



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

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of the City Council

**FROM:** David C. Laredo, City Attorney

**MEETING DATE:** November 28, 2018

**SUBJECT:** Second Reading of an Ordinance to Repeal Former Chapter 11.68 and Adopt Revised Chapter 11.68 of the Pacific Grove Municipal Code.

**CEQA STATUS** Local Water Project EIR certified 11/19/2014 (SCH#2014021058); Subcommittee report, adoption Ordinance to Amend PGMC Chapter 11.68 is an organizational and administrative act that does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 15378.b.5.

**RECOMMENDATION**

Hold second reading and adopt an ordinance to repeal former Chapter 11.68 and enact revised Chapter 11.68 of the Pacific Grove Municipal Code.

**DISCUSSION**

On November 7, 2018 the City Council received the final report of the ad hoc Water Policy Subcommittee. A glossary referencing special terms related to water issues was also attached to November 7, 2018 agenda. At that same meeting, Council directed City staff to take specific action steps as itemized in the report related to pricing and terms of use for water entitlements. By two separate motions, Council adopted by unanimous vote (1) a revised Council Policy 600-4 and (2) first reading of an ordinance to amend PGMC Chapter 11.68. This agenda matter presents the second reading of the ordinance to revise Pacific Grove Municipal Code Chapter 11.68 water distribution regulations.

The ordinance implements Council Policy 600-4 and provides general guidance related to assignment, distribution and use of new water supplies, including water allocations and water entitlements. The ordinance promotes immediate use of available water supplies, and inhibits water banking.

No amendments have been made to the draft ordinance as approved at the first reading. The code modifications proposed by this measure are needed as the former Municipal Code Chapter 11.68 is now out of date. This ordinance provides a regulatory process by which water entitlements and water allocations may be assigned and distributed for use. This ordinance implements water distribution objectives, and addresses processes related to both water allocations and water entitlements.

**OPTIONS**

1. Take no action.
2. Modify the draft Ordinance to Amend PGMC Chapter 11.68.
3. Provide other direction.

**FISCAL IMPACT**

Enactment of this ordinance will not have any direct impact on revenue or expenses.

**CEQA**

The PG Local Water Project EIR was certified on 11/19/2014 (SCH#2014021058). Adoption of an Ordinance to Amend PGMC Chapter 11.68 is an organizational and administrative act that does not constitute a “Project” under California Environmental Quality Act (CEQA) Guidelines Section 15378.b.5.

**GOAL ALIGNMENT**

This agenda item is consistent with City Council Goal #2 – Infrastructure – Continue to build and improve the infrastructure needed to match existing and anticipated needs.

**ATTACHMENTS**

1. Ordinance to Amend Chapter 11.68 of the Pacific Grove Municipal Code

RESPECTFULLY SUBMITTED:

*Dave Laredo*

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David C. Laredo  
City Attorney

## **ORDINANCE NO. 18-XXX**

### **AN ORDINANCE OF THE CITY OF PACIFIC GROVE DELETING PACIFIC GROVE MUNICIPAL CODE CHAPTER 11.68 (WATER ALLOCATION REGULATIONS) AND ADDING CHAPTER 11.68 (WATER DISTRIBUTION REGULATIONS) TO THE PACIFIC GROVE MUNICIPAL CODE**

#### **FACTS**

1. Based on the Report of the ad hoc Water Policy Subcommittee, and concurrent with adoption of revised Council Policy 600-4 (Water Distribution, Water Use and Water Entitlements), this Ordinance substantially amends Pacific Grove Municipal Code (PGMC) Chapter 11.68 (Water Allocation Regulations).
2. Potable water remains extremely scarce in Pacific Grove. Requests for water use on the current Water Wait List exceed the City's current supply. Also, a California Public Utilities Commission (CPUC) moratorium may presently interfere with California American Water Company's (Cal-Am's) ability to set new water meters to serve projects that do not have access to a current, active Cal-Am water meter.
3. Mindful of the limited potable water available for use, and limits affecting that water, the City of Pacific Grove built and now operates its Local Water Project (PGLWP). The PGLWP is designed to create non-potable recycled water to meet irrigation needs on the City-owned Pacific Grove Golf Links and El Carmelo Cemetery reducing potable water metered demand from the Cal-Am water system. PGLWP includes a new Satellite Reclaimed Water Treatment Plant facility with a design flow capacity of 0.25 million gallons per day to recycle a portion of the City's municipal wastewater at the Point Pinos Wastewater Treatment Plant. The SWRCB approved a \$7.7 million grant and loan from the Water Recycling Funding Program and Clean Water State Revolving Fund (Resolution No. 2015-0070) for the PGLWP.
4. Monterey Peninsula Water Management District (MPWMD) enacted its Ordinance No. 168 in 2016 to create the Pacific Grove Recycled Water Supply Entitlement. This Water Entitlement represents a vested property right held by the City that allows future potable water use from the Cal-Am system.
5. When other new potable water supplies become available for use in the City, that water will be allocated by MPWMD. The City Council will then exercise its discretion to distribute available water to end users.
6. This ordinance provides a regulatory process by which water entitlements and water allocations may be assigned and distributed for use. This ordinance implements water

distribution objectives, and addresses processes related to both water allocations and water entitlements. This ordinance defines for terms or phrases related to water distribution regulations that are technical or specialized, or that may not reflect common usage.

7. A key purpose of this ordinance is to promote immediate use of available water supplies, and to inhibit water banking.

8. This ordinance provides available water shall be quantified and distributed by Council resolution to applicants on the water waiting list and to these separate categories: (1) residential; (2) commercial/non-residential; (3) civic needs/council goals.

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

**SECTION 1.** The City Council hereby finds and determines each of the foregoing Facts, which are incorporated into this ordinance by reference, are true and correct.

**SECTION 2.** The provisions of Chapter 11.68 (Water Allocation Regulations) of the Pacific Grove Municipal Code shall be deleted in their entirety.

**SECTION 3.** The following text shall be enacted as Chapter 11.68 (Water Distribution Regulations) of the Pacific Grove Municipal Code:

**Chapter 11.68  
WATER DISTRIBUTION REGULATIONS**

**11.68.05.1 Definitions**

(a) This section provides definitions for terms or phrases used in this chapter that are technical or specialized, or that may not reflect common usage. If any of the definition in this chapter conflicts with definitions in other provisions of the Pacific Grove Municipal Code, the definitions set forth in this section shall control for the purposes of this chapter. If a word is not defined in this chapter, or in other provisions of this title, the most common dictionary definition shall be presumed to be correct.

(b) The following are defined terms for use in this chapter:

- Allocation – A discrete quantity of water held by the city from the Monterey Peninsula Water Management District for new or Intensified water use within the city
- City Water Allocation – Policy 600-4, enacted by the city council for the City of Pacific Grove

- City Water Distribution Regulations –Chapter 11.68 of the Pacific Grove Municipal Code (PGMC)
- Entitlement – (Also Water Entitlement) A discrete quantity of potable water developed through use of city funds, available for sale to end users to enable new or intensified use of water from the California American water distribution system. Entitlements are evidenced by a vested contractual right granted by the City.
- Intensified Water Use – Any change in water use on a parcel which, in a residential use, is evidenced by an increase in the number of fixture units serving that parcel; or, in any non-residential use, evidenced by the incremental change in the project’s capacity for annual water use based upon factors set by the Monterey Peninsula Water Management District.
- Mixed Use – Where one or more water meters or connections supply both residential and non-residential water uses, often within the same building.
- Notice of Available Water – A notice provided by the City Manager, or agent, to advise an applicant that water from a Water Entitlement or Water Allocation is ready for immediate use for a project, which may trigger time limits for wait-listed properties within which applicants must claim and purchase water, or be removed from the Water Wait List.
- Pacific Grove Local Water Project (PGLWP) – A reclamation plant intercepting and treating sewer water to deliver non-potable water to the Pacific Grove Golf Links and El Carmelo Cemetery, and providing water for other public uses.
- Tranche – Increments of potable water the City Council deems from time to time in its discretion to be available for immediate use from the Water Planning Reserve.
- Water Credits – A record created by the Monterey Peninsula Water Management District that allows reuse of a specific quantity of water upon a specific location, based upon documented permanent abandonment of prior water use on that site.
- Water Planning Reserve – A discrete amount of water available within the city. Tranches of water, when transferred from the Water Planning Reserve, are placed for immediate use into one of three categories: commercial/non-residential category; residential category; and civic needs/council goals category.
- Water Subscription – A document through which a property owner acquires a contract interest for a discrete quantity of water from the legal owner of a water entitlement.

- Water Use Capacity – The maximum potential water use which theoretically may occur, based on average water use data for similar structures and uses in the Monterey Peninsula region, as shown by projected water use tables developed by the Monterey Peninsula Water Management District. Anticipated maximum annual water demand is expressed in acre-feet for a specific real property.
- Water Wait List – A chronological list that quantifies unmet potable water requests for unserved end use water users. Prerequisite qualifying criteria must have been met before a project was placed on the Water Wait List.

**11.68.010 Distribution of potable water.**

(a) All water available for distribution and use within the City shall be distributed by resolution passed and adopted by the council. All such water shall be quantified and distributed to applicants on the water waiting list or among separate categories in such amounts and percentages as determined by the council: (1) residential; (2) commercial/non-residential; (3) civic needs/council goals.

(b) Water shall be distributed in the following sequence:

(1) Available supply should first be used to satisfy requests from the 12/31/2018 Water Wait List, in order, based on the date each request was placed on that list;

(2) Water should next be placed into the water planning reserve;

(3) Council should then transfer, by resolution, water increments (tranches) it deems, in its discretion, to be available for immediate use from the water planning reserve to the following categories. The initial distribution shall be divided:

- 50% - commercial/non-residential category;
- 25% - residential category; and
- 25% - civic needs/council goals category.

(4) Subsequent transfer of additional water increments (tranches) from the water planning reserve to separate categories shall be divided by the council, by resolution, between the commercial/non-residential, residential and civic needs/council goals categories.

(5) The city council in its discretion, from time to time by resolution, may move water from one category to another.

(c) Mixed use projects should access the residential category for residential water requirements of the project; the commercial portion of the project should access for the commercial/non-residential category for commercial water requirements of the project, and the civic

needs/council goals category shall apply to the “affordable” portion of any project that includes an affordable housing component.

(d) The commercial category should apply to all non-residential water requirements of the project.

(e) The civic needs/council goals category should apply to governmental projects undertaken by the City or any other public agency that provides benefit to the community. This category shall also apply to the “affordable” portion of any project that include an affordable housing component.

**11.68.015 Priority dates for wait listed applications.**

Project applications placed on any Water Wait List after 1/1/2019 will be eligible for water, within their respective category, on priority date basis provided the project is then able to use the water; if not, the available water will be passed to the next buildable project and the delayed project shall remain on the Water Wait List; the project shall retain its original priority date Water Wait list until it is able to acquire available water for use.

**11.68.020 Unavailability of water – Readiness for building permit applications.**

(a) Applications for projects for which there is no available water shall not be accepted or processed. However, there shall be established a prioritized waiting list for each category according to order of receipt of proof of readiness to apply for a building permit.

(b) For projects requiring only a building permit, proof of readiness to apply for a building permit shall include submittal of all materials normally required to be filed with building permit applications.

(c) For projects requiring discretionary land use entitlements (including, without limitation, variances, use permits, historical preservation permits, architectural approvals), proof of readiness to apply for a building permit shall include the final discretionary approval and submittal of all materials or plans normally required to be filed with a discretionary permit application. Final discretionary approval shall occur upon the granting of all required project approvals by the boards and commissions having jurisdiction to first hear the project applications. In the event of a successful appeal, i.e., denial of the project application, from such approval, the project shall be removed from that list.

(d) A request for inclusion on a prioritized waiting list shall include a written acknowledgment that there is, at the time of such request, no water available for the requested project. Fees may apply to remain current on this waiting list.

- (e) Proofs of readiness shall be placed on prioritized waiting lists according to order received. Once water is available to service a project covered by proofs of readiness in a given land use category, those affected shall be notified and may apply for building permits. Once a building permit is determined to be complete and ready for issuance, the applicant shall be granted authorization to seek a water permit.
- (f) When water is available for distribution and use, or for purchase via entitlement, the city manager may impose time limits for wait-listed properties within which they must claim and purchase water, or be removed from the wait list.
- (g) Projects on the water wait list should be eligible for water, within their respective category, based on the priority date for each project provided the project is then able to use the available water; if not, the project will be passed to the next buildable project and the delayed project shall retain its priority date and remain on the Water Wait list until it is able to use the water.
- (h) Any applicant on the Water Wait List that cannot take immediate advantage of water by regulation or operation of law, or who chooses to not purchase Entitlement Water, shall retain the original Water Wait List priority date until able to acquire available water by allocation for use on the project.

**11.68.030 Time Limits for Wait Listed Projects.**

- (a) When water is available for project use, or by purchase via entitlement, time limits set forth in paragraph (c) below shall apply to wait-listed properties within which those that can take immediate advantage of the water must claim and purchase water, or be removed from the Water Wait list. Projects prevented by regulation or operation of law from immediate use of water shall remain on the Water Wait list and retain their priority date.
- (b) Applicants removed from any Wait List may choose to reapply, if eligible, to any successor Wait List (if one exists) under then-current terms and conditions that may apply to the new wait list.
- (c) The City will send a Notice of Available Water to applicants on the Water Wait List. Applicants shall have 10 calendar days from the receipt of the Notice to provide written notification to the City of their intent to use available water or to remain on the Water Wait List (“passing”). Wait-listed properties shall be required to re-apply for permit amendments or renewal, if needed, within 30 days of the date Notice of Available Water by the property is sent. In the alternative, Applicants shall be required to state their intent to "pass" on purchasing entitlement water during this same time period. Building permits shall be obtained 120 days thereafter. Full payment be tendered for any water entitlement within 180 days of the date water is available for use by the property. Extensions to these time limits may be granted for good cause, in accord with section 11.68.050 (4).

- (a) Full use of water, including purchased entitlement water or water from an allocation, (quantified by Water Use Capacity) shall be required by the first date of occupancy. Any unused entitlement shall be subject to revocation to enable reassignment or sale for other uses. The City may consider rebate of the pro-rata purchase price of any unused water entitlement to the then-current property owner (less a reasonable processing fee) upon revocation of an increment of unused water entitlement, but payment of the rebate amount shall not be made by the City until sale of that water increment has been completed and paid in full by another water user.

**11.68.040 Entitlement Water.**

- (a) Sale of PGLWP Entitlement water shall be set at the prevailing market rate as determined by council resolution. Fees paid to the City by the applicant to maintain a spot on the 12/31/2018 Water Wait List shall be applied as a credit toward the purchase of the Water Entitlement; no refund shall be granted.
- (b) After purchase of Entitlement Water, the City may rebate the pro-rata purchase price to the then-current property owner (less a reasonable processing fee) upon City revocation of any increment of unused water entitlement, but payment of the rebate amount shall not be made by the City until sale of that water increment has been completed and paid in full to the City by another water user.

**1168.050 Building permit time limit.**

Any applicant for a building permit whose project requires water shall meet the following criteria:

1. The applicant shall re-apply (if needed) for amendment or renewal of any required city permit for that project within 30 days of the date water is available for use by the property,
2. Within 120 days from the Notice of Available Water is sent to the applicant, the applicant shall obtain both the water permit from the district and a building permit from the city.
3. Full payment shall be tendered for any water entitlement within 180 days of the date the Notice of Available Water is sent.
4. The City Manager, or designee, may extend these time limits upon written request made prior to the expiration date that demonstrates good cause for the extension, as determined in the sole discretion of the city manager. As a prerequisite to receiving the extension, the property owner(s) shall sign and return to the city, within 10 calendar days of the grant of any extension, a letter committing to use that increment of water for the project. If the building permit is not obtained within the required time, the plan check shall expire and the assigned water shall be recredited to the appropriate category.

**11.68.060 Additional Water Supplies.**

The council shall periodically review the regulations and procedures contained in this chapter and the status of the city’s water reserves. Should new water supplies become available for use within the City from any source of supply, the council should convene a Council Water Policy Subcommittee to quantify the increment of available water, ascertain terms, conditions and use limits that may apply to that increment of water, and recommend amendments, if needed and appropriate, to this chapter and to Council Policy 600-4.

**SECTION 4.** If any provision, section, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

**SECTION 5.** In accord with Article 15 of the City Charter, this Ordinance shall 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 \_\_\_\_\_, 2018, by the following vote:

AYES:  
NOES:  
ABSENT:

APPROVED:

\_\_\_\_\_  
BILL KAMPE, Mayor

ATTEST:

\_\_\_\_\_  
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
DAVID C. LAREDO, City Attorney