NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

SPECIAL MEETING AGENDA

Wednesday, October 2, 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

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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): Foursome Development Company and CCS Pacific Grove Manager, LLC and Comstock
Under negotiation: Price and terms of payment

ADJOURNMENT

NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, October 2, 2024, 6:00 P.M.

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

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

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

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

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

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

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

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 Amelio

1. **APPROVAL OF AGENDA**

2. **PRESENTATIONS**

A. Mayor's Proclamation: Museum Foundation **PG 9**
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 September 4, 2024, City Council Regular Meeting **PG 11**
Reference: Staphany Arriola, Management Analyst (Confidential)
Recommended Action: Approve minutes.

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

B. Minutes of the September 18, 2024 City Council Regular Meeting **PG 18**

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve minutes.

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

6. **RESOLUTIONS**

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

A. Resolution Authorizing Investment of Monies in the Local Agency Investment Fund (LAIF) **PG 25**

Reference: Fred Marsh, Administrative Services Director

Recommended Action: Rescind Resolution 23-010; and approve a resolution authorizing the investment of monies in the Local Agency Investment Fund (LAIF).

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

7. **ORDINANCES**

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

A. Ordinance Amending the Operating and Capital Budget for the Fiscal Year (FY) 2024-25

Reference: Fred Marsh, Administrative Services Director **PG 28**

Recommended Action: Hold second reading and adopt an ordinance amending the operating and capital budget for the Fiscal Year (FY) 2024-25.

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

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 32**

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. Climate Action and Adaptation Planning Committee **PG 34**

Reference: Climate Action and Planning Committee Chair Lori McDonnell and Vice-Chair Cathy Wooten

Recommended Action:

1. Receive report on Climate Action and Adaptation Planning Committee status.
2. Alternative, discuss and take other action related to this item.

CEQA: Proposed Ordinance not subject to CEQA based on Guideline Sections: 15060(c)(3) and 15378; 15060(c)(2); 15061(b)(3); and 150308

9. **REPORTS – REQUIRING ACTION**

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

A. Contract Amendment for Professional Services **PG 36**

Reference: Fred Marsh, Administrative Services Director

Recommended Action:

1. Approve Amendment #1 to the Professional Services Agreement with Catacutan Consulting, LLC., increasing the previously approved contract by $50,000 for a total not to exceed amount of $150,000.
2. Direct the City Manager to take alternative action.

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

B. David Avenue Sidewalk Project (CIP23-21) – Award of Contract **PG 39**

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action:

1. Award an agreement with JMS Cement Contractors, Inc. In an amount not to exceed $510,020 plus a 10% contingency
2. Alternatively, discuss and take other action related to this item.

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

C. Boards, Commissions and Committee Appointments **PG 43**

Reference: Bill Peake, Mayor

Recommended Action: Approve appointments of Roger O'Sullivan to Recreation Board ending January 31, 2029 and Greg Marshall to the Economic Development Commission ending January 31, 2027.

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

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

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

A. Architectural Review Board Meeting Minutes: May 15, 2024, June 11, 2024, and July 9, 2024 **PG 46**
Reference: Aaron Campbell, Senior Planner
Recommended Action: Receive minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Planning Commission Meeting Minutes: January 2024 through July 2024 **PG 57**
Reference: Aaron Campbell, Senior Planner
Recommended Action: Receive minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

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

A. Introduction of Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60 **PG 97**
Reference: Matthew Mogensen, City Manager
Recommended Action:

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60; and
4. Direct a summary of the proposed ordinance be published as approved by the City Attorney.

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

12. **UNFINISHED AND ONGOING BUSINESS**

A. Resolution Of The City Council Of The City Of Pacific Grove Declaring Its Intent To Initiate Procedures For A Transition From At-Large To District-Based Council Member Elections **PG 111**

Reference: Brian Pierik, City Attorney

Recommended Action:

1. Motion to adopt Resolution Of The City Council Of The City Of Pacific Grove Declaring Its Intent To Initiate Procedures For A Transition From At-Large To District-Based Council Member Elections in the form of Attachment 1
2. Motion to direct the City Manager to develop a tentative timeline for conducting public hearings, formulating proposed district maps scenarios and election sequencing, and present a draft ordinance to the City Council for action.
3. Motion to authorize the Mayor to sign an Agreement with LULAC to extend the date to complete the transition to district-based elections within the safe harbor provisions of Elections Code Section 10010 to March 31, 2025 provided that LULAC agrees to such an extension.
4. Motion to authorize the Mayor to sign a First Amendment to City of Pacific Grove Professional Services Agreement with National Demographic Corporation for further Demographer Services in an amount not to exceed $49,000.

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

B. "The Butterflies" Art Donation Subcommittee Report **PG 265**

Reference: Debby Beck and Luke Coletti, Councilmembers

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

13. **NEW BUSINESS**

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: October 02, 2024

SUBJECT: Mayor's Proclamation: Museum Foundation

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

RECOMMENDATION

Receive proclamation.

Attachments

Proclamation

Mayor's Proclamation
Recognizing the Museum Foundation of Pacific Grove

WHEREAS, the Pacific Grove Museum of Natural history exemplifies the values of education, community engagement, and preservation of heritage; and

WHEREAS, founded in 1883 as the Chautauqua Museum around a collection of natural specimens being one of the first natural history museums in the nation; and

WHEREAS, the Museum Foundation of Pacific Grove entered into a partnership with the City of Pacific Grove July 27, 2009, to operate the Museum with the mission "To Inspire Discovery, Wonder, and Stewardship of our Natural World"; and

WHEREAS, as the first cultural institution accredited in Monterey County, reflecting the museum's unwavering dedication to standards of excellence in all its programs and services; and

WHEREAS, the museum has a rich collection of nearly 40,000 objects, including 6,000 that are available for research through an online database and many on exhibition; and

WHEREAS, the museum actively engages the community in hands-on data collection and conservation efforts, has community science programs, such as Night Owl, LIMPETS, Watershed Guardians, Western Monarch Count, Science Saturdays, California Naturalist; and

WHEREAS, the museum educates thousands of visitors and students, "K through Gray", from across the Monterey Peninsula and beyond; and

WHEREAS, none of which would be possible without the dedication of the Museum Foundation Board, Staff and Volunteers.

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 Museum Foundation of Pacific Grove, it's Board, Staff and Volunteers for their outstanding efforts and contributions to our community.

Bill Peake

_____

Bill Peake, Mayor
City of Pacific Grove

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Staphany Arriola, Management Analyst (Confidential)

MEETING DATE: October 02, 2024

SUBJECT: Minutes of the September 4, 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 9-4-24

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

SPECIAL MEETING

Wednesday, September 4, 2024, 5:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

Join the Zoom Meeting to participate live at:
https://www.cityofpacificgrove.org/Zoom_Closed

CALL TO ORDER
Mayor Peake called the regular meeting to order at 5:00 p.m. Present in Chamber: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, McDonnell, and Poduri. Councilmember Coletti arrived at 5:15pm.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Amelio and second by Mayor Pro Tem Smith, Council voted 6-0-1, Councilmember Coletti absent, to approve the agenda.

SPECIAL MEETING

PUBLIC COMMENT ON CLOSED SESSION MATTERS

Public comment received from Inge Lorentzen Daumer, and Jane Haines.

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

DRAFT

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING

Wednesday, September 4, 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

CALL TO ORDER
Mayor Peake called the regular meeting to order at 6:06 p.m. Present in Chamber: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri. Mayor Pro Tem left the meeting at 6:57 p.m.

PLEDGE OF ALLEGIANCE
Councilmember Coletti led the pledge of allegiance.

1. **APPROVAL OF AGENDA**
Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Beck, Council voted 7-0, to approve the regular agenda.

2. **PRESENTATIONS**
A. Mayor's Proclamation: Recognizing The Heritage Society of Pacific Grove Point Pinos Lighthouse Restoration
Action: Received 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
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

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
Reference: Brian Pierik, City Attorney
Recommended Action: Receive report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

City Attorney Brian Pierik reported no action was taken as to both items.

B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**
Public comment received from Susan Goldbeck, Daniel Miller, Moe Ammar, Jeff Frank, Jean Anton, Robert Huitt, Mike Gibbs, Vince Tuminello, Carmelita Garcia, and Inge Lorentzen Daumer.

A. Written General Public Comment

CONSENT AGENDA

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

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

A. Minutes of the August 21, 2024 City Council Regular Meeting
Action: Approved minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

A. Housing Element Monthly Status Update
Action: Received the report.
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
Action: Received 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
Action: Received 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
Action: Received report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. Promissory Note and Agreement for 157 Grand Avenue
Action: Approved 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-

DRAFT

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**

REGULAR AGENDA

11. **PUBLIC HEARINGS**

A. First reading of an ordinance to amend the City Salary Classification Schedule (POA)
No public comment received.

Action: Upon motion by Councilmember Amelio and seconded by Mayor Peake, Council voted 7-0 to

1. Request the City Attorney read the title of the ordinance;
2. Waive further reading of the ordinance;
3. Introduce and hold 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
No public comment received.

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Beck, Council voted 6-0-1, Mayor Pro Tem Smith absent, to

1. Adopt the FY 24-25 Recommended Fees (Attachment III) and Resolution No. 24-038 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
Public comment received from Sally Moore and Peggy Gibbs.

Action: Council reviewed, commented, and provided 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

DRAFT

B. Lighthouse Avenue Sidewalk Widening Project
No public comment received.

Action: Councilmember Beck recused herself from this item.

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Amelio, Council voted 5-0-1-1, Councilmember Beck recused, Mayor Pro Tem Smith absent, to 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% engineer's oversite; returning to Council at the next meeting with an ordinance for a budget amendment
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.
Public comment received from Don Murphy, Kevin Handley, Analy, Mike Gibbs, Inge Lorentzen Daumer, Dixie Layne, and Carmelita Garcia.

Action: Upon motion by Councilmember Poduri and seconded by Councilmember Beck, Council voted 6-0-1, Mayor Pro Tem Smith absent, to

1. Direct the City Manager to return 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
Public comment received from Susan Goldbeck, Don Murphy, Carmelita Garcia, Mike Gibbs, Lisa Ciani, and Inge Lorentzen Daumer.

Action: Upon motion by Councilmember Beck and seconded by Councilmember Coletti, Council voted 6-0-1, Mayor Pro Tem Smith absent, to create a subcommittee comprising of Councilmembers Beck and Coletti, review the Museum and other options for placement of the stained-glass window, one-with little to no staff resources, and return to Council the first meeting in October. .
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

DRAFT

ADJOURNMENT
Council adjourned the regular and special meetings at 10:13 p.m.

Respectfully Submitted,

Staphany Arriola
Management Analyst

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: Sandra Kandell, City Clerk/DEI Coordinator

MEETING DATE: October 02, 2024

SUBJECT: Minutes of the September 18, 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 9-18-24

DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING

Wednesday, September 18, 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. Councilmember Beck left the meeting at 10:18 p.m.

PLEDGE OF ALLEGIANCE
Councilmember McDonnell led the pledge of allegiance.

1. **APPROVAL OF AGENDA**
Action: Mayor Peake recommended Regular Agenda item 11B be heard prior to Regular Agenda item 11A.

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

2. **PRESENTATIONS**
A. Mayor's Proclamation: Hispanic Heritage Month
Action: Received the proclamation for Hispanic Heritage Month.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
A. No closed session meeting occurred.

B. Council and staff made general announcements. It was recommended the meeting be dedicated to former Councilmember Ron Schenk upon his recent passing.

4. **GENERAL PUBLIC COMMENT**
General public comment received from Celia Barberena, Mike Gibbs, and Anthony Ciani.

A. Written General Public Comment

CONSENT AGENDA
Action: Consent Agenda item 9C was pulled and considered immediately following the Consent

Agenda.

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

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

6. **RESOLUTIONS**

7. **ORDINANCES**

A. Ordinance to amend the City Salary Classification Schedule (POA)
Action: Held second reading and adopted Ordinance No. 24-014 amending the City Salary Classification Schedule (POA).
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

8. **REPORTS – INFORMATION ONLY**

A. Check Register for August 2024
Action: Received the Check Register.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Core Revenue Report for August 2024
Action: Received the report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Fourth Quarter FY 23/24 Purchase Order Report
Action: Received the FY 23/24 Fourth Quarter Purchase Order Report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

D. Fourth Quarter FY 23/24 Capital Project Report & Update
Action: Received the report.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

E. Monterey-Salinas Transit Minutes of July 8 and August 19, 2024.
Action: Received Minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. City Support of League of California Cities' Resolution at Annual Conference
Action: Supported the resolution offered for consideration at the League of California Cities' Annual Conference and directed the City of Pacific Grove (City) Delegate to vote in favor of the resolution during the Conference General Assembly.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

DRAFT

B. City of Pacific Grove's Conflict of Interest Code
Action: Reviewed and filed the City's Conflict of Interest Code acknowledging no amendment is required.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Cultural Resource and Tribal Monitoring Protocol ***This item was pulled and considered immediately following the Consent Agenda.***
Reference: Joyce Halabi, Deputy Public Works Director
Recommended Action:
1. Authorize an amendment with Rincon Consultants, Inc. to increase the contract amount by $39,943 plus a 10% contingency and extend the term through June 30, 2025.
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

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

A. Task Force on Diversity, Equity and Inclusion's Meeting Minutes: August 12, 2024
Action: Received minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Historic Resources Committee Meeting Minutes: March 27, 2024; April 24, 2024; July 24, 2024
Action: Received minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Recreation Board Meeting Minutes: September 28, 2023, November 30, 2023, January 25, 2024, and February 22, 2024
Action: Received minutes.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

DRAFT

****

9.C. Cultural Resource and Tribal Monitoring Protocol ***This item was pulled and considered immediately following the Consent Agenda.***
Public comment received from Lisa Ciani, Inge Lorentzen Daumer, and Anthony Ciani.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, the Council voted 7-0 to authorize an amendment with Rincon Consultants, Inc. to increase the contract amount by $39,943 plus a 10% contingency and extend the term through June 30, 2025.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

B. Discussion of American Tin Cannery (ATC) Project; Proposed Resolution Declaring City's Intent to Vacate Excess Right-Of-Way Located on Portion of Sloat Avenue; Proposed Resolution Pursuant to Government Code Section 54221 for Exempt Surplus Land; Proposed Uncodified Ordinance Conditionally Ordering Vacation ***During the Approval of the Agenda, it was recommended this item be heard prior to 11A.***

Public comment received from Jane Haines, Bill Kampe, Mike Bekker, Moe Ammar, Jennifer Haydu, Dr. Paige Viren, Inge Lorentzen Daumer, Rebecca Lee, Lisa Ciani, Christi Metzer, Anthony Ciani, and John Merhaut.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to adopt Resolution No. 24-039 Declaring City's Intent to Vacate Excess Right-Of-Way Located on Portion of Sloat Avenue as described in Attachment 1 to this Agenda Report.

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

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

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to adopt Resolution No. 24-040 pursuant to Government Code Section 54221 for Exempt Surplus Land as described in Attachment 2 to this Agenda Report.

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

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

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to 7-0 request the City Attorney read the title of the ordinance, waive further reading of the ordinance, introduce and hold first reading of the uncodified ordinance conditionally ordering vacation, and direct a summary of a proposed ordinance be published as approved by the City Attorney.
CEQA: Environmental Impact Report

Action: Council took a break from 8:13 – 8:23 p.m.

A. Fiscal Year 2024-25 Budget Amendments ***During the Approval of the Agenda, it was recommended this item be heard after to 11B.***
Public comment received from Colleen Goldsmith and Andrew Kubica.

DRAFT

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Beck, Council voted 7-0 to
1. Request the City Attorney to read the title of the ordinance;
2. Waive further reading of the ordinance;
3. Introduce and hold first reading of an ordinance amending the operating and capital budget for the Fiscal Year 2024-25; and
4. Direct that publication of the ordinance will be satisfied by publication of a summary approved by the City Attorney
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

12. **UNFINISHED AND ONGOING BUSINESS**

A. Pine Avenue Street Improvements, Fountain and 15th
Public comment received from Andrew Kubica, Christie Thomas, Dixie Layne, Tina Rau, and Carmelita Garcia.

Action: A break was provided from 10:10 to 10:12 to staff on this item.

Action: Upon motion by Councilmember Amelio and seconded by Mayor Peake, Council voted to receive the presentation and authorize staff to discuss options with the Traffic Safety Commission and Pacific Grove Unified School District Staff to gain feedback on improvements and subsequently, bring back refined options to the City Council.

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

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

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

Action: Upon motion by Councilmember Beck and seconded by Councilmember Coletti, the Council voted 6-1, Councilmember Amelio dissenting, to continue past 10:00 p.m. and hear remaining items.

B. Lighthouse Avenue Sidewalk Widening Project
No public comment received.

Action: Councilmember Beck recused herself from this item.

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Amelio, Council voted 6-0-1, Councilmember Beck recused, to approve an agreement with Silcon Constructors Inc. for the Lighthouse Avenue Widening Project for an amount not to exceed $242,360.53 plus a 25% contingency
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

C. Second Amendment to Professional Services Agreement (PSA) with Rincon Consultants, Inc. for the Sixth Cycle Housing Element Update (HEU)
No public comment received.

DRAFT

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Amelio, Council voted 6-0-1, Councilmember Beck absent, to authorize the Mayor to execute the Second Amendment to Professional Services Agreement (PSA) with Rincon Consultants, Inc. for the Sixth Cycle Housing Element Update (HEU) and associated updates to the Zoning Code, Land Use Element (LUE), and Health and Safety Element (HSE) and Program Environmental Impact Report (EIR) ("Project"), adding an amount not to exceed $157,699.00 to complete the following:

1. Cover out-of-scope work associated with alternative housing sites and methods to replace three (3) Unclassified sites for the 6th Cycle HEU ($134,209.00); and
2. Provide optional task funding to cover additional work only to be utilized in the event the City receives substantive comments from HCD ($23,490.00). (Attachment A)

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

13. **NEW BUSINESS**

14. **FULL PRESENTATIONS**

A. Pure Water Monterey Presentation
No public comment received.

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

15. **CLOSED SESSION**

ADJOURNMENT
Council adjourned the special and regular meetings at 10:40 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: Fred Marsh, Administrative Services Director

MEETING DATE: October 02, 2024

SUBJECT: Resolution Authorizing Investment of Monies in the Local Agency Investment Fund (LAIF)

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

RECOMMENDATION

Rescind Resolution 23-010; and approve a resolution authorizing the investment of monies in the Local Agency Investment Fund (LAIF).

DISCUSSION

The City has invested a portion of available funds in the Local Agency Investment Fund (LAIF). LAIF was established by the State of California in 1976 as a means to prudently manage investments. Use of this investment option is authorized by Council Policy 400-5. In April 2023, the City Council adopted Resolution 23-010 which provides City positions with the authority to withdraw or deposits funds in LAIF. An updated resolution is provided to reflect the positions that are currently filled in the department.

The attached Resolution rescinds Resolution 15-051; and authorizes incumbents of the positions of Administrative Services Director and Finance Manager (Program Manager), to deposit or withdraw LAIF funds on the City's behalf. Staff will bring back a revised resolution at a future Council meeting after the Deputy Director of Finance position (Program Manager Senior) has been filled.

OPTIONS

- Approve the resolution.
- Provide alternative direction to the City Manager.

FINANCIAL IMPACT:

There is no fiscal impact associated with this item.

FOCUSED PRIORITY AREA: Affordable Housing

Attachments

Proposed Reso

RESOLUTION NO. 24-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND (LAIF)

FINDINGS

1. The Local Agency Investment Fund is established in the State Treasury under Government Code section 16429.1 et. seq. for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

2. The City Council hereby finds that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with Government Code Section 16429.1 et. seq. for the purpose of investment as provided therein is in the best interests of the City.

3. Resolution 23-010 designated the Administrative Services Director, Finance and Risk Manager, and the Management Analyst (Finance) with the authority to deposit or withdraw funds in LAIF.

4. A new resolution authorizing the position titles currently filled in the department is needed to provide City staff with the authority to deposit or withdraw funds in LAIF.

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

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

2. The Council authorizes Resolution 23-010 to be rescinded.

3. The City of Pacific Grove officers holding the titles specified hereinbelow or their successors in office are hereby authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund and may execute and deliver any and all documents necessary or advisable in order to effectuate the purpose of this resolution and the transactions contemplated hereby:

Fred Marsh	Lori Frati
Administrative Services Manager	Finance Manager

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

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 2nd day of October, 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: Fred Marsh, Administrative Services Director

MEETING DATE: October 02, 2024

SUBJECT: Ordinance Amending the Operating and Capital Budget for the Fiscal Year (FY) 2024-25

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

RECOMMENDATION

Hold second reading and adopt an ordinance amending the operating and capital budget for the Fiscal Year (FY) 2024-25.

DISCUSSION

No substantive changes occurred between the first and second readings of this ordinance. The City Clerk caused a summary of the ordinance to be published on 9/26/24.

Staff made a PowerPoint presentation at the September 18, 2024 Council meeting that presented a few different scenarios to be considered by Council regarding the possible uses of projected surplus reserves in excess of the General Fund reserve policy (35% of operating expenditures for the fund), based upon the five-year forecast included in the adopted budget for FY 24-25. These scenarios included the following:

A. Transfer the surplus funds to increase the funding levels of one of the following funds:

a. Insurance Internal Service
b. General Fund CIP
c. Vehicle Replacement
d. Special Revenue Equipment Replacement Funds

B. Funding of one or more of these proposed new positions (funding for ½ year in FY 24-25):

Proposed New Position	Est. Annual Cost	Est. Impa FY 24-25
City Forester	$230,000	$115,000
City Engineer	306,000	153,000

In addition to the above, it is proposed to do the following: (no additional funding required):

1. Add a floating FTE to Police without requiring additional funding (i.e. funded by existing personnel cost savings)
2. Change the allocation of one planner from 75% Planning/25% City Manager to 100% Planning

C. Funding of additional one-time capital projects and programs for Fiscal Year 2024-25, including:

Proposed Project/Program	Estimated Cost
Sidewalk Extension at Lighthouse and Fountain	$340,000
Sidewalk Projects (Sinex and Sunset)	175,000
Housing Element Modifications	108,000
Butterfly Sanctuary Fencing	75,000
George Washington Park Drainage	50,000
Pickleball/Tennis Court Resurfacing and Sound Fencing	47,000
POA Contract Modifications	36,000
Contract Amendment for Demographer	33,000
ADA Access at George Washington Park	25,000
Total of Above	**$889,000**

Attached is a current funded and unfunded cip list for Fiscal Year 2024-25. The recreation commission recommended the pickleball/tennis court and George Washington Park projects, along with developing a park master plan. Note that both the pickleball/tennis court and George Washington Park projects are currently included in the unfunded capital improvement project (cip) list. At this point in time, we recommend that the park master plan remain on the unfunded project list.

D. Make no changes to current projected General Fund reserve levels

OPTIONS

- Approve ordinance.
- Provide alternative direction.

FINANCIAL IMPACT:

General Fund Reserves are projected to be reduced by $1,157,000 in FY 24-25 with the passage of this ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Ordinance

ORDINANCE NO. xx-xxx

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE AMENDING THE OPERATING AND CAPITAL PROJECTS BUDGET FOR FISCAL YEAR (FY) 2024-25

FACTS

1. The City Council approved the FY 2024-25 Budget on June 19, 2024.
2. It is customary to amend the budget to adjust revenues and expenditures to reflect updated information since the adoption of the FY 2024-25 Budget.
3. The City Manager is recommending amendments to the FY 2024-25 Budget to reflect the City Council goals for the fiscal year budget
4. The Council has determined it is appropriate to amend the approved budget for FY 2024-25
5. Pursuant to Charter Article 156, an amendment of the budget must be approved by ordinance.
6. A summary of the ordinance, approved by the City Attorney, was published on 9/26/24.
7. In the enactment of the ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 154, Section 15000, et seq.
8. Enactment of this ordinance action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378 because it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment.

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

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

SECTION 2: The expenditure budget for the General Fund is amended for the items listed below. Which by reference are incorporated as set forth in its entirety.

A. Additional Capital Projects

Proposed Project/Program	Estimated Cost
Sidewalk Extension at Lighthouse and Fountain	$340,000
Sidewalk Projects (Sinex and Sunset)	175,000
Housing Element Modifications	108,000
Butterfly Sanctuary Fencing	75,000
George Washington Park Drainage	50,000
Pickleball/Tennis Court Resurfacing and Sound Fencing	47,000
POA Contract Modifications	36,000
Contract Amendment for Demographer	33,000
ADA Access at George Washington Park	25,000
Total of Above	**$889,000**

B. Additional Positions

Proposed New Position	Estimated Annual Cost	Estimated Impact FY 24-25
City Forester	$230,000	$115,000
City Engineer	306,000	153,000

C. Additional Personnel Changes

1. Add a floating FTE to Police without requiring additional funding (i.e. funded by existing personnel cost savings)
2. Change the allocation of one planner from 75% Planning / 25% City Manager to 100% Planning

SECTION 3: In accord with Article 15 of the City Charter, this ordinance shall become effective upon adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 2nd day of October, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE, Mayor

ATTEST:

_____
SANDRA KANDRELL, 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: Alyssa Kroeger, Housing Program Manager

MEETING DATE: October 02, 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 eighth monthly progress report update to Council on September 4, 2024. Since then, the following tasks have been undertaken:

- **August 30, 2024**: City staff provided Rincon with a consolidated review of the Climate Change and Vulnerability Assessment (CCVA) to inform associated amendments to the Health and Safety Element (HSE).
- **September 5, 2024**: The Housing Element Team met to discuss next steps related to the Housing Element Update (HEU), the associated contract amendment, and forthcoming Zoning Code, Land Use, and Health and Safety Element amendments, as well as the Program Environmental Impact Report (EIR).
- **September 6, 2024**: City staff provided Rincon with a consolidated response to a data needs request and 2nd amendment draft materials for review.
- **September 10, 2024**: Rincon provided City staff with a follow-up to the data needs request.
- **September 11, 2024**: City Housing and Planning staff met with Rincon and Subconsultant WRT to review current status of pending updates to the housing test fits summary and Zoning Code text.
- **September 12, 2024**: City staff provided Rincon with a final response to the 9/11 data needs request follow-up.
- **September 16, 2024**: Rincon submitted August invoice materials to City staff.
- **September 18, 2024**: City staff reviewed Rincon's August invoice materials. City staff and Rincon attended 9/18 City Council meeting to request authorization of the 2nd amendment to the Housing Element Professional Services Agreement ("HEU PSA") with Rincon Consultants, Inc.

- **September 19, 2024**: The Housing Element Team met to discuss next steps related to the Housing Element Update (HEU), the associated contract amendment, and forthcoming Zoning Code, Land Use, and Health and Safety Element amendments, as well as the Program Environmental Impact Report (EIR). City staff updated the Housing Element webpage and prepared the 2nd amendment to the Rincon HEU PSA for signatures.
- **September 20, 2024**: City staff prepared the next monthly status update for 10/2 City Council and provided Rincon with key talking points regarding the City Housing and Planning grants.
- **September 23, 2024**: City staff updated the Housing Element webpage and provided Rincon with consolidated comments on the updated draft EIR Project Description and Buildout Assumptions Memo.

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

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

OPTIONS

N/A – This is information only.

FINANCIAL IMPACT:

There is no fiscal impact associated with receiving this report.

FOCUSED PRIORITY AREA: Affordable Housing

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

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Climate Action and Planning Committee Chair Lori McDonnell and Vice-Chair Cathy Wooten
MEETING DATE:	October 02, 2024
SUBJECT:	Climate Action and Adaptation Planning Committee
CEQA:	Proposed Ordinance not subject to CEQA based on Guideline Sections: 15060(c)(3) and 15378; 15060(c)(2); 15061(b)(3); and 150308

RECOMMENDATION

DISCUSSION

The Climate Action and Adaptation Planning Committee was established in February 2023 and set to meet quarterly to work on development of a Climate Action and Adaptation Plan.

Early meetings brought in speakers with experience in Action and Adaptation planning to help the committee better understand some of the challenges and recommendations from local communities and experts. This helped the committee develop a better understanding of the type of plan that could help get the best outcomes for Pacific Grove. The recent meetings were focused on developing the RFP to select a consultant to develop and produce a Climate Action and Adaptation Plan and reviewing the submissions.

Council Action February 1, 2023
Upon motion by Mayor Peake and seconded by Councilmember Amelio, Council voted to:

1. Request that the City Council prioritize and initiate Climate Action and Adaptation Planning in 2023 tied to Council goals.
2. Seek the services of a consultant to develop and produce a Climate Action and Adaptation Plan.
3. Establish a Council Brown Act subcommittee on Climate Action and Adaptation Planning comprising of Councilmember Coletti, McDonnell and Poduri to end when a Climate Action and Adaptation Plan is complete.

Climate Action and Adaptation Subcommittee meetings have been held:

1. May 18, 2023
2. August 17, 2023
3. February 2, 2024
4. April 18, 2024
5. May 16, 2024
6. August 15, 2024
7. September 19, 2024

RFP for proposal to provide climate action and adaptation planning services:

- Issued - June 27, 2024
- Submittals deadline - August 1, 2024

Status

Three responses were received to the RFP. The CAAP Committee held a special meeting September 19, 2024 to review and discuss the proposals received in response to the RFP. The three proposals offered different approaches to the development of the CAAP, and two of the proposals were determined to best fit the needs of Pacific Grove. It was agreed that the next step would be to interview the top two submissions to identify which team can best help us achieve our Climate Action and Adaptation goals.

A subcommittee of members McDonnell, Myers, and Poduri agreed to coordinate with Environmental Program Manager George Fuerst to interview the teams and make a recommendation to the full Committee at a the next regularly scheduled CAAP meeting on November 21, 2024, and then to the City Council at the next regularly scheduled meeting.

The proposals can be viewed as attachments to the September 19, 2024 CAAP Agenda **here**.

Reference information related to climate action and adaptation planning, including existing Planning Documents and Regional Climate Action/Adaptation and related Plans can be found **here**.

OPTIONS

Not applicable.

FINANCIAL IMPACT:

None.

FOCUSED PRIORITY AREA: Environmental Stewardship

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Fred Marsh, Administrative Services Director

MEETING DATE: October 02, 2024

SUBJECT: Contract Amendment for Professional Services

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

RECOMMENDATION

1. Approve Amendment #1 to the Professional Services Agreement with Catacutan Consulting, LLC., increasing the previously approved contract by $50,000 for a total not to exceed amount of $150,000.
2. Direct the City Manager to take alternative action.

DISCUSSION

In June 2024, the City executed an agreement with Catacutan Consulting, LLC (Catacutan) for contract executive level finance, budget and accounting services to backfill the vacant administrative services director position within the Administrative Services Department (ASD). An amendment to this agreement was approved in July 2024. In addition to the administrative services director vacancy, there are two other key vacant positions in the department: deputy director of finance and finance management analyst.

Due to ongoing financial reporting and auditing within the department and limited staff resources, staff is seeking an additional budget of $50,000. It is anticipated services will cease by December unless a qualified deputy director of finance is not found. Municipal finance positions are challenging to fill since they require specialized financial skills sets. Recruitment efforts are underway for the vacancies in the department. However, it is uncertain how successful recruitment efforts will be to fill the vacancies in the next three months.

To continue to provide business continuity and ensure adequate staff resources for reporting, auditing, and other department projects, it is recommended that the City continue to contract with Catacutan for the provision of executive level finance, auditing and accounting services. Staff proposes to fully fund the contract for up to 30 hours a week, but occasionally up to 40 hours per week depending on operational needs, and for the duration of up to three months or longer, depending on the recruitment of the regular of the two vacant positions. The length of the contract is up to one year but can be terminated sooner.

OPTIONS

- Approve Amendment #2 to the Professional Services Agreement with Catacutan Consulting, LLC., increasing the previous contract by $50,000 for a total not to exceed amount of $150,000.
- Take no action. This would result in the conclusion of the Catacutan contract services to the City and would severely impact the ability of the ASD to meet project timelines and current service delivery levels, including issuance of the Annual Comprehensive Financial Report.
- Provide alternative direction to the City Manager.

FINANCIAL IMPACT:

This action will increase the contract in the amount of $50,000. For FY 2024-25, the $50,000 is projected to be offset by cost savings from vacancies. No additional general fund appropriation is required.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Contract

SECOND AMENDMENT TO CITY OF PACIFIC GROVE AGREEMENT FOR PROFESSIONAL SERVICES CATACUTAN CONSULTING, LLC

This Second Amendment to City of Pacific Grove Agreement for Professional Services Catacutan Consulting ("First Amendment") is entered into by the City of Pacific Grove. a political subdivision of the State of California ("City") and Catacutan Consulting, LLC hereinafter called "Catacutan" and shall be effective October 3, 2024.

The City and Catacutan hereby agree to the following terms:

1. On June 10, 2024, the City and Catacutan entered into a City of Pacific Grove Agreement for Professional Services in Exhibit A to the Agreement and generally described as: finance, budget and accounting services,

2. The Agreement provided Catacutan agrees to the following in section 2 of the agreement. "PAYMENTS BY CITY. City shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of $40,000."

3. The purpose of this Agreement is revised to the following section, 2: "PAYMENTS BY CITY. City shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of $150,000"

4. Except as modified by this Second Amendment, the Agreement shall remain in full force and effect.

TN WITNESS WHEREOF, City and Catacutan have executed this Second Amendment as of the day and year written below.

CITY OF PACIFIC GROVE

By: _____ By: _____
Matthew Mogensen Jessie Catacutan
City Manager

Date: _____ Date: _____

By: _____
Brian Pierik
City Attorney

Date: _____

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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Joyce Halabi, Deputy Public Works Director

MEETING DATE: October 02, 2024

SUBJECT: David Avenue Sidewalk Project (CIP23-21) – Award of Contract

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

RECOMMENDATION

1. Award an agreement with JMS Cement Contractors, Inc. In an amount not to exceed $510,020 plus a 10% contingency
2. Alternatively, discuss and take other action related to this item.

DISCUSSION

As part of the FY22/23 Capital Improvement Plan (CIP), the City Council approved the David Avenue Sidewalk Project with an initial budget of $360,000 funded through the American Rescue Plan Act (ARPA). During the budget review at their July 13, 2023 meeting, the Council decided to reallocate $278,000 from ARPA funds, previously designated for the Skate Park and Purple Pipe Projects, to the David Avenue Sidewalk Project. This adjustment raised the total project budget to $638,000.

This multi-year project aims to install sidewalks and improve pedestrian safety along David Avenue, between Patterson Lane and Montecito Avenue. David Avenue is a major arterial road, heavily trafficked and providing access to the Del Monte Neighborhood, local schools, and commercial areas.

At the February 7, 2024 meeting, continued to February 14, 2024, City staff presented the City Engineer's preliminary assessment, offering the Council a high-level overview of the challenges and potential costs of installing sidewalks on both sides of David Avenue. This presentation sought guidance on how to proceed, given that the allocated funds would not cover the entire stretch. The full agenda report is available here.

The Council ultimately directed staff to prioritize installing sidewalks on the school side of David Avenue. It was also communicated that moving forward would require additional engineering work and phasing the project, as the allocated budget would not cover the entire length of the sidewalk.

To maximize the use of the allocated ARPA funds and effectively improve pedestrian safety on David Avenue within this fiscal year, the City Engineer and staff developed a phased approach. This year's project phase will involve installing new sidewalks along the entire school side of David Avenue between Congress Avenue and Clark Lane, as well as filling in existing gaps in the sidewalks leading to

this block near the school. The specific sidewalk gaps to be addressed include: (1) the residential side of David Avenue from Presidio Lane to mid-block on David Avenue and (2) a segment of Presidio Blvd (adjacent to 1106 Presidio Blvd) down to David Avenue. By filling in the sidewalk gaps, we aim to enhance safety and provide designated routes for pedestrians traveling towards David Avenue and Congress Avenue.

The attached map shows the specific locations.

On August 21, 2024, the City issued a call for bids for the installation of sidewalks along David Avenue. The bidding period closed on September 13, 2024, and four bids were received:

Contractor	Bid Amount
JMS Cement Contractors, Inc	$510,020
Don Chapin Company, Inc	$560,000
Monterey Peninsula Engineering	$560,755
FBD Vanguard Construction, Inc	$711,910

JMS Cement Contractors has qualified as the lowest responsible bidder.

SCOPE OF WORK

The scope of work includes:

- Installation of ~2,500 SF of sidewalk
- Installation of 995 LF of curb and gutter
- Installation and/or reconstruction of 1,870 SF of driveway approach
- Construction of 9 curb ramps
- Various associated improvements including pavement markings, pavement transitions, cross gutters, signs etc.

AGREEMENT

If approved, the City's standard construction agreement template will be harnessed. This agreement has been approved by the California Joint Powers Authority (CJPIA) and the City Attorney's Office.

PUBLIC OUTREACH

A mailer was sent to all adjacent residents in February 2024, immediately following the City Council meeting, to inform them of the Council's direction and the future construction. An updated mailer will be sent out to adjacent residents after the contract is executed and the pre-construction meeting is held. This mailer will provide important details, including the expected construction timeline, a contact number for questions, and links to additional information.

The City has also collaborated closely with the school district throughout the engineering phase and will continue to work with them during construction to keep them informed and minimize any disruptions.

CONSTRUCTION TIMING & UPDATES

If the contract is awarded, the agreement will be executed, and construction will begin promptly. Staff remains on schedule to ensure that the ARPA funds allocated for this project are fully utilized before the December 31, 2024 deadline.

Regular updates will be shared in the City Manager's Report and on the ClearGov Project pages.

FUTURE PHASES
Future phases of this David Avenue Sidewalk Project will return to the Council for consideration for additional funding in future CIPs.

OPTIONS

1. Authorize the agreement
2. Do not approve the agreement. If the agreement is not authorized, the City will be unable to use the ARPA funds before the deadline. As a result, the prior expenses of $13,035.62 would become ineligible for ARPA reimbursement and would need to be covered by the general fund.

FINANCIAL IMPACT:
The project has a budget of $638,000, with $13,035.62 spent so far on engineering. There is enough funding available to cover the cost of this construction agreement.

The remaining funds will be used to cover upcoming engineering expenses, including costs related to the bidding phase, which have not yet been invoiced, as well as project management activities during the construction phase.

FOCUSED PRIORITY AREA: Infrastructure

Attachments

Project Map

David Avenue – Project Map



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: October 02, 2024

SUBJECT: Boards, Commissions and Committee Appointments

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

RECOMMENDATION

Approve appointments of Roger O'Sullivan to Recreation Board ending January 31, 2029 and Greg Marshall to the Economic Development Commission ending January 31, 2027.

DISCUSSION

The appointments of Roger O'Sullivan and Greg Marshall fill vacancies on the Recreation Board and Economic Development Commission, respectively.

City committees play a vital role in city government and provide opportunities for residents to become engaged in civic activities and work to improve local governance. We are very fortunate to have many highly qualified and talented residents willing to serve on City committees.

The term for Recreation Board members is 4 years. The term for Economic Development Commission members is 2 years.

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

OPTIONS

N/A

FINANCIAL IMPACT:

There is no fiscal impact for appointments to committees.

GOAL ALIGNMENT: Not Applicable.

Attachments

Redacted Application - O'Sullivan

Redacted Application - Marshall

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

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

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

RECEIVED
CITY MANAGER'S OFFICE
2022 OCT 28 P 3:37
CITY OF PACIFIC GROVE

Name: Roger D'Sullivan

Street Address: [redacted]

City: Pacific Grove | **State:** CA | **ZIP Code:** 93950

Residence Telephone Number: [redacted] | **Work Telephone Number:** — | **E-Mail Address:** [redacted]

Name of Board, Commission, or Committee on which you would like to serve: Recreation Commission

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

- resident of PG since 2008.
- served on Park/Recreation of Salinas in 1990s.
- 39 years in Public Education – Teacher, Coach, Athletic Director with North Monterey County USD.
  - Social Studies Dept. Chair 1991-1996
  - Asst. Track + Field Coach Boys/Girls 1984-1987, 2002-2010.
  - Head Track + Field Coach Boys/Girls 1988-2001.
  - Athletic Director 2007-2012.
- Honors
  - Salinas Valley Sports Hall of Fame Inductee 2018
  - Harden Teaching award 2007.
  - Central Coast Section CIF Head Coach 1993

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

Signature of A [redacted] **Date:** 10/28/22

FOR CITY USE ONLY

Appointed to: _____

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

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

Date Certification of Appreciation Awarded: _____

CITY OF PACIFIC GROVE

www.cityofpacificgrove.org

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

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

Name:
Greg Marshall

Street Address:
[redacted]

City:	**State:**	**ZIP Code:**
Pacific Grove	CA	93950

Residence Telephone Number:	**Work Telephone Number:**	**E-Mail Address:**
[redacted]	[redacted]	[redacted]

Name of Board, Commission, or Committee on which you would like to serve:
Economic Development Commission

Brief Description of Background and Qualifications (Additional Information May Be Attached on Separate Sheets and Attachment of Resume is Desirable):

I was raised in Pacific Grove and graduated from PGHS in 1985. I currently live in Candy Cane Lane my wife Dana and raised three children here. I have more than 30 years of sales and marketing experience in business. I am currently employed as a Director of Partners and Alliances (business development) and have been with LanguageLine Solutions for more than 20 years. LanguageLine is one of the largest employers in Monterey County. In addition to LanguageLine, my work experience includes working in the telecommunications and internet solution provider industries with companies such as AT&T, Concentric Network, Shop.com, and XO Communications. My primary business focus involves working with businesses in key vertical markets including technology, insurance, financial services, utilities, transportation, and healthcare industries. I graduated from San Jose State University with a degree in Advertising and hold an MBA from Santa Clara University.

I previously served on the Recreation Board for the City of Pacific Grove for two terms and performed as the Boardchair. I've also served on other local boards including the YMCA of Monterey and PG Pony. I feel this is great time for me to get back involved with the City of Pacific Grove to help improve the economic business viability of our City.

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

Signature of Applicant: [redacted]	**Date:** 6/21/2024

FOR CITY USE ONLY Appointed to:

Appointment: _____ **Expiration:** _____ **Date of**
Reappointment: _____ **End of Term:** _____ **Date**
Certification of Appreciation Awarded: _____

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Aaron Campbell, Senior Planner

MEETING DATE: October 02, 2024

SUBJECT: Architectural Review Board Meeting Minutes: May 15, 2024, June 11, 2024, and July 9, 2024

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

RECOMMENDATION

Receive minutes.

Attachments

ARB Minutes 5.15.24

ARB Minutes 6.11.24

ARB Minutes 7.9.24

CITY OF PACIFIC GROVE

ARCHITECTURAL REVIEW BOARD

MEETING MINUTES

Tuesday, May 14, 2024, 3:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

1. **CALL TO ORDER & ROLL CALL**
Chair Bornstein called the meeting to order at 3:00pm. Senior Planner Campbell conducted roll call with the following Board Members present in Chamber: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, Members Sutphen, and Huff.

2. **APPROVAL OF THE AGENDA**
Action: Upon a motion by Member Huff and seconded by Secretary Brooks, the Board voted to approve the agenda.
Motion carried 5-0-0, by the following vote:
AYES: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, Member Huff, and Member Sutphen
NOES: None
ABSENT: None

3. **BOARD AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
None

4. **COUNCIL LIAISON ANNOUNCEMENTS**
Mayor Peake provided Council Liaison announcements.

5. **GENERAL PUBLIC COMMENT**
General Public Comment was received by Inge Lorentzen Daumer.

A. Written General Public Comment
Action: *Written General Public Comment was received.*

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

7. REPORTS REQUIRING ACTION

A. Draft April 9, 2024, Minutes.
Reference: Laurel O'Halloran, Planner
Recommended Action: Approve the Draft April 9, 2024, ARB Minutes as submitted.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Action: Chair Bornstein made corrections to the April 9, 2024, ARB minutes.
Action: Upon a motion by Secretary Brooks and seconded by Member Huff, the Board voted to approve the Consent agenda, as amended, with corrections to the Draft April 9, 2024, ARB minutes.

Motion carried 4-0-1-0, by the following vote:
AYES: Chair Bornstein, Secretary Brooks, Member Huff, and Member Sutphen
NOES: None
ABSTAIN: Vice Chair Boyle (absent from April 9, 2024, meeting)
ABSENT: None

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Architectural Permit (AP) 23-0208 for 127 Forest Avenue (APN#006-157-024)
Zoning District/General Plan Designation: R-3-PGR
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Staff recommends the Architectural Review Board (ARB) recommend approval to the Planning Commission of the proposed Architectural Permit, subject to the findings, conditions of approval, and CEQA Guidelines §15303, Class 3, Categorical Exemption for New Construction or Conversion of Small Structures.
Reference: Aaron Campbell, Senior Planner

Aaron Campbell, Senior Planner, provided the staff presentation.

Applicant, William Mefford, was allowed 10 minutes to present.

Public comments *were received from Lisa Ciani, Patsy Volpe, Stuart Newhouse, and Bruce McGlynn.*

Action: Upon a motion by Vice Chair Boyle and seconded by Member Sutphen, the Board voted to recommend approval to the Planning Commission of the proposed Architectural Permit (AP-23-0208), subject to the findings, conditions of approval, and CEQA Guidelines §15303, Class 3, Categorical Exemption for New Construction or Conversion of Small Structures.

Motion carried 5-0-0, by the following vote:
AYES: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, Member Huff, and Member Sutphen
NOES: None
ABSENT: None

B. Architectural Permit (AP) 23-0346 for 206 Lobos Ave (APN 006-315-003-000)

Zoning District/General Plan Designation: R-4
Coastal Zone: No
Historic Resources Inventory: No
CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

Recommended Action: Staff recommends the Architectural Review Board recommend approval of Architectural Permit (AP) 23-0346 to the Planning Commission, subject to the findings, conditions of approval, and CEQA Guidelines §15301, Class 1, Categorical Exemption for Existing Facilities.
Reference: Aaron Campbell, Senior Planner

Aaron Campbell, Senior Planner, provided the staff presentation.

Applicant, Jim Gish, was allowed 10 minutes to present.

Public comments *were received from Rebecca Saathof, Hunter Eldridge, Inge Lorentzen Daumer*

Action: Upon a motion by Member Huff and seconded by Secretary Brooks, the Board voted to continue the item to the June 6, 2024, regular meeting of the ARB for the applicant to return with a redesign that better conforms to Architectural Review Guideline numbers 5, 7, 28, and 34.

Motion carried 5-0-0, by the following vote:
AYES: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, Member Huff, and Member Sutphen
NOES: None
ABSENT: None

C. Architectural Permit 23-0299, 311 Lighthouse Avenue, Pacific Grove (APN 006-252-001)
Zoning District/General Plan Designation: R-2 / High Density Residential 21.8 du/ac
Coastal Zone: No
Historic Resources Inventory: No
CEQA: Categorical Exemption, CEQA Guidelines Section 15302, Class 2, Replacement or Reconstruction of Existing Structures and Facilities
Recommended Action: Approve Architectural Permit 23-0299 subject to the recommended findings, conditions of approval, and Class 2 Categorical Exemption (CEQA Guidelines Section 15302, Replacement or Reconstruction).
Reference: Joseph Sidor, Contract Planner

Secretary Brooks recused himself stating that he lived within 500 feet of the proposed project site.

Joe Sidor, Senior Contract Planner, provided the staff presentation.

Applicant/Owner, Kathryn Kranen, was allowed 10 minutes to present.

Public comments *were received from Robert Sanuki, and Inge Lorentzen Daumer*

Action: Upon a motion by Member Huff and seconded by Vice Chair Boyle, the Board voted to approve Architectural Permit 23-0299 subject to the recommended findings, conditions of approval, and Class 2 Categorical Exemption (CEQA Guidelines Section 15302, Replacement or Reconstruction).

Motion carried 4-0-1-0, by the following vote:
AYES: Chair Bornstein, Vice Chair Boyle, Member Huff, and Member Sutphen
NOES: None
RECUSAL(s): Secretary Brooks
ABSENT: None

9. **CONTINUED AND ONGOING BUSINESS**
None

10. **NEW BUSINESS**
None

11. **PRESENTATIONS**
None

12. **NEXT MEETING - June 6, 2024**

13. **ADJOURNMENT**
Chair Bornstein adjourned the meeting at 4:46 p.m.

CITY OF PACIFIC GROVE

ARCHITECTURAL REVIEW BOARD

MEETING MINUTES

Tuesday, June 11, 2024, 3:00 P.M.

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

Appearing Telephonically Pursuant to Government Code 54953:
Board Member Huff
1901 Avenue of the Stars, Suite 575
Los Angeles, CA 90067

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

Chair Bornstein called the meeting to order at 3:00 pm. Chair Bornstein announced that Member Huff has requested to attend remotely and asked for a motion from the Board.

Action: Upon a motion by Vice Chair Boyle and seconded by Secretary Brooks, the Board voted to allow the remote attendance of Member Huff.

Motion carried 4-0-0-1, by the following vote:
AYES: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, and Member Sutphen
NOES: None
ABSENT: None
ABSTAIN: Member Huff

Chair Bornstein asked Member Huff if anyone was present with him at his location. Member Huff stated that he was alone in a conference room, and he had posted the agenda outside.

Roll call was taken with the following Board Members present: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, and Member Sutphen in Chamber, Member Huff participating remotely via Zoom.

2. **APPROVAL OF THE AGENDA**

Action: Upon a motion by Secretary Brooks, seconded by Vice Chair Boyle, the Board voted to approve the agenda.

Motion carried 5-0-0, by the following vote:
AYES: Chair Bornstein, Vice Chair Boyle, Secretary Brooks, Member Huff, and Member Sutphen
NOES: None
ABSENT: None

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

NONE

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council member Beck provided Council Liaison announcements.

5. **GENERAL PUBLIC COMMENT**

NONE

A. Written General Public Comment

NONE

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

NONE

7. REPORTS REQUIRING ACTION

NONE

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Architectural Permit (AP) 23-0346 for 206 Lobos Ave (APN 006-315-003-000)

Zoning District/General Plan Designation: R-4 **Coastal Zone:** No **Historic Resources Inventory:** No

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

Recommended Action: Staff recommends the Architectural Review Board recommend approval of Architectural Permit (AP) 23-0346 to the Planning Commission, subject to the findings, conditions of approval, and CEQA Guidelines §15301, Class 1, Categorical Exemption for Existing Facilities.

Reference: Aaron Campbell, Senior Planner

Member Sutphen recused herself stating that her friendship with an adjacent neighbor created a conflict of interest.

Aaron Campbell, Senior Planner, provided the staff presentation.

Applicant, Barbara Kloss, was allowed 10 minutes to present.

Public comments *were received from Rebecca Saathof and Inge Lorentzen Daumer.*

Action: Upon a motion by Member Huff, and seconded by Chair Bornstein, the Board voted to recommend approval of Architectural Permit (AP) 23-0346 to the Planning Commission, subject to the findings, conditions of approval, and CEQA Guidelines §15301, Class 1, Categorical Exemption for Existing Facilities.

Motion failed 2-2-1, by the following tie vote:
AYES: Chair Bornstein, Member Huff
NOES: Vice Chair Boyle, Secretary Brooks
RECUSAL: Member Sutphen
ABSENT: None

B. Architectural Permit (AP) and Administrative Use Permit (AUP) 24-0017 for 224 Congress Avenue (APN:006-303-003).

Zoning District/General Plan Designation: R-1/ Medium Density Residential (12.1 du/ac)

Coastal Zone: No **Historic Resources Inventory:** No

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

Recommended Action: Staff recommends approval of Architectural Permit (AP) and Administrative Use Permit (AUP) 24-0017 subject to the recommended findings, conditions of approval, and Class 1 Categorical Exemptions (CEQA Guidelines Section 15301, Existing Facilities).

Reference: Garrett McCown, Associate Planner

Garrett McCown, Associate Planner, provided the staff presentation.

Applicant, Anatoly Ostretsov, was allowed 10 minutes to present.

Public comments *were received from Inge Lorentzen Daumer, Carol Edmonds, and Jeff Edmonds*

Action: Upon a motion by Member Sutphen, and seconded by Secretary Brooks, the Board voted to approve Architectural Permit (AP) and Administrative Use Permit (AUP) 24-0017 subject to the recommended findings, conditions of approval, and Class 1 Categorical Exemptions (CEQA Guidelines Section 15301, Existing Facilities).

Motion carried 5-0-0, by the following vote:
AYES: Chair Bornstein, Member Huff, Vice Chair Boyle, Secretary Brooks and Member Sutphen
NOES: None
ABSENT: None

C. Architectural Permit 24-0051, 985 Piedmont Avenue, Pacific Grove (APN 007-611-032)
Zoning District/General Plan Designation: R-1 / Low Density Residential 5.4 du/ac

Coastal Zone: No **Historic Resources Inventory:** No

CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Approve Architectural Permit 24-0051 subject to the recommended findings, conditions of approval, and Class 3 Categorical Exemption (CEQA Guidelines Section 15303, New Construction).

Reference: Joseph Sidor, Contract Planner

Joseph Sidor, Senior Contract Planner, provided the staff presentation.

Applicant, Allen Robinson, was allowed 10 minutes to present.

Public comments *were received from Inge Lorentzen Daumer.*

Action: Upon a motion by Member Sutphen, and seconded by Secretary Brooks, the Board voted to approve Architectural Permit 24-0051 subject to the recommended findings, conditions of approval, and Class 3 Categorical Exemption (CEQA Guidelines Section 15303, New Construction).

Motion carried 5-0-0, by the following vote:
AYES: Chair Bornstein, Member Huff, ice Chair Boyle, Secretary Brooks and Member

Sutphen
NOES: None
ABSENT: None

9. **CONTINUED AND ONGOING BUSINESS**

NONE

10. **NEW BUSINESS**

NONE

11. **PRESENTATIONS**

NONE

12. **NEXT MEETING - July 9, 2024**

13. **ADJOURNMENT**

Chair Bornstein adjourned the meeting at 4:53 p.m.

CITY OF PACIFIC GROVE

ARCHITECTURAL REVIEW BOARD MEETING MINUTES

REGULAR MEETING AGENDA

Tuesday, July 9, 2024, 3:00 P.M.

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

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

Vice Chair Boyle called the meeting to order at 3:00pm. Present in the chamber: Vice Chair Boyle, member Huff, and member Brooks.

Chair Bornstein and member Sutphen were absent.

2. **APPROVAL OF THE AGENDA**

Staff requested to continue Item 8C to the August 13, 2024, ARB meeting.

ACTION: Upon motion by Secretary Brooks and seconded by Member Huff, the board voted to approve the agenda, as amended, continuing Item 8C to the August 13, 2024, ARB meeting.

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

AYES: Vice Chair Boyle, Board members Brooks and Huff
NOES: None
ABSENT: Chair Bornstein, member Sutphen

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

NONE

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council member Beck provided Council Liaison announcements.

5. **GENERAL PUBLIC COMMENT**

NONE

A. Written General Public Comment

NONE

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

NONE

7. REPORTS REQUIRING ACTION

NONE

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Architectural Permit (AP) and Tree Permit with Development (TPD) 23-0007, 1015 Hillside Avenue (APN: 007-592-022-000).

Zoning District/General Plan Designation: R-1/ Medium Density Residential (9.7 du/ac)

Coastal Zone: No

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Approve Architectural Permit and Tree Permit with Development (AP/TPD 23-0007) subject to the recommended findings, conditions of approval, and Section 15303(a), Class 3, New Construction, Categorical Exemption.

Reference: Garrett McCown, Associate Planner

Garrett McCown, Associate Planner, provided the staff presentation.

Derek Johnson, Project Engineer, was allowed 10 minutes to present.

Public Comment was received by Inge Lorentzen Daumer and Lisa Ciani.

ACTION: Upon motion by Secretary Brooks and seconded by Member Huff, the board voted to approve Architectural Permit and Tree Permit with Development (AP/TPD 23-0007) subject to the recommended findings, Section 15303(a), Class 3, New Construction, Categorical Exemption, and conditions of approval, as amended, to include all recommendations on pages two and three of the Arborist's Report regarding the six remaining trees.

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

AYES: Vice Chair Boyle, Secretary Brooks, and Member Huff
NOES: None
ABSENT: Chair Bornstein, Member Sutphen

B. Architectural Permit (AP) and Tree Permit with Development (TPD) 24-0071, 418 Grove Acre Avenue, Pacific Grove (APN 006-421-029)

Zoning District/General Plan Designation: R-1-B-3 / Low Density Residential 4.4 du/ac

Coastal Zone: No

Historic Resources Inventory: No

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

Recommended Action: Approve Architectural Permit and Tree Permit with Development 24-0071 subject to the recommended findings, conditions of approval, and Class 2 Categorical Exemption (CEQA Guidelines Section 15302, Replacement or Reconstruction).

Reference: Joseph Sidor, Contract Planner

Joseph Sidor, Senior Contract Planner, provided the staff presentation.

Jeanne Byrne, project architect, was given 10 minutes to present.

No public comment was received.

ACTION: Upon motion by Member Huff and seconded by Secretary Brooks, the board voted to approve the agenda.

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

AYES: Vice Chair Boyle, Secretary Brooks, and Member Huff

NOES: None
ABSENT: Chair Bornstein, Member Sutphen

C. After-The-Fact Downtown Sign Permit (DSP) 24-0099 for 542 Lighthouse Avenue (APN: 006-173-003-000). – ***Item Continued to the August 13, 2024 ARB meeting***

Zoning District/General Plan Designation: C-1-T/Downtown Commercial

Coastal Zone: No

Historic Resources Inventory: Yes

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

Recommended Action: Consider After-The-Fact Downtown Sign Permit (DSP 24-0099) and whether a finding of unique design of the building, site or use warrants special consideration for increased signage allowance, subject to the conditions of approval, and Section 15301, Class 1, Existing Facilities, Categorical Exemption.

Reference: Karen Vaughn, Community Development Director

9. **CONTINUED AND ONGOING BUSINESS**

NONE

10. **NEW BUSINESS**

NONE

11. **PRESENTATIONS**

NONE

12. **NEXT MEETING - August 13, 2024**

13. **ADJOURNMENT**

Chair Bornstein adjourned the meeting at 3:28 p.m.

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

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Aaron Campbell, Senior Planner

MEETING DATE: October 02, 2024

SUBJECT: Planning Commission Meeting Minutes: January 2024 through July 2024

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

RECOMMENDATION

Receive minutes.

Attachments

PC Minutes 1.11.24

PC Minutes 2.8.24 (Adjourned)

Special PC Minutes 2.15.24

PC Minutes 3.14.24

PC Minutes 4.11.24

PC Minutes 5.9.24

PC Minutes 6.13.24

PC Minutes 7.11.24

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, January 11, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

AGENDA

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

Chair Lilley called the meeting to order at 6:00pm. Associate Planner Campbell conducted roll call with the following commissioners present in Chamber: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Kubica, and Sawyer. Commissioner Nodzenski attended the meeting remotely stating that his "just cause" was a potentially contagious illness. He also stated that no persons 18 years of age or older were in the room with him thus fulfilling Brown Act requirements for remote participation at a public meeting. Commissioner Davison was absent.

2. **APPROVAL OF AGENDA**

Action: Upon a motion by Commissioner Sawyer and seconded by Vice Chair Murphy, the Commission voted to approve the agenda.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

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

Commission announcements were provided by Chair Lilley, Vice Chair Murphy, Commissioners Sawyer, Fredrickson and Kubica.

Action: Chair Lilley requested that the Commission call a special meeting to conduct a site visit for an upcoming project located at 420 La Calle Corte.

Action: Upon a motion by Commissioner Sawyer and seconded by Commissioner Kubica, the Commission voted to schedule a Special Meeting to conduct a site visit for an upcoming project located at 420 La Calle Corte.

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

AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

Staff announcements were made by Interim City Manager Perrault and Associate Planner Campbell.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Mayor Peake provided Council Liaison announcements.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

Reference: Aaron Campbell, Associate Planner
Recommended Action: General Written Comments
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

Action: Received written public comments.
Action: General public comments were received from Inge Lorentzen Daumer, Mike Gibbs, Rebecca Lee, and Lisa Ciani.

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

A. Planning Commission 2023 Workplan –***<u>This item was pulled from the Consent Agenda by a member of the public. The item was placed on the Regular Agenda under item 8D.</u>***

From: Steven Lilley, Planning Commission Chair
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive the revised Planning Commission 2023 Workplan.
Reference: Steven Lilley, Planning Commission Chair

7. REPORTS REQUIRING ACTION

A. Minutes of the October 5, 2023, Planning Commission Special Meeting – ***<u>This item was moved to the Regular Agenda under item 8A.</u>***
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of the October 5, 2023 Planning Commission Special Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the October 12, 2023, Planning Commission Regular Meeting - ***This item was moved to the Regular Agenda under item 8B.***
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of the October 12, 2023, Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

C. Minutes of the October 19, 2023, Planning Commission Special Meeting - ***This item was moved to the Regular Agenda under item 8C.***
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of the October 19, 2023, Planning Commission Special Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Minutes of the October 5, 2023, Planning Commission Special Meeting – ***(previously item 7A)***
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of the October 5, 2023 Planning Commission Special Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

No public comment received.

Action: Commissioner Sawyer suggested corrections to the October 5, 2023, PC meeting minutes.

Action: Upon motion by Vice Chair Murphy and seconded by Commissioner Sawyer, the Commission voted to approve the October 5, 2023, PC meeting minutes as amended.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

B. Minutes of the October 12, 2023, Planning Commission Regular Meeting – ***(previously item 7B)***
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of the October 12, 2023, Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

Public comment was received by Inge Lorentzen Daumer.

Action: Commissioner Sawyer suggested corrections to the October 12, 2023, PC meeting minutes.

Action: Upon motion by Commissioner Fredrickson and seconded by Vice Chair Murphy, the commission voted to approve the October 12, 2023, PC meeting minutes as amended.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

C. Minutes of the October 19, 2023, Planning Commission Special Meeting – **(previously item 7C)**
Reference: Aaron Campbell, Associate Planner
Recommended Action: Approve the minutes of the October 19, 2023, Planning Commission Special Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

No public comment was received.

Action: Commissioner Sawyer suggested corrections to the October 19, 2023, PC meeting minutes.

Action: Upon motion by Vice Chair Murphy and seconded by Commissioner Kubica, the commission voted to approve the October 19, 2023, PC meeting minutes as amended.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

D. Planning Commission 2023 Workplan – ***(previously item 6A)***

From: Steven Lilley, Planning Commission Chair
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive the revised Planning Commission 2023 Workplan.
Reference: Steven Lilley, Planning Commission Chair

Public comment was received by Lisa Ciani.

Action: Planning Commission received the 2023 Workplan. Chair Lilley stated that the 2023 Workplan was approved by "consensus."

E. Planning Commission Annual Report for 2023 – ***(previously item 8A)***
From: Steven Lilley, Planning Commission Chair
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: The Planning Commission review and adopt the Annual Report for 2023, for subsequent presentation to the City Council.

Reference: Steven Lilley, Planning Commission Chair

Public comment was received from Lisa Ciani.

Action: Upon motion by Commissioner Sawyer and seconded by Commissioner Fredrickson, the Commission voted to accept the Annual Report, amending section B, item 14 to state "appeal pending" and forward the report on to City Council.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

F. Proposed Subcommittee on Transportation. – **(previously item 8B)**
From: Steven Lilley, Planning Commission Chair
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: The Chair recommends that the Planning Commission create a Transportation Subcommittee to review and make recommendations on circulation issues. The Subcommittee shall be empowered to develop a work program in order to describe a future vision of transportation or circulation in Pacific Grove. The Subcommittee should address pertinent issues, including but not limited to, the location and use of major thoroughfares and transportation routes; the development of a balanced, multi-modal transportation network; increased access to alternative modes of transit, and rethinking parking needs throughout the City.
Reference: Steven Lilley, Planning Commission Chair

Public comment was received from Inge Lorentzen Daumer and Lisa Ciani.

Action: Upon a motion by Commissioner Nodzenski and seconded by Commissioner Kubica, the Planning Commission voted to approve the establishment of a transportation subcommittee in order to review and make recommendations on circulation issues. The subcommittee, to be comprised of no

more than three members, will serve for six months, subject to subsequent renewal. The subcommittee will select and address permanent circulation issues and develop a work plan for subsequent submittal to the Planning Commission.

Motion carried 4-2-1, by the following roll call vote:
AYES: Chair Lilley, Commissioners Sawyer, Nodzenski, and Kubika
NOES: Vice Chair Murphy and Commissioner Fredrickson,
ABSENT: Commissioner Davison

Action: Upon a motion by Commissioner Nodzenski and seconded by Chair Lilley, the Commission voted to appoint Commissioners Nodzenski and Davison to the Transportation Subcommittee.

Motion carried 4-2-1, by the following roll call vote:
AYES: Chair Lilley, Commissioners Sawyer, Nodzenski, and Kubika
NOES: Vice Chair Murphy and Commissioner Fredrickson,
ABSENT: Commissioner Davison

9. CONTINUED AND ONGOING BUSINESS

A. Adoption of a Resolution of Intention to Amend Chapter 23 of the Pacific Grove Municipal Code (PGMC) related to Story Poles. Continued from the December 14, 2023 PC regular meeting.
From: Claudia Sawyer, Planning Commissioner
Zoning District/General Plan Designation: All
Coastal Zone: N/A
Historic Resources Inventory: N/A

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: It is recommended that the Planning Commission (PC) consider adopting the attached Resolution of Intention (RoI) and requesting that the City manager authorize staff and legal resources necessary to assist the PC in preparing the final proposed legislative amendment for Council consideration.
Reference: Claudia Sawyer, Planning Commissioner

Public Comment was received from Mayor Peake and Lisa Ciani.

Action: Commissioner Sawyer suggested that item two of the Resolution of Intent be amended to say, "Request the City Council direct the City Manager to authorize City Staff to assist the Planning Commission in the preparation of the proposed legislative amendment*."*

Action: Upon a motion made by Vice Chair Murphy and seconded by Commissioner Kubica, the Commission voted to approve the Resolution of Intention to Amend Chapter 23 of the Pacific Grove Municipal Code (PGMC) related to Story Poles, as amended.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

B. Adoption of a Resolution of Intention to Amend Selected Provisions of Chapter 23 of the Pacific Grove Municipal Code (PGMC) to clarify selected code provisions. Continued from the December 14, 2023, PC Regular meeting.
From: Steven Lilley, Planning Commission Chair
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: It is recommended that the Planning Commission (PC) consider Adoption of a Resolution of Intention to Amend Selected Provisions of Chapter 23 of the Pacific Grove Municipal Code (PGMC) to clarify selected code provisions and requesting that the City manager authorize staff and legal resources necessary to assist the PC in preparing the final proposed legislative amendments for Council consideration.
Reference: Steven Lilley, Planning Commission Chair

Public comment was received from Inge Lorentzen Daumer.

Action: Commissioner Sawyer suggested that item two of the Resolution of Intent be amended to say, "Request the City Council direct the City Manager to authorize City Staff to assist the Planning Commission in the preparation of the proposed legislative amendment."

Action: Upon a motion made by Vice Chair Murphy and seconded by Commissioner ~~Kubica~~, Fredrickson, the Commission voted to approve the Resolution of Intention to Amend Chapter 23 of the Pacific Grove Municipal Code (PGMC) related to Story Poles, as amended.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Lilley, Vice Chair Murphy, Commissioners Fredrickson, Sawyer, Nodzenski, and Kubika
NOES: None
ABSENT: Commissioner Davison

C. Status of Planning Commission Resolution of Intention to amend PGMC Chapter 23.64.190(d) related to hotel parking.
From: Aaron Campbell, Associate Planner
Zoning District/General Plan Designation: All
Coastal Zone: N/A
Historic Resources Inventory: N/A

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive a report regarding the status of the Planning Commission Resolution of Intention to amend PGMC Chapter 23.64.190(d) related to hotel parking.
Reference: Steven Lilley, Planning Commission Chair

No public comment was received.

Action: Planning Commission received a report from Interim City Manager Perrault.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING - February 8, 2024**

13. **ADJOURNMENT – 8:46 pm**

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

This Meeting Adjourned to Thursday, March 14, 2024, 6:00 pm

~~Thursday, February 8, 2024, 6:00 P.M.~~

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

AGENDA

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

2. **ELECTION OF OFFICERS**

From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Staff recommends the Planning Commission (PC) elect a Chair and Vice Chair for a one-year term in accordance with the Pacific Grove Municipal Code (PGMC) § 3.02.050(b), Members – Terms. At the pleasure of the Commission, a Secretary may also be appointed *or* the Chair may request staff prepare Planning Commission minutes.
Reference: Aaron Campbell, Senior Planner

3. **APPROVAL OF AGENDA**

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

5. **COUNCIL LIAISON ANNOUNCEMENTS**

6. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

CONSENT AGENDA

7. REPORTS FOR INFORMATION ONLY

8. REPORTS REQUIRING ACTION

A. Minutes of the November 9, 2023, Planning Commission Regular Meeting

Reference: Aaron Campbell, Senior Planner
Recommended Action: Approve the minutes of the November 9, 2023, Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. 2023 Draft General Plan Annual Progress Report

From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive the 2023 Draft General Plan Annual Progress Report required by the California Office of Planning and Research (OPR).
Reference: Aaron Campbell, Senior Planner

REGULAR AGENDA

9. **PUBLIC HEARINGS**

A. Coastal Development Permit 24-0010, Temporary Special Events in the Coastal Zone, Pacific Grove

From: Joseph Sidor, Contract Planner
Zoning District/General Plan Designation: O & unclassified / Open Space, Recreation Trail, & undesignated
Coastal Zone: Yes
Historic Resources Inventory: N/A
CEQA: Categorical Exemption, CEQA Guidelines Section 15323, Class 23, Normal Operations of Facilities for Public Gatherings
Recommended Action: Staff recommends the Planning Commission approve the Coastal

Development Permit (CDP 24-0010), subject to the findings, conditions of approval, and Class 23 Categorical Exemption for Normal Operations of Facilities for Public Gatherings (CEQA Guidelines Section 15323).
Reference: Joseph Sidor, Contract Planner

B. Capital Improvement Plan (CIP) Projects

From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: n/a
Coastal Zone: Yes
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Hold a discussion on potential projects for consideration in the Capital Improvement Program (CIP) and provide a recommendation to the Public Works Department.
Reference: Aaron Campbell, Senior Planner

10. **CONTINUED AND ONGOING BUSINESS**

11. **NEW BUSINESS**

12. **PRESENTATIONS**

13. **NEXT MEETING - February 15, 2024**

14. **ADJOURNMENT**

PLANNING COMMISSION

SPECIAL MEETING MINUTES

Thursday, February 15, 2024, 6:00 P.M.

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

AGENDA

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

Vice Chair Murphy called the meeting to order at 6:00pm. Senior Planner Campbell conducted roll call with the following commissioners present in Chamber: Vice Chair Murphy, Commissioners Kubica, Sawyer, Sweigert, and Nodzenski. Commissioner Fredrickson was absent.

Vice Chair Murphy introduced the new Community Development Director, Karen Vaughn, and new Planning Commissioner, David Sweigert.

2. **APPROVAL OF AGENDA**

Action: Upon a motion by Commissioner Sawyer and seconded by Commissioner Kubica, the Commission voted to approve the agenda.

Motion carried 6-0-1, by the following voice vote:
AYES: Vice Chair Murphy, Commissioners Sweigert, Sawyer, Nodzenski, Davison, and Kubika
NOES: None
ABSENT: Commissioner Fredrickson

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

Commission announcement made by Vice Chair Murphy.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

No Council Liaison announcements were given.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

Action: Received written public comments.
Action: General public comment was received from Mike Gibbs.

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

7. REPORTS REQUIRING ACTION

REGULAR AGENDA

8. **PUBLIC HEARINGS**

9. **CONTINUED AND ONGOING BUSINESS**

10. **NEW BUSINESS**

11. **PRESENTATIONS**

A. Scoping Meeting for the Environmental Impact Report for the Pacific Grove Housing Element Update, Zoning Amendments, and General Plan Amendments Project
From: Joseph Sidor, Contract Planner
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive agency and public input and provide comment on the scope and content of the Environmental Impact Report (EIR) for the Pacific Grove Housing Element Update, Zoning Amendments, and General Plan Amendments Project.
Reference: Joseph Sidor, Contract Planner

Action: Planning Commission received a presentation from Rincon Consultants, Inc. representative.
Action: Planning Commission received public input on the scope and content of the Environmental Impact Report (EIR) for the Pacific Grove Housing Element Update from Vince Tuminello, Mike Gibbs, Peggy Gibbs, Nancy*, Marsha*, Susan Caitlin, Jane Haines
Action: Vice Chair Murphy, Planning Commissioners Sawyer, Nodzenski, Kubica and Sweigert provided comments on the scope and content of the Environmental Impact Report (EIR) for the Pacific Grove Housing Element Update.

*No last name provided.

12. **NEXT MEETING - March 14, 2024**

13. **ADJOURNMENT – Meeting adjourned at 7:29 p.m.**

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, March 14, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

1. **CALL TO ORDER & ROLL CALL – 6:00 p.m.**

Vice Chair Murphy called the meeting to order at 6:00pm. Senior Planner Campbell conducted roll call with the following commissioners present in Chamber: Vice Chair Murphy, Commissioners Sawyer, Kubica, Nodzenski, Davison, and Sweigert. Commissioner Fredrickson was absent.

A. **ELECTION OF OFFICERS**

From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Staff recommends the Planning Commission (PC) elect a Chair and Vice Chair for a one-year term in accordance with the Pacific Grove Municipal Code (PGMC) § 3.02.050(b), Members – Terms. At the pleasure of the Commission, a Secretary may also be appointed *or* the Chair may request staff prepare Planning Commission minutes.
Reference: Aaron Campbell, Senior Planner

Action: On a nomination by Commissioner Sawyer, the Commission voted to elect Vice Chair Murphy as Chair of the Planning Commission.

Don Murphy was elected Chair of the Planning Commission by the following 6-0-1 vote:
AYES: Vice Chair Murphy, Commissioners Sawyer, Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

Action: On a nomination by Commissioner Kubica, the Commission voted to elect Commissioner Sawyer as Vice Chair of the Planning Commission.

Claudia Sawyer was elected Vice Chair of the Planning Commission by the following 6-0-1 vote:
AYES: Chair Murphy, Commissioners Sawyer, Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

2. **APPROVAL OF AGENDA**

Action: Upon a motion by Commissioner Sweigert and seconded by Commissioner Davison, the commission voted to approve the agenda.

Motion carried 6-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

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

Staff announcements were made by Community Development Director Vaughn.

Commission announcements were made by Chair Murphy, Vice Chair Sawyer, and Commissioner Nodzenski.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council Liaison announcements were made Mayor Peake.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment
From: Aaron Campbell, Associate Planner
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Action: Receive Written Public Comments
Action: General public comments were received from Mike Gibbs, Rebecca Lee, Inge Lorentzen Daumer, Jane Haines, and Lisa Ciani.

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

A. Site Visits for Proposed Development Application Projects - ***This item was pulled from the Consent Agenda by Vice Chair Sawyer and moved to item 8C on the regular agenda.***

From: Karen Vaughn, Community Development Director
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive report.
Reference: Karen Vaughn, Community Development Director

B. Housing Element Annual Progress Report
From: Alyssa Kroeger, Housing Program Manager

Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive the city's Housing Element Annual Progress Report (HE APR) for submittal to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research (OPR).
Reference: Alyssa Kroeger, Housing Program Manager

C. 2023 Draft General Plan Annual Progress Report
From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: n/a
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive the 2023 Draft General Plan Annual Progress Report required by the California Office of Planning and Research (OPR).
Reference: Aaron Campbell, Senior Planner

7. REPORTS REQUIRING ACTION

A. Minutes of the November 9, 2023, Planning Commission Regular Meeting - ***This item was pulled from the Consent Agenda by Vice Chair Sawyer and moved to item 8D on the regular agenda.***

Reference: Aaron Campbell, Senior Planner
Recommended Action: Approve the minutes of the November 9, 2023, Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

Action: Upon a motion by Commissioner Kubica and seconded by Vice Chair Sawyer, the commission voted to approve the Consent Agenda as amended.

Motion carried 6-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Coastal Development Permit 24-0010, Temporary Special Events in the Coastal Zone, Pacific Grove; Continued from the Planning Commission Regular Meeting of February 8, 2024.

From: Joseph Sidor, Contract Planner
Zoning District/General Plan Designation: O & unclassified / Open Space, Recreation Trail, & undesignated
Coastal Zone: Yes
Historic Resources Inventory: N/A
CEQA: Categorical Exemption, CEQA Guidelines Section 15323, Class 23, Normal Operations of Facilities for Public Gatherings
Recommended Action: Staff recommends the Planning Commission approve the Coastal Development Permit (CDP 24-0010), subject to the findings, conditions of approval, and Class 23 Categorical Exemption for Normal Operations of Facilities for Public Gatherings (CEQA Guidelines Section 15323).
Reference: Joseph Sidor, Contract Planner

Public comment was received from Inge Lorentzen Daumer, Robin Venuti, and Lisa Ciani.

Action: Upon a motion by Commissioner Davison and seconded by Commissioner Sweigert, the commission voted to approve Coastal Development Permit 24-0010 subject to the findings, conditions of approval, and Class 23 Categorical Exemption for Normal Operations of Facilities for Public Gatherings (CEQA Guidelines Section 15323).

Motion carried 6-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

B. Architectural Permit/Use Permit/Variance (AP/UP/VAR 22-0158) and Coastal Development Permit (CDP 22-0158), 420 La Calle Corte, Pacific Grove (APN 007-072-024)

From: Dara Sanders, Contract Planner
Zoning District/General Plan Designation: R-1-B-4/Low Density Residential
Coastal Zone: Yes
Historic Resources Inventory: Yes
CEQA: Initial Study, Mitigated Negative Declaration
Recommended Action: Staff recommends the Planning Commission adopt the Initial Study/Mitigated Negative Declaration and approve Architectural Permit, Use Permit and Variance (AP/UP/VAR 22-0158), and Coastal Development Permit (CDP 22-0158), subject to findings and conditions of approval.
Reference: Dara Sanders, Contract Planner

Public comment was received from Lisa Ciani, Gadi Maier, Tony Ciani and Catherine McCulloch..

Action: Upon a motion by Commissioner Nodzenski and seconded by Vice Chair Sawyer the Commission voted to adopt the Initial Study/Mitigated Negative Declaration and approve Architectural Permit, Use Permit and Variance (AP/UP/VAR 22-0158), and Coastal Development Permit (CDP 22-0158), subject to findings and conditions of approval, as amended (amended Condition #1 to remove Zoning Administrator approval of an historic relocation permit, amended Condition #2 to specify permit expiration of one year, addition of condition requiring a construction

management plan and schedule at time of building permit submittal, and addition of condition that the project utilize materials to reduce the potential for bird strikes.).

Motion carried 5-1-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Kubica, Nodzenski, and Davison
NOES: Commissioner Sweigert
ABSENT: Commissioner Fredrickson

C. Site Visits for Proposed Development Application Projects - ***Previously Item 6A.***

From: Karen Vaughn, Community Development Director
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive report.
Reference: Karen Vaughn, Community Development Director

Public Comment was received from Inge Lorentzen Daumer, Lisa Ciani, and Tony Ciani.

Action: Planning Commission received the report from Community Development Director Vaughn.

D. Minutes of the November 9, 2023, Planning Commission Regular Meeting – ***Previously Item 7A.***

Reference: Aaron Campbell, Senior Planner
Recommended Action: Approve the minutes of the November 9, 2023, Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

No public comment was received.

Action: Vice Chair Sawyer suggested corrections to the minutes.
Action: On a motion by Vice Chair Sawyer and seconded by Commissioner Kubica, the Commission voted to approve the minutes of the November 9, 2023, Planning Commission Regular meeting as amended.

Motion carried 6-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

9. **CONTINUED AND ONGOING BUSINESS - NONE**

10. **NEW BUSINESS - NONE**

11. **PRESENTATIONS**

A. Capital Improvement Plan (CIP) Projects
From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: n/a
Coastal Zone: NoN/AYes
Historic Resources Inventory: NoN/AYes
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Hold a discussion on potential projects for consideration in the Capital Improvement Program (CIP) and provide a recommendation to the Public Works Department.
Reference: Aaron Campbell, Senior Planner

No public comment was received.

Action: The Planning Commission received a presentation from Senior Planner Campbell and held a discussion on potential projects for consideration in the Capital Improvement Program (CIP).

12. **NEXT MEETING - April 11, 2024**

13. **ADJOURNMENT – 10:14 pm**

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, April 11, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

1. **CALL TO ORDER & ROLL CALL – 6:00 p.m.**
Chair Murphy called the meeting to order at 6:00pm. Senior Planner Campbell conducted roll call with the following commissioners present in Chamber: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert.

2. **APPROVAL OF AGENDA**

Action: Upon a motion by Commissioner Sweigert and seconded by Commissioner Kubica, the commission voted to approve the agenda.

Motion carried 7-0-0, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: None

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

Staff announcements were made by Senior Planner Campbell and Interim Director Perrault.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

No announcements were made.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment
Reference: Aaron Campbell, Associate Planner
Recommended Action: General Written Comments
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

Action: Received written public comments.
Action: General public comments were received from Mike Gibbs.

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

A. Housing Element Monthly Status Update – ***This item was pulled from the Consent Agenda by a member of the public and moved to item 9A on the regular agenda.***

From: Karen Vaughn, Community Development Director
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive report.
Reference: Karen Vaughn, Community Development Director

7. REPORTS REQUIRING ACTION

A. Minutes of the December 14, 2023, Planning Commission Regular Meeting
From: Aaron Campbell, Senior Planner
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Approve the minutes of the December 14, 2023, Planning Commission Regular Meeting.
Reference: Aaron Campbell, Senior Planner

Action: Upon a motion by Commissioner Fredrickson and seconded by Vice Chair Sawyer, the Commission voted to approve the Consent Agenda as amended. Member of the public, Mike Gibbs, pulled item 6A from the Consent Agenda and the Commission placed it as Item 9A on the Regular Agenda.

Motion carried 7-0-0, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: None

REGULAR AGENDA

8. **PUBLIC HEARINGS**

9. **CONTINUED AND ONGOING BUSINESS**

A. Housing Element Monthly Status Update ***(previously Item 6A)***

From: Karen Vaughn, Community Development Director
Zoning District/General Plan Designation: N/A
Coastal Zone: N/A
Historic Resources Inventory: N/A
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378
Recommended Action: Receive report.
Reference: Karen Vaughn, Community Development Director

Public comment was received from Mike Gibbs.

Action: Planning Commission received the Housing Element Monthly Status Update.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

A. Presentation on the City Council's Focused Priority Areas and Goals 2023-2025
Reference: Bob Perrault, Interim City Manager
Recommended Action: Receive presentation.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

No public comment was received.

Action: Planning Commission received the presentation from Interim City Manager, Bob Perrault.

12. **NEXT MEETING - May 9, 2024**

13. **ADJOURNMENT – 7:15 pm**

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, May 9, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

1. **CALL TO ORDER & ROLL CALL – 6:00 p.m.**
Chair Murphy called the meeting to order at 6:00pm. Chair Murphy acknowledged that the following commissioners were present in Chamber: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert.

2. **APPROVAL OF AGENDA**

Action: Upon a motion by Commissioner Nodzenski and seconded by Vice Chair Sawyer, the commission voted to approve the agenda.

Motion carried 7-0-0, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: None

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

Commission announcements were made by Chair Murphy.

Staff announcements were made by Community Development Director Vaughn.

City Attorney announcements were made by Ephraim Margolin.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council Liaison announcements were made by Council Member Coletti.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment
Reference: Aaron Campbell, Associate Planner
Recommended Action: General Written Comments
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

Action: Received written public comments.
Action: General public comments were received from Inge Lorentzen Daumer.

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

7. REPORTS REQUIRING ACTION

A. Minutes of the January 11, 2024 Planning Commission Regular Meeting
Reference: Karen Vaughn, Community Development Director

Recommended Action: Approve the minutes of the January 11, 2024 Planning Commission Regular meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the February 15, 2024 Planning Commission Special Meeting

Reference: Karen Vaughn, Community Development Director
Recommended Action: Approve the minutes of the February 15, 2024 Planning Commission Special Meeting
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

Action: Upon a motion by Vice Chair Sawyer and seconded by Commissioner Sweigert, the Commission voted to approve the Consent Agenda.

Motion carried 7-0-0, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: None

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Architectural Permit (AP) and Coastal Development Permit (CDP) 23-0290, 107 14th Street, Pacific Grove (APN 006-183-016)

From: Joseph Sidor, Contract Planner

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

Coastal Zone: Yes

Historic Resources Inventory: Yes

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

Recommended Action: Staff recommends that the Planning Commission approve the Architectural Permit and Coastal Development Permit subject to the recommended findings, conditions of approval, and Class 1 and Class 31 Categorical Exemptions (CEQA Guidelines Sections 15301, Existing Facilities, and 15331, Historical Resource Restoration/Rehabilitation).

Reference: Joseph Sidor, Contract Planner

Commissioner Sawyer declared ex-parte communication with Mr. Davis asking further clarification regarding lateral walls.

No public comment was received.

Action: Upon a motion by Commissioner Fredrickson and seconded by Commissioner Davison, the Commission voted to approve the Architectural Permit and Coastal Development Permit subject to the recommended findings, conditions of approval, and Class 1 and Class 31 Categorical Exemptions (CEQA Guidelines Sections 15301, Existing Facilities, and 15331, Historical Resource Restoration/Rehabilitation).

Motion carried 6-1-0, by the following vote:
AYES: Chair Murphy, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert
NOES: Vice Chair Sawyer
ABSENT: None

B. Coastal Development Permit 24-0067, Temporary Installation of Physical Measures in the Coastal Zone, Pacific Grove

From: Joseph Sidor, Contract Planner

Zoning District/General Plan Designation: O / Open Space

Coastal Zone: Yes

Historic Resources Inventory: N/A

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

Recommended Action: Staff recommends the Planning Commission approve the Coastal Development Permit (CDP 24-0067), subject to the findings, conditions of approval, and Class 8 Categorical Exemption, Actions by Regulatory Agencies for Protection of the Environment (CEQA Guidelines Section 15308).

Reference: Joseph Sidor, Contract Planner

Public Comment was received from Amanda Priest, Vicki Pearse, Inge Lorentzen Daumer, Lisa Ciani, and Kim.

Action: Upon a motion by Commissioner Sweigert and seconded by Commissioner Fredrickson, the Commission voted to approve the Coastal Development Permit (CDP 24-0067), subject to the findings, conditions of approval, and Class 8 Categorical Exemption, Actions by Regulatory Agencies for Protection of the Environment (CEQA Guidelines Section 15308) with an amendment specifying the length of the CDP as five years or the termination of the MOU.

Motion carried 7-0-0, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Fredrickson, Kubica, Nodzenski, Davison, and Sweigert

NOES: None
ABSENT: None

C. Architectural Permit (AP) and Variance (VAR) 23-0156, and Coastal Development Permit (CDP) 23-0156, 200 1st St./113 2nd St., APN 006-223-002-000

Zoning District/General Plan Designation: R-3-PGR/HDR 19.8 Du/ac
Coastal Zone: Yes
Historic Resources Inventory: No
CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures
Recommended Action: Staff recommends that the Planning Commission approve the Architectural Permit (AP) and Variance (VAR) 23-0156, and Coastal Development Permit (CDP) 23-0156, subject to the recommended findings, conditions of approval, and Class 3 Categorical Exemption (CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures).
Reference: Aaron Campbell, Senior Planner

Commissioner Sawyer declared ex-parte communication with Scott Hall for an explanation of what is considered permeable.

Commissioner Frederickson declared ex-parte communication with the architect, Jeanne Byrne, concerning setbacks, particularly on 2nd Street.

Public comment was received by Inge Lorentzen Daumer, and Thom Akeman.

Upon a motion by Chair Murphy and seconded by Commissioner Nodzenski, the Commission voted to approve Architectural Permit (AP) and Variance (VAR) 23-0156, and Coastal Development Permit (CDP) 23-0156, subject to the recommended findings, conditions of approval, and Class 3 Categorical Exemption (CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures), as amended to include a new condition of approval prohibiting demolition during harbor seal pupping season (as defined by PGMC 14.04.035).

Commissioner Sweigert asked for a friendly amendment requesting the removal of the variance. Chair Murphy did not accept the friendly amendment.

Motion carried 4-3-0, by the following vote:
AYES: Chair Murphy, Commissioners Fredrickson, Kubica, Nodzenski
NOES: Vice Chair Sawyer, Commissioners Davison, and Sweigert
ABSENT: None

9. CONTINUED AND ONGOING BUSINESS

A. Planning Commission 2024 Work Plan

Reference: Donald Murphy, Chair
Recommended Action: Receive the Planning Commission 2024 Work Plan
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

Public Comment was received by Lisa Ciani.

Action: Planning Commission received the Planning Commission 2024 Work Plan.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING – June 13, 2024**

13. **ADJOURNMENT – 8:12 pm**

CITY OF PACIFIC GROVE
PLANNING COMMISSION
MEETING MINUTES
Thursday, June 13, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

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

Chair Murphy called the meeting to order at 6:00pm. Senior Planner Campbell conducted roll call with the following commissioners present in Chamber: Chair Murphy, Vice Chair Sawyer, Commissioners, Nodzenski, Davison, and Sweigert. Commissioner Fredrickson absent. Commissioner Kubica requested attendance via Zoom.

A. Motion to Authorize Teleconference Attendance by Andrew Kubica Pursuant to AB2449 (Providing childcare).

Action: Upon a motion by Chair Murphy and seconded by Vice-Chair Sawyer, the commission voted to approve teleconference attendance (Zoom) by Andrew Kubica.

Motion carried 5-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Davison, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

Commissioner Kubica announced that no one over the age eighteen was present with him in the room.

2. **APPROVAL OF AGENDA**

Action: Community Development Director Vaughn requested that Item 8B, Coastal Development Permit (CDP) #23-0066 (123 17th St.) be removed from the agenda. Director Vaughn explained that staff had submitted a CDP Determination of Exemption to the Coastal Commission on May 15th which was challenged by a member of the public on May 23rd. A response to the challenge was received from the Coastal Commission on June 10th, which disagreed with the merits of the challenge and upheld the city's Determination of Exemption. Being exempt from the requirement for a CDP, the project is no longer under the purview of the Planning Commission.

Action: Upon a motion by Commissioner Nodzenski and seconded by Commissioner Sweigert, the commission voted to approve the agenda, as amended, with the removal of Item 8B: Coastal Development Permit (CDP) #23-0066, 123 17th St.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Davison, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

3. **COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)**
No Commission announcements were made.
No Staff announcements were made.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council member Coletti provided Council Liaison announcements.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

Action: *Written General Public Comment was received.*
Action: *General Public Comment was received by Lisa Ciani.*

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

A. Planning Commission 2024 Workplan.
Reference: Don Murphy, Chair
Recommended Action: Receive workplan.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

7. REPORTS REQUIRING ACTION

A. Minutes of the March 14, 2024 Planning Commission Regular Meeting
Reference: Karen Vaughn, Community Development Director
Recommended Action: Approve the minutes of the minutes of the March 14, 2024 Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Minutes of the April 11, 2024 Planning Commission Regular Meeting
Reference: Karen Vaughn, Community Development Director
Recommended Action: Approve the minutes of the April 11, 2024 Planning Commission Regular Meeting.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

Action: Upon a motion by Vice Chair Sawyer and seconded by Commissioner Sweigert, the commission voted to approve the Consent Agenda.

Motion carried 6-0-1, by the following roll call vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Davison, Kurica,

and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

REGULAR AGENDA

8. **PUBLIC HEARINGS**

A. Resolution Recommending that the City Council adopt a Proposed Ordinance amending Chapter 23.45 of the Municipal Code regarding timeshare projects.

From: Brian Pierik, City Attorney

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

CEQA: Proposed Ordinance not subject to CEQA based on Guideline Sections: 15060(c)(3) and 15378; 15060(c)(2); 15061(b)(3); and 150308

Recommended Action: Motion to adopt a Resolution recommending the City Council adopt a Proposed Ordinance amending Chapter 23.45 of the Municipal Code to add a definition of timeshare project and prohibit advertising and sale thereof.

Reference: Brian Pierik, City Attorney

Public comment was received from Inge Lorentzen Daumer.

Action: Upon a motion by Commissioner Sweigert and seconded by Vice Chair Sawyer, the commission voted to adopt a Resolution recommending the City Council adopt a Proposed Ordinance amending Chapter 23.45 of the Municipal Code to add a definition of timeshare project and prohibit advertising and sale thereof, as amended to include minor text amendments.

Motion carried 6-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Davison, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

B. Coastal Development Permit No. 24-0066, 123 17th St (APN 006-154-14). – ***This item was removed from the Agenda by Community Development Director Vaughn.***

From: Aaron Campbell, Senior Planner

Zoning District/General Plan Designation: R-3-PGR

Coastal Zone: Yes

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Staff recommends that the Planning Commission approve Coastal Development Permit (CDP) 24-0066, subject to the recommended findings, conditions of approval, and Class 3 Categorical Exemption (CEQA Guidelines Section 15303, New Construction).

Reference: Aaron Campbell, Senior Planner

9. **CONTINUED AND ONGOING BUSINESS**

A. Housing Element Update - Consideration of Alternative Sites and Methods in lieu of the Three Unclassified Sites in order to Achieve the City's Regional Housing Needs Assessment (RHNA) Requirements.

From: Karen Vaughn, Community Development Director

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

CEQA: Environmental Impact Report

Recommended Action: Consider alternative sites and methods for the Housing Element Update to accommodate the City's RHNA requirements and provide a recommendation to the City Council.

Reference: Karen Vaughn, Community Development Director

Public comments were received from Lisa Ciani, Shannon, Marsha, and Christine Diiorio.

Action: Upon a motion by Chair Murphy and seconded by Commissioner Sweigert, the commission voted to recommend, with full consensus of the Planning Commission, Options 1, 2, 3, and 6 as alternative sites/methods for the Housing Element Update to accommodate the City's RHNA requirements.

Motion carried 6-0-1, by the following vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Davison, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Fredrickson

Action: The Planning Commission wished to relay to Council that Options 4 and 5 were considered acceptable by a majority of the Planning Commission, however Vice Chair Sawyer and Commissioner Sweigert were not favorable to up-zoning R-1 districts to higher density districts (R-3).

Action: The Planning Commission wished to relay to Council that they had no concerns with including any of the individual sites contained within Option 8 if they were needed to meet the City's RHNA + buffer requirements.

Action: The Planning Commission wished to relay to Council that they

recommend the utilization of *only* those alternative sites/methods necessary to meet the City's minimum RHNA + buffer requirements. The Planning Commission does not recommend accommodating more housing capacity than is required as part of the 6th cycle RHNA + buffer.

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING – July 11, 2024**

13. **ADJOURNMENT – 9:25 pm**

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

CITY OF PACIFIC GROVE

PLANNING COMMISSION

MEETING MINUTES

Thursday, July 11, 2024, 6:00 P.M.

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

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

Chair Murphy called the meeting to order at 6:00pm and took verbal roll call. The following commissioners were present in Chamber: Chair Murphy, Vice Chair Sawyer, Commissioners Kubica, Fredrickson, Nodzenski, and Sweigert. Commissioner Davison was absent.

2. **APPROVAL OF AGENDA**

Action: Community Development Director Vaughn requested that Item 9A, Policy Update Discussion and Recommendation to the City Council Regarding Vehicle Miles Traveled (VMT) and CEQA Compliance, be moved to the first item of the regular agenda.

Chair Murphy continued item 9B, Report of the Transportation Subcommittee, to the August 8, 2024, regular meeting of the Planning Commission due to the absence of Commissioner Davison.

Action: Upon a motion by Commissioner Sweigert and seconded by Commissioner Kubica, the commission voted to approve the agenda, as amended.

Motion carried 6-0-1, by the following voice vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Fredrickson, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Davison

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

No Commission announcements were made.
Director Vaughn provided staff announcements.

4. **COUNCIL LIAISON ANNOUNCEMENTS**

Council member Coletti provided Council Liaison announcements.

5. **GENERAL PUBLIC COMMENT**

A. Written General Public Comment

Action: No *Written General Public Comment was received.*
Action: *General Public Comment was received by Mike Gibbs.*

CONSENT AGENDA

6. REPORTS FOR INFORMATION ONLY

A. Planning Commission 2024 Workplan.

Reference: Don Murphy, Chair

Recommended Action: Receive workplan

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

7. REPORTS REQUIRING ACTION

A. Minutes of the May 9, 2024 Planning Commission Regular Meeting

Reference: Karen Vaughn, Community Development Director

Recommended Action: Approve the minutes of the minutes of the May 9, 2024 Planning Commission Regular Meeting.

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

B. Minutes of the June 13, 2024 Planning Commission Regular Meeting

Reference: Karen Vaughn, Community Development Director

Recommended Action: Approve the minutes of the June 13, 2024 Planning Commission Regular Meeting.

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

Action: Upon a motion by Commissioner Fredrickson and seconded by Commissioner Nodzenski, the commission voted to approve the Consent Agenda.

Motion carried 6-0-1, by the following voice vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Fredrickson, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Davison

REGULAR AGENDA

8. **CONTINUED AND ONGOING BUSINESS – *previously agenda Item 9***

A. Policy Update Discussion and Recommendation to the City Council Regarding Vehicle Miles Traveled (VMT) and CEQA Compliance – ***previously agenda item 9A***

From: Joseph Sidor, Contract Planner

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive a presentation on changes to VMT analysis and CEQA

compliance, and provide a recommendation to the City Council that it adopt the proposed amendments to the City's VMT Implementation Policy.

Reference: Joseph Sidor, Contract Planner

Staff presentation provided by Joseph Sidor, Contract Planner.

Presentation provided by Michael Schmitt and Frederik Venter of Kimley-Horn.

Public comments *were received from Tony Ciani, Kathy Durbin.*

Action: Upon a motion by Commissioner Sweigert and seconded by Commissioner Nodzenski, the commission voted to recommend to the City Council that it adopt the proposed amendments to the City's VMT Implementation Policy.

Motion carried 6-0-1, by the following voice vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Fredrickson, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Davison

~~8.~~

9. PUBLIC HEARINGS – ***previously agenda Item 8***

A. Architectural Permit (AP) 23-0208 & Coastal Development Permit (CDP) 23-0208 for 127 Forest Ave (APN 006-157-024) – ***previously agenda item 8A***

From: Aaron Campbell, Senior Planner

Zoning District/General Plan Designation: R-3-PGR

Coastal Zone: Yes

Historic Resources Inventory: No

CEQA: Categorical Exemption, CEQA Guidelines Section 15303, Class 3, Construction or Conversion of Small Structures

Recommended Action: Staff recommends the Planning Commission (PC) approve Architectural Permit (AP) 23-0208 and Coastal Development Permit (CDP) 23-0208, subject to the findings, conditions of approval, and CEQA Guidelines §15303, Class 3, Categorical Exemption for New Construction or Conversion of Small Structures.

Reference: Aaron Campbell, Senior Planner

Ex parte communication: Commissioner Kubica announced that he spoke with the applicant. Commissioner Nodzenski announced that he spoke with a neighbor. Neither had any new information to report.

Staff presentation provided by Aaron Campbell, Senior Planner.

Public comments *were received from Tony Ciani, Lisa Ciani.*

Action: Upon a motion by Commissioner Fredrickson and seconded by Commissioner Nodzenski, the commission voted to approve Architectural Permit (AP) 23-0208 and Coastal Development Permit (CDP) 23-0208, subject to the findings, conditions of approval, and CEQA Guidelines §15303, Class 3, Categorical Exemption for New Construction or Conversion of Small Structures, as amended, to remove "not visible

from Ocean View Boulevard" from fact #8 and finding #2 of CDP 23-0208.

Action: Commissioner Sawyer requested a friendly amendment to add a condition of approval requiring landscape pavers to be permeable. Commissioner Fredrickson accepted the friendly amendment.

Motion carried 6-0-1, by the following voice vote:
AYES: Chair Murphy, Vice Chair Sawyer, Commissioners Nodzenski, Fredrickson, Kubica, and Sweigert
NOES: None
ABSENT: Commissioner Davison

~~9.~~ **CONTINUED AND ONGOING BUSINESS – *moved to agenda Item 8.***

A. Policy Update Discussion and Recommendation to the City Council Regarding Vehicle Miles Traveled (VMT) and CEQA Compliance – ***this item was moved to Item 8A at the request of Director Vaughn.***

From: Joseph Sidor, Contract Planner

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive a presentation on changes to VMT analysis and CEQA compliance, and provide a recommendation to the City Council that it adopt the proposed amendments to the City's VMT Implementation Policy.

Reference: Joseph Sidor, Contract Planner

~~B.~~ Report of the Transportation Subcommittee – ***this item was continued to the August 8, 2024, Regular Meeting of the Planning Commission at the request of the Chair.***

From: Commissioners Ross Davison and Peter Nodzenski

Zoning District/General Plan Designation: N/A

Coastal Zone: N/A

Historic Resources Inventory: N/A

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

Recommended Action: Receive report from the Transportation Subcommittee.

Reference: Karen Vaughn, Community Development Director

10. **NEW BUSINESS**

11. **PRESENTATIONS**

12. **NEXT MEETING – August 8, 2024**

13. **ADJOURNMENT – 7:38 pm**

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

CITY OF PACIFIC GROVE

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: October 02, 2024

SUBJECT: Introduction of Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60

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

RECOMMENDATION

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance;
3. Introduce and hold first reading of an Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60; and
4. Direct a summary of the proposed ordinance be published as approved by the City Attorney.

DISCUSSION

On July 17, 2024, there was an Agenda Report prepared by Councilmember Luke Coletti regarding a proposed Ordinance to amend the City's Municipal Code to increase short-term rental penalties in accordance with SB 60 which is codified in Government Code Section 36900. Attachment 1 to this Agenda Report is the July 17, 2024 Agenda Report and Attachment 1 (Proposed Ordinance) and Attachment 2 (Government Code Section 36900). This Agenda item was continued to the City Council meeting on August 7, 2024.

On August 7, 2024, the City Council gave direction to the City Manager to return to the Council with a draft ordinance amending Chapter 7.40 of the City's Municipal Code to increase short-term rental penalties in accordance with SB 60.

Attachment 2 to this Agenda Report is a proposed Ordinance which would amend Chapter 7.40 of the City's Municipal Code to increase short-term rental penalties in accordance with SB 60.

The recommended action is to request the City Attorney to read the title of the Ordinance and then waive further reading and introduce the Ordinance and direct a summary of the proposed ordinance be published as approved by the City Attorney.

OPTIONS

Provide alternative direction.

FINANCIAL IMPACT:
There is no fiscal impact related to enactment of the Ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

1 - AR July 17, 2024 and two Attachments
2 - Proposed Ordinance

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Councilmember Luke Coletti
MEETING DATE:	July 17, 2024
SUBJECT:	Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60
CEQA:	Does not constitute a "Project" under California Environmental Quality Act (CEQA) Section 15378

RECOMMENDATION

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

DISCUSSION

California State Law and SB 60:

California Government Section 36901 authorizes the legislative body of a city to impose fines, penalties, and forfeitures for violations of ordinances.

California Government Code Section 36900 limits the maximum fine or penalty amounts for infractions, to $100 for the first violation, $200 for a 2nd violation of the same ordinance within one year of the first violation, and $500 for each additional violation of the same ordinance within one year of the first violation. It also requires a city levying fines pursuant to these provisions to establish a process for granting a hardship waiver in certain cases. Section 1.16.011 of the City's Municipal Code mirrors this graduated schedule of code infraction fines.

California State Senate Bill 60 (SB 60) increased the maximum fine or penalty amount for violation of an ordinance relating to a residential short-term rental ordinance, that is an infraction and poses a threat to health or safety (e.g., excessive number of occupants), to $1,500 for a first violation, $3,000 for a 2nd violation of the same ordinance within one year, and $5,000 for each additional violation of the same ordinance within one year of the first violation (see Attachment-2).

Pacific Grove Short-Term Rentals:

Section 7.40.040 of the City's Municipal Code establishes the following occupancy limit for short-term rentals:

> *(c) Occupancy Limit. The maximum number of overnight occupants (aged 18 or older) allowed within an STR unit shall be two persons per bedroom, plus one additional person per STR unit. The maximum number of daytime (nonovernight) occupants shall be one and one-half times the maximum number of occupants allowed to stay overnight at the STR unit. The city has sole discretion to determine the final occupancy limit and number of vehicles to be permitted on the STR site. [Ord. 17-024 § 2, 2017].*

City code enforcement efforts indicate some lawful short-term rentals are being advertised for occupancies in excess of this limit, which poses a threat to public health and safety.

Pacific Grove voters spoke loud and clear when they adopted Measure M, a citizens' initiative that prohibits short-term rentals in all residential zoning districts outside of the coastal zone. Measure M includes the following voter-adopted finding:

> ***The City May Adopt Additional Rules to Facilitate Effective Enforcement.*** *This Initiative is enforceable under existing provisions of the Pacific Grove Municipal Code. It does not constrain the City's authority to conduct code enforcement in the manner that best protects the welfare of the entire community.*

Operation of unlawful short-term rentals poses a threat to public health and safety.

Conclusion:

The proposed ordinance promotes public health and safety, compliance with exiting law, and helps better protect the City's residential character, which is consistent with Charter Article 5.5 and General Plan Policy 1.5:

> ***Article 5.5 Residential Character of the City*** *In the exercise of their duties, obligations and authorities, the Council, boards and commissions, officers and employees of the City shall be guided by the determination of the people that Pacific Grove is primarily a city of homes and that business and industry shall be compatible with its residential character.*
>
> ***Policy 1.5*** *Protect Pacific Grove's residential character by prohibiting the short-term (less than 30 consecutive calendar days) rental of residential property in residential zoning districts, except to the extent such use is allowed in the Coastal Zone under the Local Coastal Program. The Pacific Grove Municipal Code shall be consistent with this Policy.*

Therefore, the Pacific Grove City Council should implement short-term rental penalties consistent with California State Law. Several California cities have already done so.

OPTIONS
Provide alternative direction.

FISCAL IMPACT
There is no fiscal impact related to enactment of the Ordinance.

GOAL ALIGNMENT
Not applicable.

ATTACHMENTS
1. Proposed Ordinance
2. Gov Code Section 36900

ORDINANCE NO. 24-XXX

AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING PACIFIC GROVE MUNICIPAL CODE CHAPTER 7.40 LIMITS ON SHORT-TERM RENTALS TO CLARIFY ENFORCEMENT OF INFRACTIONS

FACTS

1. The City of Pacific Grove is a Charter City.

2. The City of Pacific Grove enacted and presently implements a Short-Term Rental Program regulated by Pacific Grove Municipal Code (PGMC) Chapter 7.40, as adopted in 2017 by Ordinance. 17-024, and as amended in 2020 by Ordinance 20-027; and

3. In enacting its comprehensive code to regulate issuance of and conditions attached to short-term rental licenses the City Council found this regulatory program is necessary to protect the public health, safety, and welfare; and

4. Issues that require regulation of STRs include but are not limited to permitting, tax compliance, noise, parking, and occupancy, as well as host and platform obligations and responsibilities; and

5. This Ordinance further clarifies Chapter 7.40 of the Municipal Code in accord with SB 60 of 2021 as signed into law by Governor Newsom. SB 60 allows cities to impose a fine of up to $5,000 for public and health and safety violations of a short-term rental ordinance; and

6. Adoption of this ordinance to Amend PGMC Chapter 7.40 does not constitute a "Project" Under California Environmental Quality Act (CEQA) Guidelines Section 15378 as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment.

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

SECTION 1. The City Council hereby finds and determines the foregoing Facts to be true and correct and are therefore incorporated herein by reference.

SECTION 2. Section 7.40.130 "Definitions" of PGMC Title 7, Chapter 7.40 shall be amended by the addition of all text shown below in ***bold italics text.***

7.40.130 Definitions.

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"Advertising" means signs, circulars, cards, telephone books, newspapers, magazines, posters, email, mobile applications, television, radio, or any other representation implying or stating the property is available for short-term rental use.

"Block" means as designated by Monterey County assessor.

"Block density" means STRs on a block divided by parcels on that block, expressed as a percentage.

"Block density limit" means block density of 15 percent.

The terms "owner," "owner representative," "person," "remuneration," "residential property," "responsible tenant," "transient," "transient use," "transient use of residential property," and "transient use site" as used in this chapter shall be given the same definition as those terms in PGMC 23.64.350.

"Residential dwelling" is a term that shall mean a private structure designed and available for use and occupancy as a residence by one or more individuals. "Residential dwelling" does not include a commercially operated hotel, motel, bed and breakfast inn, or time-share property as specified.

"Short-term rental (STR)" is a term that shall mean a short-term rental unit that is rented for periods of less than 30 consecutive days for remuneration. ***This term shall include or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.***

"Short-term rental use" or "short-term occupancy" means the use, by any person, of residential property for transient lodging where the term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession, or tenancy is less than 30 consecutive calendar days.

"STR license" shall authorize the short-term rental use of an entire dwelling unit.

"STR site manager" shall mean the representative of the person or entity that owns an STR.

"Sun-setting" means a method in which licenses are discontinued. The sun-setting determination shall be the result of a lottery to ensure blocks are consistent with a block density limit of 15 percent.

"Zone of exclusion" shall mean the range of 55 feet from an existing STR parcel boundary. Any parcel that is located within the 55-foot zone of exclusion shall be ineligible for an STR license.

SECTION 3. Section 7.40.190 "Penalties" of PGMC Title 7, Chapter 7.40 shall be amended by the addition of all text shown below in ***bold italics text.***

7.40.190 *Administrative* Penalties.

Penalties as set forth in Chapter 1.16 PGMC, or the administrative process set forth in Chapter 1.19 PGMC, may be imposed ***as Administrative Penalties*** for failure to comply with the provisions of Chapter 23.64 PGMC or this chapter, with respect to:

(a) Any STR owner, STR site manager, or person who transacts or carries on any activity relating to or supporting the short-term rental use of residential property in the city without first having procured and complied with an STR license from the city and paying all applicable license fees shall be subject to administrative penalties as set forth in Chapter 1.19 PGMC, including administrative penalties imposed by a hearing officer for violation of any provision of this chapter in an amount not to exceed a maximum of $2,500 per day for each continuing violation, in addition to administrative costs, interest and restitution for compliance re-inspections, for any related series of violations, and/or forfeiture of all rents received during the period short-term rental use was allowed without an STR license, whichever amount is greater;

(b) Any owner, owner representative, responsible tenant, person acting as agent, real estate broker, real estate sales agent, property manager, reservation service or otherwise who advertises the use of residential property in violation of the provisions of this chapter shall be subject to administrative penalties as set forth in Chapter 1.19 PGMC, including administrative penalties imposed by a hearing officer for violation of any provision of this chapter in an amount not to exceed a maximum of $100.00 per day for each continuing violation, in addition to administrative costs, interest, and restitution;

(c) Any STR owner, STR site manager, or person who fails to immediately respond to neighborhood concerns regarding any activity at the short-term rental site and who has failed to timely remedy any violation in response to two or more complaints shall be subject to administrative penalties;

(d) Any STR owner, STR site manager, responsible tenant or person who allows a short-term rental use site to be used or maintained in a manner detrimental to the peace, public health, safety or general welfare of persons or property of the neighborhood or the public, and fails to timely remedy this violation in response to two or more complaints;

(e) Any STR owner, STR site manager, responsible tenant or person who allows impermissible or inappropriate behavior at the STR unit or action that exceeds the limits on short-term rental use set by PGMC 7.40.040 following two or more complaints;

(f) Limits upon administrative penalties in PGMC 1.19.200 shall not apply to any violation of this chapter.

SECTION 4. Section 7.40.195 "Enforcement of Infractions" of PGMC Title 7, Chapter 7.40 shall be added as shown below in ***bold italics text.***

7.40.195 ***Enforcement of Infractions.***

In lieu of, or in addition to any "Administrative Penalties" authorized by PGMC Section 7.40.190, the City may prosecute any violation Short-Term Rental Program regulated by Pacific Grove Municipal Code (PGMC) Chapter 7.40 as an infraction as follows:

(a) Penalty provisions set by this Section shall apply only to infractions that pose a threat to public health and safety, and do not apply to a first-time offense of failure to register or pay a business license fee.

(b) A fine shall not exceed $1,500 for a first violation of Chapter 7.40;

(c) A fine shall not exceed $3,000 for a second violation of Chapter 7.40 within twelve consecutive months; and,

(d) A fine shall not exceed $5,000 for each additional violation of Chapter 7.40 within twelve consecutive months from the date of the first violation.

(e) A hardship waiver request may be considered to reduce or offset penalty provisions of this section as follows:

(1) The hardship waiver request shall be filed with the city manager on an application form, available from the office of the city manager, within 10 days of the date of the citation. The application shall state the amount of the waiver request, and clearly state all circumstances that justify the waiver.

(2) The requirement to pay the full amount of the fine required by this section shall be stayed unless or until the city manager makes a determination on the hardship waiver request.

(3) The cited party shall submit to the city manager a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the city manager the person's actual financial inability to pay to the city the full amount of the fine required by this section.

(4) The city manager shall issue a written determination listing the reasons for his or her determination to issue or not issue the hardship waiver. The written determination of the city manager shall be final.

(5) The written determination of the city manager shall be served upon the person who filed the request for hardship waiver. This determination shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure, and the time limit set by PGMC 1.20.010 shall apply.

SECTION 5. If any provision, section, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or

phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional**.**

SECTION 6. In accord with Article 15 of the City Charter, this Ordinance shall take effect 30 days after adoption on the second reading.

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

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE, Mayor

ATTEST:
DATED: _____

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____
BRIAN A. PIERIK, City Attorney

DRAFT

STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

State of California

GOVERNMENT CODE

Section 36900

36900. (a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by the following:

(1) A fine not exceeding one hundred dollars ($100) for a first violation.

(2) A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year.

(3) A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year.

(c) Notwithstanding any other law, a violation of local building and safety codes determined to be an infraction is punishable by the following:

(1) A fine not exceeding one hundred thirty dollars ($130) for a first violation.

(2) A fine not exceeding seven hundred dollars ($700) for a second violation of the same ordinance within one year.

(3) (A) A fine not exceeding one thousand three hundred dollars ($1,300) for each additional violation of the same ordinance within one year of the first violation.

(B) A fine not exceeding two thousand five hundred dollars ($2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(d) (1) Notwithstanding any other law, including subdivisions (b) and (c), the violation of a short-term rental ordinance that is an infraction is punishable by the following:

(A) A fine not exceeding one thousand five hundred dollars ($1,500) for a first violation.

(B) A fine not exceeding three thousand dollars ($3,000) for a second violation of the same ordinance within one year.

(C) A fine not exceeding five thousand dollars ($5,000) for each additional violation of the same ordinance within one year of the first violation.

(2) For purposes of this section, "short-term rental" means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.

(3) For purposes of this section, "residential dwelling" means a private structure that is designed and available, pursuant to applicable law, for use and occupancy by

one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or a time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.

(4) The fine limits set by this subdivision apply only to infractions that pose a threat to public health or safety. The fines described in this subdivision shall not apply to a first time offense of failure to register or pay a business license fee. Nothing in this subdivision limits the authority of a city, or city and county, to establish lower fines for specific violations by ordinance.

(e) A city levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (d), shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

(Amended by Stats. 2021, Ch. 307, Sec. 2. (SB 60) Effective September 24, 2021.)

ORDINANCE NO. 24-XXX

AN ORDINANCE OF THE CITY OF PACIFIC GROVE AMENDING PACIFIC GROVE MUNICIPAL CODE CHAPTER 7.40 LIMITS ON SHORT-TERM RENTALS TO CLARIFY ENFORCEMENT OF INFRACTIONS

FACTS

1. The City of Pacific Grove is a Charter City.

2. The City of Pacific Grove enacted and presently implements a Short-Term Rental Program regulated by Pacific Grove Municipal Code (PGMC) Chapter 7.40, as adopted in 2017 by Ordinance. 17-024, and as amended in 2020 by Ordinance 20-027; and

3. In enacting its comprehensive code to regulate issuance of and conditions attached to short-term rental licenses the City Council found this regulatory program is necessary to protect the public health, safety, and welfare; and

4. Issues that require regulation of STRs include but are not limited to permitting, tax compliance, noise, parking, and occupancy, as well as host and platform obligations and responsibilities; and

5. This Ordinance further clarifies Chapter 7.40 of the Municipal Code in accord with SB 60 of 2021 as signed into law by Governor Newsom. SB 60 allows cities to impose a fine of up to $5,000 for public health or safety violations of a short-term rental ordinance; and

6. Adoption of this ordinance to Amend PGMC Chapter 7.40 does not constitute a "Project" Under California Environmental Quality Act (CEQA) Guidelines Section 15378 as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment.

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

SECTION 1. The City Council hereby finds and determines the foregoing Facts to be true and correct and are therefore incorporated herein by reference.

SECTION 2. Section 7.40.195 "Enforcement of Infractions Posing a Threat to Public Health or Safety" of PGMC Title 7, Chapter 7.40 shall be added as shown below in ***bold italics text.***

7.40.195 ***Enforcement of Infractions Posing a Threat to Public Health or Safety.***

In lieu of, or in addition to any "Penalties" authorized by PGMC Section 7.40.190, the City may prosecute any person for any violation of the Short-Term Rental Program regulated by Pacific Grove Municipal Code (PGMC) Chapter 7.40 as an infraction as follows:

(a) Penalty provisions set by this Section shall apply only to infractions that pose a threat to public health or safety as enumerated in subsection (g). In no case shall such penalties exceed maximum fine amounts established pursuant to California Government Code Section 36900 et seq., or future amendments thereof.

(b) A fine shall not exceed $100.00 for a first violation for failure to license a short-term rental where short-term rental use of the residential property is an allowed use. Where short -term rental use of the residential property is not an allowed use, 7.40.195(c) shall apply.

(c) A fine shall not exceed $1,500 for any other first violation of Chapter 7.40;

(d) A fine shall not exceed $3,000 for a second violation of Chapter 7.40 within twelve consecutive months; and,

(e) A fine shall not exceed $5,000 for each additional violation of Chapter 7.40 within twelve consecutive months from the date of the first violation.

(f) A hardship waiver request may be considered to reduce or offset penalty provisions of this section as follows:

(1) The hardship waiver request shall be filed with the city manager on an application form, available from the office of the city manager, within 10 days of the date of the citation. The application shall state the amount of the waiver request, and clearly state all circumstances that justify the waiver.

(2) The requirement to pay the full amount of the fine required by this section shall be stayed unless or until the city manager makes a determination on the hardship waiver request.

(3) The cited party shall submit to the city manager a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the city manager the person's actual financial inability to pay to the city the full amount of the fine required by this section.

(4) The city manager shall issue a written determination listing the reasons for his or her determination to issue or not issue the hardship waiver. The written determination of the city manager shall be final.

(5) The written determination of the city manager shall be served upon the person who filed the request for hardship waiver. This determination shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure, and the time limit set by PGMC 1.20.010 shall apply.

(g) Infractions which pose a threat to public health or safety are the following:

(1) Short-term rental use of residential property without a valid STR license;
(2) Exceeding allowable occupancy limits (overnight);
(3) Exceeding allowable occupancy limits (daytime);
(4) Violation of the city's codified noise ordinance;
(5) Operation of auctions, commercial functions, or other similar events;
(6) Failure to dispose of solid waste;
(7) Failure to properly store waste and refuse bins;
(8) The STR owner, site manager, guest or any occupant of an STR unit engages in disorderly conduct at that site; and
(9) Any other incident or conduct which, upon the determination of the City Code Compliance Officer, poses a threat to public health or safety.

SECTION 3. If any provision, section, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional**.**

SECTION 4. In accord with Article 15 of the City Charter, this Ordinance shall take effect 30 days after adoption on the second reading.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

_____
BILL PEAKE, Mayor

ATTEST:
DATED: _____

_____
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

_____

BRIAN A. PIERIK, City Attorney

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Brian Pierik, City Attorney

MEETING DATE: October 02, 2024

SUBJECT: Resolution Of The City Council Of The City Of Pacific Grove Declaring Its Intent To Initiate Procedures For A Transition From At-Large To District-Based Council Member Elections

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

RECOMMENDATION

1. Motion to adopt Resolution Of The City Council Of The City Of Pacific Grove Declaring Its Intent To Initiate Procedures For A Transition From At-Large To District-Based Council Member Elections in the form of Attachment 1
2. Motion to direct the City Manager to develop a tentative timeline for conducting public hearings, formulating proposed district maps scenarios and election sequencing, and present a draft ordinance to the City Council for action.
3. Motion to authorize the Mayor to sign an Agreement with LULAC to extend the date to complete the transition to district-based elections within the safe harbor provisions of Elections Code Section 10010 to March 31, 2025 provided that LULAC agrees to such an extension.
4. Motion to authorize the Mayor to sign a First Amendment to City of Pacific Grove Professional Services Agreement with National Demographic Corporation for Further Demographer Services in an amount not to exceed $49,000.

DISCUSSION

A. Background

July 9, 2002: SB 976 filed with the Secretary of State adding Chapter 1.5 to Division 14 of the California Elections Code known as the California Voting Rights Act ("CVRA") which became effective on January 1, 2003 (Attachment 2).

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 3). 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. At the time of receipt of the 8.25.22 Letter, the City of Santa Monica case involving CVRA issues, discussed below, had not yet been decided by the California Supreme Court.

March 6, 2024: The subject of the CVRA was discussed by the City Council. The discussion included

reference to 8.25.22 Letter from LULAC and the City of Santa Monica case and other CVRA issues. At that meeting, the City Council authorized the City Manager to retain a demographer to perform a demographic analysis of the City.

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

August 23, 2024: City received by certified mail an undated letter ("8.23.24 Letter") from Aidee Farias (LULAC District 12 Director), see Attachment 5. 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 requested 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.

September 4, 2024: There was a City Council meeting in which there was a discussion regarding the 8.23.24 LULAC Letter. After a discussion at the City Council meeting regarding the CVRA, and receipt of public comment, the City Council voted to direct the City Manager to return to the City Council with a Resolution of Intent to Transition from At-Large Elections to By-District Elections and to retain a demographer to assist in that transition process.

B. California Voting Rights Act ("CVRA")

As noted, the CVRA became effective on January 1, 2003 and is set forth in Elections Code §§ 14025 - 14032. (Attachment 2.) 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.

There are seven cities in the County of Monterey with District-Based Elections:

1. Gonzales
2. Greenfield
3. King City
4. Marina
5. Monterey
6. Salinas
7. Soledad

C. 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 on August 30, 2023 (Attachment 7).

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 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.

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 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.

G. 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.

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

1. 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.

H. 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 LULAC 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 for the expiration of the "safe harbor" provisions of Section 10010 can be extended by up to 90 days upon agreement with LULAC which would extend the safe harbor 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."

Request has been made to LULAC for an agreement to extend the 90 day safe harbor period to March 31, 2025 if the City adopts a Resolution of Intent before October 7, 2024. At this time, the City has not yet received a response from LULAC to this request.

I. Impact of 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.

Since the City does not know at this time whether there will be a need to create six districts of four districts in light of the pending Measure Z, the proposed Resolution of Intent has been drafted to address both possibilities, namely what will happen if Measure Z is not approved by the voters and what will happen if Measure Z is approved. Recitals P to Q of the proposed Resolution read as follows:

1. Recital P: On the ballot for the November 5, 2024 General Election is City Measure Z which will ask the voters this question ("Measure Z"):

> *Shall the Pacific Grove City Charter be amended to reduce the size of the City Council from six Councilmembers and a Mayor to four Councilmembers and a Mayor such that: in 2026 two Councilmembers shall be elected to four-year terms, and one to a single two-year term, and every two years thereafter two Councilmembers shall be elected to four-year terms; with associated amendments for votes needed for a quorum, majority vote and other select actions?*

2. Recital Q: If Measure Z is not approved by a majority of the voters on November 5, 2024, then the City should create six districts with the first district elections held in November 2026.

3. Recital R: If Measure Z is approved by a majority of the voters on November 5, 2024, then:

(1) In the November 2026 General Election, there will be three Councilmembers elected with two Councilmembers serving a four year term which shall expire in December 2030 and one Councilmember serving a two year term which shall expire in December 2028.

(2) In the November 2028 General Election, there will be two Councilmembers elected to a four year term which shall expire in December 2032 who will join with the two Councilmembers elected to a four year term in the November 2026 General Election resulting in a City Council comprised of four City Councilmembers and a directly-elected Mayor.

(3) If Measure Z is approved by the voters on November 5, 2024, then in order to avoid the confusing, time consuming and costly process of creating six districts for the November 2026 election and thereafter creating four districts for the November 2028 election, the City should create four districts in 2025 and the first district elections will be held in the November 2028 General Election.

Further, in order to plan for the circumstance that Measure Z may be approved by the voters on November 5, 2024, Section 2 of the Resolution of Intent reads as follows:

2. The City Council hereby resolves to consider adoption of an ordinance, as authorized by Government Code Section 34886 and consistent with Elections Code Section 10010, to transition to a district-based election system for use in the City's General Municipal Election for City Council members as follows:

(a) If Measure Z is not approved by the voters on November 5, 2024, then the City will create six districts with the first district elections for three City Council seats to be held in the November 2026 General Election or

(b) If Measure Z is approved by the voters on November 5, 2024, then the City will create four districts with the first district elections for two City Council seats to be held in the November 2028 General Election.

J. 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 safe harbor provisions, 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.

K. Conclusion

Based upon the direction of the City Council at its meeting on September 4, 2024, the recommended actions are set forth in this Agenda Report and include:

1. Motion to adopt Resolution Of The City Council Of The City Of Pacific Grove Declaring Its Intent To Initiate Procedures For A Transition From At-Large To District-Based Council Member Elections in the form of Attachment 1

2. Motion to Provide Direction to City Manager develop a tentative timeline for conducting public hearings, formulating proposed district maps scenarios and election sequencing, and present a draft ordinance to the city council for decision.

3. Motion to authorize the Mayor to sign an Agreement with LULAC to extend the date to complete the transition to district-based elections within the safe harbor provisions of Elections Code Section 10010 to March 31, 2025 provided that LULAC agrees to such an extension.

4. Motion to authorize the Mayor to sign a First Amendment to City of Pacific Grove Professional Services Agreement with National Demographic Corporation for Further Demographer Services in an amount not to exceed $49,000 (Attachment 9).

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

Provide alternative action.

FINANCIAL IMPACT:

If the Council adopts a Resolution of Intent to Transition from At-Large Elections to District Elections, then the financial impact will include staff time, costs for a demographer to assist with the transition and preparation of draft district maps in an amount not to exceed $49,000 and potentially costs payable to LULAC not to exceed $37,500.00.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

1 - Resolution of Intent
2 - CVRA Elections Code Sections 14025 - 14032
3 - LULAC Letter of August 25, 2022
4 - Agenda Report dated March 6, 2024 and Demographic Report by NDC
5 - LULAC Letter of August 23, 2024
6 - Pico Neighborhood v. Santa Monica
7 - League of California Cities paper dated August 30, 2023
8 - California Elections Code § 10010
9 - 1st Amdt to NCD Contract

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DECLARING ITS INTENT TO INITIATE PROCEDURES FOR A TRANSITION FROM AT-LARGE TO DISTRICT-BASED COUNCIL MEMBER ELECTIONS PURSUANT TO ELECTIONS CODE § 10010 AND GOVERNMENT CODE § 34886, DIRECTING CITY MANAGER DEVELOP A TENTATIVE TIMELINE FOR CONDUCTING PUBLIC HEARINGS, FORMULATING PROPOSED DISTRICT MAPS SCENARIOS AND ELECTION SEQUENCING, AND PRESENTING A DRAFT ORDINANCE TO THE CITY COUNCIL FOR DECISION

RECITALS

A. Pursuant to Article 6 of the Charter of the City of Pacific Grove, members of the City Council of the City of Pacific Grove ("City") are currently elected in at-large elections, that is, each member is elected in a city-wide vote.

B. On August 23, 2024, the City received a certified letter ("Letter") from the District 12 Director of the League of United Latin American Citizens ("LULAC"). The Letter 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 and the Letter urges the City 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.

C. A violation of the CVRA may be established if it is shown that racially polarized voting has combined with an at-large voting system to impair the ability of a protected class of voters to elect candidates of its choice or to influence the outcome of an election (Elections. Code § 14027).

D. Under the CVRA, "racially polarized voting" means voting in which there is a difference between 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 [Elections Code § 14026(e)]

E. The CVRA applies only to at-large electoral systems and thus favors district-based electoral systems, as defined (Elections Code § 14026(b)), which are not subject to attack under the CVRA, even if there is racially polarized voting in the districts.

F. The Letter received by the City did not include an assertion that racially polarized voting occurred in the City or any evidence to support such a claim, nor, at this time, is the City itself aware of any such evidence.

G. The City denies that its election system violates the CVRA or any other provision of law and asserts that City's election system is legal in all respects.

H. The City can transition to district-based elections even if there is no violation of the CVRA and the City Council has determined that the public interest is better served by initiating a

process for transition to a district-based election system and thereby avoiding the costs associated with defending a lawsuit under the CVRA at some time in the future.

I. The California Legislature in Elections Code § 10010 has provide a method whereby a jurisdiction can expeditiously transition to a district-based election system and thereby protect itself against the high cost of litigation under the CVRA.

J. California Government Code § 34886 provides additional protection by authorizing the legislative body of a city, under certain circumstances and without a vote, to adopt an ordinance to change its method of election from an at-large system to a district-based system in which either (a) each council member is elected only by the voters in the district in which the candidate resides, or (b) all council members except the mayor are elected by district and the mayor is elected by a city-wide vote.

K. The CVRA, Elections Code § 10010, and Government Code § 34886 are General Laws of the State of California and Article 8 of the Charter of the City of Pacific Grove requires the City's General municipal elections to be held pursuant to the provisions of the General Laws of the State of California.

L. The of the purposes of the CVRA and Elections Code § 10010 is to encourage the election of the governing body of a jurisdiction on a by-district basis, such that the voters of each district elect one of the district's own residents to be its representative on the governing body, thus protecting the jurisdiction from CVRA litigation.

M. Another purpose of California Elections Code § 10010 is to prohibit CVRA litigation and place a cap on the recovery of attorneys' fees associated with a CVRA claim, if, within forty-five (45) days of receipt of a claim under the CVRA by certified letter, the City adopts a resolution stating its intent to transition to district-based elections, and, within ninety (90) days thereafter (or as otherwise stipulated by the parties), the City adopts an ordinance transitioning to a district-based election system consistent with the intent and purpose of the California Voting Rights Act.

N. Prior to the City Council's consideration of an ordinance to establish district boundaries for a district-based electoral system, California Elections Code § 10010 requires all of the following:

1. Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) public hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts.

2. After all draft maps are drawn, City shall publish and make available for release at least one draft map and, if members of the City Council will be elected for staggered terms of office, the potential sequence of the elections shall also be published.

3. The City Council shall also hold at least two (2) additional hearings over a period of no more than forty-five (45) days, at which the public shall be invited to

provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.

4. The first version of a draft map shall be published at least seven (7) 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 (7) days before being adopted.

O. The City will retain an experienced qualified demographer to assist the City in the development of a proposal for a district-based electoral system.

P. On the ballot for the November 5, 2024 General Election is City Measure Z which will ask the voters this question ("Measure Z"):

Shall the Pacific Grove City Charter be amended to reduce the size of the City Council from six Councilmembers and a Mayor to four Councilmembers and a Mayor such that: in 2026 two Councilmembers shall be elected to four-year terms, and one to a single two-year term, and every two years thereafter two Councilmembers shall be elected to four-year terms; with associated amendments for votes needed for a quorum, majority vote and other select actions?

Q. If Measure Z is <u>not</u> approved by a majority of the voters on November 5, 2024, then the City should create six districts with the first district elections held in November 2026.

R. If Measure Z <u>is</u> approved by a majority of the voters on November 5, 2024, then:

1. In the November 2026 General Election, there will be three Councilmembers elected with two Councilmembers serving a four year term which shall expire in December 2030 and one Councilmember serving a two year term which shall expire in December 2028.

2. In the November 2028 General Election, there will be two Councilmembers elected to a four year term which shall expire in December 2032 who will join with the two Councilmembers elected to a four year term in the November 2026 General Election resulting in a City Council comprised of four City Councilmembers and a directly-elected Mayor.

3. If Measure Z is approved by the voters on November 5, 2024, then in order to avoid the confusing, time consuming and costly process of creating six districts for the November 2026 election and thereafter creating four districts for the November 2028 election, the City should create four districts in 2025 and the first district elections will be held in the November 2028 General Election.

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

1. The foregoing Recitals are true and correct and are hereby incorporated by this reference as if set forth in full.

2. The City Council hereby resolves to consider adoption of an ordinance, as authorized by Government Code Section 34886 and consistent with Elections Code Section

10010, to transition to a district-based election system for use in the City's General Municipal Election for City Council members as follows:

(a) If Measure Z is not approved by the voters on November 5, 2024, then the City will create six districts with the first district elections for three City Council seats to be held in the November 2026 General Election or

(b) If Measure Z is approved by the voters on November 5, 2024, then the City will create four districts with the first district elections for two City Council seats to be held in the November 2028 General Election.

3. The City Council directs the City Manager to work with a qualified demographer and other consultants as needed, to formulate, for review by the public and the City Council, one or more electoral district scenarios, each fully consistent with the intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act, and other relevant laws.

4. Working with the qualified demographer and other consultants as needed, the City Manager is directed to publicize and post information regarding the proposed transition to a district-based election system, including relevant maps, notices, agendas and other information and to establish a means of communication to receive comments and answer questions from the public.

5. The City Council intends to complete the transition to district-based elections by January 1, 2025, but in no event later than March 31, 2025, by conducting public hearings pursuant to Elections Code § 10010 to solicit and receive public input and testimony on proposed district-based electoral map scenarios and for the City Council's evaluation, possible refinement and ultimate adoption by ordinance of a district-based election system for election of City Council members.

6. The City Manager is directed to develop an initial tentative timeline for consideration of the City Council, which timeline may be adjusted by the City Manager as he deems necessary or appropriate during the districting process, including pursuant to Elections Code § 10010(e)(3)(C).

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE this 2nd day of October, 2024.

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: _____ APPROVED: _____
Sandra Kandell, City Clerk Bill Peake, Mayor

APPROVED AS TO FORM:

_____
Brian Pierik, City Attorney

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.

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

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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 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

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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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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").

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

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.

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

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

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

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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.,

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.

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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.

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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.

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Elections 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

(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.

(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.

(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.

FIRST AMENDMENT TO CITY OF PACIFIC GROVE PROFESSIONAL SERVICES AGREEMENT WITH NATIONAL DEMOGRAPHIC CORPORATION FOR DEMOGRAPHER SERVICES

This First Amendment to City of Pacific Grove Professional Services Agreement ("Agreement"), is made and effective as of October 3, 2024, between the City of Pacific Grove ("City"), a municipal corporation and National Demographic Corporation, a California corporation ("CONSULTANT").

The City and Consultant hereby agree to the following terms:

1. On May 20, 2024, the City and Consultant entered into a City of Pacific Grove Agreement for Professional Services generally described as: professional demographer services and the production of a report that describes the City's demographic characteristics.

2. The Agreement provided Consultant agrees to the Section 2 Scope of Work that was set Forth in Exhibit A to the agreement.

3. This First Amendment to the Agreement revises Section 2 Scope of Work and replaces with the Scope of Work further described in Exhibit A to this First Amendment and includes Consultant's Standard Districting Scope of Work.

4. The Agreement provided Consultant agrees to the following in Section 5 a. of the agreement:

   "PAYMENT

   a. The City agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the Payment Schedule as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Twelve-Thousand-Two-Hundred-Fifty dollars ($12,250.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

5. This First Amendment to the Agreement replaces Exhibit B attached to this Amendment and revises Section 5 a. to the not to exceed amount as follows:

   "PAYMENT

   ~~a.~~ The City agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the Payment Schedule as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Forty-nine-thousand dollars ($49,000.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement. The not to exceed amount of $49,000 includes the $12,250 paid on the Agreement plus an additional $36,500 for the services described in Exhibit A to this Amendment for a total rounded to $49,000 and this will include two in person meetings (total $6000) and two virtual meetings ((total $3000).

6. Except as modified by this First Amendment, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, City and Catacutan have executed this First Amendment as of the day and year written below.

CITY OF PACIFIC GROVE	CONSULTANT
By:_____	By:_____
Mayor	Consultant
Date: _____	Date: _____
By:_____	
City Attorney	
Date: _____	

Attachments: Exhibit A Scope of Services
Exhibit B Payment Schedule

EXHIBIT A

SCOPE OF SERVICES

The scope of services to be provided by CONSULTANT, which are summarized from the Request for Proposals below, are in addition to the detailed CONSULTANT proposal included asr EXHIBIT E.

CONSULTANT shall develop and provide a study that will include analysis of:

- Districting Project Setup and coordination:
    - Development of demographic database including Census Bureau and California Statewide Database data of total population, citizen voting age population, voter registration, voter turnout, and socio-economic data on language spoken at home, renters vs homeowners, age, education level, and other factors useful in identifying communities of interest;
    - Incorporation of any Geographic Information System (GIS) data that the jurisdiction wishes to include and provides (often including school locations; school attendance areas; important local landmarks; or local neighborhood boundaries);
    - Initial telephonic discussion with about data, communities of interest, schedule, criteria and special concerns of the jurisdiction;
    - Assist jurisdiction with developing a communications plan for public outreach, including suggestions for webpage content and design, public feedback logistics, and strategies for engaging constituents;
    - Assist jurisdiction with developing a project plan, including a detailed timeline, goals and objectives, and specific deliverables list;
    - Provide progress reports on an as-needed basis as determined by the project manager and meet regularly with project team;
    - Any phone- or web-conference calls to discuss the project's progress or to answer any questions that may arise;
    - Provide education and guidance on required redistricting criteria, and advice on selecting optional redistricting criteria, for staff and elected officials;
    - Preparation and delivery of reports required under Elections Code Section 21130(b);
- Districting Plan Development:

- Creation of 2 to 4 initial draft maps;
- Analysis and preparation for presentation of all whole or partial plans submitted by the public;
- Conversion of all maps and reports to web-friendly versions;
- Online posting of all maps to an interactive review website;
- Create any requested additional and/or revised maps as requested;

- Plan implementation:
  - Provide spatial data in GIS-friendly format of any dataset used or created for this project to staff upon request;
  - Work with the County Registrar of Voters to implement the final adopted plan;

- Project Options
  - Number of virtual or in-person meetings (and resulting per-meeting fee);
  - Consultant-prepared and -managed project website;
  - Online mapping tool allowing residents to draw and submit maps;
  - Paper-based mapping tool allowing residents to draw and submit maps.

o **EXHIBIT B**

PAYMENT SCHEDULE

Invoices shall be submitted to the City based on work performed. The total cost of services under this agreement shall not exceed $49,000.

1. Redistricting Project Elements (Covers everything listed above except for per-meeting and optional expenses): ..... $ 16,500

2. Per-Meeting expense:

    a. In-person attendance, per meeting ..... $ 3,000

    b. Virtual (telephonic, Zoom, etc.) attendance, per meeting ..... $ 1,500

For each meeting, NDC will prepare meeting materials, including presentation materials and maps; present and explain key concepts, including mandatory and traditional redistricting criteria and "communities of interest"; facilitate conversations; answer questions; and gather feedback on existing and proposed boundaries. Per-meeting prices include all travel and other anticipated meeting-related expenses. Telephone calls to answer questions, discuss project status, and other standard project management tasks do not count as meetings and do not result in any charge.

3. Optional Project Elements:

    a. Project website ..... $ 6,500

    b. Public mapping tool options:

        i. Online and paper system including all elements below ..... $ 4,500

            1. DRA (an easy-to-use online mapping tool, also known as "Dave's Redistricting App")

            2. Public Participation Kit paper-based mapping tool

    c. Public Participation Kit mapping tool alone ..... $ 3,000

Credit for Work Already Performed on Demographic Analysis: .... ($ 3,500)

CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Debby Beck, Councilmember, Luke Coletti, Councilmember
MEETING DATE:	October 02, 2024
SUBJECT:	"The Butterflies" Art Donation Subcommittee Report
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

At its September 4, 2024, meeting the City Council discussed Nader Agha's proposed gift of a large stained-glass window titled "The Butterflies." The Council took the following action:

> *Discussed proposed gift of a stained-glass window and created a subcommittee to look at locations for the stained-glass window and report back to council the first week in October.*

The September 4, 2024, agenda report describes the window as follows: a 12' x 8' stained-glass window, consisting of three panels forming a semicircle of fluttering monarchs, which was designed by Nader Ahga and spent decades as the feature fenestration of the Holman Building.

The Subcommittee reviewed the plan set for the Holman Building Condominium Project and located a detail for the window (see page 2 of Attachment-1). The detail indicates the window is approximately 19' wide.

As the theme of the piece is Monarch butterflies, the Subcommittee concluded the best location for the proposed gift would be the Pacific Grove Museum of Natural History. On Sept 18, 2024, the Subcommittee met with Museum Director Rachel Miller. We discussed where the piece might be placed and agreed the arched window on the south wall was likely the best location. The concept would be to enclose the piece in a weatherproof frame that is mounted to the outside of the building. The Subcommittee developed a concept image showing the piece at this location (see page 1 of Attachment-1).

An alternate location would be to individually hang the three panels at City Hall. A stained-glass window from the Old Methodist Church currently hangs at City Hall (see Attachment-2).

If the donor wishes to pursue either of these two locations more detailed plans will need to be developed and brought to Council for approval.

This concludes the Subcommittee's involvement.

OPTIONS

1. Take no action.
2. Provide alternate direction.

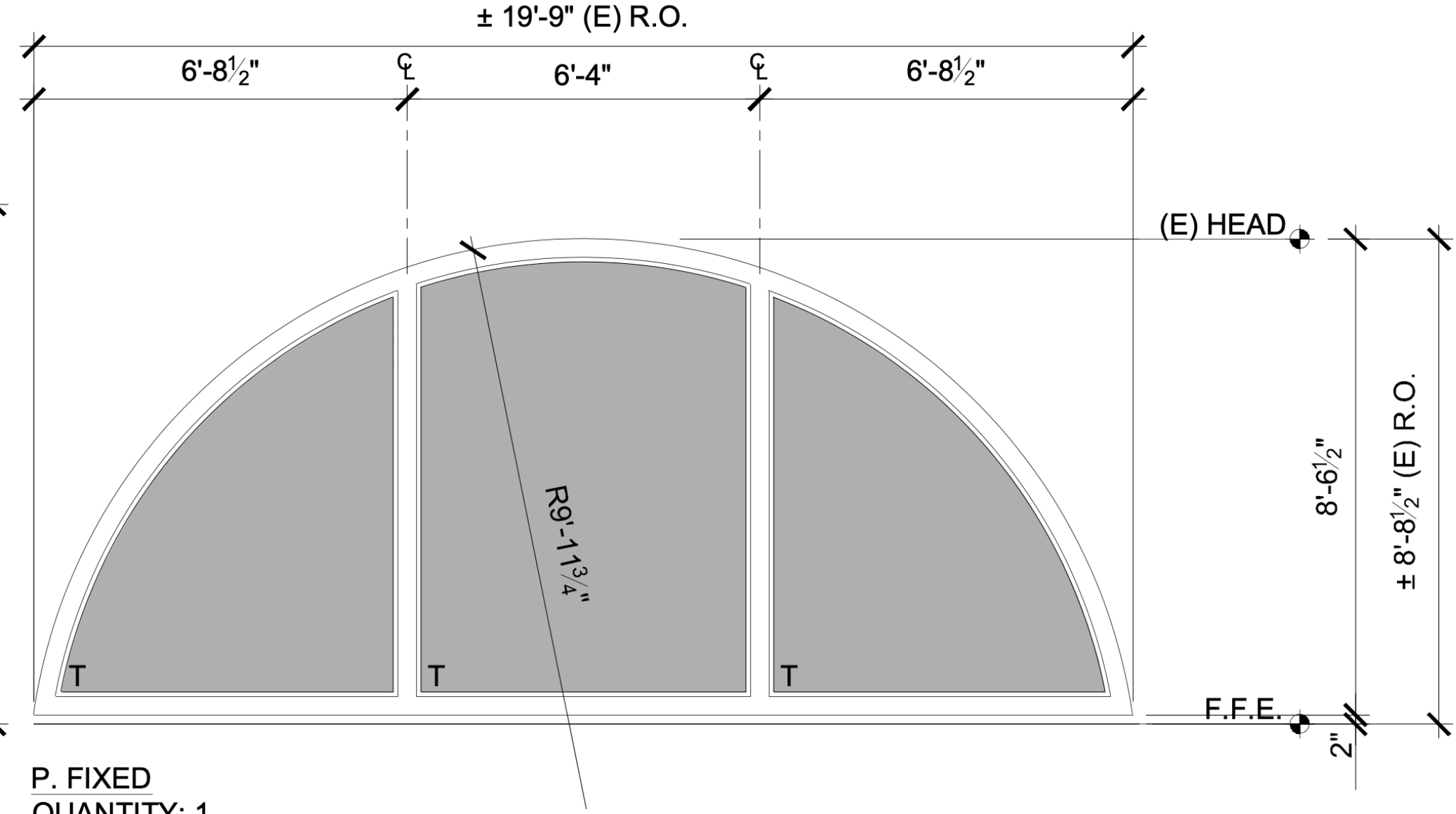
FINANCIAL IMPACT:
There is no cost associated with receiving the report.

GOAL ALIGNMENT: Not Applicable.

Attachments

1 - "The Butterflies" Window at Museum
Methodist Window at City Hall


19 feet
17 feet



P. FIXED
QUANTITY: 1


CITY OF PACIFIC GROVE, CA
INC. 1889
300

