act (SB 375), both of which call for substantial reductions. As indicated above, CARB established long-term [reduction targets](#) for the largest regions in the state that ranged from 13 to 16 percent.

Second, Caltrans has developed a statewide VMT reduction target in its [Strategic Management Plan](#). Specifically, it calls for a 15 percent reduction in per capita VMT, compared to 2010 levels, by 2020.

Third, fifteen percent reductions in VMT are achievable at the project level in a variety of place types. ([Quantifying Greenhouse Gas Measures](#), p. 55 CAPCOA, 2010).

Fourth, in CARB's most recent update to the Climate Change Scoping Plan, a 15 percent reduction in light-duty VMT beyond what existing plan and policies achieve is recommended to achieve the State's 2030 and 2050 targets. (CARB, [The 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target](#), October 2017, pp. 116, 150; see generally, CARB, [Climate Change Scoping Plan: A Framework for Change](#), December 2008, p. 27; CARB, [First Update to the Climate Change Scoping Plan](#), May 2014, p. 113; CARB, [The 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target](#), October 2017, p. 149.)

The Final 2017 Scoping Plan Update states,

VMT reductions are necessary to achieve the 2030 target and must be part of any strategy evaluated in this Plan. Stronger SB 375 GHG reduction targets will enable the State to make significant progress toward this goal, but alone will not provide all of the VMT growth reductions that will be needed. There is a gap between what SB 375 can provide and what is needed to meet the State's 2030 and 2050 goals." (CARB, [California's 2017 Climate Change Scoping Plan](#), November 2017, p. 75.)

Furthermore,

At the State level, a number of important policies are being developed. Governor Brown signed Senate Bill 743 (Steinberg, 2013), which called for an update to the metric of transportation impact in CEQA. That update to the CEQA Guidelines is currently underway. Employing VMT as the metric of transportation impact statewide will help to ensure GHG reductions planned under SB 375 will be achieved through on-the-ground development, and will also play an important role in creating the additional GHG reductions needed beyond SB 375 across the State. (*Id.* at p. 76.)

....

Employing VMT as the metric of transportation impact statewide will help to ensure GHG reductions planned under SB 375 will be achieved through on-the-ground development, and will also play an important role in creating the additional GHG reductions needed beyond SB 375 across the State. Implementation of this change will rely, in part, on local land use decisions to reduce GHG emissions associated with the transportation sector, both at the project level, and in long-term plans (including general plans, climate action plans, specific plans, and transportation plans) and supporting sustainable community strategies developed under SB 375. The State can provide guidance and tools to assist local governments in achieving those objectives. (*Id.* at p. 76.)

....

California's future climate strategy will require increased focus on integrated land use planning to support livable, transit-connected communities, and conservation of agricultural and other lands. Accommodating population and economic growth through travel- and energy-efficient land use provides GHG-efficient growth, reducing GHGs from both transportation and building energy use. GHGs can be further reduced at the project level through implementing energy-efficient construction and travel demand management approaches. Further, the State's understanding of transportation impacts continues to evolve. The CEQA Guidelines are being updated to focus the analysis of transportation impacts on VMT. OPR's Technical Advisory includes methods of analysis of transportation impacts, approaches to setting significance thresholds, and includes examples of VMT mitigation under CEQA. (*Id.* at p. 102.)

Also, the Scoping Plan includes the following item as a "Recommended Action": "forthcoming statewide implementation of SB 743[.]" (*Id.* at p. 103.)

Achieving 15 percent lower per capita (residential) or per employee (office) VMT than existing development is both generally achievable and is supported by evidence that connects this level of reduction to the State's emissions goals. The following pages describe a series of screening thresholds below which a detailed analysis may not be required. Next, this advisory describes numeric thresholds recommended for various project types. Finally, this advisory describes the analysis for certain unique circumstances.

1. Screening Thresholds for Land Use Projects

Many agencies use “screening thresholds” to quickly identify when a project should be expected to cause a less-than-significant impact without conducting a detailed study. (See e.g., CEQA Guidelines, §§ 15063(c)(3)(C), 15128, and Appendix G.) As explained below, this technical advisory suggests that lead agencies may screen out VMT impacts using project size, maps, and transit availability.

Screening Threshold for Small Projects

Many local agencies have developed screening thresholds to indicate when detailed analysis is needed. Absent substantial evidence indicating that a project would generate a potentially significant level of VMT, or inconsistency with a Sustainable Communities Strategy (SCS) or general plan, projects that generate or attract fewer than 110 trips per day⁶ generally may be assumed to cause a less-than-significant transportation impact.

Map-Based Screening for Residential and Office Projects

Residential and office projects that locate in areas with low VMT, and that incorporate similar features (i.e., density, mix of uses, transit accessibility), will tend to exhibit similarly low VMT. Maps created with data from a travel survey or travel demand model can illustrate areas that are currently below threshold VMT (see recommendations below). Because new development in such locations would likely result in a similar level of VMT, such maps can be used to screen out residential and office projects from needing to prepare a detailed VMT analysis.

⁶ CEQA provides a categorical exemption for existing facilities, including additions to existing structures of up to 10,000 square feet, so long as the project is in an area where public infrastructure is available to allow for maximum planned development and the project is not in an environmentally sensitive area. (CEQA Guidelines, § 15301, subd. (e)(2).) Typical project types for which trip generation increases relatively linearly with building footprint (i.e., general office building, single tenant office building, office park, and business park) generate or attract an additional 110-124 trips per 10,000 square feet. Therefore, absent substantial evidence otherwise, it is reasonable to conclude that the addition of 110 or fewer trips could be considered not to lead to a significant impact.

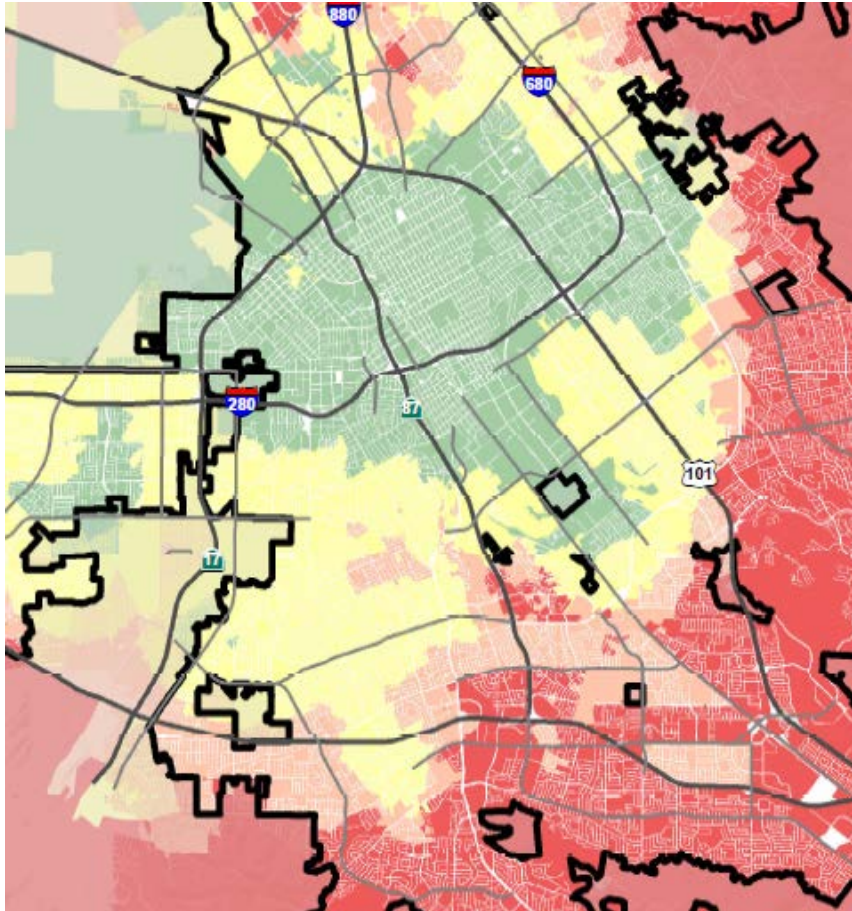


Figure 2. Example map of household VMT that could be used to delineate areas eligible to receive streamlining for VMT analysis. (Source: City of San José, Department of Transportation, draft output of City Transportation Model.)

Presumption of Less Than Significant Impact Near Transit Stations

Proposed CEQA Guideline Section 15064.3, subdivision (b)(1), states that lead agencies generally should presume that certain projects (including residential, retail, and office projects, as well as projects that are a mix of these uses) proposed within ½ mile of an existing major transit stop⁷ or an existing stop along a high quality transit corridor⁸ will have a less-than-significant impact on VMT. This presumption would not apply, however, if project-specific or location-specific information indicates that the project

⁷ Pub. Resources Code, § 21064.3 (“‘Major transit stop’ means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.”).

⁸ Pub. Resources Code, § 21155 (“For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.”).

will still generate significant levels of VMT. For example, the presumption might not be appropriate if the project:

- Has a Floor Area Ratio (FAR) of less than 0.75
- Includes more parking for use by residents, customers, or employees of the project than required by the jurisdiction (if the jurisdiction requires the project to supply parking)
- Is inconsistent with the applicable Sustainable Communities Strategy (as determined by the lead agency, with input from the Metropolitan Planning Organization)

If any of these exceptions to the presumption might apply, the lead agency should conduct a detailed VMT analysis to determine whether the project would exceed VMT thresholds (see below).

2. Recommended Numeric Thresholds for Residential, Office, and Retail Projects

Recommended threshold for residential projects: A proposed project exceeding a level of 15 percent below existing VMT per capita may indicate a significant transportation impact. Existing VMT per capita may be measured as regional VMT per capita or as city VMT per capita. Proposed development referencing city VMT per capita should not cumulatively exceed the number of units specified in the SCS for that city, and should be consistent with the SCS.

Residential development that would generate vehicle travel that is 15 or more percent below the existing residential VMT per capita, measured against the region or city, may indicate a less-than-significant transportation impact. In MPO areas, development measured against city VMT per capita (rather than regional VMT per capita) should not cumulatively exceed the population or number of units specified in the SCS for that city because greater-than-planned amounts of development in areas above the region-based threshold would undermine the VMT containment needed to achieve regional targets under SB 375.

For residential projects in unincorporated county areas, the local agency can compare a residential project's VMT to (1) the region's VMT per capita, or (2) the aggregate population-weighted VMT per capita of all cities in the region. In MPO areas, development in unincorporated areas measured against aggregate city VMT per capita (rather than regional VMT per capita) should not cumulatively exceed the population or number of units specified in the SCS for that city because greater-than-planned amounts of development in areas above the regional threshold would undermine achievement of regional targets under SB 375.

These thresholds can be applied to either household (i.e., tour-based) VMT or home-based (i.e., trip-based) VMT assessments.⁹ It is critical, however, that the agency be consistent in its VMT measurement

⁹ See Appendix 1 for a description of these approaches.

approach throughout the analysis to maintain an “apples-to-apples” comparison. For example, if the agency uses a home-based VMT for the threshold, it should also be use home-based VMT for calculating project VMT and VMT reduction due to mitigation measures.

Recommended threshold for office projects: A proposed project exceeding a level of 15 percent below existing regional VMT per employee may indicate a significant transportation impact.

Office projects that would generate vehicle travel exceeding 15 percent below existing VMT per employee for the region may indicate a significant transportation impact. In cases where the region is substantially larger than the geography over which most workers would be expected to live, it might be appropriate to refer to a smaller geography, such as the county, that includes the area over which nearly all workers would be expected to live.

Office VMT screening maps can be developed using tour-based data, considering either total employee VMT or employee work tour VMT. Similarly, tour-based analysis of office project VMT could consider either total employee VMT or employee work tour VMT. Where tour-based information is unavailable for threshold determination, project assessment, or assessment of mitigation, home-based work trip VMT should be used throughout all steps of the analysis to maintain an “apples-to-apples” comparison.

Recommended threshold for retail projects: A net increase in total VMT may indicate a significant transportation impact.

Because new retail development typically redistributes shopping trips rather than creating new trips,¹⁰ estimating the total change in VMT (i.e., the difference in total VMT in the area affected with and without the project) is the best way to analyze a retail project’s transportation impacts.

By adding retail opportunities into the urban fabric and thereby improving retail destination proximity, local-serving retail development tends to shorten trips and reduce VMT. Thus, lead agencies generally may presume such development creates a less-than-significant transportation impact. Regional-serving retail development, on the other hand, which can lead to substitution of longer trips for shorter ones, may tend to have a significant impact. Where such development decreases VMT, lead agencies should consider the impact to be less-than-significant.

Many cities and counties define local-serving and regional-serving retail in their zoning codes. Lead agencies may refer to those local definitions when available, but should also consider any project-specific information, such as market studies or economic impacts analyses that might bear on customers’ travel behavior. Because lead agencies will best understand their own communities and the likely travel behaviors of future project users, they are likely in the best position to decide when a

¹⁰ Lovejoy, et al., *Measuring the impacts of local land-use policies on vehicle miles of travel: The case of the first big-box store in Davis, California*, *The Journal of Transport and Land Use*, 2013.

project will likely be local-serving. Generally, however, retail development including stores larger than 50,000 square feet might be considered regional-serving, and so lead agencies should undertake an analysis to determine whether the project might increase or decrease VMT.

Mixed-Use Projects

Lead agencies can evaluate each component of a mixed-use project independently and apply the significance threshold for each project type included (e.g., residential and retail). Alternatively, a lead agency may consider only the project's dominant use. In the analysis of each use, a project should take credit for internal capture. Combining different land uses and applying one threshold to those land uses may result in an inaccurate impact assessment.

Other Project Types

Of land use projects, residential, office, and retail projects tend to have the greatest influence on VMT. For that reason, OPR recommends the quantified thresholds described above for purposes of analysis and mitigation. Lead agencies, using more location-specific information, may develop their own more specific thresholds, which may include other land use types. In developing thresholds for other project types, or thresholds different from those recommended here, lead agencies should consider the purposes described in section 21099 of the Public Resources Code and regulations in the CEQA Guidelines on the development of thresholds of significance (e.g., CEQA Guidelines, § 15064.7).

Strategies and projects that decrease local VMT but increase total VMT should be avoided. Agencies should consider whether their actions encourage development in a less travel-efficient location by limiting development in travel-efficient locations.

Redevelopment Projects

Where a project replaces existing VMT-generating land uses, if the replacement leads to a net overall decrease in VMT, the project would lead to a less-than-significant transportation impact. If the project leads to a net overall increase in VMT, then the thresholds described above should apply.

If a residential or office project leads to a net increase in VMT, then the project's VMT per capita (residential) or per employee (office) should be compared to thresholds recommended above. Per capita and per employee VMT are efficiency metrics, and, as such, apply only to the existing project without regard to the VMT generated by the previously existing land use.

If the project leads to a net increase in provision of locally-serving retail, transportation impacts from the retail portion of the development should be presumed to be less than significant. If the project consists of regionally-serving retail, and increases overall VMT compared to with existing uses, then the project would lead to a significant transportation impact.

RTP-SCS Consistency (All Land Use Projects)

Section 15125, subdivision (d), of the CEQA Guidelines provides that lead agencies should analyze impacts resulting from inconsistencies with regional plans, including regional transportation plans. For this reason, if a project is inconsistent with the Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS), the lead agency should evaluate whether that inconsistency indicates a significant impact on transportation.

3. Recommendations Regarding Land Use Plans

As with projects, agencies should analyze VMT outcomes of land use plans over the full area over which the plan may substantively affect travel patterns, including beyond the boundary of the plan or jurisdiction's geography. Analysis of specific plans may employ the same thresholds described above for projects. A general plan, area plan, or community plan may have a significant impact on transportation if it is not consistent with the relevant RTP-SCS.

Thresholds for plans in non-MPO areas may be determined on a case-by-case basis.

4. Other Considerations

Rural Projects Outside of MPOs

In rural areas of non-MPO counties (i.e., areas not near established or incorporated cities or towns), fewer options may be available for reducing VMT, and significance thresholds may be best determined on a case-by-case basis. Note, however, that clustered small towns and small town main streets may have substantial VMT benefits compared to isolated rural development, similar to the transit oriented development described above.

Impacts to Transit

Because criteria for determining the significance of transportation impacts must promote “the development of multimodal transportation networks” pursuant to Public Resources Code section 21099, subd. (b)(1), lead agencies should consider project impacts to transit systems and bicycle and pedestrian networks. For example, a project that blocks access to a transit stop or blocks a transit route itself may interfere with transit functions. Lead agencies should consult with transit agencies as early as possible in the development process, particularly for projects that are located within one half mile of transit stops.

When evaluating impacts to multimodal transportation networks, lead agencies generally should not treat the addition of new transit users as an adverse impact. An infill development may add riders to transit systems and the additional boarding and alighting may slow transit vehicles, but it also adds

destinations, improving proximity and accessibility. Such development also improves regional vehicle flow by adding less vehicle travel onto the regional network.

Increased demand throughout a region may, however, cause a cumulative impact by requiring new or additional transit infrastructure. Such impacts may be adequately addressed through a fee program that fairly allocates the cost of improvements not just to projects that happen to locate near transit, but rather across a region to all projects that impose burdens on the entire transportation system, since transit can broadly improve the function of the transportation system.

F. Considering the Effects of Transportation Projects on Vehicle Travel

Many transportation projects change travel patterns. A transportation project which leads to additional vehicle travel on the roadway network, commonly referred to as “induced vehicle travel,” would need to quantify the amount of additional vehicle travel in order to assess air quality impacts, greenhouse gas emissions impacts, energy impacts, and noise impacts. Transportation projects also are required to examine induced growth impacts under CEQA. (See generally, Pub. Resources Code, §§ 21065 [defining “project” under CEQA as an activity as causing either a direct or reasonably foreseeable indirect physical change], 21065.3 [defining “project-specific effect” to mean all direct or indirect environmental effects], 21100, subd. (b) [required contents of an EIR].) For any project that increases vehicle travel, explicit assessment and quantitative reporting of the amount of additional vehicle travel should not be omitted from the document; such information may be useful and necessary for a full understanding of a project’s environmental impacts. (See Pub. Resources Code, §§ 21000, 21001, 21001.1, 21002, 21002.1 [discussing the policies of CEQA].) A lead agency that uses the VMT metric to assess the transportation impacts of a transportation project may simply report that change in VMT as the impact. When the lead agency uses another metric to analyze the transportation impacts of a roadway project, changes in amount of vehicle travel added to the roadway network should still be analyzed and reported. (See, e.g., California Department of Transportation, [Guidance for Preparers of Growth-related, Indirect Impact Analyses](#) (2006).)

While CEQA does not require perfection, it is important to make a reasonably accurate estimate of transportation projects’ effects on vehicle travel in order to make reasonably accurate estimates of GHG emissions, air quality emissions, energy impacts, and noise impacts. (See, e.g., *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 210 [EIR failed to consider project’s transportation energy impacts]; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266.) Appendix 2 describes in detail the causes of induced vehicle travel, the robust empirical evidence of induced vehicle travel, and how models and research can be used in conjunction to quantitatively assess induced vehicle travel with reasonable accuracy.

If a project would likely lead to a measurable and substantial increase in vehicle travel, the lead agency should conduct an analysis assessing the amount of vehicle travel the project will induce. Project types that would likely lead to a measurable and substantial increase in vehicle travel generally include:

- Addition of through lanes on existing or new highways, including general purpose lanes, HOV lanes, peak period lanes, auxiliary lanes, or lanes through grade-separated interchanges

Projects that would not likely lead to a substantial or measurable increase in vehicle travel, and therefore generally should not require an induced travel analysis, include:

- Rehabilitation, maintenance, replacement and repair projects designed to improve the condition of existing transportation assets (e.g., highways, roadways, bridges, culverts, tunnels, transit systems, and assets that serve bicycle and pedestrian facilities) and that do not add additional motor vehicle capacity
- Roadway shoulder enhancements to provide “breakdown space,” dedicated space for use only by transit vehicles, to provide bicycle access, or to otherwise improve safety, but which will not be used as automobile vehicle travel lanes
- Addition of an auxiliary lane of less than one mile in length designed to improve roadway safety
- Installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, or emergency breakdown lanes that are not utilized as through lanes
- Addition of roadway capacity on local or collector streets provided the project also substantially improves conditions for pedestrians, cyclists, and, if applicable, transit
- Conversion of existing general purpose lanes (including ramps) to managed lanes or transit lanes, or changing lane management in a manner that would not substantially increase vehicle travel
- Addition of a new lane that is permanently restricted to use only by transit vehicles
- Reduction in number of through lanes
- Grade separation to separate vehicles from rail, transit, pedestrians or bicycles, or to replace a lane in order to separate preferential vehicles (e.g., HOV, HOT, or trucks) from general vehicles
- Installation, removal, or reconfiguration of traffic control devices, including Transit Signal Priority (TSP) features
- Traffic metering systems
- Timing of signals to optimize vehicle, bicycle, or pedestrian flow
- Installation of roundabouts or traffic circles
- Installation or reconfiguration of traffic calming devices
- Adoption of or increase in tolls
- Addition of tolled lanes, where tolls are sufficient to mitigate VMT increase
- Initiation of new transit service
- Conversion of streets from one-way to two-way operation with no net increase in number of traffic lanes
- Removal or relocation of off-street or on-street parking spaces
- Adoption or modification of on-street parking or loading restrictions (including meters, time limits, accessible spaces, and preferential/reserved parking permit programs)
- Addition of traffic wayfinding signage

- Rehabilitation and maintenance projects that do not add motor vehicle capacity
- Addition of new or enhanced bike or pedestrian facilities on existing streets/highways or within existing public rights-of-way
- Addition of Class I bike paths, trails, multi-use paths, or other off-road facilities that serve non-motorized travel
- Installation of publicly available alternative fuel/charging infrastructure
- Addition of passing lanes in rural areas that do not increase overall vehicle capacity along the corridor

1. Recommended Significance Threshold for Transportation Projects

As noted in Section 15064.3 of the CEQA Guidelines, lead agencies for roadway capacity projects have discretion, consistent with CEQA and planning requirements, to choose which metric to use to evaluate transportation impacts. This section recommends considerations for evaluating impacts using vehicle miles traveled. Lead agencies have discretion to choose a threshold of significance for transportation projects as they do for other types of projects. As explained above, Public Resources Code section 21099, subdivision (b)(1), provides that criteria for determining the significance of transportation impacts must promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.

Whether adopting a threshold of significance, or evaluating transportation impacts on a case-by-case basis, a lead agency should ensure that the analysis addresses:

- Direct, indirect and cumulative effects of the transportation project (CEQA Guidelines, § 15064, subds. (d), (h))
- Near-term and long-term effects of the transportation project (CEQA Guidelines, §§ 15063, subd. (a)(1), 15126.2, subd. (a))
- The transportation project's consistency with state greenhouse gas reduction goals (Pub. Resources Code, § 21099)¹¹
- The impact of the transportation project on the development of multimodal transportation networks (Pub. Resources Code, § 21099)

¹¹ The Air Resources Board has ascertained, in [The 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target](#) (p. 116) and [Mobile Source Strategy](#) (p. 37), the limits of VMT growth compatible with California containing greenhouse gas emissions to levels research shows would allow for climate stabilization. The [Staff Report on Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets](#) (Figure 1, p. 10, and Figure 2, p. 23), illustrates that Regional Transportation Plans and Sustainable Communities Strategies will fall short of achieving GHG reductions research says is needed to achieve climate stabilization, so OPR recommends not basing transportation project thresholds on those documents.

- The impact of the transportation project on the development of a diversity of land uses (Pub. Resources Code, § 21099)

The recommendations in this technical advisory may be updated over time.

2. Estimating VMT Impacts from Transportation Projects

CEQA requires analysis of a project's potential growth-inducing impacts. (Pub. Resources Code, § 21100, subd. (b)(5); CEQA Guidelines, § 15126.2, subd. (d).) Many agencies are familiar with the analysis of growth inducing impacts associated with water, sewer, and other infrastructure. This technical advisory addresses growth that may be expected from roadway expansion projects.

Because a roadway expansion project can induce substantial VMT, incorporating quantitative estimates of induced VMT is critical to calculating both transportation and other impacts of these projects. Induced travel also has the potential to reduce or eliminate congestion relief benefits. An accurate estimate of induced travel is needed to accurately weigh costs and benefits of a highway capacity expansion project.

The effect of a transportation project on vehicle travel should be estimated using the "change in total VMT" method described in *Appendix 1*. This means that an assessment of total VMT without the project and an assessment with the project should be made; the difference between the two is the amount of VMT attributable to the project. The assessment should cover the full area in which driving patterns are expected to change. As with other types of projects, the VMT estimation should not be truncated at a modeling or jurisdictional boundary for convenience of analysis when travel behavior is substantially affected beyond that boundary.

Transit and Active Transportation Projects

Transit and active transportation projects generally reduce VMT and therefore are presumed to cause a less-than-significant impact on transportation. This presumption may apply to all passenger rail projects, bus and bus rapid transit projects, and bicycle and pedestrian infrastructure projects. Streamlining transit and active transportation projects aligns with each of the three statutory goals contained in SB 743 by reducing GHG emissions, increasing multimodal transportation networks, and facilitating mixed use development.

Roadway Projects

Reducing roadway capacity (for example, by removing or repurposing motor vehicle travel lanes) will generally reduce VMT and therefore is presumed to cause a less-than-significant impact on transportation. Generally, no transportation analysis is needed for such projects.

Building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, typically induces additional vehicle travel. For the types of projects previously indicated as likely to lead to additional vehicle travel, an estimate should be made of the change in vehicle travel resulting from the project.

For projects that increase roadway capacity, lead agencies can evaluate induced travel quantitatively by applying the results of existing studies that examine the magnitude of the increase of VMT resulting from a given increase in lane miles. These studies estimate the percent change in VMT for every percent change in miles to the roadway system (i.e., “elasticity”). (See U.C. Davis, Institute for Transportation Studies, [Increasing Highway Capacity Unlikely to Relieve Traffic Congestion](#), (October 2015); Boarnet and Handy, [Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions](#), California Air Resources Board Policy Brief, September 30, 2014.) Given that lead agencies have discretion in choosing their methodology, and the studies on induced travel reveal a range of elasticities, lead agencies may appropriately apply professional judgment in studying the transportation effects of a particular project. The most recent major study ([Duranton and Turner, 2011](#)), estimates an elasticity of 1.0, meaning that every percent change in lane miles results in a one percent increase in VMT.

To estimate VMT impacts from roadway expansion projects:

1. Determine the total lane-miles over an area that fully captures travel behavior changes resulting from the project (generally the region, but for projects affecting interregional travel look at all affected regions).
2. Determine the percent change in total lane miles that will result from the project.
3. Determine the total existing VMT over that same area.
4. Multiply the percent increase in lane miles by the existing VMT, and then multiply that by the elasticity from the induced travel literature:

$$[\% \text{ increase in lane miles}] \times [\text{existing VMT}] \times [\text{elasticity}] = [\text{VMT resulting from the project}]$$

This method would not be suitable for rural (non-MPO) locations in the state which are neither congested nor projected to become congested. It also may not be suitable for a new road that provides new connectivity across a barrier (e.g., a bridge across a river) if it would be expected to substantially shorten existing trips. If it is likely to be substantial, the trips-shortening effect should be examined explicitly.

The effects of roadway capacity on vehicle travel can also be applied at a programmatic level. For example, in a regional planning process the lead agency can use that program-level analysis to streamline later project-level analysis. (See CEQA Guidelines, § 15168.) A program-level analysis of VMT should include effects of the program on land use patterns, and the VMT that results from those land use effects. In order for a program-level document to adequately analyze potential induced demand

from a project or program of roadway capacity expansion, lead agencies cannot assume a fixed land use pattern (i.e., a land use pattern that does not vary in response to the provision of roadway capacity). A proper analysis should account for land use investment and development pattern changes that react in a reasonable manner to changes in accessibility created by transportation infrastructure investments (whether at the project or program level).

Mitigation and Alternatives

Induced VMT has the potential to reduce or eliminate congestion relief benefits, increase VMT, and increase other environmental impacts that result from vehicle travel.¹² If those effects are significant, the lead agency will need to consider mitigation or alternatives. In the context of increased travel that is induced by capacity increases, appropriate mitigation and alternatives that a lead agency might consider include the following:

- Tolling new lanes to encourage carpools and fund transit improvements
- Converting existing general purpose lanes to HOV or HOT lanes
- Implementing or funding off-site travel demand management
- Implementing Intelligent Transportation Systems (ITS) strategies to improve passenger throughput on existing lanes

Tolling and other management strategies can have the additional benefit of preventing congestion and maintaining free-flow conditions, conferring substantial benefits to road users as discussed above.

G. Analyzing Other Impacts Related to Transportation

While requiring a change in the methodology of assessing transportation impacts, Public Resources Code section 21099 notes that this change “does not relieve a public agency of the requirement to analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation.” OPR expects that lead agencies will continue to address mobile source emissions in the air quality and noise sections of an environmental document and the corresponding studies that support the analysis in those sections. Lead agencies should continue to address environmental impacts of a proposed project pursuant to CEQA’s requirements, using a format that is appropriate for their particular project.

Because safety concerns result from many different factors, they are best addressed at a programmatic level (i.e., in a general plan or regional transportation plan) in cooperation with local governments,

¹² See *Increasing Highway Capacity Unlikely to Relieve Traffic Congestion*, National Center for Sustainable Transportation, October 2015, available at http://www.dot.ca.gov/newtech/researchreports/reports/2015/10-12-2015-NCST_Brief_InducedTravel_CS6_v3.pdf; see Duranton and Turner, *The Fundamental Law of Road Congestion: Evidence from US cities*, 2011, available at <http://www.nber.org/papers/w15376>.

metropolitan planning organizations, and, where the state highway system is involved, the California Department of Transportation. In most cases, such an analysis would not be appropriate on a project-by-project basis. Increases in traffic volumes at a particular location resulting from a project typically cannot be estimated with sufficient accuracy or precision to provide useful information for an analysis of safety concerns. Moreover, an array of factors affect travel demand (e.g., strength of the local economy, price of gasoline), causing substantial additional uncertainty. Appendix B of the [General Plan Guidelines](#) summarizes research which could be used to guide a programmatic analysis under CEQA. Lead agencies should note that automobile congestion or delay does not constitute a significant environmental impact (Pub. Resources Code, §21099(b)(2)), and safety should not be used as a proxy for road capacity.

H. VMT Mitigation and Alternatives

When a lead agency identifies a significant impact, it must identify feasible mitigation measures that could avoid or substantially reduce that impact. (Pub. Resources Code, § 21002.1, subd. (a).) Additionally, CEQA requires that an environmental impact report identify feasible alternatives that could avoid or substantially reduce a project's significant environmental impacts.

Indeed, the California Court of Appeal recently held that a long-term regional transportation plan was deficient for failing to discuss an alternative which could significantly reduce total vehicle miles traveled. In *Cleveland National Forest Foundation v. San Diego Association of Governments, et al.* (2017) 17 Cal.App.5th 413, the court found that omission "inexplicable" given the lead agency's "acknowledgment in its Climate Action Strategy that the state's efforts to reduce greenhouse gas emissions from on-road transportation will not succeed if the amount of driving, or vehicle miles traveled, is not significantly reduced." (*Cleveland National Forest Foundation, supra*, 17 Cal.App.5th at p. 436.) Additionally, the court noted that the project alternatives focused primarily on congestion relief even though "the [regional] transportation plan is a long-term and congestion relief is not necessarily an effective long-term strategy." (*Id.* at p. 437.) The court concluded its discussion of the alternatives analysis by stating: "Given the acknowledged long-term drawbacks of congestion relief alternatives, there is not substantial evidence to support the EIR's exclusion of an alternative focused primarily on significantly reducing vehicle trips." (*Ibid.*)

Several examples of potential mitigation measures and alternatives to reduce vehicle miles traveled are described below. However, the selection of particular mitigation measures and alternatives are left to the discretion of the lead agency, and mitigation measures may vary, depending on the proposed project and significant impacts, if any. Further, OPR expects that agencies will continue to innovate and find new ways to reduce vehicular travel.

Potential measures to reduce vehicle miles traveled include, but are not limited to:

- Improve or increase access to transit.
- Increase access to common goods and services, such as groceries, schools, and daycare.

- Incorporate affordable housing into the project.
- Incorporate neighborhood electric vehicle network.
- Orient the project toward transit, bicycle and pedestrian facilities.
- Improve pedestrian or bicycle networks, or transit service.
- Provide traffic calming.
- Provide bicycle parking.
- Limit or eliminate parking supply.
- Unbundle parking costs.
- Provide parking or roadway pricing or cash-out programs.
- Implement or provide access to a commute reduction program.
- Provide car-sharing, bike sharing, and ride-sharing programs.
- Provide transit passes.
- Shifting single occupancy vehicle trips to carpooling or vanpooling, for example providing ride-matching services.
- Providing telework options.
- Providing incentives or subsidies that increase the use of modes other than single-occupancy vehicle.
- Providing on-site amenities at places of work, such as priority parking for carpools and vanpools, secure bike parking, and showers and locker rooms.
- Providing employee transportation coordinators at employment sites.
- Providing a guaranteed ride home service to users of non-auto modes.

Notably, because VMT is largely a regional impact, regional VMT-reduction programs may be an appropriate form of mitigation. In lieu fees have been found to be valid mitigation where there is both a commitment to pay fees and evidence that mitigation will actually occur. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140-141; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.) Fee programs are particularly useful to address cumulative impacts. (CEQA Guidelines, § 15130, subd. (a)(3) [a “project’s incremental contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact”].) The mitigation program must undergo CEQA evaluation, either on the program as a whole, or the in-lieu fees or other mitigation must be evaluated on a project-specific basis. (*California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026.) That CEQA evaluation could be part of a larger program, such as a regional transportation plan, analyzed in a Program EIR. (CEQA Guidelines, § 15168.)

Examples of project alternatives that may reduce vehicle miles traveled include, but are not limited to:

- Locate the project in an area of the region that already exhibits low VMT.
- Locate the project near transit.
- Increase project density.
- Increase the mix of uses within the project or within the project’s surroundings.

- Increase connectivity and/or intersection density on the project site.
- Deploy management strategies (e.g., pricing, vehicle occupancy requirements) on roadways or roadway lanes.

Appendix 1. Considerations About Which VMT to Count

Consistent with the obligation to make a good faith effort to disclose the environmental consequences of a project, lead agencies have discretion to choose the most appropriate methodology to evaluate project impacts.¹³ A lead agency can evaluate a project's effect on VMT in numerous ways. The purpose of this document is to provide technical considerations in determining which methodology may be most useful for various project types.

Background on Estimating Vehicle Miles Traveled

Before discussing specific methodological recommendations, this section provides a brief overview of modeling and counting VMT, including some key terminology.

Here is an illustrative example of some methods of estimating vehicle miles traveled. Consider the following hypothetical travel day (all by automobile):

1. Residence to Coffee Shop
2. Coffee Shop to Work
3. Work to Sandwich Shop
4. Sandwich Shop to Work
5. Work to Residence
6. Residence to Store
7. Store to Residence

Trip-based assessment of a project's effect on travel behavior counts VMT from individual trips to and from the project. It is the most basic, and traditionally the most common, method of counting VMT. A trip-based VMT assessment of the residence in the above example would consider segments 1, 5, 6 and 7. For residential projects, the sum of home-based trips is called *home-based* VMT.

A *tour-based* assessment counts the entire home-back-to-home tour that includes the project. A tour-based VMT assessment of the residence in the above example would consider segments 1, 2, 3, 4, and 5 in one tour, and 6 and 7 in a second tour. A tour-based assessment of the workplace would include segments 1, 2, 3, 4, and 5. Together, all tours comprise *household* VMT.

¹³ The California Supreme Court has explained that when an agency has prepared an environmental impact report:

[T]he issue is not whether the [lead agency's] studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the [lead agency's] finding[.]

(*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 409; see also *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357, 372.)

Both trip- and tour-based assessments can be used as measures of transportation efficiency, using denominators such as per capita, per employee, or per person-trip.

Trip- and Tour-based Assessment of VMT

As illustrated above, a tour-based assessment of VMT is a more complete characterization of a project's effect on VMT. In many cases, a project affects travel behavior beyond the first destination. The location and characteristics of the home and workplace will often be the main drivers of VMT. For example, a residential or office development located near high quality transit will likely lead to some commute trips utilizing transit, affecting mode choice on the rest of the tour.

Characteristics of an office project can also affect an employee's VMT beyond the work tour. For example, a workplace located at the urban periphery, far from transit, can require an employee to own a car, which in turn affects the entirety of an employee's travel behavior and VMT. For this reason, when estimating the effect of an office development on VMT, it may be appropriate to consider total employee VMT if data and tools, such as tour-based models, are available. This is consistent with CEQA's requirement to evaluate both direct and *indirect* effects of a project. (See CEQA Guidelines, § 15064, subd. (d)(2).)

Assessing Change in Total VMT

A third method, estimating the *change in total VMT* with and without the project, can evaluate whether a project is likely to divert existing trips, and what the effect of those diversions will be on total VMT. This method answers the question, "What is the net effect of the project on area VMT?" As an illustration, assessing the total change in VMT for a grocery store built in a food desert that diverts trips from more distant stores could reveal a net VMT reduction. The analysis should address the full area over which the project affects travel behavior, even if the effect on travel behavior crosses political boundaries.

Using Models to Estimate VMT

Travel demand models, sketch models, spreadsheet models, research, and data can all be used to calculate and estimate VMT (see Appendix F of the [preliminary discussion draft](#)). To the extent possible, lead agencies should choose models that have sensitivity to features of the project that affect VMT. Those tools and resources can also assist in establishing thresholds of significance and estimating VMT reduction attributable to mitigation measures and project alternatives. When using models and tools for those various purposes, agencies should use comparable data and methods, in order to set up an "apples-to-apples" comparison between thresholds, VMT estimates, and VMT mitigation estimates.

Models can work together. For example, agencies can use travel demand models or survey data to estimate existing trip lengths and input those into sketch models such as CalEEMod to achieve more

accurate results. Whenever possible, agencies should input localized trip lengths into a sketch model to tailor the analysis to the project location. However, in doing so, agencies should be careful to avoid double counting if the sketch model includes other inputs or toggles that are proxies for trip length (e.g., distance to city center). Generally, if an agency changes any sketch model defaults, it should record and report those changes for transparency of analysis. Again, trip length data should come from the same source as data used to calculate thresholds to be sure of an “apples-to-apples” comparison.

Additional background information regarding travel demand models is available in the California Transportation Commission’s [“2010 Regional Transportation Plan Guidelines,”](#) beginning at page 35.

Appendix 2. Induced Travel: Mechanisms, Research, and Additional Assessment Approaches

Induced travel occurs where roadway capacity is expanded in an area of present or projected future congestion. The effect typically manifests over several years. Lower travel times make the modified facility more attractive to travelers, resulting in the following trip-making changes:

- **Longer trips.** The ability to travel a long distance in a shorter time increases the attractiveness of destinations that are farther away, increasing trip length and vehicle travel.
- **Changes in mode choice.** When transportation investments are devoted to reducing automobile travel time, travelers tend to shift toward automobile use from other modes, which increases vehicle travel.
- **Route changes.** Faster travel times on a route attract more drivers to that route from other routes, which can increase or decrease vehicle travel depending on whether it shortens or lengthens trips.
- **Newly generated trips.** Increasing travel speeds can induce additional trips, which increases vehicle travel. For example, an individual who previously telecommuted or purchased goods on the internet might choose to accomplish those tasks via automobile trips as a result of increased speeds.
- **Land Use Changes.** Faster travel times along a corridor lead to land development farther along that corridor; that new development generates and attracts longer trips, which increases vehicle travel. Over several years, this induced growth component of induced vehicle travel can be substantial, making it critical to include in analyses.

Each of these effects has implications for the total amount of vehicle travel. These effects operate over different time scales. For example, changes in mode choice might occur immediately, while land use changes typically take a few years or longer. CEQA requires lead agencies to analyze both short-term and long-term effects.

Evidence of Induced Vehicle Travel. A large number of peer reviewed studies¹⁴ have demonstrated a causal link between highway capacity increases and VMT increases. Many provide quantitative estimates of the magnitude of the induced VMT phenomenon. Collectively, they provide high quality evidence of the existence and magnitude of the induced travel effect.

Most of these studies express the amount of induced vehicle travel as an “elasticity,” which is a multiplier that describes the additional vehicle travel resulting from an additional lane mile of roadway capacity added. For example, an elasticity of 0.6 would signify an 0.6 percent increase in vehicle travel for every 1.0 percent increase in lane miles. Many of these studies distinguish “short run elasticity” (increase in vehicle travel in the first few years) from “long run elasticity” (increase in vehicle travel

¹⁴ See, for example, [Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions: Policy Brief](#) (CARB, Sept. 30, 2014) and [Increasing Highway Capacity Unlikely to Relieve Traffic Congestion](#) (National Center for Sustainable Transportation, Oct. 2015).

beyond the first few years). Long run elasticity is larger than short run elasticity, because as time passes, more of the components of induced vehicle travel materialize. Generally, short run elasticity can be thought of as excluding the effects of land use change, while long run elasticity includes them. Most studies find a long run elasticity between 0.6 and just over 1.0 (See [*Impact of Highway Capacity and Induced Travel on Passenger Vehicle Use and Greenhouse Gas Emissions: Policy Brief*](#), p. 2.), meaning that every increase in lanes miles of one percent leads to an increase in vehicle travel of 0.6 to 1.0 percent. The most recent major study (Duranton and Turner, [*The Fundamental Law of Road Congestion: Evidence from US Cities*](#), 2011) finds the elasticity of vehicle travel by lanes miles added to be 1.03; in other words, each percent increase in lane miles results in a 1.03 percent increase in vehicle travel. (An elasticity greater than 1.0 can occur because new lanes induce vehicle travel that spills beyond the project location.) In CEQA analysis, the long-run elasticity should be used, as it captures the full effect of the project rather than just the early-stage effect.

Quantifying Induced Vehicle Travel Using Models. Lead agencies can generally achieve the most accurate assessment of induced vehicle travel resulting from roadway capacity increasing projects by applying elasticities from the academic literature, because those estimates include vehicle travel resulting from induced land use. If a lead agency chooses to use a travel demand model, additional analysis would be needed to account for induced land use. This section describes some approaches to undertaking that additional analysis.

Proper use of a travel demand model can capture the following components of induced VMT:

- Trip length (generally increases VMT)
- Mode shift (generally shifts from other modes toward automobile use, increasing VMT)
- Route changes (can act to increase or decrease VMT)
- Newly generated trips (generally increases VMT)
 - Note that not all travel demand models have sensitivity to this factor, so an off-model estimate may be necessary if this effect could be substantial.

However, estimating long-run induced VMT also requires an estimate of the project's effects on land use. This component of the analysis is important because it has the potential to be a large component of the overall induced travel effect. Options for estimating and incorporating the VMT effects that are caused by the subsequent land use changes include:

1. *Employ an expert panel.* An expert panel could assess changes to land use development that would likely result from the project. This assessment could then be analyzed by the travel demand model to assess effects on vehicle travel. Induced vehicle travel assessed via this approach should be verified using elasticities found in the academic literature.
2. *Adjust model results to align with the empirical research.* If the travel demand model analysis is performed without incorporating projected land use changes resulting from the project, the

assessed vehicle travel should be adjusted upward to account for those land use changes. The assessed VMT after adjustment should fall within the range found in the academic literature.

3. *Employ a land use model, running it iteratively with a travel demand model.* A land use model can be used to estimate the land use effects of a roadway capacity increase, and the traffic patterns that result from the land use change can then be fed back into the travel demand model. The land use model and travel demand model can be iterated to produce an accurate result.

A project which provides new connectivity across a barrier, such as a new bridge across a river, may provide a shortened path between existing origins and destinations, thereby shortening existing trips. In some cases, this trip-shortening effect might be substantial enough to reduce the amount of vehicle travel resulting from the project below the range found in the elasticities in the academic literature, or even lead a net reduction in vehicle travel overall. In such cases, the trip-shortening effect could be examined explicitly.

Whenever employing a travel demand model to assess induced vehicle travel, any limitation or known lack of sensitivity in the analysis that might cause substantial errors in the VMT estimate (for example, model insensitivity to one of the components of induced VMT described above) should be disclosed and characterized, and a description should be provided on how it could influence the analysis results. A discussion of the potential error or bias should be carried into analyses that rely on the VMT analysis, such as greenhouse gas emissions, air quality, energy, and noise.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Joyce Halabi, Deputy Public Works Director
MEETING DATE: August 07, 2024
SUBJECT: Tree Maintenance Services Agreement
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Authorize an agreement with Topes Tree Service Inc. to provide Tree Maintenance Services for trees in the public right-of-way and on City-owned properties in an amount not-to-exceed \$250,000 per fiscal year, with up to four (4) annual, one-year extensions by mutual letter
2. Authorize the Mayor to execute all letters of extension associated with this agreement
3. Alternatively, take other action related to this item

DISCUSSION

The City of Pacific Grove Public Works Department is responsible for maintaining all trees on public land and within the City's right-of-way. To effectively manage this task, including vertical clearance standards for all city roadways, the city has historically utilized a tree service contractor to supplement staff.

THE IMPORTANCE OF A TREE SERVICE CONTRACTOR

The City's tree service contractor plays an essential role in maintaining the health and safety of Pacific Grove's trees. They perform critical maintenance tasks for all trees within public spaces, City facilities, and the City right of way under the guidance and supervision of the City Arborist.

Key Responsibilities:

- **Pruning & Removal:** The contractor performs routine, priority, and emergency pruning and tree removal, including clearing street obstructions.
- **Additional Services:** Other services may include tree planting, staking, pest control, fertilization, and maintenance or removal of trees as needed.
- **Emergency Response:** The contractor also supports emergency response efforts, helping to remove or stabilize hazardous trees and ensuring public safety by addressing tree-related hazards promptly.

Having a skilled contractor for tree maintenance helps our Arborist and staff manage the demanding task of tree care in accordance with the Pacific Grove Municipal Code Title 12, Trees and the Urban Forest, and the City's Urban Forestry Standards. This partnership ensures our urban forest remains healthy, attractive, and safe.

COLLABORATION BETWEEN THE TREE SERVICE CONTRACTOR, ARBORIST, AND CITY STAFF

The tree service contractor works closely with the City Arborist and staff to ensure all tree maintenance is performed efficiently and to City standards.

Integration Process:

- **Work Orders:** The contractor receives detailed work orders from the City Arborist, outlining required services, location, urgency, and scheduling.
- **Execution:** The contractor schedules and performs the necessary work as instructed.
- **Monitoring & Review:** The City Arborist monitors the progress, reviews the completed work, and checks invoices to ensure alignment with the services performed.

This collaboration ensures that Pacific Grove's urban landscape remains appealing and safe for residents and visitors. By partnering with a qualified tree service contractor, we enhance our ability to maintain and beautify our community's natural environment while responding effectively to any tree-related issues.

The City has used the model of harnessing an on-call tree service contractor agreement to complete essential tree maintenance since 2014.

REVISING THE BID PROCESS

In July 2023, the City Council approved a one-year agreement with Topes Tree Service to provide Tree Maintenance Services. However, options to extend this agreement, as originally recommended by staff, were not approved.

During the meeting, the City Council requested that staff revisit the bidding process to make the services and associated fees clearer prior to the issuance of a Call for Bids the following year. Previously, bids were assessed based on the "total daily rate," which combined labor rates, equipment rates, and "other rates," including emergency callout fees. Historically, the contract was awarded to the bidder with the lowest total daily rate.

Throughout the Fiscal Year, staff reviewed how other municipalities handle their bidding processes and revised the bid sheet for greater clarity. The updated bid sheet now requests hourly rates for specific common activities, such as:

- Street Clearance
- Tree Trimming
- Stump Removal
- Tree Watering
- Tree Planting, and
- Consulting Arborist Services

Additionally, the bid sheet includes separate hourly rates for labor, equipment, and emergency callouts. The new bidding process specifies that evaluation and selection will consider the contractor's relevant professional experience, staff qualifications, bid pricing, and ability to respond promptly to emergency scenarios.

The revised bid sheet was used for the 2024 BID process.

2024 BID PROCESS

A call for bids was issued on June 11, 2024, and closed on July 10, 2024. 5 proposals were received:

1. Marios Tree Service
2. Community Tree Service
3. West Coast Arborists
4. Topes Tree Service
5. T&S Tree Service LLC

Upon thorough review of the proposals, Topes Tree Service has been selected as the desired firm and stood out among the proposals based upon their:

- **Prompt Emergency Response:** Topes Tree Service demonstrated the ability to respond quickly to emergency requests. They have the advantage of being geographically closest to the City, with the nearest office and yard among all submissions, located in Monterey on Garden Road.
- **Competitive Pricing:** Topes Tree Service provided the most competitive hourly rates, with equipment rates approximately 38% lower and labor rates about 30% lower than the next closest bidder. These reduced hourly rates allow their overall service offerings—such as street clearance, trimming, emergency call-outs, watering, consulting arborist services, and stump removals—to be more cost-effective.
- **Extensive Experience and Resources:** They have vast experience in tree trimming services, along with a robust staff and readily available equipment.

NEXT STEPS

If an agreement is authorized, Staff will prepare an agreement using the City's standard agreement template, approved by the City Attorney and California Joint Powers Authority (CJPIA), for the Mayor's signature.

Staff recommends approving the agreement with Topes Tree Service, including options for extensions, because their bid is cost-effective, displays their ability to perform the work and meets the City's needs. By approving this agreement with extension options, the City can lock in the competitive pricing from the 2024 proposal, which helps keep costs stable. If the City were to release a new call for bids every year, it would likely lead to increased pricing annually.

OPTIONS

1. Authorize agreement
2. Do not authorize agreement. Failure to authorize an agreement will result in delays for street clearance and trimming needs.
3. Provide alternative direction

FINANCIAL IMPACT:

There is sufficient funding for the Tree Maintenance Services Agreement in the FY24/25 Fiscal Year Public Works Department, Forestry Division budget.

FOCUSED PRIORITY AREA: Environmental Stewardship



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: August 07, 2024
SUBJECT: Planning Commission Meeting Minutes: September 2023 through December 2023
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

PC Minutes 9.14.23
PC Minutes 10.05.23
PC Minutes 10.12.23
PC Minutes 10.19.23
PC Minutes 11.09.23
PC Minutes 12.14.23



CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, September 14, 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 members present in Chamber: Chair Lilley, Commissioners Fredrickson, Sawyer, Davison and Kubica. Vice Chair Murphy and Commissioner Nodzenski were absent.

2. **APPROVAL OF AGENDA**

Action: Commissioner Sawyer requested the commission move Item 9A to 8A.

Action: Commissioner Kubica made a friendly amendment to move Item 9A to 8C. Seconded by Commissioner Fredrickson. Commissioner Kubica requested the commission move Item 9B to 8D.

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

Motion carried 5-0-2, by the following roll call vote:

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

NOES: None.

ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

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

Commissioner Sawyer attended the Turner Center for Housing at UC Berkeley. The California Sliding Home Ownership Ladder took place on August 15th. They discussed housing market research and a California program called Dream for All.

Commissioner Sawyer asked if staff knows where to find the draft document from Integral Consulting for the update on the coastal hazards section of the LCP.

Mr. Sidor stated that the consultant is working on the data collection and modeling. Staff anticipates having an administrative draft to review sometime next month.

Commissioner Sawyer asked if the Planning Commission was added to the list of persons interested in receiving CDP applications.

Mr. Sidor stated that the two commissioners who requested to be added to the list were Chair Lilley and Vice Chair Murphy. He clarified that commissioners interested in being added to the list should write an email to staff with that request.

Commissioner Fredrickson met with Jeanne Byrne concerning photos of the project that were not included in the packet.

Chair Lilley announced that on September 6th the City Council unanimously upheld the Commission's July 13th decision to approve CDP 22-0318 Multiple Locations in the Coastal Zone (Sewer Project).

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Councilmember Coletti announced that the City Council subcommittee was actively engaged in the recruitment process for an interim City Manager. That announcement was made to the public and available to view on the City's website.

5. **GENERAL PUBLIC COMMENT**

Written General Public Comment

Reference: Aaron Campbell, Associate Planner

Recommended Action: Receive correspondence.

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

General Public Comment received from:

Inge Lorentzen Daumer

(The Administrative Use Permit for 215 Forest Ave. was called up. See motion below.)

Michaela Kenster

Marsha

Tony Ciani

Katie Stern

Lisa Ciani

Mike Gibbs

Action: Ms. Daumer requested that the commission consider calling up the AUP for 215 Forest Ave. The commission discussed the call-up procedure. City Attorney Pierik clarified that it would require at least three commissioners to vote in favor for the call-up to be approved and added to the next available agenda.

Action: Commissioner Sawyer made a motion to call up the AUP for Pop & Hiss located at 215 Forest Ave.

Action: Upon a motion by Commissioner Sawyer and seconded by Commissioner Kubica, the commission voted to approve the call-up of the AUP at 215 Forest Ave.

Motion carried 5-0-2, by the following roll call vote:

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

NOES: None.

ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

- A. Planning Commission 2023 Work Plan
Reference: Steven Lilley, Planning Commission Chair
Recommended Action: Receive the revised 2023 Planning Commission Work Plan.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

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 consent agenda and continued to the October 12th PC 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, this item was pulled from the consent agenda and continued to the October 12th PC Meeting.*
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve 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

- C. Minutes of the August 10, 2023, Planning Commission Regular Meeting – *At the request of Commissioner Sawyer, this item was pulled from the consent agenda and continued to the October 12th PC Meeting.*
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of 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 requested the June, July and August PC minutes be pulled from the consent agenda and continued to the October 12th PC Meeting.

Action: Upon motion by Commissioner Davison and seconded by Commissioner Kubica, the commission voted to approve the consent agenda as modified.

Motion carried 5-0-2, by the following roll call vote:

AYES: Commissioners Kubica, Fredrickson, Sawyer, Davison and Chair Lilley.
NOES: None.

ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

REGULAR AGENDA

8. PUBLIC HEARINGS

- A. Architectural Permit (AP), Use Permit (UP) and Variance (VAR) No. 22-0284, 773-775 Ocean View Blvd, Pacific Grove (APN 006-071-007)
From: Joseph Sidor, Contract Planner
Zoning District/General Plan Designation: R-3-PGR / High Density Residential 24.8 du/ac
Coastal Zone: Yes
Historic Resources Inventory: No
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities
Recommended Action: Staff recommends the Planning Commission approve the Architectural Permit, Use Permit, and Variance (AP/UP/VAR 22-0284), subject to the findings, conditions of approval, and Class 1 Categorical Exemption (CEQA Guidelines Section 15301, Existing Facilities).
Reference: Joseph Sidor, Contract Planner

Staff report received from Senior Planner, Mr. Sidor.

Project comments provided by the architect, Jeanne Byrne.

Public comment received from:

Marion Morelli

Judy Cole

Julie Almquist

Marian Moe

Tony Ciani

Darren Tinsley

Inge Lorentzen Daumer

Additional project comments provided by the architect, Jeanne Byrne.

Comments provided by the owner, Bart Bruno.

Action: Upon a motion by Commissioner Fredrickson and seconded by Commissioner Kubica, the commission voted to accept staff's recommendation to approve the Architectural Permit, Use Permit, and Variance (AP/UP/VAR 22-0284), subject to the findings, conditions of approval, and Class 1 Categorical Exemption (CEQA Guidelines Section 15301, Existing Facilities).

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

AYES: Commissioners Kubica, Fredrickson, Davison and Chair Lilley.

NOES: Commissioner Sawyer.

ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

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

From: Garrett McCown, Assistant Planner

Zoning District/General Plan Designation: R-3-PGR/High Density Residential 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 Planning Commission approve AP/CDP 23-0061, subject to findings, conditions of approval, and a Class 1 CEQA categorical exemption.

Reference: Garrett McCown, Assistant Planner

Commissioner Sawyer recused herself from this project due financial interest.

Staff report received from Senior Planner, Mr. Sidor.

Project comments provided by the architect, Anatoly Ostretsov.

Public comment received from:

Tony Ciani

Action: Upon a motion by Commissioner Kubica and seconded by Commissioner Fredrickson, the commission voted to accept staff's recommendation to approve the AP/CDP 23-0061, subject to findings, conditions of approval, and a Class 1 CEQA categorical exemption.

Motion carried 4-0-2-1, by the following roll call vote:

AYES: Commissioners Kubica, Fredrickson, Davison and Chair Lilley.

NOES: None.

ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

RECUSED: Commissioner Sawyer.

- C. Revised Cannabis Regulatory Draft Ordinances – ***At the request of Commissioner Sawyer and Commissioner Kubica, this item was moved from 9A to 8C.***

From: Erica Vega, Contract City Attorney

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Review and accept all revisions to the Cannabis Regulatory Draft Ordinances and make a recommendation to City Council.

Reference: Erica Vega, Assistant City Attorney

Staff report received from Associate Planner, Mr. Campbell.

Contract City Attorney, Erica Vega made herself available for questions.

Public comment received from:

Mr. Tuminello

Mike Gibbs
Marsha
Inge Lorentzen Daumer
Tony Ciani
Terrence Zito

Action: Commissioner Sawyer made a recommendation to strike the word “morals” from Section 23.92.010. City Attorney Vega stated that could be done. Chair Lilley recommended that the word “morals” also be removed from Section 11.100.010.

Action: Commissioner Sawyer made a recommendation to strike B6 regarding design standards in Section 23.92.050.

Action: Commissioner Sawyer made a recommendation to add a reference to the City’s lighting standards in Section 23.92.080.

Action: Commissioner Sawyer made a recommendation to add a reference to the City’s lighting standards in paragraph four of Section 23.92.080.

Action: Chair Lilley made a recommendation to clarify the language regarding the application period in Section 11.100.060 A.

Action: Chair Lilley made a recommendation to add a definition for a “provisional” license in Section 11.100.060 E.

Action: Upon a motion by Commissioner Sawyer and seconded by Commissioner Davison, the commission voted to accept staff’s revisions, approve the recommended changes as discussed in Chapter 11 and Chapter 23 and transmit the proposed ordinances (with changes) to the City Council.

Motion carried 5-0-2, by the following roll call vote:

AYES: Commissioners Sawyer, Kubica, Fredrickson, Davison and Chair Lilley.
NOES: None.
ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

D. Housing Element and General Plan Updates – ***At the request of Commissioner Kubica, this item was moved from 9B to 8D.***

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

Action: Director Wyatt asked, on behalf of the consultants online, if the commission would be able to hear the remaining items on the agenda. The commission discussed moving Archeological Resources and Tribal Monitoring Protocol above this item.

Action: Director Wyatt shared a brief housing element update. She said a draft document would be released on Monday.

Action: Mr. Campbell shared that there was consensus on a special PC meeting for October 5th and, if needed, October 12th. Director Wyatt shared that they wanted to take the item to Council by October 18th (and potentially again on November 1st) to meet the November 2nd submittal date. So, there would be two Planning Commission meetings

added and two Council meetings, if necessary.

Public Comment received from:
Inge Lorentzen Daumer

- E. Archeological Resources Review and Tribal Monitoring Protocol
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 draft protocol and provide comments.
Reference: Joyce Halabi, Deputy Public Works Director

Deputy Director Halabi introduced the consultants from Rincon: Hannah Haas, Cultural Resources Program Manager and Senior Archaeologist, and Christopher Duran, Principal and Senior Archaeologist.

Draft protocol received from consultant, Christopher Duran.

Public comment received from:
Adam Pinterits
Tony Ciani
Lisa Ciani
Inge Lorentzen Daumer

Action: Upon a motion by Commissioner Fredrickson and seconded by Commissioner Sawyer, the commission voted to continue this item to the next available meeting, preferably the special meeting on October 19th.

Motion carried 5-0-2, by the following roll call vote:

AYES: Commissioners Sawyer, Kubica, Fredrickson, Davison and Chair Lilley.
NOES: None.
ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

- F. Boards and Commissions Joint Working Group
From: Cathy Madalone, Chief of Police
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 Commissioner to voluntarily join the new Boards

and Commissions Joint Working Group.

Reference: Cathy Madalone, Chief of Police

This item was continued to the October 19th meeting.

- G. Great Tide Pool Property Habitat and Coastal Pathways Concerns Proposed Short and Long Term Mitigations

From: Claudia Sawyer, Planning Commissioner

Zoning District/General Plan Designation: n/a

Coastal Zone: Yes

Historic Resources Inventory: N/A

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

Recommended Action: Review and discuss possible recommendations to City Council regarding Great Tide Pool Restoration/Enhancement plan

Reference: Claudia Sawyer, Planning Commissioner

This item was continued to the October 19th meeting.

- H. Policy and Ordinance Subcommittee - Recommended Zoning Amendments

From: Aaron Campbell, Associate Planner

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: Continue the proposed Title 23 amendments to the November 9, 2023, Planning Commission Regular Meeting.

Reference: Aaron Campbell, Associate Planner

Mr. Campbell voiced staff’s recommended action to continue the proposed Title 23 Amendments to the November 9th meeting.

Public comment received from:
Tony Ciani

Action: Upon a motion by Commissioner Sawyer and seconded by Commissioner Kubica, the commission voted to continue the proposed Title 23 Amendments and Hotel Parking to the November 9th meeting.

Motion carried 5-0-2, by the following roll call vote:

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

NOES: None.

ABSENT: Vice Chair Murphy and Commissioner Nodzenski.

9. **CONTINUED AND ONGOING BUSINESS**

A. **Revised Cannabis Regulatory Draft Ordinances – At the request of Commissioner Sawyer and Commissioner Kubica, this item was moved from 9A to 8C.**

From: Erica Vega, Contract City Attorney

Zoning District/General Plan Designation: n/a

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Review and accept all revisions to the Cannabis Regulatory Draft Ordinances and make a recommendation to City Council.

Reference: Erica Vega, Assistant City Attorney

B. **Housing Element and General Plan Updates – At the request of Commissioner Kubica, this item was moved to 8D.**

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

C. **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

Commissioner Sawyer shared a brief update. She stated that the subcommittee was close to submitting their written story pole protocol.

Action: Upon a motion by Commissioner Fredrickson and seconded by Commissioner Davison, the commission voted to continue the remaining items on the agenda to the October 19th meeting.

10. **NEW BUSINESS**

A. **Nomination and Appointment of a Planning Commission Secretary**

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: Nominate and appoint a Planning Commission Secretary

Reference: Steven Lilley, Planning Commission Chair

This item was continued to the October 19th meeting.

11. **PRESENTATIONS**
12. **NEXT MEETING - October 5, 2023**
13. **ADJOURNMENT – 10:20pm**

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

PLANNING COMMISSION

SPECIAL MEETING MINUTES

Thursday, October 5, 2023, 6:30 P.M.

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

This meeting was held in Council Chambers and via Zoom webinar.

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

Chair Lilley called the meeting to order at 6:30pm. Senior Planner Sidor conducted roll call with the following commissioners present in Chamber: Chair Lilley, Vice Chair Murphy, Commissioner Davison, Fredrickson, Kubica, Nodzenski and Sawyer.

2. **APPROVAL OF AGENDA**

Action: Upon motion by Commissioner Fredrickson and seconded by Vice Chair Murphy, the commission voted to approve the agenda.

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

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

NOES: None.

ABSENT: None.

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

Chair Lilley announced the following:

Annie Allenbaugh resigned from Office Assistant in Community Development as she is relocating to another community.

Anastacia Wyatt resigned as Director of the Community Development Department to take a position in another community.

Dan Gho, Public Works Director, will be assisting in managing the day-to-day operations for the Community Development Department. Recruitment is underway to find a director for CDD.

Erica Vega, a partner at Burke, Williams and Sorensen has been appointed Assistant City Attorney and will be assisted by Ephraim Margolin. She will be present at the October 12, 2023 PC Meeting via zoom.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Councilmember Coletti announced that the City Council reviewed the Planning Commission's recommendation for the Cannabis Regulatory Draft Ordinances (Title 11 and 23) and gave direction to amend the proposed ordinances. Those will be coming to Council for first read in November.

5. **GENERAL PUBLIC COMMENT**

General public comment received from:

Vincent Tuminello

Tony Ciani

A. Written General Public Comment

(Chair Lilley read the list of residents who provided written general public comment for the meeting.)

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

7. **REPORTS REQUIRING ACTION**

A. Minutes of the June 8, 2023, Planning Commission Regular Meeting – **At the request of Commissioner Sawyer, this item was moved to 8A.**

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, this item was moved to 8B.**

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approve 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

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Minutes of the June 8, 2023, Planning Commission Regular 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

Action: Commissioner Sawyer recommended the following changes:

Change public citizen to private citizen so the sentence reads, “Chair Lilley attended as a private citizen.”

Add “was received” to page 7 under C to make it a complete sentence.

“An oral report was received.”

At the top of page 11 it should state, “the following individuals.”

Action: Chair Lilley recommended the following changes:

Change council chamber to council chambers.

At the top of page 10, in the third line, the words “to the Commission”

should be omitted.

On page 11, under F, Tony and Lisa Ciani's name is misspelled and needs to be corrected.

Public comment received from:

Lisa Ciani
Inge Lorentzen Daumer
LoboWolf

Action: Upon motion by Vice Chair Murphy and seconded by Commissioner Nodzenski, the commission voted to approve the June 8, 2023 Planning Commission Minutes as amended.

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

AYES: Chair Lilley, Vice Chair Murphy, Commissioner Davison, Fredrickson, Kubica, Nodzenski and Sawyer.
NOES: None.
ABSENT: None.

B. Minutes of the July 13, 2023, Planning Commission Regular Meeting

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approve 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

Action: Commissioner Sawyer recommended the following changes:

At the bottom of page 14, delete "that she," it should just say "attended."
Under 8A, add the following information: "Staff report received by Senior Planner, Mr. Sidor. Applicant, Mark Porter, commented on the project."
One page 17 (8B), add the following information: "Staff report received by Senior Planner, Mr. Sidor. Applicant, Steve Olson, provided project comments."
On page 18, add Lisa Ciani to public comment.
Under 8D, add the following information: "Mr. Sidor provided the report. Mr. Gho, Public Works Director, provided project comments."
Under E, add the following information: "Staff report received by Mr. Campbell. Applicant testimony provided by Mr. Gho, Public Works Director, and Veronica Camp, Seltzer Company Owner."

Public comment received from:

Lisa Ciani

Action: Upon motion by Commissioner Sawyer and seconded by Commissioner Kubica, the commission voted to approve the June 8, 2023 Planning Commission Minutes as amended and post them to the City website.

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

AYES: Chair Lilley, Vice Chair Murphy, Commissioner Davison, Fredrickson, Kubica, Nodzenski and Sawyer.
NOES: None.
ABSENT: None.

C. [6th Cycle Draft Housing Element](#)

From: Joseph Sidor, Contract Senior Planner

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

Recommended Action:

Staff recommends the Planning Commission consider the consultant presentation, ask any pertinent questions, provide input on the 6th Cycle Draft Housing Element, and take one of the following actions:

1. Hear public comment on the 6th Cycle Draft Housing Element and provide a recommendation to the City Council; or
2. Hear public comment on the 6th Cycle Draft Housing Element without providing a recommendation to City Council; or
3. Alternatively, discuss and take other action related to this item.

Reference: Joseph Sidor, Contract Senior Planner

Chair Lilley discussed the rules for the evening and the role of the Planning Commission in this review.

Senior Planner, Mr. Sidor, thanked residents who provided comments on the draft housing element and introduced Veronica Tam from Rincon Consulting.

A presentation was provided by the consultant, Veronica Tam.

Public comment received from:

Steve Hauk
Ken Hinshaw
Adam Pinterits
Geva Arcanin
Barbara Palmer
Dwight Palmer
Andree Brisson
Pam Tanous
Peggy Gibbs
Vincent Tuminello
Lori Rombi
LoboWolf
Lisa Ciani
Inge Lorentzen Daumer
Daniel Miller
Paul Walkingstick
Windows11
Marsha
Jane Haines
Dixie Layne
Justin L.
Tony Ciani
Nancy Parsons
Louise Ramirez

Ms. Tam responded to questions from the commission.

- Action:** Commissioner Kubica recommended adding two sites to be considered for the inventory: Mission Linen (801 Sunset Drive) and the former La Porte Mansion site (1030 Lighthouse Avenue).
- Action:** Commissioner Fredrickson recommended removing the NOAA Building (1352 Lighthouse Avenue) from the inventory. He recommended utilizing the upper Forest Ave. Business District for developing those units.
- Action:** Upon motion by Commissioner Fredrickson and seconded by Commissioner Sawyer, the commission voted to recommend to City Council that Site 49 (the NOAA Building) be removed from the sites inventory for the 6th Cycle Draft Housing Element.

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

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

NOES: None.

ABSENT: None.

- Action:** Commissioner Sawyer recommended considering space near the Andronico's parking lot for development. Commissioner Sawyer asked that objective design standards be included for single family dwellings and guidelines to maintain the historic character in the City.
- Action:** Commissioner Davison also suggested that mixed use be considered for the shopping centers (e.g. Andronico's, Safeway and Lucky). He suggested that existing City property (specifically a section of the golf course) be considered for housing development.
- Action:** Vice Chair Murphy suggested adding an anti-displacement plan for small businesses in the community. He also questioned the possibility of a vacancy tax in the City.
- Action:** Chair Lilley asked Ms. Tam for definitions of "reuse sites" and "low barrier navigation centers."
- Action:** Chair Lilley brought the discussion of Project Homekey to the commission.
- Action:** Upon motion by Chair Lilley and seconded by Commissioner Fredrickson, the commission voted to recommend removal of all references to Project Homekey throughout the Draft Housing Element.

Motion carried 5-2, by the following roll call vote:

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

NOES: Commissioners Nodzenski and Davison.

ABSENT: None.

9. **CONTINUED AND ONGOING BUSINESS**
10. **NEW BUSINESS**
11. **PRESENTATIONS**
12. **NEXT MEETING - October 12, 2023**
13. **ADJOURNMENT 10:33 pm**

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

PLANNING COMMISSION

MEETING MINUTES

Thursday, October 12, 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. Assistant Planner McCown conducted roll call with the following members present in Chamber: Chair Lilley, Vice Chair Murphy, Commissioners Davison and Kubica. Commissioners Fredrickson, Nodzenski, and Sawyer were absent.

2. **APPROVAL OF AGENDA**

Action: Upon motion by Commissioner Davison and seconded by Vice Chair Murphy, the commission voted to approve the agenda.

Motion carried 4-0-3, by the following roll call vote:

AYES: Chair Lilley, Vice Chair Murphy, Commissioners Davison and Kubica.
NOES: None.
ABSENT: Commissioners Fredrickson, Nodzenski and Sawyer.

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

Chair Lilley announced that on September 14, 2023, the Planning Commission approved an architectural permit and waiver for a project at 773-775 Ocean View Boulevard. After that approval, the project was appealed to the City Council.

Chair Lilley welcomed Attorneys Erica Vega, Assistant City Attorney, and Mary Wagner.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

None.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

(Chair Lilley read the list of residents who provided written general public comment for the meeting.)

General public comment received from:

Vince Tuminello

Mike Gibbs

Tony Ciani

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

7. REPORTS REQUIRING ACTION

REGULAR AGENDA

8. PUBLIC HEARINGS

9. CONTINUED AND ONGOING BUSINESS

- A. [6th Cycle Draft Housing Element](#) (Continued from the October 5, 2023, Planning Commission Special Meeting)
From: Joseph Sidor, Contract Senior Planner
Zoning District/General Plan Designation: N/A
Coastal Zone: NoN/AYes
Historic Resources Inventory: NoN/AYes
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Staff recommends the Planning Commission consider the 6th Cycle Draft Housing, ask any pertinent questions, and provide input on the 6th Cycle Draft Housing Element.
Reference: Joseph Sidor, Contract Senior Planner

Mr. Sidor, Senior Planner, shared the recommendation from staff and provided a review of the action taken on the item at the last Planning Commission hearing on October 5th. He introduced Mr. Russell and Veronica Tam from Rincon Consultants.

Public comment received from:

Mike Gibbs

Dwight Palmer

Vince Tuminello

Tony Ciani

William Smith

Lisa Ciani

Kathy Durbin

Inge Lorentzen Daumer

Action: Upon motion by Chair Lilley and seconded by Vice Chair Murphy, the commission voted unanimously to recommend the City Council consider four properties as potential additions to the Draft Housing Element Sites Inventory in the event that other properties are removed or otherwise not available to fulfill Pacific Grove's regional housing needs assessment (RHNA) of 1,125 new housing units. The four sites are the Safeway site on Forest Ave, the Country Club Shopping Center site, the Mission Linen property at 801 Sunset Drive, and the LaPorte Mansion property at 1030 Lighthouse Avenue.

Motion carried 4-0-3, by the following roll call vote:

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

NOES: None.

ABSENT: Commissioners Fredrickson, Nodzenski and Sawyer.

Action: Upon motion by Vice Chair Murphy and seconded by Commissioner Davison, the Planning Commission voted unanimously to forward the commission’s recommendations and the

Draft Housing Element (DHE) to the City Council with a recommendation that the City Council accept the Planning Commission's recommendations and direct staff to submit the DHE to the state.

Motion carried 4-0-3, by the following roll call vote:

AYES: Chair Lilley, Vice Chair Murphy, Commissioners Davison and Kubica.
NOES: None.
ABSENT: Commissioners Fredrickson, Nodzenski and Sawyer.

10. **NEW BUSINESS**
11. **PRESENTATIONS**
12. **NEXT MEETING - October 19, 2023**
13. **ADJOURNMENT -8:46 pm**

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.
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CITY OF PACIFIC GROVE

PLANNING COMMISSION

SPECIAL MEETING MINUTES

Thursday, October 19, 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 6:01 p.m. Senior Planner Sidor conducted roll call with the following members present in Chamber: Chair Lilley, Vice Chair Murphy, and Commissioners Davison, Nodzenski and Sawyer. Commissioners Kubica and Fredrickson were absent.

2. **APPROVAL OF AGENDA**

Action: Upon motion by Commissioner Sawyer and seconded by Vice Chair Murphy, the commission voted to approve the agenda.

Motion carried 5-0-2, by the following roll call vote:

AYES: Chair Lilley, Vice Chair Murphy and Commissioners Davison, Nodzenski and Sawyer.
NOES: None.
ABSENT: Commissioners Fredrickson and Kubica.

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

At the October 18, 2023 City Council Meeting, Chair Lilley presented the Planning Commission's recommendations on the Draft Housing Element (DHE).

Chair Lilley announced that City Council approved a contract with Mr. Lew Bauman to be Interim Community Development Director.

Referring to the interruption during the City Council Meeting's public comment period, Chair Lilley stated that there is no place for disruptive conduct and that hate speech will not be tolerated in community meetings.

Associate Planner Campbell and Senior Planner Sidor responded to questions and comments from Commissioner Sawyer and Chair Lilley.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Councilmember Coletti shared that Council voted 4-3 to approve the Draft Housing Element (DHE) with Planning Commission's recommendations to remove the NOAA site and remove reference to Project Homekey. They also followed the staff's recommendation to remove the Community Center site. The draft was sent to the state Housing and Community Development Department (HCD).

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

Reference: Aaron Campbell, Associate Planner

Recommended Action: Receive correspondence.

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

General public comment received from:
Lisa Ciani

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

7. REPORTS REQUIRING ACTION

- A. Minutes of the August 10, 2023, Planning Commission Regular Meeting - *At the request of Commissioner Sawyer, this item was pulled from the consent agenda and moved to the regular agenda (10B).*

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approve the minutes of the August 10, 2023, Planning Commission Regular Meeting.

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

REGULAR AGENDA

8. PUBLIC HEARINGS

- A. Planning Commission Call-up of AUP 23-0179; 215 Forest Avenue (APN: 006-282-026)

From: Aaron Campbell, Associate Planner

Zoning District/General Plan Designation: C-D

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: Staff recommends the Planning Commission affirm the Zoning Administrator's decision to issue Administrative Use Permit 23-0179 based upon findings of fact.

Reference: Aaron Campbell, Associate Planner

Chair Lilley introduced the item and explained how this item came to the Planning Commission.

Staff report received from Mr. Campbell.

On behalf of the applicant, a presentation was provided by Attorney Eric Fonferek.

Public comment received from:

Inge Lorentzen Daumer

Tony Ciani

Jenny MacMurdo

Annalisa Miller

Sarah Chance

Katie Stern

Sloan C.

Christine Hara

Lisa Ciani

Unknown speaker

Action: Upon motion by Commissioner Nodzenski and seconded by Vice Chair Murphy, the commission voted to affirm the Zoning Administrator's decision to issue Administrative Use Permit 23-0179 based upon findings of fact.

Motion carried 5-0-2, by the following roll call vote:

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

NOES: None.

ABSENT: Commissioners Fredrickson and Kubica.

B. Boards and Commissions Joint Working Group

From: Cathy Madalone, Chief of Police

Zoning District/General Plan Designation: n/a

Coastal Zone: NoN/AYes

Historic Resources Inventory: NoN/AYes

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

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

Reference: Cathy Madalone, Chief of Police

Staff report received from Chief Madalone.

Action: Upon motion by Commissioner Nodzenski and seconded by Commissioner Davison, the commission voted to recommend one commissioner to voluntarily join the new Boards and Commissions Joint Working Group.

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

AYES: Chair Lilley, Commissioners Davison and Nodzenski.

NOES: Vice Chair Murphy, Commissioner Sawyer.

ABSENT: Commissioners Fredrickson and Kubica.

C. Great Tide Pool Property Habitat and Coastal Pathways Concerns Proposed Short and Long Term Mitigations

From: Claudia Sawyer, Planning Commissioner

Zoning District/General Plan Designation: N/A

Coastal Zone: NoN/AYes

Historic Resources Inventory: NoN/AYes

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

Recommended Action: Review and discuss possible recommendations to City Council regarding Great Tide Pool Restoration/Enhancement plan.

Reference: Claudia Sawyer, Planning Commissioner

Presentation provided by Commissioner Sawyer. She shared a report from Mr. Gho, Public Works Director.

Public comment received from:

Lisa Ciani

Tony Ciani

Inge Lorentzen Daumer

Action: Upon motion by Vice Chair Murphy and seconded by Commissioner Nodzenski, the commission voted to recommend that City Council adopt the short-term mitigations as suggested by Commissioner Sawyer.

Action: Commissioner Sawyer made a friendly amendment that long term mitigation be investigated. The friendly amendment was accepted.

Action: Chair Lilley made a friendly amendment to recommend that the City receive monthly

report addressing the activities involved with the repair of the restoration improvements of the Great Tide Pool. He also suggested that a plan and funding be secured. The friendly amendment was not accepted.

Action: Upon motion by Vice Chair Murphy, seconded by Commissioner Nodzenski, and amended by Commissioner Sawyer, the commission voted to recommend that City Council adopt the short-term mitigations as suggested by Commissioner Sawyer and investigate long-term mitigation as suggested by the party employed to make such suggestions.

Motion carries 5-0-2, by the following roll call vote:

AYES: Chair Lilley, Vice Chair Murphy, Commissioners Davison, Nodzenski and Sawyer.
NOES: None.
ABSENT: Commissioners Fredrickson and Kubica.

9. **CONTINUED AND ONGOING BUSINESS**

A. Story Pole Subcommittee

From: Claudia Sawyer, Planning Commissioner

Zoning District/General Plan Designation: N/A

Coastal Zone: NoN/AYes

Historic Resources Inventory: NoN/AYes

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

Report received from Commissioner Sawyer.

Public comment received from:

Tony Ciani

Lisa Ciani

B. Housing Element and General Plan Updates

From: Joseph Sidor, Contract Planner

Zoning District/General Plan Designation: N/A

Coastal Zone: NoN/AYes

Historic Resources Inventory: NoN/AYes

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: Joseph Sidor, Contract Planner

Report received from Mr. Sidor, Senior Contract Planner.

Public comment received from:

Inge Lorentzen Daumer

Lisa Ciani

Mr. Sidor, Senior Contract Planner responded to questions.

10. **NEW BUSINESS**

A. Nomination and Appointment of a Planning Commission Secretary

From: Steven Lilley, Planning Commission Chair

Zoning District/General Plan Designation: N/A

Coastal Zone: NoN/Ayes

Historic Resources Inventory: NoN/Ayes

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

Recommended Action: Nominate and appoint a Planning Commission Secretary

Reference: Steven Lilley, Planning Commission Chair

Commissioner Sawyer was nominated to be secretary.

Action: Upon motion by Chair Lilley, the commission voted to appoint Commissioner Sawyer as secretary of the Planning Commission.

Motion carried 5-0-2, by the following roll call vote:

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

NOES: None.

ABSENT: Commissioners Fredrickson and Kubica.

- B. Minutes of the August 10, 2023, Planning Commission Regular Meeting - ***At the request of Commissioner Sawyer, this item was pulled from the consent agenda and moved to the regular agenda (10B).***

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approve the minutes of the August 10, 2023, Planning Commission Regular Meeting.

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

Action: Secretary Sawyer recommended the following revisions:

- First paragraph should state, “completed work on a certification letter.”
- Correct spelling of Lilley under 3A and 6A.
- Minutes should clearly state “Phase I of Rincon Contract.”
- Lisa Ciani also asked to pull item 6A.
- Under 8A, reference, should included staff report by Mr. Campbell and Mr. Pierik provided comments.
- On page 18 correct spelling of Commissioner Davison.

Action: Upon motion by Chair Lilley, the commission voted to appoint Commissioner Sawyer as secretary of the Planning Commission.

Motion carried 5-0-2, by the following roll call vote:

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

NOES: None.

ABSENT: Commissioners Fredrickson and Kubica.

11. **PRESENTATIONS**

12. **NEXT MEETING - November 9, 2023**

13. **ADJOURNMENT – 8:59 p.m.**

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

PLANNING COMMISSION

MEETING MINUTES

Thursday, November 9, 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. Senior Planner Sidor conducted roll call with the following members present in Chamber: Chair Lilley, Vice Chair Murphy, Secretary Sawyer and Commissioners Davison, Nodzenski, Fredrickson, and Kubica.

2. **APPROVAL OF AGENDA**

Action: Upon motion by Commissioner Fredrickson and seconded by Commissioner Sawyer, the commission voted to remove item 8A from the agenda and continue item 8A to the December 14th Regular meeting of the Planning Commission.

Motion carried 4-3-0, by the following roll call vote:

AYES: Chair Lilley, Secretary Sawyer, and Commissioners Fredrickson and Kubica.
NOES: Vice Chair Murphy and Commissioners Nodzenski and Davison.
ABSENT: None

Action: Upon motion by Commissioner Fredrickson and seconded by Commissioner Sawyer, the commission voted to approve the agenda as amended.

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

AYES: Chair Lilley, Vice Chair Murphy, Secretary Sawyer, and Commissioners Fredrickson, Nodzenski, Davison, and Kubica.
NOES: None
ABSENT: None

Action: Upon motion by Commissioner Fredrickson and seconded by Commissioner Kubica, the commission voted to request staff to renote Architectural Permit & Coastal Development Permit 22-0264, 111 10th St.

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

AYES: Chair Lilley, Vice Chair Murphy, Secretary Sawyer, and Commissioners Fredrickson, Nodzenski, Davison, and Kubica.
NOES: None
ABSENT: None

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

Secretary Sawyer announced her resignation as Planning Commissioner Secretary. Chair Lilley introduced interim Community Development Director Lew Bauman.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council Liaison, Luke Coletti, made general announcements.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comments

Reference: Aaron Campbell, Associate Planner

Recommended Action: General Written Comments

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

General written comments were received from K. Locke, Jane Haines, Inge Lorentzen Daumer.

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

A. Planning Commission 2023 Workplan – **Commissioner Sawyer pulled item 6A and the item was re-agendized as item 9C.**

Reference: Steven Lilley, Planning Commission Chair

Recommended Action: Receive the revised Planning Commission 2023 Work plan.

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

7. **REPORTS REQUIRING ACTION**

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Architectural Permit (AP) & Coastal Development Permit (CDP) 22-0264, 111 10th St (APN 006-218-001) - **Item 8A was continued to the December 14th regular meeting of the Planning Commission.**

From: Aaron Campbell, Associate Planner

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

9. **CONTINUED AND ONGOING BUSINESS**

A. Story Pole Subcommittee Report

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

Action: Received Story Pole Subcommittee Report from Commissioner Sawyer.

Public Comment: No public comment received.

B. Housing Element and General Plan Updates

From: Joe Sidor, Contract Senior Planner

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 Housing Element and General Plan updates.

Reference: Joe Sidor, Senior Contract Planner

Action: Received Housing Element & General Plan update from Contract Planner Joe Sidor.

Public Comment: No public comment received.

C. Planning Commission 2023 Workplan

Reference: Steven Lilley, Planning Commission Chair

Recommended Action: Receive the revised Planning Commission 2023 Work plan.

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

Action: No action taken.

Public Comment: No public comment received.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING - December 14, 2023**

13. **ADJOURNMENT – Meeting adjourned at 7:10 pm.**

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.



NOTICE OF MEETING

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, December 14, 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 6:00pm. Associate Planner Campbell conducted roll call with the following commissioners present in Chamber: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Kubica, Nodzenski and Sawyer. Commissioner Davison was absent.

Action: Due to technical difficulties with Zoom, Chair Lilley called a recess at 6:12 pm until the issue was resolved.

Action: Chair Lilley resumed the meeting at 6:30 pm.

2. **APPROVAL OF AGENDA**

Action: Upon motion by Vice Chair Murphy and seconded by Commissioner Fredrickson, the commission voted to move items 6A, 8D, and 8E to the consent agenda.

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

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

NOES: None

ABSENT: Commissioner Davison

Action: Upon a motion by Commissioner Fredrickson and seconded by Chair Lilley, the commission voted to send item 8C to the Historic Resources Committee and continue to a date uncertain.

Motion failed 2-4-1, by the following roll call vote:

AYES: Chair Lilley, Commissioner Fredrickson

NOES: Vice Chair Murphy, Commissioners Sawyer, Nodzenski, and Kubica

ABSENT: Commissioner Davison

Action: Upon a motion by Commissioner Fredrickson and seconded by Vice Chair Murphy, the Commission voted to approve the agenda as amended.

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

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

NOES: None

ABSENT: Commissioner Davison

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

Commission announcements were made by Commissioner Sawyer, Chair Lilley, and Vice Chair Murphy

4. **COUNCIL LIAISON ANNOUNCEMENTS**

No announcements were made.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comments

Reference: Aaron Campbell, Associate Planner

Recommended Action: General Written Comments

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

Action: Received written public comments.

Action: General public comments were received from Mike Gibbs, Inge Lorentzen Daumer, Lisa Ciani, Tony Ciani

CONSENT AGENDA

6. **REPORTS FOR INFORMATION ONLY**

A. Planning Commission 2023 Workplan

Reference: Steven Lilley, Planning Commission Chair

Recommended Action: Receive the revised Planning Commission 2023 Work plan.

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

7. **REPORTS REQUIRING ACTION**

A. Minutes of the September 14, 2023 Planning Commission Regular Meeting

Reference: Aaron Campbell, Associate Planner

Recommended Action: Approve the minutes of the September 14, 2023 Planning Commission Regular Meeting.

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

Action: Commissioner Sawyer suggested corrections to the September 14th PC meeting minutes.

B. Adoption of a Resolution of Intention to Amend Chapter 23.64.190(d) of the Pacific Grove Municipal Code (PGMC) related to Hotel Parking (*previously Item 8D*).

From: Steven Lilley, Planning Commission Chair

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

Recommended Action: It is recommended that the Planning Commission (PC) consider 1) confirming a motion adopted on December 8, 2022, recommending changes to the municipal code related to hotel parking; 2) adopting the attached Resolution of Intention (RoI); and 3) requesting that the City manager authorize staff and legal resources necessary to assist the PC in preparing the final proposed legislative amendment for Council consideration.

Reference: Steven Lilley, Planning Commission Chair

Action: Upon a motion by Commissioner Nodzenski and seconded by Commissioner Sawyer, the Commission voted to approve the Consent Agenda as amended. Inge Larentzen Daumer pulled Item 7C from Consent Agenda and the Commission placed it as Item 8D on the Regular Agenda.

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

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

NOES: None

ABSENT: Commissioner Davison

REGULAR AGENDA

8. PUBLIC HEARINGS

- A. Architectural Permit (AP) & Coastal Development Permit (CDP) 22-0264, 111 10th St (APN 006-218-001) continued from the November 9, 2023 Planning Commission regular meeting.

From: Aaron Campbell, Associate Planner

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

Public comment was received by Tyler Ridgley, Toni Souza, Ann Rudolph, Inge Lorentzen Daumer, Lisa Ciani, and Tony Ciani.

Action: Upon a motion by Vice Chair Murphy and seconded by Commissioner Nodzenski, the Commission voted to approve Architectural Permit (AP 22-0264), subject to the findings, amended conditions of approval, and CEQA Class 1 and Class 31 categorical exemptions for existing facilities and historical restoration/rehabilitation, respectively. Amendments to the Conditions of Approval include 1. Development shall follow all provisions and standards outlined in the City of Pacific Grove Information Bulletin.

29: Tree Guidelines During Development, and 2. A qualified tribal monitor and archaeological monitor shall be present to observe all ground disturbing activities of the project and to investigate and report on any findings.

Action: Commissioner Sawyer requested a friendly amendment to the motion that would add Scenic Resources SCE-9 of the LUP to the permit findings. Vice Chair Murphy and Commissioner Nodzenski agreed to the friendly amendment.

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

AYES: Vice Chair Murphy, Commissioners Fredrickson, Nodzenski, and Kubika.

NOES: Commissioner Sawyer, Chair Lilley

ABSENT: Commissioner Davison

- B. Coastal Development Permit (CDP) 22-0296 for 1353 Arena, 1335 Arena, and 320 Asilomar Avenues, Pacific Grove (APNs 007-061-003, 007-061-044, and 007-061-045).
From: Garrett McCown, Assistant Planner
Zoning District/General Plan Designation: R-1-B-4/Low Density Residential 1.0 DU/AC
Coastal Zone: Yes
Historic Resources Inventory: N/A
CEQA: Categorical Exemption, CEQA Guidelines Section 15305, Class 5, Minor Alterations in Land Use Limitations
Recommended Action: Staff recommends that the Planning Commission approve the proposed Coastal Development Permit (CDP 22-0296), subject to the findings, condition of approval and Class 5 categorical exemption for minor alterations in land use limitations.
Reference: Garrett McCown, Assistant Planner

Public comment was received by Gonzalo Pique, Inge Lorentzen Daumer, Lisa Ciani, David Huff, and Tony Ciani.

Action: Upon a motion made by Commissioner Fredrickson and seconded by Vice Chair Murphy the Commission voted to approve Coastal Development Permit (CDP 22-0296), subject to the findings, conditions of approval and Class 5 categorical exemption for minor alterations in land use limitations.

Action: Chair Lilley requested a friendly amendment to provide correct and matching square footage calculations on the site plans. The friendly amendment was accepted by Commissioner Fredrickson and Vice Chair Murphy.

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

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

NOES: None

ABSENT: Commissioner Davison

- C. Use Permit (UP) and Coastal Development Permit (CDP) 23-0221, 270 Central Ave (APN 006-214-002)
From: Aaron Campbell, Associate Planner
Zoning District/General Plan Designation: R-3-PGR
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing

Facilities

Recommended Action: Staff recommends the Planning Commission approve the proposed Use Permit and Coastal Development Permit (UP/CDP 23-0221), subject to the recommended findings, conditions of approval, and Class 1 and Class 31 Categorical Exemptions (CEQA Guidelines Section 15301 - Existing Facilities and Section 15331 - Historical Resource Restoration/Rehabilitation).

Reference: Aaron Campbell, Associate Planner

Public comment was received by Michael Zubrecki, Moe Ammar, Inge Lorentzen Daumer, Tony Ciani, Lisa Ciani, and Alex Lorca.

Action: Upon a Motion made by Commissioner Sawyer and seconded by Commissioner Fredrickson the Planning Commission voted to approve Use Permit and Coastal Development Permit (UP/CDP 23-0221), subject to the recommended findings, amended conditions of approval, and Class 1 and Class 31 Categorical Exemptions (CEQA Guidelines Section 15301 - Existing Facilities and Section 15331 - Historical Resource Restoration/Rehabilitation) with the following additional conditions of approval: Applicant must provide exterior lighting plans and landscape plans.

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

AYES: Chair Lilley, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika.

NOES: Vice Chair Murphy

ABSENT: Commissioner Davison

Action: On a motion by Commissioner Fredrickson and seconded by Vice Chair Murphy the Commission voted to continue all remaining agenda items to the January 11, 2024, regular meeting of the Planning Commission.

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

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

NOES: None

ABSENT: Commissioner Davison

- D. Adoption of a Resolution of Intention to Amend Chapter 23.64.190(d) of the Pacific Grove Municipal Code (PGMC) related to Hotel Parking. – **This item was moved to the Consent Agenda under item 7B.**

From: Steven Lilley, Planning Commission Chair

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: It is recommended that the Planning Commission (PC) consider 1) confirming a motion adopted on December 8, 2022, recommending changes to the municipal code related to hotel parking; 2) adopting the attached Resolution of Intention (RoI); and 3) requesting that the City manager authorize staff and legal resources necessary to assist the PC in preparing the final proposed legislative amendment for Council consideration.

Reference: Steven Lilley, Planning Commission Chair

- D. Adoption of a Resolution of Intention to Amend Selected Provisions of Chapter 23 of the Pacific Grove Municipal Code (PGMC) to clarify selected code provisions. -***This item was moved to the Consent Agenda under item 7C by the Commission, and then later pulled from the Consent Agenda by a member of the public. The item was placed on the regular agenda under 8D and continued to the January 11, 2024, PC meeting.***

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: It is recommended that the Planning Commission (PC) consider Adoption of a Resolution of Intention to Amend Selected Provisions of Chapter 23 of the Pacific Grove Municipal Code (PGMC) to clarify selected code provisions and requesting that the City manager authorize staff and legal resources necessary to assist the PC in preparing the final proposed legislative amendments for Council consideration.

Reference: Steven Lilley, Planning Commission Chair

- E. Adoption of a Resolution of Intention to Amend Chapter 23 of the Pacific Grove Municipal Code (PGMC) related to Story Poles. - ***This item was continued to the January 11, 2024, PC meeting.***

From: Claudia Sawyer, Planning Commissioner

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: It is recommended that the Planning Commission (PC) consider adopting the attached Resolution of Intention (RoI) and requesting that the City manager authorize staff and legal resources necessary to assist the PC in preparing the final proposed legislative amendment for Council consideration.

Reference: Claudia Sawyer, Planning Commissioner

9. **CONTINUED AND ONGOING BUSINESS**

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING - January 11, 2024**

13. **ADJOURNMENT – 10:30 p.m.**

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: Brian Pierik, City Attorney
MEETING DATE: August 07, 2024
SUBJECT: First Reading of Ordinance Amending Section 2.06.010 (a) of the Pacific Grove Municipal Code Relating to Residency Requirement for City Manager
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 and Introduce and hold first reading of an Ordinance Amending Section 2.06.010 (a) of the Pacific Grove Municipal Code Relating to Residency Requirement for City Manager;
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney.

DISCUSSION

Municipal Code Section 2.06.010 currently reads, in pertinent part, as follows:

“The city manager shall be appointed by the affirmative vote of five-sevenths of the council. The city manager, who shall be the administrative head of the city government, shall be chosen by the council without regard to political consideration and with reference solely to his/her qualifications for such office.

(a) Residence Requirement. It shall not be necessary that he or she reside in the city at the time of his/her appointment, but he or she shall become a resident thereof within 60 days thereafter and thereafter during his or her incumbency actually reside in said city.”

California Constitution, Article XI, Section 10 (b) reads:

“(b) A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.”

Thus, the test to determine whether a residency requirement is valid is one of reasonableness and should be evaluated based on whether it is designed to achieve a legitimate objective.

There are considerations that can be included in determining what is a reasonable distance for a City Manager residence. For example, the City Manager serves as the emergency services director for the City and should be living within a reasonable driving distance to take action during an emergency.

For these reasons, this Ordinance is being proposed to amend Section 2.06.010 (a) to read as

(a) Residence Requirement. It shall not be necessary that he or she reside in the city at the time of his/her appointment, but he or she shall become a resident ~~thereof~~ within 60 days thereafter ~~and thereafter during his or her incumbency actually reside in said city~~ of the County of Monterey or such other location as mutually agreed upon in writing by the City Council and the City Manager.

With this amendment to Section 2.06.010 (a) the City Manager would not be required to live in the City of Pacific Grove, but would be required to be a resident of the County of Monterey or such other location as mutually agreed upon in writing by the City Council and City Manager.

OPTIONS

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

FINANCIAL IMPACT:

There is no fiscal impact related to enactment of this Ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Ordinance Amending PGMC 2.06.010(a) re CM Residency Requirement

ORDINANCE NO. 24-XXX

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING SECTION 2.06.010 (a) OF THE PACIFIC GROVE MUNICIPAL CODE REGARDING RESIDENCE REQUIREMENT FOR CITY MANAGER

FACTS

1. Municipal Code Section 2.06.010 currently reads, in pertinent part, as follows:

The city manager shall be appointed by the affirmative vote of five-sevenths of the council. The city manager, who shall be the administrative head of the city government, shall be chosen by the council without regard to political consideration and with reference solely to his/her qualifications for such office.

(a) Residence Requirement. It shall not be necessary that he or she reside in the city at the time of his/her appointment, but he or she shall become a resident thereof within 60 days thereafter and thereafter during his or her incumbency actually reside in said city.

2. This Ordinance will amend Section 2.06.010 (a) read as follows with the deleted text stricken and the added text underlined:

(a) Residence Requirement. It shall not be necessary that he or she reside in the city at the time of his/her appointment, but he or she shall become a resident ~~thereof~~ within 60 days thereafter ~~and thereafter during his or her incumbency actually reside in said city~~ of the County of Monterey or such other location as mutually agreed upon in writing by the City Council and the City Manager.

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. Section 2.06.010 (a) of the Pacific Grove Municipal Code is hereby amended and shall read as follows:

(a) Residence Requirement. It shall not be necessary that he or she reside in the city at the time of his/her appointment, but he or she shall become a resident within 60 days thereafter of the County of Monterey or such other location as mutually agreed upon in writing by the City Council and the City Manager.

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

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent

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

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

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:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. 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: Daniel Gho, Public Works Director/Deputy City Manager
MEETING DATE: August 07, 2024
SUBJECT: First Reading of an Ordinance Approving an Amendment to the Lease between Lighthouse Fellowship and the City of Pacific Grove
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Request the City Attorney to read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an Ordinance approving an amendment to the lease between Lighthouse Fellowship and the City of Pacific Grove for the use of City owned property located at 515 Junipero Avenue, commonly known as the Community Center, in the City of Pacific Grove, and authorizing the Mayor to execute Amendment #2 and any Letters of extension of the Lease.
4. Direct that publication of the Ordinance will be satisfied by publication of a summary approved by the City Attorney.

DISCUSSION

The City owns the property located at 515 Junipero Avenue, Pacific Grove, CA 93950. This property is commonly known as the Community Center. Within the larger property is an office space, referred to as the Community Center Office. From 2009 until 2015 the office space was seldom used. In March 2015, the City signed a Lease agreement with Lighthouse Fellowship for one year, with two, one-year extension options. In 2018, the Council authorized an amendment to the Lease for an additional year, with up to five (5) consecutive options to renew and extend the term of the lease, each for a period of up to one (1) year. The last extension was harnessed in FY2023/2024.

The Lighthouse Fellowship desires to remain a tenant of the Community Center Office and has requested an extension of the lease agreement. The staff recommendation is to authorize Amendment #2 to the Lease Agreement. The amendment will extend the term of the lease for a one-year period (FY2024-2025), with up to four (4) options to extend the lease annually, each for a period of up to one (1) year. All other terms of the lease will remain the same including the rent. The agreed upon rent is \$650 per month, for the 600 square feet of office space. The Lighthouse Fellowship provides all the necessary insurance documents and fulfills all conditions noted in the original lease documents.

During this 9-year term, Lighthouse Fellowship has been a positive presence at the facility and a great

partner with the City of Pacific Grove.

OPTIONS

1. Approve the amendment.
2. Do not approve the amendment and provide alternative direction.

FINANCIAL IMPACT:

Rent will be paid to the City by the Lighthouse Fellowship in the amount of \$650 a month.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Lease and Amendment #1

Amendment #2

Ordinance for office Lease

**CITY OF PACIFIC GROVE
COMMUNITY CENTER RECREATION OFFICE LEASE**

THIS LEASE AGREEMENT, (Lease) is entered into this 6th day of February, 2015, by and between the City of Pacific Grove (City), a municipal corporation, and Lighthouse Fellowship of Pacific Grove (Lessee). The City and Lessee, collectively, shall be referred to as the Parties.

RECITALS

A. WHEREAS, the City is the owner of the real property located at 515 Junipero Ave, Pacific Grove, CA 93950;

B. WHEREAS, located on the Property is the Recreation Office (Premises), which is currently unused by City;

C. WHEREAS, lessee wishes to Lease the Premises from City, and City wishes to Lease Premises to Lessee; and

NOW THEREFORE, for mutually acknowledged valuable consideration, the Parties hereby covenant and agree as follows:

AGREEMENT

1. Terms of Lease; Use; Operation of Lease.

1.1 Premises. The Premises are defined, and are therefore limited to the Recreation Office located at located at 515 Junipero Avenue in Pacific Grove, California more particularly described on Attachment "A," attached hereto and incorporated herein by this reference. Lessee shall also have access to, and use of, the adjacent public restrooms (Public Restrooms).

1.2 Lease. City hereby Leases and lets to Lessee, and Lessee hereby Leases and takes from City all areas that constitute the described Premises.

1.3 Term of Lease. The term of this Lease shall be for one year, commencing on **March 1, 2015.**

1.4 Options to Extend. So long as Lessee is not in default under any term or condition of this Lease, Lessee shall have an option to extend this Lease for two (2) consecutive options to renew and extend the Term of this Lease, each for a period of one (1) year. Should the Parties fail to reach agreement on the rental rate to be paid during any such extension prior to the expiration date of this Lease or the expiration of any extension, this Lease shall terminate as of the expiration date of this Lease or the expiration of any extension. Lessee shall provide City written notice of Lessee's intent to extend on or before ninety (90) days prior to the expiration of

the Lease. Any option term shall be cancelled upon the failure of Lessee to provide written notice in accord with this paragraph.

1.5 Use of Premises.

1.5.1 Use of Premises. Lessee shall use and occupy the Premises pursuant to this Lease and upon the terms and conditions herein solely for general office use or small meeting space.

1.5.2 Compliance with Law. Tenant shall not use or occupy the Premises in violation of law or for any purpose which is in violation of any zoning or other land use regulation and shall discontinue any use of the Premises which is declared by any governmental authority to be a violation of law. Lessee, at its sole cost and expense shall obtain any and all permits and licenses which may be required for the operation of the Premises, and Lessee shall pay any and all taxes, including sales and use taxes, which may be assessed against Lessee for any reason in the operation of the Premises. Lessee shall not commit, or suffer to be committed, any waste or nuisance in its occupancy of the Premises.

2. Rent.

2.1 Base Rent. Base Rent for the Premises shall be shall be six hundred fifty (\$650.00) per month, payable on the first day of each month, for the first 12 months of the Agreement.

3. Late Payment of Rent.

3.1 Late Charge. Lessee acknowledges that late payment to City rent shall cause City to incur costs not contemplated by this Lease. The exact amount of those costs is difficult and impracticable to determine. Therefore, if any rent payment is not received by first of each month, Lessee shall pay to City an additional sum of ten percent (10%) per month of rent as a late charge. A separate late charge shall become due and payable for each month until the full balance is paid.

3.2 Fair Estimate of Costs. The Parties agree that the late charge referenced above is a fair and reasonable estimate of costs City shall incur by reason of any late payment. City's acceptance of any late charge shall not constitute a waiver, by City, of any default with respect to the overdue amount. City may exercise any of its rights and remedies notwithstanding its receipt of the late charge.

4. Utilities; Maintenance & Repair.

4.1 Premises Access to Utilities. City agrees it will make available to the Premises utility facilities for the distribution within the Premises of, electricity, lighting, heat, and a telephone outlet. Lessee shall be responsible for making available internet services.

4.2 Contract for Utilities. City shall be responsible to pay for all heating and electricity utility services. As to all other utility service, Lessee shall contract directly, and be solely responsible to pay for all other utility services, including, without limitation, telephone, cable and/or satellite TV, and Internet service fees and charges. City shall not be liable for damage or other loss due to failure or interruption of any utility services, and failure or interruption of those services shall not entitle Lessee to terminate this Lease.

4.3 Maintenance and Repair of Premises by Lessee. Lessee agrees to: (1) keep the Premises in a clean and sanitary condition; (2) immediately notify the City of any defects or dangerous conditions in and about the Premises of which they become aware; and (3) reimburse City for the cost of any damage by Lessee or its guests or invitees. Further, Lessee shall repair, replace, rebuild or restore, in good order and safe condition, interior and exterior windows, locks, window casements, fixtures, and furnishings. As to each, maintenance and repair shall be made in a workmanlike manner, utilize good quality materials, and completed to a standard that each item is in good and safe operable, usable and sanitary order and condition.

4.4 Maintenance and Repair of Premises by City. City shall repair, replace, rebuild or restore, in good order and safe condition, the interior and exterior of the Premises throughout the term of this Lease and any extension thereof. This obligation shall extend only to any office walkway, doors, electrical wiring, conduits, outlets, flooring, walls, ceiling, and/or HVAC system. As to each, maintenance and repair shall be made in a workmanlike manner, utilize good quality materials, and completed to a standard that each item is in good and safe operable, usable and sanitary order and condition.

4.5 Proof to City. Lessee shall provide written proof of maintenance, repair, replacement, rebuilding, and/or restoration as may be required by City.

5. Insurance and Indemnification.

With respect to the premises leased under this Agreement, Tenant shall maintain the insurance specified below. The City of Pacific Grove reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Tenant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the term of this lease.

5.1 Workers Compensation & Employers Liability Insurance. The following Workers Compensation & Employers Liability Insurance shall be required if Tenant has employees:

- Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- Employers Liability Insurance with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- The policy shall include a written waiver of the insurer's right to subrogate against the City of Pacific Grove.
- Required Evidence of Coverage:

- Subrogation waiver endorsement
- Completed Certificate of Insurance.

If Tenant currently has no employees, Tenant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

5.2 General Liability Insurance. Tenant shall obtain General Liability Insurance with the following requirements:

- Commercial General Liability Insurance no less broad than Insurance Services Office (ISO) form CG 0001. Coverage shall be on a standard occurrence form.
- Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate. The General Aggregate shall apply separately to each location. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Tenant maintains higher limits than the specified minimum limits, the City of Pacific Grove requires and shall be entitled to coverage for the higher limits maintained by Tenant.
- Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by the City of Pacific Grove. Tenant is responsible for any deductible or self-insured retention and shall fund it upon the City of Pacific Grove's written request, regardless of whether Tenant has a claim against the insurance or is named as a party in any action involving the City of Pacific Grove.
- The City of Pacific Grove shall be endorsed as an additional insured for liability arising out the ownership, maintenance or use of that part of the premises leased to the Tenant (ISO form CG 20 11 or equivalent).
- The insurance provided to The City of Pacific Grove as an additional insured shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by the City of Pacific Grove
- The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.
- Required Evidence of Coverage:
 - Copy of the additional insured endorsement or policy language granting additional insured status;
 - Copy of the endorsement or policy language indicating that coverage applicable to The City of Pacific Grove is primary and non-contributory; and
 - Properly completed Certificate of Insurance.

5.3 Property Insurance for Tenants Improvements & Betterments. Tenant shall obtain "Property Insurance for Tenants Improvements & Betterments" with the following requirements:

- Property insurance on a "special form" or "all risks" basis.
- Minimum Limit: the full current replacement cost of the Improvements & Betterments.
- Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by the City of Pacific Grove.
- Required Evidence of Coverage:

- Properly completed Certificate of Property Insurance or Evidence of Commercial Property Insurance.

All insurers other than the California State Compensation Insurance Fund shall have an A.M. Best's rating of at least A:VII.

Where required, the name and address for Additional Insured endorsements and Certificates of Insurance shall be: the City of Pacific Grove, 300 Forest Avenue, Pacific Grove, CA 93950.

Evidence of all coverage shall be provided for the entire term of this Agreement. Tenant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. Upon written request, certified copies of required insurance policies shall be provided within thirty (30) days.

6 Taxes

6.5 Taxes. Lessee recognizes and understands that this Lease may create a real property possessory interest tax that may subject the Lessee to real property taxes. Nonpayment of taxes may result in Lessee being in default.

7 Default.

7.5 Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

7.5.1 Vacating or abandonment of the Premises by Lessee for more than a continuous ninety (90) day period.

7.5.2 The failure by Lessee to make any payment of rent, taxes, or any other payment required to be made by Lessee where such failure shall continue for period of ten (10) days after written notice from City of the overdue amount.

7.5.3 The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, where such failure continues for a period of 30 days after written notice from City.

7.5.4 The making by Lessee of any general assignment for the benefit of creditors.

7.5.5 The institution of any bankruptcy proceedings by or against Lessee.

7.5.6 Lessee's improper, unauthorized or unpermitted use of Premises.

7.6 Remedies in Default. City shall provide Lessee with written notice of its material breach. Lessee shall have thirty (30) days to cure said breach. In the event of any such continuing default or breach by Lessee, City may at any time thereafter, with or without notice or demand, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

7.6.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the property to City. Additionally, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to:

7.6.1.1 The reasonable cost of recovering possession of the Premises.

7.6.1.2 Reasonable expenses of re-letting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees and any real estate commission actually paid.

7.6.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee has abandoned the Premises. In such event, City is entitled to enforce all of its rights and remedies under this Lease, including the right to recover the rent as it becomes due.

7.6.3 Pursue any other remedy now or hereafter available to City under the laws of California.

7.7 Assignment and Subletting. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber any of Lessee's interest in this Lease or in the Premises without City's prior written consent.

7.8 Surrender. At the end of the term or upon sooner termination of this Lease, Lessee shall surrender the Premises and tenant improvements to the City in good order, condition and repair, ordinary wear and tear excepted. All improvements shall remain the property of City. Any damage to the Premises occasioned by Lessee's removal of its furnishings and equipment shall be repaired by Lessee, or City may, at its option, repair and Lessee shall pay reasonable costs.

7.9 Entry for Repair. City reserves the right to enter the Premises to inspect for Lease compliance, to make necessary repairs and improvements which Lessee has failed to make, to supply necessary services, and for other legitimate purposes, at any reasonable time, during normal business hours and with forty eight (48) hours advanced notice to Lessee, or upon such other time as may be mutually agreed, emergencies excepted. The City may not unreasonably interfere with Lessee's use of the premises in its entry under this provision.

7.10 Alterations. Lessee shall not make any structural change without the prior written consent of the City. Any alteration other than the installation of removable equipment or appliances shall become property owned by City. City shall not be liable for the cost or expense of any alteration.

7.11 Other Provisions Regarding Premises.

7.11.1 Lessee shall be allowed, at its sole cost and expense, to remove the existing carpet and replace it with new carpet. The new carpet shall be approved by City, whose consent shall not be unreasonably withheld.

7.11.2 Prior to commencement of this Lease, City shall remove all furniture and materials from the Premises.

7.11.3 Prior to commencement of this Lease, the City shall have the exterior and office doors re-keyed and shall retain a copy of the key. Lessee shall reimburse the City for the costs of re-keying the doors.

7.11.4 Lessee is specifically authorized to remove existing City signage and stickers on the Premises door and place a new sign on the door. New signage must comply with City sign regulations and must be approved by City, whose consent shall not be unreasonably withheld.

7.11.5 Lessee shall be allowed, at its sole cost and expense, to repaint the interior of the Premises.

7.12 Waste. Lessee shall not commit, or allow to be committed, any waste, damage, or nuisance on the Premises.

7.13 Liens. Lessee shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligation incurred by Lessee.

7.14 Destruction of Premises. If the Premises are destroyed or made unusable by fire, flood, vandalism or any other cause so as to make it impossible to carry on business, this agreement and its provisions, may be terminated at the election of either City or Lessee, delivered in writing to the other Party within thirty (30) days after such destruction.

7.15 Claims. Lessee shall notify City, in writing, by the end of the next non-holiday weekday, of any occurrence at the Premises which involves injury to person or property. This notice shall include the full description of facts, circumstances, nature of the incident. Lessee shall provide the names and addresses of persons involved, and of all witnesses. Lessee shall promptly provide City with copies of any claim for damage, including copies of any court actions regarding incidents that occurred on or about the Premises.

7.16 Holding Over. If Lessee remains in possession of the Premises after the expiration of the term and without executing a new Lease, then such holding over shall be construed as a tenancy from month to month, subject to all of the applicable terms and conditions of this Lease, provided however that Base Rent and Percentage Rent shall increase by a factor of two hundred percent (200%) during the month to month tenancy.

7.17 Waiver. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Lease or failure to enforce any provision of ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law for any subsequent breach or violation of the same. The subsequent acceptance by either Party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Lease or of any applicable law or ordinance.

7.18 Mediation. Lessee shall continue to perform under this Lease during any dispute. Any controversy between the parties regarding the construction or application of this Lease, and any claim arising out of this Lease or its breach, shall first be discussed at an informal meeting between the parties within 10 days of the dispute or claim arising. Should the informal meeting not resolve the dispute the matter shall be submitted to mediation. The parties shall agree on a mutually acceptable mediator and shall each bear their own mediation costs. If mediation does not prove successful, either party may institute a proceeding in a court of law or the parties may agree to nonbinding or binding arbitration. In the event any dispute arising from or related to this Lease results in litigation, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

7.19 Successors. The terms and conditions contained in this Lease shall, subject to the provisions as to assignment, apply to and bind Lessee, Lessee's tenants, Lessee's sub-tenants, and the successors of any of these persons or successors of the Parties.

7.20 Amendment. This Lease may be amended only by a written instrument, signed by both City and Lessee.

7.21 Integration. This document, together with Attachment A, represents the entire and integrated agreement between City and Lessee and supersedes all prior negotiations, representations, and agreements, either written or oral.

7.22 Governing Law. This Lease shall be governed and construed by the laws of the State of California. Venue shall be within the County of Monterey, California.

7.23 Compliance with Law. Lessee agrees it shall faithfully observe in the use of the Premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force.

7.24 Recitals Part of Lease. The Recitals set forth above are incorporated herein and constitute an integral part of this Lease.

7.25 Notices. All notices by either Party to the other shall be in writing. Notices shall be addressed as follows:

City:
City of Pacific Grove
Attn: City Manager
300 Forest Avenue
Pacific Grove, CA 93950

Lessee:
Lighthouse Fellowship of Pacific Grove
Attn: President
PO Box 700
Pacific Grove, CA 93950

A copy of any such notice shall also be delivered, in writing, as follows:

City ATTORNEY:

Office of the City Attorney
300 Forest Avenue
Pacific Grove, CA 93950

7.26 Time is of the Essence. Time is of the essence of each and every term and provision of this Agreement.

7.27 Severability. The invalidity of any provision of this Lease shall in no way affect the validity of any other provision hereof.

7.28 Headings. The headings used in this Lease are for convenience of the Parties and shall not be considered in interpreting the meaning of any provision of this Lease.

7.29 Attorney's Fees. In the event of any dispute that results in litigation or arbitration arising from or related to this Lease, including payment of rent or suit for possession, the prevailing Party shall be entitled to recovery of all reasonable costs incurred, including that Party's time, court costs, attorney fees, expenses for expert witnesses, expenses for accountants or appraisers, and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing Party, and shall not require initiation of a separate legal proceeding. The provisions of this paragraph shall incorporate any further relief that may be provided by any other provision of this Lease.

City of Pacific Grove:

Date: 5-16-15

Thomas Francisco
City MANAGER
City OF PACIFIC GROVE

Lighthouse Fellowship Pacific Grove:

Date: 5/7/15

David Lucas
Sr. Pastor David Lucas
President

U:\GENERAL (NEW)\City of Pacific Grove\City Property & Leases\Community Center\Lease - Recreation Office at Community Center to Lighthouse Fellowship(rev2).doc

Approved as to City



CITY ATTORNEY
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

RECREATION OFFICE LEASE - PACIFIC GROVE COMMUNITY CENTER

Page 9 of 10

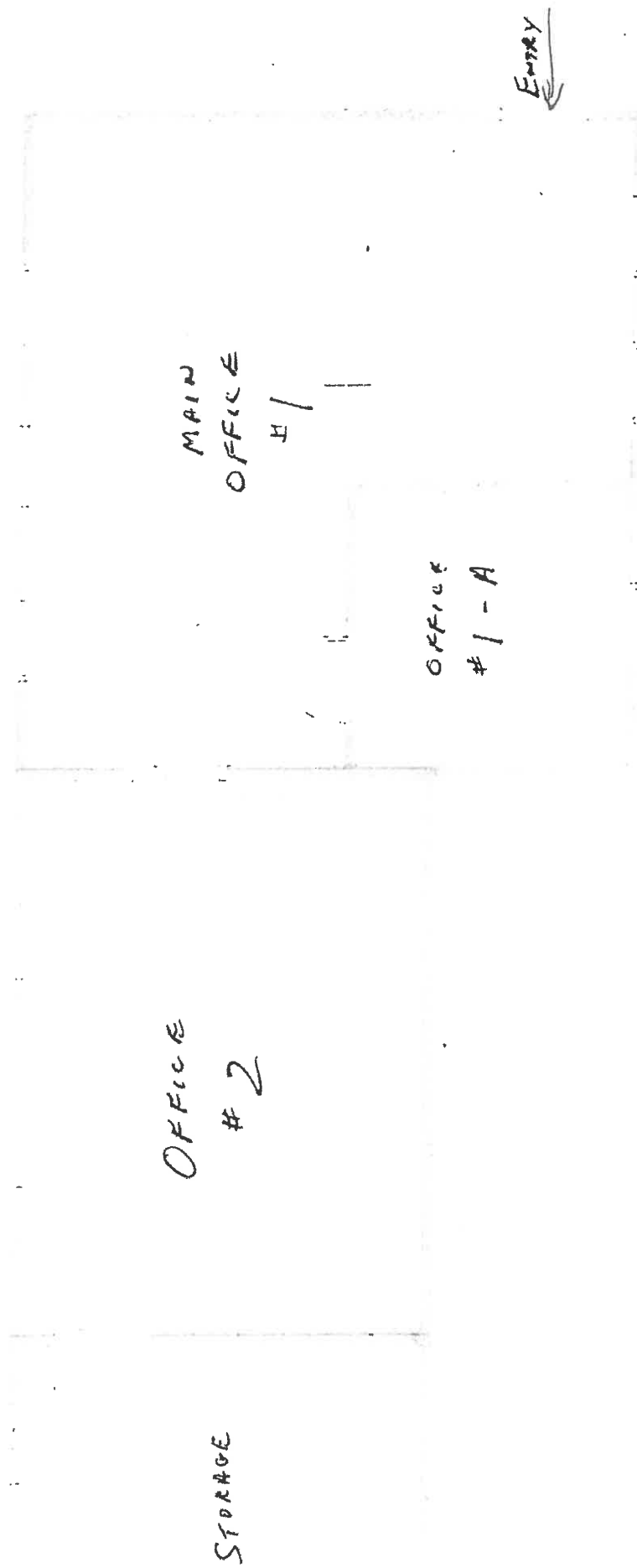
PGCC 8-7-2024
Page 213

ATTACHMENT “A”

[Insert Description]

(as of 12.31.14)

ATTACHMENT "A"



Recreation Office
Pacific Grove Community Center (515 Junipero Ave.)

Scale 3/4" = 1"

N

AMENDMENT #1 TO THE AGREEMENT FOR THE COMMUNITY CENTER RECREATION
OFFICE LEASE TO THE LIGHTHOUSE FELLOWSHIP

WHEREAS, the City of Pacific Grove ("City") and the Lighthouse Fellowship ("Lessee")
entered into a Lease Agreement ("Agreement") dated May 16, 2015; and

WHEREAS, the City and Lessee desire to amend certain terms of the Agreement;

NOW, THEREFORE, the parties agree as follows:

A. The Agreement is amended as follows:

- Section 1.3 Term of Lease. The term of this lease shall be from the date of amendment execution to June 30, 2019.
- Section 1.4 Options to Extend. So long as Lessee is not in default under any term or condition of the lease, Lessee shall have up to five (5) consecutive options to renew and extend the term of this lease, each for a period of one (1) year. Should the Parties fail to reach agreement on the rental rate to be paid during any such extension prior to the expiration date of this lease or the expiration of any extension, this Lease shall terminate as of the expiration date of this Lease or the expiration of any extension. Lessee shall provide the City written notice of Lessee's intent to extend on or before ninety (90) days prior to the expiration of the Lease. Any option term shall be cancelled upon the failure of the Lessee to provide written notice in accord with this paragraph.

B. All other terms of the Agreement remain the same.

Dated: 2/28/18



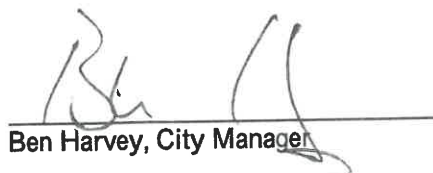
Sr. Pastor David Lucas
President, Lighthouse Fellowship

Dated: 3-5-18



Daniel Gho, Public Works Director

Dated: 3-5-18


Ben Harvey, City Manager

**AMENDMENT #2 TO THE AGREEMENT FOR THE COMMUNITY CENTER RECREATION
OFFICE LEASE TO THE LIGHTHOUSE FELLOWSHIP**

WHEREAS, the City of Pacific Grove (“City”) and the Lighthouse Fellowship (“Lessee”) entered into a Lease Agreement (“Agreement”) dated May 16, 2015; and

WHEREAS, the City and Lessee desire to amend certain terms of the Agreement;

NOW, THEREFORE, the parties agree as follows:

A. The Agreement is amended as follows:

- Section 1.3 Term of Lease. The term of this lease shall be from the date of amendment execution to June 30, 2025.
- Section 1.4 Options to Extend. So long as Lessee is not in default under any term or condition of the lease, Lessee shall have up to four (4) consecutive options to renew and extend the term of this lease, each for a period of one (1) year subject to the execution by the Parties of a letter approving the extension (“Letter”). The Mayor is authorized to execute the Letter on behalf of the City. Should the Parties fail to reach agreement on the rental rate to be paid during any such extension prior to the expiration date of this lease or the expiration of any extension, this Lease shall terminate as of the expiration date of this Lease or the expiration of any extension. Lessee shall provide the City written notice of Lessee’s intent to extend on or before ninety (90) days prior to the expiration of the Lease. Any option term shall be cancelled upon the failure of the Lessee to provide written notice in accord with this paragraph.

B. All other terms of the Agreement remain the same.

Dated: _____

Sr. Pastor David Lucas

President, Lighthouse Fellowship

Dated: _____

Bill Peake, Mayor

ORDINANCE NO. 24-_____
ORDINANCE OF THE CITY OF PACIFIC GROVE AUTHORIZING THE CITY TO
EXECUTE LEASE AMENDMENT #2 FOR THE
COMMUNITY CENTER OFFICE SPACE

WHEREAS, The City owns the property located at 515 Junipero Avenue, commonly known as the Community Center Office; and

WHEREAS, From June of 2009 - February 2015, this office space has essentially gone unused; and

WHEREAS, Lighthouse Fellowship of Pacific Grove has been a tenant in good standing for the past nine years; and

WHEREAS, Our City's Attorney and Risk Manager have also been involved in the contract language that is included in this report; and

WHEREAS, The agreed rent is \$650 per month, for the 600 square feet of office space and Insurances for Liability and Workman's Compensation are a condition for this agreement; and

WHEREAS, The lease amendment is for 1 year with the option to extend for an additional 4 years by mutual letter; and

WHEREAS, The City Council authorizes the Mayor to execute all extensions associated with this lease amendment upon approval of this ordinance

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

SECTION 1. The foregoing recitals are adopted as findings of the City Council and hereby incorporated by reference as though set forth fully herein.

SECTION 2. The Agreement and Lease between the City of Pacific Grove and the Lighthouse Fellowship of Pacific Grove is hereby approved. The agreement shall remain in force according to terms and conditions thereof.

SECTION 3: The City Manager is authorized to execute all documents and to perform all other necessary City acts to implement the ordinance.

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

sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on September 1, 2024.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
THIS ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

PEAKE, Mayor BILL

ATTEST:

DATED: _____

SANDRA KANDELL, 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: Luke Coletti, Councilmember
MEETING DATE: August 07, 2024
SUBJECT: Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60 (*This item was continued from Council's July 19, 2024 Regular Meeting.*)
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Direct the City Manager to return within 60 days with a draft ordinance amending Chapter 7.40 of the City's Municipal Code to increase short-term rental penalties in accordance with SB 60; and
2. Direct the City Manager to return with a comprehensive list of "infractions that pose a threat to public health or safety," including those that are a violation of the building and safety code.

DISCUSSION

California State Law and SB 60:

California Government Code [Section 36901](#) authorizes the legislative body of a city to impose fines, penalties, and forfeitures for violations of ordinances.

California Government Code [Section 36900](#) limits the maximum fine or penalty amounts for infractions, to \$100 for the first violation, \$200 for a 2nd violation of the same ordinance within one year of the first violation, and \$500 for each additional violation of the same ordinance within one year of the first violation. It also requires a city levying fines pursuant to these provisions to establish a process for granting a hardship waiver in certain cases. [Section 1.16.011](#) of the City's Municipal Code mirrors this graduated schedule of code infraction fines.

California State [Senate Bill 60](#) (SB 60) increased the maximum fine or penalty amount for violation of an ordinance relating to a residential short-term rental ordinance, that is an infraction and poses a threat to health or safety (e.g., excessive number of occupants), to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation (see Attachment-2).

Pacific Grove Short-Term Rentals:

[Section 7.40.040](#) of the City’s Municipal Code establishes the following occupancy limit for short-term rentals:

(c) Occupancy Limit. The maximum number of overnight occupants (aged 18 or older) allowed within an STR unit shall be two persons per bedroom, plus one additional person per STR unit. The maximum number of daytime (nonovernight) occupants shall be one and one-half times the maximum number of occupants allowed to stay overnight at the STR unit. The city has sole discretion to determine the final occupancy limit and number of vehicles to be permitted on the STR site. [Ord. 17-024 § 2, 2017].

City code enforcement efforts indicate some lawful short-term rentals are being advertised for occupancies in excess of this limit, which poses a threat to public health and safety.

Pacific Grove voters spoke loud and clear when they adopted [Measure M](#), a citizens’ initiative that prohibits short-term rentals in all residential zoning districts outside of the coastal zone. Measure M includes the following voter-adopted finding:

The City May Adopt Additional Rules to Facilitate Effective Enforcement. *This Initiative is enforceable under existing provisions of the Pacific Grove Municipal Code. It does not constrain the City’s authority to conduct code enforcement in the manner that best protects the welfare of the entire community.*

Operation of unlawful short-term rentals poses a threat to public health and safety.

Conclusion:

The proposed ordinance promotes public health and safety, compliance with exiting law, and helps better protect the City’s residential character, which is consistent with [Charter Article 5.5](#) and [General Plan Policy 1.5](#):

Article 5.5 Residential Character of the City *In the exercise of their duties, obligations and authorities, the Council, boards and commissions, officers and employees of the City shall be guided by the determination of the people that Pacific Grove is primarily a city of homes and that business and industry shall be compatible with its residential character.*

Policy 1.5 *Protect Pacific Grove’s residential character by prohibiting the short-term (less than 30 consecutive calendar days) rental of residential property in residential zoning districts, except to the extent such use is allowed in the Coastal Zone under the Local Coastal Program. The Pacific Grove Municipal Code shall be consistent with this Policy.*

Therefore, the Pacific Grove City Council should implement short-term rental penalties consistent with California State Law. Several California cities have already done so.

OPTIONS

Provide alternative direction.

FINANCIAL IMPACT:

There is no fiscal impact related to enactment of the Ordinance.

GOAL ALIGNMENT: Not Applicable.

Attachments

1. Proposed Ordinance
2. Gov Code Section 36900

ORDINANCE NO. 24-XXX

AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING PACIFIC GROVE MUNICIPAL CODE CHAPTER 7.40 LIMITS ON SHORT-TERM RENTALS TO CLARIFY ENFORCEMENT OF INFRACTIONS

FACTS

1. The City of Pacific Grove is a Charter City.
2. The City of Pacific Grove enacted and presently implements a Short-Term Rental Program regulated by Pacific Grove Municipal Code (PGMC) Chapter 7.40, as adopted in 2017 by Ordinance. 17-024, and as amended in 2020 by Ordinance 20-027; and
3. In enacting its comprehensive code to regulate issuance of and conditions attached to short-term rental licenses the City Council found this regulatory program is necessary to protect the public health, safety, and welfare; and
4. Issues that require regulation of STRs include but are not limited to permitting, tax compliance, noise, parking, and occupancy, as well as host and platform obligations and responsibilities; and
5. This Ordinance further clarifies Chapter 7.40 of the Municipal Code in accord with SB 60 of 2021 as signed into law by Governor Newsom. SB 60 allows cities to impose a fine of up to \$5,000 for public and health and safety violations of a short-term rental ordinance; and
6. Adoption of this ordinance to Amend PGMC Chapter 7.40 does not constitute a “Project” Under California Environmental Quality Act (CEQA) Guidelines Section 15378 as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment.

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

SECTION 1. The City Council hereby finds and determines the foregoing Facts to be true and correct and are therefore incorporated herein by reference.

SECTION 2. Section 7.40.130 “Definitions” of PGMC Title 7, Chapter 7.40 shall be amended by the addition of all text shown below in ***bold italics text***.

7.40.130 Definitions.

“Advertising” means signs, circulars, cards, telephone books, newspapers, magazines, posters, email, mobile applications, television, radio, or any other representation implying or stating the property is available for short-term rental use.

“Block” means as designated by Monterey County assessor.

“Block density” means STRs on a block divided by parcels on that block, expressed as a percentage.

“Block density limit” means block density of 15 percent.

The terms “owner,” “owner representative,” “person,” “remuneration,” “residential property,” “responsible tenant,” “transient,” “transient use,” “transient use of residential property,” and “transient use site” as used in this chapter shall be given the same definition as those terms in PGMC 23.64.350.

“Residential dwelling” is a term that shall mean a private structure designed and available for use and occupancy as a residence by one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or time-share property as specified.

“Short-term rental (STR)” is a term that shall mean a short-term rental unit that is rented for periods of less than 30 consecutive days for remuneration. ***This term shall include or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.***

“Short-term rental use” or “short-term occupancy” means the use, by any person, of residential property for transient lodging where the term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession, or tenancy is less than 30 consecutive calendar days.

“STR license” shall authorize the short-term rental use of an entire dwelling unit.

“STR site manager” shall mean the representative of the person or entity that owns an STR.

“Sun-setting” means a method in which licenses are discontinued. The sun-setting determination shall be the result of a lottery to ensure blocks are consistent with a block density limit of 15 percent.

“Zone of exclusion” shall mean the range of 55 feet from an existing STR parcel boundary. Any parcel that is located within the 55-foot zone of exclusion shall be ineligible for an STR license.

SECTION 3. Section 7.40.190 “Penalties” of PGMC Title 7, Chapter 7.40 shall be amended by the addition of all text shown below in ***bold italics text***.

7.40.190 Administrative Penalties.

Penalties as set forth in Chapter 1.16 PGMC, or the administrative process set forth in Chapter 1.19 PGMC, may be imposed *as Administrative Penalties* for failure to comply with the provisions of Chapter 23.64 PGMC or this chapter, with respect to:

- (a) Any STR owner, STR site manager, or person who transacts or carries on any activity relating to or supporting the short-term rental use of residential property in the city without first having procured and complied with an STR license from the city and paying all applicable license fees shall be subject to administrative penalties as set forth in Chapter 1.19 PGMC, including administrative penalties imposed by a hearing officer for violation of any provision of this chapter in an amount not to exceed a maximum of \$2,500 per day for each continuing violation, in addition to administrative costs, interest and restitution for compliance re-inspections, for any related series of violations, and/or forfeiture of all rents received during the period short-term rental use was allowed without an STR license, whichever amount is greater;
- (b) Any owner, owner representative, responsible tenant, person acting as agent, real estate broker, real estate sales agent, property manager, reservation service or otherwise who advertises the use of residential property in violation of the provisions of this chapter shall be subject to administrative penalties as set forth in Chapter 1.19 PGMC, including administrative penalties imposed by a hearing officer for violation of any provision of this chapter in an amount not to exceed a maximum of \$100.00 per day for each continuing violation, in addition to administrative costs, interest, and restitution;
- (c) Any STR owner, STR site manager, or person who fails to immediately respond to neighborhood concerns regarding any activity at the short-term rental site and who has failed to timely remedy any violation in response to two or more complaints shall be subject to administrative penalties;
- (d) Any STR owner, STR site manager, responsible tenant or person who allows a short-term rental use site to be used or maintained in a manner detrimental to the peace, public health, safety or general welfare of persons or property of the neighborhood or the public, and fails to timely remedy this violation in response to two or more complaints;
- (e) Any STR owner, STR site manager, responsible tenant or person who allows impermissible or inappropriate behavior at the STR unit or action that exceeds the limits on short-term rental use set by PGMC 7.40.040 following two or more complaints;
- (f) Limits upon administrative penalties in PGMC 1.19.200 shall not apply to any violation of this chapter.

SECTION 4. Section 7.40.195 “Enforcement of Infractions” of PGMC Title 7, Chapter 7.40 shall be added as shown below in *bold italics text*.

7.40.195 Enforcement of Infractions.

In lieu of, or in addition to any "Administrative Penalties" authorized by PGMC Section 7.40.190, the City may prosecute any violation Short-Term Rental Program regulated by Pacific Grove Municipal Code (PGMC) Chapter 7.40 as an infraction as follows:

(a) Penalty provisions set by this Section shall apply only to infractions that pose a threat to public health and safety, and do not apply to a first-time offense of failure to register or pay a business license fee.

(b) A fine shall not exceed \$1,500 for a first violation of Chapter 7.40;

(c) A fine shall not exceed \$3,000 for a second violation of Chapter 7.40 within twelve consecutive months; and,

(d) A fine shall not exceed \$5,000 for each additional violation of Chapter 7.40 within twelve consecutive months from the date of the first violation.

(e) A hardship waiver request may be considered to reduce or offset penalty provisions of this section as follows:

(1) The hardship waiver request shall be filed with the city manager on an application form, available from the office of the city manager, within 10 days of the date of the citation. The application shall state the amount of the waiver request, and clearly state all circumstances that justify the waiver.

(2) The requirement to pay the full amount of the fine required by this section shall be stayed unless or until the city manager makes a determination on the hardship waiver request.

(3) The cited party shall submit to the city manager a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the city manager the person's actual financial inability to pay to the city the full amount of the fine required by this section.

(4) The city manager shall issue a written determination listing the reasons for his or her determination to issue or not issue the hardship waiver. The written determination of the city manager shall be final.

(5) The written determination of the city manager shall be served upon the person who filed the request for hardship waiver. This determination shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure, and the time limit set by PGMC 1.20.010 shall apply.

SECTION 5. 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 take effect 30 days after adoption on the second reading.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2021, 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

State of California

GOVERNMENT CODE

Section 36900

36900. (a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by the following:

(1) A fine not exceeding one hundred dollars (\$100) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year.

(3) A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

(c) Notwithstanding any other law, a violation of local building and safety codes determined to be an infraction is punishable by the following:

(1) A fine not exceeding one hundred thirty dollars (\$130) for a first violation.

(2) A fine not exceeding seven hundred dollars (\$700) for a second violation of the same ordinance within one year.

(3) (A) A fine not exceeding one thousand three hundred dollars (\$1,300) for each additional violation of the same ordinance within one year of the first violation.

(B) A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(d) (1) Notwithstanding any other law, including subdivisions (b) and (c), the violation of a short-term rental ordinance that is an infraction is punishable by the following:

(A) A fine not exceeding one thousand five hundred dollars (\$1,500) for a first violation.

(B) A fine not exceeding three thousand dollars (\$3,000) for a second violation of the same ordinance within one year.

(C) A fine not exceeding five thousand dollars (\$5,000) for each additional violation of the same ordinance within one year of the first violation.

(2) For purposes of this section, “short-term rental” means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.

(3) For purposes of this section, “residential dwelling” means a private structure that is designed and available, pursuant to applicable law, for use and occupancy by

one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or a time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.

(4) The fine limits set by this subdivision apply only to infractions that pose a threat to public health or safety. The fines described in this subdivision shall not apply to a first time offense of failure to register or pay a business license fee. Nothing in this subdivision limits the authority of a city, or city and county, to establish lower fines for specific violations by ordinance.

(e) A city levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (d), shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

(Amended by Stats. 2021, Ch. 307, Sec. 2. (SB 60) Effective September 24, 2021.)



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: August 07, 2024
SUBJECT: Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Motion to adopt Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four

DISCUSSION

On July 3, 2024, the City Council of the City of Pacific Grove adopted Resolution No. 2024-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four to be voted upon at the election to be held on November 5, 2024.

Resolution No. 2024-028 in the title of the Resolution states that in 2026 that two Councilmembers shall be elected to a four year term and one Councilmember shall be elected to a two year term. Further, Section 3 of Resolution 2024-028 provides that the ballot question to be submitted to the electorate will be as follows:

Shall the Pacific Grove City Charter be amended to reduce the size of the City Council from six Councilmembers and a Mayor to four Councilmembers and a Mayor such that: in 2026 two Councilmembers shall be elected to four-year terms, and one to a single two-year term, and every two years thereafter two Councilmembers shall be elected to four-year terms; with associated amendments for votes needed for a quorum, majority vote and other select actions?	YES	
	NO	

Resolution No. 2024-028 in Exhibit A listed the Effective Dates for the amendments to the City Charter being proposed. However, in reviewing Resolution No. 2024-028, there is noted to be a clerical error

which needs to be corrected on the Effective Dates for the changes proposed by the ballot measure for Article 11 (The Mayor) and Article 12 (Council) and those changes are shown here in redline to reflect the correct Effective Dates for the amendments to Article 11 and Article 12:

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - November 7, 2028. ~~November 3, 2026.~~
3. Amendment of Charter Article 12 - November 3, 2026. ~~November 7, 2028.~~
4. Amendment of Charter Article 13 - November 7, 2028.
5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

The recommended action is for the City Council to adopt a Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four as contained in the Attachment to this Agenda Report.

OPTIONS

N/A

FINANCIAL IMPACT:

There is no fiscal impact for this correction.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

1 Resolution Correcting Clerical error in Resolution No. 24-028 Charter Amendment

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE CORRECTING CLERICAL ERROR IN RESOLUTION NO. 2024-028 AND SUBMITTING A BALLOT MEASURE TO VOTERS TO AMEND THE PACIFIC GROVE CITY CHARTER TO CHANGE THE NUMBER OF ELECTED CITY COUNCIL MEMBERS FROM SIX TO FOUR COUNCILMEMBERS BY DIRECTING (1) IN 2026 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS, AND ONE COUNCIL MEMBER SHALL BE ELECTED TO A SINGLE TWO-YEAR TERM, AND (2) EVERY TWO YEARS THEREAFTER BEGINNING IN 2028 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS; CONSISTENT CHARTER CHANGES SHALL CLARIFY A QUORUM, MAJORITY VOTE AND OTHER SELECT ACTIONS AND REQUESTING THE MONTEREY COUNTY ELECTIONS DEPARTMENT TO CONDUCT THE ELECTION AND CONSOLIDATE IT WITH THE STATEWIDE ELECTION TO BE HELD ON NOVEMBER 5, 2024

WHEREAS, on July 3, 2024, the City Council of the City of Pacific Grove adopted Resolution No. 2024-028 entitled:

RESOLUTION NO. 24-028

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE SUBMITTING A BALLOT MEASURE TO VOTERS TO AMEND THE PACIFIC GROVE CITY CHARTER TO CHANGE THE NUMBER OF ELECTED CITY COUNCIL MEMBERS FROM SIX TO FOUR COUNCILMEMBERS BY DIRECTING (1) IN 2026 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS, AND ONE COUNCIL MEMBER SHALL BE ELECTED TO A SINGLE TWO-YEAR TERM, AND (2) EVERY TWO YEARS THEREAFTER BEGINNING IN 2028 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS; CONSISTENT CHARTER CHANGES SHALL CLARIFY A QUORUM, MAJORITY VOTE AND OTHER SELECT ACTIONS AND REQUESTING THE MONTEREY COUNTY ELECTIONS DEPARTMENT TO CONDUCT THE ELECTION AND CONSOLIDATE IT WITH THE STATEWIDE ELECTION TO BE HELD ON NOVEMBER 5, 2024

WHEREAS, Resolution No. 24-028 includes in Exhibit A as Part 4 EFFECTIVE DATES:

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - November 3, 2026.
3. Amendment of Charter Article 12 - November 7, 2028.
4. Amendment of Charter Article 13 - November 7, 2028.

5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

WHEREAS, there is clerical error in the listing of the Effective Dates in Part 4 of Exhibit A in that Article 11 should be effective on November 7, 2028 and Article 12 should be effective November 3, 2026 as shown here in track changes and, as corrected, in Part 4 of Exhibit A attached to this Resolution:

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - ~~November 7, 2028.~~ November 3, 2026.
3. Amendment of Charter Article 12 - ~~November 3, 2026.~~ November 7, 2028.
4. Amendment of Charter Article 13 - November 7, 2028.
5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

WHEREAS, except for the correction of the clerical error on the Effective Dates as identified hereinabove, the balance of this Resolution is identical to Resolution No. 2024-028.

WHEREAS, the Pacific Grove City Charter, since 1927, has required the staggered election of six Council members, in addition to the Mayor, whereby each Council Member is elected to serve a four-year term. This election system was largely based on the "Model City Charter" published in 1926 by the League of California Municipalities, with one notable exception being the "Model City Charter" recommended a five-member council.

WHEREAS, California city councils vary greatly in size from four to fifteen members. A clear majority of cities (almost 90%) throughout California call for election of a five-member council. This is the council membership for all cities in Monterey County, excepting Pacific Grove and Salinas. Less than 7% of California cities rely on a seven-member council.

WHEREAS, the proposed Charter Amendment would reduce the size of the City Council from seven to five members, that is, four Council members and a Mayor.

WHEREAS, reducing the number of elected council members from six to four will reduce redundancy, conserve City resources and facilitate decision-making. Some commentators have stated council larger than five increases the opportunity for members to divide into factions.

WHEREAS, any City Charter amendment must be approved by the voters of that City.

WHEREAS, a change to the City election system requires a vote of the electorate and may only be effected prospectively insofar as elected officials, by law, hold office for the entire term of their elected service.

WHEREAS, the change to the City election system proposes to stage this election sequence whereby one council member shall serve a single two-year term to provide a bridge between the six-member group of elected councilmembers to the four-member group of elected councilmembers.

WHEREAS, pursuant to Elections Code Section 10002, the City Council of the City of Pacific Grove may request the Board of Supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election. The city or district shall reimburse the county in full for the services performed upon presentation of a bill to the city or district.

WHEREAS, pursuant to Elections Code Section 10002, Monterey County Elections shall supply the elections official with a list of its precincts, or consolidated precincts, as applicable.

WHEREAS, the City Clerk and County Registrar of Voters are authorized to print forms, publish notices, and provide information as may be necessary or convenient to assure the orderly conduct of the election, and they shall do all other things necessary to facilitate the holding of the election in a manner consistent with law.

WHEREAS, pursuant to Elections Code Sections 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections.

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election.

WHEREAS, the City Council finds and determines this resolution is exempt from the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. ("CEQA") and 14 Cal. Code of Regulations, Sections 15000, et seq. ("CEQA Guidelines"). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines 15378.

WHEREAS, the City Council desires to submit the proposed Charter Amendment to the voters of the City at a General Municipal Election to be held on Tuesday, November 5, 2024, , and to be consolidated with the general municipal election and the statewide election to be held on that date.

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

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Resolution 24-022. On June 5, 2024, the City Council adopted Resolution 24-022 Calling An Election, Requesting The County Elections Department Conduct The Election, Requesting Consolidation Of The Election With The November 5, 2024, General Municipal Election, And Authorizing The City Manager To Sign The Service Agreement For Provision Of Election Services.

Section 3. Election. Pursuant to Section 3 of Article XI of the California Constitution, Article 8 of the City Charter, and Elections Code Sections 9255(b)(l), the City Council of the City of Pacific Grove hereby orders the following proposed Charter Amendment be submitted to the voters at the November 5, 2024, General Municipal Election and requests the Monterey County Elections Department to conduct the election and consolidate it with the statewide election to be held on November 5, 2024 and submit to the electorate the following question:

Measure " _ " Charter Amendment - Reducing Number of Councilmembers.

Shall the Pacific Grove City Charter be amended to reduce the size of the City Council from six Councilmembers and a Mayor to four Councilmembers and a Mayor such that: in 2026 two Councilmembers shall be elected to four-year terms, and one to a single two-year term, and every two years thereafter two Councilmembers shall be elected to four-year terms; with associated amendments for votes needed for a quorum, majority vote and other select actions?	YES	
	NO	

Section 4. Proposed Charter Amendment. The text of the proposed Charter Amendment to be submitted to the voters is attached to this Resolution as Exhibit A and incorporated by reference. The full text of the proposed Charter Amendment shall be printed in the Sample Ballot and Voters Pamphlet and shall be made available to the public and to any voter at the County Elections Department and the Pacific Grove City Clerk.

Section 5. Publication of Measure. The City Clerk is directed to publish a synopsis of the measure at least one time not later than one week before the election.

Section 6. Approval. The vote requirement for this measure to pass shall be a majority of those casting ballots on the measure (50% plus 1).

Section 7. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Elections Department.

Section 8. Analysis and Argument. Pursuant to Elections Code Section 9280, the City Attorney shall prepare an impartial analysis of the measure that shall not exceed 500 words no later than 12:00 p.m. on August 15, 2024. Pursuant to Elections Code Section 9282, the City Council authorizes the Mayor to author and submit the primary argument and pursuant to Elections Code Section 9285(a), authorizes the Mayor to submit a rebuttal argument in favor of the ballot measure. Pursuant to Elections Code Section 9287, if more than one argument is submitted against the measure, the City Clerk shall select the argument to be included with the ballot materials. An argument for or against the measure shall not exceed 300 words in length. The last day to submit arguments for or against the proposed measure shall be August 15, 2024. Submittals are to be delivered to the City Clerk no later than 12:00 p.m. Rebuttal arguments (250 words) shall be permitted pursuant to applicable law. The last day to submit rebuttal arguments to the City Clerk shall be August 22, 2024. Submittals are to be delivered to the City Clerk no later than 12:00 p.m.

Section 9. Implementation. The City Clerk and City Manager are authorized to take all actions as necessary to effectuate the purposes of this resolution and the election. The City Manager is authorized to execute all documents and to perform all other necessary City acts to enter into a service agreement for the provision of election services with Monterey County Registrar of Voters. The City Clerk and City Attorney are authorized to make any typographical, clerical, and non-substantive corrections to this resolution as may be deemed necessary by the Monterey Elections Department.

Section 10. Declaration. The City Council shall meet to declare the results of the election called for by this Resolution at their regular meeting following certification of election results.

Section 11. Effective Date. This Resolution shall take immediate effect upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

Section 12. Environmental Compliance. The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly, or indirectly.

Section 13. Election Called and Consolidated. The City Council of the City of Pacific Grove hereby orders an election be called and consolidated with any and all elections also called to be held on November 5, 2024 within the same territory.

Section 14. All Necessary Services. The City Council of the City of Pacific Grove hereby orders that pursuant to Elections Code Section 10002 said governing body hereby requests the Board of Supervisors of the County of Monterey to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services in full.

Section 15. Printing of Measure. The City Council of the City of Pacific Grove hereby requests that the Monterey County Elections Department print the attached full measure text Exhibit A exactly as filed or indicated on the filed document in the voter information guide for the November 5, 2024 election.

PASSED AND ADOPTED by the City Council of the City of Pacific Grove on this 7th day of August, 2024, 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

RESOLUTION NO. _____

EXHIBIT A

Text of Proposed Charter Amendment to Be Submitted to the Voters: Proposal to Amend the Pacific Grove City Charter to Reduce the Size of the City Council from Six (6) Councilmembers and a Mayor to Four (4) Councilmembers and a Mayor and Redefine the Votes Needed for a Quorum, A Majority Vote and Other Select Actions.

TEXT OF AMENDMENT TO PACIFIC GROVE CITY CHARTER

Amended text shown in ***underscored bold italics*** text, and deleted text shown in strikeout text. **Highlighted** text shown solely for ease of reference.

PART 1: PROPOSED CHARTER AMENDMENT

Section 1. That Article 6 of the City Charter be amended to read as follows:

Article 6 Officers and Employees

The officers of the City of Pacific Grove shall consist of ~~six~~ **four** Councilmembers and a Mayor, a City Manager, a City Clerk, a City Treasurer, a City Attorney, other officers as provided by ordinance, and members of Commissions, Boards and Committees as provided by Charter and by ordinance; provided, the Council may by ordinance provide for such subordinate officers, assistants, deputies, clerks and employees as it deems necessary, and that the Council may at any time, when in its judgment the interest of the City so demands, consolidate by ordinance the powers and duties of two or more City officers, and place the same in charge of one such officer. The Mayor and the members of the Council shall be elected from the City at large. All other officers, assistants, deputies, clerks, and employees shall be appointed as provided in this Charter, or as the Council may provide by ordinance in case no provision for their appointment is herein made, and they shall hold their respective offices or positions at the pleasure of the appointing power, except as otherwise herein provided.

Section 2. That Article 11 of the City Charter be amended to read as follows:

Article 11 The Mayor

A Mayor shall be elected at each general municipal election and shall hold office for the term of two years from and after the Tuesday next succeeding the day of such election and until a successor is elected and qualified. The Mayor may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by State Law for General Law cities of comparable size to Pacific Grove. The Mayor shall be ineligible to hold any office or employment with the City except as a member of any board, commission or committee thereof of which the Mayor is constituted such member by General Law. In the name and on behalf of the City the Mayor shall sign all contracts, deeds, bonds and other legal instruments in which the city is a party. The Mayor or the Mayor's designate shall represent the City at all ceremonial functions of a social or patriotic character when it is desirable or

appropriate to have the City represented officially thereat. The Council shall choose one of its members to serve as Mayor pro tempore during the absence of the Mayor. The Mayor shall preside over all Council meetings and shall be entitled to one vote.

In the event a vacancy occurs in the office of the Mayor, the remaining Council Members shall appoint, by ~~four~~ **three** affirmative votes, one of their number to serve as Mayor for the remaining term of the vacated office of Mayor. If the Council does not fill the Mayoral vacancy within thirty (30) days its appointment power shall lapse and the Mayor Pro Tempore shall assume the office of Mayor. In either event, a vacancy shall then exist as to that Council seat, which shall be filled in accord with the provisions of Article 12 of this Charter.

Section 3. That Article 12 of the City Charter be amended to read as follows:

Article 12 Council

~~Three~~ **Two** Councilmembers shall be elected at each general municipal election and shall hold office for the term of four years each from and after the Tuesday next succeeding the day of such election, and until their successors are elected and qualified.

A vacancy in an elective office shall be filled by appointment by the Council, such appointee to hold office until the next general municipal election and until a successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election and until a successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election next succeeding such appointment. Should the Council fail to fill any such vacancy within thirty days after the same occurs, then it shall be filled by appointment by the Mayor; provided, however, that if the offices of a majority, or more, of the Council shall become vacant, then the City Clerk shall call a special election at once to fill the vacancies for the unexpired terms, and the same shall be conducted substantially in the manner provided for general municipal elections.

If any Councilmember of the City shall be absent for more than two consecutive regular meetings without good cause as determined by the Council, or shall cease to be a resident or elector of the City, or shall fail to qualify, or shall resign or be convicted of a felony, or be adjudged mentally incompetent, the Councilmember's office shall thereupon become vacant.

The Councilmembers may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by the State Law for General Law cities of comparable size to Pacific Grove.

No Councilmember shall be eligible to hold any other office or employment with the City except as a member of any board, commission, or committee thereof, of which the Councilmember is constituted such member by the General Law of the State.

The term of office for a Councilmember who files as a candidate for the Office of Mayor shall automatically expire on the Tuesday next succeeding the general municipal election held following that filing. The filing period for candidates to fill such Councilmember's term shall be extended an additional five days.

Section 4. That Article 13 of the City Charter be amended to read as follows:

Article 13 Meetings of the Council

All meetings of the Council shall be duly noticed and shall be open to the public and shall otherwise comply with applicable state law. All meetings of the Council shall be held in the Council Chambers, except that the Council may hold meetings at another location either to (1) accommodate those who wish to attend, or to (2) accommodate an emergency situation, or to (3) accommodate the needs of a particular meeting as determined in the sole discretion of the Council. There shall be two regular meetings of the Council in each month at a day and hour by ordinance determined, and any regular meeting may be adjourned to a date and hour certain and such adjourned meeting shall be a regular meeting for all purposes; provided however, the Council may cancel one of those meetings, as circumstances may require, by ~~five (5)~~ **four (4)** affirmative votes. The Council shall adopt rules for the conduct of its proceeding and shall provide by ordinance the manner in which its special meetings may be called.

Section 5. That Article 15 of the City Charter be amended to read as follows:

Article 15 Ordinances

- (a) The enacting clause of all ordinances passed by the Council shall read as follows: "The Council of the City of Pacific Grove does ordain as follows:" The enacting clause of all ordinances passed by the vote of the electors of the City through the exercise of the initiative or referendum shall be: "The people of the City of Pacific Grove do ordain as follows:"
- (b) The affirmative vote of ~~four~~ **three** members of the Council shall be necessary to adopt any ordinances, resolutions or claims against the City, which vote shall be taken by ayes and noes and entered upon the record, and upon the request of any member of the Council the ayes and noes shall be taken and recorded upon any vote.
- (c) No ordinance shall be passed by the Council on the day of its introduction nor within five days thereafter, nor at any time other than at a regular meeting, nor until its publication at least once in the official newspaper at least three days before its adoption. Provided, that the publication of ordinances as required herein may be satisfied by publication of a summary of a proposed ordinance, if at the time the ordinance is introduced the Council directs a summary to be published. Any summary so published shall be approved by the City Attorney. A copy of the full text of proposed ordinances for which summaries are published shall be on file in the office of the City Clerk and available to the public on and after the first business day following introduction.
- (d) Notwithstanding the five day waiting period required in (c), immediately hereinabove, any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health, safety or public welfare, and containing the reasons for its urgency, may be introduced and if passed by a vote of no fewer than ~~five~~ **four** members of the Council shall become effective immediately.

- (e) A proposed ordinance may be amended or modified between the time of its introduction and the time of its final passage, provided its general scope and original purpose are retained.
- (f) No ordinance or portion thereof shall be repealed, revised or amended except by ordinance, and all ordinances shall be signed by the Mayor and attested by the City Clerk.
- (g) Except as provided by General Law, or by this Charter, no action providing for the approval or amendment of the annual fiscal year budget, or for the acquisition, sale, lease, encumbrancing or disposition of real property of the City, or any interest therein, or for the levying of any tax or assessment, or for the granting of any franchise, or for the establishment or changing of zoning regulations, or for the imposing of any penalty, shall be taken except by ordinance.
- (h) All ordinances subject to the right of referendum shall become effective 30 days following final passage. All other ordinances shall be effective immediately upon final passage. The provisions of this subarticle shall not affect the ability of the Council to adopt emergency measures pursuant to subarticle (d) of this Article.

Section 6. That Article 19 of the City Charter be amended to read as follows:

Article 19 City Manager

There shall be a City Manager appointed by the affirmative vote of ~~five-sevenths~~ **four fifths** of the Council who shall be the administrative head of the City government. The City Manager shall be chosen by the Council without regard to political consideration and with reference solely to qualifications for such office. The procedure for removal of the City Manager shall be prescribed by ordinance.

It shall not be necessary that the City Manager reside in the City at the time of appointment, but the City Manager shall become a resident thereof within sixty days thereafter and thereafter during incumbency shall actually reside in the City.

The powers and duties of the City Manager shall be:

- a. To see that all ordinances are enforced.
- b. To appoint all heads of departments, subordinate officials and employees, and remove the same, and have general supervision and control over the same.
- c. To exercise general supervision over all privately owned public utilities operating within the City so far as the same are subject to municipal control.
- d. 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.
- e. 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.

- f. To attend all meetings of the Council unless excused therefrom by ~~three~~ **two** members thereof or by the Mayor.
- g. 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.
- h. To keep the Council advised as to the needs of the City.
- i. To have supervision over all City property, including public buildings, parks and playgrounds.
- j. 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.
- k. 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.
- l. 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.

Section 7. That Article 24 of the City Charter be amended to read as follows:

Article 24 City Attorney

There shall be a City Attorney appointed by the City Council. The City Attorney shall be an attorney-at-law, admitted to the bar of the Supreme Court of this State, and one who has been in actual practice in the State, for at least three years next preceding appointment. All other things being equal, an attorney who has had special training for this office or experience in municipal corporation law shall be appointed to this office, if practicable. The City Attorney shall be legal advisor of the Council and shall be available to all other City officials on City business.

The City Attorney shall prosecute all violations of City ordinances, and shall draft all ordinances, resolutions, contracts, or other legal documents or proceedings required by the Council or other officials, except as may be otherwise provided, and shall perform such legal services from time to time as the Council may require, and shall attend all meetings of the Council unless excused therefrom by ~~three~~ **two** members thereof or by the Mayor. When from any cause therefrom the City Attorney is unable to perform the duties of office, the City Attorney shall with the consent of the Council appoint some other qualified attorney to act temporarily as City Attorney. Whenever, in the judgment of the Council, the interests of the City require it, assistant counsel may be employed. The City Attorney shall deliver all books, records, papers, documents, and property of every description, under his or her control, owned by the City, to his or her successor in office, and shall possess such other powers, and perform such additional duties, not in conflict with this Charter, as may be prescribed by ordinance.

Section 8. That Article 26 of the City Charter be amended to read as follows:

Article 26 Appointive Commissions and Boards

There shall be the Commission and Boards enumerated in this Article which shall have the powers and duties as provided herein. The appointment of persons to serve on these Commissions and Boards shall be made by the Mayor subject to the confirmation by affirmative vote of ~~four~~ **three** members of the Council.

Before making such appointments the Mayor shall consult with the Council and shall consider fully any and all nominations suggested by other members of the Council.

Members of Commissions and Boards shall serve at the pleasure of the Council. The Council, by an affirmative vote of ~~four~~ **three** of its members, may remove any member of any Commission or Board at any time during the Commission or Board member's term of office.

The term of office for members of Commissions and Boards shall be four years, but in no event shall any person serve more than three successive full terms on a single Commission or Board. For the purposes of this Article, service upon appointment to a vacated mid-term seat shall be deemed service for a full term. A person who has served for such three term period on a Commission or Board shall be eligible for reappointment to that Commission or Board after the expiration of two years.

Any person appointed to serve on such Commissions or Boards shall be a registered elector of the City and shall not hold any paid office or employment in the City government or be a member of any other Board as herein enumerated, or be a member of the City Council, except as an ex officio member without vote.

a. CITY PLANNING COMMISSION. There shall be a Planning Commission consisting of seven members, and shall have the following powers and duties:

- (1) Recommend to the Council the adoption, amendment, or repeal of a General Master Plan, or any part thereof, for the physical development of the City.
- (2) Exercise such functions with respect to land subdivisions, planning and zoning as may be prescribed by ordinance or resolution.
- (3) Perform such other duties relating to planning and zoning as the Council may require by ordinance or resolution, or as may be prescribed by the General Laws of the State.

b. LIBRARY BOARD. There shall be a Library Board consisting of five members and shall have the following powers and duties:

- (1) Act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public library.
- (2) Recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the City Library.

(3) Perform such other duties relating to the library services as the Council may require by ordinance or resolution.

c. MUSEUM BOARD. There shall be a Museum Board consisting of five members and shall have the following powers and duties:

(1) Act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public museum.

(2) Recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the City Museum.

(3) Perform such other duties relating to the museum service as the Council may require by ordinance or resolution.

d. RECREATION BOARD. There shall be a Recreation Board consisting of five members and shall have the following powers and duties:

(1) Act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a City recreation program.

(2) Recommend to the City Council the adoption of such laws, rules and regulations as it may deem necessary for the administration and operation of a City recreation program.

(3) Promote and stimulate public interest in a recreation program and solicit to the fullest extent possible the cooperation of school authorities and other public and private agencies interested therein.

(4) Perform such other duties relating to the recreation program as the Council may require by ordinance or resolution.

Section 9. That Article 40 of the City Charter be amended to read as follows:

Article 40 Contracts on Public Works; Materials and Supplies

(a) In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in furnishing supplies or materials for same when the expenditure required for the same shall exceed the sum of Fifteen Thousand Dollars (\$15,000.00), the same shall be done by contract and shall be let to the lowest responsible bidder, after notice by publication in the official newspaper, and security for the due execution and performance of any such contract may be required of the successful bidder. The Council may provide by ordinance for the detailed procedure for carrying out this Article.

Provided, that the Council may reject any and all bids presented and may re-advertise in their discretion, and provided further, that after rejecting bids the Council may declare and determine by an affirmative vote of ~~five~~ **four** of its members that in its opinion the work in question may be more economically or satisfactorily performed by day labor, by either city employees or others,

and after adoption of a resolution to this effect, it may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this Article.

Provided, further, that such contracts likewise may be let without advertising for bids if such work shall be deemed by the Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by an affirmative vote of ~~five~~ **four** Council members and containing a declaration of facts constituting such urgency.

(b) The Council by ordinance shall adopt policies and procedures, including appropriate bidding regulations, governing purchases of or contracts for supplies, materials and equipment. Purchases of supplies, materials and equipment shall be made only in accordance with the adopted policies and procedures.

PART 2: BALLOT DESCRIPTION

As provided in Government Code section 34458.5, the following ballot description is in this proposed Charter Amendment measure:

CHARTER AMENDMENT

The proposed Charter Amendment measure would amend Pacific Grove City Charter Articles 6, 11, 12, 13, 15, 19, 24, 26, and 40. The amendment would change the number of elected City Council members from six to four by directing (1) in 2026 two Council members shall be elected to four-year terms, and one Council member shall be elected to a single two-year term, and (2) every two years thereafter beginning in 2028 two Council members shall be elected to four-year terms; Consistent Charter changes shall clarify a quorum, majority vote and other select actions, which shall become effective when the number of Councilmembers is reduced to four (4) after the November 2028 election is certified.

Charter Article 6 would be revised to provide the reduction of the number of Councilmembers from six (6) to four (4).

Charter Article 11 would be revised to provide that in the event a vacancy occurs in the office of the Mayor, the remaining Council Members shall appoint, by three (3) affirmative votes, one of their number to serve as Mayor for the remaining term of the vacated office of Mayor, instead of four (4) votes.

Charter Article 12 would be revised to provide that two (2) Councilmembers shall be elected at each general municipal election rather than three (3).

Charter Article 13 would be revised to provide that the City Council may cancel one of its monthly meetings, by four (4) affirmative votes instead of five (5).

Charter Article 15 would be revised to provide that the affirmative vote of three (3) members of the Council shall be necessary to adopt any ordinances, resolutions or claims against the City instead of four (4).

Charter Article 19 would be revised to provide that the appointment of the City Manager shall require the affirmative vote of four fifths of the Council instead of five sevenths and to require the City Manager to attend all meetings of the Council unless excused by two (2) members instead of three (3), or by the Mayor.

Charter Article 24 would be revised to provide that the City Attorney must attend all meetings of the Council unless excused by two (2) members instead of three (3), or by the Mayor.

Charter Article 26 would be revised to provide that the appointment of persons serving on City Commissions and Boards shall be made by the Mayor subject to the confirmation by affirmative vote of three (3) members of the Council instead of four (4). Also the Council, by an affirmative vote of three (3) of its members, may remove any member of any commission, instead of four (4).

Charter Article 40 would be revised to provide that the Council after rejecting all bids may declare and determine by an affirmative vote of four (4) of its members instead of five (5) that in its opinion the work in question may be more economically or satisfactorily performed by day labor, by either city employees or others, and after adoption of a resolution, it may proceed to have the proposed work done without further observance of the foregoing provisions of Article 40.

Article 40 would also be revised to allow the Council to approve a contract without advertising for bids with a finding of urgent necessity for the preservation of life, health or property, with an affirmative vote of four (4) Council members instead of five (5).

PART 3: IMPLEMENTATION

In the event this Charter Amendment measure is approved:

- A. Exclusively for the election to be held in November 2026, two councilmembers shall be elected and hold office for a term of four years and one additional councilmember shall be elected and hold office for a term of two years, resulting in a four (4) member City Council and Mayor (5 member) local legislative body after the November 2028 election is certified
- B. To further effectuate the purposes of this Charter Amendment measure and the direction of the voters, the City Council shall amend the following sections of the Pacific Grove Municipal Code - Sections 2.04.070 (c)(5), 3.02.030 and 3.04.030, and such other sections as needed, to modify the number of required council votes for actions referenced in those provisions as may be consistent with this measure.
- C. This Charter Amendment measure shall be submitted to the Secretary of State pursuant to Government Code sections 34459 through 34461, inclusive.

PART 4: EFFECTIVE DATES

Section 3(a) of Article XI of the California Constitution provides:

For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

This Charter Amendment measure shall become effective in the manner allowed by law.

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - November 3, 2028.
3. Amendment of Charter Article 12 - November 7, 2026.
4. Amendment of Charter Article 13 - November 7, 2028.
5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

PART 5: SEVERABILITY

It is the intent of the people that the provisions of the Charter Amendment measure are severable and that if any section, subsection, sentence, clause, or phrase of this charter amendment is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Charter Amendment measure. The people of the City of Pacific Grove hereby declare that they would have passed this Charter Amendment measure and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Bill Peake, Mayor
MEETING DATE: August 07, 2024
SUBJECT: Resolution Amending Policy 000-5 to Add Section and Regarding Recommendations by Boards, Committees, and Commissions
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Motion to approve Resolution Amending Policy 000-5 to Add Section 7 Regarding Recommendations of Boards, Committees and Commissions
2. Motion to approve Protocol for recommendations to the City Council by Boards, Committees and Commissions
3. Other action related to this item.

DISCUSSION

In recent years, the Boards, Committees and Commissions (“Committees”) have become very proactive and initiated recommendations to the City Council to improve City services for both residents and businesses. These recommendations are excellent community feedback to Council. Council should give them ample consideration when approving City goals, policies, and budget.

A Resolution to amend Policy 000-5 is proposed to provide a protocol for Committee recommendations (Attachment 1).

The amendment to Policy 000-5 will add Section 7 which reads (as noted in Attachment 2) as follows:

7. Recommendations to City Council from Boards, Committees and Commissions. The protocol for the submission of recommendations to the City by Boards, Committees and Commissions shall be as set forth by action of the City Council except for recommendations by the Boards, Committees and Commissions requested by City staff.

PROTOCOL FOR RECOMMENDATIONS

To consider recommendations by Committees to the City Council, a protocol (“Protocol”) is being proposed in this Agenda Report as follows:

1. Committee approves recommendation via an agenda item and vote.
2. Chairperson documents recommendation via a Committee Recommendation in the form

attached to this Agenda Report (Attachment 3).

3. Chairperson and Council Liaison discuss next steps which may include discussion with City Manager and/or City Attorney.

This Protocol could result in any number of outcomes such as placement on Council agenda, referral back to Committee, or identification of obstacles to implementation.

Example recommendations that can be heard by Council are: new/revised programs, studies, policies, public notices, public meetings/workshops, expenditures, and engagement with a public agency. Implementation may require City Manager concurrence and legal review by the City Attorney.

Recommendations must be within the scope of a Committee's roles and responsibility as described in the Boards, Committees, and Commissions Handbook, Appendix E – Powers and Duties.

OPTIONS

- Status quo
- Pull Committee Minutes from Council consent agenda

FINANCIAL IMPACT:

There is no fiscal impact.

GOAL ALIGNMENT: Not Applicable.

Attachments

Reso Amending Policy 000-5 to Add Section 7 Regarding Recommendations of BCCs

Redline of Policy 000-5 with added Section 7 in redline.

Boards, Committees, and Commissions Recommendation Form

RESOLUTION NO. 24-XXX

**RESOLUTION AMENDING COUNCIL POLICY 000-5 COMMITTEE
CLASSIFICATION; BOARD, COMMISSION AND COMMITTEE APPOINTMENTS
AND PROCEDURES**

FINDINGS

1. Council Policy 000-5 includes the procedures for the Boards, Committees and Commissions.
2. The amendment to Council Policy 000-5 here proposed is intended to clarify the protocol for recommends to the City Council from Boards, Committees and Commissions.
3. The Amendment will provide an orderly and efficient process for the City Council to consider the recommendations of the Boards, Committees and Commissions.

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

1. The Council determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.
2. Policy 000-5 is hereby amended to add Section 7 to read as follows:

7. Recommendations to City Council from Boards, Committees and Commissions. The protocol for the submission of recommendations to the City by Boards, Committees and Commissions shall be as set forth by action of the City Council except for recommendations by the Boards, Committees and Commissions requested by City staff.
3. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 7th day of August 2024, 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

CITY OF PACIFIC GROVE, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NO.	EFF. DATE	PAGE
Committee Classification; Board, Commission, and Committee Appointments and Procedures	000-5	February 2, 2011	1 of 3

1. Purpose. This policy establishes standards for: 1) the classification of Council committees; 2) the appointment of board, commission, and committee members; and 3) board, commission, and committee procedures.

2. Classification. The following classification shall be in place to handle the committee and other referral needs of the Council not otherwise subject to the jurisdiction of charter or municipal code boards and commissions:

a. Ad hoc committees. This class of committee shall consist either of citizens only or a mixed group of Council members and citizens. Such committees shall have limited assignments related to temporal issues and shall be expected to complete the assignments within a relatively short time. The Council shall provide a written statement of mission to an ad hoc committee, shall ask that the work of the committee be completed by a certain date, shall advise as to record keeping and form of recommendation and shall provide guidance on legal and practical aspects of proceeding with committee work, including suggested formats for agenda and minutes. Ad hoc committees shall be required to submit summary progress reports to the Council on a regular basis, or at least semi-annually. Unless otherwise directed by the Council, ad hoc committees shall designate their chair and vice chair. Ad hoc committees shall be free to request that the Council expand committee missions, i.e. scope of work, but shall make no such changes without specific approval of the Council.

b. Standing committees. This class of committee shall consist either of citizens only or a mixed group of Council members and citizens. Assignment(s) shall not necessarily be permanent, but a standing committee may exist to address issues arising more or less continually in an area of interest to the Council. With the exception of the time specific items, the provisions set out in the ad hoc committee section, above, shall apply as well to standing committees.

c. Council subcommittees. This class treats the situation where one, two, or three Council members are given direction to perform work/research and to return to the Council with some pre-assigned product.

NOTE: Staff shall not be named as committee members. Staff's role is advisory and supportive; naming staff as committee members confuses staff's relationship and responsibility to assigned committees.

3. Appointment of Board, Commission, and Committee Members.

a. Members of charter and municipal code boards and commissions are selected by the Mayor, subject to approval by the Council. Selection shall occur annually at the second regular meeting in January and on an as-needed basis thereafter. The appointment process includes a minimum two-week notification period, including posting, posting on the City's web site, and media notices specifying the board(s) or commission(s) having a vacancy, the number of vacancies on each, the

term of service, the application process, and the application closing date. The City Clerk shall make available a folder containing all applications for Council examination, and the Mayor's selections for Council approval will be placed on the next available regular meeting agenda following the closing date. If a vacancy arises during a term, and there are one or more active applications for that board or commission on file, appointment can be made from those applications, without re-noticing. This can help avoid a significant disruption in the operations of the board or commission due to extended vacancy. In any event, applications are valid for a maximum of only 12 months.

b. When considering appointments to a City Boards or Commissions, Pacific Grove residency and voter registration shall be required.

1. Residency in Pacific Grove is established when all of the following conditions are met: the applicant is registered to vote; the address listed on the applicant's drivers license; the address where the applicant receives his or her mail; and where the applicant physically resides, combined with the intent to remain there.
2. Should a Pacific Grove resident serving on a City Board or Commission no longer qualify as a Pacific Grove resident under paragraph (b) 1, above, that office shall be vacated.
3. As an exception to the residency requirement set by this paragraph (b), a non-resident may be appointed to the Economic Development Commission, Architectural Review Board, and the Diversity, Equity, and Inclusion (DEI) Task Force.

c. With respect to appointment of citizen members of ad hoc committees and standing committees, appointment opportunities shall be announced at a Council meeting and in the media, as appropriate, with a stated closing date that is a least one week before the meeting at which the appointments will be made. If there are not sufficient or appropriate applications, the time limit may be extended and announcements may be repeated. Recommendations shall be invited from everyone with interest or expertise, i.e., Council, staff, board/commission/committee members, and citizens. Recommendations shall be made to the Mayor or the City Clerk. Any interested Council members may review the applications in the Clerk's file. The Mayor shall submit final selections for Council approval on the next available regular meeting agenda following the closing date.

d. Membership of boards, commissions, and committees shall not be changed without Council approval.

e. In making appointments to the many bodies referenced in this policy, the Council shall endeavor to distribute the appointments as broadly as possible throughout the city population. Unless a special talent or expertise otherwise dictates, the Council shall not favor appointment of more than one member of a household to a single body. Further, in considering appointments, the Council shall be attentive to the City's status as an Equal Employment Opportunity (EEO) organization.

f. (1) With the exception of charter boards and commissions (which service limitations are set out in the city charter) a citizen member of a body covered by this policy shall not be reappointed to a new term if such reappointment would result in continuous service on the body for more than eight consecutive years. Service for less than a full term shall not be counted in applying the eight-year limit.

(2) Lengths of terms, commencement, and expiration dates of said terms for members of

boards, commissions, and committees established by the Municipal Code shall be as provided by the Municipal Code. Expiration dates are staggered, so as to provide continuity.

(3) Lengths of terms of standing committee members shall be as provided at the time the Council establishes a standing committee. Said terms shall in any event be set to expire on January 31 of the appropriate year.

(4) Ad hoc committee member terms shall be for the time required for the work of the committee to be completed, as specified by the Council.

g. Appointments to outside agencies shall be made by the Mayor subject to approval by the Council.

h. All members shall serve at the pleasure of the Council. The Council, by an affirmative vote of four of its members, may remove any committee member at any time during the member's term of office (Charter Article 26). Possible grounds for removal are: excessive absences, verbally or physically abusive behavior, and violations of ethics or conflicts of interest.

4. Board, Commission, and Committee Procedures. Charter, municipal code, ad hoc, and standing boards, commissions, and committees shall adhere to standard procedures for notice, conduct of meetings, reporting to the Council, and other matters, as provided in the *Boards, Committees and Commissions Handbook*, which are attached to and made a part of this policy.

5. Council Review of Board Actions. The City Council shall not "approve" the minutes of any board, commission, or committee; rather the minutes shall be "received." If there is an item in the minutes that requires actions of the Council, it shall be separately and specifically listed on the Council agenda for action. As set forth in the municipal code (PGMC §23.73.080) the Council, acting at its next regular meeting following a final decision of any board or commission, may "call up" an item acted upon by that board or commission. The vote of three members of the Council shall be required to call an item for review. The action so called shall be reviewed by the Council, de novo, within thirty days of the decision to compel review. Notice of the review shall be provided in the same manner as required for the initial action. The review, by majority vote, may affirm or modify the original decision.

6. Council Access to Email Groups. Upon request, any member of the City Council shall be allowed to join any City Committee Email Group.

7. Recommendations to City Council from Boards, Committees and Commissions. The protocol for the submission of recommendations to the City by Boards, Committees and Commissions shall be as set forth by action of the City Council except for recommendations by the Boards, Committees and Commissions requested by City staff.

Attachments:

Boards, Committees and Commissions Handbook

Adopted: June 17, 1992 Resolution No. 6280

Amended: September 1, 1993 Resolution No. 6361
Amended: March 29, 1996 Resolution No. 6-017
Amended: May 15, 1996 Resolution No. 6-026
Amended: January 8, 1997 Resolution No. 7-001
Amended: February 19, 1997 Resolution No. 7-006
Amended: September 1, 2010 Resolution No. 10-069
Amended: December 1, 2010 Resolution No. 10-103
Amended: February 2, 2011 Resolution No. 11-007
Amended: March 6, 2019 Resolution No. 19-003
Amended: March 22, 2023 Resolution No. 23-006



CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

Committee Recommendation

TO: (Council Liaison) _____

FROM: (Chairperson) _____

COMMITTEE: _____

DATE: _____

RECOMENDATION (include date of committee vote)

DISCUSSION(attach continued discussion)

FISCAL IMPACT (if known)

ATTACHMENTS



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk
MEETING DATE: August 07, 2024
SUBJECT: League of California Cities (LoCC) Annual Conference Voting Delegate and Alternate(s)
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Discuss, designate, and adopt by resolution a voting delegate and up to two alternates to represent the City on policy matters at the League of California Cities (LoCC) Annual Conference on October 16-18 in Long Beach, California.
2. Alternatively, discuss and take other action related to this item.

DISCUSSION

Council adopted by resolution City Council Policy [000-29](#) setting forth an annual process for selecting a voting delegate and up to two alternates to attend the LoCC Annual Conference, participate in the business meeting, and vote on behalf of the City.

The League of California Cities will hold its 2024 Annual Conference from October 16-18, in Long Beach, California. During the conference business meeting, the authorized delegate from the City may represent the City's interests to vote on and approve League policy. The delegate shall attend the conference to represent and vote on behalf of the City of Pacific Grove. If the selected voting delegate cannot attend, the designated alternate may exercise voting authority.

The League requires each city seeking to vote on matters to authorize by resolution its Mayor or other elected officials to formally represent the city, participate in the business meeting, and vote on behalf of the city.

Cal Cities membership considers and acts on resolutions that establish Cal Cities policy. Policy issues are determined annually by the League Board in late summer at which time staff will return to Council for direction to the voting delegate/alternate(s).

OPTIONS

Not applicable.

FINANCIAL IMPACT:

Funding for City Council conference attendance and travel is allocated within the adopted Fiscal Year 24-25 budget.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Cal Cities Voting Delegate Packet

Proposed Resolution



Council Action Advised by September 25, 2024

DATE: Wednesday, July 10, 2024

TO: Mayors, Council Members, City Clerks, and City Managers

RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference and Expo, Oct. 16-18, 2024
Long Beach Convention Center

Every year, the League of California Cities convenes a member-driven General Assembly at the [Cal Cities Annual Conference and Expo](#). The General Assembly is an important opportunity where city officials can directly participate in the development of Cal Cities policy.

Taking place on Oct. 18, the General Assembly is comprised of voting delegates appointed by each member city; every city has one voting delegate. Your appointed voting delegate plays an important role during the General Assembly by representing your city and voting on resolutions.

To cast a vote during the General Assembly, your city must designate a voting delegate and up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity. Voting delegates may either be an elected or appointed official.

Action by Council Required. Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.

Following council action, please submit your city's delegates through [the online submission portal](#) by Wed., Sept. 25. When completing the Voting Delegate submission form, you will be asked to attest that council action was taken. You will need to be signed in to your My Cal Cities account when submitting the form.

Submitting your voting delegate form by the deadline will allow us time to establish voting delegate/alternate records prior to the conference and provide pre-conference communications with voting delegates.

Conference Registration Required. The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration is open on the [Cal Cities](#) website.



For a city to cast a vote, one voter must be present at the General Assembly and in possession of the voting delegate card and voting tool. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the voting delegate desk. This will enable them to receive the special sticker on their name badges that will admit the voting delegate into the voting area during the General Assembly.

Please view Cal Cities' [event and meeting policy](#) in advance of the conference.

Transferring Voting Card to Non-Designated Individuals Not Allowed. The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the General Assembly, they may *not* transfer the voting card to another city official.

Seating Protocol during General Assembly. At the General Assembly, individuals with a voting card will sit in a designated area. Admission to the voting area will be limited to the individual in possession of the voting card and with a special sticker on their name badge identifying them as a voting delegate.

The voting delegate desk, located in the conference registration area of the Long Beach Convention Center in Long Beach, will be open at the following times: Wednesday, Oct. 16, 8:00 a.m.-6:00 p.m. and Thursday, Oct. 17, 7:30 a.m.-4:00 p.m. On Friday, Oct. 18, the voting delegate desk will be open at the General Assembly, starting at 7:30 a.m., but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for submitting your voting delegate and alternates by Wednesday, Sept. 25. If you have questions, please contact Zach Seals at zseals@calcities.org.

Attachments:

- General Assembly Voting Guidelines
- Information Sheet: Cal Cities Resolutions and the General Assembly

General Assembly Voting Guidelines

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Cal Cities Annual Conference and Expo, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the voting delegate form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the voting delegate desk in the conference registration area. Voting delegates and alternates must sign in at the voting delegate desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the General Assembly.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the credentials committee at the voting delegate desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and voting tool; and be registered with the credentials committee. The voting card may be transferred freely between the voting delegate and alternates but may not be transferred to another city official who is neither a voting delegate nor alternate.
6. **Voting Area at General Assembly.** At the General Assembly, individuals with a voting card will sit in a designated area. Admission to the voting area will be limited to the individual in possession of the voting card and with a special sticker on their name badge identifying them as a voting delegate.
7. **Resolving Disputes.** In case of dispute, the credentials committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the General Assembly.

How it works: Cal Cities Resolutions and the General Assembly

Developing League of California Cities policy is a dynamic process that engages a wide range of members to ensure Cal Cities represents cities with one voice. These policies directly guide Cal Cities' advocacy to promote local decision-making, and lobby against statewide policies that erode local control.

The resolutions process and General Assembly is one way that city officials can directly participate in the development of Cal Cities policy. If a resolution is approved at the General Assembly, it becomes official Cal Cities policy. Here's how resolutions and the General Assembly work.

Prior to the Annual Conference and Expo

General Resolutions



Sixty days before the Annual Conference and Expo, Cal Cities members may submit policy proposals on issues of importance

to cities. The resolution must have the concurrence of at least five additional member cities or individual members.

Policy Committees



The Cal Cities President assigns general resolutions to policy committees where members

review, debate, and recommend positions for each policy proposal. Recommendations are forwarded to the Resolutions Committee.

During the Annual Conference and Expo

Petitioned Resolutions



The petitioned resolution is an alternate method to introduce policy proposals during

the annual conference. The petition must be signed by voting delegates from 10% of member cities, and submitted to the Cal Cities President at least 24 hours before the beginning of the General Assembly.

Resolutions Committee



The Resolutions Committee considers all resolutions. General Resolutions approved¹ by either a policy committee

or the Resolutions Committee are next considered by the General Assembly. General resolutions not approved, or referred for further study by both a policy committee and the Resolutions Committee do not go to the General Assembly. All Petitioned Resolutions are considered by the General Assembly, unless disqualified.²

General Assembly



During the General Assembly, voting delegates debate and consider general and petitioned resolutions forwarded by the Resolutions Committee. Potential Cal Cities bylaws amendments are also considered at this meeting.

Who's who

Cal Cities policy development is a member-informed process, grounded in the voices and experiences of city officials throughout the state.

The **Resolutions Committee** includes representatives from each Cal Cities diversity caucus, regional division, municipal department, and policy committee, as well as individuals appointed by the Cal Cities president.

Voting delegates are appointed by each member city; every city has one voting delegate.

The **General Assembly** is a meeting of the collective body of all voting delegates—one from every member city.

Seven **policy committees** meet throughout the year to review and recommend positions to take on bills and regulatory proposals. Policy committees include members from each Cal Cities diversity caucus, regional division, and municipal department, as well as individuals appointed by the Cal Cities president.

¹ The Resolution Committee can amend a general resolution prior to sending it to the General Assembly.

² Petitioned Resolutions may be disqualified by the Resolutions Committee according to Cal Cities Bylaws Article VI, Sec. 5(f).

RESOLUTION NO. 24-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE APPOINTING A VOTING DELEGATE AND ALTERNATE TO THE LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE

FINDINGS

1. The City of Pacific Grove is a full voting member of the League of California Cities (League);
2. The League takes positions on matters affecting cities throughout the state, including but not restricted to sponsoring legislation, taking joint positions on pending legislation, the placing voters' initiatives on the ballot;
3. The Board of Directors of the League of California Cities places matters for the cities' collective consideration on the agenda for the business meeting at the League's annual conference;
4. The League requires each city seeking to vote on those matters to authorize by resolution its Mayor or other elected officials to formally represent the city, participate in the business meeting, and vote on behalf of the city;
5. This resolution is in accordance with, and does not conflict with, existing City laws and regulations and applicable Government Code provisions, and
6. This action does not constitute a "Project" as that term is defined under the California Quality Act (CEQA), CEQA Guidelines Section 15378 as it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

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 of Pacific Grove hereby appoints _____ as voting delegate with _____ and _____ as alternate voting delegates to the League of California Cities annual conference in Long Beach, California.
3. The City of Pacific Grove City Clerk, or designee, is authorized to inform the League of the above appointments.
4. This resolution shall take effect immediately following passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this
7th day of August, 2024, 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