NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

SPECIAL MEETING AGENDA

Wednesday, September 4, 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:
https://www.cityofpacificgrove.org/Zoom_Closed

Please click here for directions to dial into the meeting audio.

AGENDA

CALL TO ORDER

APPROVAL OF AGENDA

SPECIAL MEETING

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 Real Property Negotiators (Government Code § 54956.8)
Property: Sloat Avenue between Eardley Avenue and Dewey Avenue
Agency Negotiator(s): Matthew Mogensen, City Manager
Negotiating Party(ies): (Comstock)
Under negotiation: Price and terms of payment

B. Conference with Legal Counsel – Initiation of Litigation Government Code §54956.9(d)(2)
Number of Cases: One (Arising out of letter received from LULAC on August 23, 2024, attached.)
Reference: Brian Pierik, City Attorney
Recommended Action: Receive report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

ADJOURNMENT

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: September 04, 2024

SUBJECT: Conference with Legal Counsel – Initiation of Litigation Government Code §54956.9(d)(2) Number of Cases: One (Arising out of letter received from LULAC on August 23, 2024, attached.)

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

RECOMMENDATION

Receive report.

Attachments

LULAC District 12 Letter

LULAC District 12
Aidee Farias, District Director
aideemfarias@gmail.com

RECEIVED
CITY MANAGER'S OFFICE
2024 AUG 23 A 9:52
CITY OF PACIFIC GROVE

Dear City Council of Pacific Grove,

On behalf of LULAC District 12, I, Aidee Farias, District Director, formally request that the City of Pacific Grove transition from at-large to district-based elections to comply with the California Voting Rights Act (CVRA).

The CVRA prohibits at-large election systems that impair protected classes' ability to elect preferred candidates or influence election outcomes. We believe Pacific Grove's current system dilutes minority voting strength, potentially violating the CVRA.

Pursuant to Elections Code Section 10010, we request that within 45 days, the City Council adopt a resolution outlining its intent to transition to district-based elections. The City then has 90 days to hold public hearings and adopt an ordinance establishing districts.

This transition would align Pacific Grove with positive statewide trends, as numerous cities and school districts have already adopted district elections. Recently, neighboring cities like Soledad, Gonzales, Greenfield, and Monterey have taken steps in this direction.

We urge Pacific Grove to act proactively to avoid potential litigation, which has proven costly for other municipalities. Transitioning voluntarily allows the City to maintain control over the districting process and engage the community meaningfully.

We look forward to your timely response and cooperation in this matter. Please provide a timeline for the transition process and outline the steps the City will take to implement district-based elections.

Sincerely,

Aidee Farias

Aidee Farias
LULAC District 12 Director

NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, September 4, 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.

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

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
https://www.cityofpacificgrove.org/Zoom_CC

Please click here for directions to dial into the meeting audio.

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE: Councilmember Coletti

1. **APPROVAL OF AGENDA**

2. **PRESENTATIONS**

A. Mayor's Proclamation: Recognizing The Heritage Society of Pacific Grove Point Pinos Lighthouse Restoration **PG 11**
Reference: Bill Peake, Mayor
Recommended Action: Receive proclamation.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

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

A. Report on Closed Session by City Attorney

B. Other

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

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 August 21, 2024 City Council Regular Meeting **PG 14**
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

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 20**

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

B. Community Goals and Work Plan Review for FY 24-25 **PG 22**

Reference: Matthew Mogensen, City Manager

Recommended Action: Receive the Goals and Work Plan Update.

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

C. Water Allocation Update for 520 Lighthouse Avenue Mixed-Use Project **PG 28**

Reference: Karen Vaughn, Community Development Director

Recommended Action: Receive report.

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

D. Monterey One Water Board of Directors 2024 Mid-Year Highlights **PG 30**

Reference: Nick Smith, Mayor Pro Tem

Recommended Action: Receive report.

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. Promissory Note and Agreement for 157 Grand Avenue **PG 32**
Reference: Matthew Mogensen, City Manager
Recommended Action: Approve a new Promissory Note and Agreement with IC PG Property Owner, LLC for water entitlement for the hotel project at 157 Grand Avenue (APN 006-173-002), accelerating the water entitlement payment by 12-months and revising the project ownership.
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

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 an ordinance to amend the City Salary Classification Schedule (POA)
Reference: Leticia Livian, Human Resources Director **PG 38**
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 a first reading of an ordinance to amend the salary classification schedule to modify the salary range for Police Officer and Police Sergeant and approve the amendment; and
4. Direct that 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. Cost of Services (User Fee) Study – August 2024 **PG 42**
Reference: Jessie Catacutan, Interim Administrative Services Director

Recommended Action:

1. Adopt the FY 24-25 Recommended Fees (Attachment III) and Resolution No. 24-XXX (Attachment IV) to create and adopt the City's FY 24-25 Master Fee Schedule.
2. Direct the City Manager to propose an increase in fees for City Council consideration using the Consumer Price Index (CPI) with a cap of 5%, in May of each of the next three years.

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

12. UNFINISHED AND ONGOING BUSINESS

A. Direction to the City Manager regarding Outdoor Dining Guidelines for Bulb-Outs

Reference: Matt Mogensen, City Manager **PG 162**

Recommended Action: City Council to review, comment, and provide direction to the City Manager regarding:

1. The draft goals and objectives of the Outdoor Dining Guidelines under development;
2. The current precedent of the Pacific Grove outdoor dining streetscapes; and
3. Example features, structures and amenities of model and poor outdoor dining facilities noted in field visits of various communities.

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

B. Lighthouse Avenue Sidewalk Widening Project **PG 205**

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

Recommended Action:

1. Receive bids and authorize the City manager to prepare a budget amendment to allocate funds for the Lighthouse Avenue Sidewalk Widening Project for an amount of $339,304.66 which includes the base bid, a 25% construction contingency and 15% engineers oversite.
2. Alternatively, discuss and take other action related to this item.

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

C. Discussion Regarding California Voting Rights Act Issues, Impact of Ballot Measure for Measure Z (Proposes Reduction from Six Councilmembers to Four Councilmembers) and Letter Received from LULAC on August 23, 2024 and Motion to Provide Direction to City Manager **PG 207**

Reference: Brian Pierik, City Attorney

Recommended Action:

1. Discuss California Voting Rights Act issues, Impact of Ballot Measure Z (Proposed Reduction from Six Councilmembers to Four Councilmembers) and Letter Received from LULAC on August 23, 2024.

2. Motion to Provide Direction to City Manager regarding the California Voting Rights

Act which could include returning to the City Council with a Resolution of Intent to Transition from At-Large Elections to By-District Elections and retain a demographer to assist in that transition process or such other action related to this item as the Council determines appropriate.

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

13. **NEW BUSINESS**

A. Outdoor Art Donation Proposal of Stained Glass "The Butterflies" from Nader Agha
Reference: Daniel Gho, Public Works Director/Deputy City Manager **PG 361**
Recommended Action: 1. Discuss proposed gift of a stained-glass window and provide direction the City Manager.
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: Bill Peake, Mayor

MEETING DATE: September 04, 2024

SUBJECT: Mayor's Proclamation: Recognizing The Heritage Society of Pacific Grove Point Pinos Lighthouse Restoration

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

RECOMMENDATION

Receive proclamation.

Attachments

Proclamation

Mayor's Proclamation
Recognizing The Heritage Society of Pacific Grove
Point Pinos Lighthouse Restoration

WHEREAS, The Heritage Society of Pacific Grove in 2007 created a Lighthouse Preservation Committee for the purpose of fundraising and restoration of the Point Pinos Lighthouse. This led to an agreement with the City of Pacific Grove to "provide overall leadership and coordination, and contribute to the repair, restoration, and preservation of the Point Pinos Lighthouse" commencing 14 years ago on September 1, 2010; and

WHEREAS, the Point Pinos Lighthouse was lit February 1, 1855, and is the oldest continuously operating lighthouse on the West Coast of the U.S. It is on the U.S. National Register of Historic Places. The building has been restored to 1937-1945. The Adobe Chapter-Questers provided room furnishings replicating the Emily Fish lighthouse keeper period (1893 – 1914); and

WHEREAS, Point Pinos Lighthouse ownership was transferred from the U.S. Coast Guard to the City of Pacific Grove in 2006. And since becoming a city museum, it is a top Pacific Grove tourist attraction with over 25,000 visitors annually from CA and across the world. Notably the lighthouse is still an active U.S. Coast Guard aid to navigation; and

WHEREAS, The Heritage Society raised funds, built a gift shop and bathrooms, obtained professional restoration and interpretative plans, restored lighthouse exterior and interior, built a fence, sidewalk, and archways, lowered the cellar; created new displays and a video, installed chimney caps, updated electric wiring, installed internet, provided kitchen and bathroom period furnishings, created a backyard garden, expanded native planting, etc; and

WHEREAS, The Heritage Society volunteers contributed over 20,000 hours to the lighthouse. Ongoing restoration includes the lantern and roof. Volunteers meet weekly on Tuesday mornings and currently focus on landscaping and maintenance of the fence and buildings.

NOW THEREFORE, I, Bill Peake, by virtue of the authority vested in me as Mayor of the City of Pacific Grove do hereby recognize The Heritage Society of Pacific Grove volunteers for their outstanding efforts to restore and preserve the Point Pinos Lighthouse for all to enjoy.

Bill Peake

_____

Bill Peake, Mayor
City of Pacific Grove

Photos & Volunteer List attached.



2009 Michael from San Jose, Wikipedia



2024 Bill Peake, Pacific Grove

Volunteers

Lynn	Archer	Steve	Honegger	Bill	Peake
Jeff	Becom	Doug	Howe	Ted	Rose
Christine	Bertko	John	Hudson	Jan	Rose
Bob	Bourke	Pat	Lovejoy	Fred	Sammis
Ray	Byrne	Reiko	Michisaki	Gary	Stotz
Mike	Cronin	George	Mika	Dennis	Tarmina
Donna	Foote	Jack	Mix	Mark	Travaille
Nina	Grannis	Dan	Myers	Jim	Turley
Earnest	Greer	Lowell	Northrop	Claudia	Vierneisel
Sean	Hadley	Anne	Oja	Al	Washburn
Ken	Hinshaw	Chris	Patton	et. al.	

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: September 04, 2024

SUBJECT: Minutes of the August 21, 2024 City Council Regular Meeting

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

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes 8-21-24

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING

Wednesday, August 21, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
https://www.cityofpacificgrove.org/Zoom_CC

DRAFT

CALL TO ORDER
Mayor Peake called the regular meeting 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
Councilmember Beck led the pledge of allegiance.

1. **APPROVAL OF AGENDA**
Action: Staff requested Regular Agenda item 11A be removed from the agenda to return at a future Council meeting.

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

2. **PRESENTATIONS**
A. Small Business and Entrepreneurs Presentation
Action: Received presentation.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

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

4. **GENERAL PUBLIC COMMENT**
General public comment received from Susan Goldbeck, Daniel Miller, Jane Haines, Carmelita Garcia, Karen Paul, Jenny Hart, Mike Gibbs, Lisa Ciani, Thom Akeman, Nancy Parson, and Peter Cowley.

A. Written General Public Comment

CONSENT AGENDA
Action: Consent Agenda item 8C was pulled and considered immediately following the Consent Agenda.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio,

Council voted 7-0, to approve the Consent Agenda as modified.

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

A. Minutes of the August 7, 2024 City Council 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**

A. Second Reading of an Ordinance Amending Section 2.06.010 (a) of the Pacific Grove Municipal Code Relating to Residency Requirement for City Manager
Action: Held second reading and adopted Ordinance No. 24-012 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

B. Second Reading of an Ordinance Approving an Amendment to the Lease between Lighthouse Fellowship and the City of Pacific Grove
Action: Held second reading and adopted Ordinance No. 24-013 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.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

8. **REPORTS – INFORMATION ONLY**

A. Fourth Quarter Treasurer's Quarterly Report
Action: Received the report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Check Register for July 2024
Recommended Action: Received the check register.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Monarch Sanctuary Annual Report ***This item pulled and considered immediately following the Consent Agenda.***
Reference: George Fuerst, Environmental Program Manager
Recommended Action:
1. Receive 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

DRAFT

9. **REPORTS – REQUIRING ACTION**

A. Motion to Approve Business Improvement District Advisory Board Applicants
Action: Approved the appointments of Business Improvement District Advisory Board Applicants Alessandro Bush and Alexa Sims
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: June 18, 2024
Action: Received the minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Task Force on Diversity, Equity and Inclusion Meeting Minutes: June 10, 2024
Action: Received the minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Museum Board Minutes - 5/9/23, 11/14/23, 2/14/24
Action: Received the minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

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8.C. Monarch Sanctuary Annual Report ***This item pulled and considered immediately following the Consent Agenda.***
Public comment received from Jane Haines, Carmelita Garcia, Daniel Miller, and Christine Walkingstick.

Action: Received report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

A. City of Pacific Grove's Conflict of Interest Code ***This item was pulled and will return to a future Council meeting.***
Reference: Sandra Kandell, City Clerk
Recommended Action:
1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an ordinance to amend Pacific Grove Municipal Code (PGMC) Chapter 2.40, Conflict of Interest, to account for the addition, deletion, and modification of positions listed as "designated employees"; determine that, for the purposes of the City of Pacific Grove's (City) Conflict Code, the City is the "agency;" approve the updated Conflict Code; and
4. Direct that publication of the ordinance will be satisfied by publication of a summary approved by the City Attorney.

DRAFT

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

12. **UNFINISHED AND ONGOING BUSINESS**

A. Motion to Authorize City Manager to Issue a Request for Proposals (RFP) for Cannabis Consulting Services
No public comment received.

Action: Upon motion by Councilmember Amelio and seconded by Mayor Pro Tem Smith, Council voted 7-0, to authorize City Manager to Issue a Request for Proposals (RFP) for Cannabis Consulting Services.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

A. Memorandum of Understanding between the City of Pacific Grove and the Police Officers Association (POA)
Public comment received from Daniel Miller.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted 7-0, to adopt a Resolution No. 24-037 approving the Memorandum of Understanding between the City of Pacific Grove and the Police Officers Association to cover the period of July 1, 2024, through June 30, 2027.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Master Services and Purchasing Agreement with Axon Enterprise, Inc.
Public comment received from Daniel Miller.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Beck, Council voted 7-0, to authorize the Mayor to execute Master Services and Purchasing Agreement with Axon Enterprise, Inc. for five years for Fleet cameras, Body Worn cameras and Taser equipment for a total amount not to exceed $407,855.99.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Reinstallation of Crosswalks and Stop Sign at Fountain Avenue and Pine Avenue
Public comment received from Daniel Miller, Carmelita Garcia, and Christie Thomas.

Action: Discussed the reinstallation of crosswalks at the intersection of Fountain Avenue and Pine Avenue, where a previously existing crosswalk has been removed. Staff will provide an update to Council at its September 4, 2024 meeting.
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

14. **FULL PRESENTATIONS**

A. Pacific Grove Deer Awareness Annual Report by Carmelita Garcia
Public comment received from Kim Akeman and Lisa Ciani.

DRAFT

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

15. **CLOSED SESSION**

ADJOURNMENT
Council adjourned the regular and special meetings at 7:17 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____Date_____

Attest by City Manager: _____Date_____

DRAFT

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Alyssa Kroeger, Housing Program Manager

MEETING DATE: September 04, 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 seventh monthly progress report update to Council on August 7, 2024. Since then, the following tasks have been undertaken:

- **July 29, 2024:** Staff provided Rincon with the City's 2016 Final Area of Special Biological Significance (ASBS) Compliance Plan, as requested.
- **August 5, 2024:** Rincon provided the second amendment request for the Rincon Housing Element contract to staff for review and discussion.
- **August 6 - 7, 2024:** Staff updated the Housing Element webpage with new materials and resources.
- **August 8, 2024:** Housing Element Leadership Team met to discuss the second amendment request to the Rincon Housing Element contract.
- **August 13, 2024:** Rincon delivered the draft Climate Change and Vulnerability Assessment for staff review and provided an updated second amendment request for the Housing Element contract to staff per the August 8th discussion.
- **August 15, 2024:** Rincon submitted July invoice materials to staff.
- **August 19, 2024:** Staff drafted the agenda for the August 22nd check-in meeting to discuss with the Housing Element Team. Staff reviewed Rincon's July invoice and deliverables. Contract Management. Staff replenished Planning Commissioners' supply of the updated Housing Element Half Sheet Handout (V2) while tabling at the Pacific Grove Farmers' Market to inform the community about the Draft Housing Element (DHE) and to direct them to the one-stop-shop Housing Element website.

- **August 20, 2024:** Staff distributed the agenda for the August 22nd check-in meeting to the Housing Element Team.
- **August 21, 2024:** Rincon provided the California Department of Housing and Community Development (HCD) with an email update on the current status of the City's DHE.
- **August 22, 2024:** The Housing Element Team met to discuss next steps related to the Housing Element Update (HEU), second contract amendment, and the associated Zoning Code, Land Use, and Health and Safety Element amendments, as well as the Program Environmental Impact Report (EIR).
- **August 26, 2024:** Staff updated the Housing Element webpage and created table signage for the Planning Commissioners' Housing Element outreach tabling efforts underway. Staff began drafting the second amendment and related documents for the Rincon Housing Element contract, scheduled for City Council in September.

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

Housing Element Leadership Team includes City Manager, Community Development Director, Housing Program Manager, Rincon Principals-In-Charge, and Rincon Project Managers.

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:	Matthew Mogensen, City Manager
MEETING DATE:	September 04, 2024
SUBJECT:	Community Goals and Work Plan Review for FY 24-25
CEQA:	Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive the Goals and Work Plan Update.

DISCUSSION

At the April 19, 2023, City Council meeting, the City Council adopted its Areas of Focus, Goals and Milestones for 2023-2025, including a workplan (attached to this agenda report) that details the anticipated delivery dates for the goal milestones by fiscal year quarter. Staff has been consistently working towards the goals and milestones since adoption. The workplan was reviewed by the City Council at the February 28, 2024, City Council Special Goals Meeting and Budget Workshop for current status and to discuss if the Goals and Milestones are still relevant to the priorities of the City Council. The Council opted to continue the work outlined in the workplan through the remainder of this fiscal year and Council term.

Attached is a matrix containing Community Goals by priority area, the milestones, and the progress made through August of 2024. The Goals/Milestones that are gray are completed, the yellow-highlighted items are in progress, and the orange-noted rows are items that the work effort is large enough it will continue after the end of 2024.

OPTIONS

The options available to the City Council:

1. Review the current Work Plan and modify the Plan as necessary: or
2. Provide the City Manager with additional direction.

FINANCIAL IMPACT:

There is no fiscal impact related to this report. All goals and work efforts noted in the matrix are allocated resources through separate agenda items, capital project, budget line item approvals, or contracts.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

2023-2025 Community Goals & Work Plan

Attachments

Community Goals & Work Plan 2023-25

PRIORITY AREA: Recreation Services

POLICY VALUE STATEMENT: Pacific Grove offers robust and accessible recreational and cultural activities for all ages.

NEW	MANDATE	GOALS	MILESTONES FOR 2023	QUARTER OF COMPLETION (Fiscal Year)	LEAD DEPARTMENT	Status	Percentage Complete	Additional Notes
YES	NO	**Expand hours and services of the Youth Center**	Submit comprehensive recreation plan to City Council for expanded services, activities and programs; receive Council input. *(Plan components include: recruitment strategy, proposed budget including additional FT and Seasonal PT employee hours, expanded hours of operation for all recreational facilities including the Lighthouse. ThePlan will also explain the delta btween 2019 service offerings to what is orooosedl.*	Q4 FY22/23	Rec/PW /CMO /ASD	**Complete**	100%	
			Recruit and onboard additional Seasonal PTE (current and expanded summer 2023 programming).	Q4 FY22/23	Rec/PW/CMO	**Complete**	100%	
			Recruit and onboard additional FTE.	QI FY23/24	Rec/PW/CMO	**Complete**	100%	
			Complete implementation of comprehensive recreation plan (that includes expanding hours, activities and services for the community).	QI FY23/24	Rec/PW/CMO	**Complete, Ongoing**	100%	
YES	NO	**Expand or reinstate afterschool and recreational activities, including recreation and sports programs.**	Same milestones as above.	Q4 FY22/23	Rec/PW/CMO	**Partially Complete, Ongoing**	90%	Always Ongoing
YES	No	**Evaluate fees for use/rental of City facllllies (e.g. Chautauqua Hal, etc.) to incentlvlze more use by the community.**	Assess facility rental fees and submit new proposed fee schedule to the City Council for consideration.	Revised QI FY24/25	ASD/Rec	Draft Complete	95%	Draft Fee study proposed for adoption on September 4, 2024 City Council Agenda. Fees have been reviewed thoroughly and adjustments made to meet this goal.
			Implement new fee schedule.	Revised QI FY24/25	ASD/Rec	Draft Complete	95%	Draft Fee study proposed for adoption on September 4, 2024 City Council Agenda

QUARTER	FIscalyear
QI	July-Aug-Sept
Q2	Oct-Nov-Dec
Q3	Jan-Feb-March
Q4	April-May-June

PRIORITY AREA: Infrastructure

POLICY VALUE STATEMENT: Pacific Grove prioritizes capital needs and maintains community assets

NEW	MANDATE	GOALS	MILESTONES FOR 2023	QUARTER OF COMPLETION (Fiscal Year)	LEAD DEPARTMENT	Status	Percentage Complete	Notes
YES •	NO	**Enhance the process, prioritization, scheduling and completion of CIP projects.**	Select consultant to recommend a new approach for Capital Improvement Program, including the development of asset management schedules, recommended funding and prioritization to address ongoing repair and replacement of City facilities, assets and infrastructure. Select a consultant to develop asset management schedules and recommended funding to address repair and replacement of City facilities, assets and infrastructure as part of defining a new approach to CIP process.	Revised Q2 FY24/25	PW/ASD/CMO	Partially Completed	90%	Staff entered into an agreement with selected contractor to perform the assessment and received draft reports for the Police, Fire, City Hall, Youth Center and Public Works facilities. Reports will be presented to City Council in Q2 of FY 24/25
			Implement recommendations for the development and adoption of a new Capital Improvement Plan. effective July 1, 2024, including a new asset management program.	Revised Q2 FY24/25	PW/ASD/CMO	No yet initiated	0%	Implementation to begin Q3 of FY 24/25
YES	NO	**Complete Streets Poley: adopt a plan to Implement the design of safe walking paths, sIdewalks and bike lanes. Including signage.**	Retain the services of a qualified firm to assess the City's multi-modal transportation network, including all associated transportation policies and the proposed general plan transportation element, and to draft a Complete Streets Policy and safe routes to school map - specific to the needs of the Pacific Grove community.	Revised Q2 FY24/25	PW/COO	Initiated	50%	City staff released an RFP and proposals where due May 29th. No proposals had been received. Staff is seeking alternatives
			Develop and adopt a draft policy and safe routes to school map; shepherd through the Traffic Safety Commission for feedback and public review.	Revised Q2 FY24/25	PW/CDD	Initiated	0%	Traffic Safety Commission to hear presentation from TAMC on SRTS. Subcommitte with PGUSD also discussing and hearing presentation on 9/10/24
			Incorporate policy elements for implementation as a part of subsequent CIP streets infrastructure improvements.		PW/CDD		0%	This action will not take place prior to the end of Q2 23/24

QUARTER	Fiscal vear
Ql	Julv-Aug-Sept
Q2	Oct-Nov-Dec
Q3	Jan-Feb-March
Q4	April-Mav-June

PRIORITY AREA: Environmental Stewardship

POLICY VALUE STATEMENT: Pacific Grove Implements environmentally sustainable practices that protect wildlife and the coastal community.

NEW	MANDATE	GOALS	MILESTONES FOR 2023	QUARTER OF COMPLETION (Fiscal Year)	LEAD DEPARTMENT	Status	Percentage Complete	Additional Notes
YES	NO	**Initiate and Complete a Climate Action and Adaptation Plan.**	Receive recommendations from City Climate Action and Adaptation Plan Subcommittee to authorize funds for a consultant: present to BNRC and then City Council for review and additional input.	Revised to Q2 FY24/25	PW/CDD	Partially Completed	90%	RFQ and plans had been released and proposals had been received in Q1 of 2024/25. The Climate Action Sub - Committee is reviewing 3 received proposals and will bring recommendation to Council in Q2 of FY 24/25
			Present proposed Climate Action and Adaptation Plan to BNRC and then City Council for review and adoption.		PW/CDD			This action will not take place prior to the end of Q2 23/24
YES	NO	**Initiate and complete a Citywide Tree Improvement and Management Plan (e.g., planting In pubic areas, sustainable tree maintenance and removal strategies, review and replacement of non-native plants and species,etc.).**	Complete comprehensive Title 12 revisions; revisions focus on replanting compliance and tree appeal process; to be reviewed by the BNRC.	Revised Q2 FY24/25	PW	Initiated	90%	Reviewed by BNRC in January, April and July of 2024. Staff is finalizing the document and plans to bring it to Council in Q2 of FY 24/25
			Complete comprehensive Title 12 revisions; revisions focus on replanting compliance and tree appeal process; to be reviewed City Council.	Revised Q2 FY24/25	PW	Not yet initiated	0%	Q2 of FY 24/25
			Plant and maintain (e.g., additional labor) 150 native trees on public property and public right-of-way.	Q4 FY23/24	PW	Completed	100%	Staff hosted a community tree planting event and planted 50 trees associated with Arbor day. Staff has planted numerous other trees throughout town and in GW park.
NO	NO	**Protect Wldllfe and Habitat.**	Train CSOs in wildlife protection.	Revised Q2 FY24/25	PD/CMO	Initiated		PD is working with Good City (consultant) on this matter. Training will also be provided by MB Aquarium staff. *(PD is waiting for the Aquarium to identify staff to train CSO's on the coastal wildlife. CSO's are continuing to collect data on calls for service regarding wildlife and coastal contacts initiated by the CSOs. This data is to be turned over to the consultant at the end of 2024).*
			Draft and issue RFQ for Local Coastal Program (LCP) amendments.	Q4 FY22/23	CMO/CDD	Completed		Proposal was too high, considering revisings to the RFP to lower costs
			Review and rank RFQ responses: make recommendation for City Council to award contract.	Revised Q2 FY24/25	CDD/CMO	Initiated		Pending new RFP above or Council appropriation of $300,000
			Release a public draft of LCP amendments for review and City Council adoption; submit to California Coastal Commission for LCP Amendment.		CDD/CMO			This action will not take place prior to the end of Q2 23/24
NO	NO	**Review, update and implement George Washington Park Master Plan.**	Hire a consultant to conduct biological assessment of GWP in order to update and recommend implementation measures of the GWP master plan.	Q4 FY22/23	PW	Initiated	70%	Study expected to be completed in Q3 of 2024/25
			Receive and review Monterey Fire Department's Community Wildfire Protection Plan for impact to GWP (harmonize and align).	Revised Ql FY24/25	MFD/PW	Complete	100%	The final CWPP report is available online: https://haveyoursaymonterey.org/cwpp
			Implement Council adopted policies for GWP Master Plan in alignment with approved City Council direction.		PW/MFD	Initiated		Improvements consistent with the GWP master plan commenced in September 2024. Improvements were halted at the request of the Council & BNRC; Until an updated plan is approved or alternative direction provided, only required maintenance for safety will be executed. Will not be completed prior to end of Q2 24/25

QUARTER	Fiscal year
Ql	July-Aug-Sept
Q2	Oct-Nov-Dec
Q3	Jan-Feb-March
Q4	April-Mav-June

PRIORITY AREA: Affordable Housing

POLICY VALUE STATEMENT: Pacific Grove supports a diversity of affordable housing opportunities.

NEW	MANDATE	GOALS	MILESTONES FOR 2023	QUARTER OF COMPLETION {Fiscal Year}	LEAD DEPARTMENT	Status	Percentage Complete	Notes
YES	NO	**Explore and assess the grandfathering of existing non-conforming ADU's**	Review, audit and conduct field visits for prior second unit report.		CDD	Initiated, Ongoing	20%	May best be addressed on a case-by-case basis with the Building, Planning, and Housing Departments in collaboration as inquiries come in to CDD
			Present findings and staff recommendations to City Council for direction.	Q3 FY23/24	CDD	Ongoing		
NO	YES	**Complete Housing Element Update (MANDATED}**	Prepare and present draft 6th Cycle Housing Element to the Planning Commission, including DEIR (if necessary).	Q3 FY23/24	CDD	Complete, Ongoing	100%	The Planning Commission considered the 6th Cycle Draft Housing Element on October 5th and 12th, and made recommendations. These recommendations were brought forward to Council on October 18th. NOP issued on January 26, 2024 for the preparation of the EIR. EIR Scoping Session was held with the Planning Commission on February 15, 2024. Staff and consultant work on the DEIR is underway.
			Submit draft 6th Cycle Housing Element to HCD for comments.	Q3 FY23/24	CDD	Complete	100%	Draft Housing Element was submitted to HCD on November 1, 2023. City received formal HCD comments on January 31, 2024. Staff and consultant are reviewing HCD comments and preparing revisions to the Draft Housing Element accordingly. Working to identify alternative sites/methods to meet RHNA after the removal of the three "Unclassified" sites. Alt sites/methods were presented to PC on June 13, 2024 and CC on July 17, 2024. Rincon and staff are preparing a revised Draft Housing Element to be submitted to HCD in Fall 2024.
			Integrate HCD revisions into the draft 6th Cycle Housing Element	Q3 FY23/24	CDD	Ongoing	80%	
			Prepare and present draft 6th Cycle Housing Element to the City Council for final adoption and EIR certification (if necessary).	Revised Q2 FY 24/25	CDD	Ongoing	60%	Likely summer 2025.
YES	YES	**Initiate a feaslbllty and site selection process for the design and construction of an affordable housing project**	Prepare 6th Cycle Housing Element draft with Rincon Consultants to deteremine an inventory of feasible development sites for affordable housing.	Revised Q2 FY 24/25	CDD	Ongoing		To follow certified Housing Element
			Determine outside developers' interest in sites selected in Housing Element to develop affordable housing.	Revised FY 2024/25	CDD	Ongoing		To follow certified Housing Element
			City Council review and consideration of preferred site, including selection of preferred market and/or non-profit developer.	Revised FY 2024/25	CDD	Ongoing		To follow certified Housing Element

QUARTER	Fiscal year
QI	July-Aug-Sept
Q2	Oct-Nov-Dec
Q3	Jan-Feb-March
Q4	April-Mav-June

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Karen Vaughn, Community Development Director

MEETING DATE: September 04, 2024

SUBJECT: Water Allocation Update for 520 Lighthouse Avenue Mixed-Use Project

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

RECOMMENDATION

Receive report.

DISCUSSION

Municipal Code Section 11.68 governs the City's water distribution regulations. In 2019, water became available and the City was able to begin the sale of water allocations to individual properties/projects.

In July 2020, the City issued a Promissory Note to sell and transfer approximately 3.5725 acre-feet of water entitlements to a large-scale mixed-use project located at 520 Lighthouse Avenue. The project included 10 residential condominium units along with ground floor commercial uses. To date, six of the ten residential condominium units have been sold and the City has collected $375,000 ($62,500 per unit). There are four remaining residential units that will need to secure and pay for their water allocations prior to final inspection and Certificate of Occupancy.

Associated water allocation reports were provided to City Council on April 21, 2021 and January 19, 2022.

OPTIONS

Direct staff to take additional or alternative action.

FINANCIAL IMPACT:

There is no financial impact in receiving the report.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

520 Lighthouse Avenue Condo Sales

520 Lighthouse Avenue Condos

Unit #	Status	Date to City Mgr.	Date to Title Co.	Rcvd Recorded	Finaled by Bldg.	Appendix A to Finance	
201	*Sold*	6/5/2024	6/6/2024	6/14/2024	yes	yes	Recorded
202							
203	*Sold*	6/18/2024	6/25/2024	7/9/2024	yes	yes	Recorded
204							
205	*Sold*	11/15/2023	11/15/2023	11/15/2023	yes	yes	Recorded
301							
302							
303	*Sold*	5/20/2024	5/21/2024	5/24/2024	yes	yes	Recorded
304	*Sold*	8/1/2023	8/1/2023	8/1/2023	yes	yes	Recorded
305	*Sold*	6/28/2023	6/29/2023	no record	yes	yes	Recorded

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Nick Smith, Mayor Pro Tem

MEETING DATE: September 04, 2024

SUBJECT: Monterey One Water Board of Directors 2024 Mid-Year Highlights

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

RECOMMENDATION

Receive report.

Attachments

Mid - year M1W

Board of Directors: 2024 Mid-Year Highlights

Wastewater Infrastructure

Monterey One Water continues to prioritize the maintenance and improvement of its infrastructure. A selection of critical infrastructure projects designed to ensure reliable conveyance and treatment of wastewater in progress throughout Q1 and Q2 included:

- Monterey & Seaside Pump Stations Upgrades (reliable conveyance)
- Headworks Bypass Project (Regional Treatment Plant update)
- Secondary Clarifier #1 & 2 Drive Replacement (Regional Treatment Plant update)

Regional Collaboration

- The City of Salinas owns and operates the Industrial Wastewater Treatment Facility where agricultural processors discharge their industrial wastewater along with some urban runoff . Due to severe winter weather and potential flooding that occurred throughout winter 2024, the facility become inoperable and M1W was able to divert agricultural processing water to its Regional Treatment Plant for treatment and safe disposal (Feb-April 2024).
- Staff will be working with the Monterey County Water Resources Agency (WRA) to review the findings of a financial audit related to the production and distribution of recycled water for agriculture irrigation and river water. The terms of the Amended and Restated Water Recycling Agreement are ambiguous and the agencies will be collaborating to create greater clarity and transparency related to indirect costs and internal controls.

Pure Water Monterey

The Pure Water Monterey Project continues to perform as designed, meeting the strict state and federal water quality parameters outlined in its permit requirements.

- In Fiscal Year 2024, the Agency produced 3,819 AF of purified water for the potable water supply via groundwater replenishment. 3,500 AF supports the current water supply while 319 AF is stored in the groundwater basin for future use.
- An Expansion of Pure Water Monterey is underway. Construction remains on track for operation by the end of 2025. Critical purification equipment is scheduled to begin arriving this fall with electrical equipment to be delivered starting in December 2024. To date, the Expansion Project has received ~$42 million in grants from state and federal sources. This will directly offset construction costs.

Renewable Energy

- The Monterey Renewable Energy and Electrical Utility Reliability Study was finalized in spring of 2024. This joint effort with ReGen Monterey, the neighboring solid waste and reuse district, assessed the ‘highest and best use of wastes and waste by-products’ of the two agencies. The goals of the effort are to 1) reduce GHGs through the capture and productive use of landfill and digester methane gas; 2) support California legislation on organics diversion and clean energy generation; and 3) create a reliable, sustainable energy portfolio for M1W and ReGen that eliminates power interruptions and reliance on the California Independent System Operators grid.
- M1W is also pursuing consultant support to optimize tax incentives made available through the federal government’s Inflation Reduction Act for construction related to renewable energy progress.

Administration

- Monterey One Water's Residential Low-Income Sewer Assistance Program offers reduced service fees for qualifying residential customers. Program parameters were expanded for fiscal year 2024-2025 and enrollment in the program increased 65%. The 2024-2025 is currently full, but enrollment is annual, based on Board allocation of funds, and enrollment will reopen in 2025 for the next fiscal year.
- Monterey One Water’s billing process will continue to be bi-monthly and will not move to your property tax statement. Although the Board of Directors unanimously approved the initial implementation, final ratification by the Board did not receive the required 2/3 majority support. Boronda, City of Monterey, and Moss Landing jurisdictions opted to move their wastewater collection fees to the property tax statement; M1W will no longer bill for those fees.

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Matthew Mogensen, City Manager

MEETING DATE: September 04, 2024

SUBJECT: Promissory Note and Agreement for 157 Grand Avenue

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

RECOMMENDATION

Approve a new Promissory Note and Agreement with IC PG Property Owner, LLC for water entitlement for the hotel project at 157 Grand Avenue (APN 006-173-002), accelerating the water entitlement payment by 12-months and revising the project ownership.

DISCUSSION

The Pacific Grove Municipal Code (PGMC) sets forth water distribution rules in Title 11. Chapter 11.68 governs Water Entitlement processes by which potable water made available by funding and operation of the Pacific Grove Local Water Project (PGLWP) are available for sale. The City began sales of entitlement water in July 2019.

At the September 1, 2021, City Council meeting, the City Council adopted Ordinance 21-023 to approve a code change to 11.68.040 *Entitlement Water* to enable Promissory Agreements associated with payment of entitlement water sales. Per PGMC 11.68.040 (c), City Council approval shall be required for the City to enter into any promissory agreement related to payment for entitlement of water. The maximum amount payable pursuant to the promissory agreement shall not exceed 90 percent of the purchase price with a 10 percent deposit required at the time of the execution of the agreement.

The new hotel at 157 Grand Avenue currently under construction (The PG Hotel) requested approval to defer the payment of the water entitlement, due to the scale of the project. The project had a water demand of 8.816 acre-feet and was required to pay the PGLWP $1,542,800.00 for the water allocation. On February 2, 2022, the City Council approved a Promissory Agreement with Rohnert Park RI LP, Belvnus, LLC, Travel Inn Associates, LP, and Mohammad Rezfor for the deferred water allocation payment until the issuance of the final occupancy permit. This was projected to occur in December of 2025.

The project was sold to IC PG Property Owner, LLC, on May 19, 2023. The new owner further refined the project and the water demands were adjusted downward due to the removal of a spa, dining capacity, and the number of rooms. The resulting water demand calculation now equals 6.355 acre feet, a reduction of 2.461 acre-feet. This reduction will allow the PGLWP additional supply to assist other projects in need of additional water supply.

The new Promissory Note and Agreement holds the same terms as the initial agreement, but accelerates the payment for water allocation by one year from December 2025 to December 27, 2024. The new Promissory Note and Agreement also documents the new ownership as the other party instead of the initial project owner.

OPTIONS

Do not approve Promissory Note and Agreement. This action is not recommended as the advantages of the new Promissory Note and Agreement would not be realized. The Council may direct the City Manager to take alternative action as well.

FINANCIAL IMPACT:

The initial Promissory Note and Agreement entered on February 2, 2022, with Rohnert Park RI LP, Belvnus, LLC, Travel Inn Associates, LP, and Mohammad Rez, allowed the developer of a large project, as defined in PGMC 11.68.040, to leverage financing so that the large financial outlay associated with the purchase of water can be deferred until the time of final inspection and certificate of occupancy. The initial water allocation of the 2022 Promissory Note and Agreement was for 8.816 acre-feet for a cost of $1,542,800. An initial deposit of $154,280 (10%) was paid as required. The final 90% payment in the amount of $1,388,520 was required to be paid prior to issuance of the final occupancy permit.

The project was sold to IC PG Property Owner, LLC, on May 19, 2023. Subsequently, the project designs were refined and the water demands adjusted downward accordingly as a spa was removed, dining capacity reduced and the number of rooms reduced. The resulting water demand calculation now equals 6.355 acre feet, a reduction of 2.461 acre-feet. This reduction also results in a lower overall water purchase price of $1,112,125. With the 10% deposit on file credited, the final water purchase payment due on December 27, 2024, is $957,845.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Promissory Note and Agreement

PROMISSORY NOTE AND AGREEMENT

(Project Name)

$957,845.00 Pacific Grove, California
_____, 2024

This Promissory Note and Agreement ("Note") is dated August __, 2024, by and between the CITY OF PACIFIC GROVE, a California charter city ("City") and IC PG PROPERTY OWNER, LLC, a Colorado limited liability company ("Owner") and is made in consideration of the mutual covenants and conditions set forth below.

Recitals

1. Pursuant to that certain Grant Deed, dated May 17, 2023, and recorded on May 19, 2023, as Document No. 2023015332, in the official records of Monterey County, Rohnert Park RI LP, Belvnus LLC, Travel Inn Associates LP, and Durrell Pacific Grove LLC, conveyed to Owner the property located at 157 Grand Avenue, in the City of Pacific Grove, County of Monterey, State of California (APN No. 006-173-002) (the "Property");

2. On September 8, 2023, City issued to Owner a building permit to commence construction of a hotel project on the Property;

3. On May 28, 2024, City granted to Owner a Water Entitlement of 6.355 acre-feet per year ("Water Entitlement") dedicated to the Property, pursuant to the ASSIGNMENT OF A PORTION OF MONTEREY PENINSULA WATER MANAGEMENT DISTRICT RULE 23.9 CITY OF PACIFIC GROVE WATER ENTITLEMENT ("Assignment"), subject to the payment therefor; and

4. Pursuant to the Assignment, Owner owes City $957,845.00 to fully pay for the Water Entitlement.

Agreements

FOR VALUE RECEIVED, Owner promises to pay to the City, in lawful money of the United States of America, the principal sum of Nine Hundred Fifty-Seven Thousand Eight Hundred Forty-Five and 00/100 Dollars ($957,845.00), as further discussed hereinbelow, in accordance with the terms and conditions described herein.

1. Owner agrees to pay City $957,845.00 in full, on or prior to December 27, 2024.

2. This Note shall accrue interest at the rate of zero percent (0%) per annum provided Owner is not in default hereunder. Should Owner be in default under the terms of this Note, interest on the unpaid principal of this Note shall accrue interest at the rate of twelve percent (12%) per annum.

3. To the extent applicable, Owner shall maintain its corporate existence in good standing in California. Owner shall maintain in force all licenses, approvals, and agreements, the loss of which could have a material adverse effect as to the performance on this Note. Owner shall provide to City a Certificate of Good Standing from the appropriate authority,

submitted within ten (10) days upon request by City, certifying that Owner is in good standing to conduct business within the State of California.

4. All sums remaining unpaid under this Note shall become immediately due and payable, at City's option, upon ten (10) calendar days' notice without further demand, or presentment, and regardless of any prior forbearance, on the occurrence of any of the following events:

    a. Owner's failure to make any payment when due under the terms of this Note;
    b. The filing of a petition in bankruptcy by, or the initiation of any proceeding under any bankruptcy or insolvency laws against the Owner;
    c. Upon expiration or revocation of the building permit associated with the Property; or;
    d. If any interest in the Property is sold, transferred or conveyed to any person, whether voluntarily or involuntarily.

5. Upon any event of default referenced above, City may at City's option, upon ten (10) days' calendar notice without further notice, demand, or presentment, and regardless of any prior forbearance, may revoke in full or in part, the Water Entitlement. In the event that City revokes the Water Entitlement, Owner shall be under no obligation to pay the principal or any interest on this Note.

6. City shall have the right to be fully reimbursed by Owner for all of its costs and expenses to the extent not prohibited by applicable law, including but not limited to, outside collection agencies and reasonable attorneys' fees, incurred to collect amounts due under this Note.

7. If any action is commenced which arises out of or related to this Note, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenditures in the action, in addition to costs and expenditures otherwise allowed by law. Recovery of these fees or expenses shall be as additional costs awarded to the prevailing party and shall not require initiation of a separate legal proceeding. In any matter arising out of or relating to the bankruptcy of Owner prior to the payment in full of this Note, Owner agrees to pay all of City's costs and expenditures, including reasonable attorneys' fees and expert fees, which may be incurred in enforcing or protecting City's rights and interests.

8. No failure of delay by City in exercising City's rights under this Note shall be considered a waiver of such rights.

9. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile or email, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be made to CITY and OWNER at the addresses listed below.

10. Any waiver of any terms and conditions of this Note must be in writing and signed by City and Owner. A waiver of any of the terms and conditions shall not be construed as a waiver of any other terms or conditions in this Note.

11. City and Owner shall comply with all applicable federal, state and local laws and regulations in performing under this Agreement and Note.

12. This Note shall be governed by and interpreted under the laws of the State of California. Venue for any action shall be in the County of Monterey.

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

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

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

16. If any of the provisions contained in this Note are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

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

CITY OF PACIFIC GROVE
ADDRESS: _____

_____

Email: _____

BY: _____

As approved to form: City Attorney

DATE: _____

By: _____
City Manager

DATE: _____

By: _____
Mayor
DATE: _____

IC PG PROPERTY OWNER, LLC
ADDRESS: 8084 S. Wallace Ct., Suite A
Englewood, CO 80112
Email: Gary. Roffe@Cypress16.com

By: PACIFIC GROVE INVESTORS, LLC
As MANAGER

By: _____
Gary Roffe, Manager
DATE: _____

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Leticia Livian, Human Resources Director

MEETING DATE: September 04, 2024

SUBJECT: First reading of an ordinance to amend the City Salary Classification Schedule (POA)

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

RECOMMENDATION

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold a first reading of an ordinance to amend the salary classification schedule to modify the salary range for Police Officer and Police Sergeant and approve the amendment; and
4. Direct that a summary of a proposed ordinance be published as approved by the City Attorney.

DISCUSSION

On August 21, 2024, the Council adopted Resolution 24-037 to authorize the city manager to execute all documents and to perform all other necessary City acts to implement the Memorandum of Understanding (MOU) between the City of Pacific Grove (City) and the Pacific Grove Police Officers Association (POA).

The MOU approved increases to the salary range for Police Officer and Police Sergeant for 2024, 2025 and 2026. The salary increases and the effective dates are listed below.

1. 3% salary increase effective July 7, 2024; and
2. 3% salary increase effective the first full pay period in July 2025; and
3. 3% salary increase effective the first full pay period in July 2026.

Additionally, as part of the MOU, the salary step percentage between steps 5 and 6 and steps 6 and 7, will increase from 3.75% to 5%.

The City salary classification schedule identifies the job classifications approved by Council (e.g., Police Officer) and the hourly rates of pay for each classification at each step authorized by the Personnel Rules. To implement a salary increase, the salary classification schedule must be amended to incorporate the salary increase for the effective dates outlined in the MOU between the City and the POA. The action proposed in this Agenda Report is to implement the salary change for the first increase of 3% effective July 7, 2024.

Pursuant to Charter Article 25 and Pacific Grove Municipal Code (PGMC) Section 4.20.280, approval and amendment to the classification schedule must be adopted by the Council. The requested changes are for Police Officer and Police Sergeant classifications only, all other classifications in the salary schedule remain the same. To view the entire salary schedule, please refer to the City's website, http://www.cityofpacificgrove.org/about-city/human-resources/salaries-benefits-and-mous

City Of Pacific Grove
Proposed New Salary Schedule - POA Hourly Rate

	Classification	Step 1A	Step 2B	Step 3C	Step 4D	Step 5E	Step 6F	Step 7G
Current Hourly	Police Sergeant	53.53	56.21	59.02	61.97	65.07	67.51	70.04
New Hourly	Police Sergeant	55.14	57.89	60.79	63.83	67.02	70.37	73.89
Current Hourly	Police Officer	46.33	48.65	51.08	53.63	56.32	58.43	60.62
New Hourly	Police Officer	47.72	50.11	52.61	55.24	58.01	60.91	63.95

OPTIONS

1. Provide alternative direction to staff.

FINANCIAL IMPACT:

The projected annual fiscal impact to the General Fund is listed below:

Year 1 FY 24/25	$114,478 is budgeted for the 3% COLA. $36,000 will need to be amended in the budget for the percentage increase amounts between steps 5 and 6, and steps 6 and 7.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Ordinance

ORDINANCE NO. 24-____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING THE CLASSIFICATION SCHEDULE FOR POLICE SERGEANT AND POLICE OFFICER

Findings

1. The City of Pacific Grove (City) entered into a new Memorandum of Understanding (MOU) with the Pacific Grove Police Officer Association; and

2. The MOU is effective from July 1, 2024 through June 30, 2027; and

3. The MOU contains three salary adjustments; and

4. The first salary adjustment takes effect on July 7, 2024; and

5. The second salary adjustment takes effect the first full pay period of July 2025; and

6. The third salary adjustment takes effect the first full pay period of July 2026; and

7. Modifications to the salary classification plan are for Police Officer and Police Sergeant Classifications only; and

8. Modifications to the salary classification plan must be amended for each described date; and

9. Amendment to the classification plan must be adopted by the City Council pursuant to Charter Article 25 and Pacific Grove Municipal Code (PGMC) Section 4.20.280; and

10. The City Council ratified the MOU and its implementation measures, including salary adjustment; and In the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. Enactment of this ordinance action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment pursuant Section 15378.

Ordinance

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

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

SECTION 2. The position classification plan approved and adopted by the City Council pursuant to Charter Article 15 and PGMC § 4.20.280 is amended for the POA positions, with the following salary schedule:

City Of Pacific Grove

Proposed New Salary Schedule - POA Hourly Rate

Eff.	Classification	Step 1A	Step 2B	Step 3C	Step 4D	Step 5E	Step 6F	Step 7G
July 7, 2024	524-001 Police Sergeant	55.14	57.89	60.79	63.83	67.02	70.37	73.89
Eff.	**Classification**	**Step 1A**	**Step 2B**	**Step 3C**	**Step 4D**	**Step 5E**	**Step 6F**	**Step 7G**
July 7, 2024	516-001 Police Officer	47.72	50.11	52.61	55.24	58.01	60.91	63.95

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

SECTION 4. In accord with Article 15 of the City Charter, this ordinance shall become effective July 7, 2024.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this_____day of September 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____

BILL PEAKE, Mayor

ATTEST:

_____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____

BRIAN PIERNIK, City Attorney

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Jessie Catacutan, Interim Administrative Services Director

MEETING DATE: September 04, 2024

SUBJECT: Cost of Services (User Fee) Study – August 2024

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

RECOMMENDATION

1. Adopt the FY 24-25 Recommended Fees (Attachment III) and Resolution No. 24-XXX (Attachment IV) to create and adopt the City's FY 24-25 Master Fee Schedule.
2. Direct the City Manager to propose an increase in fees for City Council consideration using the Consumer Price Index (CPI) with a cap of 5%, in May of each of the next three years.

DISCUSSION

At the City Council Meeting on February 1, 2023, the Council directed staff to approve the contract with Matrix Consulting Group (MCG) for proposals to develop a Cost Allocation Plan and User Fee Study. The goal of the Cost Allocation Plan (CAP) was to provide a comprehensive analysis identifying the appropriate distribution of citywide administrative and overhead costs to all City operating departments, divisions, and programs. The analysis included developing an Office of Management and Budget (OMB)-Compliant CAP to satisfy the requirements established by OMB Circular A-87 Cost Principles for State, Local, and Indian Tribe Governments, Title 2 CFR 225; and a Full Cost Allocation Plan to allocate central support departments to operating functions. The OMB-Compliant CAP can be used to support the reimbursement of indirect costs on Federal and State grants, while the Full CAP can be used to establish indirect costs between departments and overhead rates. The Full CAP served as part of the foundation for the Fee Study. The last Fee Study, also the first one for the city, was completed in April 2018 and was presented to City Council on May 2, 2018.

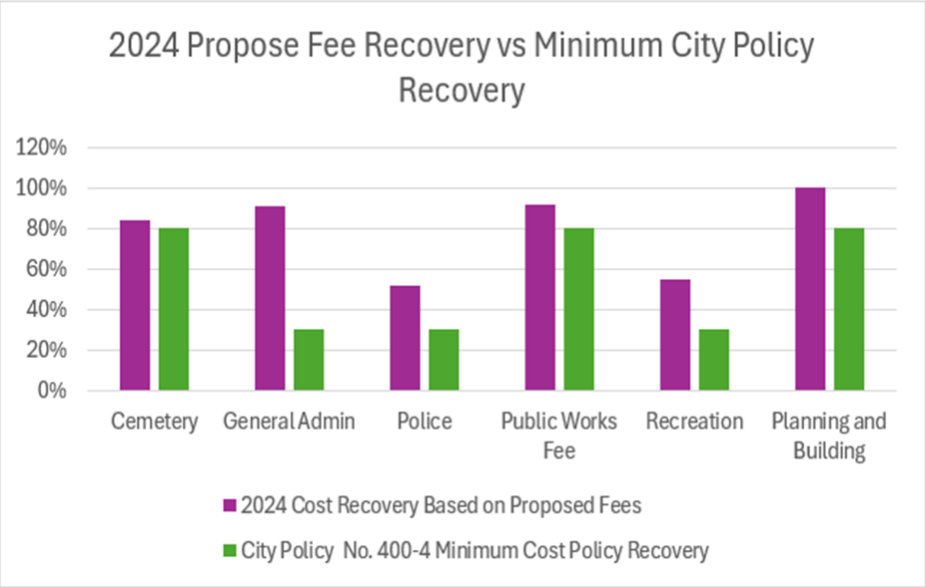
The Fee Study used a widely accepted "bottom-up" approach to cost analysis. Department representatives were asked to identify the positions and the amount of time spent on each individual fee activity. This information, along with the City's budgeted salaries, benefits, allowable expenditures, and the indirect costs identified in the CAP were used to establish the "full cost" of providing a service. Each department reviewed the inputs prior to finalizing the attached report (Attachment I). It should be noted that the fee study does not include rates for the rental or sale of land or property; however, it does provide a formula to assist in cost recovery for land use related to filming. All land and property sales or rentals are not limited to the cost recovery principles associated with fees, as they can be sold or leased at market rate.

The table below provides budget, estimated revenue (unaudited) and percent of revenue generated by each unit for FY 23-24. We have only included units that have generated over $10,000 (see note below). A projected 5% overall increase in Revenue for FY24-25 would be $205,000.

Unit	FY 23-24 Budget	Estimated Revenue FY 23-24	% of Revenue	Projected 5% Increase of Revenue FY 24-25
Cemetery	$ 686,000	$ 810,923	19.7%	$ 851,469
General Admin	$ 538,000	$ 780,413	19.0%	$ 819,433
Police	$ 213,000	$ 170,450	4.1%	$ 178,972
Public Works Fee	$ 8,000	$ 11,111	0.3%	$ 11,666
Recreation	$ 292,000	$ 330,208	8.0%	$ 346,719
Planning and Building	$ 2,133,000	$ 2,004,883	48.8%	$ 2,105,127
Total	$ 3,870,000	$ 4,107,987	100.0%	$ 4,313,387

The City Council adopted Fees, Charges, and Cost Recovery Policy (No. 400-4 – Attachment II). The purpose of the policy is to guide the City Council's establishment of fees for service, fines, and other charges for service, in order to help ensure consistency in fee setting rationale. The policy is intended to provide broad guidance for service areas, without providing detailed guidance for all fee categories. Staff has reviewed each proposed fee discussed in this report both individually and collectively per service area to ensure the proposed fees meet the intent of the policy while maintaining cost recovery levels for the service area as a whole. The table below is a summary of the 2024 overall cost recovery based on proposed fees and a summary of the city cost recovery policy by each respective unit. In addition, the bar chart below demonstrates the full compliance of the proposed fees with the minimum percentage of cost recovery from city policy No. 400-4.

Unit	2024 Cost Recovery Based on Proposed Fees	No. 400-4 Cost Recovery Policy
Cemetery	84%	Market and 80+%
General Admin	91%	30+%
Police	51%	30-50%
Public Works Fee	92%	80-100%
Recreation	55%	Market and 30+%
Planning and Building	100%	80-100%
Grand Total	88%	



It is important to note that individual fees may be higher or lower than the recommended cost recovery for a service area. For example, Planning and Building (Community Development) fee may be achieving 100% cost recovery while another is achieving 70 %. Collectively, they are above the 80% cost recovery goal, but the fees are adjusted based on staff experience, reasonableness of the increase from the last study, or other factors.

It has been six years since the previous study and many variables have changed. Certain fees, primarily in Community Development, are seeing larger increases as a result. Driving the increases are rising operational costs since 2018, and the fact that the 2018 study did not include certain administrative overhead costs. Taking the approach of understanding the full cost of a service requires the administrative overhead to be considered.

The details in Attachment III study reflects the current fees (citywide), the full-cost of fees needed to recover costs from the 2024 user fee study and the staff recommended fees that will be used to update the FY 24-25 City's Fee Master Schedule. The proposed fees were increased or decreased according to the total cost from the 2024 user fee study except for Cemetery site sales. Below in this report is a further explanation about Cemetery site sales fees.

The City Council's Community Goals and Work Plan contains a goal to "Evaluate fees for the use/rental of City facilities." This study was an opportunity to look closer at the costs associated with providing the use and rental of City facilities and revise as appropriate. The result is a staff recommended reduction in the majority of fees associated with the rental of City facilities, as shown in Attachment III, page 40. In addition, staff has revised and/or proposed moderate increases compared to the cost for Parks and Recreation program fees as shown on Page 36 of Attachment III to remain competitive and for the best interest of the community we serve.

The Cemetery site sales total cost was based on buying new land. Staff recommends a 10% increase and not increasing by almost 200% based on total cost to remain competitive (see picture below for example). Should the city acquire additional plots from the Methodist Church or construct a new mausoleum, the city's cost will increase and these site prices will need to be reevaluated.

Fee Name	Unit	Current Fee	Total Cost	Staff Recommended Fee
CEMETERY SITE SALES				
Urn Sites (Other than Urn Garden)				
Single	Each	$2,557	$7,227	$2,813
Double	Each	$4,194	$11,854	$4,613
Triple	Each	$4,508	$12,741	$4,959

While the Council has adopted a cost recovery policy (No. 400-4), the Council may adopt a lower fee to encourage or acknowledge community stewardship. An example could be a dog license fee that offers a reduced rate for an altered pet ($25 vs $55 with the same cost). This would be consistent with the City's existing fee structure.

Additional information in the report includes policy considerations, referencing industry indexes for annual updates, a sample schedule for formal fee updates and a special Filming Fee supplement.

OPTIONS

· Take an alternative action and provide direction to the City Manager.

FINANCIAL IMPACT:

There is no fiscal impact with this report (additional revenue generated to be determined based on final fees approved).

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Attachment I - User Fee Study Report

Attachment II - City Cost Recovery Policy No. 400-4

Attachment III - FY 24-25 Proposed User Fees

Attachment IV - Resolution No. 24-XXX FY 24-25 Master Fee Schedule

Report on Cost of Services (User Fee) Study

CITY OF PACIFIC GROVE, CALIFORNIA

FINAL REPORT

August 2024

matrix consulting group

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1. Introduction and Executive Summary

The report, which follows, presents the results of the Cost of Services (User Fee) Study conducted by the Matrix Consulting Group for the City of Pacific Grove, California.

Project Background and Overview

The City of Pacific Grove last conducted a formal fee study in 2018 and has since updated fees based upon annual inflationary factors. The purpose of this study is to re-evaluate time and cost assumptions from the 2018 analysis and determine the full cost (direct and indirect) of providing City services based upon the current organizational structure and processes. Matrix Consulting Group analyzed the cost-of-service relationships that exist between fees for service activities in the following areas: Administrative Services, Planning, Building, Police, Public Works and Cemetery, and Parks and Recreation. The results of this Study provide a tool for understanding current service levels and the cost for those services.

General Project Approach and Methodology

The methodology employed by the Matrix Consulting Group is a widely accepted "bottom up" approach to cost analysis, where time spent per unit of fee activity is determined for each position within a Department or Program. Once time spent for a fee activity is determined, all applicable City costs are then considered in the calculation of the "full" cost of providing each service. The following table provides an overview of types of costs applied in establishing the "full" cost of services provided by the City:

Table 1: Overview of Cost Components

Cost Component	Description
Direct	Fiscal Year 2024 Budgeted salaries, benefits, and allowable expenditures.
Indirect	Program, departmental, clerical, and Citywide support.

Together, the cost components in the table above comprise the calculation of the total "full" cost of providing a particular service, regardless of whether a fee for that service is charged.

The work accomplished by the Matrix Consulting Group in the analysis of the proposed fees for service involved the following steps:

- **Department / Program Staff Interviews:** The project team interviewed department / program staff regarding their needs for clarification to the structure of existing fee items, or for addition of new fee items.

- **Data Collection:** Data was collected for each permit / service, including time estimates. In addition, all budgeted costs and staffing levels for Fiscal Year 2024 were entered into the Matrix Consulting Group's analytical software model.

- **Cost Analysis:** The full cost of providing each service included in the analysis was established.

- **Review and Approval of Results with City Staff:** Department and City management has reviewed and approved these documented results.

A more detailed description of user fee methodology, as well as legal and policy considerations are provided in subsequent chapters of this report.

Summary of Results

Overall, the detailed documentation of the Study will show an over-collection for some fees (on a per unit basis), and an undercharge for most others. The results of this analysis will provide Departments and the City with guidance on how to right-size their fees to ensure that each service unit is set at an amount that does not exceed the full cost of providing that service.

The display of the cost recovery figures shown in this report are meant to provide a basis for policy development discussions among Council members and City staff, and do not represent a recommendation for where or how the Council should act. The setting of the "rate" or "price" for services, whether at 100 percent full cost recovery or lower, is a policy decision to be made only by the Council, with input from City staff and the community.

Considerations for Cost Recovery Policy and Updates

Matrix Consulting Group recommends that the City use the information contained in this report to make any necessary updates to their formal cost recovery policies and continue with their annual updates to fees for service. The following subsections highlight the importance of reviewing and updating these policies.

1 Formal Cost Recovery Policy

The Government Finance Officers Association's (GFOA) best practices for *Establishing Government Charges and Fees* states that governmental entities should adopt formal policies regarding charges and fees which include the jurisdiction's intention to recover

the full cost or partial costs of providing services sets forth circumstances under which the jurisdiction might set a charge or fee at less than or more than 100% of full cost, and outlines the considerations that might influence the jurisdiction's pricing decision.

Matrix Consulting Group recommends that the City review current policies and make adjustments based on current and projected goals. Whenever a cost recovery policy is established at less than 100% of the full cost of providing services, a known gap in funding is recognized and may then potentially be recovered through other revenue sources. Matrix Consulting Group considers a formalized cost recovery policy for various fees for service an industry Best Management Practice.

2 Annual Fee Update / Increase Mechanism

The purpose of a comprehensive update is to completely revisit the analytical structure, service level estimates and assumptions, and to account for any major shifts in cost components or organizational structures that have occurred since the City's previous analysis.

GFOA best practices for *Establishing Government Charges and Fees* states that governmental entities should review, and update charges and fees periodically based on factors such as the impact of inflation, other cost increases, adequacy of cost recovery, use of services, and the competitiveness of current rates to avoid large infrequent fee increases. It is recommended the City continue its current practice of conducting comprehensive analyses every three to five years as this practice captures any changes to organizational structure, processes, code amendments, and new service areas.

In between comprehensive updates, the City should continue to utilize published industry economic factors such as Consumer Price Index (CPI) or other regional factors to update the cost calculations established in the Study on an annual basis. Utilizing an annual increase mechanism ensures that the City receives appropriate fee increases that reflect growth in costs.

2. Legal Framework and Policy Considerations

This section of the report is intended to provide an overview of legal rules and regulations as well as general policy considerations regarding fees for service. A "user fee" is a charge for service provided by a governmental agency to a public citizen or group. In California, several constitutional laws such as Propositions 13, 4, and 218, State Government Codes 66014 and 66016, and more recently Prop 26 and the Attorney General's Opinion 92-506 set the parameters under which the user fees typically administered by local government are established and administered. Specifically, California State Law, Government Code 66014(a), stipulates that user fees charged by local agencies "…may not exceed the estimated reasonable cost of providing the service for which the fee is charged".

General Principles and Philosophies Regarding User Fees

Local governments are providers of many types of general services to their communities. While all services provided by local government are beneficial to constituents, some services can be classified as globally beneficial to all citizens, while others provide more of a direct benefit to a specific group or individual. The following table provides examples of services provided by local government within a continuum of the degree of community benefit received:

Table 2: Services in Relation to Benefit Received

"Global" Community Benefit	"Global" Benefit and an Individual or Group Benefit	Individual or Group Benefit
• Police • Park Maintenance • Fire Suppression	• Recreation / Community Services • Fire Prevention	• Building Permits • Planning and Zoning Approval • Site Plan Review • Engineering Development Review • Facility Rentals

Funding for local government is obtained from a myriad of revenue sources such as taxes, fines, grants, special charges, user fees, etc. In recent years, alternative tax revenues, which typically offset subsidies for services provided to the community, have become increasingly limited. These limitations have caused increased attention on user fee activities as a revenue source that can offset costs otherwise subsidized (usually) by the general fund. In Table 3, services in the "global benefit" section tend to be funded primarily through voter approved tax revenues. In the middle of the table, one typically finds a mixture of taxes, user fee, and other funding sources. Finally, in the "individual /

group benefit" section of the table, lie the services provided by local government that are typically funded almost entirely by user fee revenue.

The following are two central concepts regarding the establishment of user fees:

- **Fees should be assessed according to the degree of individual or private benefit gained from services.** For example, the processing and approval of a land use or building permit will generally result in monetary gain to the applicant, whereas Police services and Fire Suppression are examples of services that are essential to the safety of the community at large.

- **A profit-making objective should not be included in the assessment of user fees.** In fact, California laws require that the charges for service be in direct proportion to the costs associated with providing those services. Once a charge for service is assessed at a level higher than the actual cost of providing a service, the term "user fee" no longer applies. The charge then becomes a tax subject to voter approval.

Therefore, it is commonly accepted that user fees are established at a level that will recover up to, and not more than, the cost of providing a particular service.

General Policy Considerations Regarding User Fees

Undoubtedly, there are programs, circumstances, and services that justify a subsidy from a tax based or alternative revenue source. However, it is essential that jurisdictions prioritize the use of revenue sources for the provision of services based on the continuum of benefit received.

Within the services that are typically funded by user fees, the Matrix Consulting Group recognizes several reasons why City staff or the Council may not advocate the full cost recovery of services. The following factors are key policy considerations in setting fees at less than 100 percent of cost recovery:

- **Limitations posed by an external agency.** The State or an outside agency will occasionally set a maximum, minimum, or limit the jurisdiction's ability to charge a fee at all. An example includes time spent copying and retrieving public documents and / or transportation permits.

- **Encouragement of desired behaviors.** Keeping fees for certain services below full cost recovery may provide better compliance from the community. For example, if the cost of a permit for charging a water heater in residential home is higher than the cost of the water heater itself, many citizens will avoid pulling the permit.

- **Benefit received by user of the service and the community at large is mutual.** Many services that directly benefit a group or individual equally benefit the community. Examples include Planning Design Review, historical dedications, and certain types of special events.

The Matrix Consulting Group recognizes the need for policies that intentionally subsidize certain activities. The primary goals of a User Fee Study are to provide a fair and equitable basis for determining the costs of providing services and ensure that the City complies with State law.

Parks and Recreation Specific Regulations

Specific rules and regulations within Proposition 26 impact Parks and Recreation related activities directly. These regulations note that Parks and Recreation stands apart from other departments and services, as users are not compelled to participate in recreation programs, or to utilize rental facilities. As such, Parks and Recreation fees can be set based on market rates including both private sector providers as well as other public entities. The regulatory exceptions can be separated into two categories – rental rates and recreation programs. The following points provide further information regarding these items:

1. **Rental Rates:** One of the exceptions to the tax category under Proposition 26 is a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property[1]. There is no requirement that these rates must be limited to the cost of service, as they can be dependent upon a variety of features of the facility or park being rented.

2. **Recreation Programs:** Under Proposition 26, the exception to the tax category is a charge that is "imposed". Based upon the League of California Cities implementation guide for Proposition 26, as well as other legal opinions, recreation classes, youth sports, adult sports, are not a charge that is "imposed upon residents". Rather residents have the option to voluntarily participate in those programs and utilize a private entity (non-governmental entity) for those activities. Therefore, these rates are allowed to be set based upon the market options within the area rather than being restricted to the cost of service being provided.

Utilizing these two principals is key to understanding the results generated through this analysis. As such, when setting fees specific to Parks and Recreation, fees do not need to be set at or under the cost of service, rather, fee amounts can and should be based upon the rates that the market can bear.

[1] Proposition 26 Article XIII C(1)(e)(4)

Summary of Legal Restrictions and Policy Considerations

Once the full cost of providing services is known, the next step is to determine the “rate” or “price” for services at a level which is up to, and not more than the full cost amount. The Council is responsible for this decision, which often becomes a question of balancing service levels and funding sources. The placement of a service or activity within the continuum of benefit received may require extensive discussion and at times fall into a “grey area”. However, with the resulting cost of services information from a User Fee Study, the Council can be assured that the adopted fee for service is reasonable, fair, and legal. The City will need to review all fees for service in this analysis and where subsidies are identified increase them to reduce the deficit, and where over-recoveries are identified the fee must be reduced to comply with the law.

3. User Fee Study Methodology

The Matrix Consulting Group utilizes a cost allocation methodology commonly known and accepted as the "bottom-up" approach to establishing User Fees. The term means that the cost is calculated for each fee or line-item individually based upon the level of effort associated with that service / fee. The following chart describes the components of a full cost calculation:



The following subsections discuss the two components of the basis of the full cost.

Time Estimation

Utilization of time estimates is a reasonable and defensible approach, especially since experienced staff members who understand service levels and processes unique to the City developed these estimates. The project team worked closely with City staff in developing time estimates with the following criteria:

- Estimates are representative of average times for providing services. Extremely difficult or abnormally simple projects are not factored in the analysis.
- Estimates reflect the time associated with the position or positions that typically perform a service.
- Estimates provided by staff are reviewed and approved by the department / division, and often involve multiple iterations before a Study is finalized.
- Estimates are reviewed by the project team for "reasonableness" against their experience with other agencies.
- Estimates are not based on time and motion studies, as they are not practical for the scope of services and time frame for this project.
- Estimates match the current or proposed staffing levels to ensure there is no over-allocation of staff resources to fee and non-fee related activities.

Matrix Consulting Group agrees that while the use of time estimates is not perfect, it is the best alternative available for setting a standard level of service on which to base a jurisdiction's fees for service while meeting the requirements of California law.

The alternative to time estimating is actual time tracking, often referred to billing on a "time and materials" basis. Except in the case of anomalous or sometimes very large and complex projects, Matrix Consulting Group believes this approach to not be cost effective or reasonable for the following reasons:

- Accuracy in time tracking is compromised by the additional administrative burden required to track, bill, and collect for services in this manner.
- Additional costs are associated with administrative staff's billing, refunding, and monitoring deposit accounts.
- Customers often prefer to know the fees for services in advance of applying for permits or participating in programs.
- Departments can better predict revenue streams and staff needs using standardized time estimates and anticipated permit volumes.

Situations arise where the size and complexity of a given project warrants time tracking and billing on a "time and materials" basis. Matrix Consulting Group has recommended taking a deposit and charging Actual Costs for such fees as appropriate and itemized within the current fee schedule.

Fully Burdened Hourly Rates

The fully burdened hourly rates calculated through this study include the following components:

- **Salaries:** FY24 Budgeted salaries were utilized and consolidated at the positional level.
- **Benefits:** FY24 Budgeted benefits were utilized and consolidated at the positional level.
- **Productive Hours:** Based upon the bargaining agreements and memorandum of understanding (MOU), working or productive hours were calculated. This means

taking the 2,080 starting hours and reducing the hours by vacation, sick, holidays, trainings, and administrative leave.

- **Departmental / Divisional Overhead:** This captures any internal service charges or operating supply costs such as vehicles, supplies, etc. Additionally, this component includes the cost associated with support from Director, Administrative and Analytical staff that do not directly work on fees.

- **Citywide Overhead:** This captures support provided by City Council, City Clerk, City Attorney, Human Resources, Finance, and IT. The costs are based upon the FY24 indirect cost allocation plan.

Together these components result in the generation of fully burdened hourly rates by position / classification and / or department / division. These rates were multiplied against the time assumptions to calculate the full cost of services noted in this report.

4. Results Overview

The motivation behind a cost of services (User Fee) analysis is for the City Council and Departmental staff to maintain services at a level that is both accepted and effective for the community, and to maintain control over the policy and management of these services.

It should be noted that the results presented in this report are not a precise measurement. In general, a cost-of-service analysis takes a "snapshot in time", where a fiscal year of financial and operational information is utilized. Changes to the structure of fee names, along with the use of time estimates allow only for a reasonable projection of subsidies and revenue. Consequently, the Council and Department staff should rely conservatively upon these estimates to gauge the impact of implementation going forward.

Discussion of results in the following chapters is intended as a summary of extensive and voluminous cost allocation documentation produced during the Study. Each chapter will include detailed cost calculation results for each major permit category including the following:

- **Modifications:** discussions regarding any proposed revisions to the current fee schedule, including elimination or addition of fees.

- **"Per Unit" Results:** comparison of the full cost of providing each unit of service to the current fee for each unit of service (where applicable).

- **Annualized Results:** utilizing annual projected estimates of fee-related activities overall annual subsidies and revenue impacts were projected.

The full analytical results were provided to City staff under separate cover from this summary report.

5. General Administration

Fees included in the General Administrations section of the City's fee schedule represent services provided or administered by staff in the Finance Department, or that can be applicable to citywide services such as credit card fees. These services include photocopies, notary services, agenda copies, Business License Administration, City Hall Facility Rentals, and fuel sales. The following sections discuss any proposed fee schedule modifications and detailed unit results.

Fee Schedule Modifications

In discussions with Finance and Administrative staff the only modification proposed was to relocate 'Transient Use Licenses' from the Planning fee schedule to the General Administration fee schedule, as Finance staff process these licenses.

Detailed Results

The City collect fees for a variety of services such as film applications, business licenses, and city hall rentals. The total cost calculated includes direct staff costs and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 3: Total Cost Per Unit Results – General Administration

Fee Name	Unit	Current Fee	Total Cost	Difference
Special Services	Each	Actual Costs		
Document Photocopy and Report Fees (Soft or Hard Copy)	Per Page	$0.25	$0.25	$0
Digital Production (CD, DVD, Flash Drives) of PRA Information	Each	Actual Costs		
Notary Services[2]	Per Page	$15	$15	$0
Returned Check Processing[3]				
1st Check	Each	$22	$25	($3)
2nd and Subsequent Checks	Each	$22	$35	($13)
Credit Card Payment Processing Fee				
$1.00 - $50.00	Each	$2	$2	$0
$50.01 - $100.00	Each	$3	$3	$0
$100.01 - $200.00	Each	$5	$5	$0
Greater than $200.01	Each	4%	4%	$0
Annual Reports				
Copies of Annual Budget or Financial Reports	Each	Actual Costs		

[2] Government Code 8211
[3] CIV § 1719(a)

Fee Name	Unit	Current Fee	Total Cost	Difference
Business License Administration Fee				
If paid by August 1 (on time payment/standard)	Per License	$22	$46	($24)
If paid after August 1 (late payment)	Per License	$49	$46	$3
TRANSIENT USE LICENSES				
Initial STR Application Review	Each	$413	$141	$272
Application Renewal	Each	$253	$97	$156
Annual License	Each	$680	$124	$556
Home Sharing License Annual Renewal	Each	$191	$332	($141)
Initial Home Sharing License Application Review	Each	$349	$81	$268
Transient License Change or Reprint Fee	Each	$32	$26	$6
City Hall Rentals				
Security Deposit (SECURITY)	Per Rental	$70	$70	$0
Clean-up Fee	Per Rental	Actual Costs		
Special Audio-Visual Equipment Use	Deposit	$280	$280	$0
Council Chambers – first four hours of use				
First four hours	First 4 hours	$148	$377	($229)
Per hour after four hours	Per Hour	$37	$94	($57)
Forest Avenue Conference Room – first four hours				
First four hours	First 4 hours	$58	$75	($17)
Per hour after four hours	Per Hour	$15	$19	($4)
City Manager Conference Room – first four hours				
First four hours	First 4 hours	$116	$151	($35)
Per hour after four hours	Per Hour	$30	$38	($8)
Fuel Sales				
Fuel sales to outside agencies		Cost + 10%		
Tobacco License[4]				
Tobacco Retailer License	Each	$386	$407	($21)
Filming Fees				
Minor Film Permit	per permit	$162	$183	($21)
Mid-Level Film Permit	per permit	$549	$629	($80)
Major Film Permit	per permit	$893	$1,107	($214)
Land Lease for Filming	Per SQFT / Hour	$0.15	$0.24	($0.09)
Late Payments				
Late Payment Fee	Minimum	$25	$25	$0

Overall, the City is generally recovering for the general administrative services provided. Costs associated with Transient Use Licenses have significantly decreased due to the change in application processing, which no longer requires Planning staff time. Fees which are set by State agencies, including notary, returned check, and tobacco licensing should be set in alignment with current amounts.

[4] Set by Monterey County Environmental Health Department

6. City Clerk

The City Clerk is responsible for a wide variety of functions and services that support both other city departments and residents and visitors. Certain services provided are assessed fees, such as public records requests, candidate statement filings, and document certification. The following sections discuss any proposed fee schedule modifications and detailed unit results.

Fee Schedule Modifications

In discussions with City Clerk staff, it was proposed to remove the 'Agenda Only' Miscellaneous fee, as staff no longer provide these services due to online availability of documents. It was also proposed that 'Marriage Solemnization' be added as a new fee.

Detailed Results

The City Clerk collect fees for a variety of certification, election, and miscellaneous services. The total cost calculated includes direct staff costs and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 4: Total Cost Per Unit Results – City Clerk

Fee Name	Unit	Current Fee	Total Cost	Difference
Clerk Certification				
Certification of Pacific Grove Residency and or Proof of Life	per signature	$15	$15	$0
Certification of Documents	per document	$15	$15	$0
Public Records[5]				
Copies standard 8.5" x 11", black and white (ordinances, resolutions, campaign finance and economic statements)	per page	$0.25	$0.10	$0
Elections				
Nomination Papers Filing Fee[6]	per filing	$25	$25	$0
Candidates Statement Filing	per filing	Set by County		N/A
Intent to File Initiative[7]	per filing	$200	$200	$0
Late filing fee	per late day	$10	$10	$0

[5] Public Records Act
[6] Election Code Section 10228
[7] Election Code Section 9202(b)

Fee Name	Unit	Current Fee	Total Cost	Difference
Miscellaneous				
Administrative Records (Compilation/Creation)	per request	Actual Costs	Actual Costs	N/A
Appeal Fee (Beautification, Traffic Commission, all others not listed elsewhere)	per appeal	$46	$46	($0)
Annual Subscription Service: Agenda and Minutes	per subscription	$30	$136	($106)
Marriage Solemnization	per request	New	$25	N/A

Many of the services provided by the City Clerk have fees set by the State. For services for which the State does not impose a fee – Appeals and Agenda subscriptions, the City is either at cost recovery, or subsidizing services by $106.

7. Cemetery

The El Carmelo Cemetery has been part of the City's history since the 1800's, with City staff responsible for maintaining this cherished final resting place. City staff are responsible for all services provided at the cemetery, including site sales, market and plaque placements, and mausoleum inurnment. The following sections discuss any proposed fee schedule modifications and detailed unit results.

Fee Schedule Modifications

In discussing the current fee structure for Cemetery fees, the only revisions staff felt were needed related to the renaming of certain fees to better reflect locations and services. For example, 'Unit 1 – Mausoleum' was renamed to 'Historic Site Unit 1 – Mausoleum' to better denote where and what type of site unit one represents. These wording changes will better help the community understand the types of sites and areas available.

Detailed Results

Services provided by the Cemetery fall into three main categories: Site Sales, Endowment, and Labor Charges and Deed Processing. The following subsections provide detailed unit results for the various services that fall within each of these categories.

1 Site Sales

The City collects fees for the sale of burial urn, and inurnment sites. The total cost calculated includes direct staff costs, land costs, and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 5: Total Cost Per Unit Results – Cemetery (Site Sales)

Fee Name	Unit	Current Fee	Total Cost	Difference
Single Burial Site				
Adult	Each	$5,048	$14,267	($9,219)
Child	Each	$2,526	$7,139	($4,613)
Double Garden Crypt-In Ground	Each	$8,744	$24,714	($15,970)
Urn Garden				
Double-In Ground	Each	$3,772	$10,661	($6,889)
Single-In Ground	Each	$2,361	$6,673	($4,312)

Fee Name	Unit	Current Fee	Total Cost	Difference
Urn Sites (Other than Urn Garden)				
Single	Each	$2,557	$7,227	($4,670)
Double	Each	$4,194	$11,854	($7,660)
Triple	Each	$4,508	$12,741	($8,233)
Columbarium Niche (1 - 4 urns)	Each	$8,383	$23,693	($15,310)
Historic Site Unit 1 - Mausoleum				
Single Niche	Each	$3,341	$9,443	($6,102)
Double Niche	Each	$6,549	$18,510	($11,961)
Single Crypt	Each	$15,783	$44,609	($28,826)
Modern Site Unit 2 - Mausoleum				
Double Niche	Each	$6,549	$18,510	($11,961)
Single Crypt	Each	$15,782	$44,606	($28,824)
Double Crypt	Each	$28,957	$81,843	($52,886)
Memorial Garden	Each	$344	$972	($628)
Memorial Wall Plaque Site	Each	$73	$206	($133)

Currently, the City is under-recovering for all site sales at the Cemetery. Most of the cost associated with these services is land based, and as such the City should review the results of this analysis and determine appropriate cost recovery levels.

2 Endowment

The City collects fees for endowment care which is meant to offset perpetual costs associated with general maintenance of cemetery grounds, facilities, and infrastructure. The City is currently looking to conduct a cemetery master plan, which would outline facility and grounds needs and future costs. As such, endowment fees were not reviewed through this analysis, but should be evaluated once the master plan is complete.

3 Labor Charges and Deed Processing

The City collects fees for a variety of services related to the burial, inurnment, and deed processing for the Cemetery. The total cost calculated includes direct staff costs and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 6: Total Cost Per Unit Results – Cemetery (Labor Charges and Deed Processing)

Fee Name	Unit	Current Fee	Total Cost	Difference
LABOR CHARGES				
Open / Close				
Burial Site:				
Adult	Each	$2,094	$2,230	($136)
Child	Each	$1,042	$1,108	($66)

Fee Name	Unit	Current Fee	Total Cost	Difference
Double Garden Crypt:				
1st Opening	Each	$1,948	$1,999	($51)
Subsequent Opening	Each	$1,801	$1,922	($121)
Set or Removal In-Ground				
Marker:				
Set In-Ground Marker	Each	$590	$625	($35)
Set In-Ground Marker with Border	Each	$881	$932	($51)
Remove In-Ground Marker or In-Ground Marker with Border	Each	$287	$371	($84)
Urn:				
Set In-Ground Urn and Marker	Each	$896	$955	($59)
Set In-Ground Urn and Marker with Border	Each	$1,114	$1,185	($71)
Remove In-Ground Urn & Marker or In-Ground Urn & marker with Border	Each	$355	$301	$54
Vase:				
Set or Remove In-Ground Vase	Each	$178	$186	($8)
Set In-Ground Vase with Border	Each	$395	$416	($21)
Addition of Boarder After Original Placement				
To Marker	Each	$590	$609	($19)
To Vase	Each	$433	$455	($22)
Historic Site Unit 1 Mausoleum - Inurnment				
Open Mausoleum Niche for inurnment	Each	$1,042	$1,108	($66)
Place plaque or vase on Mausoleum Niche at inurnment	Each	$217	$231	($14)
Place / Remove plaque or vase on Mausoleum Niche after inurnment	Each	$578	$609	($31)
Replace Vase Holder (Niche & Columbarium)	Each	$250	$263	($13)
Remove Urn - Niche	Each	$287	$301	($14)
Modern Site Unit 2 Mausoleum - Inurnment				
Open Mausoleum Niche for inurnment	Each	$825	$878	($53)
Place plaque or vase on Mausoleum Niche at inurnment	Each	$256	$269	($13)
Place / Remove plaque or vase on Mausoleum Niche after inurnment	Each	$468	$493	($25)
Replace Vase Holder (Niche & New Columbarium)	Each	$178	$186	($8)
Remove Urn - Niche	Each	$297	$339	($42)
Columbarium - Inurnment				
Open Columbarium Niche to Place Urn	Each	$1,189	$1,262	($73)
Place / Remove Plaque or Vase on Columbarium niche at Inurnment	Each	$146	$154	($8)
Place Plaque or Vase on Columbarium niche after Inurnment	Each	$651	$686	($35)
Remove Urn - Columbarium Niche	Each	$323	$301	$22
Open New Columbarium Niche to Place Urn	Each	$679	$724	($45)
Place Plaque or Vase on New Columbarium niche	Each	$178	$186	($8)
Remove plaque or urn from New Columbarium niche	Each	$178	$186	($8)
Mausoleum Crypt - Inurnment				
Open Mausoleum Crypt for inurnment	Each	$969	$1,032	($63)
Open Mausoleum Crypt for burial	Each	$1,553	$1,647	($94)
Historic Site Unit 1 Mausoleum - Burial				
Place Plaque or Vase on Mausoleum Crypt at Burial	Each	$217	$231	($14)
Place Plaque or Vase on Mausoleum Crypt other than at Burial	Each	$468	$493	($25)

Fee Name	Unit	Current Fee	Total Cost	Difference
Modern Site Unit 2 Mausoleum - Burial				
Open Underground Mausoleum Crypt for Burial	Each	$1,844	$1,954	($110)
Place plaque or vase on Mausoleum Crypt at Burial	Each	$146	$308	($162)
Place Plaque or Vase on Mausoleum Crypt after Burial	Each	$630	$670	($40)
Memorial Garden				
Open Memorial Garden Site (place urn)	Each	$515	$548	($33)
Place Plaque on Memorial Garden Site/Memorial Wall	Each	$178	$186	($8)
Remove Urn from Memorial Garden Site	Each	$395	$416	($21)
Remove Plaque from Memorial Garden Site/Memorial Wall	Each	$468	$493	($25)
Disinter				
Casket, Double Garden Crypt:				
Lower Level	Each	$1,559	$1,493	$66
Upper Level	Each	$1,406	$1,493	($87)
In-Ground Casket:				
Child	Each	$969	$1,032	($63)
Adult	Each	$1,406	$1,493	($87)
Miscellaneous				
Remove Niche/Crypt Slug	Each	$323	$493	($170)
Replace Cracked Mausoleum Granite Plate (Unit 1)	Each	$178	$186	($8)
Place Cameos	Per Hour	$178	$154	$24
Marker Rubbing	Per Hour	$126	$154	($28)
Pallbearers – weekdays only	Per 4 Staff	$308	$660	($352)
Saturday Service (4-hour minimum at overtime rate)	Per Hour	$615	$766	($151)
Hourly Rate (2-hour minimum)	Per Hour	$94	$165	($71)
Overtime Hourly Rate (2-hour minimum)	Per Hour	$103	$192	($89)
DEED PROCESSING				
Deed Fee	Each	$255	$255	$0
Replacement Deed Fee	Each	$38	$38	($0)
Deed Transfers, Document Processing Fee	Each	$255	$255	$0
CA Disposition of Human Remain Permit	Each	$12	$21	($9)

Most of the labor and deed processing services provided by Cemetery staff show an under-recovery. Items that show an over-recovery are due to changes process and or the use of different staff to provide the services.

8. Planning

The Planning Division of Community Development is responsible for reviewing and approving land use and development priorities issued by the City Council in the General Plan, Zoning Ordinances, and Specific Plans. The Division is responsible for two primary functions: Advance Planning and Current Planning. Planning functions including providing direction on the City's growth and future development through updates to the General Plan, Local Costal Program, and Zoning Codes. Current Planning functions help ensure that City-adopted plans and regulations are enforced through historic preservation, land use, and architectural reviews. Fees examined in this study relate to plan review and include fees such as subdivisions, environmental review, use permits, architectural reviews, historic reviews, and variances. The following sections discuss any proposed fee schedule modifications and detail per unit results.

Fee Schedule Modifications

In discussions with Planning staff, the following modification to the current fee schedule were proposed:

- **Eliminated Fees:** The following fees were proposed to be eliminated as the City no longer offers these services or they are covered through other existing applications:
  - Certificate of Use and Occupancy
  - Inquiry Fee
  - Miscellaneous Project Review/Document Preparation
  - Environmental Review Exemption
  - Negative Declaration Addendum
  - Square footage ranges for the Commercial or Industrial Coastal Development Permits
  - Grading (all ranges)
  - Copies, hard and soft (scanned)
  - Initial STR Application Review
  - Transient Use Licenses - Application Renewal
  - Transient Use Licenses - Annual License
  - Home Sharing License Annual Renewal
  - Initial Home Sharing License Application Review
  - Transient License Change or Reprint Fee

- **Moved Fees:** The Transient Use License fees should be moved to the Finance section of the fee schedule, as Planning staff are no longer the lead for these services. The Stormwater fees should be moved to the Public Works section of the fee schedule, as those staff take the lead in processing, reviewing, inspecting, and issuing those permits.

- **New Fees:** During discussions with Planning staff, it was determined that a new fee should be added to the fee schedule for Parcel Legality Determinations (PLD).

- **Modified Verbiage:** Several fee names in the current fee structure were modified to better reflect the services being provided. For example:
  - General Plan Update Fee becomes General Plan Update
  - Lot Line Adjustment becomes Lot Line Adjustment (Inland Zone – Outside the Coastal Zone)
  - Variances and Amendments becomes Variances
  - Administrative Variances and Amendments becomes Administrative Variances

The adjustments and additions proposed will provide applicants with a better reflection of the services being provided by the Planning Division.

Detailed Results

The Planning Division collects fees for items such as Zoning Map Amendments, Tentative Tract Maps, Environmental Impact Reports, Sign Permits, Noticing, and Appeals among others. The total cost calculated for each Planning service includes direct staff costs, cross-departmental support, and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 7: Total Cost Per Unit Results – Planning

Fee Name	Unit	Current Fee	Total Cost	Difference
GENERAL PLAN AND ZONING AMENDMENTS				
General Plan Amendment	Deposit	$5,783	$9,563	($3,780)
General Plan Land Use Map Amendment	Deposit		$3,701	($3,701)
General Plan Update	% of Permit Fee	5%	5%	0%
Zoning Ordinance Amendment	Deposit	$2,888	$9,563	($6,675)
Zoning Map Amendment	Deposit	$2,888	$5,623	($2,735)
Zoning Ordinance Interpretations	Each	$1,403	$1,598	($195)
Interpretations of Permitted Uses Lists	Each	$1,403	$1,598	($195)

Fee Name	Unit	Current Fee	Total Cost	Difference
SUBDIVISIONS				
Tentative Tract Map				
Base	Base	$2,617	$3,258	($641)
Per Lot	Per Lot	$317	$323	($6)
Final Tract Map				
Base + Recording Fee	Base	$2,617	$3,258	($641)
Per Lot	Per Lot	$405	$323	$82
Lot Line Adjustment (Inland Zone - Outside the Coastal Zone)	Each	$2,159	$2,536	($377)
Parcel Legality Determination (PLD)	Each	New	$1,052	N/A
Final Parcel Map (plus recording fees)	Each	$2,287	$2,827	($540)
Tentative Parcel Map	Each	$2,287	$2,827	($540)
Lot Mergers	Each	$2,175	$2,536	($361)
Certificate of Compliance	Each	$2,175	$2,115	$60
ENVIRONMENTAL REVIEW				
Environmental Impact Report (EIR)	Deposit	50% of EIR cost	$10,000	N/A
Initial Studies/Mitigated Negative Declaration	Deposit	$7,027	$7,500	($473)
Mitigation Monitoring	Deposit	$5,180	$5,500	($320)
USE PERMITS				
Use Permit and Amendments				
Single Family	Each	$2,089	$2,644	($555)
Multi-Family, Commercial, Institutional, all other uses	Each	$3,407	$3,701	($294)
Administrative Use Permits	Each	$1,369	$1,382	($13)
ARCHITECTURAL REVIEW				
Architectural Permit				
Single Family		$3,481	$3,701	($220)
Multi-Family				
Four units or less	Base	$4,259	$4,350	($91)
Five units or more	Base	$4,804	$4,781	$23
Commercial, Industrial, Institutional, all others				
10,000 sq. ft. or less	Base	$3,600	$3,701	($101)
10,001- 50,000 sq. ft.	Base	$5,343	$5,384	($41)
50,000-100,000 sq. ft.	Base	$10,791	$10,784	$7
Over 100,000 sq. ft.	Base	$13,737	$13,435	$302
Administrative Architectural Permit	Each	$1,675	$1,802	($127)
Administrative Design Change	Each	$1,675	$1,802	($127)
COUNTER REVIEW PERMITS				
Counter Review & Determination				
No new square footage (Plus hourly fee if more than ½ hour required)	Per Permit	$241	$421	($180)
New square footage (Plus hourly fee if more than 3 hours required)	Per Permit	$978	$1,047	($69)
Zoning Confirmation for Business License Permit	Per Permit	$168	$210	($42)
Massage Permit Application	Per Application	$168	$446	($278)
SIGN PERMITS				
Downtown Sign Permit	Per Sign	$624	$1,133	($509)
Administrative Sign Permit	Per Sign	$978	$950	$28
Sign Permit	Per Sign	$2,556	$1,133	$1,423

Fee Name	Unit	Current Fee	Total Cost	Difference
HISTORIC REVIEW				
Historic Demolition Permit	Each	$5,474	$5,860	($386)
Off-site relocation permit	Each	$5,474	$5,860	($386)
Historic Resources Inventory Determinations (Additions/Deletions)	Each	$2,093	$1,997	$96
On-site relocation permit	Each	$2,737	$3,077	($340)
Historic Preservation Permit	Each	$1,979	$1,997	($18)
Initial Historic Screening	Each	$515	$507	$8
VARIANCES				
Variances	Each	$2,907	$3,701	($794)
Administrative Variances	Each	$1,625	$2,031	($406)
APPEALS				
Appeals of enforcement and zoning ordinance interpretations	Per Appeal	$2,782	$2,667	$115
Appeals/hearings of planning permits	Per Appeal	$1,192	$3,161	($1,969)
Request for Zoning Administrative Hearing or Decision	Per Appeal	$571	$784	($213)
Appeal fees for Coastal Development Permits	Per Appeal	$0	$3,161	($3,161)
NOTICING				
Mailing	Each	Actual Cost	Actual Cost	N/A
Publishing	Each	$379		
COASTAL DEVELOPMENT PERMITS				
Waiver of De Minims Development plan permit	Each	$2,453	$2,957	($504)
Single Family Residence	Each	$2,453	$4,058	($1,605)
Multi-family Residential				
Base	Each	$2,978	$5,136	($2,158)
Per Unit	Per Unit	$1,012	$1,100	($88)
Commercial or Industrial	Each	Varies	$6,624	N/A
Lot Line Adjustment (Coastal Zone)	Each	$2,453	$5,352	($2,899)
Subdivision	Per Lot	$2,452	$3,744	($1,292)
Emergency Permit	Each	$1,840	$1,683	$157
Amendment	% of Permit Fee	50%	50%	$0
Temporary Event	Each	$3,066	$5,243	($2,177)
Extension	Each	50%	$227	
CODE ENFORCEMENT				
Abandonment or purchase of City property	Each	$3,686	$3,744	($58)
Abandoned Property Registration Fee	Each	$234	$306	($72)
Investigation fees, Code violations (Actual Cost)		Actual Cost	Actual Cost	N/A
VACANT PROPERTIES				
Inspection per property (min. or actual cost)	Each	$176	$204	($28)
Registration per property	Each	$176	$204	($28)
MISCELLANEOUS				
County Filing Fees	Each	As determined by County		
Density bonus	Each	$2,265	$2,873	($608)
General File Research	Each	$64	$210	($146)
Hourly Fee	Per Hour	$130	$210	($80)
Outdoor Sidewalk Dining Permit	Each	$438	$938	($500)
Sidewalk Vendor Permit	Each	$49	$307	($258)

Fee Name	Unit	Current Fee	Total Cost	Difference
Permit Extension (Fee may be waived if permit is subject to Water Waiting List)	Each	25% of permit base fee	$227	N/A
Pre-Application Meeting / Preliminary Project Review	Each	$269	$307	($38)
Records Management and Retention (per file)	Each	$58	$194	($136)
Rental Property Registration	Each	$238	$398	($160)
Revocable License for Encroachments (plus hourly fee after 2 hours)	Each	$870	$1,035	($165)
Statement of Compliance (hourly fee if more than 4 hours required)	Each	$491	$842	($351)
Tree Permit with Development	Each	$296	$404	($108)
Tree Permit with Development Violation	Each	$251	$404	($153)
ABC License Review Fee	Each	$183	$202	($19)
ANIMAL REGULATION - KEEPING AND BREEDING PERMITS				
Animal Keeping Permit	Each	$182	$362	($180)
Animal Keeping Permit Annual Renewal	Each	$44	$103	($59)
Commercial Breeding Permit, Cats	Each	$155	$1,221	($1,066)
Commercial Breeding Permit, Dogs	Each	$155	$1,221	($1,066)
Incidental Breeding Permit, Cats (per litter)	Each	$77	$284	($207)
Incidental Breeding Permit, Dogs (per litter)	Each	$77	$284	($207)
HOUSING FEES				
Rehabilitation & Sewer Loan Payoff Demand	Each	$127	$307	($180)
Reconveyance Fee	Each	$193	$404	($211)
County Recording Fee (billed by Monterey County Recorder)	Each	Actual Cost	Actual Cost	N/A
Housing Rehab Loan Fees (CalHOME Loan Funded Projects)				
Loan Processing	Each	$2,078	$3,349	($1,271)
Underwriting	Each	$639	$631	$8
Property Tax Verification	Each	$64	$307	($243)
Loan Document Preparation – SFD	Each	$375	$1,149	($774)
Loan Document Preparation – Manufactured Housing	Each	$446	$2,201	($1,755)
Inspection To Determine Scope of Work (Actual Cost)	Each	$276	$412	($136)
Contractor Selection (Actual Cost)	Each	$276	$3,560	($3,284)
Development of Work Write-up & Specifications (Actual Cost)	Each	$2,638	$4,401	($1,763)
Project Bidding (Actual Cost)	Each	$1,285	$4,304	($3,019)
Progress Inspection/Payment Authorization (Actual Cost)	Each	$138	$518	($380)
Affordable Housing Monitoring - Annual Fee Per Household				
Affordable Units	Each	$127	$194	($67)
Registered Units	Each	$127	$194	($67)

Overall, the Planning Division is under-recovering for nearly all the services they provide. The greatest subsidy provided by the City relates to the 'Zoning Ordinance Amendment' at $6,675, however, as this is a deposit-based fee, the City does have the ability to recover its costs through project-based billings. Conversely, the $2,899 subsidy associated with

the ‘Lot Line Adjustment (Coastal Zone)’ can only be reduced or eliminated through the increase of the permit fee.

The Division does have a handful of permits which show current fees higher than the full cost of providing service, most significantly seen by the ‘Sign Permit’ fee which currently over recovers by $1,423. This imbalance is due to changes in application processing, as well as changes in the staff primarily assigned to complete these tasks.

9. Building

The Building Division of Community Development is responsible for ensuring all new construction, modifications, and additions to existing buildings comply with state and local laws and regulations. The fees examined within this study relate to structural mechanical, electrical, and plumbing plan review and inspection services. The following sections discuss modifications made to the Building fee structure and detail per unit analysis results.

Fee Schedule Modifications

The Building fee schedule consists of both flat fees and valuation-based fees, both of which were studied. The project team worked with the Building Division to streamline the current fee schedule by modifying structures and adding new flat fees. The following points highlight the proposed changes:

- **New Fees:** The following fees were added to better reflect the services provided by the Division, and to provide an easier way for staff to administer permits:
  - Single Family Residential Reroof
  - Multi-Family / Commercial Reroof
  - Kitchen / Bathroom Remodel (non-structural no exterior changes)
- **Modified Verbiage:** One fee name in the current fee structure was modified to better reflect the services being provided: 'Single Permit: Building or M / E / P' was changed to 'Single Permit: M / E / P'.

Implementing these changes to the Building fee structure will help to clarify the fee schedule, increase consistency of fee applications, and reduced the complexity in relation to both internal staff and developers determining the full fees associated with their building projects.

Detailed Results – Flat Fees

The Building Division currently assesses a variety of permits for over the counter or simplified permits, such as reroofs, solar voltaic systems, electric vehicle charging stations, excavations, etc. The following table details the current fees associated with Flat Fees Permits, the full cost associated with Building to provide these services, and the difference.

Table 8: Total Cost Per Unit Results – Building Flat Fees

Fee Name	Unit	Current Fee	Total Cost	Difference
MISCELLANEOUS BUILDING PERMITS				
Electrical Permit (not requiring plan check)	Each	$153	$237	($84)
Plumbing Permit (not requiring plan check)	Each	$153	$237	($84)
Mechanical Permit (not requiring plan check)	Each	$153	$237	($84)
Solar voltaic system	Each	$331	$670	($339)
Single Family Residential Reroof	Each	New	$670	
Multi-Family / Commercial Reroof				
First Building	First Building	New	$602	
Each Additional Building	Each Additional	New	$130	
Kitchen / Bathroom Remodel (non-structural no exterior changes)	Each	New	$1,367	
PLAN CHECK				
Single Family Residential Plan Check	% of Building Permit	75%	75%	0%
Commercial Plan Check	% of Building Permit	90%	95%	-5%
Non-Structural Plan Review (not included in larger project)	Per Hour	$148	$174	($26)
Structural Plan Review (not included in a larger project)	Per Hour	$181	$174	$7
Plan review extension	Per 90 days	$750	$285	$465
On-site storm water management plan review and inspection	Each	$410	$558	($148)
Additional fee if LID requirements or additional time required, per hour	Per Hour	$130	$138	($8)
Building Permits Extension	Per 90 days	$1,197	$922	$275
OTHER INSPECTIONS AND REVIEWS				
Inspections outside of normal business hours	Per Hour	$356	$193	$163
Re-inspection fees assessed under provisions of CBC § 108.8	Per Hour	$239	$138	$101
Inspections for which no fee is specifically indicated	Per Inspection	$149	$207	($58)
Traffic control plan review	Each	$188	$239	($51)
Change of Street Address	Each	$188	$304	($116)
Alternate methods of construction (hourly fee, 2 hour minimum)	Per Hour	$377	$753	($376)
Owner/building surcharge in addition to permit fee	% of Permit Fee	20%	20%	0%
Electric Vehicle Charging Station - residential	Each	$277	$667	($390)
Electric Vehicle Charging Station - commercial	Each	$471	$1,226	($755)
Temporary Occupancy	Each	$377	$1,017	($640)
ASBS Stormwater Inspection	Deposit	$3,711	$3,751	($40)
Stormwater Annual Post-Construction BMP Inspection	Each	$215	$289	($74)
Additional plan review due to changes/additions/revisions to approved plans	Per 30 min	$115	$87	$28
Wireless Encroachment / Public Right of Way Permit.	Each	$527	$711	($184)
Grading Inspection	Per Hour	$115	$192	($77)
Grading Plan Checking	Per Hour	$115	$192	($77)
Residential Zoning Records Report (RZRR) & Sewer Lateral Report (combined)	Each	$363	$860	($497)
Sewer Lateral Report Review	Each	$154	$518	($364)

Fee Name	Unit	Current Fee	Total Cost	Difference
Parklets				
New Parklet	Each	New	$905	
Parklet Renewal	Each	New	$300	
Excavation and Inspection Services				
Inspections for which no fee is specifically indicated	Per Hour	$136	$192	($56)
Encroachment permit: street opening/excavation	Each	$261	$650	($389)
Encroachment permit: driveway	Each	$270	$650	($380)
Encroachment permit: sidewalk	Each	$178	$650	($472)
Encroachment: temporary	Each	$270	$650	($380)
Encroachment permit: permanent underground	Each	$270	$650	($380)
Encroachment permit: permanent above ground	Each	$270	$650	($380)
Encroachment permit processing fee	Hourly	$136	$192	($56)
Annual encroachment permit	Each	$9,713	$10,476	($763)

The City is currently subsidizing nearly all its flat fee related services, with the largest deficit ($763) relating to 'Annual Encroachment Permits'. Fees showing an over-recovery range from a low of $7 for 'Structural Plan Review – Hourly' to a high of $465 for 'Plan Review Extension'.

Detailed Results – Valuation-Based Fees

The Building The City of Pacific Grove currently uses a valuation table to establish Construction Inspection fees. There are two types of permits offered: Combination and Single. Combination permits include structural, mechanical, electrical, and plumbing inspections, while single permits relate to mechanical, electrical, or plumbing inspections. All valuation-based fees are determined based on a sliding scale where the higher the project valuation, the greater the permit fee.

1 Combination Permit Fees

Combination Permits currently have a scale that ranges from $1 to greater than $1 million dollars. Given current project valuations in the City, the sliding scale was expanded to $10 million to provide a stronger nexus between services provided to higher valued projects. The following table outlines the valuation category, current fee, total cost, and difference.

Table 9: Total Cost Per Unit Results – Combination Permit Fees

Project Valuation Sliding Scale Category	Current Fee	Total Cost	Difference
Project Valuation $1 to $500	$142.00	$190.69	($48.69)
Project Valuation $501 to $2,000			
First $500	$142.00	$190.69	($48.69)
Each Additional $100 or fraction thereof	$12.00	$15.54	($3.54)
Project Valuation $2,001 to $25,000			

Project Valuation Sliding Scale Category	Current Fee	Total Cost	Difference
First $2,000	$300.00	$423.78	($123.78)
Each Additional $1,000 or fraction thereof	$49.00	$57.53	($8.53)
Project Valuation $25,001 to $50,000			
First $25,000	$1,361.00	$1,747.04	($386.04)
Each Additional $1,000 or fraction thereof	$35.00	$39.32	($4.32)
Project Valuation $50,001 to $100,000			
First $50,000	$2,188.00	$2,730.08	($542.08)
Each Additional $1,000 or fraction thereof	$21.00	$29.39	($8.39)
Project Valuation $100,001 to $500,000			
First $100,000	$3,355.00	$4,199.35	($844.35)
Each Additional $1,000 or fraction thereof	$17.00	$23.66	($6.66)
Project Valuation $500,001 to $1,000,000			
First $500,000	$10,824.00	$13,664.86	($2,840.86)
Each Additional $1,000 or fraction thereof	$16.00	$20.60	($4.60)
Project Valuation $1,000,001 to $5,000,000			
First $1,000,000	$19,254.00	$23,963.87	($4,709.87)
Each Additional $1,000 or fraction thereof	$9.00	$1.56	$7.44
Project Valuation $5,000,001 to $10,000,000			
First $5,000,000	$24,254.00	$30,190.51	($5,936.51)
Each Additional $1,000 or fraction thereof	$9.00	$1.00	$8.00
Project Valuation $10,000,001+			
First $10,000,000	$28,254.00	$35,191.51	($6,937.51)
Each Additional $1,000 or fraction thereof	$9.00	$0.50	$8.50

The City is under-recovering for its combination building services based on valuation. These subsidies range from a low of $48.69 for projects valued up to $500, to a high of $6,937.51 for projects valued at $10 million.

2 Single Permit Fees

Single Permits currently have a scale that ranges from $1 to greater than $1 million dollars. However, as these permits relate to single or standalone projects related to mechanical, electrical, or plumbing work, the sliding scale was reduced to reflect reasonable project values. The following table outlines the valuation category, current fee, total cost, and difference.

Table 10: Total Cost Per Unit Results – Single (M/ E / P) Permit Fees

Project Valuation Sliding Scale Category	Current Fee	Total Cost	Difference
Project Valuation $1 to $500	$126.00	$190.69	($64.69)
Project Valuation $501 to $2,000			
First $500	$123.00	$190.69	($67.69)
Each Additional $100 or fraction thereof	$6.00	$10.95	($4.95)
Project Valuation $2,001 to $25,000			
First $2,000	$233.00	$354.91	($121.91)
Each Additional $1,000 or fraction thereof	$35.00	$38.58	($3.58)
Project Valuation $25,001 to $50,000			
First $25,000	$988.00	$1,242.29	($254.29)
Each Additional $1,000 or fraction thereof	$22.00	$29.67	($7.67)
Project Valuation $50,001 to $100,000			

Project Valuation Sliding Scale Category	Current Fee	Total Cost	Difference
First $50,000	$1,582.00	$1,983.96	($401.96)
Each Additional $1,000 or fraction thereof	$16.00	$19.94	($3.94)
Project Valuation $100,001 +			
First $100,000	$2,397.00	$2,980.75	($583.75)
Each Additional $1,000 or fraction thereof	$11.00	$15.18	($4.18)

The City is under-recovering for all its Single Permit services, ranging from $64.69 for projects valued up to $500 to $583.75 for projects valued over $100,000.

10. Fire

The City of Pacific Grove has contracted with the City of Monterey for nearly two decades to provide Fire services. Included in these services are Occupancy Inspections and Fire Life Safety plan review and inspections. Applicants wishing to obtain Fire related permits or reviews are instructed to visit the City of Monterey for these services. The City of Monterey bills the City of Pacific Grove monthly for both suppression and prevention services.

City of Pacific Grove staff, while not directly performing suppression or prevention services, provides contract oversight, and is the final authority on Pacific Grove related codes and issues. In FY17/18 the City's administrative overhead rate based on its cost allocation plan was calculated at 7%. Based on the City's FY23/24 cost plan the administrative overhead rate was calculated at 8%.

The City of Pacific Grove mirrors the City of Monterey's fee structure for prevention services. This ensures that Pacific Grove's fee structure accurately reflects and captures the various services provided by the City of Monterey. When Monterey's fee structure or schedule changes, Pacific Grove also updates its schedules.

If the City is interested in recovering their administrative costs associated with contract management, an administrative surcharge of 8% should be applied to the fees adopted by the City of Monterey. This surcharge would go directly to the City of Pacific Grove and help offset administrative and oversight services.

11. Library

The Pacific Grove Library strives to provide a welcoming environment and balanced collection while preserving the past and planning for the future. Services are provided to the community through print and online collections and programs for all ages. Most of the services and programs provided by the Library are free. However, the City does charge for photocopies, library card replacement, and lost or damaged materials. The following sections discuss any proposed fee schedule modifications and detail per unit results.

Fee Schedule Modifications

The Library's current fee structure is already streamlined, and therefore no modifications were made.

Detailed Results

As noted above, most services provided by the Library are free of charge. Fees assessed by the Department are used to offset replacement costs, or account for photocopy materials. The total cost calculated for each fee-related service includes direct staff costs, Departmental, and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 11: Total Cost Per Unit Results – Library

Fee Name	Unit	Current Fee	Total Cost	Difference
Other Fees and Rentals				
Photocopies				
Black and White	Per Page	$0.15	$0.15	$0.00
Color	Per Page	$0.25	$0.25	$0.00
Computer Printout	Per Page	$0.15	$0.15	$0.00
Card Replacement				
Replace Borrower's Card	Each	$3	$4	($1)
Lost / Damaged Material Replacement / Repair				
Re-Cataloging / processing for lost book or recording	Each	$3	$4	($1)
Lost or damaged items	Each		Actual Cost	

Material costs associated with photocopies reflect standard charges. Both the 'Card Replacement' and 'Re-Cataloging / Processing' fees shows a minimal subsidy of $1. As services provided by the Library expand, the City should consider updating its fee schedule to include any additional services for which it would like to recover fees.

12. Point Pinos Lighthouse

The Point Pinos Lighthouse is a Pacific Grove landmark, providing picturesque views of the Pacific Ocean and the City of Pacific Grove. Having been in operation since 1855, the lighthouse is the oldest operating lighthouse on the west coast. The lighthouse is open to visitors year-round for visits Monday, Thursday, and Friday between 1pm and 3pm, and weekends between 11am and 3pm.

Currently entrance into the lighthouse is free, with a suggested donation of $7 for adults, $3 for children, and free entry for children under seven (7). These donations help pay for conservation efforts at the lighthouse including ongoing maintenance.

Currently the only fee charged by the lighthouse is for private tours. The current fee is $135 for a two-hour tour, however, through this study, the full cost of this tour was calculated at $150, resulting in a $15 subsidy.

Lighthouse staff would like to begin charging for one-time and special events. While a fee for these services should be added to the fee schedule, as these events could vary in staff efforts and costs, the fee should be based on the event, and established prior to the event occurrence.

13. Local Water Project

In response to a shortage of potable water due to limitations on existing water supplies, the City of Pacific Grove constructed and operates a Satellite Recycled Water Treatment Plant (SRWTP), which recycles a portion of Pacific Grove's municipal wastewater. The SRWTP produces approximately 125 acrefeet (AFY) of non-potable water which is primarily used for landscape irrigation at the Pacific Grove Golf Links and El Carmelo Cemetery.

The City's current budget for the Local Water Project is approximately $1.64 million. While the SRWTP can produce an average of 125 AFY, it has average annual sales of 96 AFY. The FY24 cost per AFY is $13,092, which equates to $0.040 per gallon. The City currently charges a fee of $0.029 per gallon for Recycle Water. Therefore, the City is under-recovering for recycled water by $0.011 per gallon.

14. Police

The Police Department is responsible for the day-to-day oversight of law enforcement services in the City of Pacific Grove. The Department is comprised of two main divisions: Patrol Operations and Administrative Services. Patrol Operations staff provide various services including school resources, training, traffic, investigations, patrol, and a citizen's academy. The Administrative Services division handles police records, animal control, parking enforcement, purchasing, and property and evidence.

The fees included in this analysis are in relation to animal regulation, alarm registration, clearance letters, and parking permits provided by the Department. The following subsections discuss any proposed fee schedule modifications and detail per unit results.

Fee Schedule Modifications

In discussions with Police staff, the following modification to the current fee schedule were proposed:

- **Removed Fees:** To more accurately describe the services offered, the following fees were removed:
  - 'Concealed Weapon Permit - Annual Renewal'
  - 'Concealed Weapon Permit – Issuance'
  - 'Oversize Vehicle Registration'

- **Moved Fees:** The Animal Regulation – Breeding Permits, as well as the Massage Permit, were moved to the Planning fee schedule, as those staff have primary responsibility for reviewing and issuing those permits.

The modifications proposed more accurately represent the services being provided by the Police Department.

Detailed Results

The Police Department charges fees for service including items such as animal impound cards, firearm storage, and police responses. The total cost calculated for each Police service includes direct staff costs and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 12: Total Cost Per Unit Results – Police

Fee Name	Unit	Current Fee	Total Cost	Difference
ANIMAL REGULATION — DOG LICENSES - PGMC § 10.04.010				
Annual Dog License Fee, Altered Dog	Annual	$23	$52	($29)
Annual Dog License Fee, Unaltered Dog	Annual	$52	$52	($0)
Dog License, Delinquent Penalty (after 30 days)	Per Offense	$27	$27	$0
Dog License, Replacement Tag	Each	$10	$12	($2)
ANIMAL REGULATION - IMPOUND FEES - PGMC § 10.04.100				
Impound Fee - Altered				
Initial Impound - Licensed & Altered	Each	$0	$185	($185)
Initial Impound - Unlicensed & Altered	Each	$0	$259	($259)
2nd & Subsequent - Altered	Each	$89	$185	($96)
Impound Fee - Unaltered				
Impound Fee (Initial Impound) Licensed & Unaltered	Each	$89	$185	($96)
Impound Fee (Initial Impound) Unlicensed & Unaltered	Each	$89	$259	($170)
Impound Fee (2nd & Subsequent) Unaltered	Each	$179	$185	($6)
Boarding Fee				
PG Kennel	Per Day	$43	$255	($212)
Transported to SPCA	Each	$184	$184	$0
ALARM REGISTRATION & RESPONSE				
Alarm Registration	Annual	$38	$38	$0
Alarm Renewal (within 30 Days of Alarm Permit Expiration Date)	Annual	$5	$5	$0
False Alarm				
First Response - Unpermitted Alarm	Each	$150	$335	($185)
First Response	Each	$0	$184	($184)
Second Response	Each	$64	$184	($120)
Third Response	Each	$179	$184	($5)
Fourth Response	Each	$297	$184	$113
Fifth and Subsequent Response	Each	$416	$184	$232
Duress/Panic/Robbery Alarm Violation	Each	$358	$389	($31)
Late Fee (if not paid within 30 days)	Per Offense	$28	$28	$0
ADMINISTRATIVE AND MISCELLANEOUS				
Accident Report, Compilation and Copying (per report)	Each	$10	$38	($28)
Booking Fee	Each	$31	$36	($5)
Clearance Letter				
No Record on File	Each	$37	$38	($1)
Record on File	Each	$28	$50	($22)
Crime Report, Compilation and Copying (per report)	Each	$12	$69	($57)
Information Report, Compilation and Copying (per report)	Each	$5	$38	($33)
Evidence Video Reproduction	Each	$45	$312	($267)
Fingerprint Processing (Live Scan administration)	Each	$30	$76	($46)
Removal of Traffic Boot	Each	$141	$196	($55)
Repossession Receipt	Each	$16	$15	$1
Sign-off of tickets by other agencies	Each	$18	$38	($20)
Vehicle Release Fee	Each	$238	$419	($181)
PARKING PERMITS & FEES				
Contractor's Parking Permit, Monthly	Monthly	$44	$265	($221)
Parking Meter Rate per Hour	Per Hour	$2	$2	$0

Fee Name	Unit	Current Fee	Total Cost	Difference
Public Parking Lot Permit				
Processing, Delinquency Penalty	Per Offense	$28	$73	($45)
Annual	Annual	$405	$2,435	($2,030)
12-Month, TRANSFERABLE	Annual	$515	$2,435	($1,920)
Monthly	Monthly	$44	$225	($181)
Residential Parking Permit Processing, per permit, Annual	Annual	$11	$33	($22)
Temporary Overnight Parking				
Initial Residential Registration	Each	$26	$26	$0
72 Hour Resident Permit	Each	$4	$5	($1)
Weekly - Exemption	Weekly	$100	$97	$3
Annual - Exemption	Annual	$416	$197	$219
Timed Space - Daily	Per Day	$5	$5	$0
POLICE RESPONSE - DUI, Peace Disturbance, Social Hosting, & Special Events				
Police Commander Hourly Rate	Per Hour	$220	$219	$1
Police Sergeant Hourly Rate	Per Hour	$211	$246	($35)
Police Officer Hourly Rate	Per Hour	$186	$216	($30)
Police Services, Animal Control & Parking Enforcement Community Service Officer	Per Hour	$156	$143	$13
Patrol Vehicle Hourly Rate	Per Hour	$64	$131	($67)
MISCELLANEOUS PERMITS & DEPOSITS				
Amplified Sound Permit	Each	$89	$133	($44)
Drone Permit				
Daily	Per Day	$23	$43	($20)
Annual	Annual	$87	$110	($23)
Firearms Storage: Administrative Release Fee	Each	$446	$465	($19)
Garage Sale Permit Processing	Each	$10	$20	($10)
Refuse Container or Storage Container				
Initial	Each	$59	$79	($20)
Renewal/Extension	Each	$30	$31	($1)
Transportation of Large Structure				
Deposit – variable fee based on size/type of structure	Deposit	$224	$149	$75
Per Structure	Per Structure	$639	$802	($163)
Correctable Code Violation - Admin Fee	Each	$10	$55	($45)
Film Permit Application Fee	Each	$162	$160	$2

A majority of Police fees under-recover, ranging from a low of $1 'Clearance Letter – No Record on File' to a high of $2,030 for 'Parking Lot Permit – Annual'. The largest over-recovery is in relation to 'Temporary Overnight Parking Permit – Annual Exemption' at $219. Over-recoveries are primarily due to streamlined processes since the previous fee study was conducted.

15. Public Works

The Public Works Department oversees maintenance and operations of City owned facilities and infrastructure, as well as the design, planning, construction, or repair of the City's Capital Improvement Projects. The Department is also responsible for maintaining all city owned vehicles, municipal roads, culverts and basins, street lighting and street signs. Most of the services provided by Public Works staff are general functions relating to City services, as Building staff handle all Engineering related reviews and inspections. However, the Department does charge out for services relating to Banner Installation, memorial trees, news racks, and trees. The following sections discuss any proposed fee schedule modifications and detailed unit results.

Fee Schedule Modifications

In discussions with Public Works staff, it was determined that some minor modifications to the current structure would be beneficial. The following points highlight the proposed modifications:

- **Removed Fees:** The 'Tree Removal with Development' permit was removed, as these services are covered under other permits, and therefore redundant.

- **Added Fees:** To better reflect fees associated with violations for trimming or removing trees prior to approval the following penalties were added:

    - Trimming Prior to Approval
    - Removal Prior to Approval

- **Moved Fees:** Stormwater fees have been moved from the Planning section of the fee schedule to the Public Works section, as Public Works staff take the lead in processing, reviewing, inspecting, and issuing these permits.

The above modifications ensure that Public Work's section of the fee schedule best reflects the services that are being provided and enable the department to collect fees more accurately for those services.

Detailed Results

The Public Works Division collects fees for items such as news racks and tree removals. The total cost calculated for each Public Works service includes direct staff costs, Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and difference associated with each service.

Table 13: Total Cost Per Unit Results – Public Works

Fee Name	Unit	Current Fee	Total Cost	Difference
MISCELLANEOUS FEES				
Requested Special Traffic Review	per hour	Varies	$189	
Banner Installation and Removal (Downtown Street Lights)	per pole	$47	$76	($29)
Memorial Benches and Trees				
Memorial Bench	per bench	$449	$632	($183)
Memorial Bench maintenance (5 years)	every 5 years	$589	$759	($170)
Memorial Tree	per tree	$1,046	$1,111	($65)
Annual Solid Waste Exemption Application	per application	$97	$340	($243)
News Racks				
News rack Annual Application Fee	per application	$61	$94	($33)
News rack Program Fee Half Rack	Each	$40	$76	($36)
News rack Program Fee Full Rack	Each	$84	$114	($30)
Electrical Vehicle Charging Stations		PG&E Rate		
TREE FEES				
Application Fee	Flat	$105	$377	($272)
Removal or Trimming				
Single Tree	Flat	$71	$92	($21)
Each Additional Tree	Each Tree	$33	$42	($9)
Tree Replacement In-Lieu Fee	Deposit	$901	$994	($93)
Tree Appeal	Each	$236	$683	($447)
TREE PERMIT VIOLATION				
Trimming Prior to Approval	Penalty	New	$750	
Removal Prior to Approval	Penalty	New	$1,500	
STORMWATER				
Tier 3 and 4 – 15,000 square feet of impervious surface or greater (incl. 2 reviews)	Each	$1,840	$1,923	($83)
Tier 2 – 5,000-15,000 square feet impervious surface (incl. 2 reviews)	Each	$1,226	$1,250	($24)
Tier 1 – 2,500-5,000 square feet impervious surface	Each	$771	$866	($95)
Each subsequent Tier 2 review	Per Review	$540	$577	($37)
Inspection Fee	Per Inspection	$144	$192	($48)
Annual Inspection and re-inspection	Per Inspection	$215	$289	($74)
Each subsequent Tier 1 review	Per Review	$340	$385	($45)

All services being provided by Public Works currently show an under-recovery. The differences currently range from a low of $9 for each additional tree removal or trimming, and a high of $447 for a 'Tree Appeal'. As many of the services provided by Public Works

have some sort of community benefit or impact, the City should review the fees to determine an appropriate cost recovery level.

16. Parks and Recreation

The Parks and Recreation Department provides a wide range of services through programs, contract instructors, and collaborations with outside agencies. These services include Pre-school, Sports, Programs, Swimming, Facility Rentals, and Special Events. The following sections discuss any proposed fee schedule modifications and detailed unit results.

Fee Schedule Modifications

The Parks and Recreation Department has a wide variety of services it provides on a seasonal and annual basis. In discussing current services, the following were proposed for elimination:

- **Eliminated Fees:** The following fees were removed from the Department's fee schedule as these services are no longer provided or offered:
  - All Youth Center Program Fees, including Membership per Semester, Membership for the School Year, Daily Admission, and Dance Admission
  - Recreational Swimming: Lovers Point, (during full-day offering noon - 4:30) mostly Friday, Saturday, Sunday & Holidays
  - Swimming Family Card
  - Minimal Impact Events Application
  - Transfer Fee (transfers between classes and/or sessions)
- **New Fees:** The Department is looking to add fees for Pre-School Camps as this is a new service.
- **Expanded Fees:** The Department has expanded their sports fees, which currently are $99 for residents / non-profit, and $108 for non-resident / commercial. Based on discussions with staff, fees will be expanded to differentiate between Tots, Youth, and Adults, and account for clinics, camps, leagues, and classes.

The above modifications will help illustrate the various services provided by the Parks and Recreation Department.

Detailed Results

Services provided by the Parks and Recreation Department fall into four main categories: Pre-School and Youth Programs, Swimming, Facility and Field Rentals, and Special Events and Miscellaneous. The following subsections provide detailed unit results for the various fees, programs, and services that fall within each of these categories.

1 Pre-School and Youth Programs

The total cost for Pre-School, Pre-School Camps, Sports, Camps, and Youth Center Programs includes direct staff costs, direct material costs (where applicable), and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and the associated difference.

Table 14: Total Cost Per Unit Results – Parks & Recreation (Pre-School and Youth Programs)

Fee Name	Unit	Current Fee	Total Cost	Difference
PRE-SCHOOL (MONTHLY FEES)				
2 Days Per Week				
Resident/ Non- Profit	per month	$197	$221	($24)
Non- Resident / Commercial	per month	$217	$221	($4)
3 Days Per Week				
Resident/ Non- Profit	per month	$311	$331	($20)
Non- Resident / Commercial	per month	$344	$331	$13
5 Days Per Week				
Resident/ Non- Profit	per month	$506	$552	($46)
Non- Resident / Commercial	per month	$562	$552	$10
PRE-SCHOOL CAMPS (WEEKLY FEES)				
Resident/ Non- Profit	Per Week	$98	$320	($222)
Non- Resident / Commercial	Per Week	$108	$320	($212)
SPORTS				
Tots (3-5 years)				
Clinic	per participant		$147	N/A
Camp	per participant		$151	N/A
Class	per participant		$100	N/A
Youth (5-18 years)				
Tournament or Clinic - Resident	per participant	$99	$301	($202)
Tournament or Clinic - Non-Residential	per participant	$109	$301	($192)
Camp	per participant		$277	($277)
League - Resident	per participant	$99	$477	($378)
League - Non-Residential		$109	$477	($368)
Adult (18+ years)				
Tournament or Clinic:				
Non-Contact - Resident	per participant		$274	
Non-Contact – Non-Residential	per participant		$274	
Contact - Resident	per participant		$274	
Contact - Non-Residential	per participant		$274	

Fee Name	Unit	Current Fee	Total Cost	Difference
League:				
Non-Contact Sport - Resident	per participant		$358	
Non-Contact Sport - Non-Residential	per participant		$358	
Contact Sport - Resident	per participant		$358	
Contact Sport - Non-Residential	per participant		$358	
PROGRAMS				
Full Day Youth Camp (5-day week)				
Resident/ Non- Profit	per week	$197	$459	($262)
Non- Resident / Commercial	per week	$217	$459	($242)
Full Day Youth Camp (4-day week)				
Resident/ Non- Profit	per week	$157	$367	($210)
Non- Resident / Commercial	per week	$175	$367	($192)
Full Day Youth Camp (3-day week)				
Resident/ Non- Profit	per week	$116	$275	($159)
Non- Resident / Commercial	per week	$130	$275	($145)
Daily Drop-In (per Day)				
Resident/ Non- Profit	per day	$45	$92	($47)
Non- Resident / Commercial	per day	$49	$92	($43)

All the services provided by the City relating to pre-school, pre-school camps, sports, camps, and youth programs show an under-recovery for resident / non-profit fees, and all but two non-resident / commercial fees. The City should review their cost recovery philosophies for pre-school, camps, sports, and youth programs, and determine appropriate fee levels.

It should be noted that fees for parks and recreation services can exceed the total cost of service but should be in alignment with market rates.

2 Swimming

The total cost for Swimming Programs (during the Summer Season) includes direct staff costs, direct material costs (where applicable), and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and the associated difference.

Table 15: Total Cost Per Unit Results – Parks & Recreation (Swimming)

Fee Name	Unit	Current Fee	Total Cost	Difference
Tot Swim Lessons, 8 class sessions, per child				
Resident/ Non- Profit	per child	$82	$232	($150)
Non- Resident / Commercial	per child	$82	$232	($150)
Youth Swim Lessons, 8 class sessions, per child				
Resident/ Non- Profit	per child	$82	$497	($415)
Non- Resident / Commercial	per child	$82	$497	($415)

Fee Name	Unit	Current Fee	Total Cost	Difference
Private Swim Lessons, per class, per child per 20-minute lesson				
Resident/ Non- Profit	per child	$38	$423	($385)
Non- Resident / Commercial	per child	$43	$423	($380)
Semi-private Swim Lessons, per class, per child (2 students required) lesson Group Swim Lessons				
Resident/ Non- Profit	per 30-minute session	$21	$212	($191)
Non- Resident / Commercial	per 30-minute session	$23	$212	($189)
Private use of swimming pool				
Resident/ Non- Profit	per hour	$112	$116	($4)
Non- Resident / Commercial	per hour	$189	$116	$73

All the services provided by the City relating to swimming programs show an under-recovery for resident / non-profit fees, and all but one non-resident / commercial fees. The City should review their cost recovery philosophies for swimming programs and determine appropriate fee levels.

It should be noted that fees for parks and recreation services can exceed the total cost of service but should be in alignment with market rates.

3 Facility and Field Rentals

Fees charged for facility and filed rentals account for exclusive use and are not applied to all picnic or park areas. The total cost for facility and field rentals includes direct staff costs, direct material costs (where applicable), and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and the associated difference.

Table 16: Total Cost Per Unit Results – Parks & Recreation (Facility and Field Rentals)

Fee Name	Unit	Current Fee	Total Cost	Difference
FACILITY RENTAL				
Picnic Facility Reservation Permit: Caledonia, George Washington, Arnett Park, and similar Picnic Facilities				
1 – 50 persons				
Resident/ Non- Profit	Per Day	$41	$96	($55)
Non- Resident / Commercial	Per Day	$69	$96	($27)
51 + persons				
Resident/ Non- Profit	Per Day	$99	$167	($68)
Non- Resident / Commercial	Per Day	$71	$167	($96)
Court Reservation Fees: Volleyball, Basketball, Tennis and Pickleball				
Resident/ Non- Profit	Per Day	$22	$58	($36)
Non- Resident / Commercial	Per Day	$41	$58	($17)
Community Center, Lebeck Room (2 hr. minimum rental)				
Resident/ Non- Profit	Per Hour	$116	$250	($134)
Non- Resident / Commercial	Per Hour	$206	$250	($44)

Fee Name	Unit	Current Fee	Total Cost	Difference
Community Center, Lebeck Room – Security Deposit				
Resident/ Non- Profit	Deposit	$557	$557	$0
Non- Resident / Commercial	Deposit	$557	$557	$0
Community Center, Kuwatani/Scout Room per hr. (Minimum of 2 hours)				
Resident/ Non- Profit	Per Hour	$40	$48	($8)
Non- Resident / Commercial	Per Hour	$68	$48	$20
Chautauqua Hall Facility 2 hr. minimum rental)				
Resident/ Non- Profit	Per Hour	$449	$140	$309
Non- Resident / Commercial	Per Hour	$785	$140	$645
Chautauqua Hall Facility – Security Deposit				
Resident/ Non- Profit	Deposit	$557	$557	$0
Non- Resident / Commercial	Deposit	$577	$577	$0
Youth Center (2 hr. minimum rental)[8]				
Resident/ Non- Profit	Per Hour	$116	$75	$41
Non- Resident / Commercial	Per Hour	$206	$75	$131
Youth Center Meeting Room				
Resident/ Non- Profit	Per Hour	$40	$35	$5
Non- Resident / Commercial	Per Hour	$68	$35	$33
Little House at Jewell Park				
Resident/ Non- Profit	Per Hour	$19	$53	($34)
Non- Resident / Commercial	Per Hour	$35	$53	($18)
Lovers Point Park – Per Hour Fee for 1 – 100 Persons (Special Events or Special Use)				
Resident/ Non- Profit	Per Hour	$182	$626	($444)
Non- Resident / Commercial	Per Hour	$318	$626	($308)
Lovers Point Park – Per Hour Fee for Over 100 Persons (Special Events or Special Use)				
Resident/ Non- Profit	Per Hour	$382	$1,100	($718)
Non- Resident / Commercial	Per Hour	$382	$1,100	($718)
Lovers Point Wedding or Staging Area; Berwick Park, Jewell Park, Pt. Pinos Lighthouse and Elmarie Dyke Gazebo reservation fee[9]				
Resident/ Non- Profit	Per Hour	$187	$578	($391)
Non- Resident / Commercial	Per Hour	$349	$578	($229)
Recreation Trail Rental Fee Per Hour for 1 – 100 Persons				
Resident/ Non- Profit	Per Hour	$190	$304	($114)
Non- Resident / Commercial	Per Hour	$190	$304	($114)
Recreation Trail Rental Fee Per Hour for over 100 Persons				
Resident/ Non- Profit	Per Hour	$382	$400	($18)
Non- Resident / Commercial	Per Hour	$382	$400	($18)
MUNICIPAL SOFTBALL PARK RENTAL POLICY				
Daily Use				
Resident/ Non- Profit	per day	$224	$443	($219)
Non- Resident / Commercial	per day	$391	$443	($52)
Field Use, Per Hour				
Resident/ Non- Profit	per hour	$33	$93	($60)
Non- Resident / Commercial	per hour	$56	$93	($37)
Lights per hr.				
Resident/ Non- Profit	per hour	$28	$29	($1)
Non- Resident / Commercial	per hour	$28	$29	($1)

[8] Pending staff availability.
[9] Plus fully burdened staff rates.

Fee Name	Unit	Current Fee	Total Cost	Difference
Staff, Per hour				
Resident/ Non- Profit	per hour	Fully burdened Rate		
Non- Resident / Commercial	per hour	Fully burdened Rate		
Deposit on daily rate (same as prior Class II, Class III, Class IV)				
Resident/ Non- Profit	Deposit	$187	$187	$0
Non- Resident / Commercial	Deposit	$187	$187	$0

Most of the rental fees charged by the City show an under-recovery for both resident / non-profit and non-resident / commercial, with some fees showing minimal over-recoveries.

It should be noted that fees for parks and recreation services can exceed the total cost of service but should be in alignment with market rates.

4 Miscellaneous Fees and Special Events

The total cost for miscellaneous services and special events includes direct staff costs, direct material costs (where applicable), and Departmental and Citywide overhead. The following table details the fee name, current fee, total cost, and the associated difference.

Table 17: Total Cost Per Unit Results – Parks & Recreation (Miscellaneous and Special Events)

Fee Name	Unit	Current Fee	Total Cost	Difference
Refund Processing (if within written time frame)				
Resident/ Non- Profit	% of Refund	25%	25%	
Non- Resident / Commercial	% of Refund	25%	25%	
SPECIAL EVENT FEES				
Application fee – Events with 1 – 999 participants				
Resident/ Non- Profit	per application	$230	$827	($597)
Non- Resident / Commercial	per application	$230	$827	($597)
Application fee – Events with more than 1,000 participants				
Resident/ Non- Profit	per application	$839	$1,985	($1,146)
Non- Resident / Commercial	per application	$839	$1,985	($1,146)

The City is currently under-recovering for all transfers and special event applications. The subsidy relating to transfers between classes or sessions is $19, while the special event application ranges between $597 and $1,146. The City should review the types of special event applications it receives and determine if current cost recovery levels are appropriate.

17. Cost Recovery Considerations

The following sections provide guidance regarding how and where to increase fees, determining annual update factors, and developing cost recovery policies and procedures.

Fee Adjustments

This study has documented and outlined on a fee-by-fee basis where the City is under and over collecting for its fee-related services. City and Department management will now need to review the results of the study and adjust fees in accordance with Departmental and City philosophies and policies. The following dot points outline the major options the City has in adjusting its fees.

- **Over-Collection**: Upon review of the fees that were shown to be over-collecting for costs of services provided, the City should reduce the current fee to be in line with the full cost of providing the service.

- **Full Cost Recovery:** For fees that show an under-collection for costs of services provided, the City may decide to increase the fee to full cost recovery immediately.

- **Phased Increase:** For fees with significantly low cost recovery levels, or which would have a significant impact on the community, the City could choose to increase fees gradually over a set period of time.

The City will need to review the results of the fee study and associated cost recovery levels and determine how best to adjust fees. While decisions regarding fees that currently show an over-recovery are straight forward, the following subsections, provide further detail on why and how the City should consider either implementing Full Cost Recovery or a Phased Increase approach to adjusting its fees.

1 Full Cost Recovery

Based on the permit or review type, the City may wish to increase the fee to cover the full cost of providing services. Certain permits may be close to cost recovery already, and an increase to full cost may not be significant. Other permits may have a more significant increase associated with full cost recovery.

Increasing fees associated with permits and services that are already close to full cost recovery can potentially bring a Department's overall cost recovery level higher. Often,

these minimal increases can provide necessary revenue to counterbalance fees which are unable to be increased.

The City should consider increasing fees for permits for which services are rarely engaged to full cost recovery. These services often require specific expertise and can involve more complex research and review due to their infrequent nature. As such, setting these fees at full cost recovery will ensure that when the permit or review is requested, the City is recovering the full cost of its services.

2 Phased Increases

Depending on current cost recovery levels some current fees may need to be increased significantly to comply with established or proposed cost recovery policies. Due to the type of permit or review, or the amount by which a fee needs to be increased, it may be best for the City to use a phased approach to reaching their cost recovery goals.

As an example, you may have a current fee of $200 with a full cost of $1,000, representing 20% cost recovery. If the current policy is 80% cost recovery, the current fee would need to increase by $600, bringing the fee to $800, to comply. Assuming this service is something the City provides quite often, and affects various members of the community, an instant increase of $600 may not be feasible. Therefore, the City could take a phased approach, whereby it increases the fee annually over a set period until cost recovery is achieved.

Raising fees over a set period not only allows the City to monitor and control the impact to applicants, but also ensure that applicants have time to adjust to significant increases. Continuing with the example laid out above, the City could increase the fee by $150 for the next four years, spreading out the increase. Depending on the desired overall increase, and the impact to applicants, the City could choose to vary the number of years by which it chooses to increase fees. However, the project team recommends that the City not phase increases for periods greater than five years, as that is the maximum window for which a comprehensive fee assessment should be completed.

Annual Adjustments

Conducting a comprehensive analysis of fee-related services and costs annually would be quite cumbersome and costly. The general rule of thumb for comprehensive fee analyses is between three and five years. This allows for jurisdictions to ensure they account for organizational changes such as staffing levels and merit increases, as well as process efficiencies, code or rule changes, or technology improvements.

Developing annual update mechanisms allow jurisdictions to maintain current levels of cost recovery, while accounting for increases in staffing or expenditures related to permit services. The two most common types of update mechanisms are Consumer Price Index (CPI) and Cost of Living Adjustment (COLA) factors. The following points provide further detail on each of these mechanisms.

- **COLA / Personnel Cost Factor:** Jurisdictions often provide their staff with annual salary adjustments to account for increases in local cost of living. These increases are not tied to merit or seniority, but rather meant to offset rising costs associated with housing, gas, and other livability factors. Sometimes these factors vary depending on the bargaining group of a specific employee. Generally, these factors are around two or three percent annually.

- **CPI Factor:** A common method of increasing fees or cost is to look at regional cost indicators, such as the Consumer Price Index. These factors are calculated by the Bureau of Labor Statistics, put out at various intervals within a year, and are specific to states and regions.

The City of Pacific Grove currently utilizes a CPI to increase fees annually, but should review its options internally (COLA) as well as externally (CPI) to determine which option better reflects the goals of the Department and the City. If choosing a CPI factor, the City should outline which CPI should be used, including specific region, and adoption date. If choosing an internal factor, again, the City should be sure to specify which factor if multiple exist.

Policies and Procedures

This study has identified areas where the City is under-collecting the cost associated with providing services. This known funding gap is therefore being subsidized by other City revenue sources.

Updating current cost recovery policies and procedures will serve to ensure that current and future decision makers understand how and why fees were determined and set, as well as provide a road map for ensuring consistency when moving forward.

The Matrix Consulting Group has extensive experience in analyzing local government operations across the United States and has calculated typical cost recovery ranges. The following table outlines these cost recovery ranges by major service area.

Table 18: Typical Cost Recovery Ranges by Department

Department / Program	Typical Cost Recovery Ranges
Administration	20% - 40%
City Clerk	20% - 40%
Cemetery	80% - 100%
Planning	50% - 80%
Building	80% - 100%
Public Works	80% - 100%
Parks and Recreation	20% - 40%

Information presented in the table above is based on the Matrix Consulting Group's experience in analyzing local governments' operations across the United States and within California and reflects *typical* cost recovery ranges observed by local adopting authorities.

The City should review the current cost recovery levels outlined in this analysis and review current policies regarding cost recovery to ensure alignment with current philosophies and goals.

Appendix – Comparative Survey

As part of the Cost of Services (User Fee) study for the City of Pacific Grove, Matrix Consulting Group conducted a comparative survey of user fees. The City identified eight jurisdictions to be included in the comparative survey: Capitola, Carmel, Carpinteria, Marina, Monterey, Santa Cruz, Sausalito, and Seaside. The project team then reviewed public documents (i.e., agenda items, staff reports, budgets, fee schedules, and ordinances), and or contacted jurisdictions to get comparative information.

While this full report provides the City with a reasonable estimate and understanding of the true costs of providing services, many jurisdictions also wish to benchmark themselves against other comparable jurisdictions to consider the local "market rates" for services. This type of analysis allows for the City to assess what types of changes in fee levels their community can bear. However, what this analysis does not provide is adequate information regarding the relationship of other jurisdiction's costs to their fees (i.e., policy decisions to subsidize, cost recovery goals, etc.).

The following sections detail various factors to consider when reviewing comparative survey results, as well as graphical comparisons of current fees and total calculated costs for various permits issued or services provided by the City.

1 Economic Factors

To provide additional context to the comparative survey information, the project team collected economic factors for the jurisdictions included. Three important economic factors to consider when comparing fees across multiple jurisdictions are: population, budget, and workforce size. These factors can impact how and when fees are administered, as a jurisdiction with a smaller population may choose to not charge a fee, or a smaller workforce size may inhibit their ability to administer a fee.

The following tables rank each jurisdiction from smallest to largest for each of these economic factors:

Table 19: Ranking of Jurisdictions by Population

Jurisdiction	Population[10]
Carmel	3,196
Sausalito	7,199
Capitola	9,846
Carpinteria	13,122
Pacific Grove	**14,791**
Marina	22,507
Monterey	29,874
Seaside	32,085
Santa Cruz	61,950

Table 20: Ranking of Jurisdictions by Citywide Total Budget[11]

Jurisdiction	FY23-24 Budget
Capitola	$19,780,450
Carpinteria	$28,621,850
Carmel	$29,332,582
Pacific Grove	**$32,104,273**
Sausalito	$35,650,621
Marina	$40,453,140
Seaside	$79,170,631
Monterey	$97,872,467
Santa Cruz	$139,590,175

Table 21: Ranking of Jurisdictions by FTE

Jurisdiction	FY23-24 FTE
Capitola	41.00
Carpinteria	70.00
Capitola	72.00
Sausalito	96.23
Carmel	**98.00**
Pacific Grove	108.50
Marina	177.00
Seaside	453.75
Monterey	927.73

The City of Pacific Grove ranks in the middle to low end of surveyed jurisdictions in terms of population and budget, and on the higher end for FTE.

[10] 2022 US Census data was used to determine each jurisdictions population.
[11] To ensure appropriate comparisons, full operating budget (all funds) has been used for all jurisdictions.

2 Recency Factor

While the above comparative information can provide some perspective when paralleling Pacific Grove's fees with surveyed jurisdictions, other key factors to consider are when a jurisdiction's fee schedule was last updated and when the last comprehensive analysis was undertaken. It is important to note that even though jurisdictions may have conducted recent fee studies their fees are not always adopted at full cost recovery. The comparative results only show the adopted fee for the surveyed jurisdiction, not necessarily the full cost associated with the comparable service.

The following tables detail when each surveyed jurisdiction last conducted a fee analysis and when they last updated their fee schedule.

Table 22: Last Fee Schedule Updated

Jurisdiction	Response
Marina	2020
Santa Cruz	2023
Sausalito	2024
Seaside	2024
Capitola	2024
Carmel	2024
Monterey	2024
Carpinteria	2024

Table 23: Last Fee Study Conducted

Jurisdiction	Response
Carpinteria	2016
Santa Cruz	2017[12]
Marina	2018
Sausalito	2018
Seaside	2022
Capitola	N/A
Carmel	N/A
Monterey	N/A

All but the City of Marina have updated their fees within the last couple of years, while only the City of Seaside has conducted a fee study within the last five years.

[12] The City of Santa Cruz is currently out-to-bid for a fee study.

3 Additional Factors

Along with keeping the statistics outlined in the previous sections in mind, the following issues should also be noted regarding the use of market surveys in the setting of fees for service:

- **Cost Recovery Factors:** Each jurisdiction and its fees are different, and many are not based on the actual cost of providing services as various policy decision may subsidize services.

- **Fee Variance Factors:** The same "fee" with the same name may include different steps or sub-activities. In addition, jurisdictions provide varying levels of service and have varying levels of costs associated with providing services such as staffing levels, salary levels, indirect overhead costs, etc.

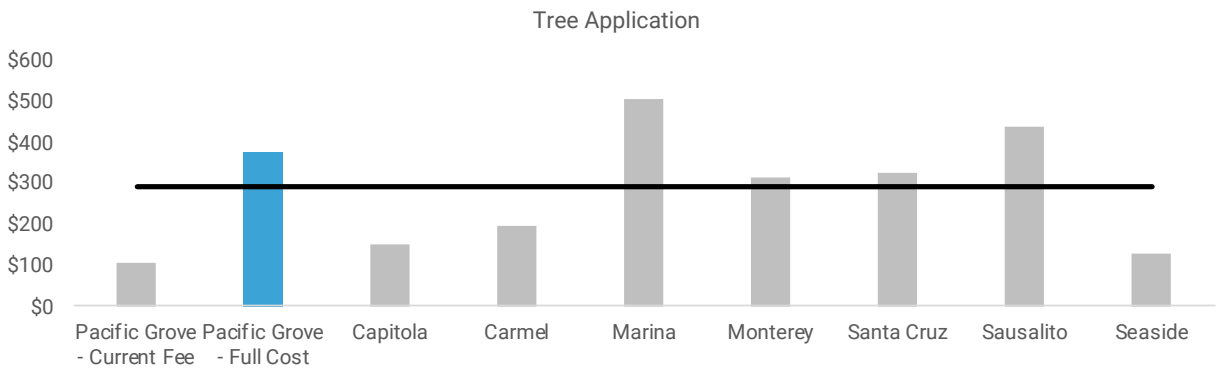
In addition to the issues noted, market surveys can also run the risk of creating a confusing excess of data that will obscure rather than clarify policy issues. Because each jurisdiction is different, the Matrix Consulting Group recommends that the information contained in the market comparison of fees be used as a secondary decision-making tool, rather than a tool for establishing an acceptable price point for services.

4 Comparative Survey Results

As part of this study, the project team conducted a survey of how the City's current user fees and calculated full cost compared to other jurisdictions. The following subsections provide a comparative look at several fee-related services provided by the City.

1 Tree Application

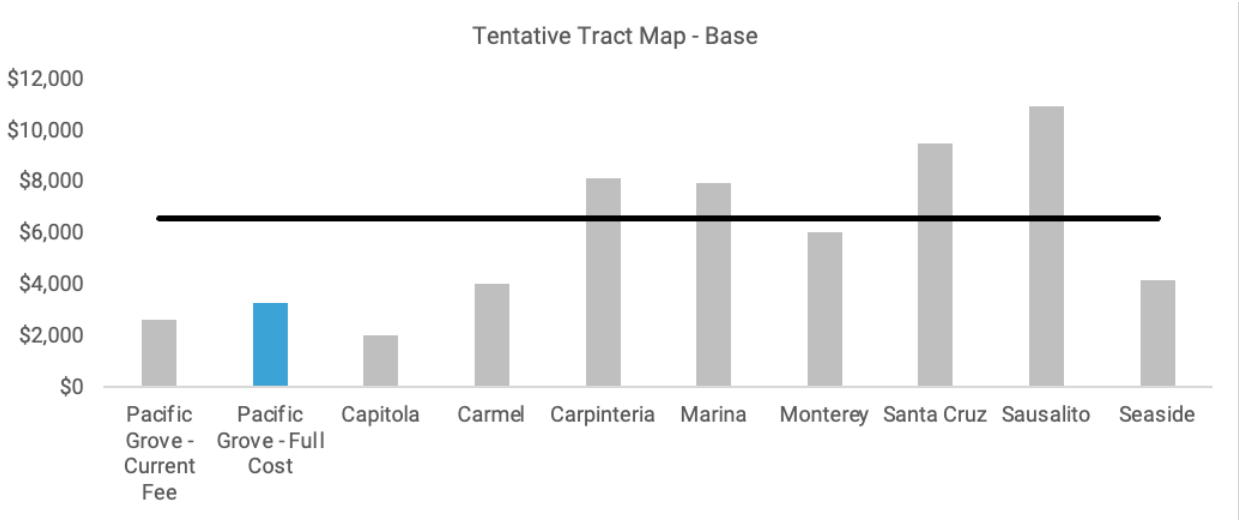
Pacific Grove charges a $105 fee for a Tree Application. Through this study, the project team calculated the full cost to be $377. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee is the lowest fee charged, Seaside's fee of $126 is the most comparable. The full cost calculated is slight above the jurisdictional average of $293 and is most comparable to Santa Cruz at $326. At $435, Marina charges the highest fee.

2 Tentative Tract Map

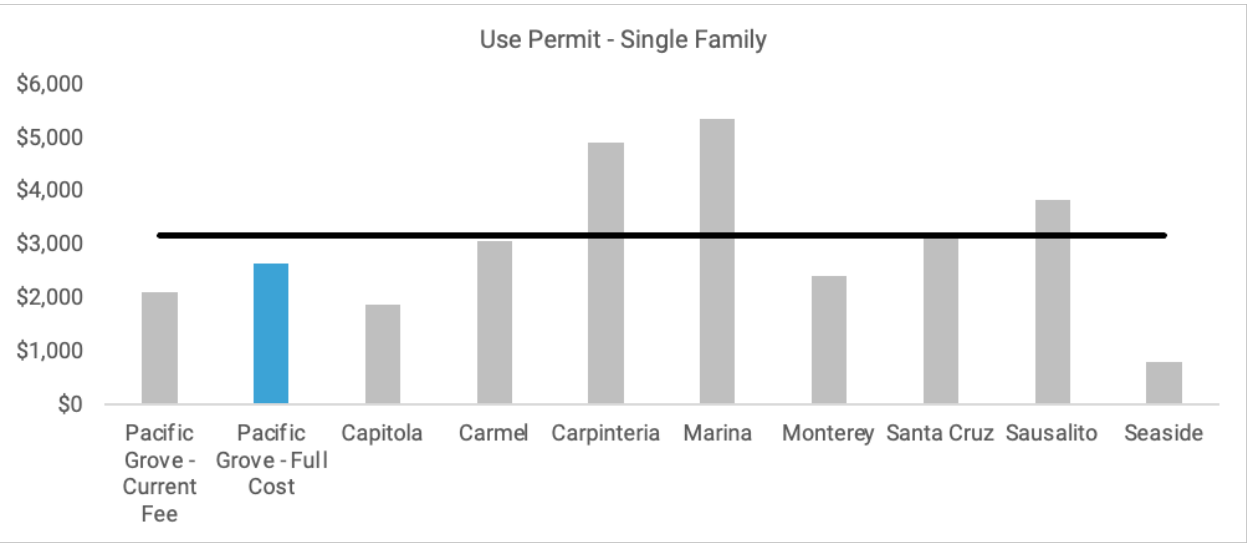
Pacific Grove charges a $2,617 fee for a Tentative Tract Map. Through this study, the project team calculated the full cost to be $3,258. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Of the surveyed jurisdictions with flat fees for Tentative Tract Maps, Pacific Grove's current fee is the second lowest, following Capitola at $2,000. The full cost calculated is significantly below the jurisdictional average of $6,568 and closely aligns with Carmel at $4,000. Carpinteria and Sausalito administer this fee as a deposit, set at $11,000 and $10,925 respectively.

3 Use Permit – Single Family

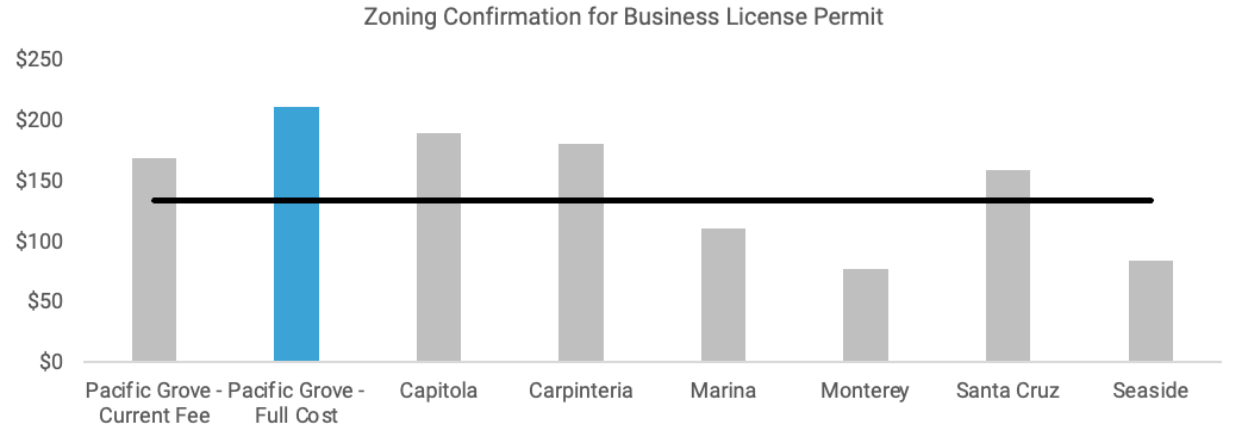
Pacific Grove charges a $2,089 fee for a Single-Family Use Permit. Through this study, the project team calculated the full cost to be $2,644. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and full cost calculated are just below the jurisdictional average of $3,161, and closely aligns with Monterey at $2,393. At $5,350, Marina charges the highest fee. Carpinteria administers this fee as a deposit, set at $4,900.

4 Zoning Confirmation for Business License Permit

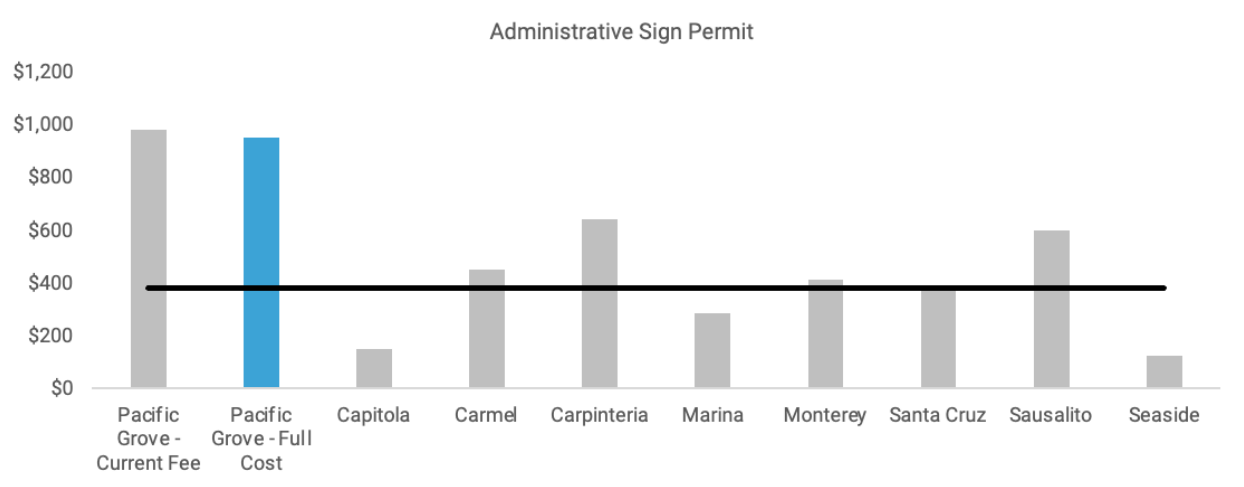
Pacific Grove charges a $168 fee for a Zoning Confirmation for Business License Permit. Through this study, the project team calculated the full cost to be $210. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and full cost calculated are both above the jurisdictional average of $133 and are most comparable to Capitola ($189). At $180, Carpinteria charges the highest fee.

5 Administrative Sign Permit

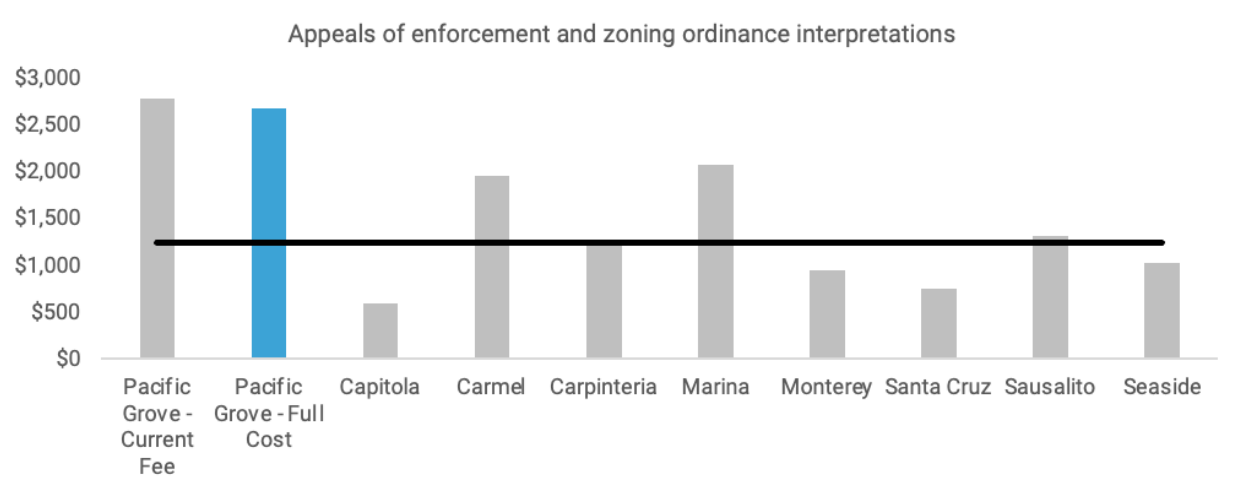
Pacific Grove charges a $978 fee for an Administrative Sign Permit. Through this study, the project team calculated the full cost to be $950. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Of the surveyed jurisdictions with flat fees for Administrative Sign Permits, Pacific Grove's current fee is the highest. Both the current fee and full cost calculated are significantly above the jurisdictional average of $380 and are most comparable to Carpinteria at $640.

6 Appeals of Enforcement and Zoning Ordinance Interpretations

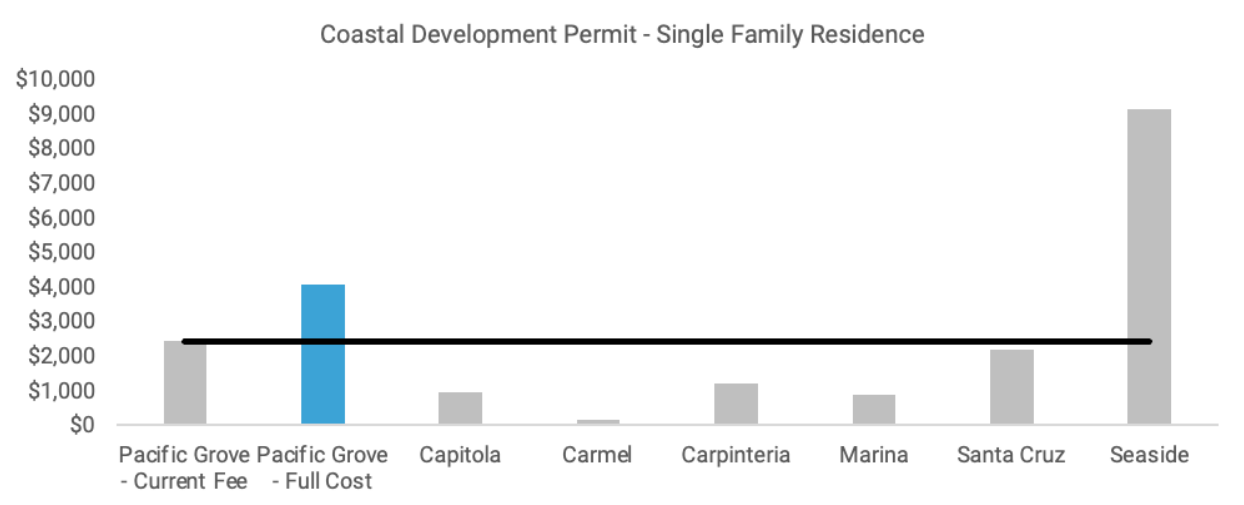
Pacific Grove charges a $2,782 fee for an Appeals of Enforcement and Zoning Ordinance Interpretations. Through this study, the project team calculated the full cost to be $2,667. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and full cost calculated are significantly higher than the jurisdictional average of $1,235. The current fee is most comparable to Marina at $2,075. Carpinteria does note that their fee of $1,260 is set a 66% subsidy.

7 Coastal Development Permit – Single Family Residence

Pacific Grove charges a $2,453 fee for Single-Family specific Coastal Development Permit. Through this study, the project team calculated the full cost to be $4,058. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.

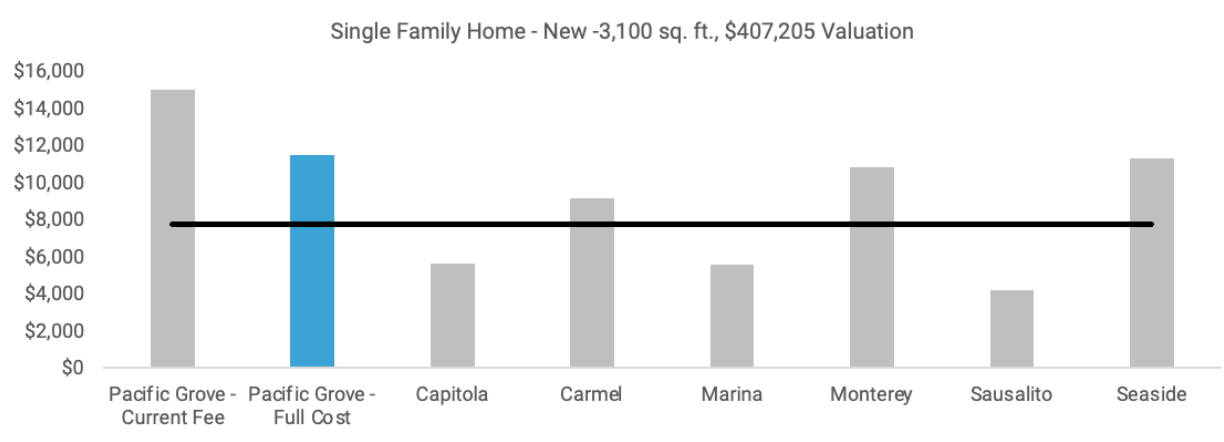


Of the surveyed jurisdictions with flat fees for Single-Family Coastal Development Permits, Pacific Grove's current fee and calculated full are the highest. Both the current fee and full cost calculated are significantly above the jurisdictional average of $2,420

and are most comparable to Santa Cruz at $2,174. Carpinteria administers this fee as a deposit, set at $1,200.

8 Single-Family Home - New: 3,100 sq. ft. / $407,205 Valuation

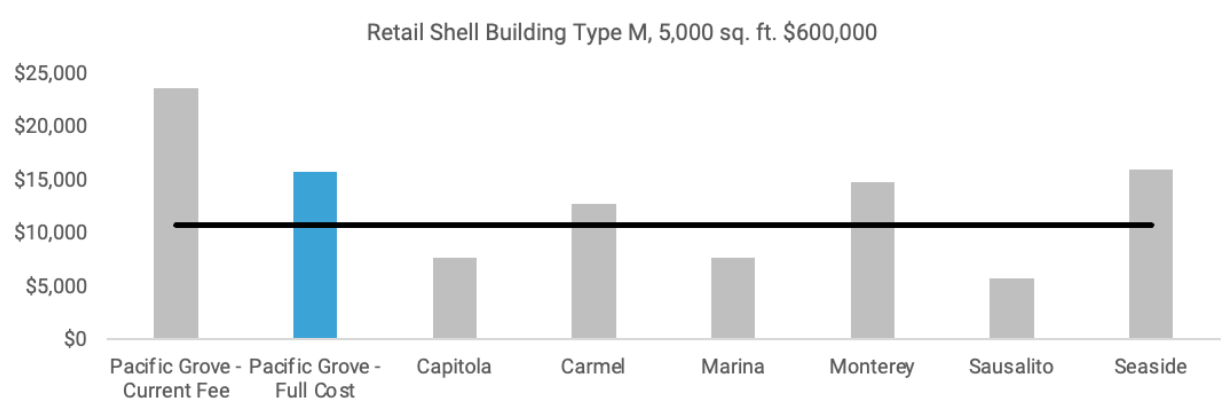
Pacific Grove charges a $15,011 fee for New 3,100 square foot Single-Family home, valued at $407,205. Through this study, the project team calculated the full cost to be $11,469. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full are the highest and are significantly above the jurisdictional average of $7,772. At $11,296 Seaside has the most comparable fee.

9 Retail Shell Building Type M: 5,000 sq. ft. / $600,000

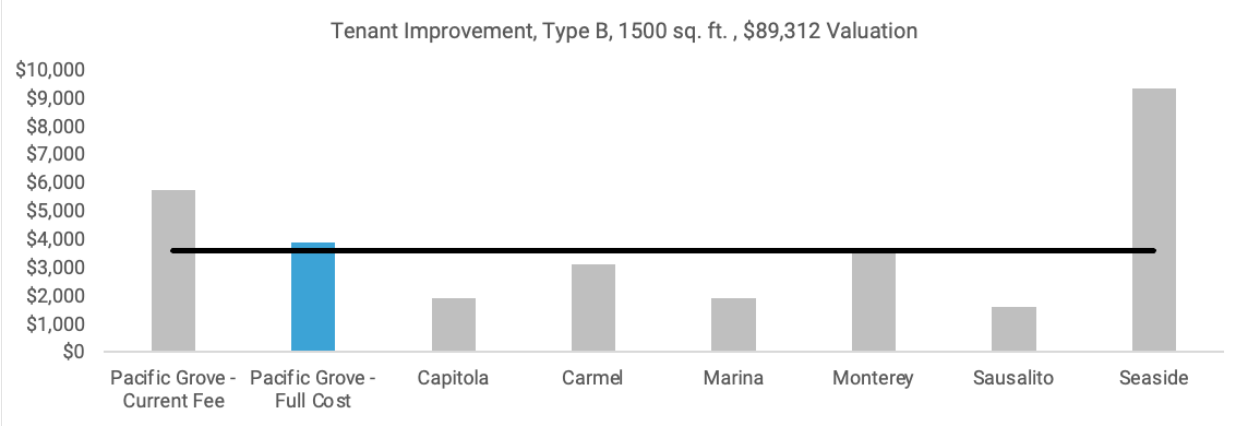
Pacific Grove charges a $23,606 fee for a 5,000 square foot Type M Retail Shell Building valued at $600,000. Through this study, the project team calculated the full cost to be $15,725. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full are the highest and are significantly above the jurisdictional average of $10,761. At $15,989, Seaside has the most comparable fee.

10 Tenant Improvement, Type B: 1,500 sq. ft. / $89,312 Valuation

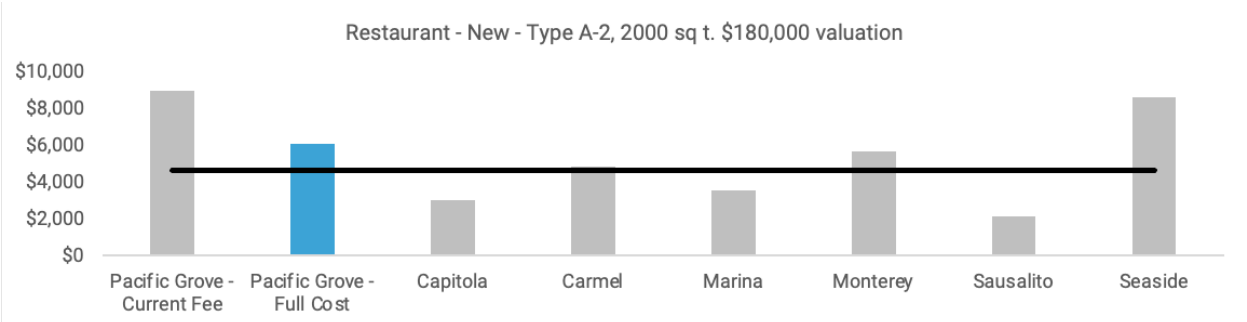
Pacific Grove charges a $5,726 fee for a 1,500 square foot Type B Tenant Improvement valued at $89,312. Through this study, the project team calculated the full cost to be $3,885. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full cost are both above the jurisdictional average of $3,576 and are most comparable to Monterey's charges ($3,566). At $9,344, Seaside charges the most for this plan check and permit.

11 Restaurant - New - Type A-2: 2,000 sq t. / $180,000 valuation

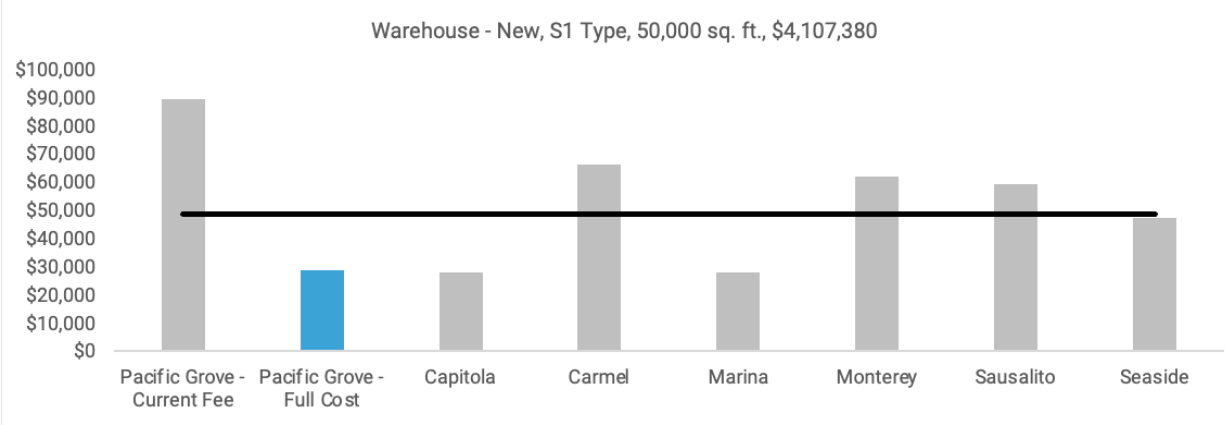
Pacific Grove charges a $8,959 fee for a new 2,000 square foot Type A-2 Restaurant valued at $180,000. Through this study, the project team calculated the full cost to be $6,092. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full are the highest and are both above the jurisdictional average of $4,631. At $8,580, Seaside has the most comparable fee.

12 Warehouse - New, S1 Type: 50,000 sq. ft. / $4,107,380

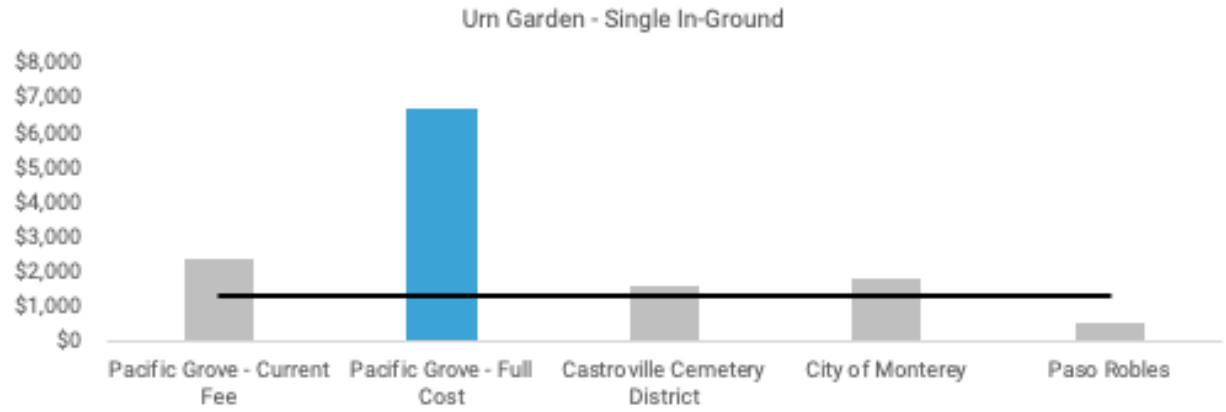
Pacific Grove charges a $89,719 fee for a new 50,000 square foot Type S1 Warehouse valued at $180,000. Through this study, the project team calculated the full cost to be $28,801. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee is significantly above the jurisdictional average of $48,602, while its full cost is much lower. The current fee is in alignment with fees charged by Sausalito ($59,522) and Monterey ($61,945).

13 Urn Garden – Single In-Ground

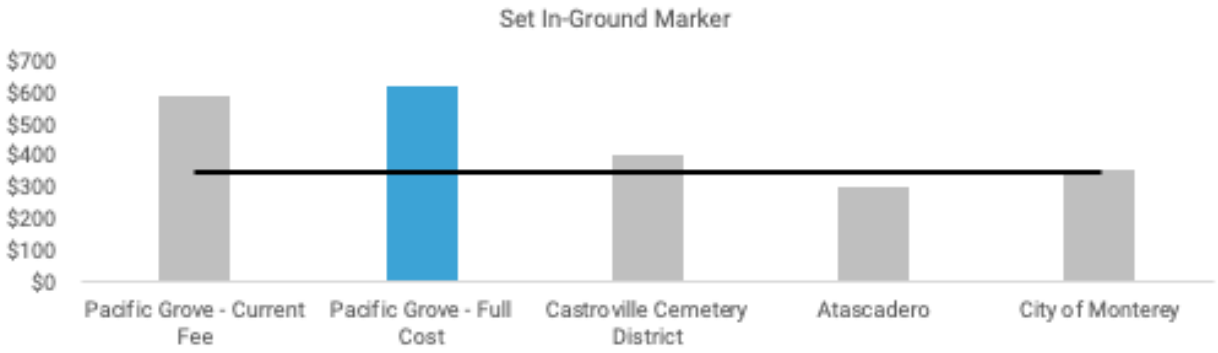
Pacific Grove charges a $2,361 fee for a Single In-Ground urn placement in their Urn Garden. Through this study, the project team calculated the full cost to be $6,673. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full are the highest and are significantly above the jurisdictional average of $1,228. At $1,757, the City of Monterey has the most comparable fee.

14 Set In-Ground Marker

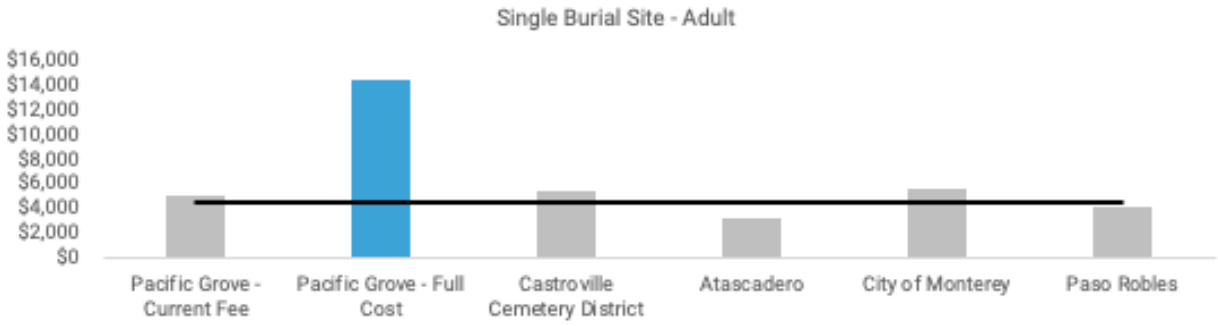
Pacific Grove charges a $590 fee for a Set In-Ground Marker. Through this study, the project team calculated the full cost to be $625. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full cost are the highest and are above the jurisdictional average of $351. At $400, the Castroville Cemetery District has the most comparable fee.

15 Single Burial Site - Adult

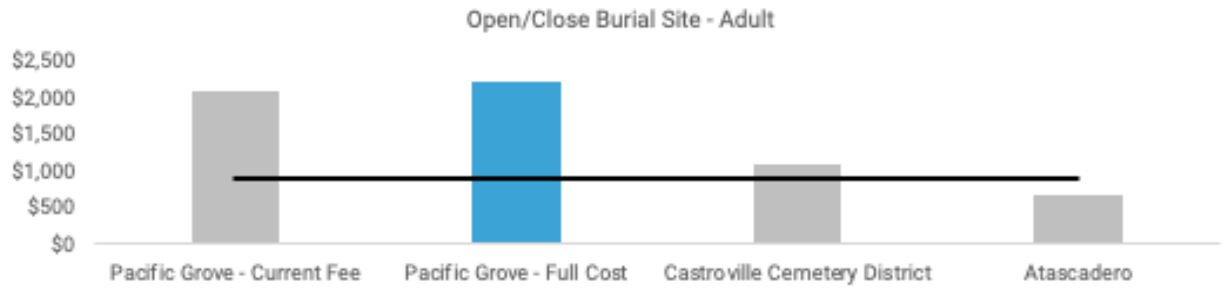
Pacific Grove charges a $5,048 fee for a Single Burial Site for an Adult. Through this study, the project team calculated the full cost to be $14,267. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full cost are both above the jurisdictional average of $1,228, and the current fee is the third highest of the surveyed jurisdictions. At $5,328, the Castroville Cemetery District has the most comparable fee.

16 Open/Close Burial Site - Adult

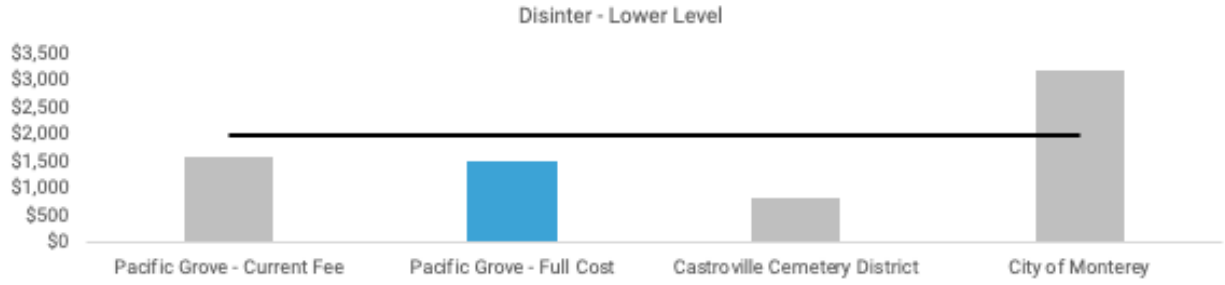
Pacific Grove charges a $2,094 fee for an Open/Close Burial Site for an Adult. Through this study, the project team calculated the full cost to be $2,230. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full are both above the jurisdictional average of $888. At $1,100, the Castroville Cemetery District has the most comparable fee.

17 Disinter – Lower Level

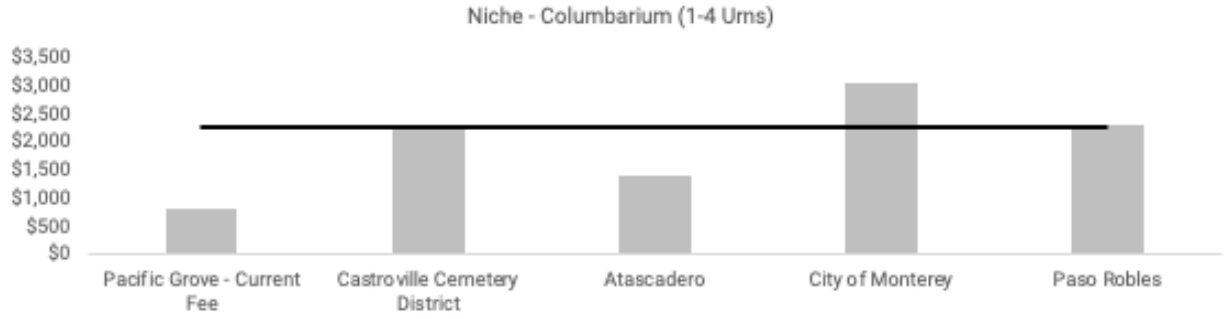
Pacific Grove charges a $1,559 fee for disinterment of lower-level graves. Through this study, the project team calculated the full cost to be $1,493. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and calculated full are both above the jurisdictional average of $1,983. At $800, the Castroville Cemetery District has the most comparable fee. Neither the Atascadero nor Paso Robles cemetery districts offer disinterment services.

18 Niche - Columbarium

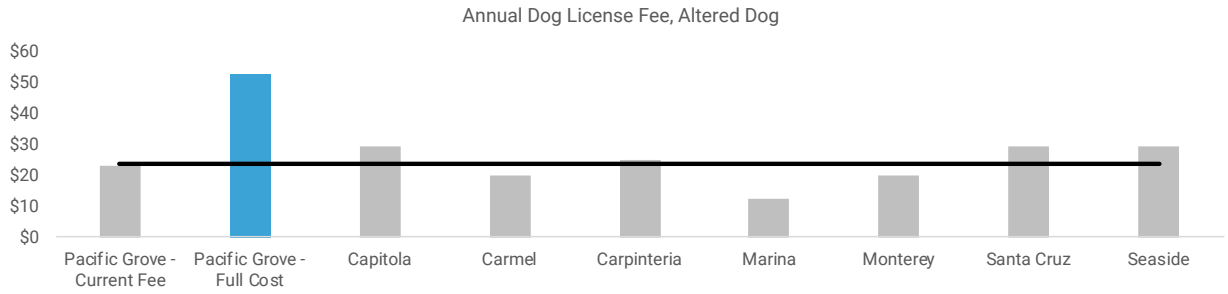
Pacific Grove charges a $2,094 fee for an Open/Close Burial Site for an Adult. This study did not evaluate endowment care costs, so a full cost of this service is not available. The following graph compares Pacific Grove's current fee to those of surveyed jurisdictions.



Pacific Grove's current fee is below the jurisdictional average of $2,248. At $1,400, the Atascadero Cemetery District has the most comparable fee.

19 Annual Dog License Fee, Altered Dog

Pacific Grove charges a $23 fee for an Annual Dog License for an Altered Dog. Through this study, the project team calculated the full cost to be $52. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.

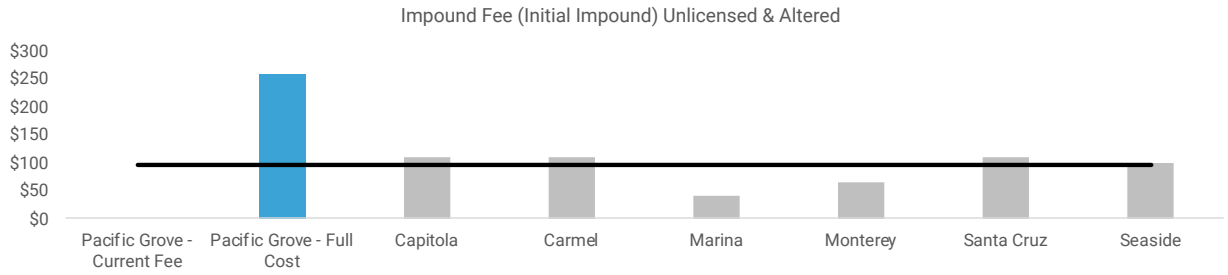


Pacific Grove's full cost calculated is the highest, while the current fee is in alignment with the jurisdictional average of $23. At $25, Carpinteria most closely aligns with the current fee charged.

20 Impound Fee (Initial Impound) Unlicensed & Altered

Currently, Pacific Grove does not charge a fee for an initial impound of an unlicensed or altered animal. Through this study, the project team calculated the full cost to be $259.

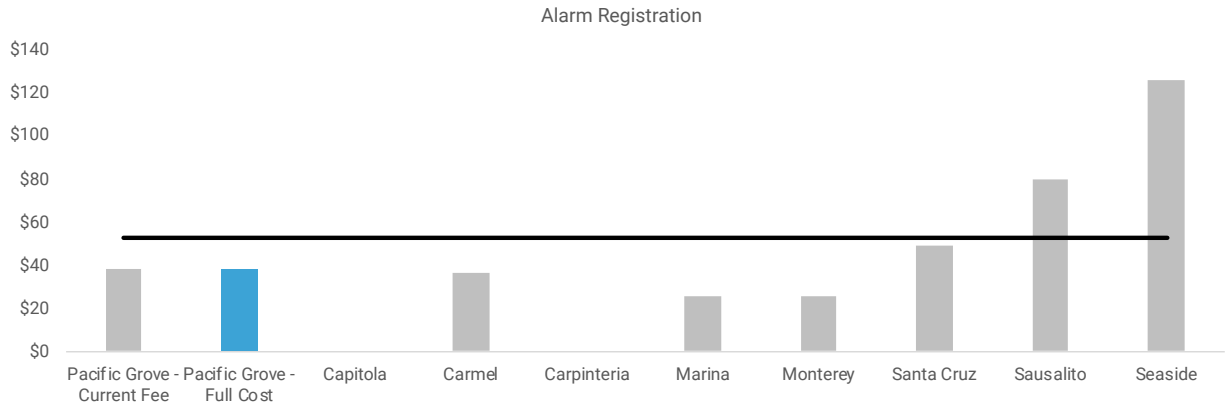
The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Of the jurisdiction who charge a comparable fee, all administer a fee for an initial impound, ranging from a high of $110 (Capitola and Santa Cruz) to a low of $40 (Marina). Pacific Grove's full cost calculated is the highest and is significantly higher than the jurisdictional average of $97.

21 Alarm Registration

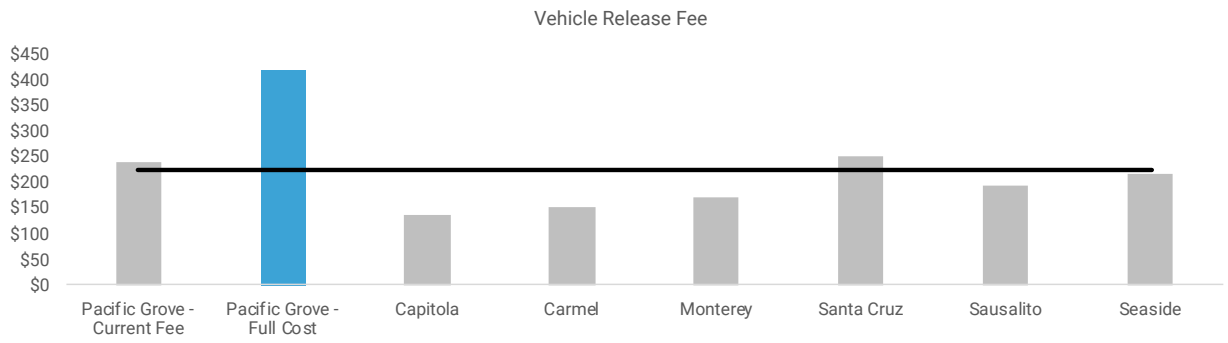
Pacific Grove charges a $38 fee for an Alarm Registration. Through this study, the project team calculated the full cost to also be $38. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's current fee and full cost calculated are lower than the average of $57, but higher than Carmel, Marina, and Monterey. Seaside has the highest fee at $126.

22 Vehicle Release Fee

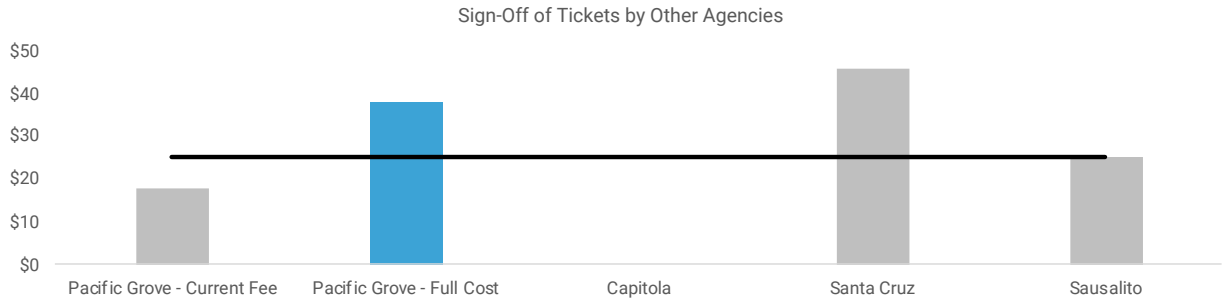
Pacific Grove charges a $238 fee for a Vehicle Release Fee. Through this study, the project team calculated the full cost to be $419. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Pacific Grove's calculated full cost is the highest and is above the jurisdiction average of $222. The current fee is in alignment with the average and is most comparable to Santa Cruz at $250.

23 Sign-Off of Tickets by Other Agencies

Pacific Grove charges an $18 fee for a Sign-Off of Tickets by Other Agencies. Through this study, the project team calculated the full cost to be $38. The following graph compares Pacific Grove's current fee and calculated full cost to those of surveyed jurisdictions.



Of the surveyed jurisdictions which charge a comparable fee, Pacific Grove's current fee is the second lowest as Capitola does not charge for citation signoffs. The calculated full cost is above the jurisdictional average of $25 and is most comparable to Santa Cruz ($46)

5 Summary

Based upon the comparative survey, Pacific Grove generally has fees that are higher than the surveyed jurisdictions, particularly in relation to Building specific fees. Of the surveyed jurisdictions Pacific Grove's fees are most comparable with Seaside, Capitola, and Sausalito. It is important to note that the results of this survey only show the fees adopted

by the council, not the cost recovery policy decisions for departments or a jurisdiction. As such, the results of this survey should be used as a secondary decision-making tool.

CITY OF PACIFIC GROVE
CITY COUNCIL POLICY

Policy Governing	Policy No.	Effective Date	Page No.
Fees, Charges, and Cost Recovery	400-4	June 15, 2011	1 of 2

I. PURPOSE

The purpose of the policy is to guide the City Council's establishment of fees for service, fines, and other charges for service, in order to help ensure consistency in fee setting rationale. The policy is intended to provide broad guidance for service areas, without providing detailed guidance for all fee categories

It is the City Council's intent that the policy may be amended over time to address additional services and evolving economic circumstances.

II. POLICY OF THE CITY

The City establishes fees according to Pacific Grove Municipal Code Chapter 6.02. Pursuant to Article XIIIB of the California Constitution, it is the intent of the City Council to recover a portion or all costs reasonably borne for providing government services to the extent such cost recovery reflects the appropriate balance of general revenue support and fees paid by the individual(s) benefiting from the service.

For enterprise services, in which the City is offering products or services for which the customer has broad market choices, the City may choose to set rates based on current market conditions. This includes facility rentals, cemetery sales, recreational programs, land use, or similar enterprises. This market-based approach provides the City with the ability to optimize revenue beyond recovering the cost of providing the service. These market-based rates accurately reflect the value received by the customer.

In setting fees, City staff shall prepare fees for City Council consideration, based on cost recovery levels in the subsequent table. The listed percentage or methodology represents the combined cost recovery level for the department. Individual fees within each department may be established at a lower rate to encourage a desired performance; however the overall departmental fees should be within the listed ranges.

All staff assigned to hourly-based services, such as special events, inspections, or related tasks will be charged at the fully burdened hourly rate.

Service	Cost Recovery Method
Administration, City Clerk, Libraries	At least 30% of costs
Consideration may need to be given to the recovery percentage, such as limitations on certain fees imposed by the State, election code; or similar entities.	
Community Development	80-100% of costs
Public Works	80-100% of costs
Public Safety	30-50% of costs
Hyperbaric Chamber	80-100% of costs
City Facility Rental	
Private parties	Market
Non-profit organizations	Market
Ongoing, frequent, or unique rental (e.g., weekly classes, or street closure)	Discount from Market
City–sponsored events	No charge
Special Events	
For-profit sponsor	Market; however at least 100% costs
Non-profit sponsor	100% of costs
Events designated "traditional" by City Council	No charge
Recreation	Market; however at least 30% of costs
Cemetery	Market; however at least 80% of costs
Golf	Determined through concessionaire

Adopted June 2, 2010 (Resolution No. 10-044)
Adopted June 15, 2011 (Resolution No. 11-052)
Adopted September 19, 2018 (Resolution No. 18-033)

GENERAL ADMINISTRATION		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
GENERAL ADMIN				
Special Services	Each	Actual Costs		
Document Photocopy and Report Fees (Soft or Hard Copy)	Per Page	$0.25	$ 0	$ 0.25
Digital Production (CD, DVD, Flash Drives) of PRA Information	Each	Actual Costs		
Notary Services	Per Page	$15	$ 15	$ 15
Returned Check Processing				
1st Check	Each	$22	$ 25	$ 25
2nd and Subsequent Checks	Each	$22	$ 35	$ 35
Credit Card Payment Processing Fee				
$1.00 - $50.00	Each	$2	$ 2	$ 2
$50.01 - $100.00	Each	$3	$ 3	$ 3
$100.01 - $200.00	Each	$5	$ 5	$ 5
Greater than $200.01	Each	4%	$ 0	4%
Annual Reports				
Copies of Annual Budget or Financial Reports	Each	Actual Costs		
Business License Administration Fee				
If paid by August 1 (on time payment/standard)	Per License	$22	$ 46	$ 37
If paid after August 1 (late payment)	Per License	$49	$ 46	$ 46
TRANSIENT USE LICENSES				
Initial STR Application Review	Each	$413	$ 141	$ 141
Application Renewal	Each	$253	$ 97	$ 97
Annual License	Each	$680	$ 124	$ 124

GENERAL ADMINISTRATION		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
GENERAL ADMIN				
Home Sharing License Annual Renewal	Each	$191	$ 332	$ 265
Initial Home Sharing License Application Review	Each	$349	$ 81	$ 81
Transient License Change or Reprint Fee	Each	$32	$ 26	$ 26
City Hall Rentals				
Security Deposit (SECURITY)	Per Rental	$70	$ 70	$ 70
Clean-up Fee	Per Rental	Actual Costs		
Special Audio Visual Equipment Use	Deposit	280	$ 280	$ 280
Council Chambers – first four hours of use				
First four hours	First 4 hours	$148	$ 377	$ 148
Per hour after four hours	Per Hour	37	$ 94	$ 37
Forest Avenue Conference Room – first four hours				
First four hours	First 4 hours	$58	$ 75	$ 58
Per hour after four hours	Per Hour	15	$ 19	$ 15
City Manager Conference Room – first four hours				
First four hours	First 4 hours	$116	$ 151	$ 116
Per hour after four hours	Per Hour	30	$ 38	$ 30
Fuel Sales				
Fuel sales to outside agencies		Cost + 10%		
Water Entitlement Rights				
Application Processing Fee	Each	$484	$ -	$ 484
Per Acre Foot Per Year	Per AFY	$262,250	$ -	$ 262,250
Per one tenth (.10) Acre Foot Per Year	Per .10 AFY	$26,225	$ -	$ 26,225

GENERAL ADMINISTRATION		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
GENERAL ADMIN				
Tobacco License				
Tobacco Retailer License	Each	$386	$ 407	$ 407
Filming Fees				
Minor Film Permit	per permit	$162	$ 183	$ 183
Mid-Level Film Permit	per permit	$549	$ 629	$ 629
Major Film Permit	per permit	$893	$ 1,107	$ 1,107
Land Lease for Filming	Per Sq. Ft. Per Hour	$0.15	$ 0	$ 0.24
Late Payments				
Late Payment Fee	Minimum	$25	$ 25	$ 25

CITY CLERK		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CITY CLERK FEES				
Clerk Certification				
Certification of Pacific Grove Residency and or Proof of Life	per signature	$15	$ 15	$ 15
Certification of Documents	per document	$15	$ 15	$ 15
Public Records				
Copies standard 8.5" x 11", black and white (ordinances, resolutions, campaign finance and economic statements)	per page	$0.25	$ 0	$ 0.10
Elections				
Nomination Papers Filing Fee	per filing	$25	$ 25	$ 25
Candidates Statement Filing	per filing	Set by County		
Intent to File Initiative	per filing	$200	$ 200	$ 200
Late filing fee	per late day	$10	$ 10	$ 10
Miscellaneous				
Administrative Records (Compilation/Creation)	per request	Actual Costs		
Appeal Fee (Beautification, Traffic Commission, all others not listed elsewhere)	per appeal	$46	$ 46	$ 46
Annual Subscription Service: Agenda and Minutes	per subscription	$30	$ 136	$ 136
Marriage Solemnization	per request	New	$ 25	$ 25

CEMETERY		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CEMETERY SITE SALES				
Single Burial Site				
Adult	Each	$5,048	$ 14,267	$5,553
Child	Each	$2,526	$ 7,139	$2,779
Double Garden Crypt-In Ground	Each	$8,744	$ 24,714	$9,618
Urn Garden				
Double-In Ground	Each	$3,772	$ 10,661	$4,149
Single-In Ground	Each	$2,361	$ 6,673	$2,597
Urn Sites (Other than Urn Garden)				
Single	Each	$2,557	$ 7,227	$2,813
Double	Each	$4,194	$ 11,854	$4,613
Triple	Each	$4,508	$ 12,741	$4,959
Columbarium Niche (1 - 4 urns)	Each	$8,383	$ 23,693	$9,221
Historic Site Unit 1 - Mausoleum				
Single Niche	Each	$3,341	$ 9,443	$3,675
Double Niche	Each	$6,549	$ 18,510	$7,204
Single Crypt	Each	$15,783	$ 44,609	$17,361
Modern Site Unit 2 - Mausoleum				
Double Niche	Each	$6,549	$ 18,510	$7,204
Single Crypt	Each	$15,782	$ 44,606	$17,360
Double Crypt	Each	$28,957	$ 81,843	$31,853
Memorial Garden	Each	$344	$ 972	$378
Memorial Wall Plaque Site	Each	$73	$ 206	$80
ENDOWMENT CARE				
Burial Site				

CEMETERY		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CEMETERY SITE SALES				
Adult	Each	$1,195	$ -	$1,195
Child	Each	$614	$ -	$614
Double Garden Crypt	Each	$1,195	$ -	$1,195
Urn Garden				
Double	Each	$735	$ -	$735
Single	Each	$657	$ -	$657
Urn Sites (Other than Urn Garden)				
Single	Each	$657	$ -	$657
Double	Each	$735	$ -	$735
Triple	Each	$1,195	$ -	$1,195
Niche				
Columbarium (1-4 Urns)	Each	$802	$ -	$802
Mausoleum				
Single	Each	$735	$ -	$735
Double	Each	$802	$ -	$802
Memorial Garden Vault	Each	$134	$ -	$134
Crypt	Each	$802	$ -	$802
LABOR CHARGES				
Grounds Maintenance (One Time Fee)				
Memorial Garden Sites	Each	$307	$ -	$307
Child Sites	Each	$614	$ -	$614
All Other Sites	Each	$1,226	$ -	$1,226
Open / Close				
Burial Site:				

CEMETERY		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CEMETERY SITE SALES				
Adult	Each	$2,094	$ 2,230	$2,230
Child	Each	$1,042	$ 1,108	$1,108
Double Garden Crypt:				
1st Opening	Each	$1,948	$ 1,999	$1,200
Subsequent Opening	Each	$1,801	$ 1,922	$1,920
Set or Removal In-Ground				
Marker:				
Set In-Ground Marker	Each	$590	$ 625	$625
Set In-Ground Marker with Border	Each	$881	$ 932	$932
Remove In-Ground Marker or In-Ground Marker with Border	Each	$287	$ 371	$371
Urn:				
Set In-Ground Urn and Marker	Each	$896	$ 955	$955
Set In-Ground Urn and Marker with Border	Each	$1,114	$ 1,185	$1,185
Remove In-Ground Urn & Marker or In-Ground Urn & marker with Border	Each	$355	$ 301	$301
Vase:				
Set or Remove In-Ground Vase	Each	$178	$ 186	$186
Set In-Ground Vase with Border	Each	$395	$ 416	$416
Addition of Boarder After Original Placement				
To Marker	Each	$590	$ 609	$609
To Vase	Each	$433	$ 455	$455
Historic Site Unit 1 Mausoleum- Inurnment				
Open Mausoleum Niche for inurnment	Each	$1,042	$ 1,108	$1,108

CEMETERY		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CEMETERY SITE SALES				
Place plaque or vase on Mausoleum Niche at inurnment	Each	$217	$ 231	$231
Place / Remove plaque or vase on Mausoleum Niche after inurnment	Each	$578	$ 609	$609
Replace Vase Holder (Niche & Columbarium)	Each + cost of Vase Package	$250	$ 263	$263
Remove Urn - Niche	Each	$287	$ 301	$301
Modern Site Unit 2 Mausoleum - Inurnment				
Open Mausoleum Niche for inurnment	Each	$825	$ 878	$878
Place plaque or vase on Mausoleum Niche at inurnment	Each	$256	$ 269	$269
Place / Remove plaque or vase on Mausoleum Niche after inurnment	Each	$468	$ 493	$493
Replace Vase Holder (Niche & New Columbarium)	Each + cost of Vase Package	$178	$ 186	$186
Remove Urn - Niche	Each	$297	$ 339	$339
Columbarium - Inurnment				
Open Columbarium Niche to Place Urn	Each	$1,189	$ 1,262	$1,262
Place / Remove Plaque or Vase on Columbarium niche at Inurnment	Each	$146	$ 154	$154
Place Plaque or Vase on Columbarium niche after Inurnment	Each	$651	$ 686	$686
Remove Urn - Columbarium Niche	Each	$323	$ 301	$301
Open New Columbarium Niche to Place Urn	Each	$679	$ 724	$724

CEMETERY		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CEMETERY SITE SALES				
Place Plaque or Vase on New Columbarium niche	Each	$178	$ 186	$186
Remove plaque or urn from New Columbarium niche	Each	$178	$ 186	$186
Mausoleum Crypt - Inurnment				
Open Mausoleum Crypt for inurnment	Each	$969	$ 1,032	$1,032
Open Mausoleum Crypt for burial	Each	$1,553	$ 1,647	$1,647
Historic Site Unit 1 Mausoleum - Burial				
Place Plaque or Vase on Mausoleum Crypt at Burial	Each	$217	$ 231	$231
Place Plaque or Vase on Mausoleum Crypt other than at Burial	Each	$468	$ 493	$493
Modern Site Unit 2 Mausoleum- Burial				
Open Underground Mausoleum Crypt for Burial	Each	$1,844	$ 1,954	$1,954
Place plaque or vase on Mausoleum Crypt at Burial	Each	$146	$ 308	$308
Place Plaque or Vase on Mausoleum Crypt after Burial	Each	$630	$ 670	$670
Memorial Garden				
Open Memorial Garden Site (place urn)	Each	$515	$ 548	$548
Place Plaque on Memorial Garden Site/Memorial Wall	Each	$178	$ 186	$186
Remove Urn from Memorial Garden Site	Each	$395	$ 416	$416

CEMETERY		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
CEMETERY SITE SALES				
Remove Plaque from Memorial Garden Site/Memorial Wall	Each	$468	$ 493	$493
Disinter				
Casket, Double Garden Crypt:				
Lower Level	Each	$1,559	$ 1,493	$1,493
Upper Level	Each	$1,406	$ 1,493	$1,493
In-Ground Casket:				
Child	Each	$969	$ 1,032	$1,032
Adult	Each	$1,406	$ 1,493	$1,493
Miscellaneous				
Remove Niche/Crypt Slug	Each	$323	$ 493	$395
Replace Cracked Mausoleum Granite Plate (Unit 1)	Each Plus Plate Cost	$178	$ 186	$186
Place Cameos	Per Hour	$178	$ 154	$154
Marker Rubbing	Per Hour	$126	$ 154	$154
Pallbearers – weekdays only	4 Staff	$308	$ 660	$660
Saturday Service (4-hour minimum at overtime rate)	Per Staff Hour	$615	$ 766	$766
Hourly Rate (2-hour minimum)	Per Staff Hour	$94	$ 165	$165
Overtime Hourly Rate (2-hour minimum)	Per Staff Hour	$103	$ 192	$192
DEED PROCESSING				
Deed Fee	Each	$255	$ 255	$255
Replacement Deed Fee	Each	$38	$ 38	$38
Deed Transfers, Document Processing Fee	Each	$255	$ 255	$255
CA Disposition of Human Remain Permit	Each	$12	$ 21	$21

PLANNING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
GENERAL PLAN AND ZONING AMENDMENTS				
General Plan Amendment	Deposit	$5,783	$ 9,563	$10,000
General Plan Land Use Map Amendment	Deposit		$ 3,701	$10,000
General Plan Update Fee	% of Permit Fee	5%	$ 0	5%
Zoning Ordinance Amendment	Deposit	$2,888	$ 9,563	$10,000
Zoning Map Amendment	Deposit	$2,888	$ 5,623	$10,000
Zoning Ordinance Interpretations	Each	$1,403	$ 1,598	$1,598
Interpretations of Permitted Uses Lists	Each	$1,403	$ 1,598	$1,598
SUBDIVISIONS				
Tentative Tract Map				
Base	Base	$2,617	$ 3,258	$3,258
Per Lot	Per Lot	$317	$ 323	$323
Final Tract Map				
Base + Recording Fee	Base	$2,617	$ 3,258	$3,258
Per Lot	Per Lot	$405	$ 323	$323
Lot Line Adjustment (Inland Zone - Outside the Coastal Zone)	Each	$2,159	$ 2,536	$2,536
Parcel Legality Determination (PLD)	Each	New	$ 1,052	$1,052
Final Parcel Map (plus recording fees)	Each	$2,287	$ 2,827	$2,827
Tentative Parcel Map	Each	$2,287	$ 2,827	$2,827
Lot Mergers	Each	$2,175	$ 2,536	$2,536
Certificate of Compliance	Each	$2,175	$ 2,115	$2,115

PLANNING		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
ENVIRONMENTAL REVIEW				
Environmental Impact Report (EIR)	Deposit	50% of EIR cost	$ 10,000	$10,000
Initial Studies/Mitigated Negative Declaration	Deposit	$7,027	$ 7,500	$7,500
Mitigation Monitoring	Deposit	$5,180	$ 5,500	$5,500
Environmental Enhancement Fund (Fund 5)	per sq. ft.	$2	$ 2	$2
USE PERMITS				
Use Permit and Amendments				
Single Family	Each	$2,089	$ 2,644	$2,644
Multi-Family, Commercial, Institutional, all other uses	Each	$0	$ 3,701	$3,701
Administrative Use Permits		$1,369	$ 1,382	$1,382
ARCHITECTURAL REVIEW				
Architectural Permit				
Single Family		$3,481	$ 3,701	$3,701
Multi-Family				
Four units or less	Base	$4,259	$ 4,350	$4,350
Five units or more	Base	$4,804	$ 4,781	$4,781
Commercial, Industrial, Institutional, all others				
10,000 sq. ft. or less	Base	$3,600	$ 3,701	$3,701
10,001- 50,000 sq. ft.	Base	$5,343	$ 5,384	$5,384
50,000-100,000 sq. ft.	Base	$10,791	$ 10,784	$10,784

PLANNING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
Over 100,000 sq. ft.	Base	$13,737	$ 13,435	$13,435
Administrative Architectural Permit	Each	$1,675	$ 1,802	$1,802
Administrative Design Change	Each	$1,675	$ 1,802	$1,802
COUNTER REVIEW PERMITS				
Counter Review & Determination				
No new square footage (Plus hourly fee if more than ½ hour required)	Per Permit	$241	$ 421	$421
New square footage (Plus hourly fee if more than 3 hours required)	Per Permit	$978	$ 1,047	$1,047
Zoning Confirmation for Business License Permit	Per Permit	$168	$ 210	$210
Massage Permit Application	Per Application	$168	$ 446	$446
SIGN PERMITS				
Downtown Sign Permit	Per Sign	$624	$ 1,133	$1,133
Administrative Sign Permit	Per Sign	$978	$ 950	$950
Sign Permit	Per Sign	$2,556	$ 1,133	$1,133
HISTORIC REVIEW				
Historic Demolition Permit	Each	$5,474	$ 5,860	$5,860
Off-site relocation permit	Each	$5,474	$ 5,860	$5,860
Historic Resources Inventory Determinations (Additions/Deletions)	Each	$2,093	$ 1,997	$1,997
On-site relocation permit	Each	$2,737	$ 3,077	$3,077
Historic Preservation Permit	Each	$1,979	$ 1,997	$1,997
Initial Historic Screening	Each	$515	$ 507	$507

PLANNING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
VARIANCES				
Variances	Each	$2,907	$ 3,701	$3,701
Administrative Variances	Each	$1,625	$ 2,031	$2,031
APPEALS				
Appeals of enforcement and zoning ordinance interpretations	Per Appeal	$2,782	$ 2,667	$2,667
Appeals/hearings of planning permits	Per Appeal	$1,192	$ 3,161	$3,161
Request for Zoning Administrative Hearing or Decision	Per Appeal	$571	$ 784	$784
Appeal fees for Coastal Development Permits	Per Appeal	$0	$ 3,161	$0
OVERLAY FEES				
Area of Special and Biological Significance	Each	5% of permit fees		
Butterfly Buffer	Each	5% of permit fees		
NOTICING				
Mailing	Each	Actual Cost	Actual Cost	Actual Cost
Publishing	Each	$379		Actual Cost
COASTAL DEVELOPMENT PERMITS				
Waiver of De Minims Development plan permit	Each	$2,453	$ 2,957	$2,957
Single Family Residence	Each	$2,453	$ 4,058	$4,058
Multi-family Residential				

PLANNING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
Base	Each	$2,978	$ 5,136	$5,136
Per Unit	Per Unit	$1,012	$ 1,100	$1,100
Commercial or Industrial	Each	Varies	$ 6,624	$6,624
Lot Line Adjustment (Coastal Zone)	Each	$2,453	$ 5,352	$5,352
Subdivision	Per Lot	$2,452	$ 3,744	$3,744
Emergency Permit	Each	$1,840	$ 1,683	$1,683
Amendment	% of Permit Fee	50%	$ 1	50%
Temporary Event	Each	$3,066	$ 5,243	$5,243
Extension	% of Permit Fee	50%	$ 228	$228
CODE ENFORCEMENT				
Abandonment or purchase of City property	Each	$3,686	$ 3,744	$3,744
Abandoned Property Registration Fee	Each	$234	$ 306	$306
Investigation fees, Code violations (Actual Cost)		Actual Cost		Actual Cost
VACANT PROPERTIES				
Inspection per property (min. or actual cost)	Each	$176	$ 204	$204
Registration per property	Each	$176	$ 204	$204
MISCELLANEOUS				
County Filing Fees	Each	As determined by County		
Density bonus	Each	$2,265	$ 2,873	$2,873
General File Research	Each	$64	$ 210	$210

PLANNING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
Hourly Fee	Per Hour	$130	$ 210	$210
Multiple Permits for Single Family residential applications only	Per Permit			
Outdoor Sidewalk Dining Permit	Each	$438	$ 938	$938
Sidewalk Vendor Permit	Each	$49	$ 307	$307
Permit Extension (Fee may be waived if permit is subject to Water Waiting List)	Each	25% of permit base fee	$ 227	$227
Pre-Application Meeting / Preliminary Project Review	Each	$269	$ 307	$307
Records Management and Retention (per file)	Each	$58	$ 194	$194
Rental Property Registration	Each	$238	$ 398	$398
Revocable License for Encroachments (plus hourly fee after 2 hours)	Each	$870	$ 1,035	$1,035
Statement of Compliance (hourly fee if more than 4 hours required)	Each	$491	$ 842	$842
Tree Permit with Development	Each	$296	$ 404	$404
Tree Permit with Development Violation	Each	$251	$ 404	$404
ABC License Review Fee	Each	$183	$ 202	$202
ANIMAL REGULATION - KEEPING AND BREEDING PERMITS - §10.16.040				
Animal Keeping Permit	Each	$182	$ 362	$362
Animal Keeping Permit Annual Renewal	Each	$44	$ 103	$103
Commercial Breeding Permit, Cats	Each	$155	$ 1,221	$1,221

PLANNING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
Commercial Breeding Permit, Dogs	Each	$155	$ 1,221	$1,221
Incidental Breeding Permit, Cats (per litter)	Each	$77	$ 284	$284
Incidental Breeding Permit, Dogs (per litter)	Each	$77	$ 284	$284
HOUSING FEES				
Rehabilitation & Sewer Loan Payoff Demand - Per Statement	Each	$127	$ 307	$307
Reconveyance Fee	Each	$193	$ 404	$404
County Recording Fee (billed by Monterey County Recorder)	Each	Actual Cost		Actual Cost
Housing Rehab Loan Fees (CalHOME Loan Funded Projects)				$0
Loan Processing	Each	$2,078	$ 3,349	$3,349
Underwriting	Each	$639	$ 631	$631
Property Tax Verification	Each	$64	$ 307	$307
Loan Document Preparation – SFD	Each	$375	$ 1,149	$1,149
Loan Document Preparation – Manufactured Housing	Each	$446	$ 2,201	$2,201
Inspection To Determine Scope of Work (Actual Cost)	Each	$276	$ 412	$412
Contractor Selection (Actual Cost)	Each	$276	$ 3,560	$3,560
Development of Work Write-up & Specifications (Actual Cost)	Each	$2,638	$ 4,401	$4,401
Project Bidding (Actual Cost)	Each	$1,285	$ 4,304	$4,304

PLANNING		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PLANNING				
Progress Inspection/Payment Authorization (Actual Cost)	Each	$138	$ 518	$518
Affordable Housing Monitoring - Annual Fee Per Household				$0
Affordable Units	Each	$127	$ 194	$194
Registered Units	Each	$127	$ 194	$194

BUILDING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
BUILDING AND PERMITTING FEES				
MISCELLANEOUS BUILDING PERMITS				
Electrical Permit (not requiring plan check)	Each	$ 153	$ 237	$ 237
Plumbing Permit (not requiring plan check)	Each	$ 153	$ 237	$ 237
Mechanical Permit (not requiring plan check)	Each	$ 153	$ 237	$ 237
Solar voltaic system	Each	$ 331	$ 670	$ 670
Single Family Residential Reroof	Each	New	$ 670	$ 670
Multi-Family / Commercial Reroof				
First Building	First Building	New	$ 602	$ 602
Each Additional Building	Each Additional	New	$ 130	$ 130
Kitchen / Bathroom Remodel (non-structural no exterior changes)	Each	New	$ 1,367	$ 1,367
PLAN CHECK				
Single Family Residential Plan Check	% of Building Permit Fee	$ 0.75	$ 0.75	$ 0.75
Commercial Plan Check	% of Building Permit Fee	$ 0.90	$ 0.95	$ 0.95
Non-Structural Plan Review (hourly not included in larger project)	Per Hour	$ 148	$ 174	$ 174
Structural Plan Review (hourly not included in a larger project)	Per Hour	$ 181	$ 174	$ 174
Plan review extension	Per 90 days	$ 750	$ 285	$ 285
On-site storm water management plan review and inspection	Each	$ 410	$ 558	$ 558

BUILDING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
BUILDING AND PERMITTING FEES				
Additional fee if LID requirements or additional time required, per hour	Per Hour	$ 130	$ 138	$ 138
Building Permits Extension	Per 90 days	$ 1,197	$ 922	$ 922
OTHER INSPECTIONS AND REVIEWS				
Inspections outside of normal business hours (4 hour minimum)	Per Hour	$ 356	$ 193	$ 193
Re-inspection fees assessed under provisions of CBC § 108.8	Per Hour	$ 239	$ 138	$ 138
Inspections for which no fee is specifically indicated	Per Inspection	$ 149	$ 207	$ 207
Traffic control plan review	Each	$ 188	$ 239	$ 239
Change of Street Address	Each	$ 188	$ 304	$ 304
Alternate methods of construction (hourly fee, 2 hour minimum)	Per Hour	$ 377	$ 753	$ 753
Owner/building surcharge in addition to permit fee	% of Permit Fee	$ 0.20	$ 0.20	$ 0.20
Electric Vehicle Charging Station - residential	Each	$ 277	$ 667	$ 667
Electric Vehicle Charging Station - commercial	Each	$ 471	$ 1,226	$ 1,226
Temporary Occupancy	Each	$ 377	$ 1,017	$ 1,017
ASBS Stormwater Inspection Fee min. deposit (Fee calculation of 26 rainy season inspections)	Deposit	$ 3,711	$ 3,751	$ 3,751

BUILDING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
BUILDING AND PERMITTING FEES				
Stormwater Annual Post-Construction BMP Inspection	Each	$ 215	$ 289	$ 289
Additional plan review due to changes/additions/revisions to approved plans per hour (1/2 hour min.)	Per 30 min	$ 115	$ 87	$ 87
Wireless Encroachment / Public Right of Way Permit.	Each	$ 527	$ 711	$ 711
Grading Inspection (hourly fee, 1-hour minimum)	Per Hour	$ 115	$ 192	$ 192
Grading Plan Checking (hourly fee, ½-hour minimum)	Per Hour	$ 115	$ 192	$ 192
Residential Zoning Records Report (RZRR) & Sewer Lateral Report (combined)	Each	$ 363	$ 860	$ 860
Sewer Lateral Report Review	Each	$ 154	$ 518	$ 518
Parklets				
New Parklet	Each	New	$ 905	$ 905
Parklet Renewal	Each	New	$ 300	$ 300
Excavation and Inspection Services				
Inspections for which no fee is specifically indicated (per hour with a ½-hour minimum)	Per Hour	$ 136	$ 192	$ 192
Encroachment permit: street opening/excavation	Each	$ 261	$ 650	$ 650
Encroachment permit: driveway	Each	$ 270	$ 650	$ 650
Encroachment permit: sidewalk	Each	$ 178	$ 650	$ 650

BUILDING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
BUILDING AND PERMITTING FEES				
Encroachment: temporary (e.g., building construction requiring scaffolding in Right- of-Way	Each	$ 270	$ 650	$ 650
Encroachment permit: permanent underground (e.g. utility line)	Each	$ 270	$ 650	$ 650
Encroachment permit: permanent above ground (e.g. retaining wall, fence, etc.)	Each	$ 270	$ 650	$ 650
Encroachment permit hourly processing fee, if more than 2 hours review or inspection required.	Hourly	$ 136	$ 192	$ 192
Annual encroachment permit (Encompasses up to 40 utility openings per year)	Each	$ 9,713	$ 10,476	$ 10,476
CONSTRUCTION INSPECTION: (Based on Project Valuation)				
Combination Permit Fees: (Building or Building + M + E + P)				
$0 - $500	Base	$ 142	$ 191	$ 191
$501 - $2,000	Base	$ 142	$ 191	$ 191
$501 - $2,000	Each. Addl. $100 or fraction thereof	$ 12	$ 16	$ 16
$2,001 - $25,000	Base	$ 300	$ 424	$ 424
$2,001 - $25,000	Each Addl. $1,000 or fraction thereof	$ 49	$ 58	$ 58
$25,001 - $50,000	Base	$ 1,361	$ 1,747	$ 1,747

BUILDING		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
BUILDING AND PERMITTING FEES				
$25,001 - $50,000	Each Addl. $1,000 or fraction thereof	$ 35	$ 39	$ 39
$50,001 - $100,000	Base	$ 2,188	$ 2,730	$ 2,730
$50,001 - $100,000	Each Addl. $1,000 or fraction thereof	$ 21	$ 29	$ 29
$100,001 - $500,000	Base	$ 3,355	$ 4,199	$ 4,199
$100,001 - $500,000	Each Addl. $1,000 or fraction thereof	$ 17	$ 24	$ 24
$500,001 - $1,000,000	Base	$ 10,824	$ 13,665	$ 13,665
$500,001 - $1,000,000	Each Addl. $1,000 or fraction thereof	$ 16	$ 21	$ 21
$1,000,001 - $5,000,000	Base	$ 19,254	$ 23,964	$ 23,964
$1,000,001 - $5,000,000	Each Addl. $1,000 or fraction thereof	$ 9.00	$ 1.56	$ 1.56
$5,000,001 - $10,000,000	Base	$ 24,254	$ 30,191	$ 30,191
$5,000,001 - $10,000,000	Each Addl. $1,000 or fraction thereof	$ 9.00	$ 1.00	$ 1.00
$10,000,001+	Base	$ 28,254	$ 35,192	$ 35,192
$10,000,001+	Each Addl. $1,000 or fraction thereof	$ 9.00	$ 0.50	$ 0.50
Single Permit: (M / E / P)				
$0 - $500	Base	$ 126	$ 191	$ 191
$501 - $2,000	Base	$ 123	$ 191	$ 191
$501 - $2,000	Each. Addl. $100 or fraction thereof	$ 6	$ 11	$ 11

BUILDING		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
BUILDING AND PERMITTING FEES				
$2,001 - $25,000	Base	$ 233	$ 355	$ 355
$2,001 - $25,000	Each Addl. $1,000 or fraction thereof	$ 35	$ 39	$ 39
$25,001 - $50,000	Base	$ 988	$ 1,242	$ 1,242
$25,001 - $50,000	Each Addl. $1,000 or fraction thereof	$ 22	$ 30	$ 30
$50,001 - $100,000	Base	$ 1,582	$ 1,984	$ 1,984
$50,001 - $100,000	Each Addl. $1,000 or fraction thereof	$ 16	$ 20	$ 20
$100,001+	Base	$ 2,397	$ 2,981	$ 2,981
$100,001+	Each Addl. $1,000 or fraction thereof	$ 11	$ 15	$ 15

FIRE		Attachment III - FY 24-25 Recommended Fees		
Fire Services are provided by Monterey County Agreement. Therefore, there is NO HOURLY RATE				

LIBRARY		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
Other Fees and Rentals				
Photocopies				
Black and White	Per Page	$ 0	$ 0	$ 0.15
Color	Per Page	$ 0	$ 0	$ 0.25
Computer Printout	Per Page	$ 0	$ 0	$ 0.15
Card Replacement				
Replace Borrower's Card	Each	$ 3	$ 4	$ 4
Lost / Damaged Material Replacement / Repair				
Re-Cataloging / processing for lost book or recording	Each	$ 3	$ 4	$ 4
Lost or damaged items	Each	Actual Cost	$ -	Actual Cost

PT PINOS LIGHTHOUSE		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
POINT PINOS LIGHTHOUSE				
Private Lighthouse Tour Fee (2 Hour)	Per Tour	$ 135	$ 150	$150
One-Time Events	Each	New	Varies	

LOCAL WATER PROJECT		Attachment III - FY 24-25 Recommended Fees		
Cost Per Gallon Calculation				
Annual Water Production (AcreFoot)	125			
Costs				
Local Water Proje Contract Services	$410,000			
Local Water Proje Utilities	$375,000			
Local Water Proje Bldg Repair, Main	$5,000			
Local Water Proje Equip Repair, Mai	$10,000			
Local Water Proje Internal Service	$11,000			
Local Water Proje Fund Transfers	$600,000			
Local Water Proje Indirect Cost All	$19,000			
Local Water Proje Interest Pmts	$45,467			
Local Water Proje Principal Pmts	$160,982			
Total Costs	**$1,636,449**			
Average Water Sales (AcreFoot)	125	FY18 & 19 had sales of 95.81 and 95.71		
Liquid Gallons per AcreFoot	325,851			
Average Water Sales (Gallons)	**40,731,375**			

LOCAL WATER PROJECT		Attachment III - FY 24-25 Recommended Fees		
Cost Per Gallon Calculation				
Cost Per AcreFoot)	$13,092			
Cost Per Gallon	**$0.040**			
Current Fee	$0.029			
Difference	-$0.011			

POLICE		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
POLICE DEPARTMENT				
ANIMAL REGULATION — DOG LICENSES - PGMC § 10.04.010				
Annual Dog License Fee, Altered Dog	Annual	$ 23	$ 52	$ 25
Annual Dog License Fee, Unaltered Dog	Annual	$ 52	$ 52	$ 55
Dog License, Delinquent Penalty (after 30 days)	Per Offense	$ 27	$ 27	$ 30
Dog License, Replacement Tag	Each	$ 10	$ 12	$ 11
ANIMAL REGULATION - IMPOUND FEES - PGMC § 10.04.100				
Impound Fee (Initial Impound) Licensed & Altered	Each	$ -	$ 185	$ 55
Impound Fee (Initial Impound) Unlicensed & Altered	Each	$ -	$ 259	$ 78
Impound Fee (2nd & Subsequent) Altered	Each	$ 89	$ 185	$ 90
Impound Fee (Initial Impound) Licensed & Unaltered	Each	$ 89	$ 185	$ 90
Impound Fee (Initial Impound) Unlicensed & Unaltered	Each	$ 89	$ 259	$ 90
Impound Fee (2nd & Subsequent) Unaltered	Each	$ 179	$ 185	$ 180
Boarding Fee, per day PG Kennels	Each	$ 43	$ 255	$ 50
Boarding Fee, transported to SPCA	Each	$ 184	$ 184	$ 184
ALARM REGISTRATION & RESPONSE				
Alarm Registration	Annual	$ 38	$ 38	$ 38
Alarm Renewal (within 30 Days of Alarm Permit Expiration Date)	Annual	$ 5	$ 5	$ 5

POLICE		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
POLICE DEPARTMENT				
False Alarm - First Response - Unpermitted Alarm	Each	$ 150	$ 335	$ 155
False Alarm - First Response	Each	$ -	$ 184	$ -
False Alarm - Second Response	Each	$ 64	$ 184	$ 65
False Alarm - Third Response	Each	$ 179	$ 184	$ 180
False Alarm - Fourth Response	Each	$ 297	$ -	$ 184
False Alarm - Fifth and Subsequent Response	Each	$ 416	$ 184	$ 184
Duress/Panic/Robbery Alarm Violation	Each	$ 358	$ 389	$ 360
Late Fee (if not paid within 30 days)	Per Offense	$ 28	$ 28	$ 28
ADMINISTRATIVE AND MISCELLANEOUS				
Accident Report, Compilation and Copying (per report)	Each	$ 10	$ 38	$ 11
Booking Fee	Each	$ 31	$ 36	$ 36
Clearance Letter – No Record on File	Each	$ 37	$ 38	$ 40
Clearance Letter – Record on File	Each	$ 28	$ 50	$ 30
Crime Report, Compilation and Copying (per report)	Each	$ 12	$ 69	$ 21
Information Report, Compilation and Copying (per report)	Each	$ 5	$ 38	$ 38
Evidence Video Reproduction	Each	$ 45	$ 312	$ 156
Fingerprint Processing (Live Scan administration)	Each	$ 30	$ 76	$ 35
Removal of Traffic Boot	Each	$ 141	$ 196	$ 145
Repossession Receipt	Each	$ 16	$ 15	$ 15

POLICE		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
POLICE DEPARTMENT				
Sign-off of tickets by other agencies	Each	$ 18	$ 38	$ 20
Vehicle Release Fee	Each	$ 238	$ 419	$ 240
PARKING PERMITS & FEES				
Contractor's Parking Permit, Monthly	Monthly	$ 44	$ 265	$ 49
Parking Meter Rate per Hour	Per Hour	$ 2	$ 2	$ 2
Public Parking Lot Permit Processing, Delinquency Penalty	Per Offense	$ 28	$ 73	$ 30
Public Parking Lot Permit, Annual	Annual	$ 405	$ 2,435	$ 415
Public Parking Lot Permit, 12-Month, TRANSFERABLE	Annual	$ 515	$ 2,435	$ 525
Public Parking Lot Permit, Monthly	Monthly	$ 44	$ 225	$ 46
Residential Parking Permit Processing, per permit, Annual	Annual	$ 11	$ 33	$ 15
Temporary Overnight Parking Permit Program - Initial Residential Registration	Each	$ 26	$ 26	$ 26
Temporary Overnight Parking - 72 Hour Resident Permit	Each	$ 4	$ 5	$ 5
Temporary Overnight Parking Permit - Weekly - Exemption	Weekly	$ 100	$ 97	$ 97
Temporary Overnight Parking Permit - Annual - Exemption	Annual	$ 416	$ 197	$ 197
Timed Space - Daily	Per Day	$ 5	$ 5	$ 5
POLICE RESPONSE - DUI, Peace Disturbance, Social Hosting, & Special Events				

POLICE		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
POLICE DEPARTMENT				
Police Commander Hourly Rate	Per Hour	$ 220	$ 219	$ 219
Police Sergeant Hourly Rate	Per Hour	$ 211	$ 246	$ 211
Police Officer Hourly Rate	Per Hour	$ 186	$ 216	$ 195
Police Services, Animal Control & Parking Enforcement Community Service Officer Hourly Rate	Per Hour	$ 156	$ 143	$ 143
Patrol Vehicle Hourly Rate	Per Hour	$ 64	$ 131	$ 70
MISCELLANEOUS PERMITS & DEPOSITS				
Amplified Sound Permit	Each	$ 89	$ 133	$ 95
Drone Permit Fee - Daily	Per Day	$ 23	$ 43	$ 25
Drone Permit Fee - Annual	Annual	$ 87	$ 110	$ 95
Firearms Storage: Administrative Release Fee	Each	$ 446	$ 465	$ 465
Garage Sale Permit Processing	Each	$ 10	$ 20	$ 15
Refuse Container or Storage Container Permit	Each	$ 59	$ 79	$ 65
Refuse Container or Storage Container Permit Renewal/Extension	Each	$ 30	$ 31	$ 31
Transportation of Large Structure deposit – variable fee based on size/type of structure - unused portion to be reimbursed	Each	$ 224	$ 149	$ 149
Transportation of Large Structure permit – per structure	Per Structure	$ 639	$ 802	$ 640
Correctable Code Violation - Admin Fee	Each	$ 10	$ 55	$ 17
Film Permit Application Fee	Each	$ 162	$ 160	$ 160

PUBLIC WORKS		Attachment III - FY 24-25 Recommended Fees		
		Cost Per Unit Results		
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PUBLIC WORKS				
MISCELLANEOUS FEES				
Requested Special Traffic Review	per hour	Charged at hourly rate	$ 189	$189
Banner Installation and Removal (Downtown Street Lights)	per pole	$ 47	$ 76	$76
Memorial Bench	per bench	$ 449	$ 632	$632
Memorial Bench maintenance (5 years)	every 5 years	$ 589	$ 759	$759
Memorial Tree	per tree	$ 1,046	$ 1,111	$1,111
Annual Solid Waste Exemption Application	per application	$ 97	$ 340	$340
News rack Annual Application Fee	per application	$ 61	$ 94	$94
News rack Program Fee Half Rack	Each	$ 40	$ 76	$76
News rack Program Fee Full Rack	Each	$ 84	$ 114	$114
Electrical Vehicle Charging Stations		Equal to PG&E Peak Demand Rate		
TREE FEES				
Application Fee	Flat	$ 105	$ 377	$190
Removal or Trimming				
Single Tree	Flat	$ 71	$ 92	$50
Each Additional Tree	Each Tree	$ 33	$ 42	$20
Tree Replacement In-Lieu Fee	Deposit	$ 901	$ 994	$500
Tree Removal with Development				
Single Tree	Per Tree	$ 311		
Each Additional Tree	Each Tree	New		
Tree Appeal	Each	$ 236	$ 683	$340

PUBLIC WORKS		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
PUBLIC WORKS				
TREE PERMIT VIOLATION				
Trimming Prior to Approval	Penalty	New	$ 750	$750
Removal Prior to Approval	Penalty	New	$ 1,500	$1,500
STORMWATER				
Tier 3 and 4 – 15,000 square feet of impervious surface or greater (incl. 2 reviews)	Each	$ 1,840	$ 1,923	$1,923
Tier 2 – 5,000-15,000 square feet impervious surface (incl. 2 reviews)	Each	$ 1,226	$ 1,250	$1,250
Tier 1 – 2,500-5,000 square feet impervious surface	Each	$ 771	$ 866	$866
Each subsequent Tier 2 review	Per Review	$ 540	$ 577	$577
Inspection Fee	Per Inspection	$ 144	$ 192	$192
Annual Inspection and re-inspection	Per Inspection	$ 215	$ 289	$289
Each subsequent Tier 1 review	Per Review	$ 340	$ 385	$385

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
PRE-SCHOOL (MONTHLY FEES)				
2 Days Per Week				
Resident/ Non- Profit	per month	$ 197	$ 221	$ 200
Non- Resident / Commercial	per month	$ 217	$ 221	$ 220
3 Days Per Week				
Resident/ Non- Profit	per month	$ 311	$ 331	$ 315
Non- Resident / Commercial	per month	$ 344	$ 331	$ 350
5 Days Per Week				
Resident/ Non- Profit	per month	$ 506	$ 552	$ 510
Non- Resident / Commercial	per month	$ 562	$ 552	$ 552
PRE-SCHOOL CAMPS (WEEKLY FEES)				
Resident/ Non- Profit	Per Week	$ 98	$ 320	$ 102
Non- Resident / Commercial	Per Week	$ 108	$ 320	$ 112
SPORTS				
Tots (3-5 years)				
Class / Clinic	per participant	$ 98	$ 151	$ 102
Class / Clinic - Non-Residential	per participant	$ 108	$ 100	$ 112
Youth (5-18 years)				
Tournament or Clinic - Resident	per participant	$ 99	$ 301	$ 109
Tournament or Clinic - non-resident	per participant	$ 109	$ 301	$ 119
Camp	per participant		$ 277	$ 225
League - resident	per participant	$ 99	$ 477	$ 109
League -non-resistant	per participant	$ 109	$ 477	$ 119
Adult (18+ years)				

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
Tournament or Clinic - non-contact - resident	per participant		$ 274	$ 109
Tournament or Clinic - non-contact - non-resident	per participant		$ 274	$ 119
Tournament or Clinic - contact - resident	per participant		$ 274	$ 208
Tournament or Clinic - contact - non-resident	per participant		$ 274	$ 238
League - non-contact sport - resident	per participant		$ 358	$ 60
League - non-contact sport - non resident	per participant		$ 358	$ 70
League - contact sport - resident	per participant		$ 358	$ 90
League - contact sport - non resident	per participant		$ 358	$ 100
PROGRAMS				
Full Day Youth Camp (5 day week)				
Resident/ Non- Profit	per week	$ 197	$ 459	$ 205
Non- Resident / Commercial	per week	$ 217	$ 459	$ 226
Full Day Youth Camp (4 day week)				
Resident/ Non- Profit	per week	$ 157	$ 367	$ 163
Non- Resident / Commercial	per week	$ 175	$ 367	$ 182
Full Day Youth Camp (3 day week)				
Resident/ Non- Profit	per week	$ 116	$ 275	$ 121
Non- Resident / Commercial	per week	$ 130	$ 275	$ 135
Daily Drop-In (per Day)				
Resident/ Non- Profit	per day	$ 45	$ 92	$ 50
Non- Resident / Commercial	per day	$ 49	$ 92	$ 50
SWIMMING (during the Summer Season)				

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
Tot Swim Lessons, 8 class sessions, per child				
Resident/ Non- Profit	per child	$ 82	$ 232	$ 90
Non- Resident / Commercial	per child	$ 82	$ 232	$ 100
Youth Swim Lessons, 8 class sessions, per child				
Resident/ Non- Profit	per child	$ 82	$ 497	$ 90
Non- Resident / Commercial	per child	$ 82	$ 497	$ 100
Private Swim Lessons, per class, per child per 30 minute lesson				
Resident/ Non- Profit	per child	$ 38	$ 423	$ 42
Non- Resident / Commercial	per child	$ 43	$ 423	$ 47
Semi-private Swim Lessons, per class, per child (2 students required) per 30 minute lesson Group Swim Lessons				
Resident/ Non- Profit	per 30 minute session	$ 21	$ 212	$ 23
Non- Resident / Commercial	per 30 minute session	$ 23	$ 212	$ 25
Recreational Swimming: Lovers Point Pool, (2 Hours)				
Resident/ Non- Profit	per day	$ 3	$ 37	$ 3
Non- Resident / Commercial	per day	$ 3	$ 37	$ 4
Private use of swimming pool (rental fee per hour)				
Resident/ Non- Profit	per hour	$ 112	$ 116	$ 115
Non- Resident / Commercial	per hour	$ 189	$ 116	$ 115

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	Unit	Current Fee	Total Cost	Staff Recommended Fee
DEPARTMENT NAME				
OTHER PROGRAMS, CONTRACTUAL AGREEMENTS				
Contractual Agreements for Recreational Programs in Facilities and Parks				
Resident/ Non- Profit		Contract	Contract	
Non- Resident / Commercial		Contract	Contract	
Adult Contract Recreation Programs				
Resident/ Non- Profit		Contract	Contract	
Non- Resident / Commercial		Contract	Contract	
Youth Special Trips/Excursions (85% of cost)				
Resident/ Non- Profit		Contract	Contract	
Non- Resident / Commercial		Contract	Contract	
FACILITY RENTAL				
Picnic Facility Reservation Permit: Caledonia, George Washington, Arnett Park, and similar Picnic Facilities				
1 – 50 persons				
Resident/ Non- Profit	Per Day	$ 41	$ 96	$ 45
Non- Resident / Commercial	Per Day	$ 69	$ 96	$ 80
51 + persons				
Resident/ Non- Profit	Per Day	$ 99	$ 167	$ 100
Non- Resident / Commercial	Per Day	$ 71	$ 167	$ 150
Court Reservation Fees: Volleyball, Basketball, Tennis and Pickleball				

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
Cost Per Unit Results				
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
Resident/ Non- Profit	Per Day	$ 22	$ 58	$ 25
Non- Resident / Commercial	Per Day	$ 41	$ 58	$ 45
Community Center, Lebeck Room (2 hr. minimum rental)				
Resident/ Non- Profit	Per Hour	$ 116	$ 250	$ 120
Non- Resident / Commercial	Per Hour	$ 206	$ 250	$ 200
Community Center, Lebeck Room – Security Deposit				
Resident/ Non- Profit	Deposit	$ 557	$ 557	$ 557
Non- Resident / Commercial	Deposit	$ 557	$ 557	$ 557
Community Center, Kuwatani/Scout Room per hr. (Minimum of 2 hours)				
Resident/ Non- Profit	Per Hour	$ 40	$ 48	$ 45
Non- Resident / Commercial	Per Hour	$ 68	$ 48	$ 75
Chautauqua Hall Facility 2 hr. minimum rental)				
Resident/ Non- Profit	Per Hour	$ 449	$ 140	$ 120
Non- Resident / Commercial	Per Hour	$ 785	$ 140	$ 140
Chautauqua Hall Facility – Security Deposit				
Resident/ Non- Profit	Deposit	$ 557	$ 557	$ 557
Non- Resident / Commercial	Deposit	$ 577	$ 557	$ 557
Youth Center (2 hr. minimum rental) See - NOTE A				
NOTE A> Pending on staff availability				
Resident/ Non- Profit	Per Hour	$ 116	$ 75	$ 75
Non- Resident / Commercial	Per Hour	$ 206	$ 75	$ 215
Little House at Jewell Park				

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
Resident/ Non- Profit	Per Hour	$ 19	$ 53	$ 20
Non- Resident / Commercial	Per Hour	$ 35	$ 53	$ 40
Lovers Point Park – Per Hour Fee for 1 – 100 Persons (Special Events or Special Use)				
Resident/ Non- Profit	Per Hour	$ 182	$ 626	$ 190
Non- Resident / Commercial	Per Hour	$ 318	$ 626	$ 330
Lovers Point Park – Per Hour Fee for Over 100 Persons (Special Events or Special Use)				
Resident/ Non- Profit	Per Hour	$ 382	$ 1,100	$ 390
Non- Resident / Commercial	Per Hour	$ 382	$ 1,100	$ 390
Lovers Point Wedding or Staging Area; Parks, Pt. Pinos LH and E. Dyke fee NOTE B> Plus fully burdened staff rate				
NOTE B> Plus fully burdened staff rate				
Resident/ Non- Profit	Per Hour	$ 187	$ 578	$ 280
Non- Resident / Commercial	Per Hour	$ 349	$ 578	$ 560
Recreation Trail Rental Fee Per Hour for 1 – 100 Persons				
Resident/ Non- Profit	Per Hour	$ 190	$ 304	$ 250
Non- Resident / Commercial	Per Hour	$ 190	$ 304	$ 300
Recreation Trail Rental Fee Per Hour for over 100 Persons				
Resident/ Non- Profit	Per Hour	$ 382	$ 400	$ 200

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
Non- Resident / Commercial	Per Hour	$ 382	$ 400	$ 400
MUNICIPAL SOFTBALL PARK RENTAL POLICY				
Daily Use				
Resident/ Non- Profit	per day	$ 224	$ 443	$ 230
Non- Resident / Commercial	per day	$ 391	$ 443	$ 400
Field Use, Per Hour				
Resident/ Non- Profit	per hour	$ 33	$ 93	$ 35
Non- Resident / Commercial	per hour	$ 56	$ 93	$ 60
Lights per hr.				
Resident/ Non- Profit	per hour	$ 28	$ 29	$ 30
Non- Resident / Commercial	per hour	$ 28	$ 29	$ 30
Staff, Per hour				
Resident/ Non- Profit	per hour	Fully burdened Rate		
Non- Resident / Commercial	per hour	Fully burdened Rate		
Deposit on daily rate (same as prior Class II, Class III, Class IV)				
Resident/ Non- Profit	Deposit	$ 187	$ 187	$ 187
Non- Resident / Commercial	Deposit	$ 187	$ 187	$ 187
MISCELLANEOUS RECREATION FEES & CHARGES				
Refund Processing Fee (if within written time frame)				

PARKS AND RECREATION		Attachment III - FY 24-25 Recommended Fees		
	Cost Per Unit Results			
Fee Name	**Unit**	**Current Fee**	**Total Cost**	**Staff Recommended Fee**
DEPARTMENT NAME				
Resident/ Non- Profit		25% of refund	5% of refund	
Non- Resident / Commercial		25% of refund	5% of refund	
SPECIAL EVENT FEES				
Application fee – Events with 1 – 999 participants				
Resident/ Non- Profit	per application	$ 230	$ 827	$ 250
Non- Resident / Commercial	per application	$ 230	$ 827	$ 250
Application fee – Events with more than 1,000 participants				
Resident/ Non- Profit	per application	$ 839	$ 1,985	$ 850
Non- Resident / Commercial	per application	$ 839	$ 1,985	$ 850
SPECIAL EVENT INSURANCE PREMIUMS				
All private parties, wedding receptions, anniversaries, and events with or without alcohol or admissions fees				
Resident/ Non- Profit		Cost + 10%	Cost + 10%	Cost + 10%
Non- Resident / Commercial		Cost + 10%	Cost + 10%	Cost + 10%

RESOLUTION NO. 24-xxx

ESTABLISHING FEES AND CHARGES FOR CERTAIN ACTIVITIES

FINDINGS

1. Pacific Grove Municipal Code (PGMC) Chapter 6.02 provides for the establishment of fees and charges for service, and;

2. The City of Pacific Grove held a public hearing on September 4, 2024 regarding changes to the Master Fee Schedule, and;

3. Notice of a Public Hearing to be held on September 4, 2024 was published in accordance with PGMC Chapter 6.02 and relevant California Government Code sections, and;

4. The City Council desires to adopt the updated Master Fee Schedule for FY 2024-25, and;

5. The Action proposed by this Resolution does not constitute a "Project" as that term is defined under California Environmental Quality Act (CEQA), CEQA Guideline section 15378.

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

1. The Council determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.

2. After receiving a report of the proposed changes in fees, charges, and costs contained in the City of Pacific Grove FY 2024-25 Master Fee Schedule, and having held a public hearing on the changes, the City Council hereby authorizes the changes including any changes as directed by Council.

3. Per Government Code 66017, approved changes that relate to community development services shall be effective 60 days following final action by the City Council on the resolution on November 4, 2024. All other non-community development fees shall be effective on September 16, 2024. In the case of reductions, the reductions can be implemented on November 4, 2024, on a case-by-case basis, by decision of the City Manager.

4. Every City Department is requested to reproduce, display, and distribute copies of their fee schedules as deemed appropriate. The Master Fee Schedule shall also be posted on the City's website and available at the Library.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 4th day of September, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE, Mayor

ATTEST:

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____
BRIAN A PIERIK, City Attorney

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:	September 04, 2024
SUBJECT:	Direction to the City Manager regarding Outdoor Dining Guidelines for Bulb-Outs
CEQA:	Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

City Council to review, comment, and provide direction to the City Manager regarding:

1. The draft goals and objectives of the Outdoor Dining Guidelines for Bulb-Outs under development;
2. The current precedent of the Pacific Grove outdoor dining streetscapes; and
3. Example features, structures and amenities of model and poor outdoor dining facilities noted in field visits of various communities.

DISCUSSION

At the June 19, 2024, City Council Meeting, the Council authorized the City Manager to retain a consultant to draft Outdoor Dining Guidelines centered on the bulb-outs, specifically to the southeast corner of Lighthouse Avenue and Forest Avenue. The purpose of the guidelines is to provide for quality outdoor dining amenities and experience that preserves and enhances the character and history of Pacific Grove. These guidelines will eventually be incorporated into Guidelines for all outside dining in the Lighthouse Business District. The southeast corner of Lighthouse and Forest is the location of a sidewalk expansion project that will be constructed in the coming months and will accommodate outdoor dining features and amenities for the restaurants that front this area of sidewalk. These guidelines will lay a foundation for the larger Lighthouse Business District Outside Dining Guidelines that will follow this initial effort. As such, the preparation of the initial guidelines should be completed with the larger picture in mind of what the City will want to employ in the larger District.

BFS Landscape Architects has been engaged to assist the City with developing the Outdoor Dining Guidelines. The firm's work, led by Oona Johnsen, has begun and a foundation of information on the base guidelines has started to come together. To move this project to the final draft stage for City Council consideration, a City Council discussion, feedback and direction is necessary.

Attached to this report is the base draft sections of the Guidelines that encompass the goals and objectives, "existing conditions", and various examples of model amenities, features, structures, etc. Before the final draft can be developed for consideration of the City Council, staff and Ms. Johnsen are requesting City Council feedback and direction on these topics.

To prepare the attached report and the presentation materials, Ms. Johnsen reached out to the property owners and business owners of the affected properties at the southeast corner of Lighthouse Avenue and Fountain Avenue. The feedback is not entirely complete at this time with scheduling difficulties, but good conversations and feedback have occurred to prepare us for this stage in the discussion. Various community outdoor dining guidelines were also reviewed, and site visits were conducted to compile the information to present to the City Council for feedback. The communities surveyed include: Sausalito, San Mateo, Santa Cruz, San Francisco, Palo Alto and Santa Clarita.

Following City Council feedback and direction, Ms. Johnsen and staff will take these next steps:

1. Incorporate comments from City Council and develop the Draft Guidelines.
2. Provide the Draft Guidelines to the Business Improvement District Board and Economic Development Committee for review and comment.
3. Incorporate comments from the BID and EDC and refine the Draft Guidelines.
4. Provide the refined draft Guidelines to the Planning Commission for review and comment.
5. Incorporate comments from the Planning Commission to develop the Final Guidelines.
6. Present Final Guidelines to City Council for final approval.

The work effort will continue at a priority pace while taking the necessary steps to ensure we get the valuable input needed to lay the important foundation for the larger Lighthouse Business District Outdoor Dining Guidelines that will follow this effort.

OPTIONS

Take other action related to this item.

FINANCIAL IMPACT:

There is no direct financial impact as a result of this item.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Partial PG Outdoor Dining Guidelines Document

CITY OF PACIFIC GROVE

OUTDOOR DINING GUIDELINES

(BULB OUT CONDITIONS)

Updated: August 2024

INDEX

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a. Goals
b. Objectives

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PROPOSED CONDITIONS

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- Model Examples – Descriptions
- Poor Examples – Descriptions
- Images – Model Examples & Poor Examples

B. Precedent Outdoor Dining Guidelines

LOCATION

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ELIGIBILITY

DESIGN GUIDELINES

A. Layout
B. Materials
C. Function & Maintenance

APPLICATION & APPROVAL PROCESS

PURPOSE & GOALS

A. Project Description

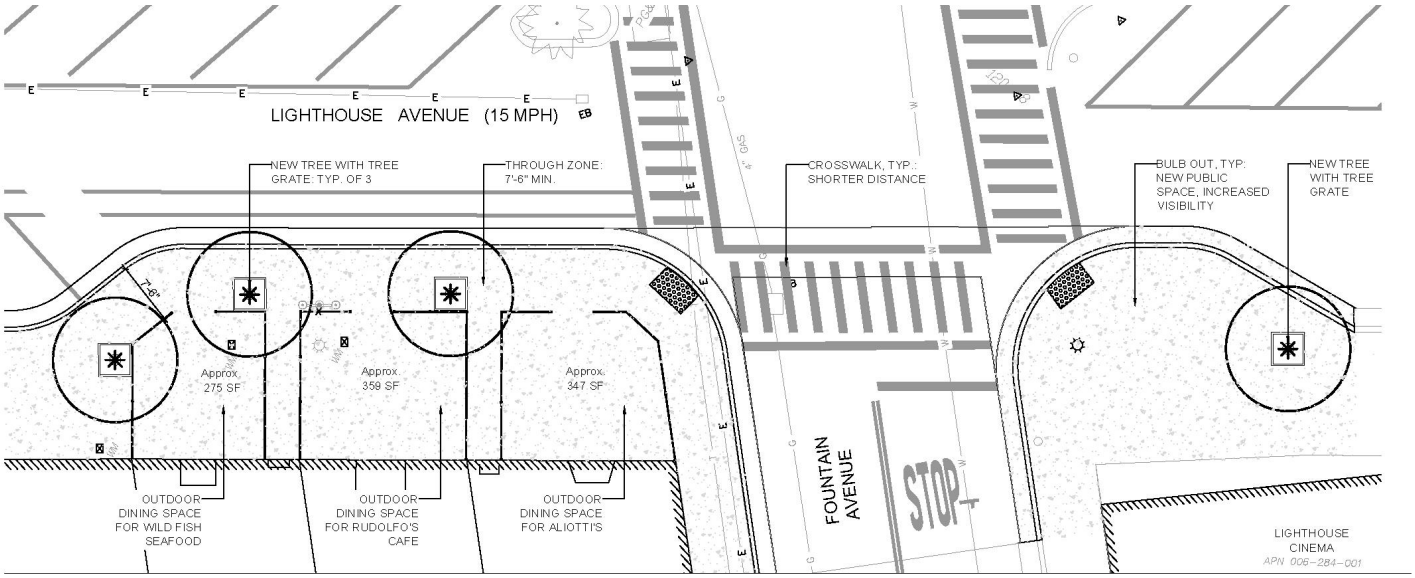
This document is an overview of the policies, procedures, and design guidelines associated with the creation of outdoor dining areas within the public right-of-way, specifically in the form of bulb-outs for the Lighthouse Avenue Sidewalk Widening project (LASW) within the Lighthouse Business District in the City of Pacific Grove (PG). Refer to plan in Figure 1. Overall goals and objective for outdoor dining guidelines are below.

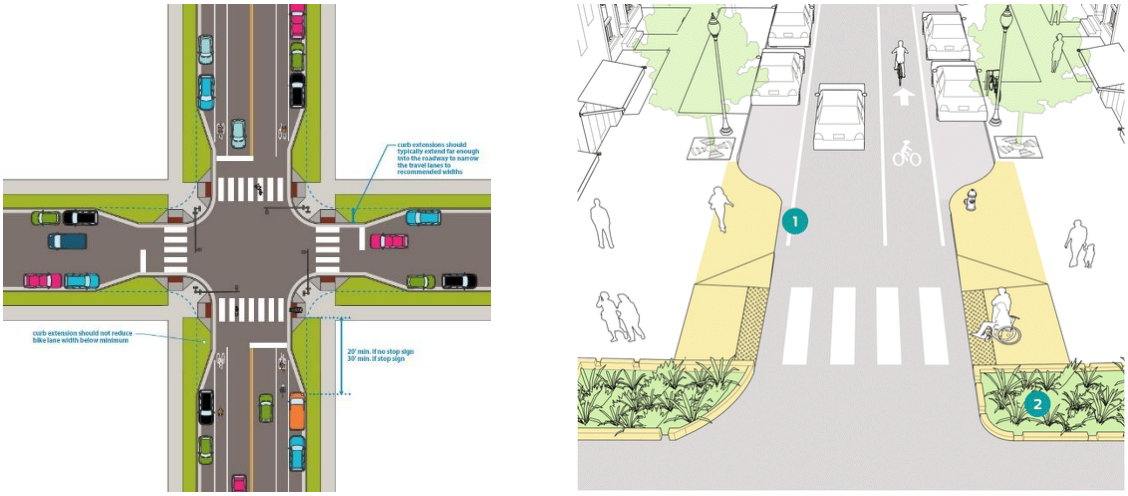
Goals

1. To ensure the development of quality outdoor seating areas, the appropriate use of the public realm for outdoor dining while preserving and enhancing the character and history of Pacific Grove.
2. Increase pedestrian safety.

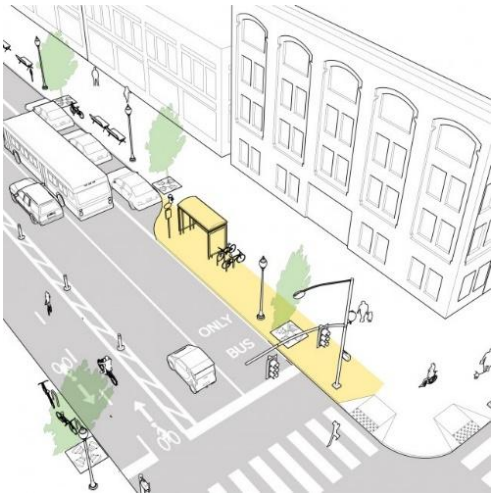
Objectives

1. Activating the streetscape by maintaining visibility to the outdoor dining areas.
2. Provide a continuous and unified design aesthetic along the streetscape that is in character with Lighthouse Avenue.
3. Use materials that don't obstruct but preserve the views to the architectural character of the building façade, entry, and storefront.
4. Require commercial grade furnishings and materials for the durability and safety of pedestrians.
5. Adhering to all local regulations and code requirements.
6. Installing clear maintenance guidelines so outdoor dining spaces remain clean, safe, and functional.





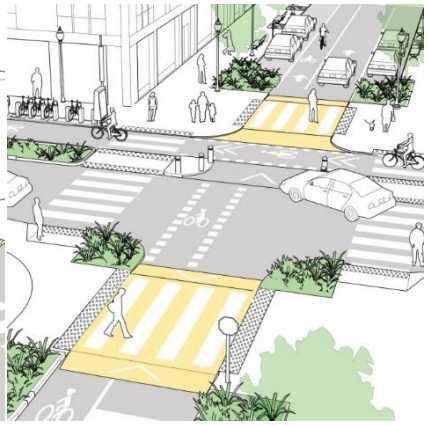
Figures 2 & 3: Bulb outs create shorter walking distances at intersections.





Figures 4 & 5: Bulb outs create more public realm space at corners that can be utilized for a variety of purposes, i.e. transit stop, planting, seating areas, street trees.





Figures 6 & 7: Bulb outs increase visibility for pedestrians and vehicles alike.

Future text for full manual:

Applicants and designers in the City of Pacific Grove are strongly encouraged to read these guidelines in their entirety when they are first thinking about proposing future outdoor dining in bulb-out areas. Activating exterior spaces within public right of way fall under separate approval and permitting processes. Any applicant attempting to activate these public areas should first contact the Community Development Department.

Understanding the design guidelines will help the applicant achieve a successful outdoor dining proposal for bulb-out areas. It may reduce the time it takes to receive a permit and will likely result in a superior design that is cohesive for the Lighthouse Business District.

DEFINITIONS

A. "Outdoor Dining": Dining spaces located outdoors adjacent to the food establishment for the same eating activities that occur within the establishment, weather permitting. The outdoor area may be located on sidewalks, plazas, in parking spaces as temporary 'parklets', or other open areas. Refer to "Sidewalk Dining".

B. "Sidewalk Dining" (temporary): Tables, chairs, benches, umbrellas, waiter stands, barriers, tray stands, planters, trash receptacles, and other furniture normally associated with dining (collectively hereafter, for convenience, "furniture") may be placed on the sidewalk but shall not be placed to obstruct the minimum unobstructed pedestrian travel width of the sidewalk defined as a minimum of five feet. All applicable Americans with Disabilities (ADA) requirement minimums shall be met.

C. "Parklets" (temporary): Temporary, non-structural platform constructed within the traveled portion of right-of-way that replaces one or more parallel, perpendicular, or diagonal parking space(s) and all associated furnishings. A platform may be built to bring the grade of the sidewalk out into the street. Once the platform is installed, furnishings such as tables, chairs, benches, bike parking, and/or landscaping may be placed on the platform.

D. "Bulb-outs" (permanent): Also known as a curb extension, is a traffic calming measure that extends the sidewalk into the parking lane to create more space for pedestrians and improve visibility. Bulb-outs can be placed at corners or midblock and can also be used to create small public spaces, landscaped areas, or transit waiting zones.

E. "Shared Space" means underutilized areas of public streets or areas of the public right-of-way not specific to parking uses or defined as pedestrian or vehicular travel ways.

F. "Perimeter Fence" is a surface mounted fence structure that defines the outdoor dining area. This fence shall be between 30-36 inches tall.

G. "Guardrail"42-inch-tall guardrails shall be provided on all open sides of unenclosed elevated work locations that are more than 30 inches above the floor, ground, or other working areas of a building as defined in Section 3207 of the General Industry Safety Orders. The fencing design must meet California code: §3201, §3210.

H. "Through Zone" means the unobstructed area of sidewalk where primary pedestrian circulation occurs. The Through Zone shall always remain free and clear of physical obstructions.

I. "Frontage Zone" means the sidewalk area between the Through Zone and the front of the adjacent property/building which may accommodate pedestrian oriented activities or sidewalk dining.

J. "Furnishing Zone" means the area between the Through Zone and the Curb Zone where streetscape amenities such as planter boxes, streetlights and tree wells are typically located.

K. "Curb Zone" means the area located between the Furnishing Zone and the vehicular or bicycle travel lane and defines the boundary between the pedestrian realm and the roadway. The Curb Zone only exists in areas that contain parallel, perpendicular, or diagonal public parking along the curb line.

L. "Public Realm" means any publicly owned street, streetscape, pathway, right-of-way, park, publicly accessible open space and any public and civic building and facilities, freely accessible to everyone regardless of their economic or social conditions. Refer to Figure 8 for elements of a public realm.

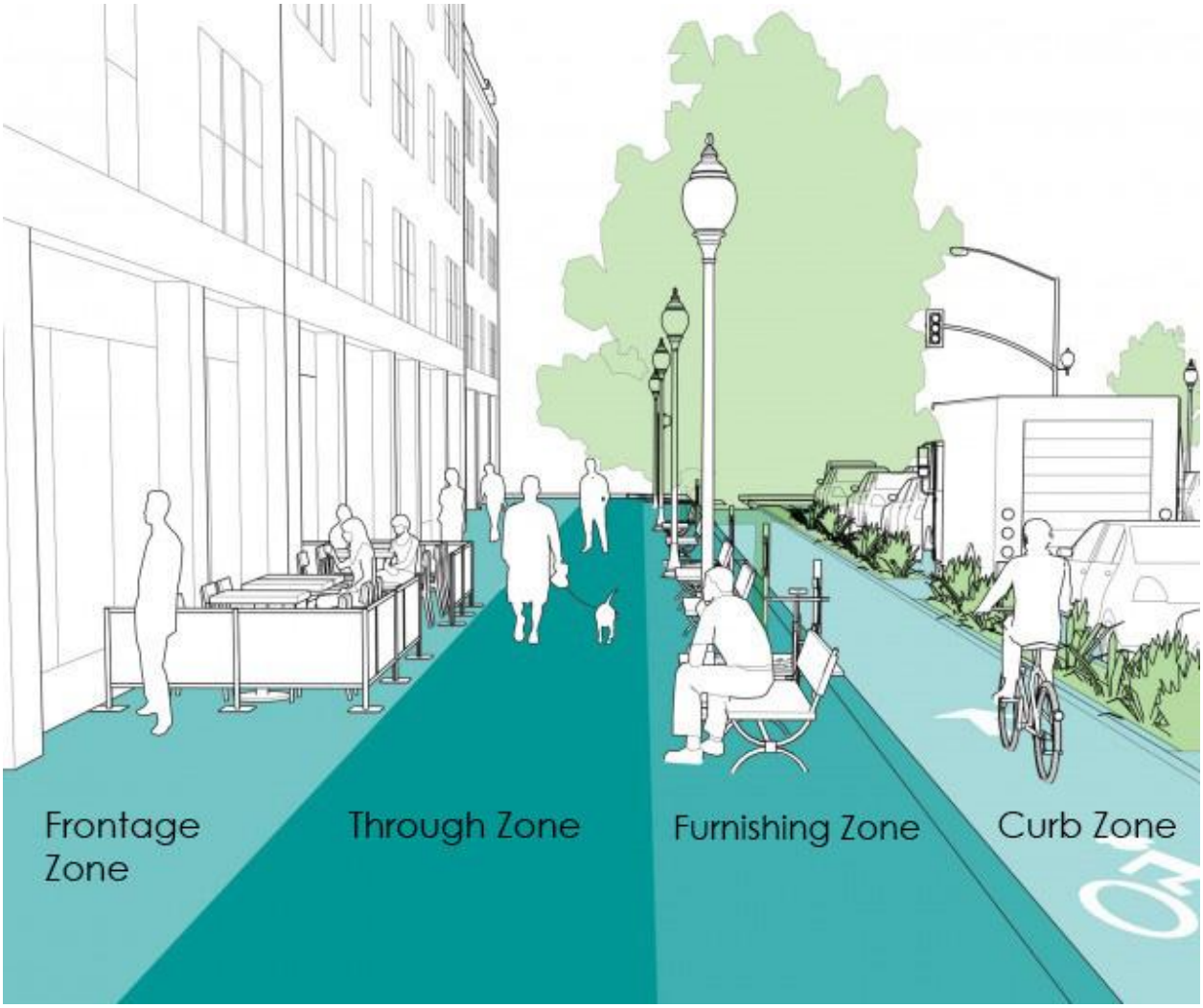


Figure 8: Diagram of elements of a Public Realm.
(Diagram by National Association of City Transportation Official (NACTO)

EXISTING CONDITIONS

Pacific Grove is home to an iconic historic downtown in Lighthouse Avenue full of unique personality and vitality with a wide variety of restaurants, shops, and other services focused on serving the local community. Lighthouse Avenue includes historic architectural styles and a wide diversity of building forms. However, due to the rise of the pandemic and a push for open air dining, restaurants have reduced the impact and importance of the existing historic buildings in this street. The parklets in focus, as part of the LASW project, are currently heavy structures with dark wood fencing and thick roof structures, creating a barrier between the street and public realm, relating to storefront and sidewalk pedestrian activity. Refer to Figure 9.

Viewing these parklets from across the street or driving through the street, people are obstructed from seeing building signage, entryways, and storefronts. This creates that disconnect between the person and space and detracts from the architectural character and charm from Lighthouse Avenue.

The speed limit along Lighthouse Avenue in the downtown section is currently 15 MPH.



Figure 9: Existing Conditions

PROPOSED CONDITIONS

The bulb out reconfiguration, as part of LASW project, provides a new curb alignment. It extends the sidewalk into the parking lane. By taking out five parking spaces. This extra space enables the development of new outdoor dining spaces at the face of the buildings for the three restaurants. The sidewalk/pedestrian flow will move around the area towards the street with a 7.5-foot distance between the outdoor dining delineation (fence or partition) to the back of curb. With the intersection narrowed, crosswalk length is shorted and there is increased visibility of the pedestrian, creating a safer condition.

The LASW project aims to provide visible outdoor dining to activate the street. Seeing outdoor dining on the street creates a feeling of excitement and helps draw visitors to the area, thus benefiting all businesses along Lighthouse Avenue. Seeing people on the street also creates a feeling of safety. There are 'eyes on the street' and activity helps to slow traffic. Refer to section on Figure 10.



PRECEDENTS

A. Precedent Outdoor Dining Streetscapes

In July 2024, the City of Pacific Grove's design consultant explored five towns to observe their outdoor dining configurations: Los Gatos, Campbell, Santa Cruz, Saratoga, and Monterey. As a result, model examples and poor examples were compiled. Refer to the list of elements and associated photos.

Model Examples - Descriptions

Overhead Shade Structures:

1. Shade structure design doesn't obstruct the view of the building frontage:
   a. The overhead roof element is tall, to ensure views to the front entry and any building signage.
   b. The overhead roof element is thin and flat, enabling views to the building.
   c. Overhead roof element is removable or retractable and used only when needed.
2. Colors are muted or complement the building color pallet, thus reducing distraction from the building itself.
3. Canvas canopies are durable and are taught.
4. Retractable canopies attached to buildings are retracted on nice days.
5. Durable materials/canopy systems are used.
6. Removable Umbrellas to be durable, commercial grade, 150lbs base to accommodate high winds.
   a. To be removed from the premises when establishment is closed or retracted when not needed.
7. Canopies kept clean.

Wind Abatement:

1. Side panels that are placed on the shade structure top rail and roll down. Rolling mechanism in line with top rail and inconspicuous.
2. Side panels that are removable that fit between shade structure posts.
3. Side panels are only used when needed, fully removed when establishment is closed.
   a. Tempered glass must be kept clean.
   b. Acrylic panels are approved but must be removed and replaced when start to buckle or fade/get cloudy. Do we want to permit this material?
   c. Durable and taut outdoor fabric with a muted color.
4. Panels kept clean.

Transparent Perimeter Fencing:

1. Dining activity is seen and admired.
2. The building frontage, character and entry are seen.
3. Planters in segments of the railing soften the hard edge, but also provide segments of transparent fencing which include visibility.
4. Rounded, smooth tops on post or pickets (safety issue).

5. Pickets are narrow and/or spaced wide to not obstruct views.
6. The design of perimeter fence panels is varied adding individual character.
7. Fencing materials are unobtrusive, not competing with the design of the architectural character of the building.
8. The color of fencing remains muted: black, gray, brown, tan.
9. Height of fences are 30" to 36" tall.
10. Must be mounted to the ground and removable.

Clearly Defined Entries:

1. Entry into the restaurant establishment through the perimeter fencing is apparent and comfortably wide.
2. No gates are present as they provide a barrier.

Heating Units:

1. Preferred heaters are mounted to an overhead structure or building, and not seen, creating a clear sightline to the building frontage.
2. Moveable heating units are only used when needed and are stored and unseen when not needed. Make and model are similar. A thin, non-obtrusive design is preferred. Quantity of heaters are reduced. One standing heating unit per 4 tables maximum.

Lighting:

1. Lighting to be used to produce ambiance in sections of the outdoor dining area where needed.
    a. Areas near the restaurant window will be able to utilize the indoor lighting.
2. Preferred lighting is not visible or hanging.
    a. Attached to building.
    b. Attached to the top of the shade structure roof.
    c. Recessed in the shade structure roof.

Sidewalk Treatments:

1. Sidewalks are clear and wide for pedestrians and the outdoor dining area doesn't impede into the Through Zone.
2. Sidewalk hardscape is consistent and gives visual and material clues that you are on a 'main' or 'important' street or district, i.e. special/artistic hardscape treatments or a pattern of different materials that delineate the frontage zone, through zone, furnishing zone and curb zone.
3. Street trees are neatly arranged and have a tree well with an accessible tree grate or have healthy understory planting.
4. Site furnishings such as benches, light poles, or trash receptacles, are of a consistent type and are clean and well maintained.
5. The sidewalks are clean and well maintained.

Intersections & Crosswalk Treatments:

1. Crosswalks at significant or busy intersections have special treatments other than the asphalt with white transverse lines, i.e. rapid flashing beacons (RFB), use of pavers and a special pattern, colored and/or textured concrete treatments, sides of crosswalks include a flush concrete curb or paver strip. These crosswalk treatments provide a safety feature by informing the pedestrian and driver that certain intersections have a hierarchy of use and/or there is a particular emphasis that you are on an important section of the street.
2. Intersections have a flush curb throughout the corner radius. This reduces any trip hazards and allows more space for pedestrians to cross on the ramp portion, as well as more direct alignment to the other side of the street.
3. Crosswalk corner pavement with a special inlay that either depicts the street name or crest/logo of the City.

Poor Examples - Descriptions

Enclosure:

1. Overhead shade structure should not act as an enclosure which is attached to the building: having barriers/wind screens on 3 sides and a roof structure.

Overhead Shade Structures:

1. Thick, heavy and/or solid heavy roof structure that detract and obscure the building frontage.
2. The roof structure set too low and blocks the view to the front door and/or building signage.
3. Canvas roof shade that buckles and is loose.
4. Residential grade umbrellas. Umbrellas that do not stand straight or leaning. They will not withstand wind gusts.
5. Made of materials not durable for outdoor conditions.
6. Canopies and shade structures that are too wide or long and need structural reinforcement.
7. Made of material not complimentary to the historic streetscape i.e. corrugated plastic and metal, heavy wood, plastics.
8. Colors that are bright and/or detract from the building character.
9. Canopies that are not cleaned.

Wind Abatement:

1. Side panels that are not removable or retractable.
2. Too many side panels are present when there are multiple, adjacent outdoor dining areas.
3. Made of materials not durable for outdoor conditions or flap in the wind.
4. Able to see a rolled panel or the rolling mechanism is too obvious.
5. Colors that are bright and/or detract from the building character.
6. Paneling that is not cleaned.

Opaque Perimeter Fencing:

1. Fence panels that are solid and opaque, obscuring visibility into the outdoor dining space and building frontage.
2. Fence panels higher than 42” tall.
3. Fence panels that are not mounted to the sidewalk.
4. No pointed or rough tops on post or pickets (safety issue).
5. Paneling with material that is not in character of the historic nature of the street.
6. Bright colors that do not compliment the building character.

Poorly Defined Entries:

1. Entries that are less than 34” wide.
2. Entries with gates.

Moveable Heating Units:

1. Moveable heating units that obscure the building entry and façade.
2. Units left out all day/night either in place, or clustered together.
3. Different make and model of heaters in the same outdoor space.
4. Too many heaters in the outdoor space.

Lighting:

1. Fixture not durable or rated for outdoor conditions.
2. Long hanging fixtures that move in the wind.
3. Exposed cords.
4. Too many light fixtures distract the building frontage character.
5. Lighting treatments that are too bright.
6. Fluorescent or neon light fixtures.

Sidewalk Treatments:

1. Outdoor dining impedes pedestrian flow in the through zone.
    a. Furnishings or sign elements in the through zone.
    b. Large plants that impede movement in the through zone.
    c. Elements that obscure sightlines.
2. Sidewalks exhibit different paver types, patterns and don't provide a clear understanding that you are on a significant street or district.
3. Sidewalks include trees/tree wells which are inconsistent in size and placement and contain dirt instead of a groundcover planting.
4. Site furnishings are of different types along the street, trash overflowing, and/or not well maintained.
5. The sidewalks are not clean or well maintained.

Intersections and Crosswalk Treatments:

1. There are no visual clues indicating you are on an important street or district.
2. Include a typical asphalt crosswalk with white transverse lines.
3. Curb ramps are limited to the 3-ft wide portion of the corner.

Images – Model Examples & Poor Examples

Enclosure:

Poor Examples

A full enclosure is not desired and will not be considered "outdoor dining". Refer to Figures 11 – 14 for full enclosure examples that would not be permitted.



Figures 11-14

Overhead Shade Structures:

Model Examples (Overhead Shade Structures)





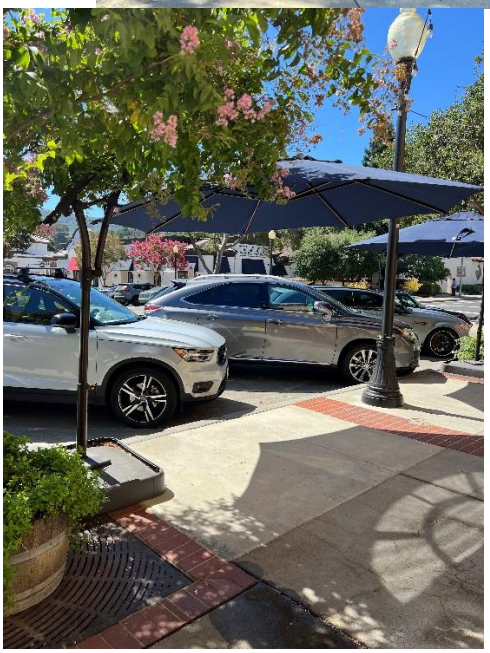
Figures 15 – 16: Retractable canopies.





Figures 17-18: Flat and taut canopies allow views of the building frontage, front door and signage.



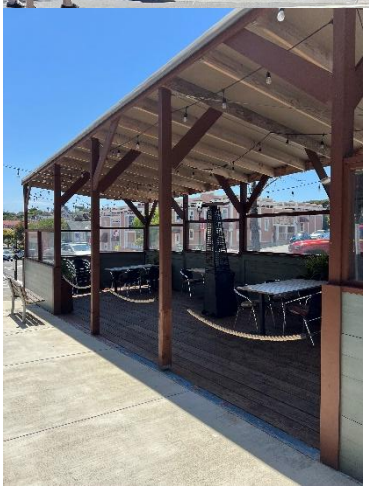


Figures 19-20: Commercial grade umbrellas are durable, have good form, stay straight, and have heavier bases available to withstand wind uplift.

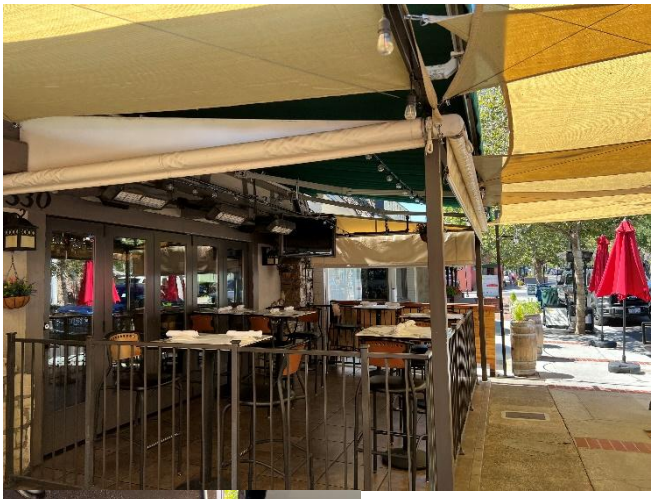
Poor Examples (Overhead Shade Structures)




Figures 21 – 22: Fabric canopies that aren't taught or durable are unsightly. Residential grade umbrellas are not durable and add to the appearance of an unkempt area.

Figures 23 - 24: Heavy metal and wood overhead structures detract from the architecture of the building and don't fit the character of Pacific grove. Structural engineering would be required to support the roof.





Figures 25 – 26: Canopies that extend farther than the outdoor dining area and multiple canopies connected to make a deep canopy area prevent visibility to the building frontage and is unsightly component to the streetscape.





Figures 27 - 28: Corrugated plastic and metal canopies do not fit the character of Pacific Grove.

Wind Abatement:

Model Examples (Wind Abatement)







Figures 29 – 31: Wind screens that have an inconspicuous reel are preferred.



Figure 32: Wind screen panels that are removable and made of durable materials are preferred.

Poor Examples (Wind Abatement)

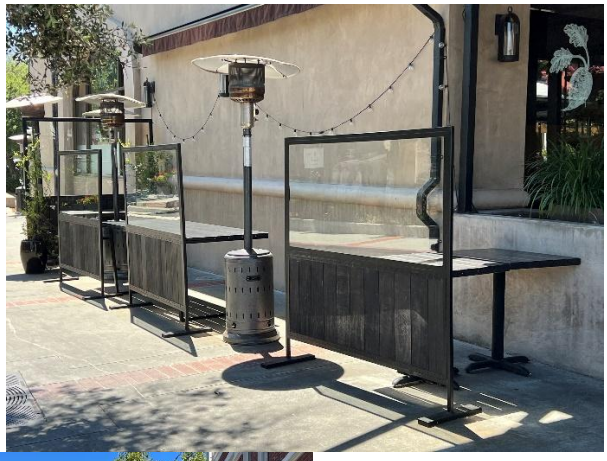
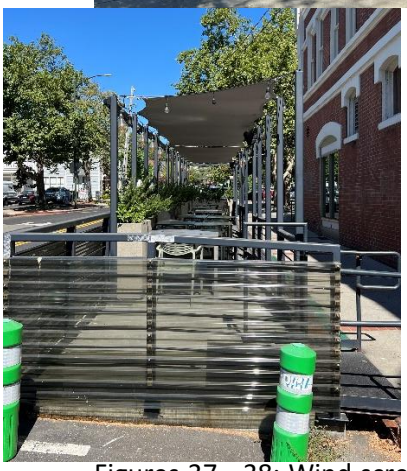




Figures 33 – 34: Wind screens that are made of non-durable materials will look unkempt and get easily damaged.




Figures 35 - 36: Wind screens that are permanently affixed obstruct the view of the streetscape and building façade. Bright colors don't fit the character of Pacific Grove.

Figures 37 - 38: Wind screen panels that are not surface mounted will fall in a wind gust. Corugated materials apear unkempt.

Perimeter Fencing:

Model Examples (Perimeter Fencing)





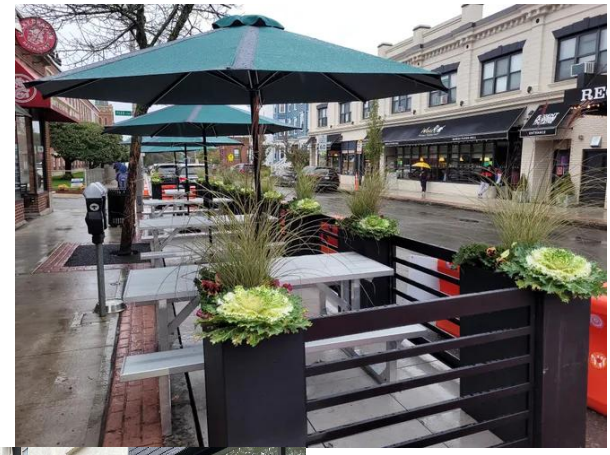


Figure 39 – 41: Metal pickets provide a clear view to the building façade and entry.





Figures 42-43: Different picket and panel configurations give individuality to the restaruant establishment and still allow visibility.

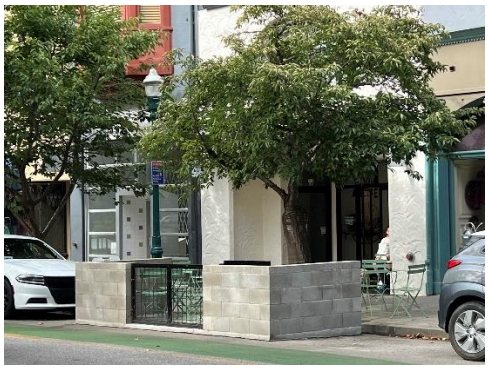




Figures 44 – 45: Perimeter fencing can inegrate planter pots and still maintain visibility into the outdoor dinign area. Adding a bar top to the perimeter fence is a great way to activate the streetscape.

Poor Examples (Perimeter Fencing)





Figures 46-47: Wood fence pickets are closely spaced creating a visual barrier and not in character with Pacific Grove. CMU is not an appropriate material for a streetscape.





Figures 48 – 49: Metal and concrete panels add a barrier to the dining activity and building frontage. Wood panels are are not in character with Pacific Grove and the vegetation is tall where dining activity would not been seen.

Entries:

Model Examples (Entries)



Figure 50: Wide entry points are preferred.

Heating Units:

Model Examples (Heating Units)



Figure 51: Heating units integrated into the canopy are preferred as they are not seen from the streetscape.

Poor Examples (Heating Units)





Figures 52 – 53: Too many portable heating units are unsightly. Grouping heaters when a restaurant is not operational is not acceptable.

Lighting:

Poor Examples (Lighting)



Figure 54: Lighting that is hanging free without support is not acceptable.

Sidewalk Treatments:

Model Examples (Sidewalk Treatments)









Figures 55 – 58: Materials and pavement type gives character to streetscapes. These examples also show clear public realm elements.

Poor Examples (Sidewalk Treatments)



Figures 59: Obstructions in the through zone are not pedestrian friendly. No clear delineation of public realm elements creates a disorganized public realm.

Intersections & Crosswalk Treatments:

Model Examples (Intersection & Crosswalk Treatments)





Figures 60 – 61: Intersection corner conditions that have a wide flare reduced tripping hazards and allows the pedestrian to use the ramp freely.




Figures 62 – 63: Crosswalks in brick and different materials as character to place and add attention to pedestrians.

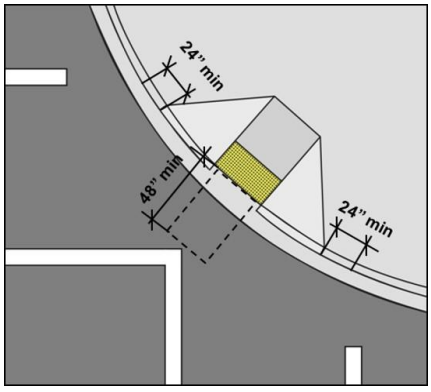






Figures 64 – 66: There are opportunities to add character to the streetscape whether it is a bronze inlay of the City logo, street name, historic marker, or even a group of planter pots.

Poor Examples (Intersection & Crosswalk Treatments)



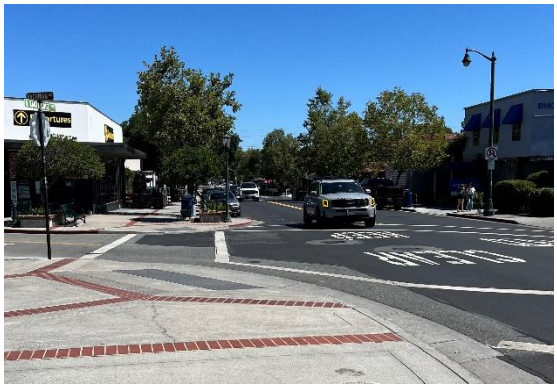


Figure 67 - 68: Curb ramps such as this force the pedestrian into the intersection rather than in line with the crosswalk.

B. Precedent Outdoor Dining Guidelines

Santa Clarita Outdoor Dining Standards and Guidelines. 2022. https://santaclarita.gov/wp-content/uploads/sites/42/migration/OTNSP_Outdoor_Dining_Guidelines.pdf

Palo Alto Permanent Parklet Program. 2023. https://www.cityofpaloalto.org/files/assets/public/v/1/public-works/engineering-services/webpages/parklet-program/parklet-standards-adopted-final-11.13.2023.pdf

San Francisco Shares Spaces Manual. 2022. https://www.sf.gov/sites/default/files/2022-09/Shared%20Spaces%20Manual.pdf

Sausalito Proposed Parklet and Outdoor Dining Program. 2022. https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1384173/Attachment_2_-_Parklet_WG_Final_Draft_03112022_Rev_1__1_.pdf

City of San Mateo Guidelines for Expanded Outdoor Dining During Covid-19 Emergency. 2021. https://www.cityofsanmateo.org/DocumentCenter/View/81384/City-of-San-Mateo-Outdoor-Dining-Guidelines

City of Santa Cruz Parklet Program. 2023. https://www.cityofsantacruz.com/home/showpublisheddocument/92888/638191534337830000

LOCATION

This section will be expanded upon in the full manual.

Lighthouse Avenue Sidewalk Widening Project (LASW) within the Lighthouse Business District in the City of Pacific Grove.

The location of the outdoor dining space in bulb out conditions shall be immediately adjacent to the restaurant façade and contained within the front sidewalls of the restaurant. The outdoor dining space shall not encroach on to the sidewalk of the adjacent properties. Further, the space may not project more than half the width of the sidewalk.

A. Considerations for Future Bulb Out Construction

Existing Conditions

1. Slope considerations.
2. Existing public realm features.
3. Existing signage.
4. Stormwater facilities.
5. Traffic and parking considerations.
6. Sidewalk treatments.
7. Intersection treatments.
8. Crosswalk treatments.

Civil Engineering Input and Design

1. Transportation design standards.
2. City standards.
3. Accessibility.
4. Engineering.

ELIGIBILITY

This section will be expanded upon in the full manual.

DESIGN GUIDELINES

A. Layout

This section will be expanded upon in the full manual incorporating other streets.

Bulb out layout plan for the LASW project is found on Figure 01. For other intersections, bulb -out layout and design will be modified based on existing conditions and civil engineering input and design, refer to sections LOCATION and ELIGIBILITY.



Figure 68: Layout conditions for the LASW project.

Widths

- 5 ft minimum through zone – no obstructions in sidewalk.
- 5 ft minimum wide entry points.
- 3 ft minimum wide curb ramps.

Heights

- 3 ft tall maximum outdoor dining perimeter fence.

Slope Conditions

- Max slope 5% on sidewalk per ADA Standards.
- Curb ramps per ADA Standards.

Existing Public Realm Features

- Relocation of two street trees and one streetlight.
- Addition of one street tree.
- No other furnishings are present or provided on this specific portion of the street.

Stormwater Facilities

- Engineered.

Size

- Outdoor dining area delineation ends at the property line between buildings and extends to the start of the through zone.

Building Entry Points

- All building entry points remain clear and visible for entry.

Pedestrian and Vehicular Sightlines

- AB-413 is followed.
- Visibility at intersections is improved by having a 20’ setback on crosswalk approach.
- The perimeter fence does not exceed 3’ tall.
- Refer to additional engineering standards, codes, and regulations.

B. Materials

This section will be further developed based on review comments.

This section contains design guidelines on the preferred materials for outdoor dining areas in bulb out conditions. Examples of disapproved materials are also provided.

There is flexibility given to the element design and material, so restaurant establishments can provide individuality to their outdoor dining.

C. FUNCTION & MAINTENANCE

All maintenance of the outdoor dining areas to be provided at the expense of the restaurant establishment.

Smoking

- Smoking will not be permitted in the outdoor dining areas.

Alcohol

- Only allowed in the restaurant and outdoor dining premises. No alcohol permitted in the public realm.
- Signage to say NO ALCOHOLIC BEVERAGES BEYOND THIS POINT.
- Applicants shall comply with all applicable ABC regulations regarding alcohol use for their establishment within the parklet. The issuance of an Encroachment Permit does not constitute any ABC or Zoning approvals for alcohol use by the City. Applicants are solely responsible for securing a valid ABC license to allow/extend business operations within the encroachment area. (12.21.22 PG Draft)

Cleanliness

- Outdoor dining areas shall be always maintained free of litter and debris.
- The ground floor shall be always kept clean and pressure washed 3 times a year.
- Any rust or discoloration of materials must be repaired or replaced.
- Any broken or damaged materials to be repaired or replaced.
- Any vandalism shall be repaired or replaced at the expense of the restaurant establishment.
- "Business owner or outdoor dining operator shall maintain the outdoor dining space clean. Outdoor furniture, equipment and other amenities must be removed from the outdoor dining area for extended periods of non-use (two weeks or more). The city may request removal during special events, etc." (2014 PG Draft Standards)

Afterhours Access & Maintenance

- General public to be permitted inside all outdoor dining areas in the public realm afterhours. No barriers to entry permitted at any time. During open hours?
- Heating units to be placed indoors, out of the public realm after hours.
- Retractable canopies to be retracted.
- All wind screens to be removed and located indoors.
- Non-bolted furniture may remain in the outdoor dining area if they are heavy enough to withstand 60 mph wind gusts (March 2023 recorded 59 MPH wind gusts in Monterey - Weather Underground History). Or they may be grouped and fastened together. When known storm events are forecasted, restaurant establishments are required to bring in all non-bolted furnishings inside.
- Furniture covers are not permitted in the public realm.

- Any plants incorporated into the outdoor dining space are to be watered and deadheaded as needed. Any dead plants to be removed and replaced.

Temporary/Seasonal Decorations

- Seasonal decorations are permitted and must be removed within one week of the holiday.

Code Compliance

- City codes.
- ADA Compliance.

Violations

- If the restaurant establishment cannot adhere to these maintenance requirements (up to 5 recorded violations by a City employee in one year), the outdoor dining area will be revoked and removed at the expense of the owner.

APPLICATION & APPROVAL PROCESS

This section will be further developed based on review comments.

From 2014 PG Draft Outdoor Dining Design Standards

APPLICATION

Written letter. A brief description that includes the name of the restaurant, a description of proposed outdoor dining space and number of seats.

Site Plan. A plan showing the proposed outdoor dining space, to scale, including the sidewalk clearance requirement, elevations, furniture.

Photos or Drawings. Submit color photos, renderings or graphics showing the setup, type of furniture and materials of barriers.

STEPS FOR APPROVAL

1) Schedule an informal meeting with Community & Economic Development to go over your ideas for your outdoor dining. Call (831) 648-3138 to schedule a meeting.
2) Contact the Community and Economic Development Department for an application at (831) 648-3138 or by coming to City Hall, located at 300 Forest Avenue.
3) Provide proof or public liability insurance in the amount of one million dollars, name the City as an additional insured.

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: September 04, 2024

SUBJECT: Lighthouse Avenue Sidewalk Widening Project

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

RECOMMENDATION

1. Receive bids and authorize the City manager to prepare a budget amendment ordinance to allocate funds for the Lighthouse Avenue Widening Project for an amount of $339,304.66 which includes the base bid, a 25% construction contingency and 15% engineers oversite.
2. Alternatively, discuss and take other action related to this item.

DISCUSSION

In June of 2020, the City Council ratified emergency measures taken by the City Manager to streamline the processes through which businesses could offer outside dining. By August 1, 2020, approximately 11 restaurants were operating parklets on City property under the temporary rules established by the local emergency. In 2021 and 2022, the City Council adopted an ordinance with one-year sunset provisions that clarified the scope and effect of the temporary Parklet Program and Outside Dining rules.

At its March 22, 2023, meeting, the City Council adopted Ord. 23-004, which expands the encroachment permit process to allow parklets in the public right-of-way.

With the adoption of Ord. 23-004, parklets are now authorized through an annual, temporary encroachment permit. Issuing an annual encroachment permit allows the parklets to remain temporary and revocable if the conditions noted on the encroachment permit are not met. Adoption of Ord. 23-004 also formed a subcommittee, consisting of council members Beck, Coletti and McDonnell. Since late October 2023, council member Beck has recused herself from participation in the parklet subcommittee. The subcommittee continued its efforts and developed the Lighthouse Avenue Sidewalk Widening Project.

The intent of the parklet subcommittee was to address the numerous inquiries and concerns related to the three parklets at Lighthouse Ave and Fountain Ave and to devise methods to best address the safety concerns and potential conflicts between pedestrians and vehicles created by the parklets on this block. With increased visibility and safety front of mind, the subcommittee, in consultation with the City's contracted traffic engineer, recommended consideration of extending the sidewalk where the parklets currently exist.

City Staff, in conjunction with the members of the subcommittee, presented a rendering and options to the City Council at their February 21, 2024 meeting. At the meeting, the Council authorized the City Manager to finalize plans and prepare a Request for Proposals (RFP) for the Lighthouse Avenue Sidewalk Widening Project. At the City Council's June 19, 2024 meeting, Staff presented the final plans and bidding package to the City Council and Council authorized the release of the RFP.

On August 9, 2024, the City received 3 bids for the construction of the Lighthouse Avenue Sidewalk Widening Project.

Construction Firms	**Bids**
Silcon Constructors Inc.	$242,360.53
Monterey Peninsula Engineering	$419,075.00
Vanguard Construction	$442,107.00

OPTIONS

Do not authorize the City Manager to initiate a budget amendment.

FINANCIAL IMPACT:

As part of the FY23/24 Capital Improvement Plan (CIP), the City Council allocated $50,000 for the Design of Lighthouse Avenue Sidewalk Widening Project (CIP24-06). This was harnessed to develop the plans, specifications and bidding package.

The recommendation in this report is to have Council request the City Manager to prepare a budget amendment in an amount of $339,304.66, which includes the base bid (Silcon Constructors), a 25% construction contingency and 15% engineers oversite.

Funding has yet to be allocated in Fiscal Year 2024/25 for the construction of the Lighthouse Avenue Sidewalk Widening Project. If approved, it is anticipated that a budget amendment will be drafted and presented to Council either at their September 18, 2024, or October 2, 2024, meeting. Once the first read of the ordinance has been approved, then City staff will prepare a report to the Council for the award of the construction bid that will correspond with the second read of the budget modification.

FOCUSED PRIORITY AREA: Infrastructure

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: September 04, 2024

SUBJECT: Discussion Regarding California Voting Rights Act Issues, Impact of Ballot Measure for Measure Z (Proposes Reduction from Six Councilmembers to Four Councilmembers) and Letter Received from LULAC on August 23, 2024 and Motion to Provide Direction to City Manager.

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

RECOMMENDATION

1. Discuss California Voting Rights Act issues, Impact of Ballot Measure Z (Proposed Reduction from Six Councilmembers to Four Councilmembers) and Letter Received from LULAC on August 23, 2024.

2. Motion to Provide Direction to City Manager regarding the California Voting Rights Act which could include returning to the City Council with a Resolution of Intent to Transition from At-Large Elections to By-District Elections and retain a demographer to assist in that transition process or such other action related to this item as the Council determines appropriate.

DISCUSSION

A. Letters from League of United Latin American Citizens (LULAC)

1. August 25 2022 Letter

On August 25, 2022, the City of Pacific Grove received a letter from Andrew Sandoval on behalf of the League of United Latin American Citizens (LULAC), hereafter 8.25.22 Letter (Attachment 1). The 8.25.22 Letter included a demand that the City change its at-large voting system to a by-district voting system for city council elections. This 8.25.22 Letter was posted on the City's website following receipt.

The case of Pico Neighborhood Association v. City of Santa Monica was pending at the time of receipt of the 8.25.22 Letter. The California Supreme has since issued its decision in the Santa Monica case.

The 8.25.22 Letter asserts that changing to by-district elections would avoid a potential violation of the California Voting Rights Act (CVRA), protect the City from litigation under the CVRA, be consistent with the trend in California and Monterey County for cities and other jurisdictions to transition to

by-district elections, and improve the accountability and responsiveness of the City's elected officials.

In a by-district electoral system, the City is divided into districts of approximately equal population and only the voters residing in each district may vote for candidates for City Council for that district. Those candidates themselves must also be residents and voters of that district. In the current at-large voting electoral system, all voters in the City are entitled to vote for all candidates running for the City Council.

2. August 23, 2024 Letter

On August 23, 2024, the City received by certified mail an undated letter ("8.23.24 Letter") from Aidee Farias (LULAC District 12 Director), see Attachment 2. In this 8.23.24 Letter, LULAC formally requests the City to transition from at-large to district-based elections to comply with the CVRA and states their belief that the City's at-large system dilutes minority voting strength potentially violating the CVRA.

The 8.23.24 Letter request that the City Council adopt a Resolution of Intent to transition to district-based elections within 45 days and states that the City then has 90 days to hold public hearings and adopt an ordinance establishing districts.

The 8.23.24 Letter states that the transition would align Pacific Grove with positive statewide trends including neighboring cities like Soledad, Gonzales, Greenfield and Monterey.

Finally, the 8.23.24 Letter urges Pacific Grove to avoid potential litigation, which has proven costly for municipalities and that transitioning voluntarily allows the City to maintain control over the districting process and engage the community meaningfully.

B. City Council Action

On March 6, 2024, there was a discussion regarding issues relating to the California Voting Rights Act ("CVRA"), copy of the Agenda Report is Attachment 3. The action taken by the Council at that time was to authorize the City Manager to issue an Request for Proposal for the services of demographer. Much of the information provided in the March 6, 2024 regarding the CVRA is set forth below in this Agenda Report.to again provide the Council and the public with this information.

On July 17, 2024, City Manager Matt Mogensen submitted an Agenda Report (Attachment 4A) which attached a copy of the report from National Demographic Corporation (NDC), Attachment 4B.

C. California Voting Rights Act ("CVRA")

The CVRA was enacted in 2001, Elections Code §§ 14025 - 14032. (Attachment 5.) The CVRA applies only to at-large electoral systems. The CVRA alters established standards of proof and defenses that exist under the federal Voting Rights Act, making it easier for plaintiffs to challenge the electoral system of any city or other jurisdiction that does not elect its governing board by-district. For example, under the CVRA, a plaintiff is not required to prove that, by changing to districts, there will be a least one district which has a majority of minority voters.

Importantly, the CVRA also expands the ability of plaintiffs to recover their attorneys' fees and expenses, making awards mandatory if plaintiffs prevail. In contrast, defendants, even if successful, cannot recover either attorneys' fees or costs.

Importantly, even if the City were to successfully defend itself against a CVRA lawsuit, nothing prevents a different set of plaintiffs from filing a new CVRA demand against the City potentially plunging the City into litigation again. The only absolute protection for the City against a lawsuit under the CVRA is the implementation of single-member by-district elections.

The CVRA prohibits at-large electoral systems that impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class. Plaintiffs in a CVRA case must prove that racially polarized voting occurs in specified elections.

D. Pico Neighborhood Association v. City of Santa Monica

On September 20, 2023, the California Supreme Court issued its modified ruling in the case of Pico Neighborhood Association v. City of Santa Monica, 15 Cal. 5th 292 (2023) (see Attachment 6), that plaintiffs must also prove that the combination of at-large voting and voting patterns reflecting racial polarization results in the dilution of the ability of protected class voters to elect chosen candidate or influence the outcome of elections. In other words, plaintiffs must prove that they would have the opportunity to elect chosen candidates in a legal alternative electoral system such as a by-district system or alternatives that may be available in charter cities (e.g., cumulative voting; ranked choice voting; limited voting, etc.).

The Santa Monica case has been remanded to the trial court for consideration of the dilution issue under the standard set in the Supreme Court's opinion. Given the flexibility of this standard, there is no "bright-line" percentage beneath which an action under the CVRA cannot be sustained. Even a protected class that forms a relatively small percentage of a city's population may be able to state a cause of action for violation of the CVRA. Also, small cities are as vulnerable as larger jurisdictions.

The CVRA purports to protect electoral "influence" as well as the ability to elect chosen candidates. No court has ruled on the meaning of electoral "influence" in the 23 years since enactment of the CVRA. Electoral influence was not an issue in the Santa Monica case. In the Santa Monica case, the Latino plaintiffs alleged that in a by-district electoral system in which Latinos constituted about 30 percent of eligible voters in a district, Latinos would be successful in electing chosen candidates because of the characteristics of the voters in the neighborhoods in that district.

The League of California Cities provided a summary of the Santa Monica case on August 30, 2023 (Attachment 7).

E. Remedies

In CVRA cases, the court has broad jurisdiction to order additional "appropriate" remedies. In all CVRA cases to date, the court has ordered the losing jurisdiction to implement by-district election.

City of Highland: In this case, the city argued that the admitted CVRA violation could be remedied through use of a cumulative voting system. Plaintiffs argued in favor of by-district elections and won.

City of Palmdale: In the Palmdale case, the remedies included shortening the terms of office of council members elected in the at-large system and ordering a special election in which all the new district seats were on the ballot at the same time. The City was permitted to re-stagger the terms of office after that first election in the new districts.

F. Attorneys' Fees

As mentioned above, the CVRA contains an attorneys' fee-shifting provision that operates in only one direction, in favor of plaintiffs. The CVRA mandates that the defendant shall pay the reasonable attorneys' fees and litigation expenses of plaintiffs who prevail in a CVRA lawsuit. Plaintiffs can also prevail through a settlement which results in a change to by-district election without a court order.

Exposure to payment of plaintiffs' attorneys' fees and expenses has been a significant incentive motivating other jurisdictions to transition to by-district elections because of the extremely high expense of CVRA trials. Both parties must retain expert witnesses, often three or four on issues such as demographics, racially polarized voting, the efficacy of alternative voting systems, and the totality of the circumstances supporting a showing of the undiluted ability of protected class voters to elect chosen candidates. Examples of the recovery of attorneys' fees by plaintiffs by court order include:

City of Santa Monica: The outstanding demand for plaintiffs' attorneys' fees through trial is $22 million. The Santa Monica case involved a six-week trial;

City of Palmdale: the City paid approximately $4.5 million to the prevailing plaintiffs;

City of Highland: this case which concerned only the remedy to be implemented because the city had conceded liability, the city paid plaintiffs $1 million;

City of Santa Clara: the prevailing plaintiffs collected $3.5 million in fees and expenses through trial;

City of Modesto: this was the very first CVRA case to go to trial and the City prevailed at trial, but then was reversed on appeal, the city paid plaintiffs approximately $3.5 million for attorneys' fees.

Settlements have also been expensive with payments in the range of $300,000 to $1 million for plaintiffs' attorneys' fees depending on the stage of the litigation in which the case was settled.

In addition to these mandatory payments to plaintiffs' attorneys, defending jurisdictions must pay their own attorneys and expenses of litigation, including expert witnesses, which generally run in the millions of dollars as well.

No jurisdiction has yet successfully defended itself in a CVRA case that has gone to trial. However, were that to happen, the defendant is not entitled to recover its attorneys' fees or costs of litigation and would remain exposed to a CVRA demand and lawsuit in the future by a different set of plaintiffs.

G. City Charter

Pacific Grove's Charter provides that, "The Mayor and the members of the Council shall be elected from the City at large." (Charter of the City of Pacific Grove, Art. 6.) Ordinarily, this provision could be changed only with approval of the majority of the voters of the City.

Some cities, including charter cities have used a state law, Government Code Section 34886, to transition to by-district elections without first placing the issue of the change on the ballot. Section 34886 provides:

Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective

mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21130 of the Elections Code and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

Some charter cities that have transitioned from at-large elections to by-district elections have interpreted their respective charters as permitting the change without a vote. For example, the Charter of the City of Monterey, in contrast to the Charter of the City of Pacific Grove, does not specify the City's method of electing its legislative body. Accordingly, the city did not place the change to by-district elections on the ballot.

The City of Sunnyvale's charter did specify at-large elections for the city council and when the city transitioned to by-district elections, the process included a charter amendment ballot measure authorizing the change which was approved by the voters.

The City of Santa Rosa's charter also specified at-large elections for the city council. The City adopted an Ordinance in 2018 and a Charter amendment to provide for district elections was approved by the voters on November 8, 2022.

No court has ruled on the legality of charter cities with at-large elections specified in the charter using Government Code Section 34886 to transition to by-district elections without a charter amendment vote.

In the case of Jauregui v. City of Palmdale, 226 Cal. App. 4th 781, 798 (2014), the court held that if a charter city's electoral system is adjudicated to cause dilution of the voting rights of a protected class, then state law prevails over the Charter.

H. Process for Transitioning from At-Large Elections to By-District Elections

The process of transitioning from at-large elections to by-district elections is controlled by California Elections Code § 10010 (Attachment 8), which specifically applies to charter cities.

The City should retain the services of a demographic firm to assist with the transitioning process.

Elections Code § 10010 provides for the following process for transition from at large elections to district elections:

1. Public Hearing to Consider a Resolution of Intent to Transition from At-Large Elections to By-district Elections; Request to Retain Demographer to Assist City with drawing of district maps

2. First Public Hearing on composition of possible districts before draft maps are drawn

3. Second Public Hearing no more than 30 days after First Public Hearing on composition of possible districts before draft maps are drawn

4. Publication of Draft Maps and Election Sequence – at least 7 days prior to public hearing on maps

5. First Public Hearing on Draft Maps

6. Second Public Hearing on Draft Maps no more than 45 days after First Public Hearing on Draft Maps: Consider Introduction (First Reading) of Ordinance to transition from at-large elections to by-district elections.

7. Consider Adoption (Second Reading) of Ordinance to transition from at-large elections to by-district elections; public hearing required in connection with adoption of Ordinance; Ordinance becomes effective 30 days after adoption.

I. Timing

Elections Code Section 10010 includes the so-called "safe harbor" language if the City adopts a Resolution of Intent to Transition from at large Elections to by-district Elections within 45 days of the receipt of the 8-23-24 Letter. 45 days from August 23, 2024 is October 7, 2024. There is a City Council meeting on October 2, 2024 which would be last regular City Council meeting before October 7, 2024.

If the City adopts a Resolution of Intent on October 2, 2024, then 90 days thereafter is January 1, 2025 as the deadline to complete the process of the public hearings described in Section 10010 (a) and adoption of an ordinance approving a district map.?

The January 1, 2025 deadline can be extended by up to 90 days upon agreement with LULAC which would extend the deadline to complete the transition process to March 31, 2025 if the City adopts a Resolution of Intent on October 2, 2024.?

If the January 1, 2025 deadline were to remain, then the multiple hearings required by Section 10010 would be occurring in November and December 2024 during the holiday season.?? The purpose of the 90 days extension as described in Section 10010 is to "provide additional time to conduct public outreach, encourage public participation, and receive public input."

Upon direction from the City Council contact can be made with LULAC to inquire if they will agree to extend the 90 day deadline to March 31, 2025 if the City adopts a Resolution of Intent before October 7, 2024.?

J. Ballot Measure Z – Six Councilmembers To Four Councilmembers

Ballot measure Z set for the November 5, 2024 Election, if approved, would reduce the number of Councilmembers from six to four.

If the ballot measure is not approved, and the City adopts a Resolution of Intent to Transition to districts, then there would be a need adopt a district map for six districts.? ?

If the ballot measure is approved, and the City adopts a Resolution of Intent to Transition to districts, then there would be a need adopt a district map for four districts.?

K. Costs

If the City adopts a Resolution of Intent before October 7, 2024 and if the City completes the transition to district either 90 days thereafter, or 180 days thereafter if LULAC approves a 90 day extension of the deadline, then there is a cap under Elections Code Section 10010 "safe harbor" provisions on the recovery for the "cost of the work project generated to support the notice."

There must be a demand in writing?for those costs with financial documentation. The costs can include attorneys' fees and demographer fees and related costs.?? The cap was $30,000, but that has increased over the years with CPI and that cap is now about $37,500.00. If the City does not meet the deadlines in the CVRA, then there is no cap on the amount of costs that can be recovered in any litigation which might be filed against the City.

L. Conclusion

The recommended action is for the Council to discuss the CVRA issues and provide direction to the City Manager on how to proceed in response to the Letter from LULAC received on August 23, 2024 which could include returning to the City Council with a Resolution of Intent to Transition from At-Large Elections to By-District Elections and retain a demographer to assist in that transition process or such other action related to this item as the Council determines appropriate.

ENVIRONMENTAL REVIEW

This activity has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and as such, is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

OPTIONS

N/A

FINANCIAL IMPACT:

If the Council gives direction to return with a Resolution of Intent to Transition from At-Large Elections to District Elections, then the financial impact would include staff time, costs for a demographer to assist with the transition and preparation of draft district maps and potentially costs payable to LULAC not to exceed $37,500.00.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

LULAC Letter of August 25, 2022
LULAC Letter of August 22, 2024
Agenda Report dated March 6, 2024
Agenda Report dated July 17, 2024
Demographic Report by NDC
CVRA Elections Code Sections 14025 - 14032
Pico Neighborhood v. City of Santa Monica, 15 Cal. 5th 292 (2023)
League of California Cities paper dated August 30, 2023
California Elections Code § 10010

LULAC District 12
Andrew Sandoval, District Director
joseandrewsandoval@gmail.com

Dear City of Pacific Grove

I am writing on behalf of LULAC District 12. We are interested in improving the accountability and responsiveness of future elected officials as well as the election system of the City of Pacific Grove as a whole. As the City of Pacific Grove continues to grow, it must adopt positive stateside trends in voting and elections in order to prevent voters from losing the ability to meaningfully engage in elections and community policy-making. At our LULAC District 12 meeting, our District Board voted unanimously to request the City of Pacific Grove move toward District elections.

One of the growing trends in California is district elections. District elections have been shown to improve voter turnout and help governments respond to community concerns. Districts are the cornerstone of our state and federal systems. Accordingly, they have been adopted by numerous cities, community college districts, and school districts. Recently the City of Soledad, Gonzales, Greenfield, and Monterey has passed resolutions of intent and some have adopted maps. Chualar, Santa Rita, Salinas City, Pacific Grove, Alisal, and other school districts have also moved towards district elections.

With regard to the City of Pacific Grove elections, we believe that the City of Pacific Grove would benefit from moving towards district elections. This would prevent the City of Pacific Grove from being in violation of the California Elections Code sections 14025 et. seq., known as the California Voting Rights Act of 2001 (CVRA). A change mandated in the election system to prevent occurrences of voting patterns that impair the ability of voters to elect candidates of their choice or impair their rights to influence the outcome of an election, particularly as a result of the dilution or abridgment of its rights and privileges under state and federal law.

We therefore respectfully demand that the City of Pacific Grove change its at-large voting system to a district-based voting system that affords all voters and protected groups the equal opportunity to choose elected officials to the City of Pacific Grove and, thereby, bring the system into compliance with the CVRA.

The reality is that all public agencies that have litigated this issue have lost. The costs to litigate a CVRA challenge can be tremendously high since an agency must pay the plaintiff's legal fees if the city is unsuccessful. In other cases, the plaintiff's legal fees have ranged from $385,000 to $4.5 million.

Additionally, if the court finds a CVRA violation, the court has the authority to impose district-based elections and to determine district boundaries with input solely from the plaintiff's attorney and consultants, effectively removing this authority from the School District and the community.

Finally, even if the public agency successfully defends a CVRA lawsuit, that success does not bar a subsequent challenge under the CVRA by a different plaintiff.

A few cities have decided to defend against these actions, but none have prevailed on the merits. In addition to the low threshold for establishing a valid claim under the CVRA, the law also requires the city to pay a plaintiff's attorney's fees and costs if the plaintiff prevails. Plaintiffs' attorneys' fees and costs in CVRA cases often amount to millions of dollars.

Please respond to this correspondence and include the City of Pacific Grove's plans to calendar a resolution and outline the steps it will take to facilitate the transition along with an estimated timeline. If the City of Pacific Grove fails to take action within the statutory timeline to effect change in its election process, we may seek judicial assistance to enforce our remedies at law. Per the CVRA, we will seek equitable relief and other forms of relief, including attorneys fees.

We understand there is a pandemic and are aware of the need to maintain safe distances and exercise precautions. We have seen an increase in participation in public meetings with the many options currently available. Zoom, Google Meets, and YouTube along with in-person are excellent ways to engage the community. Having interpretation available at all engagement meetings will allow all stakeholders to play a meaningful role in the process of moving towards district elections and drawing maps. We hope to see the City of Pacific Grove be inclusive of all stakeholders.

We are hopeful that you will be able to work with us to achieve a timely transition in order to bring the City of Pacific Grove into compliance with the CVRA. We have attached a comprehensive study done by the Pacific Grove School District that will help provide more information and evidence as you make this decision.

Thank you



Andrew Sandoval
LULAC District 12 Director

Robert Goodman

ATTORNEY AT LAW
1114 STATE STREET, SUITE 312
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 965-9869
FACSIMILE (805) 965-8669

August 9, 2021

Dr. Ralph G. Porras, Superintendent
Pacific Grove Unified School District
435 Hillcrest Ave.
Pacific Grove, CA 93950

Re: Notice of Violation of California Voting Rights Act

Dear Dr. Porras:

First, we would like to acknowledge and thank you for your work, and the work of the Board of Education and staff, on behalf of the Pacific Grove Unified School District.

On behalf of Olivia Hernandez, a member of a protected class and a registered voter in the Pacific Grove Unified School District, this letter and the enclosed report assert that the Pacific Grove Unified School District's method of conducting elections is in violation of the California Voting Rights Act. Pursuant to state law, the Board of Education of the Pacific Grove Unified School District has 45 days from receipt of this letter to adopt a resolution outlining its intention to transition from at-large to district elections, detailing specific steps it will take to facilitate this transition, and estimating the time-frame for this transition. If the Board of Education does not adopt a resolution to this effect, then a legal action will be commenced in Monterey County Superior Court. The lawsuit would seek a court order requiring the Pacific Grove Unified School District to establish district elections pursuant to the California Voting Rights Act.

District elections are sweeping California. As far as this office is aware, no government agency in California has successfully defended a complaint alleging a violation of the California Voting Rights Act. For this reason, we recommend a collaborative settlement which would cap costs to the Pacific Grove Unified School District and enable more participation by the Board of Education in the transition to district elections than would be the case through a court action.

Advantages of a pre-litigation settlement include that implementation of district elections in the Pacific Grove Unified School District could be deferred until November 2022 or November 2024, also deferring the hearings to draw district lines. This approach has proved successful in a number of other government jurisdictions in California.

We appreciate that for a government agency that has not planned to institute district elections, the November 2022 deadline could be difficult, particularly since all census data are not yet available. Government jurisdictions elsewhere have asked for a settlement process whereby more time would be available for implementation, and a settlement agreement can achieve this result. Under any circumstances, reimbursement costs are capped at $30,000, provided the Board of Education adopts a resolution of intent to implement district elections. The terms of existing Board members would not be affected by the move to district elections.

District elections elsewhere have been tied to more than greater representation -- these elections lead to more candidates seeking election to boards and councils and to greater participation and interest by the community in local government agencies and elections. There are many benefits that public agencies derive from district elections, including higher voter turn-out and more community participation, as described in the enclosed report. A number of government agencies in Monterey county, as elsewhere, have enacted district elections successfully.

Thank you for your consideration and attention to this matter. We look forward to working with you to establish district elections in the Pacific Grove Unified School District. We believe the Pacific Grove Unified School District will be an even better school district with district elections -- more representative of the people and in compliance with state law.

Sincerely yours,

Robert Goodman

Robert Goodman

RG/ph
Encl
Cc: California Voting Rights Project

Establishing District Elections in the

Pacific Grove Unified School District

pursuant to the

California Voting Rights Act

California Voting Rights Project
July 2021

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Establishing District Elections in the Pacific Grove Unified School District Pursuant to the California Voting Rights Act

Introduction

There is a strong case for establishing district elections in the Pacific Grove Unified School District. Hundreds of California school districts, cities, and special districts have instituted district elections in recent years pursuant to the California Voting Rights Act. District elections bring government closer to the people and increase representation, result in higher turn-out in local elections, and lead more candidates to run for local office.

Although about two-fifths of the enrollment in the Pacific Grove Unified School District is comprised of members of protected classes, no members of protected classes currently serve on the Board of Education of the Pacific Grove Unified School District or have been elected to the Board in many years.

There are many examples of polarized voting in the Pacific Grove Unified School District on state and local ballot measures. There are also significant differences between members of different groups in socioeconomic characteristics pertaining to education, employment, and health and in performance in the Pacific Grove Unified School District. At least 19 government agencies in Monterey County utilize district elections.

Abridgment of voting rights of members of protected classes is proscribed by the California Voting Rights Act. The United States Voting Rights Act and, especially, the California Voting Rights Act provide strong and explicit protections to challenge at-large forms of election to government bodies and to replace them with district elections.

To date, no government jurisdiction in California has prevailed in a challenge to its electoral system on the basis of the California Voting Rights Act.[1] The current, at-large method of election to the Pacific Grove Unified School

District Board of Education impairs the ability of members of protected classes to elect candidates of their choice and their ability to influence the outcomes of elections. Therefore, district elections must be established in the Pacific Grove Unified School District.

1. Benefits of District Elections

There are many benefits of district elections which have been experienced in jurisdictions throughout California. These include greater voter turn-out and participation, and more candidates running for office. In some places, turn-out in some voting precincts has increased by as much as one-quarter after district elections were implemented, and the number of candidates seeking election has more than doubled.

District elections bring government closer to the people. They result in representatives who are more knowledgable of neighborhood problems and concerns. Candidates learn about their electoral district when running for office. Voters have a member of the Board of Education to whom they can turn on issues, and Board members become more knowledgeable about area-specific issues. There is a wider spectrum of views on the Board of Education and more representation from all neighborhoods and the entire community. District elections empower neighborhoods. District elections have been accompanied by greater diversity of all sorts on elective boards.

District elections result in less expensive political campaigns. It is easier for younger and lower socioeconomic candidates to run for office if they do not have to raise as much money. This results in less influence by special interests. By walking door to door and other inexpensive means, candidates can be elected who would not be elected in at-large elections.

The Pacific Grove Unified School District will be an even better school district with district elections--more representative of the people and in compliance with state law. District elections will make elections to the Board of Education fairer and more inclusive, and will increase representation and participation. The universal experience with district elections in California is that school districts and other government jurisdictions have found them to be a superior form of representation, irrespective of the legal requirement.

Benefits of district elections are described in "The Politics of Latino Education: The Biases of At-Large Elections," by David Leal, Valerie Martinez-Ebers, and Kenneth Meier, published in the *Journal of Politics*, a publication of

the Southern Political Science Association, included here as Exhibit E and incorporated herein. This article contains much important information:

> Representation is an integral part of the political system.
>
> Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts. Boards, therefore, shoulder much responsibility for the quality of public education in America.
>
> The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement.
>
> Latino representation on school boards was associated with better educational conditions. In school districts with more Latino representation, Latino students experienced greater access to equal education ... There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.
>
> Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students.
>
> Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with district elections than with at-large elections. Our findings show that at-large election systems usually

disadvantage Latinos; the obvious recommendation is that at-large systems should be replaced by single-member systems.[2]

As members of protected classes are elected to governing boards, there tends also to be more members of protected classes who become employed by government agencies. In addition, because candidates for higher elective office are overwhelmingly elected first to local office, district elections lead in time to greater representation at all levels of elective office.

2. United States Voting Rights Act

The United States Voting Rights Act is landmark federal legislation that prohibits racial discrimination in voting. Passed in 1965 in the wake of the suppression of civil and voting rights, the United States Voting Rights Act is intended to enforce the voting rights guaranteed by the 14th and 15th Amendments to the United States Constitution, in particular the provisions of the 15th Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race ... [or] color".

According to the federal Voting Rights Act: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color ... A violation ... is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the ... political subdivision is one circumstance which may be considered" (52 U.S. Code Sec. 10301).

The United States Supreme Court has "long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of protected classes (*Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). Although legal actions against government jurisdictions in California to require district elections have been brought since 2002 pursuant to the California Voting Rights Act (rather than the U.S. Voting Rights Act), the federal Voting Rights Act also provides explicit and strong protection for the voting rights of members of protected classes.

3. California Voting Rights Act

Building upon the United States Voting Rights Act, the California Voting Rights Act was passed by the California legislature in 2001 and signed into law in 2002 to allow legal challenges to government jurisdictions in California with at-large methods of election to require them to institute district elections. According to the Rose Institute of State and Local Government at Claremont McKenna College (the state leader in gathering information on the transition from at-large to district elections): "The California Voting Rights Act was written to promote the use of by-district elections to encourage the election of candidates preferred by previously 'underrepresented' voters such as Latinos."[3] A copy of the California Voting Rights Act is included here as Exhibit B and incorporated herein.

The core provision of the California Voting Rights Act (CVRA) is:

> 14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or abridgment of the rights of voters who are members of a protected class.

The CVRA is clear: at-large methods of election are against California law when they impair the ability of protected classes to elect candidates of their choice or to influence the outcomes of elections as a result of dilution of the vote or abridgment of the rights of voters who are members of a protected class. Upon showing vote dilution or abridgment of the rights of voters of protected classes, at-large methods of election must be discontinued in favor of district elections.

According to Section 14028 of the CVRA: "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision." In addition: "Other factors such as ... the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the

political process, ... are probative ... factors to establish a violation" of the CVRA (Sec. 14028(e)).

The CVRA is also clear with respect to what the remedy for illegal, at-large elections is: "Upon a finding of a violation ..., the court shall implement appropriate remedies, **including the imposition of district-based elections**, that are tailored to remedy the violation" (Sec. 14029, emphasis added). Though a remedy for a violation of the CVRA other than district elections might be here contemplated, in fact no remedy has been ordered by a California court for violation of the California Voting Rights Act other than district elections.

When, as in the Pacific Grove Unified School District, a political subdivision utilizes an illegal, at-large method of election, district elections must be implemented.

To date, dozens of legal actions have been brought against school districts, cities, special districts, and other government agencies in California for violation of the California Voting Rights Act. Every action has been successful. The replacement of at-large elections by district elections is sweeping the state as a result of the CVRA. The Rose Institute also states: "Another significant effect of the California Voting Rights Act is the financial cost it has imposed ...--many challenges so far have resulted in settlements or legal awards over one million dollars."[4]

The California Voting Rights Act was ruled constitutional by a California Court of Appeal in 2007. The decision held: "The CVRA is race neutral. It does not favor any race over others or allocate burdens or benefits to any groups on the basis of race. It simply gives a cause of action to members of any racial or ethnic group that can establish that its members' votes are diluted."[5] The court further held: "Curing vote dilution is a legitimate government interest"; and: "To prove a violation, plaintiffs ... do not need to show that members of a protected class live in a geographically compact area."[6]

The CVRA also states: "Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required" (Sec.

14028(d)) to sustain a legal action brought pursuant to the California Voting Rights Act.

B. Board of Education Candidates and the Votes They Received in Pacific Grove School District Elections, 2018 and 2020

Year	Candidate	Votes
2018	Dawson	5,063
	Paff	4,127
	Walton	4,073
	Sahenkoske	3,267
2020	C. Swanson	6,783
	B. Swanson	4,262
	Miller	3,482

No candidates who are members of protected classes have sought election or been elected to the Pacific Grove Unified School District Board of Education in its most recently contested elections. The next table presents the total number of candidates and the number of candidates elected in these elections:

C. Pacific Grove Unified School District Board of Education Elections in 2018 and 2020, Total and Elected Candidates

Year	Total Cand.s	Elected Cand.s
2018	4	3
2020	3	2
Total:	**7**	**5**

As can be seen, of 7 total candidates for the Pacific Grove Unified School District Board of Education and 5 elected candidates in 2018 and 2020, none has been a member of a protected class. The next table on the following page shows the number of total votes in each of these elections:

D. Pacific Grove Unified School District Board of Education Elections in 2018 and 2020, Total Votes

Year	Total Votes
2018	16,530
2020	14,527
Total:	**31,057**

As can be seen, of more than 30,000 total votes cast for the Pacific Grove Unified School District Board of Education in 2018 and 2020, none was for a member of a protected class.

That the Pacific Grove Unified School District is more diverse than those who have sought election and been elected to the Board of Education is not intended to detract from the service that existing and past trustees provide and have provided to the community. The concern is with respect to the at-large method of election utilized by the Pacific Grove Unified School District.

As previously indicated, one of the strongest arguments for district elections in the Pacific Grove Unified School District is that it would lead to more contested elections for the Board of Education, as well as provide representation from all neighborhoods of the Pacific Grove Unified School District on the Board of Education. Although a number of elections to the Pacific Grove Unified School District Board of Education have not been contested, this does not relieve the requirements of the California Voting Rights Act to establish district elections.

Pursuant to the California Voting Rights Act, it is not necessary that abridgment of voting rights be demonstrated only in elections to the political subdivision's governing board. Rather, voting issues with respect to which the CVRA becomes applicable "means voting in which there is a difference ... in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate" (Sec. 14026(e))--irrespective of whether the difference in voting occurs for the governing board of the government jurisdiction in which district elections is sought or in other electoral choices.

This is made clear by legal specialists in districting, electoral issues, and voting rights Marguerite Leoni and Christopher Skinnell. They write in "The California Voting Rights Act," published by the *Public Law Journal* (vol. 32, Spring 2009), an official publication of the State Bar of California Public Law Section:

> **No Minority Candidates.**
>
> The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code Sec.s 14028(a) & (b).) Some particularly obvious examples ... might include Proposition 187 (denying services to undocumented immigrants), [and] Proposition 209 (preventing state agencies from adopting affirmative action programs) ... But other local measures may also serve the same purpose.[8]

This article also states that the California Voting Rights Act "makes fundamental changes to minority voting rights law in California"; the CVRA "alters established paradigms of proof and defenses ..., thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices"; the CVRA "prescribe[s] an extremely light burden ... to establish a violation"; the CVRA "eliminate[s] the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district"; the CVRA "eliminates the requirement that plaintiffs prove discrimination"; the CVRA "mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs"; the CVRA "denies not only attorneys fees but also the costs of litigation to prevailing defendants"; the "sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction"; and "Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the

elected representatives ... to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the [government jurisdiction] is in the CVRA safe harbor."[9] A copy of this article is included here as Exhibit D and incorporated by this reference.

There are many examples of racially polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District on state ballot measures in even the two most recent elections, where electoral precincts within the District with different proportions of members of protected classes have expressed different preferences on measures, including:

E. Polarized Voting on State Ballot Measures in Pacific Grove Unified School District, 2018 and 2020

Year	State Ballot Measure
2018	Proposition 1, housing programs
2018	Proposition 3, water bonds
2018	Proposition 8, dialysis payment restructuring
2018	Proposition 10, local rent control
2020	Proposition 15, funding for public schools
2020	Proposition 16, repeal Proposition 209
2020	Proposition 18, allow 17-, 18-year olds to vote
2020	Proposition 19, change property tax rules
2020	Proposition 25, require money bail

Further, there are also many instances of racially polarized voting in the Pacific Grove Unified School District on local ballot measures, including:

F. Polarized Voting on Local Ballot Measures in Pacific Grove Unified School District, 2009 to 2020

Year	Local Ballot Measure
2009	Measure J, City of Pacific Grove Library Parcel Tax
2010	Measure Q, City of Pacific Grove Library Parcel Tax
2011	Measure V, Pacific Grove Unified School District Parcel Tax
2012	Measure A, Pacific Grove Unified School District Parcel Tax
2014	Measure A, Pacific Grove Unified School District Facilities Bond
2020	Measure V, Monterey Peninsula Com. Cllg Dist. Facilities Bond

The analysis here presents examples of polarization only to the year 2009. If this presentation were continued to the year 2000, incorporating state and local ballot measures and state and local candidates for office, it would be possible to demonstrate as many as 40 or more instances of polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District since this time.

Pursuant to the CVRA, as previously cited: "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in *elections incorporating other electoral choices by the voters of the political subdivision*" (Sec. 14028(a)). The emphasized passage was specifically incorporated into the CVRA to provide for challenges to government jurisdictions in which very few or no members of protected classes had run for their elected boards. Pursuant to the California Voting Rights Act, district elections must be established in the Pacific Grove Unified School District.

The California Voting Rights Act also states: "Other factors such as ... denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, ... are probative, but not necessary factors to establish a violation" (Sec. 14028(e)). As well as the examples of abridgment of voting rights and polarized voting previously outlined, there is significant evidence of the extent to which members of protected classes in the Pacific Grove Unified School District bear the effects of past conditions in areas such as education, employment, and health.

The next table presents comparisons between the white and Latino populations in Pacific Grove on various socioeconomic characteristics pertaining to education, employment, and health in the 2019 United States Census Bureau American Community Survey estimate:

G. Comparison Between White and Latino Populations In City of Pacific Grove on Various Socioeconomic Characteristics, 2019

	White Population	Latino Population
Education		
Adults with high school degree	99.0%	74.5%
Adults with bachelor's degree	56.9%	19.7%
Employment		
Average per capita income	$55,162	$35,334
Households receiving food stamps	2.0%	5.0%
Health		
Individuals without health insurance	2.9%	6.5%

Furthermore, the California Assessment of Student Performance and Progress (CAASPP) is the main state assessment system for students in California schools. The CAASPP provides educational performance measures in

a variety of areas. The following tables present achievement for students tested in the Pacific Grove Unified School District in 2018-19 in English Language Arts/ Literacy and Mathematics, disaggregated by white and Latino students:

H. Pacific Grove Unified School District 2018-19 CAASPP English Language Arts/Literacy Achievement by Ethnicity

Achievement Level	White	Latino
4 -- Exceeds Standard	50.16%	32.45%
3 -- Meets Standard	31.05%	34.57%
2 -- Nearly Meets Standard	12.90%	21.81%
1 -- Standard Not Met	5.89%	11.17%

I. Pacific Grove Unified School District 2018-19 CAASPP Mathematics Achievement by Ethnicity

Achievement Level	White	Latino
4 -- Exceeds Standard	41.24%	20.86%
3 -- Meets Standard	28.50%	24.06%
2 -- Nearly Meets Standard	19.27%	38.36%
1 -- Standard Not Met	10.99%	18.72%

Approximately one in five students in the Pacific Grove Unified School District, disproportionately Latino, qualifies for free or reduced price meals.

In addition, the Pacific Grove Unified School District is a "basic aid" school district, whereby local property tax revenues exceed the amount of revenue received by "revenue limit" school districts, which typically receive thousands of dollars less per student than basic aid districts. Although no challenge to the funding of basic aid school districts is currently active, enactment of district elections could help to protect the funding of the Pacific Grove Unified School District from future challenges to funding formulas.

Clear and compelling evidence exists that the Pacific Grove Unified School District's current, at-large method of election to its Board of Education does not meet the requirements of the California Voting Rights Act. It is very likely that the Pacific Grove Unified School District would be ordered by a court to implement district elections. In the event that the Pacific Grove Unified School District is not willing to institute district elections voluntarily, attached hereto and incorporated herein as Exhibit A is a draft complaint against the Pacific Grove Unified School District to require its implementation of district elections pursuant to the California Voting Rights Act.

5. Methods of Instituting District Elections In the Pacific Grove Unified School District

There are two basic methods by which district elections may be instituted in the Pacific Grove Unified School District: a) a pre-litigation settlement agreement by the Pacific Grove Unified School District Board of Education outlining the District's intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition; or b) litigation.

If the Pacific Grove Unified School District Board of Education chooses a pre-litigation settlement, then, pursuant to Section 10010 of the California Elections Code, the process the Pacific Grove Unified School District will follow when district elections are implemented, as determined by the settlement agreement, is:

1) Within 45 days of receipt of the certified letter notifying the Pacific Grove Unified School District that its method of conducting elections violates the CVRA, the Pacific Grove Unified School District Board of Education will adopt a resolution outlining the District's intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition.

2) If the Pacific Grove Unified School District Board of Education passes a resolution to this effect, a legal action may not be commenced for another 90 days after the resolution's passage, or as modified by the settlement agreement.

3) Before district lines are drawn, the Pacific Grove Unified School District Board of Education holds two public hearings at which the public is invited to provide input concerning the composition of districts. In advance of these hearings, the Pacific Grove Unified School District should conduct outreach to the public, including to non-English speaking communities, explaining the districting process and encouraging participation. According to the United States Census Bureau, approximately 16 percent of residents in Pacific Grove speak a language other than English in the home.

4) Following these two hearings, the Pacific Grove Unified School District publishes and makes available for release at least one draft map and the proposed sequence of elections to new districts. The Pacific Grove Unified School District then holds two more public hearings at which the public is invited to provide input on the draft map or maps and proposed sequence of elections.

5) In determining the sequence of elections, the Pacific Grove Unified School District is required to give special consideration to the purposes of the California Voting Rights Act. For this reason, it is likely that among the first districts in which district elections will be held will be districts including significant proportions of individuals from protected classes.

6) After adopting the resolution of intention to transition from at-large to district elections and holding the hearings, the Pacific Grove Unified School District Board of Education adopts a map of districts and a sequence of elections.

If the Pacific Grove Unified School District establishes district elections according to the above process as modified by the settlement agreement, no litigation is required.

Upon adopting the resolution of intention to transition from at-large to district elections, the Pacific Grove Unified School District may seek a waiver from the California State Board of Education, as permitted by California Education Code Sections 33050-33053, of the requirement of voter approval for the transition to district elections, reducing the cost of the transition to district elections. Such waivers are routinely granted.

6. Advantages of a Settlement Agreement

A pre-litigation settlement agreement is the best way to ensure the most expeditious, least expensive, and most cooperative process to establish district elections in the Pacific Grove Unified School District. There are many advantages of a pre-litigation settlement agreement rather than litigation to institute district elections. Most importantly, the Pacific Grove Unified School District Board of Education retains a greater role in and more control over the transition process to district elections and legal costs are capped.

A greater role by the Board of Education and more control over the transition to district elections could manifest itself in a number of ways through a settlement agreement, including:

1) Participation in timing of the first district elections. If this matter were to become the subject of litigation, a court could require that a special election be held. As a result of a pre-litigation settlement agreement, the first district elections could be held in November 2022 or November 2024, also delaying the hearings to draw district lines. Elsewhere in California, agreements have been reached to hold first district elections in 2022 or 2024, following the availability of all 2020 census data, as a result of pre-litigation settlement agreements.

2) The Pacific Grove Unified School District would retain the ability to draw the lines of voting districts both now and in the future. As a result of litigation, the court could draw the lines for voting districts through a court-determined process.

3) Saving of plaintiffs' attorney fees and costs, and its own legal expenses, by the Pacific Grove Unified School District, potentially saving hundreds of thousands or even more dollars. Pursuant to the CVRA: "In any action to enforce [the California Voting Rights Act] the court shall allow the prevailing plaintiff party ... a reasonable attorney's fee ... and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs" (Sec. 14030). In addition: "Prevailing defendant parties shall not recover any costs" (id.).

In recent years, many jurisdictions have had to pay hundreds of thousands and even millions of dollars in attorneys' fees to prevailing plaintiff parties. Moreover, jurisdictions are responsible for their own legal costs, which can also be hundreds of thousands of dollars. The following table presents some settlements in California Voting Rights Act cases:

J. Settlements in CVRA Litigation (partial list)

Jurisdiction	Settlement
City of Palmdale	$4,500,000
City of Modesto	$3,000,000
City of Anaheim	$1,200,000
City of Whittier	$1,000,000
Santa Clarita Community College Dist.	$850,000
San Mateo County	$650,000
Tulare Healthcare District	$500,000
City of Escondido	$385,000
City of Garden Grove	$290,000
City of Bellflower	$250,000

As a result of the potentially significant costs of litigation, **the California Voting Rights Project strongly recommends that government jurisdictions reach settlement in the 45-day statutory pre-litigation stage**. In this case, pursuant to Assembly Bill 350 signed into legislation in 2016, costs to government jurisdictions are capped at $30,000 plus annual CPI adjustment (now, $32,377) for demographic and legal services.[10]

It should be emphasized that Assembly Bill 350 applies only to the pre-litigation phase of cases brought pursuant to the CVRA. If a CVRA action becomes the subject of litigation through a complaint being filed, there is no limit on attorneys' fees and costs other than as stated in the CVRA.

In addition, because Assembly Bill 350 would "impose additional duties on local agencies, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state ... This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for these costs shall be made pursuant to ... statutory provisions" (Legislative Counsel's Digest of Assembly Bill 350). Accordingly, it may be possible for the Pacific Grove Unified School District to receive reimbursement from the state for a pre-litigation settlement. A copy of Assembly Bill 350 is included here as Exhibit C and incorporated by this reference.

The preceding are only some of the advantages of a pre-litigation settlement agreement. As an example of a settlement agreement in another school district, a copy of the resolution and settlement agreement establishing district elections in the Goleta Union School District is included here as Exhibit G and incorporated by this reference.

Conclusion

The Pacific Grove Unified School District will be an even better school district with district elections. District elections will increase participation and representation and bring the Pacific Grove Unified School District into compliance with the California Voting Rights Act. More candidates will seek election to office and the community will become even more involved in the District and its schools.

For further information on the likelihood of district elections being instituted by a court, see the February 21, 2017, Council Agenda Report in the City of Santa Maria, which is included here as Attachment F and incorporated by this reference. According to this report: "After much analysis and in-depth conversations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections ... Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based election system."[11]

At least 19 government jurisdictions in Monterey county already utilize district elections, including:

K. Monterey County Government Jurisdictions Utilizing District Elections

Board of Supervisors
County Board of Education
Hartnell Community College District
Monterey Peninsula Community College District
Alisal Union School District
Chular Union Elementary School District
Monterey Peninsula Unified School District
North Monterey County Unified School District

Monterey County Government
Jurisdictions Utilizing District Elections (cont.d)

Pajaro Valley Unified School District
Salinas City Elementary School District
Salinas Union High School District
San Antonio Union School District
Soledad Unified School District
City of King
City of Marina
City of Salinas
Monterey Peninsula Airport District
Monterey Peninsula Water Management District
Salinas Valley Memorial Healthcare System

Abridgment of voting rights has no place in the Pacific Grove Unified School District or anywhere else. The Mission Statement of the Pacific Grove Unified School District states that the District is in "partnership with the community," has a "focus on equity," and will "meet the diverse needs of all students." District elections will--to the District's benefit--assist the Pacific Grove Unified School District to meet the goals of its Mission Statement and of the California Voting Rights Act, result in more participation and involvement by the community, and bring the District into compliance with the law.

Clear and compelling evidence of abridgment of voting rights would sustain a legal action brought pursuant to the California Voting Rights Act to institute district elections in the Pacific Grove Unified School District. A pre-litigation settlement agreement by the Pacific Grove Unified School District Board of Education provides the best opportunity to implement district elections in a manner that retains participation by the Board of Education and Pacific Grove Unified School District in the transition process to district elections and is cost-effective.

Endnotes

[1] See "CVRA Settlement Agreement / Resolution of Intention," Council Agenda Staff Report, City of Carpinteria (August 14, 2017): "The City Attorney's Office has surveyed the reported case law concerning litigation based on a violation of the CVRA. There is no reported case in which the defendant public agency has prevailed on the merits by proving that a violation of the CVRA did not occur" (p. 3).

[2] David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, "The Politics of Latino Education: The Biases of At-Large Elections," *Journal of Politics* (Vol. 66, No. 4, November 2004; included here as Exhibit E).

[3] Justin Levitt et al., "Quiet Revolution in California Local Government Gains Momentum" (Claremont McKenna College: Rose Institute of State and Local Government, November 3, 2016), p. 1. The Rose Institute remarks on the switch from at-large to district elections in California: "This quiet tectonic shift in local government is accelerating" (id.).

[4] Id., p. 2.

[5] *Sanchez v. City of Modesto*, Court of Appeal, Fifth District, California, No. F048277 (December 6, 2006).

[6] Id.

[7] Asian enrollment includes Filipinos.

[8] Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," *Public Law Journal* (Vol. 32, No. 2, Spring 2009; Official Publication of the State Bar of California Public Law Section; included here as Exhibit D).

[9] Id.

[10] Pursuant to Assembly Bill 350: "The amount of reimbursement required by this section is capped at $30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor" (Section 1. 10010(f)(3); included here as Exhibit C). The increase in the Consumer Price Index for All Urban Consumers in 2017 was 2.1%, in 2018 the increase was 1.9%, in 2019 the increase was 2.3%, and in 2020 the increase was 1.4%, meaning the cap for reimbursement is now $32,377.

[11] City of Santa Maria, "Council Agenda Report" (February 21, 2017; included here as Exhibit F).

Exhibits

A. Draft Complaint Against the Pacific Grove Unified School District for Violation of the California Voting Rights Act

B. California Voting Rights Act

C. Assembly Bill 350

D. Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," *Public Law Journal* (Spring 2009)

E. David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, "The Politics of Latino Education: The Biases of At-Large Elections," *Journal of Politics* (Nov. 2004)

F. City of Santa Maria Council Agenda Report with Respect to Implementing District Elections

G. Resolution and Settlement Agreement Establishing District Elections in the Goleta Union School District

EXHIBIT "A"

DRAFT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

Complaint for Violation of the

California Voting Rights Act of 2001

Against the Pacific Grove Unified School District

Plaintiffs, by and through their counsel of record, hereby bring this action against defendant Pacific Grove Unified School District, California, and Does 1 through 25 (collectively "Defendants" or "the defendants"). In support of their complaint, Plaintiffs allege as follows:

I. INTRODUCTION

1. This action is brought by Plaintiffs for injunctive relief against Defendants for their violation of the California Voting Rights Act of 2001, California Elections Code Sec.s 14025, *et seq.* (the "CVRA). The imposition of the Pacific Grove Unified School District's at-large method of election has resulted in vote dilution for residents of protected classes and has denied them effective political participation in elections to the Pacific Grove Unified School District Board of Education. The Pacific Grove Unified School District's at-large method of election for electing members to its Board of Education prevents residents of protected classes from electing candidates of their choice in Pacific Grove Unified School District Board of Education elections.

2. The effects of the Pacific Grove Unified School District's at-large method of election are apparent and compelling. Despite a significant proportion of members of protected classes living in the Pacific Grove Unified School District and attending its schools, no members of protected classes have sought election or been elected to the Pacific Grove Unified School District Board of Education for many years. The deficiency of members from protected classes as candidates for and elected to the Pacific Grove Unified School District Board of Education reveals the lack of access to the political process.

3. The Pacific Grove Unified School District's at-large method of election violates the CVRA. Plaintiffs bring this action to enjoin the Pacific Grove Unified School District's continued abridgment of the voting rights of members of protected classes. Plaintiffs seek a

declaration from this Court that the at-large method of election currently employed by the Pacific Grove Unified School District violates the CVRA. Plaintiffs seek injunctive relief enjoining the Pacific Grove Unified School District from further imposing or applying its current at-large method of election. Further, Plaintiffs seek injunctive relief requiring the Pacific Grove Unified School District to design and implement district-based elections to remedy its violation of the CVRA.

II. THE PARTIES

4. At all material times, Plaintiffs are and have been registered voters residing in the Pacific Grove Unified School District and are eligible to vote in the Pacific Grove Unified School District's elections.

5. At all material times, defendant Pacific Grove Unified School District, California, is and has been a political subdivision of the State of California subject to the provisions of the CVRA.

6. Plaintiffs are unaware of the true names and capacities of the defendants sued herein as Does 1 through 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of these defendants when their true names are ascertained. Plaintiffs are informed and believe, and on that basis allege, that the acts and conduct alleged herein of each defendant was known to, authorized by, and/or ratified by the other defendants. Does 1 through 25, inclusive, are individuals or entities that have caused the Pacific Grove Unified School District to violate the CVRA, failed to prevent the Pacific Grove Unified School District's violation of the CVRA, and/or are otherwise responsible for the acts and omissions alleged herein.

7. Plaintiffs are informed and believe, and allege on that basis, that each defendant named herein, at all times mentioned in this complaint, was the agent, employee, partner, joint venturer, and/or employer of the other defendants and was at all times herein mentioned acting within the course and scope of that agency, employment, partnership, ownership, or joint venture.

III. JURISDICTION AND VENUE

8. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts subject to this complaint occurred in the County of Monterey.

9. Venue is proper in this court because the Pacific Grove Unified School District is a public entity located within this county.

IV. GENERAL ALLEGATIONS

A. Political Background on the Pacific Grove Unified School District

10. The Pacific Grove Unified School District is governed by a Board of Education. The Pacific Grove Unified School District Board of Education serves as the governmental body responsible for the operation of the Pacific Grove Unified School District. The Board of Education is comprised of five members.

11. The Board of Education of the Pacific Grove Unified School District is elected at-large. All of the voters of the Pacific Grove Unified School District elect all of the members of the Board of Education.

12. Vacancies to the Board of Education are elected on a staggered basis. Every two years, the electorate elects two or three Board of Education members, each of whom serves a four-year term.

13. No member of a protected class has been elected to the Pacific Grove Unified School District Board of Education since at least 2007. No member of a protected class currently serves on the Board of Education.

B. Racial Polarization's Impact on the Pacific Grove Unified School District

14. Elections held within the Pacific Grove Unified School District are characterized by racially polarized voting.

15. Racially polarized voting occurs when members of a protected class -- as defined by California Elections Code Sec. 14025(d) -- vote for candidates or other electoral choices that differ from the rest of the electorate.

16. Racially polarized voting exists within the Pacific Grove Unified School District. There is a clear difference between the choice of candidates and other electoral choices that are preferred by voters from protected classes and the choice of candidates and other electoral choices that are preferred by voters in the rest of the electorate.

17. Racially polarized voting consists of both voter cohesion on the part of members of protected classes and voter cohesion by the non-protected class electorate against the choices of protected class voters.

18. Patterns of racially polarized voting and vote dilution have the effect of impeding opportunities for protected class voters to elect candidates of their choice to the at-large Board of Education positions in the Pacific Grove Unified School District. The non-protected class electorate dominates elections.

19. Voters from protected classes are harmed by racially polarized voting.

20. There are many examples of racially polarized voting in the Pacific Grove Unified School District. Merely in the past two election cycles, there is evidence of racially polarized voting on the following state ballot measures, in which precincts within the Pacific Grove Unified School with larger numbers of members of protected classes and other precincts have differed in their electoral choices:

2018 -- Proposition 1 (housing programs);

2018 -- Proposition 3 (water bonds);

2018 -- Proposition 8 (dialysis payment restructuring);

2018 -- Proposition 10 (local rent control);

2020 -- Proposition 15 (funding for public schools);

2020 -- Proposition 16 (repeal of Proposition 209);

2020 -- Proposition 17 (allow 17-18-year olds to vote);

2020 -- Proposition 19 (change property tax rules);

2020 -- Proposition 25 (require money bail).

21. There is also evidence of racially polarized voting and vote dilution on ballot measures at the local level in recent years, including:

2009 -- Measure J, City of Pacific Grove (library parcel tax);

2010 -- Measure Q, City of Pacific Grove (library parcel tax);

2011 -- Measure V, Pacific Grove Unified School District (parcel tax);

2012 -- Measure A, Pacific Grove Unified School District (parcel tax);

2014 -- Measure A, Pacific Grove Unified School District (facilities bond);

2020 -- Measure V, Monterey Peninsula Community College District (facilities bond).

22. In addition, there is evidence of racially polarized voting and vote dilution for candidates for local and state office in the Pacific Grove Unified School District. It is estimated that, since the year 2000, it would be possible to demonstrate as many as 40 or more instances of racially polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District on state ballot measures, local ballot measures, and candidates for state and local office.

C. Impact of Polarization on Protected Classes

23. Members of protected classes in the Pacific Grove Unified School District bear the effects of past discrimination in areas such as education, employment, and health. Members of protected classes have graduated at a lower rate from high school and college than whites, have lower per capita and median household income, and have higher percentages of households and individuals receiving food stamps and without health insurance. There are marked differences in the educational performance of white and Latino students in the Pacific Grove Unified School District in California Assessment of Student Performance and Progress (CAASPP) testing.

24. The at-large method of election voting has caused the dilution of protected class votes in the Pacific Grove Unified School District. Protected class voters and the rest of the electorate regularly express different preferences on candidates and other electoral choices, which has been to the detriment of protected class voters.

25. The obstacles posed by the Pacific Grove Unified School District's at-large method of election impairs the ability of protected class voters to elect candidates of their choice in elections held in the Pacific Grove Unified School District.

26. An alternative method of election exists -- district-based elections -- that will provide an opportunity for the members of protected classes as defined by the CVRA to elect candidates of their choice in Pacific Grove Unified School District elections.

27. All allegations made in this complaint are based upon information and belief, except those allegations which pertain to the named Plaintiffs, which are based on personal knowledge. The allegations of this complaint are stated on information and belief and are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

V. CAUSES OF ACTION

First Cause of Action

(Violation of California Voting Rights Act of 2001)

(Against All Defendants)

28. Plaintiffs hereby reallege and incorporate by reference each and every allegation stated in paragraphs 1 through 27 above as though set forth fully herein.

29. Plaintiffs are registered voters and reside within the Pacific Grove Unified School District.

30. Plaintiffs are members of a protected class of voters under the CVRA.

31. Plaintiffs are over the age of 18 and are eligible to vote in the Pacific Grove Unified School District's elections.

32. The Pacific Grove Unified School District is a political subdivision within the State of California.

33. The Pacific Grove Unified School District employs an at-large method of election.

34. Racially polarized voting has occurred, and continues to occur, in elections in the Pacific Grove Unified School District and in elections incorporating other electoral choices by voters in the Pacific Grove Unified School District. As a result, the Pacific Grove Unified School District's at-large method of election is imposed in a manner that impairs the ability of a

protected class as defined by the CVRA to elect candidates of its choice in Pacific Grove Unified School District elections.

35. An alternative method -- district-based elections -- exists that will provide an opportunity for the members of a protected class as defined by the CVRA to elect candidates of their choice in Pacific Grove Unified School District Board of Education elections.

36. An actual controversy has arisen and now exists between the parties relating to the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of rights.

37. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will continue to cause, immediate and irreparable injury to Plaintiffs, and those similarly situated.

38. Plaintiffs, and those similarly situated, have no adequate remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For a decree that the Pacific Grove Unified School District's current at-large method of election for its Board of Education violates the California Voting Rights Act of 2001;

2. For preliminary and permanent injunctive relief enjoining the Pacific Grove Unified School District from imposing or applying its current at-large method of election;

3. For injunctive relief mandating that the Pacific Grove Unified School District design and implement single-member district-based elections, as defined by the California Voting Rights Act of 2001, to remedy the Pacific Grove Unified School District's violation of the California Voting Rights Act of 2001;

4. For an award of Plaintiffs' attorney fees, costs, and prejudgment interest pursuant to the CVRA, California Elections Code Sec. 14030, and other applicable law; and

5. For such further relief as the Court deems just and proper.

Dated: September 30, 2021

EXHIBIT "B"

CALIFORNIA VOTING RIGHTS ACT
ELECTIONS CODE SECTIONS 14025-14032

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.
(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.
(3) One that combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as

this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral

choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

EXHIBIT "C"

AB-350 District-based municipal elections: preapproval hearings. (2015-2016)

SHARE THIS:

Assembly Bill No. 350

CHAPTER 737

An act to amend Section 10010 of the Elections Code, relating to elections.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 350, Alejo. District-based municipal elections: preapproval hearings.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or by districts formed within the political subdivision (district-based). Existing law requires a political subdivision, as defined, that changes from an at-large method of election to a district-based election to hold at least 2 public hearings on a proposal to establish the district boundaries of the political subdivision before a public hearing at which the governing body of the political subdivision votes to approve or defeat the proposal.

This bill would instead require a political subdivision that changes to, or establishes, district-based elections to hold public hearings before and after drawing a preliminary map or maps of the proposed district boundaries, as specified.

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large method of election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce its provisions.

This bill would require a prospective plaintiff under the CVRA to first send a written notice to the political subdivision against which the action would be brought indicating that the method of election used by the political subdivision may violate the CVRA. The bill would permit the political subdivision to take ameliorative steps to correct the alleged violation before the prospective plaintiff commences litigation, and it would stay the prospective plaintiff's ability to file suit for a prescribed amount of time. This bill would also permit a prospective plaintiff who sent a written notice, as described, to recover from the political subdivision reasonable costs incurred in supporting the written notice.

Because the bill would impose additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10010 of the Elections Code is amended to read:

10010. (a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of this code), and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

(d) For purposes of this section, the following terms have the following meanings:

(1) "At-large method of election" has the same meaning as set forth in subdivision (a) of Section 14026.

(2) "District-based election" has the same meaning as set forth in subdivision (b) of Section 14026.

(3) "Political subdivision" has the same meaning as set forth in subdivision (c) of Section 14026.

(e) (1) Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act.

(2) A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3) (A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a

political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 90 days of the resolution's passage.

(f) (1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written demand, except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at $30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXHIBIT "D"

THE CALIFORNIA VOTING RIGHTS ACT

Marguerite Mary Leoni*
Christopher E. Skinnell**

In 2002, the California Voting Rights Act, S.B. 976, was signed into law. (Elec. Code §§ 14027-14032.) The Act makes fundamental changes to minority voting rights law in California. As of January 1, 2003, the California Voting Rights Act ("CVRA") alters established paradigms of proof and defenses under the federal Voting Rights Act, thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices.[1] The potential consequences of this legislation are significant: it could force a city or special district to abandon an electoral system that may be perfectly legal under

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* Ms. Leoni is a partner at Nielsen, Merksamer, Parrinello Mueller & Naylor, LLP (Mill Valley, California), Phone: (415) 389-6800, E-mail: mleoni@nmgovlaw.com. She specializes in legal counseling and civil litigation relating to redistricting and voting rights questions, school district reorganizations, campaign, government and initiative/referendum law. Her practice includes both trial and appellate practice.

Ms. Leoni has represented and currently represents numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting and electoral matters. She has assisted in all phases of such cases including design of plans, the public hearing process, analysis of proposed alternatives, enactment procedures, referenda, districting and redistricting, preparing and advocating preclearance submissions to the U. S. Department of Justice, and defending federal court litigation concerning the legality of electoral systems under the federal constitution and Voting Rights Act. She represented the Administrative Office of the Courts on federal Voting Rights Act issues and electoral questions pertaining to trial court unification in California. She also represented the Florida Senate in designing that state's Senate and Congressional districts, Voting Rights Act preclearance, and in defending against ensuing state and federal court challenges. She also represented the consultant to Arizona's Independent Redistricting Commission in designing redistricting plans for Arizona's state legislative and congressional districts.

** Mr. Skinnell is an associate (bar results pending) at Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP (Mill Valley, California), Phone: (415) 389-6800, E-mail: cskinnell@nmgovlaw.com. He received his Bachelor's degree in 1999 from Claremont McKenna College, *magna cum laude*, and is a 2003 graduate of the University of Chicago Law School, where he served as Editor-in-Chief of *The University of Chicago Legal Forum*.

Prior to attending law school, he was a political consultant to several California legislative and initiative campaigns, a research associate at the Rose Institute of State and Local Government, and chairman of a successful initiative campaign in Southern California.

Mr. Skinnell has extensive experience with voting rights matters, both from the legal and technical perspectives. In addition to working on various voting rights lawsuits, he has published numerous articles and studies on voting rights and redistricting, has served as the technical/GIS consultant on several municipal redistrictings, and has prepared a successful preclearance submission to the U.S. Department of Justice under Section 5 of the Voting Rights Act.

[1] As noted in a celebratory press statement by the Mexican American Legal Defense and Education Fund (MALDEF) following the passage of S.B. 976, which along with the ACLU and voting rights attorney Joaquin Avila, was a primary supporter of the CVRA, the "[b]ill makes it easier for California minorities to challenge 'at-large' elections."

federal law, in the process exposing the jurisdiction to the possibility of paying very high awards of attorneys fees to plaintiffs.[2]

California's cities, counties, and special districts have had almost four decades of experience in complying with the federal Voting Rights Act ("federal VRA"), especially Section 2, the landmark legislation outlawing both intentional discrimination in voting practices and those practices that have unintentional but discriminatory effects when viewed in the totality of the circumstances. (Voting Rights Act of 1965, Pub. L. No. 89-110, Stat. 437 (1965), codified as amended at 42 U.S.C. §§ 1971, 1973-1973ff-6 (1994).) Indeed, California has adopted compliance with Section 2 as one of its statutory redistricting criteria for cities, counties, and special districts. (*See, e.g.,* Elec. Code §§ 21601 [general law cities], 21620 [charter cities], & 22000 [special districts].) After decades of litigation under the federal VRA, the courts have provided a wealth of guidance for cities and special districts in identifying practices that may have discriminatory effects. Most notable in California is the prevalence of the "at-large" electoral system (see description below). Jurisdictions have learned to consider changing to a district-based electoral system when they have minority group residents who are sufficiently numerous and geographically concentrated to form a majority in a single-member district, especially when that minority group, despite running candidates for election, consistently fails to elect.

But now the voting rights legal environment with which cities and special districts have grown familiar has changed significantly. Here are some of the highlights.

CVRA Highlights.

- **Focus of the CVRA: "At-large" and "From-district" Elections.**

If your city or special district elects its governing board members "by-district," (*i.e.*, only by the voters of the district, sometimes called "division" or "area," in which the candidate resides), you can stop reading now. The CVRA does not apply to a by-district electoral system. However, if you have an "at-large" or "from-district" system, read on!

The CVRA applies only to at-large and from-district electoral systems, or combination systems. (Elec. Code §§ 14026(a), 14027.) At-large systems are those in which each member of the governing board is elected by all the voters in the jurisdiction. Most

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[2] In federal voting rights cases, the litigation bill can run to hundreds of thousands of dollars even for a small jurisdiction of a few thousand people. *See* Florence Adams, *Latinos and Local Representation: Changing Realities, Emerging Theories* 73 (Garland 2000) (noting that in the City of Dinuba, California, the costs of federal voting rights litigation added up to nearly $60 per person, more than the annual cost of Dinuba's Fire Department). In a voting rights case filed against the City of Santa Paula in 2000 and recently settled, the City reportedly spent $700,000 for attorneys fees. *See* T.J. Sullivan, "Santa Paula Quiet on Measure D," *Ventura County Star* B-01 (Oct. 20, 2002).

jurisdictions in California, especially smaller jurisdictions, have at-large electoral systems. "From-district" elections differ from at-large systems only in that they require each member of the governing board to live within a particular district. Election, however, is still by all the voters in the jurisdiction, rather than being limited to the voters within a district. There are also combination systems in which, for example, a primary election may be conducted "by-district", but the general election is conducted "from" those same districts, *e.g.*, the top two vote winners in the primary in each district run for election "at-large" in the general election.

Each of these variations is equally vulnerable to challenge if the minority plaintiffs can show that racially-polarized voting undercuts their ability to elect or influence the election of minority-preferred candidates. Features that might cause plaintiffs to scrutinize a city or special district as a potential target for a CVRA challenge include a history of electoral losses by minority candidates or a history of unresolved issues disproportionately affecting the minority community (*e.g.*, affordable housing, street and sidewalk maintenance, juvenile crime, etc.), coupled with a significant proportion of the population that are ethnic or racial minorities.

- **Protection For Minority Electoral "Influence."**

The federal VRA prohibits the use of electoral systems that abridge the ability of minority voters to *elect* candidates of their choice. Thus, if the minority plaintiffs would have still been unable to elect their chosen candidates in the absence of the challenged at-large system, the plaintiff would have very little chance of stating a federal claim (see below). Not so under the CVRA. The CVRA invalidates not only at-large elections that prevent minority voters from electing their chosen candidates, but also those that impair the ability of minority voters to *influence* elections.

To date, such influence claims have enjoyed *very* limited recognition or success in federal litigation, and California jurisdictions have no real experience with them. The U.S. Supreme Court has repeatedly declined to address influence claims in recent years. *See Johnson v. De Grandy*, 512 U.S. 997, 1008-09 (1994); *Holder v. Hall*, 512 U.S. 874, 900 n.8 (1994) (Thomas, J., concurring in judgment); *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993); *Growe v. Emison*, 507 U.S. 25, 41 n.5 (1993). The federal courts in California have refused to sanction such influence suits as well. *See Aldasoro v. Kennerson*, 922 F.Supp. 339, 376 (S.D. Cal. 1995); *DeBaca v. County of San Diego*, 794 F.Supp. 990, 996-97 (S.D. Cal. 1992); *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384, 1391-92 (S.D. Cal. 1989); *Romero v. City of Pomona*, 665 F. Supp. 853, 864 (C.D. Cal. 1987), *aff'd* 883 F.2d 1418, 1424 (9th Cir. 1989).

Indeed, only two federal courts have ever held[3] that the federal VRA requires, rather than merely permits, the creation of influence districts in the absence of a showing of intentional discrimination, and both are of questionable precedential value. *See Armour v. Ohio*, 895 F.2d 1078 (6th Cir. 1990); *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 691 F.Supp. 991 (E.D. La. 1988). One of the opinions, *Armour v. Ohio*, was subsequently vacated when rehearing en banc was granted, 925 F.2d 987 (6th Cir. 1991). On remand the district court implicitly sanctioned such claims again, 775 F.Supp. 1044, 1059 n.19 (N.D. Ohio 1991),[4] but later opinions from the Sixth Circuit have not treated *Armour* as binding on this issue, and have, in fact, expressly rejected influence suits. *See Cousin v. Sundquist,* 145 F.3d 818, 828 (6th Cir. 1998) ("We do not feel that an 'influence' claim is permitted under the Voting Rights Act."); *Parker v. Ohio*, 2003 U.S. Dist. LEXIS 8745, *11 (S.D. Ohio). The holding of the second case, *East Jefferson Coalition for Leadership*, was effectively undermined when the court subsequently amended the finding that necessitated the influence claim: that the minority community was too widely dispersed in the jurisdiction to constitute a majority in a single-member district. *See East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson,* 926 F.2d 487, 491 (5th Cir. 1991) (noting the amended finding that the minority group could indeed constitute a majority in a single-member district).

Given the reluctance of federal courts to enter the political thicket of influence suits, by opening the door to such claims the CVRA greatly expands protection for minority voting rights and, consequently, the potential for liability of cities and special districts.

The next question, of course, is obvious: what constitutes "influence"? The answer, unfortunately, is not so obvious. The CVRA does not define "influence" and there is very little federal precedent on which to rely for guidance. As the federal district court for Rhode Island put it in *Metts v. Almond*:

> "Ability to influence" itself, is a nebulous term that defies precise definition. If it means only the potential to alter the outcome of an election, it provides no standard at all because a single voter can be said to have that ability. On the other hand, if it means something more, there does not appear to be any workable definition of how much more is required and/or any meaningful way to determine whether the requirement has been satisfied.

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[3] Several other courts have assumed as much, without so deciding, instead ruling on other grounds. *See, e.g., Voinovich*, 507 U.S. at 154; *West v. Clinton*, 786 F.Supp. 803, 806 (W.D. Ark. 1992).

[4] The district court in *Armour* purported to avoid the question of influence claims. *See* 775 F.Supp. at 1059 n.19 ("We need not reach the question of whether [an influence claim] may be viable under the Voting Rights Act because we find that the plaintiffs have met their burden of demonstrating an ability to elect a candidate of their choice."). But as Judge Batchelder noted in dissent, the Court only avoided the issue by first holding that the plaintiffs need not constitute a majority in the reconfigured district. 775 F.Supp. at 1079 (Batchelder, J., dissenting). In so ruling, "the majority opinion effectively h[eld] that there is a cause of action under Section 2 when political boundaries are drawn so that they fail to maximize a minority group's ability to influence the outcome of elections." *Id.*

217 F.Supp.2d 252, 258 (D.R.I. 2002).

Nevertheless, defining "influence" is the task that a California court may soon face. The definition may well be case-specific to the demographic and political circumstances in each defendant jurisdiction, leaving local jurisdictions without clear guidelines.

- **Streamlined Proof for Plaintiffs.**

Federal voting rights cases under Section 2 require that a successful plaintiff show that (1) the minority group be sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district, (2) there is racially-polarized voting, and (3) there is white bloc voting sufficient usually to prevent minority voters from electing candidates of their choice. *Thornburg v. Gingles,* 478 U.S. 30, 50-51 (1986). If (and only if) all three of these "preconditions" are proven, the court then proceeds to consider whether, under the "totality of circumstances" the votes of minority voters are diluted. (42 U.S.C. § 1973(b) [prescribing the totality of the circumstances standard].)

The CVRA, by contrast, purports to prescribe an extremely light burden on the plaintiff to establish a violation. Under the CVRA, plaintiffs apparently can prove a violation based *solely* on evidence of racially-polarized voting. (Elec. Code §§ 14027 & 14028(e).) Racially-polarized voting is defined as "voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and the electoral choices that are preferred by voters in the rest of the electorate." (Elec. Code § 14026(e).) *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 552 (9th Cir. 1998) (adopting relatively lenient "separate electorates" test for determining whether a candidate was a minority-preferred candidate who was defeated by white bloc voting), *cert. denied*, 527 U.S. 1022 (1999).

The CVRA appears to eliminate the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district. (Elec. Code § 14028(c).) Assuming that racially-polarized voting can be proven, the CVRA defers inquiry into the size and geographical compactness of the minority group and the impact of those factors on the minority voters' ability to elect or ability to influence elections, to the remedial phase of the litigation. (See discussion below.)

The CVRA also eliminates the requirement that plaintiffs prove discrimination under the totality of the circumstances test. (Elec. Code § 14028(e).) This departure from the federal standards may prove to be the most significant. Some federal courts have been very lenient in finding racially-polarized voting. They could afford to be so lenient,

because, under federal law, establishing racially-polarized voting is not sufficient to prove a violation. The other *Thornburg v. Gingles* preconditions must be established and a violation must be proven in the "totality of the circumstances" phase of the lawsuit. The totality analysis then permits a federal judge to take into account such matters as the *degree* of the racially-polarized voting and perhaps find that it was not severe enough to warrant judicial intervention into the electoral processes of a city.

The CVRA does not require any comparable "totality of the circumstances" analyses as part of the plaintiff's proof. Under what would seem to be a draconian application of the CVRA, plaintiffs could argue that a jurisdiction is subject to liability if 51% of minority voters vote one way, 51% of non-minority voters vote the other way, and the minority-preferred candidate loses. Whether a court would sanction such an extreme application of the CVRA, without the subsequent safety valve of the totality analysis, cannot be known at this time. Another plausible reading of the CVRA is that the Legislature meant to ease the burden on plaintiffs but still permit the totality analysis to come in by way of defense. (Elec. Code § 14028(e) [stating that many of the traditional totality factors are "probative," but not necessary to establish a violation].)

Despite the fact that Section 14028(a) provides that a violation is established if racially-polarized voting is shown, the legislation does identify at least one other factor that bears on the question of liability. Specifically the CVRA provides that the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of a jurisdiction is "one circumstance that may be considered *in determining a violation.*" (Elec. Code § 14028(b) [emphasis added].) Thus phrased, the relevance of such evidence would not appear to be limited to the remedial stage, but would affect the question of liability as well. Moreover, the phraseology suggests that other, unspecified circumstances may be considered on the question of liability as well. Under the federal scheme, minority plaintiffs whose preferred candidates have a winning record would find it difficult, if not impossible, to establish a violation of the federal VRA. Presumably this would be the result under the CVRA, but the new law is not explicit on that point. Also, the CVRA specifies that the successful candidate must also be a member of the minority group in order to be taken into consideration as "one circumstance" that may be considered at the liability phase of the litigation. The CVRA is silent on whether the election of non-minority persons who are proven to be the preferred candidates of minority voters can also be considered. Plaintiffs may well argue that such successful minority-preferred candidates do not count.

- **New Remedies.**

The most likely remedy in a successful CVRA action would be to order cities and special districts with at-large, from-district, or mixed electoral systems to change to by-district systems in which a minority group will be empowered either to elect its preferred candidates, or influence the election outcome. But judicial remedies under the Act may

not be limited to the imposition of a by-district system. In cases where the minority group may be too small to form a majority in a single member district (*i.e.*, a district from which one member of the governing board is elected), the CVRA mandates that a court impose remedies "appropriate" to the violation. Indeed, the advocates of limited or cumulative voting systems may see the CVRA as an opportunity to attempt to impose such experimental remedies in California.

In a limited voting system, voters either cast fewer votes than the number of seats, or political parties nominate fewer candidates than there are seats. Theoretically, the greater the difference between the number of seats and the number of votes, the greater the opportunities for minorities to elect their chosen candidates. Versions of limited voting are used in Washington, D.C., Philadelphia (PA), Hartford (CT) and many smaller jurisdictions.

In a cumulative voting system, voters cast as many votes as there are seats. But unlike winner-take-all systems, voters are not limited to giving only one vote to a candidate. Instead voters can cast some or all of their votes for one or more candidates. Chilton County (AL), Alamogordo (NM), and Peoria (IL) all use a version of cumulative voting, as do a number of smaller jurisdictions. The State of Illinois used cumulative voting for state legislative elections from 1870 to 1980.

- **No-Risk Litigation For Plaintiffs.**

The CVRA mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs. (Elec. Code § 14030.) Prevailing defendants, however, are not treated so kindly. The CVRA denies not only attorneys fees but also the costs of litigation to prevailing defendants, unless the court finds a suit to be "frivolous, unreasonable, or without foundation," an extremely high standard. (*Id.*)

Furthermore, California law interprets "prevailing party" more broadly than does the analogous federal law governing attorneys fees awards for actions brought under Section 2 of the Voting Rights Act. The United States Supreme Court has, as a matter of statutory interpretation, recently rejected the "catalyst" theory of prevailing parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Servs.*, 532 U.S. 598, 603-05 (2001). The catalyst theory, which the California Supreme Court has previously approved, permits recovery of attorneys fees if there is any "causal connection" between the plaintiffs' lawsuit and a change in behavior by the defendant. *Maria P. v. Riles,* 43 Cal.3d 1281, 1291 (1987). The *Maria P.* court continued:

> "'The appropriate benchmarks in determining which party prevailed are (a) the situation immediately prior to the commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes between the two.'" . . . An award of attorney fees under section 1021.5 is

> appropriate when a plaintiff's lawsuit "'was a *catalyst* motivating defendants to provide the primary relief sought,'" or when plaintiff vindicates an important right "'by activating defendants to modify their behavior.'"

Id. at 1291-92 (quoting *Folsom v. Butte County Assn. of Governments,* 32 Cal.3d 668, 685 n.31 (1982); *Westside Community for Independent Living, Inc. v. Obledo,* 33 Cal.3d 348, 353 (1983)) (internal citations omitted).

Federal law, by contrast, requires some "change [in] the legal relationship between [the plaintiff] and the defendant." *Buckhannon,* 532 U.S. at 604 (quoting *Texas State Teachers Assn. v. Garland Independent School Dist.,* 489 U.S. 782, 792 (1987)). In other words, it is not enough under federal law that the defendant changed its conduct voluntarily—there must be some legally compelled impediment to the defendant falling back into the old ways, like a judgment or a settlement.

The California Supreme Court has traditionally treated federal precedent interpreting 42 U.S.C. § 1988 as persuasive authority, but it has also held that such federal precedent is not binding with regards to interpretation of state attorneys fee law. *See Serrano v. Unruh,* 32 Cal.3d 621, 639 n.29 (1982). Thus, the *Buckhannon* holding will not inevitably lead California to reject the catalyst theory in CVRA litigation as well.

Charter Cities.

Charter cities should not be complacent in a belief that they are immune from successful challenge under the new CVRA. The CVRA, after all, purports to apply to "cities" without making any explicit distinction between general law or charter cities. (Elec. Code § 14026(c).) It is true that a charter can provide for a form of government or electoral process for a city that is different from the general law. A charter city, however, remains subject to the California Constitution and would be prohibited from adopting or maintaining a discriminatory electoral system or electoral practices that violate the equal protection clause or the right to vote. *See Canaan v. Abdelnour,* 40 Cal.3d 703 (1985), *overruled on other grounds by Edelstein v. City & County of San Francisco,* 29 Cal.4th 164, 183 (2002); *Rees v. Layton,* 6 Cal.App.3d 815 (1970). Furthermore, California courts have recognized that state statutes can override city charters if they are narrowly-tailored to address an issue of statewide concern, even in the core areas of charter city control like election administration. *Edelstein,* 29 Cal.4th at 172-174; *Johnson v. Bradley,* 4 Cal.4th 389, 398-400 (1992). The CVRA expressly provides that it is intended to implement the guarantees of Section 7 of Article I (Equal Protection) and Section 2 of Article II (Right to Vote) of the California Constitution, which are themselves regarded as matters of statewide concern. *See Cawdrey v. City of Redondo Beach,* 15 Cal.App.4th 1212, 1226 (1993).

It is always possible that the California Supreme Court would decide that, even if preserving the right to vote is a matter of statewide concern, the CVRA sweeps too broadly and cuts too deeply into municipal affairs in violation of the principle of home rule. As the Supreme Court has noted, "[T]he sweep of the state's protective measures may be no broader than its interest." *Johnson,* 4 Cal.4th at 400. *Cf. Bd. of Trustees. of the Univ. of Ala. v. Garrett,* 531 U.S. 356, 365 (2000) (when Congress seeks to enforce constitutional protections with legislation, the statutory scheme must be congruent and proportional to the injury to be prevented or remedied); *City of Boerne v. Flores*, 521 U.S. 507 (1997). For example, charter cities could argue that, assuming eradicating the adverse effects of racially-polarized voting in at-large electoral systems is a matter of statewide concern, the CVRA is not narrowly-tailored because the federal VRA presents a scheme more carefully-crafted to weed out those at-large systems in which, under the totality of circumstances, minority voting rights are abridged, and leave in place those at-large systems in which a minority candidate may have simply lost an election.

Vote of the People.

The sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction. Indeed, the latter may increase the risk to the jurisdiction by serving as persuasive proof of a violation of the CVRA if the by-district system was rejected in an election characterized by a racially-polarized vote.

No Minority Candidates.

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code §§ 14028(a) & (b).) Some particularly obvious examples from the last decade might include Proposition 187 (denying state services to undocumented immigrants), Proposition 209 (preventing state agencies from adopting affirmative action programs), and Proposition 227 (barring the use of bilingual education in California public schools). *See Cano v. Davis*, 211 F.Supp.2d 1208, 1241 n.37 (C.D. Cal. 2002) (assuming these initiatives may be used to demonstrate racially-polarized voting). But other local measures may also serve the same purpose.

CONCLUSION

California's cities and special districts are entering a new and uncertain era in voting rights law. Much about the CVRA is unclear and federal precedent on key issues appears to have been legislatively overruled. It may require years of litigation to sort it all out. It

is impossible to know now whether California courts will uphold the constitutionality of the CVRA, how they will interpret the new law, or what defenses will be available. Perhaps the "totality of the circumstances" test will be reinvigorated by way of defense. In the meantime, there is a safe harbor under the CVRA (though still not necessarily under the federal Voting Rights Act): a by-district electoral system.

Jurisdictions with a history of electoral losses by candidates who are members of a minority group should consider analyzing those elections for racially-polarized voting. If polarized voting is detected, these jurisdictions may want to consider whether a change to a by-district electoral system is warranted. Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the elected representatives and the voters, rather than adverse plaintiffs or a court, to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the city or special district is in the CVRA safe harbor, even if the districts are not exactly those that plaintiffs would have preferred.

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EXHIBIT "E"

The Politics of Latino Education: The Biases of At-Large Elections

David L. Leal
The University of Texas at Austin
Valerie Martinez-Ebers
Texas Christian University
Kenneth J. Meier
Texas A&M University

This paper investigates the determinants and consequences of Latino political representation in the field of K-12 education. The first task is to examine the association between Latino population and the Latino presence on school boards. We then investigate if Latino representation is affected by the electoral structure of school boards, as scholars have reached differing conclusions on whether at-large and ward systems hinder or enhance minority descriptive representation. The next step examines the consequences of Latino representation, specifically whether board membership is associated with the share of Latino school administrators and teachers. The regression results show that Latino population positively affects Latino board representation, but that at-large systems hinder descriptive representation. The primary determinant of Latino administrators is Latino school board membership, and the primary determinant of Latino teachers is Latino administrators. In sum, at-large elections negatively influence Latino educational representation, which produces a ripple effect that ultimately reduces the share of Latino teachers.

Latinos are now the largest minority group in the United States, but numbers alone are no guarantee of political influence. The traditional view of how minorities gain access to the benefits of the U.S. political system is via education, but research has long established that access to education itself is inherently political. The Latino community has for many generations struggled for educational equity but has faced numerous structural and other impediments. We therefore investigate the political dynamics of Latino education in the field of K-12 education, a subject of major academic and policy consequence.

This paper specifically will examine the politics of Latino representation on school boards and whether such descriptive representation has substantive effects. The first question is whether Latino population size is associated with the Latino presence on school boards. We then investigate if such representation is affected by the electoral structure of school boards because scholars disagree whether at-

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large and ward systems influence minority representation. Third, we test whether such descriptive representation influences the proportion of Latino administrators and teachers. Because the most recent prior research on these questions used data from the late 1980s, this paper provides needed evidence on how current conditions have changed given the dramatic growth in the Latino population.

School board representation is an integral aspect of the political system. School boards in America are the most local electoral unit in the federal system. Almost 100,000 people serve on 15,000 boards, and they constitute the largest bloc of elected officials in America. Overseeing the education of forty-five million public school students, they are entrusted with annual school expenditures of approximately three hundred billion dollars (Toch and Glastris 1994).

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts (Wirt and Kirst 1989). Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement. A report by the White House Initiative on Educational Excellence for Hispanic Americans (1999) documents how Latino underachievement in education begins as early as kindergarten and continues through higher education. By the age of nine, Latino children perform below their non-Latino peers in the subjects of reading, mathematics, and science. Their overall scores on the National Assessment of Educational Progress (NAEP) are also consistently below average. One-third of Latino students between the ages of 15 and 17 are enrolled below grade level, and Latinos are less likely to take college preparatory courses in high school.

The high Latino dropout rate is well known: 1998 data show a dropout rate of 30%, in comparison to 14% for African Americans and 8% for Anglos. Overall, Latinos perform lower than most groups on standardized tests, and they have the lowest high school graduation rates and four-year college enrollments of all racial and ethnic groups in the country (Riley and Pompa 1998; Secada et al. 1998).

Latinos also attend schools that are increasingly segregated in terms of race, ethnicity, and class (Orfield and Yun 1999). They often face institutional racism and cultural biases at school in terms of programming, curriculum, and tracking and ability grouping practices (Carrasquillo 1994; Grossman 1995; Spring 2000). In sum, Latinos are arguably the most educationally disadvantaged of all groups in the United States today (Riley and Pompa 1998).

Whether the dismal state of Latino education is related to political dynamics is a key question for political scientists to investigate. Meier and Stewart was one of the first investigations of this possibility. Using regression analysis and con-

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trolling for intermediary factors, they discovered that Latino students were subject to more suspensions and expulsions, were underrepresented in gifted and talented classes, and were overrepresented in special education classes. Not only were such practices associated with lower student achievement, but they also served as "a substitute for segregation" (1991, 197).

Meier and Stewart also discovered that such treatment was associated with community political power. Most importantly, Latino representation on school boards was associated with better educational conditions. In districts with more Latino representation, Latino students experienced greater access to equal education and less "second-generation" discrimination. There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Others have found evidence that Latino representation on school boards is associated with policy outcomes of interest to this community. Leal and Hess (2000), for instance, found that the percentage of school board members who are Latino is positively associated with funding for bilingual education programs, even after controlling for objective student need for bilingual education. Board representation is, therefore, not just symbolic or of interest to a small number of activists but is inseparable from the aspirations of the larger community.

The first empirical part of this paper investigates the relationship between Latino population and the Latino presence on school boards. The overall literature on representation discusses two general linkages between constituents and representatives. The first is indirect representation, whereby a legislature may collectively represent the people even if there is no clear link between specific legislators and specific constituents (Weisberg 1978). Policy outcomes are therefore congruent with public opinion, even if elected officials are not actively trying to represent their constituents.

The second form of representation is direct. This takes place when the votes of a legislator are linked to the interests of his or her constituents. Elected officials in this scenario take seriously the delegate view of representation, as opposed to the trustee view exemplified by Edmund Burke in his famous letter to Bristol. Pitkin (1967) named this substantive representation and contrasted it with descriptive representation. The latter takes place when a constituency elects a representative who shares key traits but not necessarily policy views.

This paper begins by examining the descriptive representation of Latinos on school boards. While descriptive representation does not always lead to substantive representation, voters generally see a connection. This is not to say that Anglo school board members cannot adequately represent Latino constituencies, as many have undoubtedly done so. In a similar way, a lawyer may be able to represent a district of farmers. Farmers, however, may want their elected representatives to share an agricultural background. Not only would the latter likely know more about farming, but they could be better trusted to fight for farm interests behind closed doors in Washington.

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This issue of trust is particularly important in the study of representation. Hall noted that many key legislative activities take place out of public view, such as "Building a coalition for a legislative package, drafting particular amendments, planning and executing parliamentary strategy, [and] bargaining with or persuading colleagues to adopt one's point of view" (1996, 2). Constituents must trust that members are acting in a way that furthers their interests, as there are few ways for them to monitor such legislative behaviors.

Bianco further observed that "many kinds of behavior that are not usually thought of as rational choices, such as voters' desire to be represented by 'someone like them,' are the product of a systematic, predictable calculus—moreover, a calculus aimed at securing favorable policy outcomes" (1994, ix). Voters therefore "focus on attributes because they cannot be the product of calculation and provide a clearer signal of a candidate's policy concerns" (62). In this way, descriptive representation is a shortcut voters use to increase the likelihood of their interests being served.

Electing a member of one's group to office also has symbolic value. As Davidson and Oleszek wrote, "When a member of an ethnic or racial minority goes to Congress, it is a badge of legitimacy for the entire grouping. Such legislators speak for people like them throughout the nation" (2000, 133). What is true for Congress at the national level is also true for school boards at the local level.

Prior studies of Latino representation in local political entities have documented its low levels. Scholars usually derive a statistic of group representation through the Engstrom and McDonald (1981) method, which regresses minority population on minority descriptive representation. Taebel (1978) found a Latino representation index of .44 for 60 large urban city councils, meaning an underrepresentation of 56%. Karnig and Welch (1979) found a similar city council ratio of .45 for 124 southwestern cities. Fraga, Meier, and England (1986) noted a ratio of .77 for 35 school districts in very large cities, and Meier and Stewart (1991) found it was .86 for a larger population of districts.

The second part of this paper examines whether specific types of electoral mechanisms affect the level of Latino descriptive representation. Historically, such representation was impeded by a variety of legal and extralegal tactics. Literacy tests, poll taxes, and simple intimidation were effective tools against the electoral participation of Latinos as well as African Americans and poor Anglos. These have largely passed from the political scene, but election laws originally adopted with discriminatory intent may still affect political representation.

School board membership is chosen through three means: elections by ward, elections at-large, and by appointment. Progressive reformers at the turn of the twentieth century advocated at-large elections as one prong in a larger effort to isolate school boards and city councils from the influence of political parties, immigrants, those of lower socioeconomic status, and the vagaries of the democratic process generally (Tyack 1974). This reform proved a substantial obstacle to minority communities, as minority candidates often lack the resources to launch district-wide campaigns and find it difficult to attract Anglo votes.

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In recent decades, underrepresented minority groups used the *Voting Rights Act of 1965* as "the legal foundation for creation of district-based elections to replace at-large elections to city councils and other multimember bodies" (Bezdek, Billeaux, and Huerta 2000, 209). The above authors described the example of Corpus Christi, where the efforts of the Mexican American Legal Defense and Education Fund (MALDEF) led to the replacement of eight at-large city council seats with five ward seats and three at-large seats.[1]

Whether at-large elections have discriminatory effects on minority representation is the subject of debate in the political science literature, and one with important practical ramifications. Some scholars have found that ward systems are positively associated with Latino representation on school boards (Davidson and Korbel 1981; Meier and Stewart 1991; Polinard, Wrinkle, and Longoria 1990, 1991). Others, however, have discovered no statistically significant effects (Fraga, Meier, and England 1986; Welch and Karnig 1978).

These varying findings are also present in different decades. Using data largely from the 1980s, Fraga, Meier, and England (1986) arrived at different conclusions than did Polinard, Wrinkle, and Longoria (1991) and Meier and Stewart (1991). Studies using data from the 1970s (Davidson and Korbel 1981; Welch and Karnig 1978) similarly arrived at opposite conclusions. In light of these differences across time, it is desirable to investigate representational dynamics with a contemporary survey.

A new study is also needed because the Latino population is located in a very different social and political space than was the case in the 1970s and 1980s. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino children are now encountering significant and growing numbers of such students. The state with the fastest-growing Latino population, for instance, is not Texas or California but North Carolina. The Latino population of this state increased by just over 440% from 1990 to 2000, growing from 69,020 to 372,964 people. The next largest growth rates were found in Arkansas (337%), Georgia (324%), and Tennessee (284%). The issues of Latino representation on school boards and the quality of education received by Latino children are therefore relevant to a growing number of states and regions. Consequently, a study using current data is vital to understanding how Latino educational representation fares in this new and expanding context.

The above dynamics are a larger and more noticeable continuation of previous trends. As Meier and Stewart noted, the school districts in their sample "have not had a stable enrollment composition over time. The average district increased its Hispanic enrollment by about ten percentage points since 1968 (Table 1–3). Some districts, of course, have become substantially Hispanic during this time period"

[1]Many school boards have incorporated both ward and at-large elections under the theory that minorities can benefit from coalition building and win some of the at-large seats. McDonald and Engstrom (1992), however, suggested that this did not transpire in practice.

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(1991, 31). They surveyed districts with at least 5,000 students, of whom at least 5% were Latino. Their total number of usable observations was 145; in comparison, our survey includes 857 such districts. Given these Latino population trends, additional studies might also be useful after each future census.

There is also a contemporary interest in Latinos that was largely absent in previous decades. Latino influence is now more strongly felt and more frequently commented upon in both politics and popular culture. This suggests that the role of Latinos in the contemporary political system may be qualitatively as well as quantitatively different than in previous decades.

In addition, given the extensive litigation over city council districts in recent decades, school boards are also probably the last place where at-large districts are still permitted in the presence of racial polarization. For those interested in whether and how electoral structures affect the representation of minorities on political bodies, school boards are the only arena to study. This was much less the case in the 1970s and 1980s, so a new study of school boards is the best way to investigate whether and how electoral structure can influence representation.

A related literature explores the impact of electoral systems on minority representation on city councils. Davidson and Korbel (1981) and Bezdek, Billeaux, and Huerta (2000) argued that ward districts increase Latino representation. On the other hand, Zax (1990) argued that residential segregation was a more important determinant than electoral method in the election of Latino officials. MacManus (1978) found that at-large plans did not impair the city council representation of African Americans and the Spanish speaking, although the details of the system and the socioeconomic environment were important. Taebel (1978) argued that city council size was more relevant for Latino representation than the electoral system. Rabinovitz and Hamilton (1980) suggested that a mixed system was better than a ward system for the representation of blacks on city councils.

Some have argued that electoral systems affect the representation of African Americans but not Latinos. Karnig and Welch (1979) and Welch (1990) found this was the case for city councils. One explanation is that Latinos are not subjected to the same degree of residential segregation as African Americans (Lopez 1981).

The third part of this paper investigates the consequences of descriptive representation, specifically whether the share of Latino board members is associated with the share of Latino school district employees. Administrators and teachers influence the quality of education received by students, and teachers in particular wield much power in their classrooms as "street level bureaucrats" (Lipsky 1980; on the substantive issue see Hess and Leal 1997 and Meier and Stewart 1991).

There is widespread agreement in the professional education community that minority students gain academically when they are taught by minority teachers. Empirical evidence for these propositions is less common than their assertion, however, although a growing number of scholars are testing this hypothesis in a

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variety of settings. Hess and Leal (1997) examined the relationship between teacher race/ethnicity and student achievement in large urban school districts. They found that the proportion of minority teachers was positively associated with the college matriculation of all students. While they noted that the hiring of minority teachers might serve as a proxy for unobserved school conditions relevant to student achievement, the article provides intriguing evidence that minority teachers may promote the learning of both minority and Anglo students.

Meier, Wrinkle, and Polinard (1999) and Meier et al. (2001) tested how the percentage of minority teachers was associated with the student pass rates of standardized exams required by the state of Texas. They found that pass rates were higher for both minority and Anglo students in districts with a larger share of minority teachers (although see Nielsen and Wolf 2001). Meier, Wrinkle, and Polinard (1999) suggested an explanation based on discriminatory hiring practices. Districts less focused on the quality of educators than on their race will on average hire less competent teachers, thereby negatively affecting the educational outcomes of all students.

Dee (2001) argued that this question needed a randomized experimental methodology to accurately understand whether racial dynamics were factors in student achievement. He examined test score data from the Tennessee Project STAR (Student Teacher Achievement Ratio) class-size experiment, finding significant math and reading improvements among students randomly provided same-race teachers. There are also a number of more qualitative studies of Latino student achievement that highlight the importance of Latino faculty and staff (Garcia 2001; Nieto 1999; Reyes, Scribner, and Scribner 1999; Valdes 1996).

Substantial evidence also suggests that the Latino community wants more Latinos teaching their children (Nieto 1999; Romo and Falbo 1996). While the above debate asks whether minority teachers improve the educational outcomes of minority and Anglo children, this dynamic is less important from the perspective of representation theory. Many scholars have investigated whether elected officials and political institutions are responsive to constituents, but there is less discussion of the more difficult question—whether constituent wishes are objectively in their best interests. The presence of minority teachers is, therefore, an important indicator of political responsiveness to minority communities regardless of its effect on minority students.

The only previous research on board representation and the minority presence in teaching faculties and educational administrations is Meier and Stewart (1991). They found the share of Latino school board members was positively associated with Latino administrators but not with Latino teachers. They did find, however, a positive correlation between Latino administrators and Latino teachers.

Data and Methods

Data for this paper derive from three sources. Information on school board selection structures, school board ethnicity, administrator ethnicity, teacher eth-

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nicity, and student ethnicity were obtained from an original survey. All school districts with more than 5,000 students were sent mail surveys in June 2001.[2] Nonrespondents received two follow-ups by mail. Up to six phone calls were then placed to nonrespondents in an effort to contact as many of the districts as possible; the phone interviews collected information only on the school board variables. A final attempt was made via email.

Of the 1,831 surveyed districts, 1,751 provided data on school boards (95.6%) and 1,532 (83.7%) on teachers and administrators. The actual numbers in the regression analysis are somewhat lower due to missing data for other variables. Nonrespondents on the electoral information were no different from respondents in terms of size of district, ethnic distribution in the district, and similar census data on which comparisons could be made. For the teacher and administrator data, district sizes were the same but nonrespondents were from locations with slightly smaller Latino populations. Given that the distinction between respondents and nonrespondents could not explain as much as 1% of the variance in any variable where measures existed, we are confident that any selection biases in the survey are slight and do not affect the results presented.[3]

Population figures and other demographic variables for 2000 were available from the 2000 census. Additional information used to check the accuracy of student enrollment figures on the survey were from the U.S. Department of Education (2001).

Findings

School Board Representation

The first step in assessing the level of descriptive representation is to examine the simple relationship between Latino population and Latino school board representation (both variables are expressed as a percentage of the total) as suggested by Engstrom and McDonald (1981). This equation essentially predicts the expected value of representation for a given level of population. The first column of Table 1 presents this seats-population relationship for all districts. The level of explained variation is consistent with past models for school board representation reported by Meier and Stewart [.60 (1991, 92)] and Fraga, Meier, and England [.77 (1986)]. Both previous studies, however, excluded districts with

[2] Districts with more than 5,000 students were surveyed for two reasons. First, these districts educate the overwhelming majority of Latino students, as they are located in the areas with the largest Latino populations. Our school districts had a total Latino population in 2000 of 32.84 million, which is 93% of the 35.3 million Latinos in the overall population. Second, there are significant data collection problems in many of the smaller districts. They often do not keep the type of records that larger districts do, particularly in terms of EEO data, as it is the larger districts that are regularly surveyed by the EEOC.

[3] We also checked to see if the districts lost from the sample because of missing data were different from those included in the analysis. The only difference we can find is that the districts with missing data are slightly smaller than other districts, which is not a major concern.

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TABLE 1

The Representation Relationship: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	All Districts	Minority Districts	Majority Districts	Five Percent + Latino
Intercept	−3.66	−1.36	−68.54	−8.97
	(13.05)	(6.12)	(7.54)	(13.57)
Population	.71	.43	.72	.84
	(57.48)	(40.44)	(13.50)	(40.44)
R-squared	.66	.33	.64	.66
Standard error	9.54	6.89	19.20	12.72
F	3,304.37	793.62	182.14	1,635.55
N of cases	1,739	1,633	106	857

Numbers in parentheses are t-scores.

fewer than 5% Latino students; Fraga et al. also only included districts with more than 25,000 students.

Two coefficients from the first regression in Table 1 merit discussion. First, the slope coefficient reveals that for each one percentage point increase in Latino population, Latino representation on the school board increases by .71 percentage points.[4] In short, the translation of population into representation is only 71% effective. This figure should not be interpreted by itself as the precise estimate of underrepresentation, however. The intercept (−3.66) is negative and significant, thereby indicating a threshold effect. At low levels of population, increases in Latino population have no influence on expected representation levels. Only after a threshold is breached does population predict a positive value for expected representation. That "threshold" can be estimated by using the regression equation to predict the level of population where estimated representation will be at least zero. In the present situation, the threshold is 5.2%.

The findings in the first column suggest that the relationship between representation and population is not linear. The next two columns therefore show the same regression for districts where Latinos are a minority of the population and districts where they are a majority of the population. Previous arguments about electoral structure and representation presuppose the group in question, in this

[4] We use population as the base for all our regressions rather than voting-age population, estimated population who are citizens, or school enrollment for both an empirical reason and a normative reason. Empirically, the measures are highly correlated. The R^2 between voting-age population and population is .9963, and between enrollment and population it is .9631. Using other measures of population changes the size of the coefficients but has no impact on the statistical significance of any findings. The population numbers also predict representation better than any of the other three measures. In normative terms, to paraphrase the Supreme Court, these electoral units were created to represent populations, not citizens or school age children or even voting-age populations.

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case Latinos, constitutes a minority of the total population. After all, if Latinos have a voting majority, then they can use at-large elections in the same manner as Anglos do when there is an Anglo majority.

The .71 coefficient for all districts drops to .43 in minority districts but jumps to .72 in majority districts. Comparing these figures directly is somewhat misleading simply because the intercepts are so dramatically different. Majority districts, for example, have an expected representation value of 17.5% for districts that are 50% Latino but 100% for districts with 98% or more Latinos. Both sets of findings strongly suggest that nonlinear estimates of the expected value of representation should be examined.

Before moving to the nonlinear estimates, the last column provides a comparison to the Meier and Stewart results by limiting the analysis to districts with at least 5% Latino population. Two things are immediately apparent. The representation coefficient increases to .84, essentially the same as the .86 coefficient reported by Meier and Stewart (1991, 92). The difference in intercepts in the two analyses, however, suggests caution in comparing these two values.

Table 2 estimates nonlinear equations linking population to representation. The differences between minority and majority jurisdictions are once again dramatic. In minority Latino districts, the population-squared term is significant and adds additional explanation to the overall equation. In majority districts, the nonlinear terms induce massive collinearity so that neither coefficient is significant and the level of explained variation has not changed at all.

These findings suggest that when Latinos are a minority of the population, the population-representation relationship is nonlinear, with larger percentages

TABLE 2

The Nonlinear Population-Representation Relationship: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	Minority	Districts	Majority	Districts
Intercept	−1.3619	.0135	−68.54	−46.31
	(6.12)	(.05)	(7.54)	(.81)
Population	.4315	.0683	1.72	1.08
	(28.17)	(1.45)	(13.50)	(.66)
Population Squared		.0096		.00
		(17.33)		(.39)
Adjusted R-squared	.33	.35	.64	.63
Standard error	6.89	6.76	19.20	19.20
F	793.62	445.75	182.14	90.41
N of cases	1,633	1,633	106	106

Numbers in parentheses are t-scores.

Tolerances for nonlinear equations, minority districts .10, majority districts, .0061.

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getting significantly more representation than smaller percentages. The insignificant intercept for minority districts also eliminates the problematic threshold effect of the linear estimation. The insignificant linear term in this model suggests that it can be dropped from the analysis with no loss of information. The best interpretation for majority districts, however, is that the relationship between Latino population and Latino representation remains linear.

The now traditional way to assess the bias of electoral systems is to run an interaction between the various selection plans and population within a single regression (Engstrom and McDonald 1981). As noted above, there are three major selection plans for school districts: at-large systems, ward systems, and appointed systems. For those districts with less than 50% Latinos, the current sample contains 985 pure at-large systems (where all board members are elected at-large), 443 pure ward systems, and 53 pure appointed systems. The remaining 163 systems contain mixed combinations of the three selection types.

We created three variables for each district: the proportion of members elected from wards, the proportion elected at large, and the proportion appointed. Scores of 1.0 on any of these variables indicate a pure system, and lower scores indicate fewer members selected in the manner indicated by the variable. This process permits us to retain the 163 districts that do not have pure selection systems; the precise characteristics of these mixed systems are the subject of future research. To continue our distinction between majority and minority districts, these equations are estimated for both sets of districts with the hypothesis that structure matters when Latinos are a minority but does not matter when they are a majority.

Table 3 investigates this relationship for districts where Latinos are a minority. Adjusting for the nonlinear population coefficient, the regression contains five variables: Latino population squared, the ward selection percentage, the appointed selection percentage, ward selection multiplied by Latino population squared, and appointed selection multiplied by Latino population squared. This regression equation can then be used to derive representation estimates for each of the three pure systems.

Because several of the variables reduce to zero when other systems are in place, three equations can be derived from the results in Table 3:

At-Large Elections	$\text{Representation} = .5283 + .0094 \times \text{Population}^2$
Ward Elections	$\text{Representation} = -.1743 + .0148 \times \text{Population}^2$
Appointed	$\text{Representation} = .8701 + .023 \times \text{Population}^2$

Because the various intercepts are not different from the at-large intercept, they can basically be ignored in discussions. Suffice it to say that while the at-large intercept is significantly different from zero, its size is trivial (that is, at 0% Latino population, the expected value of representation is .5%). The larger size of the population-squared coefficient for ward elections shows that they generate higher

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TABLE 3

The Detrimental Impact of At-Large Elections: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	Slope	t	tol.	Slope	t	tol.
Intercept	.5283	2.25	—	.5282	2.25	
Latino Population Squared	.0094	21.45	.70	.0094	21.53	.70
Ward System	−.7026	1.77	.83	−.7054	1.78	.83
Ward x Population Squared	.0054	6.17	.67	.0054	6.20	.67
Appointed System	.3418	.33	.79	−1.2978	1.11	.63
Appointed x Population Squared	.0136	5.91	.78	—	—	—
Appointed x Population	—	—	—	.5112	6.21	.62
R-squared	.38			.38		
Standard error	6.61			6.60		
F	201.41			202.60		
N of cases	1,628			1,628		

Analysis includes districts only with less than 50% Latino population.

levels of Latino representation than at-large systems. Appointed systems generate the largest levels of representation, as found previously by Meier and Stewart (1991). For instance, with a Latino district population of 5%, expected Latino representation is .8% in at-large systems, .2% in ward systems, and 1.4% in appointed systems. With a Latino population of 25%, the respective numbers increase to 6.4%, 9.1%, and 15.2%; at 45%, the figures are 19.6%, 29.9%, and 47.2%.

The clear conclusion from Table 3 is that both *electoral* systems systematically underrepresent Latinos when they are a minority of the population, but at-large elections are significantly more detrimental to Latino representation than ward elections. It is unclear why some prior research found a lack of bias in at-large systems, but one possibility is that analyses that do not distinguish between majority and minority Latino districts may sometimes produce incorrect results. It is also possible that past research indicating differential ward and at-large effects was substantively correct but derived using incorrect models. Only a reanalysis of the data from previous projects would determine if this is the case.

We might also investigate some additional dimensions of the school board representation process, as Table 3 incorporated only two types of independent variables: population and selection plan. Such a regression overlooks the fact that Latinos are generally poorer, less well educated, less likely to own homes, and less likely to be citizens—all factors that affect voter turnout (Leighley 2001). Several demographic variables were therefore added to the equation in Table 3: percent of Latinos with college degrees, percent noncitizens, percent living in poverty, and median Latino family income. This new regression, which is not presented because of space considerations, shows that only the percentage of Latinos

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who were noncitizens added any statistically significant explanation to the equation, and in that case the substantive impact was very small. To reduce Latino representation by 1.3 percentage points, fully one-half of all Latinos would need to not be citizens.[5]

As noted above, the theoretical arguments about electoral structure and ethnic minorities assume that ethnic minorities are a numerical minority. When Latinos become a numerical majority, electoral structure should have little effect on representation because they can simply use majoritarian electoral systems, such as at-large elections, to their advantage. To determine whether or not majority status changes the relationship between structure and representation, we replicated our analysis with the 106 school districts with a Latino majority. The equations in Table 4 include both linear relationships for population (as found in Table 2) and nonlinear relationships for population for comparison purposes.

Despite the substantial size of the coefficients for ward-based systems in both equations, none of the relationships are statistically significant. In short, when Latinos are a majority, there is no difference in the representational consequences of at-large elections compared to ward-based elections.

This finding should be qualified somewhat based on two additional bits of evidence. First, the equations are marked by a high degree of collinearity, thus making statistical significance difficult to obtain; tolerance levels for the linear relationship are especially low. At the same time, a joint f-test comparing the equations in Table 4 with those in Table 2 shows that the four additional variables as a group do not add a statistically significant level of explanation (F-test for the nonlinear specification = 1.67 with 4, 100 df, $p = .16$; F-test for the linear specification = 2.01, $p = .10$). Second, the appointive system relationships do appear to be somewhat different, with coefficients that approach or modestly exceed traditional levels of statistical significance. Because the translation of descriptive representation into substantive representation has been called into question in the literature (Meier and Stewart 1991), we leave the precise meaning of the relationships in appointive systems for future research.

Administrative Representation

Political representation on urban legislatures, be they city councils or school boards, has been linked to greater access to jobs for the represented group (Eisinger 1982; Mladenka 1989). Although there is some question as to whether the causal relationship runs from elected officials to employment or from employment to elected officials (Meier and Smith 1994), we will assume, as does the overwhelming majority of the literature, that the process flows from the top down—that is, representation on school boards increases representation in admin-

[5] One reason why citizenship does not matter more than it does is that school district elections have very low turnout (often as little as 5% of registered voters). We also tried an interaction of the Latino population and the citizenship variable, but it was statistically insignificant.

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TABLE 4

Selection Process Does Not Affect Latino Representation When Latinos Are a Majority

Dependent variable = Percent Latinos on School Board

Variable	Linear Slope	Population t	Population tol.	Squared Slope	Population t	Population tol.
Intercept	−65.40	6.21	—	−7.0380	1.25	
Latino Population	1.68	11.33	.71	.0116	11.25	.71
Ward System	−23.48	1.11	.04	−10.0413	.88	.15
Ward × Population	.34	1.15	.04	.0020	.98	.14
Appointed System	106.94	1.84	.04	48.6729	1.45	.11
Appointed × Population	−1.71	2.12	.04	−.0119	1.96	.11
R-squared	.65			.64		
Standard error	18.82			18.96		
F	39.46			38.55		
N of cases	106			106		

Analysis includes districts only with more than 50% Latino population.

istrative positions, and both in turn increase representation at the street level (in this paper, the teachers).

The first equation in Table 5 shows the relationship of Latino school board representation and population with the percentage of Latino administrators for minority districts. Population can be interpreted as a labor pool characteristic. Administrators are hired from a pool of individuals, a percentage of which will be Latino. To control for variation in the composition of the labor pool, therefore, the Latino population percentage is needed. In addition, the quality of this labor pool is affected by factors such as education levels, income, and even citizenship. Table 5 therefore controls for the Latino population percentage with college degrees, living in poverty, and who are not citizens.

Even with these controls, Latino board members are positively associated with more Latino administrators; a one percentage point increase in Latino board members is associated with a .16 percentage point increase in Latino administrators, ceteris paribus.[6] The level of explained variation in Table 5 reveals that the hiring of Latino administrators is a far more predictable process than the election of school board members.

[6] The relationships in this table may all be nonlinear. When squared terms are added for both variables, all four slopes are positive and statistically significant. The level of explained variation increases by only three percentage points, however, and the literature does not contain any arguments about a nonlinear relationship.

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TABLE 5

Latino Board Representation and Latino Administrators

Dependent variable = Percent Latino Administrators

Variable	Minority Slope	Districts t	Districts tol.	Majority Slope	Districts t	Districts tol.
Intercept	−.774	2.22	—	−26.866	2.85	
Latino Population	.327	30.31	.59	.391	2.40	.31
School Board Representation	.156	11.89	.68	.319	4.40	.33
Latino Non-Citizens	−.026	3.97	.89	−.359	2.55	.74
Latino College Graduates	.031	3.18	.68	1.619	3.76	.82
Latino Poverty	.014	1.44	.82	1.040	5.69	.66
R-squared	.62			.76		
Standard error	3.50			13.33		
F	450.86			65.63		
N of cases	1,371			101		

Table 5 also demonstrates how much other factors affect administrative hiring. The major influence on the percentage of Latino administrators hired is the percentage of Latino population, a percentage that reflects both the potential political clout of the Latino community as well as the potential pool of candidates for administrative positions. As expected, administrative representation increases with the percentage of college-educated Latinos. Even though citizenship is not a requirement for holding an administrative position in a school system, noncitizenship likely correlates with other factors that disadvantage Latinos, so the negative relationship is expected. The positive relationship between Latino poverty and administrative representation is likely a function of job opportunities. In communities with low poverty levels, well-paying jobs in the private sector are likely to attract many Latinos who might opt to be school administrators. High levels of poverty make safe, although lower paying, jobs in school systems more attractive. Even though each of these three relationships is statistically significant, their substantive impacts are relatively minor.

The second equation shows the same set of relationships for districts with a Latino majority. All relationships remain statistically significant although the size of the relationships, except for population, changes dramatically. The school board representation coefficient is now better than twice the size it was for minority Latino districts. Such a relationship is consistent with the notion that Latino representatives will be less constrained in pursuing their own interests in Latino majority jurisdictions than in jurisdictions where they are a minority. The other labor pool factors also increase in importance, thus suggesting that majority districts might be pushing up against the constraints of the size of the qualified labor force. The important finding in this second equation, however, is that Latino rep-

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TABLE 6

The Determinants of Latino Teachers

Dependent variable = Percent Latino Teachers

Variable	Minority Districts			Majority Districts		
	Slope	t	tol.	Slope	t	tol.
Intercept	−.058	.28	—	−32.268	7.16	—
Latino Population	.200	21.62	.36	.539	4.20	.30
School Board Representation	.055	5.93	.62	−.012	.19	.28
Latino Administrators	.290	16.04	.38	.467	6.04	.24
Latino College Grads	.013	2.06	.70	.890	2.54	.75
Latino Poverty	−.005	.72	.83	.435	2.64	.50
R-squared	.74			.82		
Standard error	2.35			10.43		
F	773.52			94.15		
N of cases	1,365			102		

resentation in majority districts differs from Latino representation in minority districts in significant ways.

Teacher Representation

Our final empirical analysis examines the determinants of Latino teachers. Well-developed models of teacher ethnicity in the literature suggest that labor pool characteristics (the size of the Latino population and the education levels of that population), Latino administrators, and Latino board members will be significantly linked to teacher representation. The strongest determinant of Latino teachers, however, is likely to be the percentage of Latino administrators.[7]

Table 6 reveals such a pattern. In Latino minority districts, a one percentage point increase in Latino administrators is associated with a .29 percentage point increase in Latino teachers, all other things being equal. Latino population also plays a role, but its impact is substantially less. Both Latino board representation and Latino college percentage have marginally significant relationships, but their direct substantive impact is small.[8]

[7] One potential question is what percentage of Latino teachers in the sample are bilingual education teachers. There are no national statistics on this question, but a separate Texas school data set indicates that less than 5% of Latino teachers are bilingual education teachers.

[8] To more fully explain this result, one might ask whether (1) non-Latino administrators resist hiring Latino teachers, (2) Latino administrators make extra efforts to hire Latino teachers, or (3) Latino teachers prefer to work for schools with relatively large numbers of Latino administrators. We cannot be certain which of these dynamics is taking place, but for the purposes of our study, it does not make a large difference whether one, two, or even all three are at work. The regressions show that the presence of Latino administrators leads to more Latino teachers, and it is beyond the scope of our paper to determine the relative importance of these three potential explanations.

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The relationships for Latino majority districts are even more clear cut. Latino population, Latino administrators, and labor force characteristics matter, but school board representation does not. A one percentage point increase in Latino administrators is associated with a .47 percentage point increase in Latino teachers, all other things being equal. The corresponding impact for Latino population is a .54 percentage point increase.

The relative magnitude of the school board and administrators findings makes sense because administrators hire teachers and much of this process takes place in the schools rather than in front of the board. A number of researchers have indeed noted the indirect impact of school boards on many district decisions, as much power has devolved to administrators over time.[9] In Latino minority districts, the impact of school board members is very small; in Latino majority districts, the influence cannot be distinguished from zero. Board members may lack a direct way to influence the composition of these street level bureaucrats. If the causal sequencing is correct, however, Latino school board members have a substantial indirect effect on teacher composition by affecting the ethnicity of school administrators.[10]

Conclusions

This is the first paper in a national study designed to update and expand the findings of previous research regarding the political factors and policy practices that influence educational outcomes for Latino students. Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students (Meier, Stewart, and England 1989; Reyes, Scribner, and Scribner 1999; Spring 2000). Meier and Stewart went further in their assessment of the importance of Latino representation when they identified it as the *one* contributing variable that can be manipulated or changed by "concerted political efforts and appropriate policy decisions" (1991, 210). In this report we focus on descriptive representation with the objective of improving our ability to explain and predict the population-representation relationship.

A contemporary study of this topic is useful for several reasons. First, research in the 1970s and the 1980s arrived at different conclusions about the influence of electoral structure on minority educational representation. Second, the Latino population is now located in a different social and political situation. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino chil-

[9] See Tyack (1974) for a discussion of how the responsibility for teacher hiring changed over time. Other research further suggests that the impact of Latino board members on the hiring of Latino teachers is real although indirect (Wirt and Kirst 2001, 164).

[10] One might ask whether any of the above relationships vary according to which Latino national-origin group comprises the majority of the district population. We were able to test this possibility by separately analyzing majority Mexican-American districts and majority Puerto Rican districts. The regression results derived from these subsamples were very similar to those derived from the overall sample. There were only two plurality Cuban-American districts, however, and there were no majority or plurality districts for other Latino national-origin groups.

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dren are now encountering significant and growing numbers of such students. A new and comprehensive national study is therefore important to understanding how Latino educational representation fares in this new and expanding context.

Third, to advance the methodology of analysis, the paper tests for a nonlinear population effect, which was not conducted in the educational representation literature. We also separately examine majority Latino population districts and minority Latino population districts, which was not done by previous research. Lastly, given the extensive litigation over city council districts, current school boards may represent the last opportunity to investigate whether and how electoral structures affect minority representation on political bodies in contemporary America.

Overall, our findings highlight the complexity of the relationship between Latino populations and their representation on school boards. Looking strictly at levels of population and levels of representation on school boards, earlier studies found Latinos significantly underrepresented. Our analysis shows this trend continues and appears to be growing.

The presence of a threshold effect, however, suggests that a nonlinear specification may be appropriate. We also note that Latinos (like any group) may be able to profit from at-large districting when they are a majority of the population. We test a squared population term and divide the sample into majority and minority Latino districts. The nonlinear Latino population variable is significant in the minority Latino districts and adds additional explanation to the overall equation. Both population variables are insignificant in the majority Latino districts and the model contains significant collinearity, however, thus suggesting that in these districts the relationship between Latino population and Latino representation remains linear.

A key question in the literature is the ethnic bias of different selection plans. Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with ward elections than with at-large elections. Our findings show that at-large election systems usually disadvantage Latinos; the obvious policy recommendation is that at-large systems should be replaced by single-member systems.

Interestingly, appointment systems appear more efficient than ward elections. We contend that the circumstances in appointment systems, however, are fundamentally different from elections. These differences may produce higher representation but potentially change the impact of representation. Why? The attitudes and priorities of political appointees may more closely reflect those of community elites rather than the general population, or appointees simply may behave differently than elected officials. Further study is clearly needed on the political context of appointment systems and its effect on appointee attitudes and behaviors.

We also explored other population demographics that were hypothesized to influence the low level of Latino representation on school boards. Based on theories of participation and group power, we expected the political resources of the population—income, education, and citizenship—to play a role. We found that the low socioeconomic status of the Latino population has no effect on the rela-

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tionship. The percentage of the population that is ineligible to vote (noncitizens) has a negative effect, not surprisingly, but the size of that impact is trivial.

Finally, although our models predicting Latinos in lower positions of school authority basically mirror those previously reported, our analysis serves to emphasize the linkage between descriptive and substantive representation. While characteristics of the available labor pool play a role in predicting the presence of Latino administrators and teachers, they are overshadowed by the importance of having Latinos at higher levels of authority. Latino representation on school boards is significantly associated with increases in the percentage of Latino administrators, and the percentage of Latinos in administration is the most important variable determining the presence of Latino teachers. As we know the Latino community wants more Latinos teaching their children, greater Latino school board representation is therefore more likely to lead to education policies congruent with community wishes.

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David L. Leal is assistant professor of government, The University of Texas at Austin, Austin, TX 78712-1087, (dleal@gov.utexas.edu). Valerie Martinez-Ebers is associate professor of political science, Texas Christian University, Fort Worth, TX 76129, (v.martinez@tcu.edu). Kenneth J. Meier is Charles Puryear Professor of Liberal Arts and professor of political science, Texas A&M University, College Station, TX 77843-4348, (kmeier@polisci.tamu.edu).

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EXHIBIT "F"

COUNCIL AGENDA REPORT

TO: City Council

FROM: City Manager and City Attorney

SUBJECT: RESOLUTION DECLARING THE CITY OF SANTA MARIA'S INTENTION TO TRANSITION FROM AN AT-LARGE CITY COUNCIL ELECTED PROCESS TO A DISTRICT-BASED ELECTION PROCESS PURSUANT TO ELECTIONS CODE SECTION 10010

RECOMMENDATION:

That the City Council adopt a resolution declaring its intention to transition from an at-large City Council election process to a district-based elections process, outlining specific steps it will take and providing an estimated timeline for doing so pursuant to Elections Code Section 10010.

BACKGROUND:

The City received a certified letter on December 16, 2016, from Jason Dominguez, Esq., on behalf of his client Hector Sanchez, an unsuccessful candidate for City Council in the November 2016 election, asserting that the City's at-large electoral system violates the California Voting Rights Act, codified at California Elections Code sections 14025–14032 ("CVRA"). Mr. Dominguez claims "polarized voting" may be occurring and threatens litigation if the City declines to adopt district-based elections.

The CVRA was signed into law in 2002. The law was motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the Federal Voting Rights Act ("FVRA"). In fact, the City of Santa Maria had successfully defended a FVRA lawsuit in the early 1990's brought by the Mexican American Legal Defense and Education Fund. This litigation cost over $1 million to defend and took ten years to resolve in the City's favor.

The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections with the ultimate goal to transition to "district-based" elections. By way of background, in a district-based election system, a candidate must live in the district he or she wishes to represent.

It is staff's understanding that no such FVRA lawsuits have been filed in California since 2000. Accordingly, all voting rights lawsuits in California have been filed under the CVRA since its passage. Under the CVRA, to prove a violation, plaintiffs must only demonstrate that there is "racially polarized voting." This occurs when there is a

difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate. Plaintiffs in other litigation have taken the position that the CVRA does not require a showing of discriminatory intent or an actual electoral injury. They have further argued that the CVRA does not require proof that racially polarized voting actually resulted in the defeat of a group's preferred candidate. No appellate court has yet ruled on these issues.

Cities throughout the State have increasingly been facing legal challenges to their "at-large" systems of electing City Council members. Almost all have settled claims out of court by essentially agreeing to voluntarily shift to district-based elections, while others have defended CVRA challenges through the courts. Ultimately, these cities have either voluntarily adopted, or have been forced to adopt, district-based elections. The exception is the City of Santa Clarita that resolved the CVRA action filed against it by agreeing to change the date of its general municipal election to November of even-numbered years.

Cities that have attempted to defend their existing "at-large" system of City Council elections in court have incurred significant legal costs, including attorneys' fees incurred by plaintiffs. Awards in these cases have reportedly ranged from about $400,000 to over $3,500,000. When sued, the settlements entered into by cities typically have included paying the plaintiff's attorney fees. For example, in February 2015, the City of Santa Barbara reportedly paid $800,000 in attorneys' fees and expert costs to settle their CVRA lawsuit. Another example is the City of Palmdale that incurred expenses in excess of $4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. Moreover, what is most concerning is that staff is unaware of any city that has prevailed in defending its "at-large" system of election under a claim filed by any individual or group under the CVRA. Accordingly, staff has concluded that the public's best interest is in preserving and protecting vital general fund revenues from being unnecessarily expended (given the low probability of defending against a CVRA lawsuit) and that this interest outweighs the public's interest in maintaining the current at-large voting system.

DISCUSSION:

Accordingly, after much analysis and in-depth conservations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections following the procedures required by Elections Code section 10010, as amended by AB 350, to establish voting districts. Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based electoral system.

While the City has a sustained history of electing Latinos/as to the City Council, the outcome of litigation is always uncertain. Unlike other cities where at-large elections have prevented Latinos from electing candidates of their choice, the election history for the Santa Maria City Council has demonstrated that Latino candidates have been

regularly elected. Since 1996, at least one Latino/a has been elected to the City Council in each election except the November 2012 election where a Latina candidate (Waterfield) lost by only two votes. In all, ten Latinos/as have been elected to the City Council in the last twenty years. In addition, partly because of appointments made by the City Council to fill unexpired terms, the City Council has been represented by a Latino majority from 2002 until 2010 and the current City Council is a Latino elected majority. Not withstanding the aforementioned history of being able to elect Latinos to the City Council, the CVRA essentially makes any at-large election vulnerable to challenge with a low probability of successfully defending against such a challenge.

Staff estimates that the cost to defend this lawsuit would exceed $1,000,000 even if it were successful, and would likely exceed $2,000,000 if the plaintiff prevailed and the City was ordered to pay plaintiff's attorneys' fees. These attorney fees and costs would be a General Fund liability which would be a significant unexpected expense that could not come at a worse time since the City already has a multi-million dollar structural budget deficit AND pension-related expenses continue to escalate.

It should be noted that Government Code section 34886 permits the legislative body of any city to adopt an ordinance establishing election of members of the legislative body by district. AB 350 was recently adopted by the State Legislature and became effective on January 1, 2017, and amended Elections Code section 10010 to place a cap of a maximum of $30,000 on attorneys' fees that a plaintiff would be entitled to recover if the target city voluntarily adopted an ordinance to establish voting districts either before or after receiving notice of a CVRA violation. In addition, AB350 prohibits a plaintiff from filing a CVRA lawsuit within 90 days of a city's adoption of a resolution declaring its intention to transition to district-based elections. Accordingly, should the City Council adopt the proposed resolution, the maximum the City will have to reimburse Mr. Dominguez in attorneys' fees and costs is $30,000, and plaintiff would be prohibited from filing a CVRA lawsuit until May 22, 2017.

Alternatives:

1. The City Council may elect to place this issue on the ballot and let the electorate decide if they prefer district-based elections. However, even if the voters rejected district-based elections, the City would be vulnerable to a CVRA lawsuit if racially polarized voting is occurring in the City.
2. The City Council may direct staff to defend against any CVRA lawsuits that may be filed. This option will be very expensive to defend, and even if successful, would expose the City to an award of costly attorneys' fees.

Fiscal Considerations:

There will be significant staff time needed to transition to district-based elections because of the staff time that will be incurred for the five (5) public hearings that will be required in addition to the cost for a demographics and elections consultant and special legal counsel. Should the City Council concur with staff's recommendation, the City will only be required to reimburse plaintiff for its attorney's fees and costs up to $30,000. In addition, staff expects roughly a $10,000 increase in election costs for district-based

elections during each of the upcoming election cycles. These fiscal impacts are necessary and unavoidable if the Council transitions to district-based elections.

Impact to the Community:
The decision to change from at-large to district-based voting may have a substantial impact on the community since the City Council has been elected at-large since the City's incorporation in 1905. There may be a profound and noticeable impact to the community if the City adopts district-based elections and confusion until district-based elections are fully implemented in 2020. As proposed, two council seats will be elected by-district in the 2018 election and two or three council seats (pending the outcome of the five public hearings) in the 2020 election after the current incumbents have served their full terms. In some situations, the Mayor may be elected at-large, but all other members of the City Council must reside in the district they represent. The decision whether to establish four voting districts with the Mayor elected at-large, or five voting districts is one of the topics that will be decided upon by the City Council as a result of the minimum of five (5) public hearings that will be held as required by California Elections Code section 10010 should it adopt the proposed resolution.

RICHARD J. HAYDON
City Manager

GILBERT A. TRUJILLO
City Attorney

EXHIBIT "G"

RESOLUTION OF THE GOVERNING BOARD
OF THE GOLETA UNION SCHOOL DISTRICT
Resolution No. 2019-01

Resolution to Initiate a Transition to a By-Trustee Area Election System Commencing with the 2022 Governing Board Election and Statement of Intent to Seek a Waiver of the Election Requirement from the State Board of Education

WHEREAS, the Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system;

WHEREAS, the Board has always strived to listen to all voices in the community and represent all of our community;

WHEREAS, California Education Code sections 5019(a) & (c)(l) and 5030 authorizes the Santa Barbara County Committee on School District Organization ("County Committee"), upon application of a school district's governing board, to change the method of election of governing board members in a school district under its jurisdiction;

WHEREAS, the California Voting Rights Act (Elections Code §§ 14025 *et seq.*)("CVRA") prohibits the use of an "at-large" election system for governing board members of a school district if the "at-large" elections may impair the ability of a protected class to elect candidates of its choice, or its ability to influence the outcome of an election;

WHEREAS, Governing Board ("Board") Members of the Goleta Union School District ("District") are currently elected using an "at-large" election system (i.e., election system in which registered voters of the entire jurisdiction elect candidates to the governing board);

WHEREAS, it is considered the view of the Board that starting with the 2022 Board elections, and with the benefit of then-updated federal decennial Census data released in 2021, the public interest may be better served by election of its Board members using a "by-trustee area" election system (i.e., elections in which one candidate residing in each trustee area is elected by only the registered voters in that particular trustee area);

WHEREAS, although Education Code section 5020 requires that a County Committee's resolution approving a change in the method of electing governing board members be submitted to the electorate for its approval at the school district's next regular election following the District's formal adoption of the new election system, the Board intends to seek a waiver of the voter approval requirement as permitted by law. Education Code sections 33050-33053 authorize the State Board of Education to waive this voter approval requirement, which could reduce the costs and risks associated with a school district's transition to a "by-trustee area" election system;

WHEREAS, the Board finds it is appropriate to seek a waiver of the election requirement in Education Code section 5020, and portions of sections 5019, 5021, and 5030, to ensure the timely implementation of the "by-trustee area" election system commencing with the 2022

Governing Board election, to reduce costs for the District associated with placing an item on the ballot and to reduce any potential legal liability or financial risk to the District under the CVRA;

WHEREAS, the adoption of "by-trustee area" elections will not affect the terms of any Board members serving or elected during this transition, each of whom will serve out his or her full term; and

WHEREAS, the Board, cognizant of its need for fiscal responsibility, desires to implement this change in the manner of electing Board members in a cost effective and efficient manner.

NOW, THEREFORE, the Governing Board of the Goleta Union School District does hereby resolve, order and determine as follows:

1. The above recitals are true and correct.

2. The Board hereby determines that the trustee area boundary lines shall be developed based on the most updated federal decennial Census data following its release in 2021 to provide for "by-trustee areas" elections commencing in 2022.

3. By this resolution, and pursuant to Education Code sections 5019(a) and 5030, the Board directs District staff, when timely, to transmit this resolution to the Santa Barbara County Committee on School District Organization to apply to have the County Committee adopt a change in the method of electing members of the board from "at-large" elections [Education Code section 5030(a)] to "by-trustee area" elections [Education Code section 5030(b)] commencing with the 2022 Board elections.

4. Before submitting a final proposal to the County Committee for a trustee area plan using the federal Census data, multiple public hearings in accordance with Elections Code section 10010 shall be scheduled to obtain public input on the draft proposals prepared.

5. The Board shall apply to the County Committee for establishment of trustee areas pursuant to Education Code section 5019(a) in a timely manner to have the 2022 elections for the Board conducted within the new trustee areas.

6. The Superintendent, or her designee, shall send a copy of this resolution to the County Committee for action in accordance with law.

7. The Superintendent, or her designee, is hereby directed to prepare an additional Board resolution, and implement the applicable legal requirements in a timely manner, to seek a waiver from the State Board of Education of the election requirement imposed by Education Code section 5020.

8. The Superintendent, or her designee, shall consult with legal counsel to resolve all legal issues necessary to give effect to this resolution.

9. The foregoing resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board on January 9, 2019, at a duly noticed meeting by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I, Susan Epstein, Clerk of the Governing Board of the Goleta Union School District, HEREBY CERTIFY that the foregoing Resolution was duly introduced, passed and adopted by the Board at a meeting thereof held on January 9, 2019, by a vote of _____ to _____.

IN WITNESS THEREOF, I have hereto set my hand this ___ day of _____, 2019.

_____

Clerk of the Governing Board

390-112/4392421.1

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

This CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into on this 9th day of January, 2019 ("Effective Date") by and between the GOLETA UNION SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California, operating within Santa Barbara County ("DISTRICT"), and LINDSAY ROJAS and HECTOR MENDEZ, residents of District ("Prospective Plaintiffs"). The above parties are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

A. The Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system. The Board has always strived to listen to all voices in the community and represent the interests of the entire community. Currently, members of the Board are elected pursuant to an "at-large" election system in which registered voters of the entire jurisdiction elect candidates to the Board.

B. On November 26, 2018, the District received a Notice of Violation ("Notice") of the California Voting Rights Act ("Act") from Prospective Plaintiffs, dated November 20, 2018, alleging that the District's at-large system of electing District Board members violates the Act and threatening suit unless the District transitions to a district-based electoral system, an election method in which a candidate must reside within an election district or "trustee area" that is a divisible part of the District and is elected only by voters residing within that election district.

C. The District denies that the District's at-large electoral system violates the Act. Nevertheless, in recognition that litigation involves significant costs and uncertainty, the District desires to enter into this Agreement.

D. The Parties mutually desire to delay the institution of district-based elections until 2022 so that the trustee-area boundaries may be drawn based on 2020 federal decennial Census data, which will not become available until 2021.

E. The Parties now wish conditionally to resolve and settle the Notice and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree:

1. Obligations of Parties

A. At or before its regular meeting on February 6, 2019, the District will consider approval of a resolution of intent to institute a district-based election system for District Board elections by the November 2022 regular election.[1] The District

[1] The November 2022 regular election will occur on November 8, 2022.

already planned to consider such a resolution at a January 2019 Board meeting prior to receiving the Notice.

B. Provided that the District adopts the resolution described in subsection A, Prospective Plaintiffs shall not bring suit against the District prior to November 9, 2022 for any cause of action related to the District's electoral system, including, but not limited to, suit seeking the implementation of district-based elections or claims related to or arising from the Notice.

C. Provided that the District adopts the resolution described in subsection A, within 30 days of such adoption, the District will remit a payment of $30,000.00 (thirty thousand dollars) to Prospective Plaintiffs as reimbursement of its costs incurred for the work product to support the Notice in fulfillment of the requirement to reimburse prospective plaintiffs' reasonable costs pursuant to Elections Code section 10010(f). The check will be made payable to Prospective Plaintiffs' attorney-of-record Robert Goodman to his trust account Robert Goodman Trust Account. Pursuant to Elections Code section 10010(f)(1), Prospective Plaintiffs have made a demand for reimbursement and staff has substantiated that the documentation provided by Prospective Plaintiffs represents the demography and legal costs incurred by Prospective Plaintiffs supporting their Notice.

2. Condition Precedent

Prospective Plaintiffs acknowledge, understand and agree that the District's passing of the resolution described in Section 1 is an express condition precedent to the consummation of this Agreement and the covenants, conditions and agreements contained herein. In the event that the resolution is not approved as set forth in Section 1, then this Agreement shall be null and void and shall be of no further force and effect. In such event, neither this Agreement, nor any of its terms or provisions, shall be admissible in any action or proceeding initiated by Prospective Plaintiffs for any purpose.

Further, the Prospective Plaintiffs recognize and acknowledge that the District is under no obligation to pass the resolution and that the District reserves its discretion and the full measure of its powers to evaluate the resolution in accordance with applicable procedures, standards and requirements. It is understood and agreed that this Agreement shall not be construed in any fashion as an advance determination and does not provide the Prospective Plaintiffs with any expectation as to the outcome of the District's decision on the resolution. The District's lack of approval or inaction on the resolution will not constitute a default of this Agreement, but instead will constitute a terminating event of this Agreement.

3. Admissibility of Agreement

If the District does not institute district-based elections for District Board elections by the November 2022 regular election, this Agreement shall not be construed as an admission by the District that such failure to act is unreasonable or unlawful under the Elections Code. In addition, this Agreement may not be introduced into or be admissible in any

judicial proceeding other than a judicial proceeding to enforce the terms of this Agreement.

4. Release

A. Subject to the performance of the Parties' obligations in this Agreement, the Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to the Notice (collectively, the "Released Claims"). In connection with the release of the Released Claims, the Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

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.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

B. The Parties understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which the Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.

C. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.

D. Except as provided in Section 1.C. of this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

5. Representations and Warranties

A. Prospective Plaintiffs hereby represent and warrant to the District, as of the Effective Date, as follows:

i. They have not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.

ii. To the best of their knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against the Prospective Plaintiffs that would adversely affect their ability to consummate the transactions contemplated in this Agreement. To the best of their knowledge, Prospective Plaintiffs are not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the District, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.

iii. Prospective Plaintiffs have freely entered into this Agreement and are not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.

iv. Prospective Plaintiffs have made such investigation of the facts pertaining to this Agreement as they deem necessary.

v. Prospective Plaintiffs have, prior to the execution of this Agreement, obtained the advice of independent legal counsel of their own selection regarding the substance of this Agreement and the claims released herein.

B. In executing this Agreement, Prospective Plaintiffs acknowledge, represent, and warrant to the District that they have not relied upon any statement or representation of any District officer, agent, employee, representative, or attorney regarding any facts not expressly set forth within this Agreement. In entering into this Agreement, Prospective Plaintiffs assume the risk of any misrepresentations, concealment or mistake, whether or not they should subsequently discover or assert for any reason that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect or incomplete.

C. The representations and warranties of each of the Parties set forth in this Section and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to the District in entering into this Agreement.

6. Interpretation

A. The Parties have cooperated in the drafting and preparation of this Agreement and, in any construction or interpretation to be made of this Agreement, the same

shall not be construed against any Party. This Agreement is the product of bargained for and arm's length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.

B. This Agreement is an integrated contract and sets forth the entire agreement between the Parties with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by either Party.

C. This Agreement may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by both Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.

D. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.

E. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

7. Further Cooperation

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

8. No Third Party Beneficiaries

Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement.

9. Enforced Delay (Force Majeure)

A. Performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation,

governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.

B. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Either Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time.

10. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of Santa Barbara, and each party hereby consents to the jurisdiction of the above courts in any such action and to venue in the State of California, County of Santa Barbara, and agrees that such courts have personal jurisdiction over each of them.

11. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

12. Effectiveness

This Agreement shall become effective immediately following execution by each of the Parties and ratification by the Goleta Union School District Board of Education as required by Education Code section 17604.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below ("Date of Execution").

LULAC District 12
Aidee Farias, District Director
aideemfarias@gmail.com

RECEIVED
CITY MANAGER'S OFFICE
2024 AUG 23 A 9:52
CITY OF PACIFIC GROVE

Dear City Council of Pacific Grove,

On behalf of LULAC District 12, I, Aidee Farias, District Director, formally request that the City of Pacific Grove transition from at-large to district-based elections to comply with the California Voting Rights Act (CVRA).

The CVRA prohibits at-large election systems that impair protected classes' ability to elect preferred candidates or influence election outcomes. We believe Pacific Grove's current system dilutes minority voting strength, potentially violating the CVRA.

Pursuant to Elections Code Section 10010, we request that within 45 days, the City Council adopt a resolution outlining its intent to transition to district-based elections. The City then has 90 days to hold public hearings and adopt an ordinance establishing districts.

This transition would align Pacific Grove with positive statewide trends, as numerous cities and school districts have already adopted district elections. Recently, neighboring cities like Soledad, Gonzales, Greenfield, and Monterey have taken steps in this direction.

We urge Pacific Grove to act proactively to avoid potential litigation, which has proven costly for other municipalities. Transitioning voluntarily allows the City to maintain control over the districting process and engage the community meaningfully.

We look forward to your timely response and cooperation in this matter. Please provide a timeline for the transition process and outline the steps the City will take to implement district-based elections.

Sincerely,

Aidee Farias

Aidee Farias
LULAC District 12 Director

Agenda No. 12 A

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:	March 6, 2024
SUBJECT:	Request Direction by Council to City Manager to Issue a Request for Proposal for a Demographer in Connection with the California Voting Rights Act
CEQA:	Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Motion to:

1. Direct City Manager to issue a Request for Proposal for a qualified demographer to study the demographics of the City including:
    a. The population of the City and its various racial and ethnic groups under the 2020 Census.
    b. The most recent estimates of the proportion of eligible voters in the various racial and ethnic groups in the City.
    c. Estimate of the socio-economic characteristics of the various racial and ethnic groups in the City.
    d. The criteria governing the design of electoral districts for the election of City Council members.e. A proposed timeline for the transition to by-district elections should the City Council decide upon that course of action.
2. Direct City Manager to return to the City Council with the demographer's report for discussion and further direction.

DISCUSSION

A. Letter from League of United Latin American Citizens

On August 25, 2022, the City of Pacific Grove received a letter from Andrew Sandoval on behalf of the League of United Latin American Citizens (LULAC) The letter included a demand that the City change its at-large voting system to a by-district voting system for city council elections. ("LULAC Letter" Attachment 1) The LULAC Letter was posted on the City's website following receipt.

The case of Pico Neighborhood Association v. City of Santa Monica was pending at the time of receipt of the LULAC letter. The California Supreme has since issued its decision and the status of the Santa Monica case is discussed below.

The LULAC Letter asserts that changing to by-district elections would avoid a potential violation of the California Voting Rights Act (CVRA), protect the City from litigation under the CVRA, be consistent with the trend in California and Monterey County for cities and other jurisdictions to transition to by-district elections, and improve the accountability and responsiveness of the City's elected officials.

In a by-district electoral system, the City is divided into districts of approximately equal population and only the voters residing in each district may vote for candidates for City Council for that district. Those candidates themselves must also be residents and voters of that district. In the current at-large voting electoral system, all

voters in the City are entitled to vote for all candidates running for the City Council.

B. California Voting Rights Act ("CVRA")

The CVRA was enacted in 2001, Elections Code §§ 14025 - 14032. (Attachment 2) The CVRA applies only to at-large electoral systems. The CVRA alters established different standards of proof and defenses than exist under the federal Voting Rights Act, making it easier for plaintiffs to challenge the electoral system of any city or other jurisdiction that does not elect its governing board by-district. For example, under the CVRA, a plaintiff is not required to prove that by changing the districts that there will be a least one district which has a majority of minority voters.

Importantly, the CVRA also expands the ability of plaintiffs to recover their attorneys' fees and expenses, making awards mandatory if plaintiffs prevail. In contrast, defendants, even if successful, cannot recover either attorneys' fees or costs.

Importantly, even if the City were to successfully defend itself against a CVRA lawsuit, nothing prevents a different set of plaintiffs from filing a new CVRA demand against the City potentially plunging the City into litigation again. The only absolute protection for the City against a lawsuit under the CVRA is the implementation of single-member by-district elections.

The CVRA prohibits at-large electoral systems that impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class. Plaintiffs in a CVRA case must prove that racially polarized voting occurs in specified elections.

C. Pico Neighborhood Association v. City of Santa Monica

The California Supreme Court recently ruled in Pico Neighborhood Association v. City of Santa Monica, 15 Cal. 5th 292 (2023) (see Attachment 3), that plaintiffs must also prove that the combination of at-large voting and voting patterns reflecting racial polarization results in the dilution of the ability of protected class voters to elect chosen candidate. In other words, plaintiffs must prove that they would have the opportunity to elect chosen candidates in a legal alternative electoral system such as a by-district system or alternatives that may be available in charter cities (e.g., cumulative voting ranked choice voting; limited voting, etc.).

The Santa Monica case has been remanded to the trial court for consideration of the dilution issue under the standard set in the Supreme Court's opinion. Given the flexibility of this standard, there is no "bright-line" percentage beneath which an action under the CVRA cannot be sustained. Even a protected class that forms a relatively small percentage of a city's population may be able to state a cause of action for violation of the CVRA. Also, small cities are as vulnerable as larger jurisdictions.

The CVRA purports to protect electoral "influence" as well as the ability to elect chosen candidates. No court has ruled on the meaning of electoral "influence" in the 23 years since enactment of the CVRA. Electoral influence was not an issue in the Santa Monica case. In the Santa Monica case, the Latino plaintiffs alleged that in a by-district electoral system in which Latinos constituted about 30 percent of eligible voters in a district, Latinos would be successful in electing chosen candidates because of the characteristics of the voters in the neighborhoods in that district.

The League of California Cities provided a summary of the Santa Monica case on August 30, 2023 (Attachment 4).

D. Remedies

In CVRA cases, the court has broad jurisdiction to order additional "appropriate" remedies. In all CVRA cases to date, the court has ordered the losing jurisdiction to implement by-district election.

City of Highland: In this case, the city argued that the admitted CVRA violation could be remedied through use of a cumulative voting system. Plaintiffs argued in favor of by-district elections and won.

City of Palmdale: In the Palmdale case, the remedies included shortening the terms of office of council members elected in the at-large system and ordering a special election in which all the new district seats were on the ballot at the same time. The City was permitted to re-stagger the terms of office after that first election in the new districts.

E. Attorneys Fees

As mentioned above, the CVRA contains an attorneys' fee-shifting provision that operates in only one direction, in favor of plaintiffs. The CVRA mandates that the defendant shall pay the reasonable attorneys' fees and litigation expenses of plaintiffs who prevail in a CVRA lawsuit. Plaintiffs can also prevail through a settlement which results in a change to by-district election without a court order.

Exposure to payment of plaintiffs' attorneys' fees and expenses has been a significant incentive motivating other jurisdictions to transition to by-district elections because of the extremely high expense of CVRA trials. Both parties must retain expert witnesses, often three or four on issues such as demographics, racially polarized voting, the efficacy of alternative voting systems, and the totality of the circumstances supporting a showing of the undiluted ability of protected class voters to elect chosen candidates. Examples of the recovery of attorneys fees by plaintiffs by court order include:

City of Santa Monica: The outstanding demand for plaintiffs' attorneys' fees in through trial is $22 million;

City of Palmdale: the City paid approximately $4.5 million to the prevailing plaintiffs;

City of Highland: this case which concerned only the remedy to be implemented because the city had conceded liability, the city paid plaintiffs $1 million;

City of Santa Clara: the prevailing plaintiffs collected $3.5 million in fees and expenses through trial;

City of Modesto: this was the very first CVRA case to go to trial and the City prevailed at trial, but then was reversed on appeal, the city paid plaintiffs approximately $3.5 million for attorneys fees.

Settlements have also been expensive with payments in the range of $300,000 to $1 million for plaintiffs' attorneys' fees depending on the stage of the litigation in which the case was settled.

In addition to these mandatory payments to plaintiffs' attorneys, defending jurisdictions must pay their own attorneys and expenses of litigation, which generally run in the millions of dollars as well.

No jurisdiction has yet successfully defended itself in a CVRA case that has gone to trial. However, were that to happen, the defendant is not entitled to recover its attorneys' fees or costs of litigation and would remain exposed to a CVRA demand and lawsuit in the future by a different set of plaintiffs.

F. City Charter

Pacific Grove's Charter provides that , "The Mayor and the members of the Council shall be elected from the City at large." (Charter of the City of Pacific Grove, Art. 6.) Ordinarily, this provision could be changed only with approval of the majority of the voters of the City. Some cities, including charter cities have used a state law, Government Code § 34886, to transition to by-district elections without placing the issue of the change on the ballot. Section 34886 provides:

Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that

requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21130 of the Elections Code and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

Some charter cities that have transitioned from at-large elections to by-district elections have interpreted their respective charters as permitting the change without a vote. For example, the Charter of the City of Monterey, in contrast to the Charter of the City of Pacific Grove, does not specify the City's method of electing its legislative body. Accordingly, the city did not place the change to by-district elections on the ballot.

The City of Sunnyvale's charter did specify at-large elections for the city council and when the city transitioned to by-district elections, the process included a charter amendment ballot measure authorizing the change.

The City of Santa Rosa's charter also specified at-large elections for the city council; however, that city interpreted its charter as enabling the city to use section 34886, above, to transition to by-district elections without first amending the city charter.

No court has ruled on the legality of charter cities with at-large elections specified in the charter using section 34886 to transition to by-district elections without a charter amendment vote.

In the case of Jauregui v. City of Palmdale, 226 Cal. App. 4th 781, 798 (2014), the court held that if a charter city's electoral system is adjudicated to cause dilution of the voting rights of a protected class, then state law prevails over the Charter.

G. Process for Transitioning to By-District Elections

The process of transitioning to by-district elections is controlled by California Elections Code § 10010 (Attachment 5), which specifically applies to charter cities.

Elections Code § 10010 requires a minimum of five public hearings as follows:

Activity	Timing (EC § 10010)
Retain Demographer. Pass Resolution of Intent to Change to Single-member Districts; Adopt Tentative Calendar.	Passage of resolution commences 90-day safe harbor period, which can be extended within parameters.
Hold two Public Hearings on the Composition of Possible Districts Before Draft Maps Are Drawn.	No more than 30 days apart
Publish Draft Maps and Election Sequence.	7 days prior to 1st public hearing on maps
Hold First of Two Public Hearings on Draft Maps.	No more than 45 days apart
Publish any Additional Maps With Election Sequence.	7 days prior to 2nd public hearing
Hold 2nd Public Hearing on Draft Maps; Select Preferred Map.	Within 45 days of 1st public hearing
Hold Final Public Hearing to Adopt Districting Plan and Sequence of Election To Be Implemented Contingent on Voter Approval of a Charter	At least 7 days after any changes to map proposed for adoption

Amendment Providing for By-district Elections of City Council Members.	
Deadline for Delivering to Monterey County Board of Supervisors Charter Amendment Ballot Measure Materials and Resolution Requesting Consolidation With the Statewide General Election.	August 9, 2024
First City Council Elections Conducted By-district if Charter Amendment Approved by the Voters.	November 2026

H. Conclusion

In order to evaluate the City's demographics and the potential issues regarding the California Voting Rights Act, the recommendation is for the City Council to direct the City Manager to issue an Request for Proposal for a qualified demographer to study the demographics of the City and return to the City Council with the report by the demographer for discussion and further direction.

ENVIRONMENTAL REVIEW
This activity has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and as such, is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

OPTIONS
None.

FINANCIAL IMPACT:
Staff time for the preparation of the Request for Proposal.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

12A PPT
1 - LULAC Letter
2 - CVRA Elections Code Sections 14025-14032
3 - PICO Neighborhood Association v. City of Santa Monica, 15 Cal. 5th 292 (2023)
4 - League of California Cities Paper Dates August 30, 2023
5 - California Elections Code Section 10010

Agenda No. 8 D

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Matthew Mogensen, City Manager
MEETING DATE:	July 17, 2024
SUBJECT:	City of Pacific Grove Informational Report on Demographics
CEQA:	Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Motion to:

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.

DISCUSSION

On March 6, 2024, the City Council discussed the issuance of a Request for Proposal (RFP) for a demographer to study the demographics of the City. National Demographic Corporation (NDC) was selected to perform the demographic work requested in the RFP. Attached is the City of Pacific Grove Report on Demographics prepared by NDC. This report provides a demographic overview of the City's residents as well as a series of tables that depict the economic characteristics by race/ethnicity.

The Report by NDC is being submitted to you for your information.

ENVIRONMENTAL REVIEW

This activity has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and as such, is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

OPTIONS

Receive and file the information report on City of Pacific Grove demographics prepared by NDC. Alternatively, the Council may provide an alternate direction to the City Manager regarding this item.

FINANCIAL IMPACT:

There is no financial impact of receiving the informational report.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

NDC Demographic Report

National Demographics Corporation

City of Pacific Grove
Report on Demographics

June 11, 2024

1. Demographic Overview

The California adjustment to the 2020 Census counted **15,125** residents of Pacific Grove.

	Total Population	
	Total	*Percent*
Non-Hispanic White	10,669	*71%*
Latino/Hispanic	2,165	*14%*
Black/African-American	276	*2%*
Asian/Pacific Islander	1,344	*11%*
City Total	**15,125**	

In Voting Rights-related litigation (both California and Federal), the most significant demographic data are the Citizen Voting Age Population data, as the courts view that data as the best available estimate of the population eligible to vote.

	Citizen Voting Age Population	
	Total	*Percent*
Non-Hispanic White	9,455	*80%*
Latino/Hispanic	1,249	*11%*
Black/African-American	198	*2%*
Asian/Pacific Islander	830	*7%*
City Total	**11,915**	

The current Citizen Voting Age Population (CVAP) is from the latest Special Tabulation of the American Community Survey (2018-2022). The Census Bureau releases new updates every year.

Estimates of voting and turnout can also be made using surname data provided by the California Secretary of State's California Statewide Database. Non-Hispanic White and Black/African-American estimates can then be derived by applying their share of CVAP to the remaining voters (who were not identified as Latino/Hispanic or Asian-American based on their surnames). The following show the percentage of all registered voters and the percentage of voters casting ballots who belong to each racial or ethnic group listed:

	Nov. 2022 Registration		Nov. 2022 Turnout		Nov. 2020 Turnout	
	Total	*Percent*	Total	*Percent*	Total	*Percent*
Non-Hispanic White	8,744	*83%*	6,216	*85%*	8,121	*84%*
Latino/Hispanic	940	*9%*	548	*7%*	730	*8%*
Black/African-American	353	*3%*	250	*3%*	113	*1%*
Asian/Filipino	434	*4%*	268	*4%*	354	*4%*
City Total	**10,509**		**7,310**		**9,615**	

Phone: (818) 254-1221
FAX (818) 254-1221
P.O. Box 5271
Glendale, CA 91221
info@NDCresearch.com
www.NDCresearch.com

The same data can be used to calculate the turnout rates within each racial or ethnic group:

	Nov. 2022	Nov. 2020
Non-Hispanic White	71%	90%
Latino/Hispanic	58%	84%
Black/African-American	71%	90%
Asian/Filipino	62%	83%
City Total	**70%**	**89%**

2. Economic Characteristics by Race/Ethnicity

	Median Income	Percent below poverty
Non-Hispanic White	$107,150	6.5%
Latino/Hispanic	$91,122	5.2%
Black/African-American	$67,083	12.9%
Asian/Pacific Islander	$118,125	6.9%
City Total	**$102,553**	**7.1%**

Housing Characteristics by Race/Ethnicity

	Owners	Renters
Non-Hispanic White	52%	48%
Latino/Hispanic	41%	59%
Black/African-American	0%	100%
Asian/Pacific Islander	42%	58%
City Total	**49%**	**51%**

Education Attainment Race/Ethnicity

	High School Graduates	College Graduates
Non-Hispanic White	97%	61%
Latino/Hispanic	87%	35%
Black/African-American	97%	30%
Asian/Pacific Islander	89%	61%
City Total	**96%**	**57%**

Immigration & English Fluency by Race/Ethnicity

	Foreign Born	Naturalized	Speak English less than Very Well
Non-Hispanic White	8%	75%	1%
Latino/Hispanic	18%	69%	6%
Black/African-American	7%	100%	0%
Asian/Pacific Islander	57%	61%	17%
City Total	**13%**	**68%**	**3%**

3. Fair Maps Act criteria and process requirements for drawing City Council election districts

Criteria

The Fair Maps Act of 2019 and Fair Maps Act of 2023 modified the criteria required for cities drawing or adjusting their council districts (Elections Code section 21130(a-e)). The criteria, in order of priority, are the following:

(1) Equal population using the latest Census as adjusted for the incarcerated population (21130(a))

(2) Boundaries consistent with the Federal Voting Rights Act (21130(b)). As part of this process, cities are required to produce a report to "determine whether it is possible to create an election district or districts in which a minority group is sufficiently large and geographically compact to constitute a majority in a single-member district" (21130(b)(1)).

Furthermore, if a city "conducts an analysis to determine wither 'racially polarized voting' exists," a summary must be published before adopting election district boundaries or within seven days, whichever occurs first (21130(b)(2)).

(3) Geographic contiguity (21130(c)(1)

(4) Communities of interest and neighborhoods, as defined as "population that shares common social or economic interests and should be included within a single election district for purposes of its effective and fair representation." This may include shared policy concerns, characteristics of the community, or history, but not "relationships with political parties, incumbents or political candidates." (21130(c)(2))

(5) Following natural and artificial boundaries that are "easily identifiable and understandable by residents" (21130(c)(3)).

(6) Compactness, as defined as not bypassing nearby populations in favor of more distant populations (21130(c)(4).

Finally, jurisdictions are prohibited from adopting districts "for the purpose of favoring or discriminating against an incumbent, political candidate, or political party" (21130(d)).

These criteria must be applied in that order of priority, and no other criteria may be prioritized over these criteria (21130(e)). These criteria apply to both Charter and General Law cities (21120), unless it is a charter city where the "city's charter provides two or more mandatory traditional redistricting criteria other than the requirement that districts be equal in population" (21130(g)).

Process

In short, the process requires, at a minimum, the following:

1. Jurisdiction adopts a "Resolution of Intent" declaring its decision to move to by-district elections and laying out a tentative schedule for the process.

2. Jurisdiction issues report evaluating whether it is possible to draw one or more districts where a protected class (as defined in the Federal Voting Rights Act) is able to constitute a majority of the electorate.

    - If the districting body conducted a racially polarized voting analysis, that report must also be released at this time.

3. Jurisdiction holds two public hearings to gather public input on communities of interest (and to educate the public on the process) – no draft maps are included at this stage. These two hearings must be within 30 calendar days of each other.

4. Jurisdiction draws and posts draft map(s) and proposed election sequence for those maps.

5. Jurisdiction holds two public hearings on the draft maps "prior to the public hearing at which the maps are adopted". These two hearings must be within 45 calendar days of each other.

The following are the two official statutes governing the steps in the districting process:

Elections Code 21130 (b):

The districting body shall adopt election district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

> (1) Consistent with the districting body's existing obligations under the federal Voting Rights Act, the districting body shall determine whether it is possible to create an election district or districts in which a minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, as set forth in Thornburg v. Gingles, 478 U.S. 30 (1986), and as interpreted in case law regarding enforcement of the federal Voting Rights Act with respect to redistricting. The districting body shall publish on its redistricting web page, at a minimum, the results of its analysis within seven days of completing the analysis or prior to adopting election district boundaries, whichever occurs first.
>
> (2) If the districting body, consistent with its existing obligations under the federal Voting Rights Act, conducts an analysis to determine whether "racially polarized voting," as defined in case law regarding enforcement of the federal Voting Rights Act, exists in the local jurisdiction, the districting body shall publish on its redistricting web page, at a minimum, a

summary of its analysis and findings within seven days of completing the analysis or prior to adopting election district boundaries, whichever occurs first.

Elections Code 10010:

(a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts.

CALIFORNIA ELECTIONS CODE

§ 14025. Short title

Effective: January 1, 2003

This act shall be known and may be cited as the California Voting Rights Act of 2001

§ 14026. Definitions

As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One that combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

§ 14027. At-large method of election affecting protected class voters

An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

§ 14028. Violation of protected class voter rights; determination

(a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

§ 14029. Remedies for violation of §§ 14027 and 14028

Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

§ 14030. Attorney's fees and costs

In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

§ 14031. Implementation as constitutional protection

This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

§ 14032. Voter private right of action

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

15 Cal.5th 292
Supreme Court of California.

PICO NEIGHBORHOOD ASSOCIATION et al.,
Plaintiffs and Respondents,
v.
CITY OF SANTA MONICA, Defendant and Appellant.

S263972
|
August 24, 2023
|
As Modified September 20, 2023

Synopsis

Background: Neighborhood organization and registered voter brought action alleging that city's at-large voting system for nonpartisan elections for city council discriminated against Latinos, in violation of California Voting Rights Act and California Constitution's Equal Protection Clause. Following bench trial, the Superior Court, Los Angeles County, No. BC616804, Yvette M. Palazuelos, J., 2019 WL 10854474, entered judgment in plaintiffs' favor on constitutional and statutory claims and ordered city to switch to district-based voting. City appealed. The Court of Appeal, 51 Cal.App.5th 1002, 265 Cal.Rptr.3d 530, reversed. Review was granted.

[Holding:] The Supreme Court, Evans, J., held that plaintiffs, after establishing existence of racially polarized voting, were not required to prove that minority group of Latino voters would constitute a majority, or near majority, of hypothetical single-member district.

Court of Appeal reversed; remanded.

Opinion, 51 Cal.App.5th 1002, 265 Cal.Rptr.3d 530, depublished.

Procedural Posture(s): Petition for Discretionary Review; On Appeal; Judgment.

West Headnotes (17)

[1] **Election Law** Vote Dilution
Election Law Compactness and cohesiveness of minority group

In two significant respects, California Voting Rights Act (CVRA) makes it easier than § 2 of VRA to challenge State's or political subdivision's at-large method of election: first, CVRA, unlike VRA, does not require plaintiff to demonstrate that members of minority group would be geographically compact or concentrated enough to constitute a majority of hypothetical single-member district, and second, while plaintiff can succeed under either VRA or CVRA by showing that at-large method dilutes minority group's voting power by impairing its ability to elect candidates of its choice, only CVRA allows plaintiff to prevail by demonstrating, in the alternative, that at-large method impairs minority group's ability to influence election outcome. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(b); Cal. Elec. Code §§ 14027, 14028(c).

[2] **Election Law** Vote Dilution

A court presented with a vote-dilution claim challenging an at-large voting system under § 2 of the VRA, or under the California Voting Rights Act (CVRA), which applies to nonpartisan elections, should undertake a searching evaluation of the totality of the facts and circumstances, including the characteristics of the specific locality, its electoral history, and an intensely local appraisal of the design and impact of the contested electoral mechanisms, as well as the design and impact of the potential alternative electoral system. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(b); Cal. Elec. Code §§ 14026(a, c), 14027, 14028(e).

[3] **Election Law** Compactness and cohesiveness

of minority group

Election Law Racially polarized or bloc voting

An at-large electoral system or multimember district can qualify as a prohibited vote-dilution practice under § 2 of the VRA when the plaintiff can show that a bloc-voting majority is usually able to defeat candidates supported by a politically cohesive, geographically insular minority group, and the greater the degree to which the electoral minority is homogenous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[4] **Election Law** Compactness and cohesiveness of minority group

Election Law Racially polarized or bloc voting

Plaintiff asserting vote-dilution challenge to at-large voting system, under § 2 of VRA, must satisfy three threshold conditions under *Gingles*: first, minority group must be sufficiently large and geographically compact to constitute majority in single-member district, second, minority group must be politically cohesive, and third, white majority must vote sufficiently as bloc to enable it, in absence of special circumstances, such as minority candidate running unopposed, usually to defeat minority group's preferred candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[5] **Election Law** Vote Dilution

Once the plaintiff asserting vote-dilution challenge to at-large voting system, under § 2 of VRA, has satisfied the three threshold conditions under *Gingles*, trial court is to consider totality of the circumstances and determine, based upon a searching practical evaluation of past and present reality, whether the political process is equally open to minority voters, and this determination is peculiarly dependent upon the facts of each case, and requires an intensely local appraisal of the design and impact of contested electoral mechanisms. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[6] **Election Law** Vote Dilution

Under totality of circumstances approach for considering vote-dilution challenge to at-large voting system, under § 2 of VRA, court considers a number of factors that typically may be relevant, including: history of voting-related discrimination in State or political subdivision; extent to which voting is racially polarized; extent to which State or political subdivision has used voting practices or procedures that tend to enhance opportunity for discrimination against minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; exclusion of members of minority group from candidate slating processes; extent to which minority group members bear effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in political process; use of overt or subtle racial appeals in political campaigns; and extent to which members of minority group have been elected to public office in the jurisdiction. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[7] **Election Law** Compactness and cohesiveness of minority group

Election Law Racially polarized or bloc voting

For a vote-dilution challenge to an at-large method of election under Section 2 of the VRA, or under the California Voting Rights Act (CVRA), which applies to nonpartisan elections, a plaintiff must show polarized voting, i.e., members of minority group vote as a politically cohesive unit, while the majority votes sufficiently as a bloc usually to defeat minority group's preferred candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301; Cal. Elec. Code §§ 14026(a, c, e), 14027, 14028(a).

[8] **Statutes** Context

A court construing a statute does not view a fragment in isolation, but considers the statute as

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a whole, in context with related provisions and the overall statutory structure, so that it may best identify and effectuate the scheme's underlying purpose.

[9] **Election Law**Dilution of voting power in general

To establish vote dilution under § 2 of the VRA, a court must find a reasonable alternative practice as a benchmark against which to measure the existing voting practice. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[10] **Election Law**Racially polarized or bloc voting

While the existence of racially polarized voting is relevant to a vote-dilution claim under § 2 of the VRA, and is indeed a key element for the claim, it is not in itself sufficient, and dilution requires a showing that the minority group has less ability to elect its preferred candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[11] **Election Law**Racially polarized or bloc voting

The existence of racially polarized voting is not, in itself, sufficient for a vote-dilution claim under the California Voting Rights Act (CVRA) challenging a nonpartisan at-large voting system, and dilution requires a showing that the minority group has less ability to elect its preferred candidate or influence the election's outcome than it would have if the at-large system had not been adopted. Cal. Elec. Code §§ 14026(a, c), 14027.

[12] **Election Law**Vote Dilution

To establish the dilution element for a vote-dilution claim under the California Voting Rights Act (CVRA) challenging a nonpartisan at-large voting system, the plaintiff must identify a reasonable alternative voting practice to the existing at-large electoral system that will serve as the benchmark undiluted voting practice. Cal. Elec. Code §§ 14026(a, c), 14027.

[13] **Election Law**Compactness and cohesiveness of minority group

The rationale for requiring, in a vote-dilution challenge under § 2 of the VRA to an at-large voting system, that the challenger demonstrate that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district is that if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[14] **Municipal Corporations**Nature and constitution of body in general

To prevail on vote-dilution challenge under California Voting Rights Act (CVRA) to at-large method of nonpartisan elections for city council, challengers, after establishing existence of racially polarized voting, were not required to prove that minority group of Latino voters would constitute a majority, or near majority, of hypothetical single-member district, where winning candidates often earned only plurality of vote; accordingly, what was required to establish dilution of Latino voters' ability to elect candidates of their choice was proof that, under some lawful alternative electoral system, Latino voters would have potential, on their own or with help of crossover voters, to elect their preferred candidate, and lawful alternative electoral systems could include, but were not limited to, single-member district elections. Cal. Elec. Code §§ 14026(a, c, e), 14027, 14028(a).

[15] **Election Law**Compactness and cohesiveness of minority group

To establish, under the California Voting Rights Act (CVRA), that an at-large voting system for nonpartisan elections dilutes a minority group's ability to elect its preferred candidate, a plaintiff

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must demonstrate the potential to elect representatives under some lawful alternative electoral method, and one way to do this would be to show that minority group would be sufficiently large and geographically compact to constitute a majority in a single-member district, but that is not the only way, and plaintiff could demonstrate minority group's ability to attract crossover votes for its preferred candidate, or plaintiff may identify nondistrict remedies that would enable minority group, on its own or with assistance of crossover votes, to elect its preferred candidate. Cal. Elec. Code §§ 14026(a, c, e), 14027.

[16] **Election Law** Vote Dilution

Key inquiry in establishing dilution, in vote-dilution challenge to at-large voting system for nonpartisan elections under California Voting Rights Act (CVRA), of minority group's ability to elect its preferred candidate is what percentage of vote would be required to win, an inquiry that is not short-circuited merely because minority group may fall short of absolute majority or something close to it, and in predicting how many candidates are likely to run and what percentage may be necessary to win, courts may consider experiences of similar jurisdictions that use district elections or other alternatives to traditional at-large elections, and courts should keep in mind that the inquiry at liability stage is simply to prove that a solution is possible, and not necessarily to present final solution. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(b); Cal. Elec. Code §§ 14026(a, c), 14027, 14028(e).

[17] **Election Law** Vote Dilution

The dilution element for a vote-dilution challenge to an at-large voting system under § 2 of the VRA, or under the California Voting Rights Act (CVRA), which applies to nonpartisan elections, ensures that the minority group is not made worse off, and to replace at-large elections with district elections under a dilution theory, a successful plaintiff must show not merely that the minority group would have a real electoral opportunity in one or more hypothetical districts, but also that the incremental gain in the group's ability to elect its candidate of choice in such districts would not be offset by a loss of the group's potential to elect its candidates of choice elsewhere in the locality. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(b); Cal. Elec. Code §§ 14026(a, c), 14027.

****57 ***322** Second Appellate District, Division Eight, B295935, Los Angeles County Superior Court, BC 616804, Yvette M. Palazuelos, Judge

Attorneys and Law Firms

Lane Dilg, City Attorney, George Cardona, Interim City Attorney; Gibson, Dunn & Crutcher, Theodore J. Boutrous, Jr., Marcellus A. McRae, Kahn A. Scolnick, Tiaunia N. Henry and Daniel R. Adler, Los Angeles, for Defendant and Appellant.

Cole Huber and Derek P. Cole for League of California Cities and California Special Districts Association as Amici Curiae on behalf of Defendant and Appellant.

Strumwasser & Woocher, Bryce A. Gee, Los Angeles, and Caroline C. Chiappetti for The Santa Monica Transparency Project as Amicus Curiae on behalf of Defendant and Appellant.

John K. Haggerty as Amicus Curiae on behalf of Defendant and Appellant.

The Law Office of Joseph Pertel, Joseph A. Pertel; and Christopher M. Harding, Santa Monica, for League of Women Voters of Santa Monica, Alliance of Santa Monica Latino and Black Voters, Human Relations Council Santa Monica Bay Area and Community for Excellent Public Schools as Amici Curiae on behalf of Defendant and Appellant.

Shenkman & Hughes, Kevin I. Shenkman, Mary R. Hughes, Los Angeles, Andrea A. Alarcon; Law Office of Robert Rubin, Robert Rubin, San Francisco; Goldstein, Borgen,

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Dardarian & Ho, Morris J. Baller, Laura L. Ho, Anne P. Bellows, Ginger L. Grimes, Oakland; Parris Law Firm, R. Rex Parris, Ellery S. Gordon, Lancaster; Law Offices of Milton C. Grimes, Milton C. Grimes; Schonbrun Seplow Harris & Hoffman, Paul Hoffman and John Washington, Culver City, for Plaintiffs and Respondents.

Panish Shea & Boyle and Brian Panish, Los Angeles, for Richard Polanco, Sergio Farias, Juan Carrillo, Richard Loa and Austin Bishop as Amici Curiae on behalf of Plaintiffs and Respondents.

Hogan Lovells US, Ira M. Feinberg, Erin Chapman, Zach Martinez, Patrick C. Hynds, Derek Centola and Joseph M. Charlet for FairVote as Amicus Curiae on behalf of Plaintiffs and Respondents.

Greenberg Glusker Fields Claman & Machtinger, Douglas E. Mirell and Michelle A. Mabugat, Los Angeles, for Sara Sadhwani, Bernard Fraga, Janelle Wong, Marisa Abrajano, Jason Casellas, Lorrie Frasure, Matthew Mendez Garcia, Christian Grose, Eric Gonzalez Juenke, Jane Junn, Taeku Lee, Gabriele Magni, Jennifer Merolla, Melissa Michelson, Jessica Lavariega Monforti, Jason Morin, Ricardo Ramírez, Paru Shah, LaFleur Stephens, Dara Strolovitch, Christopher Towler and Tom Wong as Amici Curiae on behalf of Plaintiffs and Respondents.

UCLA Voting Rights Project, Chad W. Dunn and Sonni Waknin for Matt Barreto, Lorrie Frasure, Chelsea Jones, Natalie Masuoka, Gary Segura, Efrén Pérez and Chris Zepeda-Millán as Amici Curiae on behalf of Plaintiffs and Respondents.

Keker, Van Nest & Peters, R. Adam Lauridsen and Connie P. Sung, San Francisco, for Asian Americans Advancing Justice–Asian Law Caucus, Asian Americans Advancing Justice–Los Angeles and Asian Law Alliance as Amici Curiae on behalf of Plaintiffs and Respondents.

Rosenfeld Meyer & Susman and Todd W. Bonder, Beverly Hills, for Oscar de la Torre as Amicus Curiae on behalf of Plaintiffs and Respondents.

Lowenstein & Weatherwax, Nathan Lowenstein and Kenneth J. Weatherwax, Los Angeles, for Bruce A. Wessel as Amicus Curiae.

Rob Bonta, Attorney General, Jonathan L. Wolff, Chief Assistant Attorney General, Heather Hoesterey and Kristin A. Liska, Deputy Attorneys General, for the Attorney General as Amicus Curiae.

Stephen Bosworth and L. Stevan Leonard as Amicus Curiae.

Opinion

Opinion of the Court by Evans, J.

***305 **58 ***323** Local governments make many of the most important decisions that affect Californians' everyday lives. They build and repair public streets, they define a neighborhood's character through planning and zoning, and they decide where to place public parks and where to allow restaurants, bars, and liquor stores to operate. They make decisions about public transit and decide where to site industries that cause pollution. They provide police services and determine the level and type of policing and other first responder services, they educate our children, they operate or regulate local utilities, and they have the power to levy taxes. The people exercise control over these choices by electing representatives to city councils, county boards, boards of education, community college boards, special district boards, and other bodies.

The genius of representative government, in all its guises, is that it is responsive to the people it serves. But its ability to be responsive is dependent in a fundamental way on the assumption that each *****324** person's vote is of equal weight. While we often take that assumption for granted, sometimes the actual value of one's vote can vary based on the way the voting is structured. For example, a minority of voters may find itself unable to elect even a single member of a multimember body when the members are elected ***306** at large, but would be able to elect one or more representatives if the members were elected by districts or by another lawful method.

In such circumstances, the voting rules may effectively decide whether a group of voters can have a voice in the myriad decisions made by local representatives. With a seat at the table, the voters' representative can have a say in the topics and terms of the debate on the many crucial decisions that local governments make. Without a seat, though, the

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voters' voice may be effectively muted or silenced and their needs and preferences may be ignored or given less weight.

To address this problem, federal and state law restrict at-large voting systems from unfairly submerging or diluting the votes of a minority in the majority's greater numbers. Section 2 of the federal Voting Rights Act of **59 1965 (52 U.S.C. § 10301; VRA) prohibits states and their political subdivisions from using an at-large method of election when such a scheme would "result in unequal access to the electoral process" based on protected characteristics of race, color, or membership in a language minority group. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 46, 106 S.Ct. 2752, 92 L.Ed.2d 25 (*Gingles*).) In an effort to provide greater protections to California voters than those provided by the VRA, the Legislature subsequently enacted the California Voting Rights Act of 2001 (Elec. Code, § 14025 et seq.; CVRA). The CVRA prohibits an at-large method of election "that impairs the ability of a protected class" (*id.*, § 14027) — as defined by race, color, or language minority group (*id.*, § 14026, subd. (d)) — "to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class" (*id.*, § 14027).

[1] Both statutory schemes require a plaintiff to show racially polarized voting — i.e., that the protected class members vote as a politically cohesive unit, while the majority votes "sufficiently as a bloc usually to defeat" the protected class's preferred candidate. (*Gingles, supra*, 478 U.S. at p. 56, 106 S.Ct. 2752; accord, Elec. Code, §§ 14026, subd. (e) [providing that "racially polarized voting" may be established by "[t]he methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the [VRA]"], 14028, subd. (a).) The CVRA, however, "make[s] it easier to successfully challenge at-large districts" in two significant respects. (Assem. Com. on Elections, Reapportionment and Const. Amends., Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Mar. 18, 2002, p. 4.) First, the CVRA, unlike the VRA, does not require a plaintiff to demonstrate that the members of the protected class would be geographically compact or concentrated enough to constitute a majority of a hypothetical single-member district. (Compare Elec. Code, § 14028, subd. (c) with *Gingles*, at p. 50, 106 S.Ct. 2752.) **307 Second, while a plaintiff can succeed under either the VRA or the CVRA by showing that the at-large method dilutes a protected class's voting power by impairing its ability "to elect" candidates of its choice (52 U.S.C. § 10301(b); Elec. Code, § 14027), only the CVRA allows the plaintiff to prevail by demonstrating, in the alternative, that the at-large method impairs the class's ability "to *influence* the outcome of an election." ***325 (Elec. Code, § 14027, italics added; cf. *League of United Latin American Citizens v. Perry* (2006) 548 U.S. 399, 446, 126 S.Ct. 2594, 165 L.Ed.2d 609 (*LULAC*) (plur. opn. of Kennedy, J.) ["The failure to create an influence district ... does not run afoul of § 2 of the [VRA]"].)

In this case, the trial court determined that because of racially polarized voting, the at-large method of electing city council members in the City of Santa Monica (the City) diluted Latino voters' ability to elect their preferred candidates and their ability to influence the outcome of council elections, as compared to several alternative electoral methods, including district elections. To remedy this violation, the trial court ordered the City to promptly conduct a special election using a seven-district map drafted by an expert who testified at trial.

The Court of Appeal granted a stay of the judgment and then reversed. It disagreed with the trial court's finding that the at-large method of election had "impaired Latinos' ability to elect candidates of their choice or to influence the outcome of an election." In the Court of Appeal's view, there had been no dilution of Latino voters' ability to elect their preferred candidates because Latino voters were too few and too geographically dispersed "to muster a majority, no matter how the City might slice itself into districts." The court likewise found no dilution of Latino voters' ability to influence the outcome of an election because a group's ability to influence an election, the Court of Appeal reasoned, has no meaning independent of the group's ability to elect its preferred candidate. In light of its findings, the Court of Appeal found it unnecessary to consider whether racially polarized voting had been established.

We conclude the Court of Appeal misconstrued the CVRA. To prevail on a CVRA **60 claim, a plaintiff who has established the existence of racially polarized voting in an at-large system need not prove that the protected class would constitute a majority — or, as the City proposes, a near

majority — of a hypothetical single-member district. City council elections, after all, are nonpartisan (Cal. Const., art. II, § 6), and the record here shows that winning candidates often earn only a plurality of the vote. Accordingly, what is required to establish "dilution" of a protected class's "ability ... to elect candidates of its choice" (Elec. Code, § 14027) is proof that, under some lawful alternative electoral system, the protected class would have the ***308** potential, on its own or with the help of crossover voters, to elect its preferred candidate. The lawful alternative electoral system may include, but is not limited to, single-member district elections.

[2] A court presented with a dilution claim should undertake a searching evaluation of the totality of the facts and circumstances (see, e.g., Elec. Code, § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and " 'an intensely local appraisal of the design and impact' of the contested electoral mechanisms" as well as the design and impact of the potential alternative electoral system. (*Gingles, supra*, 478 U.S. at p. 79, 106 S.Ct. 2752; see *Allen v. Milligan* (2023) 599 U.S. 1, ——, 143 S.Ct. 1487 [216 L.Ed.2d 60, 75] (*Milligan*).) In predicting how many candidates are likely to run and what percentage may be necessary to win, courts may also consider the experiences of other similar jurisdictions that use alternative electoral systems. (Cf. *Gingles*, at p. 56, 106 S.Ct. 2752.)

Because the Court of Appeal did not evaluate the dilution element of the CVRA under this standard, we reverse the judgment and remand the matter to the Court *****326** of Appeal for it to reconsider in the first instance the CVRA claim presented here.

I. Background

Defendant, the City of Santa Monica, has a seven-member city council. Members are elected at large through staggered elections: four are elected during the year of a presidential election, while the other three are elected during the year of a gubernatorial election. Plaintiff Pico Neighborhood Association is a nonprofit organization dedicated to advancing the interests of the residents of the City's Pico neighborhood, where its Latino residents are concentrated. While Latinos constitute only 13.64 percent of the City's citizen-voting-age population, they make up 30 percent of Pico's citizen-voting-age population.

In April 2016, plaintiffs Pico Neighborhood Association and Maria Loya, a Latina registered voter, filed this action against the City, alleging that the City's at-large method of electing its city council unlawfully impaired the ability of Latino voters to elect their preferred candidates or, alternatively, to influence the outcome of council elections. The at-large scheme, in plaintiffs' view, violated the CVRA as well as the equal protection clause of the California Constitution (Cal. Const., art. I, § 7, subd. (a)).

Following a six-week trial, the Los Angeles County Superior Court ruled in plaintiffs' favor on both claims, but this appeal concerns only the CVRA claim. After reviewing elections over the preceding 24 years, the court ***309** declared that "a consistent pattern of racially-polarized voting emerges. In most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant's city council, but, despite that support, the preferred Latino candidate loses." Indeed, at the time of the court's ruling, "only one Latino ha[d] been elected to the Santa Monica City Council in the 72 years of the current election system."[1] The court further observed that the statistical evidence of racially polarized voting was corroborated by multiple qualitative factors within the meaning of Elections Code section 14028, subdivision (e): a history of discrimination against Latinos in Los Angeles County generally and in the City specifically; the use ****61** of staggered elections, which may have discriminatory effects in some circumstances; an income disparity between the City's Latinos and its majority population that is "far greater than the national disparity"; the use of racist appeals in city council campaigns; and the lack of responsiveness to the interests and concerns of the City's Latino community, including the substantial underrepresentation of Latinos on the City's various commissions.

The trial court further found that the City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems — e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting — would better enable Latino voters "to elect candidates of

their choice or influence the outcomes of elections." In light of "the national, state and local experiences with district elections, particularly those involving districts in which the minority group is not a majority of eligible voters," the court adopted the election map drafted by plaintiffs' expert, ***327** which created seven council districts. The court ordered a special, district-based election for all seven seats to be held on July 2, 2019.

The City successfully petitioned for a writ of supersedeas to stay the trial court's order for new elections pending resolution of its appeal. In that appeal, the Second Appellate District, Division Eight, reversed the trial court judgment, finding that the City's at-large voting system violated neither the CVRA nor the California Constitution. The Court of Appeal began by rejecting plaintiffs' one-sentence argument that a CVRA violation could be established merely by evidence of racially polarized voting without any further showing that the City's at-large voting system "diluted" Latino voting power as compared to " 'some alternative method of election.' " The court next concluded that changing from an at-large system (where Latinos constituted approximately 14 percent of the voting population) to a district system ***310** (where Latinos would constitute 30 percent of a district centered around the Pico neighborhood) would not enhance Latino voters' ability to elect their candidates of choice or influence the outcome of an election in a "legally significant" way and therefore failed to demonstrate that the City's at-large system "dilut[ed]" their voting power within the meaning of the CVRA. Plaintiffs' theory, the Court of Appeal reasoned, "would create absurd results," in that "any unrealized increase in a group's percentage would satisfy the dilution element," even if the group had "a vanishingly small numerical presence." The court likewise rejected plaintiffs' contention that other voters might " 'cross over' and vote for Latino candidates, buoying Latino power and clearing the 50 percent threshold to electoral success." Such a suggestion, the Court of Appeal claimed, "arbitrarily embraces racially polarized voting when it helps and abandons it when it hurts." In light of its conclusion that plaintiffs had failed to demonstrate dilution, the court did not consider whether plaintiffs had demonstrated the existence of racially polarized voting.

We granted plaintiffs' petition for review to determine what constitutes dilution of a protected class's ability to elect candidates of its choice or to influence the outcome of an election within the meaning of the CVRA. We also ordered depublication of the Court of Appeal opinion. (*Pico Neighborhood Assn. v. City of Santa Monica* (2020) 270 Cal.Rptr.3d, 474 P.3d 635 .)

II. Discussion

Different electoral systems can lead to different outcomes. (See Engstrom, *Modified Multi-Seat Election Systems As Remedies for Minority Vote Dilution* (1992) 21 Stetson L.Rev. 743, 743 (Engstrom).) For example, where a racial minority and a racial majority consistently prefer different candidates, "multimember districts and at-large voting schemes may ' "operate to minimize or cancel out the voting strength of racial [minorities in] the voting population." ' " (*Gingles, supra*, 478 U.S. at p. 47, 106 S.Ct. 2752.) The use of at-large voting schemes in such circumstances allows the majority, by virtue of its numerical superiority, not only to regularly defeat the candidates preferred by the minority (*id.* at p. 48, 106 S.Ct. 2752), but also to " 'ignore [minority] interests without fear of political consequences,' [citation] leaving ***62** the minority effectively unrepresented." (*Id.* at p. 48, fn. 14, 106 S.Ct. 2752.) If, on the other hand, the political unit were "divided into single-member districts," those same minority groups "may be able to elect several representatives." (*Rogers v. Lodge* (1982) 458 U.S. 613, 616, 102 S.Ct. 3272, 73 L.Ed.2d 1012.) This potential disparity is why the high court has "stated on many occasions that multimember districting ***328** plans, as well as at-large plans, generally pose greater threats to minority-voter ***311** participation in the political process than do single-member districts." (*Growe v. Emison* (1993) 507 U.S. 25, 40, 113 S.Ct. 1075, 122 L.Ed.2d 388.)

The VRA and the CVRA each offer an opportunity for racial and language minority groups to challenge the dilution of their voting power caused by at-large voting systems. But they do so in somewhat different ways. Because the CVRA bears some similarities to the VRA, while also seeking to address perceived inadequacies in the VRA, we begin with a review of both statutory schemes.

A. The VRA and the CVRA, Compared

1. The VRA

[3] The VRA, as amended in 1982, prohibits a state or its political subdivisions from using any "voting qualification or prerequisite to voting or standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or [membership in a language minority group]" where, "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [the protected] class of citizens ... in that its members have less opportunity than other members of the electorate ... to elect representatives of their choice." (52 U.S.C. § 10301(a), (b).) An at-large electoral system or multimember district[2] can qualify as a prohibited practice under the VRA when the plaintiff can show that a bloc-voting majority is "*usually* ... able to defeat candidates supported by a politically cohesive, geographically insular minority group." (*Gingles, supra*, 478 U.S. at p. 49, 106 S.Ct. 2752.) " '[T]he greater the degree to which the electoral minority is homogenous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted by multimember districting.' " (*Id.* at p. 50, 106 S.Ct. 2752.)

[4] [5] [6] A plaintiff asserting a "vote dilution" challenge to an at-large voting system under the VRA must satisfy "three threshold conditions." (*Voinovich v. Quilter* (1993) 507 U.S. 146, 157, 113 S.Ct. 1149, 122 L.Ed.2d 500.) "First, the minority group must be able to demonstrate that it is sufficiently large and ***312** geographically compact to constitute a majority in a single-member district. ... Second, the minority group must be able to show that it is politically cohesive. ... Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it — in the absence of special circumstances, such as the minority candidate running unopposed, [citation] — usually to defeat the minority's preferred candidate." (*Gingles, supra*, 478 U.S. at pp. 50–51, 106 S.Ct. 2752, fn. omitted.) Once those predicate facts have been established, "the trial court is to consider the 'totality of the circumstances' and to determine, based 'upon a searching practical evaluation of the "past and present reality," ' [citation], whether the political process is equally open to minority voters. ' "This determination is peculiarly dependent *****329** upon the facts of each case," ' [citation], and requires 'an intensely local appraisal of the design and impact' of the contested electoral mechanisms." (*Id.* at p. 79, 106 S.Ct. 2752.) In undertaking this analysis, the court considers a number of factors that "typically may be relevant" to a claim under the VRA (*Gingles*, at p. 44, 106 S.Ct. 2752) and that are sometimes called " 'the Senate factors' ****63** "[3] because they appeared in the 1982 Senate Judiciary Committee majority report that accompanied the bill amending the VRA (*Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 394, 273 Cal.Rptr.3d 437).

2. The CVRA

While the CVRA is "much like" the VRA in some ways, there are notable differences between the two statutory schemes. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.) Four stand out in this proceeding. First, unlike the VRA, the CVRA applies only to "[a]n at-large method of election" (Elec. Code, § 14027) for nonpartisan offices (*id.*, § 14026, subds. (a), (c); see Cal. Const., art. II, § 6). Second, the CVRA addresses not only impairments to a protected class's "ability ... to elect candidates of its choice" (Elec. Code, § 14027; cf. 52 U.S.C. § 10301(b) ["opportunity ... to elect representatives of their choice"]), but also the class's "ability to *influence* the outcome of an election" (Elec. Code, § 14027, italics added). Third, the CVRA made it easier to challenge at-large electoral systems by explicitly rejecting the first *Gingles* ***313** precondition: "The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy." (Elec. Code, § 14028, subd. (c).) Fourth, the CVRA includes its own list of potentially probative factors, many of which overlap with the Senate factors above, but cautions that they are "not necessary factors to establish a violation" of the CVRA. (Elec. Code, § 14028, subd. (e).)[4]

[7] Despite these differences, the CVRA, like the VRA, requires a plaintiff claiming vote dilution arising from an at-large voting system to establish the existence of racially polarized voting — i.e., that the protected class members vote as a ***330** politically cohesive unit, while the majority votes "sufficiently as a bloc usually to defeat" the protected class's preferred candidate. (*Gingles, supra*, 478 U.S. at p. 56, 106 S.Ct. 2752; accord, Elec. Code, §§ 14026, subd. (e) [providing that "racially polarized voting" may be established by "[t]he methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the [VRA]"], 14028, subd. (a).)[5]

B. Defining Terms in the CVRA

The CVRA prohibits the use of an at-large method of election when it "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who **64** are members of a protected class." (Elec. Code, § 14027.) Plaintiffs contend that the City's at-large city council elections prevent Latino voters from electing, either on their own or with the support of crossover voters, their preferred candidate. They argue this diluted their ability to elect their candidate of choice as well as their ability to influence the outcome of an election. The statute, however, does not define "dilution," "ability ... to elect candidates of its choice," or "ability ... to influence the outcome of an election." (*Ibid*.) The meaning of these ***314** undefined terms presents a pure question of law that we review de novo. (See *Lopez v. Ledesma* (2022) 12 Cal.5th 848, 857, 290 Cal.Rptr.3d 532, 505 P.3d 212.)

1. "Dilution"

In plaintiffs' view, proof of racially polarized voting, in itself, establishes "dilution" within the meaning of the CVRA. They rely on the "plain language" of Elections Code section 14028, subdivision (a), which provides, "A violation of Section 14027 *is established* if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision ...." (Italics added.) According to plaintiffs, "Section 14028 expressly states how a violation of Section 14027 is shown" — i.e., simply by demonstrating the existence of racially polarized voting in an at-large jurisdiction.

[8] [9] [10] When considered in isolation, this single sentence might arguably be susceptible to plaintiffs' reading. However, a court construing a statute does not view a fragment in isolation, but considers the statute as a whole, in context with related provisions and the overall statutory structure, so that it may best identify and effectuate the scheme's underlying purpose. (See *People v. Pennington* (2017) 3 Cal.5th 786, 795, 221 Cal.Rptr.3d 448, 400 P.3d 14.) As plaintiffs concede, and as the legislative history reveals, the CVRA is in many ways "very similar" to the VRA. (Governor's Off. of Planning & Research, Enrolled Bill Rep. on Sen. Bill No. 976 (2001–2002 Reg. Sess.) July 1, 2002, p. 4.) When we construe "dilution" under the CVRA, we must therefore be mindful that it is a term of art with a settled meaning under section 2 of the VRA: " 'The phrase vote dilution itself suggests a norm with respect to which the fact of dilution may be ascertained.' " (*Holder v. Hall* (1994) 512 U.S. 874, 880, 114 S.Ct. 2581, 129 L.Ed.2d 687 (plur. opn. of Kennedy, J.).) To establish vote dilution under the VRA, "a court must find a reasonable alternative practice as a benchmark ***331** against which to measure the existing voting practice." (*Holder*, at p. 880, 114 S.Ct. 2581 (plur. opn. of Kennedy, J.); *id*. at p. 887, 114 S.Ct. 2581 (conc. opn. of O'Connor, J.) ["On this, there is general agreement"]; *id*. at p. 951, 114 S.Ct. 2581 (dis. opn. of Blackmun, J.) ["There is widespread agreement"].) So while the existence of racially polarized voting " 'is relevant to a vote dilution claim' " under the VRA (*Gingles, supra*, 478 U.S. at p. 55, 106 S.Ct. 2752) — and is indeed "a key element" (*ibid*.) — it is not in itself sufficient.

[11] We find, for several reasons, the same is true under the CVRA. The similarities between the two schemes strongly suggest that "dilution" requires not only a showing that racially polarized voting exists, but also that the protected class thereby has less ability to elect its preferred candidate or ***315** influence the election's outcome than it would have if the at-large system had not been adopted. (Cf. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 874, 280 Cal.Rptr.3d 783, 489 P.3d 1166 [concluding that the Legislature intended to adopt the " 'widely understood' "

meaning of a term in federal law]; *Davis v. City of Berkeley* (1988) 47 Cal.3d 512, 533, 253 Cal.Rptr. 839, 765 P.2d 46 [concluding that undefined "terms of art" in a statute refer to the definitions provided by federal law].) Although the legislative history materials can be read in different ways, one committee analysis recognized that the CVRA targets racially polarized voting in at-large elections only "if it Impairs the Right of Protected Groups" to elect their preferred candidates or influence the outcome of an election. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976, *supra*, as amended Apr. 9, 2002, p. 2.) After all, "the very concept of vote dilution implies — and, indeed, necessitates — the existence of an 'undiluted' practice against which the fact of dilution may be measured." (****65** *Reno v. Bossier Parish School Bd.* (1997) 520 U.S. 471, 480, 117 S.Ct. 1491, 137 L.Ed.2d 730.)

[12] Plaintiffs' construction would allow a party to prevail based solely on proof of racially polarized voting that could not be remedied or ameliorated by any other electoral system. Moreover, such a construction would render the word "dilution" in Elections Code section 14027 surplusage. Accordingly, we agree with the Court of Appeal that dilution is a separate element under the CVRA. To establish the dilution element, a plaintiff in a CVRA action must identify "a reasonable alternative voting practice" to the existing at-large electoral system that will "serve as the benchmark 'undiluted' voting practice." (*Reno v. Bossier Parish School Bd.*, *supra*, 520 U.S. at p. 480, 117 S.Ct. 1491.)

2. "The Ability ... to Elect Candidates of Its Choice"

The CVRA does not explicitly define what it means to "impair[ ] the ability of a protected class to elect candidates of its choice." (Elec. Code, § 14027.) On this question, we find the VRA illuminating, but not dispositive.

[13] An at-large electoral system impairs a protected class's ability "to elect representatives of their choice" under the federal act (52 U.S.C. § 10301(b)) only when the class can "demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." (*Gingles*, *supra*, 478 U.S. at p. 50, 106 S.Ct. 2752.) The rationale for the VRA approach is that "if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute *****332** a majority in a single-member district, these minority voters ***316** cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure." (*Gingles*, at p. 50, fn. 17, 106 S.Ct. 2752.)

For some period after *Gingles*, it was uncertain whether the first *Gingles* requirement (i.e., whether the minority group is sufficiently large and compact) could be satisfied by proof that the minority population "is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." (*Bartlett v. Strickland* (2009) 556 U.S. 1, 13, 129 S.Ct. 1231, 173 L.Ed.2d 173 (plur. opn. of Kennedy, J.) (*Strickland*).) *Strickland* settled the question. It held that the VRA does not impose "a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters." (*Strickland*, at p. 15, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.).) Dispensing with the requirement that the minority group, by itself, be sufficiently large and compact to constitute a majority in the hypothetical district, the court reasoned, "would call in question the *Gingles* framework." (*Strickland*, at p. 16, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.).)

The Court of Appeal effectively embraced the *Strickland* approach in construing the CVRA. It required a showing that Latino voters could constitute a majority, all by themselves, in a hypothetical single-member district. Indeed, it noted that "30 percent is not enough to win a majority" and rejected plaintiffs' contention that an ability to elect a preferred candidate could be shown in this case if non-Latino voters were to " 'cross over' and vote for Latino candidates, buoying Latino power and clearing the 50 percent threshold to electoral success."

The Court of Appeal erred in importing the VRA's majority-minority requirement into the CVRA. In enacting the CVRA, the Legislature wanted to make it "easier" for protected classes to demonstrate an ability to elect their preferred candidates under an alternative voting system. (Assem. Com. on Elections, Reapportionment and Const. Amends.,

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Analysis of Sen. Bill No. 976, *supra*, as amended Mar. 18, 2002, p. 4.) No longer would plaintiffs need to show the protected class was sufficiently large and geographically compact to muster a majority in a hypothetical district: "The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation ****66** of Section 14027 and this section ...." (Elec. Code, § 14028, subd. (c); see Sen. Com. on Elections and Reapportionment, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended May 1, 2001, p. 3 ["Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles, this bill does not require that the minority community be geographically compact or concentrated"]; Assem. Com. on Elections, Reapportionment and Const. ***317** Amends., Analysis of Sen. Bill No. 976, *supra*, as amended Mar. 18, 2002, p. 4 ["This bill requires that only two of those [*Gingles*] conditions be met"].)

The Legislature's rationale for rejecting the majority-minority requirement seems clear enough: It would make little sense to require CVRA plaintiffs to show that the protected class could constitute a majority of a hypothetical district, given that the CVRA is not limited to ability-to-elect claims nor are its remedies limited to district elections. (See, e.g., *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 670, 51 Cal.Rptr.3d 821 ["In a cumulative voting system, a politically cohesive but geographically dispersed minority group can *****333** elect a single candidate ... although it would be unable to elect any candidates in a conventional winner-take-all at-large system and could not form a majority in any feasible district in a district system"].) Though the parties have focused in this court on district elections, the trial court found that, in addition to district elections, several alternative at-large election methods — cumulative voting, [6] limited voting, [7] and ranked choice voting [8] — would each enhance Latino voting power and their ability to elect candidates of their choice. None of these methods would require a winning candidate to muster a majority in a hypothetical district. We can think of no reason why a CVRA claim based on any of these alternate at-large election methods should depend on such a showing. (Cf. Elec. Code, § 14028, subd. (c) ["that members of a protected class are not geographically compact or concentrated ... may be a factor in determining an appropriate remedy"].) Furthermore, the Legislature clearly intended to make the CVRA more expansive than the VRA — by, for example, explicitly recognizing claims based on dilution of the "ability to influence the outcome of an election." (Elec. Code, § 14027.)

Even in the context of district elections, the Court of Appeal's focus on a majority-minority district was misguided. The Court of Appeal feared that allowing a plaintiff to rely on crossover votes "arbitrarily embraces racially polarized voting when it helps and abandons it when it hurts," which it viewed as creating "a manipulable standard boiling down to plaintiff always wins." But far from embracing racially polarized voting "when it ***318** helps" and abandoning it "when it hurts," plaintiffs are merely pointing out the differing effects of racially polarized voting in two different settings. To challenge an at-large electoral system, a plaintiff must first demonstrate the existence of racially polarized voting — i.e., cognizable differences "in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." (Elec. Code, § 14026, subd. (e).) The plaintiff must next show that the protected class would have the potential to elect its preferred candidate or candidates under a different electoral system (say, district elections). In calculating the protected class's voting strength under the alternative system, the plaintiff does not "abandon[ ]" racially polarized voting. Rather, the plaintiff must ****67** prove that, assuming the *same* degree of racial polarization, the greater concentration of protected class voters in the hypothetical district would nonetheless be sufficient to enable them to elect their preferred candidate when combined with the available crossover votes. Alternatively, the plaintiff may be able to demonstrate sufficient voting strength where racially polarized voting by other *****334** voters *in the hypothetical district* is lower than in the community as a whole. In neither instance is the plaintiff seeking to "abandon" racially polarized voting "when it hurts."[9]

[14] The City's position in this court is slightly more nuanced, but no more persuasive. The City allows that there may be "room to expand vote-dilution claims beyond section 2's narrow ambit," but only "where the relevant minority group would account for a near-majority of voters in a hypothetical district with a history of reliable crossover support from

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other voters." The City does not dispute, however, that defining a near majority presents a new set of line-drawing problems. And in any case the CVRA permits consideration of at-large remedies such as cumulative voting, limited voting, or ranked choice voting — none of which would depend on the existence of a near majority in some hypothetical district that would never be drawn or used.

***319** These omissions counsel against adoption of the City's position. Rather than quibble over whether a protected class falls on one side or the other of an undefined near-majority line, we think it more sensible to inquire directly whether the prospect of crossover support from other voters under a lawful alternative electoral scheme would offer the protected class, whatever its size, the potential to elect its preferred candidate. When the hypothetical alternative is district elections, a high degree of racially polarized voting may, in many cases, effectively require the protected class to constitute a substantial or very substantial minority of voters. The higher the degree of racial polarization, the greater the percentage required by the protected class to demonstrate it would be able, in combination with crossover voters, to elect its preferred candidate. But there is no reason to layer this inquiry with an additional predicate showing of some undefined near majority. All that is required is that the protected class be "sufficiently large ... to elect candidates of its choice," even if it falls short of "an absolute majority of the relevant population." (*De Grandy*, *supra*, 512 U.S. at pp. 1008, 1009, 114 S.Ct. 2647.)[10]

We are also sensitive to the fact that *Gingles*'s majority-minority requirement is a poor fit for the CVRA, which applies *****335** exclusively to nonpartisan elections. (See Cal. Const., art. II, § 6.) In the City, for example, multiple candidates may vie for office, and a plurality can be sufficient to win. Requiring a protected class to demonstrate it could constitute a majority or near-majority of a hypothetical district would impose a threshold far higher than what the protected class's preferred candidate would actually need to be ****68** elected. (See *Romero v. City of Pomona* (9th Cir. 1989) 883 F.2d 1418, 1424, fn. 7 ["Less than a majority, of course, might suffice in a district where candidates are elected by plurality"], overruled on other grounds in *Townsend v. Holman Consulting Corp.* (9th Cir. 1990) 929 F.2d 1358, 1363.) We therefore decline to require a protected class demonstrate it would constitute a majority or near majority of a hypothetical district in all circumstances.

3. "Dilution" of "the Ability ... to Elect Candidates of Its Choice"

[15] Accordingly, to establish dilution of a protected class's ability to elect its preferred candidate under the CVRA, a plaintiff must demonstrate "the *potential* to elect representatives" under some lawful alternative electoral ***320** method. (*Gingles*, *supra*, 478 U.S. at p. 50, fn. 17, 106 S.Ct. 2752.) One way to demonstrate the class's potential to elect its preferred candidates would be to show, as the VRA requires, that the class would be "sufficiently large and geographically compact to constitute a majority in a single-member district." (*Gingles*, at p. 50, 106 S.Ct. 2752.) But that is not the only way. (See Elec. Code, § 14028, subd. (c).) Because the CVRA applies exclusively to nonpartisan elections, where there may be more than two candidates, the winner may prevail with far less than a majority of the vote. Moreover, the protected class may be able to demonstrate its ability to attract crossover votes for its preferred candidate. Finally, a plaintiff may identify nondistrict remedies that would enable the class, on its own or with the assistance of crossover votes, to elect its preferred candidate. The minority population percentage necessary to win an election under some alternative at-large electoral systems — cumulative or ranked-choice voting, for example — may be less than 25 percent. (See *Dillard v. Chilton County Bd. of Education* (M.D.Ala. 1988) 699 F.Supp. 870, 874 (*Dillard*) ["in a jurisdiction with seven seats, the threshold of exclusion[11] would be 12.5% plus" in a cumulative voting system]; Mulroy, *The Way Out: A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies* (1998) 33 Harv. C.R.-C.L. L.Rev. 333, 342 [threshold for ranked-choice voting "is identical to that of cumulative voting"].)

Determining whether the protected class has the potential to elect its preferred candidate under some alternative system requires a " 'functional' analysis of the political process" in that locality and a " 'searching practical evaluation of the "past and present reality." ' " (*Gingles*, *supra*, 478 U.S. at pp. 62–63, 106 S.Ct. 2752.) Courts should consider the totality of the facts and circumstances of the particular case

(see, e.g., Elec. Code, § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and " 'an intensely local appraisal of the design and impact' of the contested electoral mechanisms" as well as the design and impact of the potential alternative system. (*Gingles*, at p. 79, 106 S.Ct. 2752; see ***336 *Milligan*, *supra*, 599 U.S. 1, 143 S.Ct. 1487 [216 L.Ed.2d at p. 75].) This fact-specific inquiry accords with the legislative understanding that California is a large and diverse state that needs a flexible approach to address our changing demographics. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976, *supra*, as amended Apr. 9, 2002, p. 2 ["In California, we face a unique situation where we are all minorities"].)

[16] The key inquiry in establishing dilution of a protected class's ability to elect its preferred candidate under the CVRA, therefore, is what percentage of the vote would be required to win — an inquiry that is not short-circuited ***321** merely because the protected class may fall short of an absolute majority (or something close to that). In predicting how many candidates are likely to run and what percentage may be necessary to win, courts may also consider the experiences of other similar jurisdictions that use district elections or other alternatives to traditional at-large elections. Courts should likewise keep in mind that the inquiry at the liability ****69** stage "is simply 'to prove that a solution is possible, and not necessarily to present the final solution to the problem.' " (*Pope v. County of Albany* (2d Cir. 2012) 687 F.3d 565, 576; see *Gingles*, *supra*, 478 U.S. at p. 50, fn. 17, 106 S.Ct. 2752.)

At the remedial stage the focus will shift to which electoral system is "appropriate" and "tailored to remedy the violation." (Elec. Code, § 14029.) If the court selects a district remedy, then there must also be at least two public hearings before the maps are drafted and at least two more hearings once the maps have been drawn and published. (*Id.*, § 10010, subds. (a)(1), (2), (c).) In other words, the remedy the court ends up selecting under section 14029 may, but need not, be the benchmark the plaintiff offered to show the element of dilution.

The Court of Appeal feared that failing to craft a majority-minority requirement "would give a winning cause of action to any group, no matter how small, that can draw a district map that would improve its voting power by any amount, no matter how miniscule." To prove its point, the court offered a hypothetical in which a protected class's share of the electorate could increase from 0.1 percent under an at-large system to 1.5 percent in a proposed district. Even though the group's voting power would increase 15-fold, it could have "no practical numerical influence in any voting system" because there would be "simply too few voters ... to be numerically effective in an environment of race-based voting." This would, the Court of Appeal warned, "merely ensure plaintiffs always win."

We agree with the Court of Appeal that a plaintiff cannot prove dilution of its ability to elect its preferred candidate under the CVRA by showing that its voting share would increase 15-fold, from 0.1 percent to 1.5 percent, in a hypothetical district. In that circumstance, as the Court of Appeal explained, "[t]here are simply too few voters ... to be numerically effective in an environment of race-based voting." But it does not follow that a majority (or near-majority) requirement should be judicially engrafted onto the CVRA. After all, by eliminating *Gingles*'s geographic compactness requirement, the Legislature rejected any requirement that the protected class constitute a majority of a hypothetical district. (See Elec. Code, § 14028, subd. (c).) What enables courts to sort successful claims from unsuccessful claims is the dilution element itself, which requires the plaintiff to show that the protected class would, under some lawful alternative, have a "real ***322** electoral opportunity" to elect its candidate of choice, either on its own or with the aid of crossover voters. (***337 *LULAC*, *supra*, 548 U.S. at p. 428, 126 S.Ct. 2594; see *Pope v. County of Albany*, *supra*, 687 F.3d at p. 575, fn. 8.)[12]

[17] The dilution element also ensures the protected class is not made worse off. To replace at-large with district elections under a dilution theory, a successful plaintiff must show not merely that the protected class would have a real electoral opportunity in one or more hypothetical districts, but also that the incremental gain in the class's ability to elect its candidate of choice in such districts would not be offset by a loss of the class's potential to elect its candidates of choice elsewhere in the locality. (Cf. *Georgia v. Ashcroft* (2003) 539 U.S. 461, 479, 123 S.Ct. 2498, 156 L.Ed.2d 428 ["in examining whether the new plan is retrogressive, the inquiry must encompass the entire statewide plan as a whole"].) While "[t]he fact that the proposed remedy does not benefit

all of the [protected class] in the City does not justify denying any remedy at all" (*Gomez v. Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414, italics added), it remains the plaintiff's burden to demonstrate that some lawful alternative method of election would improve the protected class's overall ability to elect its preferred candidates. As both sides in this proceeding agree, unless the plaintiff can demonstrate a net gain in the protected class's potential to elect candidates under an alternative system, it has not shown the at-large method of election "impairs" the ability of the protected class to elect its preferred ****70** candidates. (Elec. Code, § 14027; cf. *Beer v. United States* (1976) 425 U.S. 130, 141, 96 S.Ct. 1357, 47 L.Ed.2d 629 ["the purpose of § 5 [of the VRA] has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"].)

We also reject the City's contention that a majority-minority requirement — or something close to it in the form of a near-majority requirement — is necessary to avoid difficult constitutional questions under the equal protection clause. In the City's view, it would be perilous for courts to draw race-based districts in the absence of a compelling justification. (See *Cooper v. Harris* (2017) 581 U.S. 285, 291–293, 137 S.Ct. 1455, 197 L.Ed.2d 837.) Merely increasing the percentage of minority voters in a hypothetical district where "the increase will have no real-world effect," the City warns, is not a compelling justification. But the CVRA does not require a court to grant relief that has no real world effect. As stated above, the alternative voting system must offer the protected class at least a "*potential*" to elect its preferred candidates that did not exist under the at-large system. (***323** *Gingles, supra*, 478 U.S. at p. 50, fn. 17, 106 S.Ct. 2752.) Moreover, nothing in the CVRA requires a municipality or a court to select a district-based remedy or, even if it chooses to do so, to draw district lines, as the City contends, based "principally on race." To the contrary: California law directs that district boundaries comply with the state and federal Constitutions (as well as the VRA) (Elec. Code, § 21621, subd. (b)) and requires, to the extent practicable, that boundaries be "geographically contiguous" and maintain the integrity of "any local neighborhood or local community of interest." (*Id.*, subd. (c)(1), (2).) State law also encourages district lines to be drawn along *****338** "natural and artificial barriers" and with "geographical compactness." (*Id.*, subd. (c)(3), (4).) The City does not explain how or why districts drawn in accordance with the above criteria would run afoul of the Constitution. (See *Miller v. Johnson* (1995) 515 U.S. 900, 916, 115 S.Ct. 2475, 132 L.Ed.2d 762 ["legislatures will ... almost always be aware of racial demographics"]; cf. *ibid.* [strict scrutiny applies only where "race was the predominant factor motivating the legislature's decision" and "the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations"].) Indeed, assuming lines are drawn "based on proper factors," whether to create a district where a protected class has the potential to elect its candidate of choice is "a matter of legislative choice or discretion." (*Strickland, supra*, 556 U.S. at p. 23, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.); see *Higginson v. Becerra* (9th Cir. 2019) 786 Fed.Appx. 705, 707–708.) That's precisely the choice the Legislature made in enacting the CVRA: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice ...." (Elec. Code, § 14027.)

4. "Dilution" of "the Ability ... to Influence the Outcome of an Election"

Unlike its federal analogue, the CVRA prohibits the use of an at-large electoral system that dilutes not only the ability of a protected class "to elect candidates of its choice," but also "its ability to influence the outcome of an election." (Elec. Code, § 14027.) The inclusion of the latter phrase further supports our conclusion that the CVRA cannot be read in the limited manner the City would like; indeed, the influence prong suggests a focus broader than the class's ability to elect its preferred candidates (with or without the help of crossover voters). (Cf. *Strickland, supra*, 556 U.S. at p. 13, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.) ["a minority group can influence the outcome of an election even if its preferred candidate cannot be elected"]; *LULAC, supra*, 548 U.S. at pp. 445–446, 126 S.Ct. 2594 (plur. opn. of Kennedy, J.) [distinguishing between a group's "ability to influence the outcome [of an election] between some candidates, none of whom is their candidate of choice," and the ability to elect "their candidate of choice"]; ****71** 10 Ill.

Comp. Stat. 120/5-5(b) ["The phrase ***324** 'influence district' means a district where a racial minority or language minority can influence the outcome of an election even if its preferred candidate cannot be elected"].) As the Attorney General (who is appearing in this action as amicus curiae) suggests, a protected class's ability to influence the outcome of an election could include, for example, "forming a coalition with another group to elect a candidate acceptable to each" or "blocking an unacceptable candidate."

We need not decide the scope of the CVRA's ability-to-influence prong in this case, however. Plaintiffs did not argue in the trial court or in this court an influence theory distinct from their claim that the City's at-large election system diluted their ability to elect their candidates of choice.

III. Conclusion

A group's ability "to compete successfully at electoral politics, in short, is often dependent on how the competition is structured." (Engstrom, *supra*, 21 Stetson L.Rev. at p. 743.) The CVRA represents the Legislature's effort to make that competition more fair. It bars the use of an at-large method of election if that method *****339** dilutes a protected class's ability to elect candidates of its choice or its ability to influence the outcome of an election. Dilution occurs when an at-large system denies a protected class the potential to elect its preferred candidate or influence the election's outcome. The plaintiff in a CVRA action must identify a lawful alternative to the existing at-large electoral system that will serve as the benchmark undiluted voting system.

A protected class has the ability to elect its preferred candidate if it would have the potential to elect that candidate, on its own or with the assistance of crossover support from other voters, under an alternative voting system; there is no additional requirement that the protected class constitute a majority or near-majority of a hypothetical district. A court presented with a dilution claim should undertake a searching evaluation of the totality of circumstances (see, e.g., Elec. Code, § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and the design and impact of the at-large system as well as the potential impact of lawful alternative electoral systems. In predicting how many candidates are likely to run and what percentage may be necessary to win, courts may also consider the experiences of other similar jurisdictions that use district elections or some method other than traditional at-large elections.

We express no view on the ultimate question of whether the City's at-large voting system is consistent with the CVRA. The parties vigorously contested in the Court of Appeal whether plaintiffs had established two elements of a ***325** CVRA claim: whether voting in city council elections was racially polarized and whether the at-large method of election diluted the voting power of Latino residents in those elections. Because the Court of Appeal concluded that plaintiffs had failed to demonstrate dilution of the Latino vote, it did not consider whether voting in council elections was racially polarized. We have determined that the Court of Appeal relied on an incorrect legal standard to conclude that plaintiffs had failed to satisfy the dilution element of their CVRA claim. Under the circumstances, we find it appropriate to remand the matter to the Court of Appeal to decide in the first instance whether, under the correct legal standard, plaintiffs have established that at-large elections dilute their ability to elect their preferred candidate; whether plaintiffs have demonstrated the existence of racially polarized voting; and any of the other unresolved issues in the City's appeal. (See *Central Coast Forest Assn. v. Fish & Game Com.* (2017) 2 Cal.5th 594, 606, 214 Cal.Rptr.3d 265, 389 P.3d 840.)

Disposition

We reverse the judgment of the Court of Appeal and remand for further proceedings consistent with our opinion.

We Concur:

GUERRERO, C. J.

CORRIGAN, J.

LIU, J.

KRUGER, J.

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GROBAN, J.

JENKINS, J.

All Citations

15 Cal.5th 292, 534 P.3d 54, 312 Cal.Rptr.3d 319, 23 Cal. Daily Op. Serv. 8126, 2023 Daily Journal D.A.R. 8739

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Footnotes

1 The City asserts that in the 2020 city council election, four and one-half years after plaintiffs filed this action, three of the five winning candidates were Latino. Plaintiffs dispute this characterization of the winning candidates' ethnicities. Given the limited issue before us, we express no view on the dispute.

2 "In an at-large (or multi-member district) system, all voters elect all representatives, and each voter has as many ballots as there are positions available. This system contrasts with a single-member district plan, under which the entire political jurisdiction is divided into districts roughly equal in population, each of which selects one representative by vote within the district." (*Badillo v. Stockton* (9th Cir. 1992) 956 F.2d 884, 889.)

3 The Senate factors include "the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction." (*Gingles, supra*, 478 U.S. at pp. 44–45, 106 S.Ct. 2752.)

4 The CVRA factors include "the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns." (Elec. Code, § 14028, subd. (e).)

5 We do not consider here whether the City's elections are racially polarized — an issue the Court of Appeal has not yet addressed — but we do note that, under the CVRA, "[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action." (Elec. Code, § 14028, subd. (a).)

6 Under cumulative voting, "a voter receives as many votes as there are candidates to elect, but may cast multiple votes for a single candidate." (*Portugal v. Franklin County* (Wash. 2023) 530 P.3d 994, 1002 (*Portugal*).)

7 Under limited voting, "a voter receives fewer votes than there are candidates to elect." (*Portugal, supra*, 530 P.3d at p. 1002.)

8 Under ranked choice voting, a voter ranks candidates in order of preference. In an election to fill more than one seat, such as for a city council, each ballot is counted at the start of tabulation as one vote for its first-choice ranked candidate. Any candidate with more votes than the election threshold (see fn. 11, *post*) is declared elected. If the first round of the vote counting does not fill all the seats, then the system consults the next-ranked choices from the ballots supporting the candidate with the least number of votes, the next-ranked choices from the surplus ballots (i.e., those in excess of what was needed for the elected candidate to win), or both. Jurisdictions use a variety of methods to determine when and how to transfer the nextranked choices from surplus ballots. This form of tabulation continues

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until all seats are filled. (See Tideman, *The Single Transferable Vote* (Winter 1995) 9 J. Econ. Persp. 27, 27–28, 32–35; see generally Note, *The Madisonian Case for Ranked Choice Voting: Federalist No. 10, Preferential Voting, and the American Democratic Tradition* (2021) 23 N.Y.U. J. Legis. & Pub. Pol'y 953, 963.)

9 We recognize that where there is *complete* racial polarization, the protected class may itself need to make up a majority of the district in order to have an ability to elect its preferred candidate. But " '[*i*]*n practice, such extreme conditions are never present.*' " (*Strickland, supra*, 556 U.S. at p. 45, 129 S.Ct. 1231 (dis. opn. of Breyer, J.) ["No voting group is 100% cohesive"]; see *id.* at pp. 32–33, 129 S.Ct. 1231 (dis. opn. of Souter, J.) ["of course minority voters constituting less than 50% of the voting population can have an opportunity to elect the candidates of their choice, as amply shown by empirical studies confirming that such minority groups regularly elect their preferred candidates with the help of modest crossover by members of the majority"].) As the high court has acknowledged, "there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice." (*Johnson v. De Grandy* (1994) 512 U.S. 997, 1020, 114 S.Ct. 2647, 129 L.Ed.2d 775 (*De Grandy*).)

10 An amicus curiae letter submitted in support of Pico Neighborhood Association's petition for review by the chairs of the Assembly's Latino, Black, and Asian and Pacific Islander caucuses recites that while some members were elected in majority-minority districts, many others were elected in districts in which their membership group made up only 20 to 40 percent of the eligible voters. The trial court here similarly found that candidates from minority groups who had been "unsuccessful in at-large elections have won district elections" in districts "where the minority group is one-third or less of a district's electorate."

11 "The threshold of exclusion 'is the percentage of the vote that will guarantee the winning of a seat even under the most unfavorable circumstances.' " (*Dillard, supra*, 699 F.Supp. at p. 874.) It "is calculated according to the following formula: 1/(1 + number of seats available)." (*U.S. v. Vill. of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411, 450.)

12 Plaintiffs suggest it would be rare for a group constituting less than 25 percent of the relevant voting population to make the required showing. We have no occasion here to explore that suggestion, since the Latino population in the proposed district exceeds that threshold.

End of Document

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California Supreme Court ruling leaves voting rights lawsuit unresolved

Aug 30, 2023

A recent ruling by the California Supreme Court provided little clarity on a long-running legal battle over Santa Monica's election system. The **case centers (https://www.calcities.org/news/post/2023/07/12/california-supreme-court-poised-to-resolve-key-voting-rights-case)** on whether the city's at-large election system dilutes the voting power of Latino voters. The plaintiffs argue that the city should adopt district-based voting.

The Supreme Court held that a lower court failed to properly evaluate the plaintiffs' claim that Santa Monica's election system violated the California Voting Rights Act (CVRA). The Supreme Court provided a more nuanced test and sent the case back to the lower court for further proceedings.

The League of California Cities had urged the Supreme Court to adopt clear guidelines so that cities could evaluate their election system without fear of unjustified litigation. Despite the overall disappointing and unclear result, there are a couple of helpful takeaways for cities.

Case background

In the initial 2016 lawsuit, a trial court agreed with the plaintiffs and ordered Santa Monica to switch to a district-based election system. The city appealed the decision, and the Court of Appeal reversed it. The Court of Appeal concluded that the plaintiffs failed to prove unlawful vote dilution.

The plaintiffs showed a potential increase in Latino voting power from 14% under the at-large system to 30% in one district under the district-based system. However, the Court of Appeal concluded this was not unlawful vote dilution. It reasoned that 30% is not enough to change the outcome of an election: The CVRA only prohibits at-large election systems if they “impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.”

The California Supreme Court reviewed the case to resolve what a plaintiff must prove to establish unlawful vote dilution.

What did the Supreme Court say?

The Supreme Court rejected the Court of Appeal’s reasoning. The Supreme Court pointed out that local elections are nonpartisan and that candidates can win with only a plurality — not a majority — of votes. It also noted that the CVRA was passed to make it easier to challenge at-large election systems using state law as opposed to federal law. Thus, a plaintiff does not need to prove that the protected class would make up a majority or near-majority of a district to establish unlawful vote dilution.

Rather, to prove that an at-large elections system impairs the ability of a protected minority "to elect candidates of its choice," a plaintiff must show that "under some alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate."

In assessing whether a plaintiff has met this standard, courts must review the facts and circumstances as a whole, “including the characteristics of the specific locality, its electoral history, and an intensely local appraisal of the design and impact” of the contested election system and potential alternative systems. The Supreme Court also encouraged courts to “consider the experiences of other similar jurisdictions that use alternative electoral systems.”

What does this ruling say or not say about CVRA violations?

The Supreme Court's opinion does lay out the standard for reviewing claims of unlawful dilution of a protected minority group's ability to "elect candidates of its choice." However, the standard is fact-based and complex. Since the lawsuit is ongoing, it remains uncertain what evidence might persuade a court that a city's at-large elections system has led to unlawful voter dilution.

Moreover, the ruling left a significant question unanswered. The Court stated that it was not deciding "the scope of the ability-to-influence prong" in this case. Therefore, it is unclear what might give rise to a successful claim that an at-large elections system unlawfully dilutes the ability of a protected minority group to "influence the outcome of an election" as opposed to "electing candidates of its choice."

Despite this lack of clarity, the opinion did provide a couple of tangible takeaways. The Court rejected the suggestion that a CVRA violation could be proven simply by showing that racially polarized voting was occurring. The Court held that a plaintiff must prove vote dilution *and* racially polarized voting to establish a violation of the CVRA.

"Racially polarized voting" means that there is a marked difference between the electoral choices of voters in a protected class versus the choices of the rest of the electorate.

The Supreme Court further noted that a plaintiff must show that the incremental gain in a protected class's ability to elect its candidate of choice in such districts would not be offset by a loss of the class's potential to elect its candidates of choice elsewhere in the locality. Santa Monica has suggested that moving to district elections might leave Latinos with less voting power. The Supreme Court's conclusion on this point suggests that the city could still prevail in the case if they can make that showing.

It is unknown how long it will take for the Court of Appeal to decide the case. Cal Cities will report on significant developments and may consider filing additional amicus briefs if appropriate. City leaders with questions about the ruling should consult their city attorney.

1400 K Street, Suite 400
Sacramento, CA 95814

P: (916) 658-8200
F: (916) 658-8240

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Proposed Legislation

West's Annotated California Codes
Elections Code (Refs & Annos)
Division 10. Local, Special, Vacancy, and Consolidated Elections (Refs & Annos)
Part 1. General Provisions
Chapter 2. District Boundaries (Refs & Annos)

West's Ann.Cal.Elec.Code § **10010**

§ **10010**. Political subdivision changing from at-large method of election to district-based election or establishing district-based elections; public hearings; application; notice of action

Effective: January 1, 2020
Currentness

(a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

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(d) For purposes of this section, the following terms have the following meanings:

(1) “At-large method of election” has the same meaning as set forth in subdivision (a) of Section 14026.

(2) “District-based election” has the same meaning as set forth in subdivision (b) of Section 14026.

(3) “Political subdivision” has the same meaning as set forth in subdivision (c) of Section 14026.

(e)(1) Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act of 2001.

(2) A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3)(A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated timeframe for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 90 days of the resolution's passage.

(C)(i) A political subdivision and the prospective plaintiff who first sends a notice pursuant to paragraph (1) may enter into a written agreement to extend the time period described in subparagraph (B) for up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input. The written agreement shall include a requirement that the district boundaries be established no later than six months before the political subdivision's next regular election to select governing board members. However, in a political subdivision that holds a primary election as part of its process for selecting governing board members, the written agreement shall include a requirement that district boundaries be established no later than six months before the political subdivision's next regular primary election.

(ii) No later than 10 days after a political subdivision enters into a written agreement pursuant to clause (i), the political subdivision shall prepare and make available on its internet website a tentative schedule of the public outreach events and the public hearings held pursuant to this section. If a political subdivision does not maintain an internet website, the political subdivision shall make the tentative schedule available to the public upon request.

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(f)(1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to paragraph (1) of subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written demand, except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at thirty thousand dollars ($30,000), as adjusted annually to the Consumer Price Index for All Urban Consumers, United States city average, as published by the United States Department of Labor.

Credits

(Added by Stats.2014, c. 873 (A.B.1440), § 1, eff. Jan. 1, 2015. Amended by Stats.2016, c. 737 (A.B.350), § 1, eff. Jan. 1, 2017; Stats.2017, c. 561 (A.B.1516), § 51, eff. Jan. 1, 2018; Stats.2018, c. 277 (A.B.2123), § 1, eff. Jan. 1, 2019; Stats.2019, c. 497 (A.B.991), § 105, eff. Jan. 1, 2020.)

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

2014 Legislation

Section 9 of Stats.2014, c. 873 (A.B.1440), provides:

"SEC. 9. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code."

2016 Legislation

Section 2 of Stats.2016, c. 737 (A.B.350), provides:

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"SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code."

2017 Legislation

Stats.2017, c. 561 (A.B.1516), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2017, c. 561 (A.B.1516), to other 2017 legislation, see Historical and Statutory Notes under Business and Professions Code § 2221.1.

2019 Legislation

Stats.2019, c. 497 (A.B.991), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2019, c. 497 (A.B.991), to other 2019 legislation, see Historical and Statutory Notes under Business and Professions Code § 1686.

2020 Legislation

Governor Newsom issued the following executive order, N-34-20, dated March 20, 2020, which read:

"WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

"WHEREAS hundreds of local governments across the state have also declared states of emergency, imposed or recommended social distancing, and taken other significant steps in response to COVID-19; and

"WHEREAS various political subdivisions within California are in the process of changing from an at-large method of election to district elections, existing law requires public hearings to be conducted within prescribed timeframes as part of this change, and conducting such hearings within these timeframes would be incongruent with public health officials' guidance regarding social distancing; and

"WHEREAS California held a Presidential Primary Election on March 3, 2020, for which ballot counting, tabulation, and other responsibilities related to the official canvass, including certification of the canvass, audits and/or manual tallies of election results, and reporting of the official canvass results, remain outstanding or ongoing; and

"WHEREAS COVID-19 and the response thereto may impair the ability of relevant state and local officials, including county elections officials and the Secretary of State, and the volunteers supporting them, to meet statutory deadlines associated with these responsibilities; and

"WHEREAS on November 15, 2019, I proclaimed a Special General Election to be held on May 12, 2020, to fill a vacancy in the State Senate seat representing the 28th Senate District of the State, in Riverside County; and

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"WHEREAS on November 15, 2019, I proclaimed a Special General Election to be held on May 12, 2020, to fill a vacancy in the U.S. House of Representatives seat representing the 25th Congressional District of the State, which covers portions of the counties of Ventura and Los Angeles; and

"WHEREAS on April 7, 2020, a Special Recall Election will be held in the City of Westminster, in the County of Orange; and

"WHEREAS state law would ordinarily require that these elections be conducted using in-person voting at polling locations throughout the jurisdiction; and

"WHEREAS the generalized use of in-person voting presents risks to public health and safety in light of the COVID-19 pandemic, and could risk undermining social distancing measures imposed by the State Public Health Officer, as well as other aspects of the response to COVID-19; and

"WHEREAS our elections must be accessible, secure, and safe; and

"WHEREAS California's existing vote-by-mail procedures can be used to allow these three elections to go forward in a manner that is accessible, secure, and safe.

"NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following Order to become effective immediately:

"IT IS HEREBY ORDERED THAT:

"1) The timeframes for conducting the hearings required when a political subdivision changes from an at-large method of election to a district-based election, as set forth in Elections Code section **10010**, are suspended for any subdivision, until such time as neither state nor local public health officials recommend or impose social distancing measures in the relevant subdivision. Following that time, the relevant subdivision shall hold the required hearings in a manner that ensures the public is provided advance notice and is afforded an opportunity to participate in the postponed hearings; subdivisions are urged to ensure that this process includes effective outreach to individuals with disabilities, individuals who primarily speak languages other than English, and other individuals who may have particularized needs.

"2) Notwithstanding Elections Code sections 3019, 15100-15112, 15300-15376, 15400-15402, 15450-15490, and 15500-15505; California Code of Regulations, Title 2, sections 20027, 20108.75, 20108.8, and 20110-20126; and any other applicable provision of state law, all deadlines associated with completing, auditing, and reporting on the official canvass of the March 3, 2020, Presidential Primary Election are extended by 21 days. Counties are urged to complete activities related to the official canvass according to the deadlines ordinarily imposed by state law, to the extent possible. The Secretary of State is requested to issue guidance to county elections officials concerning compliance with this paragraph.

"3) Notwithstanding Elections Code sections 1500 and 4000-4007 (including, but not limited to, the conditions otherwise imposed on all-mail ballot elections in Election Code section 4000 and 4001.5), and any other applicable provision of state law, the April 7, 2020, Special Recall Election to be held in the City of Westminster; the May 12, 2020, Special General Election to be held within the 25th Congressional District of the State; and the May 12, 2020, Special General Election to be held within the 28th Senate District of the State shall each be held as an all-mail ballot election and conducted according to those provisions of the Elections Code that govern all-mail ballot elections, including but not limited to

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Elections Code sections 3000-3026 and 4100. The respective county elections officials responsible for conducting each respective election shall transmit vote-by-mail ballots to all voters eligible to vote in each respective election. Notwithstanding the other provisions of this Order, elections officials are also authorized, and encouraged, to make in-person voting opportunities available on or before Election Day for each of these elections in a manner consistent with public health and safety, to maximize voter accessibility. Elections officials shall provide maximum possible notice to voters about how to participate in each of these elections, paying particular attention to the needs of voters at high risk from COVID-19, individuals with disabilities, and other voters with particularized needs.

"4) Notwithstanding Elections Code sections 3019, 15100-15112, 15300-15376, 15400-15402, 15450-15490, and 15500-15505; California Code of Regulations, Title 2, sections 20027, 20108.75, 20108.8, and 20110-20126; and any other applicable provision of state law including, but not limited to, any applicable state regulation, all deadlines associated with completing, auditing, and reporting on the official canvass of the May 12, 2020, Special General Elections to be held within the 25th Congressional District of the State and the 28th Senate District of the State are extended by 21 days. Counties are urged to complete activities related to the official canvass according to the deadlines ordinarily imposed by state law, to the extent possible. The Secretary of State is requested to issue guidance to county elections officials concerning compliance with this paragraph.

"IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

"This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

"IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 20th day of March 2020.

"GAVIN NEWSOM

"Governor of California

"ATTEST:

"ALEX PADILLA

"Secretary of State"

For Executive Order N-48-20 issued by Governor Newsom, relating to the manner of conducting local special elections during the COVID-19 pandemic, see Historical and Statutory Notes under Elections Code § 1500.

2021 Legislation

For Executive Order N-08-21 issued by Governor Newsom, relating to the expiration and applicability of certain COVID-19 provisions, see Historical and Statutory Notes under Government Code § 21220.

Former Notes

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Former § **10010**, enacted as § 10012 by Stats.1961, c. 23, § 10012, amended by Stats.1963, c. 971, § 1; Stats.1967, c. 509, § 2, renumbered § **10010** and amended by Stats.1975, c. 1158, § 17, amended by Stats.1984, c. 32, § 7; Stats.1993, c. 1302 (S.B.535), § 37, relating to sample ballots for elections other than direct or presidential primaries, was repealed by Stats.1994, c. 920 (S.B.1547), § 1. See Elections Code § 13303.

Former § **10010**, enacted by Stats.1961, c. 23, § **10010**, was renumbered § 10008 and amended by Stats.1975, c. 1158, § 15.

Notes of Decisions containing your search terms (0)

View all 2

West's Ann. Cal. Elec. Code § **10010**, CA ELEC § **10010**

Current with urgency legislation through Ch. 1 of 2024 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Daniel Gho, Public Works Director/Deputy City Manager; George Fuerst, Environmental Programs Manager
MEETING DATE:	September 04, 2024
SUBJECT:	Outdoor Art Donation Proposal of Stained Glass "The Butterflies" from Nader Agha
CEQA:	Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Discuss proposed gift of stained glass window and provide direction the City Manager.
2. Alternatively, discuss and take other action related to this item

DISCUSSION

The donation of a large stained-glass piece titled "The Butterflies" has been proposed by Nader Agha/The Agha Family. The 12' x 8' stained-glass window, consisting of three panels forming a semicircle of fluttering monarchs, was designed by Nader Ahga and spent decades as the feature fenestration of the Holman Building.

The Beautification and Natural Resources Commission reviewed the Art Acceptance Form on October 17, 2023, “Commissioner discussion was led by Chair Myers, who moved that we accept the piece of art for the City and to let council work out all the details. It passed unanimously 4-0.”

Further details are included in the attached proposal, including requests for exemptions to certain requirements of Council Policy 900-3 Acceptance of Art Donations. Policy 900-3 limits the control that a donor of art has on the work after donation. Exceptions to the Acceptance of Outdoor Art Donations Policy 900-3 can only be granted by City Council.

Requested deviations from the existing policy are extensive and could create short-term and long-term administrative challenges. It is the recommendation of staff that we do not deviate from policy 900-3.

If the Council authorizes staff to proceed with the drafting of a proposed agreement, the following conditions may be incorporated:

1. The installation location is yet to be determined and will require additional consideration by the donor, staff, governing bodies, and the public. The City reserves the right to select the location based on safety, security and feasibility.

2. Nader Agha / The Agha Family will pay for all costs of design, permitting, legal, engineering, fabrication, installation, lighting, maintenance, and removal of the piece/commemorative plaque through an escrow account.

3. Design, permitting, legal, engineering, fabrication, installation, lighting, maintenance, and removal of the piece/commemorative plaque must be approved by the City.

4. An escrow account would be established and funded by Nader Agha / The Agha Family prior to any costs incurred by the City. Initial escrow account funding would be $125,000. This escrow account shall be replenished from time-to-time in the event of depletion of funds. The City solely determines the amount of additional escrow funding required. In the event of failure to provide sufficient additional escrow funds in a timely manner the City may dispose of the donation in any manner without consultation with Nager Agha/The Agha Family.

5. The Nader Agha / The Agha Family would secure insurance indemnifying the City for all liability associated with the piece for the duration of when the piece resides on municipal property or within the control of the City.

6. The City accepts no responsibility for the care, preservation or maintenance of the piece except as expressly described in the donation agreement.

7. The City may reproduce images of the piece and use such images in any manner without permission of or compensation to Nader Agha / The Agha Family. Where practical, such images may be acknowledged to Nader Agha / The Agha Family.

OPTIONS

Take an alternative action

FINANCIAL IMPACT:

Staff resources to consummate the donation agreement and begin implementation.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Donor Proposal

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, CA 93950
Tel: 831.648.3190 Fax: 831.648.3184
www.cityofpacificgrove.org

Art Acceptance Form

RECEIVED
CITY MANAGER'S OFFICE
2023 JUL 27 P 2:03
CITY OF PACIFIC GROVE

HISTORY OF THE PIECE PROPOSED FOR DONATION

Donor	
Name	Nader Agha\The Agha Family
Phone	831 5949711
Fax	
Email	naderagha43@gmail.com
Mailing Address	449 Alvarado St. Monterey, Ca 93940

Legal Owner	
Name	Nader Agha /The Agha Family
Phone	831 6949711
Fax	
Email	nadrer agha43@gmail.com
Mailing Address	449 Alverado St. Monterrey, Ca 93940

Applicant	
Name	Nader Agha/The Agha Family
Phone	831 5949711
Fax	
Email	naderagha43@gmail.com
Mailing Address	449 Alvarado St. Monterey, Calif 93940

Previous Owner(s)/History of Ownership
Nader Agha

(Attach additional pages if necessary for any section)

Date of Application to Donate 7/25/23

Signature of Applicant Nader Agha X

DESCRIPTION OF WORK (PHOTO MUST BE ATTACHED)

Name of Work	"The Butterflies "
Artist	Nader Agha designed and drew the piece
Medium	stained glass
Date of Work	30 years ago
Dimensions of Work	See exhibit B
Appraised Value	It has not been appriased but we have recieved offers of $100,000.
Content/Description	This is a stunning and iconic stained glass piece that formerly graced the top of the Holman building here in P.G. for decades. The proposed location is at Civic Center facing Forest between City Hall and the Police Department. It will be protected by
Condition	a bullet proof poly- caronate product and will be lighted at night. It will truly be fitting that "The Butterflies" will again have their home in Butterfly town USA
Artist Biography (Summary)	Mr. Agha is a businessman, and real estate develper. He has been an artist and writer all his life.
Special Requirements / Conservation Measures	None See architect' SAfwat Malek's descripton of the installation at the proposed location. Exhibit B. Exhibit C is the picture of the piece as installed. The conditons of the gift are found on exhibit D
Maintenance (materials, cost, etc)	None other than routine cleaning All costs of construction and installation will be bourne by the Agha family.

Susan Goldbeck
117 Ninth St.
Pacific Grove, California 93950
831 372-2615 susangoldbeck1@att.net

July 10, 2023

City of Pacific Grove via email and USMail
300 Forest Ave.
Pacific Grove, California 93950
Attention: Ben Harvey, City manager

Re: Agha Family Gift of Butterfly Stained Glass

Dear Mr. Harvey:

As you know I am the point person for the Agha Family in connection with their proposed donation of the large butterfly stained glass window, "The Butterflies" which used to grace the front of the Holman Building for decades. It is a work of art so fitting for display in Pacific Grove. It was, as you probably know, designed by Nader Agha. He has sent you photographs of the piece and in a separate email I will send you the architect's renderings for its installation in the civic center complex on Forest Avenue. It is my understanding that you and Nader and others recommended this location.

The Agha family will donate The Butterflies to the City and pay for its installation and lighting. This includes the installation of a bullet proof plastic-like material which will go in after it is installed, to protect the piece from vandals. So that you have an idea what this is like, it is what the screens that were made of installed between customers and tellers at banks during Covid or in branches where the risk of robbery is high. Plexi-glass breaks easily, this material is bullet proof.

The City will be responsible for maintaining the piece after it is installed. I can't foresee that much maintenance will be required.

The Agha family lived in Pacific Grove for many years. The Agha children, now adults, grew up here in town. Nader has also owned the Holman building and considerable other downtown real estate and he ran businesses here for over twenty five years. He and his family have high regard for the City and want to give this valuable gift of The Butterflies to Butterflytown USA.

Exhibit D

There are some reasonable conditions in connection with this gift:

1) The Butterflies must be remain installed, and if it is not, the Agha family will have the right to have it returned.
2) It may not be sold or transferred by the City at any time. If it is, or if the City at any point does not wish to display it, the piece shall be returned to the Agha family.
3) A plaque indicating that The Butterflies is a gift from the Agha family of no less a size than nine by twelve shall be placed in front of the piece.

Please let me know what the path is for approval by the city, and which board has to approve it before installation if any.

Nader would like to have it installed by Butterfly Days in October. A reception and ribbon cutting or something like that could take place then. I will handle that if you please, or perhaps I can get some help from the Chamber of Commerce. Of course if this date doesn't work, let's get it done as soon as reasonable possible.

If you have any questions or concerns Mr. Harvey, please call me or email me and I will promptly see that you have whatever information you need. I look forward to working with you on this exciting project.

I love this City and I will be pleased to see this beautiful icon of our community put in place where everyone who sees it can admire it.

Best regards,

Susan Goldbeck

ENVIRO
INTERNATIONAL INC

ARCHITECTS C7308 BUILDERS B330234
POB 1734 • Pebble Beach, CA 93953-1734 • 831.620-9028 • www.enviro-international.com

July 24, 2023

Mr Ben Harvey,
City of Pacific Grove,
CA

Dear Mr Harvey,

Mr Nader Agha asked me to design and supervise installation of The Butterflies stained glass in the civic center complex on Forest Avenue between City Hall and the police department.

I will personally be involved in all aspects of this effort. Attached is the proposed design for the installation.

The current dimensions of The Butterflies stained glass are 12' by 8 ' Finished size will add another 4" all around. It will be mounted on top of an 18"high concrete block podium that matches the small building right behind that is located between the City Hall and the police department.

Should you have any questions, please call or email me.

Thank you

Safwat Malek
Safwat@enviro-international.com
831/620-9028

Exhibit B



STAINED GLASS WINDOW

PROPOSED GIFT FROM AGHA'S FAMILY
TO THE CITY OF PACIFIC GROVE

TO BE ERECTED ON FOREST AVENUE
BETWEEN CITY HALL & POLICE STATION

ENVIRO
INTERNATIONAL, INC
Architects 7308 • Builders 336234

Safwat Malek, President
Safwat@enviro-international.com
831.620.9028
PO Box 1734 • Pebble Beach, CA 93953

Exhibit C



STAINED GLASS WINDOW

PROPOSED GIFT FROM AGHA'S FAMILY
TO THE CITY OF PACIFIC GROVE

TO BE ERECTED ON FOREST AVENUE
BETWEEN CITY HALL & POLICE STATION

ENVIRO
INTERNATIONAL, INC
Architects 7308 • Builders 330234

Safwat Malek, President
Safwat@enviro-international.com
831.620.9028
PO Box 1734 • Pebble Beach, CA 93953



STAINED GLASS WINDOW

PROPOSED GIFT FROM AGHA'S FAMILY
TO THE CITY OF PACIFIC GROVE

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831.620.9026
PO Box 1734 • Pebble Beach, CA 93953








HOLMAN'S
pacific grove Nutrition
HOLMAN ANTIQUE PLAZA
MASSIVE SALE
Come Visit Our Store & Save
MONTEREY COUNTY BANK

City of Pacific Grove, California
City Council Policy

Policy Governing	Policy No.	Effective Date	Page
Acceptance of Outdoor Art Donations	900-3	August 2, 2017	1 of 2

PURPOSE:

The City receives donations of both art and funding for outdoor civic art from citizens and organizations. Chapter 3.24 of the Municipal Code establishes duties and functions for the Beautification and Natural Resources Commission including standards related to works of art. This policy further establishes guidelines for the evaluation, receipt and use of proposed art and art fund donations.

Public art enhances the appearance of public places, beautifies the City, and stimulates public gathering and public discussion. The City has limited capital funds to expend on outdoor civic art and relies primarily on donation. This policy is intended to provide clarity of expectations for both the City and donors so that donations may best meet the goals of each party.

Policies 100-13 Bequests and Fungible Donation and Appreciated Real Estate, 200-6(E) Library Acceptance of Art Gifts Policy, and 200-6 (I) Library Gift Acceptance Policy for Print and Non-Print Materials may also be referred to as appropriate.

POLICY & PROCEDURE:

1. Anyone wishing to donate art or art funding to the City of Pacific Grove must first provide comprehensive information about each piece of art or proposed art work by completing and submitting the Art Acceptance Form (attachment).

2. Art Acceptance Forms may be submitted to the Pacific Grove Beautification and Natural Resources Commission.

3. The Beautification and Natural Resources Commission will use the Art Acceptance Form as a basis for evaluating the art proposed for donation and making a recommendation to Council. In evaluating the art works, the Beautification and Natural Resources Commission will work with the Museum, the Library, and/or other City staff, as appropriate. City staff will consult the advisory board (e.g. Museum Board, Library Board) of the involved City department.

4. Evaluation of art works will consider each piece's intended use and disposition, artistic merit, historical significance, local interest, commercial value, and impact on City government including ongoing maintenance costs.

5. The Beautification and Natural Resources Commission, City staff, and the relevant advisory body will make a recommendation to the City Council whether or not to accept the proposed donation. All accepted donations shall be unconditional, transferring ownership and all rights of ownership to the City. Donations are accepted only with the understanding that the City has the right to determine retention, location or disposal of the donation. The City may sell the item for value and use the proceeds for any purpose appropriate to the City's Charter.

6. The City Council shall make the final determination on whether the City will accept or decline the proposed donation.

7. Issues and legalities involved in donation of art works are numerous, and there will be occasions when the City Attorney's advice may be essential. For example, an artist may be entitled under law to a royalty under certain circumstances of resale; a copyright may be involved; an artist may ask for rights and privileges such as the first chance to purchase, borrowing for an exhibition, reproduction rights, control of alterations, repairs or restoration.

8. A written agreement with the artist shall be executed with the City prior to commencement of any work of art proposed on City property or commissioned by the City.

9. All required City permits for installation and siting of art pieces on City property shall be obtained. The outdoor placement of any artwork shall not interfere with natural resources.

Adopted January 3, 2001 - Minute Motion
Amended August 3, 2017 – Resolution 17-017

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, CA 93950
Tel: 831.648.3190 Fax: 831.648.3184
www.cityofpacificgrove.org

Art Acceptance Form

HISTORY OF THE PIECE PROPOSED FOR DONATION

Donor	
Name	
Phone	
Fax	
Email	
Mailing Address	

Legal Owner	
Name	
Phone	
Fax	
Email	
Mailing Address	

Applicant	
Name	
Phone	
Fax	
Email	
Mailing Address	

Previous Owner(s)/History of Ownership

(Attach additional pages if necessary for any section)

Date of Application to Donate _____

Signature of Applicant _____

DESCRIPTION OF WORK (PHOTO MUST BE ATTACHED)

Name of Work	
Artist	
Medium	
Date of Work	
Dimensions of Work	
Appraised Value	
Content/Description	
Condition	
Artist Biography (Summary)	
Special Requirements / Conservation Measures	
Maintenance (materials, cost, etc)	

INTENDED USE

Selective Display/Exhibit	
Research	
Circulation/Loan	
Sale	

REASONS FOR ACCEPTANCE

Artistic Merit	
Historical Significance	
Local Interest	
Commercial Value	

CONDITIONS OF ACCEPTANCE

Specified Recipient	
Storage Requirements	
Proposed Location	
Special Requirements / Conservation	

(Attach additional pages if necessary for any section)

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INTENDED USE

Selective Display/Exhibit	
Research	
Circulation/Loan	
Sale	

REASONS FOR ACCEPTANCE

Artistic Merit	
Historical Significance	
Local Interest	
Commercial Value	

CONDITIONS OF ACCEPTANCE

Storage Requirements	
Cost Impact and Maintenance	
Proposed Location	
Proposed Department Responsibility	
Special Requirements / Conservation	

RECOMMENDATIONS FOR ACCEPTANCE (ACCEPT / DECLINE, SIGNATURE, DATE)

Beautification Commission	
Museum of Natural History	
Public Library	
Other Recipient Department (if Applicable)	

Approved by City Council Date _____

Mayor's Signature _____ Date _____