



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 7, 2018

SUBJECT: Approve Council Water Policy Subcommittee Recommendations:
(1) Receive Report and Approve Action Recommendations from the Report; (2) Approve Resolution to Adopt Council Policy 600-4 (Water Distribution, Water Use and Water Entitlements) and Repeal Former Council Policy 600-4 (Water Allocation Policy); and (3) Authorize 1st 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 of Policy 600-4 and of Ordinance to Amend PGMC Chapter 11.68 are organizational and administrative acts that do not constitute a “Project” under California Environmental Quality Act (CEQA) Guidelines Section 15378.b.5.

Note – a single public hearing will be held to address all action recommendations framed by this agenda item.

RECOMMENDATION

1. Receive the Council Water Policy Subcommittee report, and direct City staff to take the action steps itemized in the report so Council can consider pricing and terms of use to begin the sale of water entitlements.
2. Approve a Resolution to Adopt Council Policy 600-4 (Water Distribution, Water Use and Water Entitlements) and repeal former (outdated) Council Policy 600-4 (Water Allocation Policy).
3. Introduce and hold a first reading of an Ordinance to Repeal Former Chapter 11.68 and Adopt Revised Chapter 11.68 of the Pacific Grove Municipal Code, and direct publication of a summary of that measure as approved by the City Attorney.

DISCUSSION

On October 3, 2018 the City Council received the draft report of the ad hoc Water Policy Subcommittee (hereafter Committee) comprised of Councilmembers Rudy Fischer, Cynthia Garfield and Bill Peake, and extended the term of the Committee to November

30, 2018. The Committee was formed by the City Council on March 21, 2018 and since that time has regularly met with City Attorney David Laredo, City Manager Ben Harvey and others. (Background as to Committee activities was presented in the October 3, 2018 agenda report, but is not repeated here.)

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.

Mindful of the limited potable water available for use, and limits affecting that water, the City built and now operates its Local Water Project (PGLWP). PGLWP creates non-potable recycled water to meet irrigation needs on the City-owned Pacific Grove Golf Links and El Carmelo Cemetery; this reduces 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 \$7.7 million in grants (\$2.35 M) and loans (\$5.36 M) from the Water Recycling Funding Program and Clean Water State Revolving Fund (P.G. Resolution No. 2015-0070) for the PGLWP.

In 2016, the Monterey Peninsula Water Management District (MPWMD) enacted its Ordinance No. 168 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.

When additional 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.

The Committee now presents its final report (attached) which contains action recommendations, and also recommends the City Council enact a revised Council Policy 600-4 (Water Distribution, Water Use and Water Entitlements) and amend Pacific Grove Municipal Code (PGMC) Chapter 11.68 (Water Distribution Regulations). Adoption of Council Policy 600-4 and the first reading of PGMC Chapter 11.68 are separate agenda items for action at this meeting. This agenda item is limited to receiving the final Water Policy Subcommittee Report, and acting on its action recommendations.

The key purpose of City Water Allocation policies recommended by the Committee is to promote immediate use of available water supplies, and to avoid banking of available water. The Report addresses the following topics:

1. Water Distribution Objectives
2. Water Distribution Process
3. Water Wait List

4. Water Entitlement Calculation
5. Water Entitlement Pricing
6. Allocation of Additional Water Supplies

This agenda report is presented to Council for consideration of three separate actions:

- 1. Receive the Council Water Policy Subcommittee report, and direct City staff to take the action steps itemized in the report so Council can consider pricing and terms of use to begin the sale of water entitlements.**

The Committee recommends the Council approve the following:

1. Direct Staff report on financial aspects of the Water Project and Sale of Entitlement Water, to include:
 - a. Financing terms and status of the project
 - b. Terms of water entitlement sales within the Cal-Am system
 - c. Rates and fees for water entitlements
 - d. Water produced by the water project
2. Direct City Manager communicate with SWRCB staff to determine terms affecting sale of Pacific Grove water entitlements.
3. Direct City Attorney prepare documents for sale of water entitlements including terms and conditions restricting use.
4. Direct Staff to report on these steps and return to Council a request to set water entitlement pricing, and terms of use to begin the sale of water entitlements.
- 2. Approve a Resolution to Adopt Council Policy 600-4 (Water Distribution, Water Use and Water Entitlements) and repeal former (outdated) Council Policy 600-4 (Water Allocation Policy).**

Council Policy 600-4 provides general guidance related to assignment, distribution and use of new water supplies. It reviews Water Distribution Objectives, and addresses processes related to Water Allocations and Water Entitlements. A key purpose of this Policy is to promote immediate use of available water supplies, and to inhibit water banking.

The Policy guidance addresses the following topics:

1. Water Distribution Objectives
2. Water Distribution Process
3. Water Wait List
4. Water Entitlement
5. Additional Water Supplies

3. Introduce and hold a 1st reading of an Ordinance to Repeal Former Chapter 11.68 and Adopt Revised Chapter 11.68 of the Pacific Grove Municipal Code.

Pacific Grove Municipal Code Chapter 11.68 governs Water Distribution Regulations. The draft ordinance represents a substantial re-write of the Municipal Code as former 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. Chapter 11.68 is comprised of the following sections:

11.68.05 Definitions. This section provides definitions for terms or phrases used in this chapter that are technical or specialized, or that may not reflect common usage.

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

11.68.015 Priority for wait listed applications. Water Wait List project applications will be eligible for water, within respective category, if the project is then able to use 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 with its original priority date until water is available for use.

11.68.20 Unavailability of water. Project applications when no water is available shall not be accepted, but a prioritized waiting list for each category will be maintained upon proof of readiness to apply for a building permit.

11.68.30 Time Limits for Wait Listed Projects. Wait-listed properties that can take immediate advantage of 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. Full use of water shall be required by the first date of occupancy. Unused water shall be subject to revocation to enable reassignment or sale to other uses.

11.68.040 Entitlement Water. 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.

1168.050 Building permit time limits. Applicants must apply (if needed) for amendment or renewal of any required city permit for that project within 30 days of the date Notice of Available Water for use is sent; within 120 days from the Notice of Available Water the shall obtain the water permit from MPMWD and a building permit from the city. Full payment for the water is to be made within 180 days from the Notice of Available Water. The City Manager may extend these time limits for good cause

11.68.060 Additional Water Supplies. The council shall periodically review this chapter and the city's water reserves. If new water supplies become available, the council should convene a Council Water Policy Subcommittee to recommend amendments, if needed and appropriate, to the Municipal Code and to Council Policy 600-4.

OPTIONS

1. Take no action.
2. Receive the Report, but provide alternate direct to staff.
3. Amend the draft Council Policy 600-4 (Water Distribution, Water Use and Water Entitlements)
4. Amend Draft Ordinance to Amend Chapter 11.68 of the Pacific Grove Municipal Code.
5. Provide other direction.

FISCAL IMPACT

Revenue will accrue from Water Entitlement sales, but the amount cannot be determined until the sales price and fees are determined by future action of the City Council.

CEQA

The PG Local Water Project EIR was certified on 11/19/2014 (SCH#2014021058). Receipt of the Subcommittee report, adoption of Council Policy 600-4 and adoption of an Ordinance to Amend PGMC Chapter 11.68 are organizational and administrative acts that do 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. The Water Wait List procedures help to fulfill this goal.

ATTACHMENTS

1. Council Water Policy Subcommittee Report, including 4 attachments:
 - Portion of Supply from River
 - Calculation of Percent Unlawful Diversion
 - Calculation of PG Entitlement Available
 - Glossary of Water Terms
2. Draft Resolution Adopting Council Policy 600-4
3. Draft Council Policy 600-4

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

RESPECTFULLY SUBMITTED:

Dave Laredo

David C. Laredo
City Attorney

REVIEWED BY:

Cynthia Garfield

Cynthia Garfield
City Council Member

Bill Peake

William Peake
City Council Member

Rudy Fischer

Rudy Fischer
City Council Member

Report of the 2018 Water Policy Subcommittee

REPORT OF THE 2018 WATER POLICY SUBCOMMITTEE¹

On March 21, 2018 the City Council chose Councilmembers Rudy Fischer, Cynthia Garfield and Bill Peake to serve on the Water Policy Subcommittee. The Committee regularly met with City Attorney David Laredo and City Manager Ben Harvey. The Committee also met with Fran Farina, associate attorney with De Lay & Laredo, and with David Stoldt, General Manager of the Monterey Peninsula Water Management District.

The Committee met on the following dates:

- April 5, 2018
- April 16, 2018
- May 30, 2018
- June 12, 2018
- July 12, 2018
- August 3, 2018
- August 17, 2018
- August 31, 2018
- September 10, 2018
- September 18, 2018
- September 25, 2018
- October 5, 2018
- October 19, 2018
- November 19, 2018.

The Committee began its deliberations with a review of the subcommittee purpose and set general procedures it would follow. As an alternative to designating one council member as chair, the group designated David Laredo as non-voting group facilitator.

The Committee directed compilation of a glossary of water terms (attached to this report)

The Committee reviewed the long history of Cal-Am related water issues, and examined the regulatory roles and water limits set by the State Water Resources Control Board (SWRCB) and the California Public Utilities Commission (CPUC). This included a brief history of water rights law, the process by which Cal-Am's water supplies have been challenged, current limits imposed on Cal-Am water deliveries, and the status of various projects to develop new water supplies.

The group reviewed source documents related to the SWRCB, MPWMD and the Pacific Grove Local Water Project (PGLWP). The Committee also reviewed letters forwarded from the SWRCB:

¹ The Report was drafted by Councilmembers Rudy Fischer, Cynthia Garfield and Bill Peake, and City Attorney David Laredo and City Manager Ben Harvey.

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- May 16, 2018 from Leslie S. Laudon to Ben Harvey re PGLWP Financing,
- May 17, 2018 from Erik Ekdahl to David Stoldt re MPWMD Resolution 2018-05, and
- August 6, 2018 from Leslie S. Laudon to clarify the May 16th letter.

The SWRCB confirmed it would process final disbursement of funds for the PGLWP, and confirmed that City actions to date were compliant with the technical conditions of that SWRCB funding agreement.

The Committee reviewed and recommends City Council Water Policy 600-4 and PGMC Section 11.68 each be amended. A key Committee recommendation is to promote immediate use of water supplies, and to inhibit water banking.

BACKGROUND MONTEREY PENINSULA WATER ISSUES

California American Water Company (Cal-Am) is the investor-owned utility that holds the exclusive franchise to serve potable water within the City of Pacific Grove. Cal-Am's rates and charges are set by the California Public Utilities Commission (CPUC); this process also regulates additions to Cal-Am's utility plant, including water supply facilities. In 2011 the CPUC issued Decision (D.) 11-03048, entitled "Decision Directing Tariff Modifications to Recognize Moratorium Mandated by State Water Resources Control Board" that prohibits new Cal-Am Connections and certain increased uses of water served by Cal-Am diversions from the Carmel River to the extent such service would violate the terms of Condition 2 of SWRCB Order WR 2009-0060.

Monterey Peninsula Water Management District (MPWMD) is a unique public agency as the sole water management agency in California, ratified by voters in 1978, that manages the scarce water resources of the Monterey Peninsula. The Legislature found the Monterey Peninsula has "need for conserving and augmenting the supplies of water by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for promotion of the reuse and reclamation of water." MPWMD has implemented a permit system to regulate new and expanded uses of Cal-Am water.

The State Water Resources Control Board (SWRCB) regulates surface water rights in California, and has severely limited Cal-Am's right to draw from the Carmel River, mandating a nearly 70 percent decrease by December 31, 2016. SWRCB Order 95-10 found Cal-Am was diverting up to 14,106 AFY from the Carmel River but had rights to only 3,376.

The SWRCB Order required Cal-Am to develop and implement an urban water conservation plan to conserve 15 percent in the 1996 water year and 20 percent during each succeeding water year. However, Cal-Am could not do so and continued to divert an average of 10,978 AFY from the river, resulting in its unlawful diversion of 7,602 AFY for 14 years.

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In 2009, the SWRCB issued Order WR 2009-0060 to restrain Cal-Am's continued violation of Order 95-10. That order, as later extended, requires Cal-Am to reduce river diversions to 3,376 AFY by December 31, 2021.

The Monterey Superior Court separately adjudicated and limited Cal-Am's right to pump groundwater from the Seaside Basin in 2006. The Court imposed a physical solution to manage and protect the Basin whereby Cal-Am is allowed to extract just over 77 percent of its earlier production. In 2009, this amounted to 3,504 AFY. The Court judgment mandates further 10 percent reductions triennially from 2009 until production equals the basin's safe yield. The Court appointed a Watermaster Board under the judgment to further thus reduce water available from the Seaside Basin to Cal-Am by 2,010 AFY by 2021.

In September 2018 the CPUC issued an order to grant Cal-Am a Certificate of Public Convenience and Necessity to construct a 6.4 mgd desal plant in Marina (and related facilities). David Stoldt, MPWMD General Manager, characterized project implementation milestones in his presentation at the September 19, 2018 City Council meeting. Water from this project will not become available for use until additional permits are obtained and the project is constructed.

BACKGROUND PACIFIC GROVE WATER ENTITLEMENT

Mindful of these limitations on potable water use, the City of Pacific Grove completed and began to operate its Local Water Project (PGLWP) in January 2018. 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 its potable water metered demand on 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. In February 2015 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 this purpose.

The Monterey Peninsula Water Management District (MPWMD or District) enacted Ordinance No. 168 on January 27, 2016 creating the Pacific Grove Recycled Water Supply Entitlement. By its terms, MPWMD Rules were amended with the addition of Rule 23.9. A Water Entitlement of 66 acre-feet per annum (AFA) was recognized as a vested property right for consumption from the Cal-Am system. Rule 23.9 also required 13 AFA of metered water demand previously used by the City to be permanently suspended from use to provide lasting benefits to the Carmel River system and reserved 9 AFA for the District's exclusive use. Thus, 88 AFA from the Project are divided with 66 AFA for the City, 13 AFA for the Carmel River, and 9 AFA for the District.

Due to constraints imposed by the SWRCB, limits are placed on the City's access to the full 66 AFA.

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SWRCB Resolution 2015-0070 states, at Paragraph 4, “The City shall apply recycled water produced by the Project to service of existing uses and shall use the ensuing demand reductions to offset deliveries from Cal-Am until such time as the City receives consent from the State Water Board’s Executive Director to apply the Project’s recycled water and associated demand reductions to new service connections or to increased use at existing service addresses resulting from a change in zoning or use.”

Finding 12 of SWRCB Resolution 2015-0070 refers to Section 19.2 of SWRCB Order WR 2009-00602 to suggest new water developed must be used to offset diversions from the Carmel River prior to using the water for growth.

BACKGROUND PACIFIC GROVE WATER ALLOCATION

When new potable water supplies become available for use, that water will be allocated by MPWMD among the various land-use planning jurisdictions. The Pacific Grove City Council will then exercise its discretion to distribute available water to end users.

BACKGROUND QUANTIFICATION OF ILLEGAL DIVERSIONS AND AVAILABLE WATER ENTITLEMENT

This Background section calculates the proportionate share of illegal diversions of Carmel River water that relates to water use in the City of Pacific Grove as of the date of this Report.

MPWMD reports that water consumption from the Cal-Am water distribution system within Pacific Grove in water year (WY) 2009 was 1,477 acre-feet (AF); consumption in WY 2017 was 1,158 AF. The Water Policy Subcommittee concludes use of the Water Entitlement will not constitute growth in water use relative to conditions at the time Order WR 2009-0060 was issued.

Attachment 1 (Portion of Supply from River) - calculates the portion of water supplied from the Carmel River during the most recent 5-year period. Cal-Am’s water portfolio also includes water from the Seaside Basin, Aquifer Storage and Recovery (ASR), and the Sand City Desal Plant. The portion of supply from the Carmel River averages 68%.

² Section 19.2 provides, “Any community or combination of communities seeking to develop a new source supply must first apply water from a new source to *reduce its share of the water being illegally diverted by Cal-Am*. Water from a new source of supply should not become available for growth until after the community has fully substituted water from the new source for its share of the water being illegally diverted from the river by Cal-Am.” [Emphasis added.]

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Attachment 2 (Calculation of Percent Unlawful Diversion) - shows the same 5-year average of Cal-Am diversions from the Carmel River for customer service. Not all diversions are illegal as the SWRCB has recognized a specific legal right to water by Cal-Am. Thus, total illegal diversions represent 52%.

Attachment 3 (Calculation of Pacific Grove Entitlement Available) - applies the appropriate percentages to the City's Water Entitlement of 88 AFA as follows: 68% of the saved water comes from the Carmel River ($0.68 \times 88 = 59.84$) of which 52% is illegally diverted ($0.52 \times 59.84 = 31.12$ as the City's pro rata share of illegal Carmel River diversions) with 13 AFA suspended to the benefit of the river leaving 18.12 AFA as the City's share of illegal diversions to be offset by the Project ($31.12 - 13 = 18.12$).

Given the Water Entitlement of 66 AFA less 18.12 AFA of the City's share of illegal diversions offset by the Project leaves 47.88 AFA available for assignment to Benefited Properties ($66.00 - 18.12 = 47.88$).

Calculations used in this section should be periodically reviewed to ensure accurate quantification of available potable water supplies, and to account for possible changed conditions.

POLICY RECOMMENDATION #1 WATER DISTRIBUTION OBJECTIVES

The Committee recommends a key purpose of the City Water Distribution and Water Entitlement Policy is to promote immediate use of available water supplies.

The Committee reviewed 14 possible alternate objectives that relate to water available for distribution and use, and recommended the City Council be mindful of following *unprioritized* considerations related to decisions affecting making water available:

- Grow revenue to the City, i.e. preference to TOT & sales tax businesses;
- Maximize water entitlement sales revenue;
- Increase housing supply, to include meeting affordable housing objectives;
- Promote Downtown "District" Visitor Service Opportunities;
- Satisfy Water Wait List needs;
- Encourage Renovation.

POLICY RECOMMENDATION #2 WATER DISTRIBUTION PROCESS

The Committee recommends the process to distribute available water should follow this sequence:

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- (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 from time to time, 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.
- (c) Mixed use projects should access the residential category for residential water requirements of the project;
- (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, or for the “affordable” portion of projects that include an affordable housing component.
- (f) The city council in its discretion from time to time, by resolution, may move water from one category to another.

POLICY RECOMMENDATION #3 2018 WATER WAIT LIST

Potable water remains extremely scarce in Pacific Grove and current Water Wait List requests for additional water exceed the City’s current supply by approximately 20.7 AF. This represents about a 17.8 AF increase in demand since the Council’s last status report due primarily to the recent approval of UP/AP 16-203 referred to as Hotel Durell requesting 10.8 AF located on the northern portion of the Holman Block and UP/AP 18-364 located at 522 Lighthouse Ave requesting 6.75 AF. The remainder of the difference is accounted for by new residential requests.

Presently, a CPUC moratorium may interfere with 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.

The Committee reviewed the prior Water Wait List, and its role in selection and implementation of water distribution objectives. As of September 1, 2018, a total of 2.082 AF is needed to satisfy residential uses on the Water Wait list, and a total of 18.5941 AF is needed to satisfy commercial uses on the Water Wait list.

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After discussion of alternate Water Wait List policies, the Committee ultimately concluded the existing Wait List continues to serve appropriate purposes and changes are not presently needed.

When water does become available for use, including by purchase via entitlement, the Committee recommends time limits be instituted for 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. Those removed may choose to reapply to any successor Wait List (if one exists) and retain their priority date under all other terms and conditions that may apply to the new wait list.

The Committee recommends wait-listed properties be required to re-apply for permit amendments or renewal, if needed, within 30 days of the date water is available for use by the property, or to state their intent to "pass" on purchasing entitlement water), that building permits be obtained 120 days thereafter, and full payment be tendered for any water entitlement within 180 days after Notice is given that water is available for use by the property.

The Committee recommends full use of purchased entitlement water (quantified by water use capacity as of the first date of occupancy). Any unused entitlement shall be subject to revocation to enable reassignment to other uses

POLICY RECOMMENDATION #4 WATER ENTITLEMENT CALCULATION

The City shall seek maximum benefit and reuse of potable water saved by operation of the Pacific Grove Local Water Project.

The Committee examined the quantity of potable water anticipated to be saved by operation of the Pacific Grove Local Water Project. It recognized that MPWMD's initial calculation of saved water should account for temporary and operational needs until the project is fully operational and actual performance can be assessed against projections. After this initial adjustment, MPWMD determined the remaining initial increment of available saved water to be 88 acre-feet per year (AFA). This increment of saved water must be adjusted by an amount needed to mitigate Carmel River water conditions (13 AFA) prior to lifting of the SWRCB Cease & Desist Order, and a mandatory transfer to the MPWMD District Reserve (9 AFA). The remaining 66 AFA is available for City uses, but during the period before Cal-Am satisfies the SWRCB Cease & Desist Order, the City's entitlement must further be reduced to account for its "share" of illegal Cal-Am diversions from the Carmel River. (Reference: Attachments 1, 2 & 3).

Quantification factors referenced in this section should be reviewed after 36 months of initial operation to ensure accurate quantification of available potable water supplies, and to account for possible changed conditions.

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POLICY RECOMMENDATION #5 WATER ENTITLEMENT PRICING

The Committee examined water entitlements within the Cal-Am water distribution system currently available for purchase and use. Entitlements have been recognized by both the SWRCB and MPWMD. Regulations governing the sale, recordation and use entitlements derive from MPWMD Rules & Regulations, Regulation 23. Entitlements are currently held by the Pebble Beach Company³, Sand City⁴, Quail Meadows⁵, Malpasos (Eastwood/Odello)⁶, DBO Development⁷ and the City of Pacific Grove⁸.

The Committee recommends sale of PG Entitlement water be set at the prevailing market rate, and proceeds deposited in the City General fund. Fees paid to the City by the applicant to maintain a spot on the 12/31/2018 Water Wait List should apply as a credit toward the purchase of the Water Entitlement; no refund should be granted. The Committee also recommends the City rebate the pro-rata purchase price to the then-current property owner (less a reasonable processing fee) upon 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 by another water user.

The Council, at its discretion, may consider awarding grants to offset some or all Water Entitlement costs for projects that qualify for water from civic needs/council goals category.

³ Pebble Beach Company entitlements (MPWMD Rule 23.5) derive from the PBCSD water reclamation project, are available solely for residential uses, and may only be used within the boundaries of the Del Monte Forest.

⁴ Sand City entitlements (MPWMD Rule 23.6) derive from the Sand City desalination plan and may only be used within the boundaries of the City of Sand City.

⁵ Quail Meadows entitlements (Uncodified MWPMD ordinance) derive from water saved by the Quail Meadows subdivision and may only be used within the boundaries of that subdivision in Carmel Valley.

⁶ Eastwood/Odello entitlements (MPWMD Rule 23.7) derive from water saved from Carmel Valley Alluvial Aquifer water savings, and may only be used within properties overlying that alluvial aquifer and within the boundaries of the City of Carmel-by-the-Sea.

⁷ DBO entitlements (MPWMD Rule 23.8) derive from the water saved from the Seaside Groundwater Basin by the DBO Development and may only be used within the Cal-Am system.

⁸ Pacific Grove entitlements (MPWMD Rule 23.9) derive from the Pacific Grove Local Water Project savings, and may only be used within the boundaries of the City of Pacific Grove.

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POLICY RECOMMENDATION #6 ADDITIONAL WATER SUPPLIES

Should new water supplies become available for use within the City from any source of supply, the City 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 Policy 600-4 and to PGMC 11.68.

ACTION RECOMMENDATIONS

1. Adopt a resolution to amend Council Policy 600-4 “Water Distribution, Water Use and Water Entitlements.”
2. Approve an ordinance to amend PGMC 11.68.
3. Direct Staff report financial aspects of the Water Project and Sale of Entitlement Water, to include:
 - a. Financing terms and status of the project
 - b. Quantify water produced by the project
 - c. Market price for other water entitlements
 - d. Other water entitlement sales terms
 - e. Rates and fees for water entitlements
4. Direct City Manager communicate with SWRCB staff to determine terms affecting sale of Pacific Grove water entitlements.
5. Direct City Attorney prepare documents for sale of water entitlements including terms conditions restricting use.
6. Direct Staff report on these steps and return to Council for authorization to set water entitlement pricing, and terms of use to begin sale of water entitlements.

ATTACHMENTS

- Attachment 1 - Portion of Supply from River
- Attachment 2 - Calculation of Percent Unlawful Diversion
- Attachment 3 - Calculation of Pacific Grove Entitlement Available

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- Draft Glossary of Water Terms

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Portion of Supply From River

Cal-Am Main System Sources

	<u>Carmel Valley Aquifer</u>	<u>Seaside Basin</u>	<u>ASR Project Recovery</u>	<u>Sand City Desal</u>	<u>Total Cal-Am Main System</u>	<u>Portion of Supply from Carmel River</u>
2013	7,713	3,077	644	188	11,622	66%
2014	7,744	3,232	-	179	11,155	69%
2015	7,013	2,765	-	245	10,023	70%
2016	6,869	1,876	609	160	9,514	72%
2017	5,856	2,024	1,487	241	9,608	61%
Average	7,039	2,595	548	203	10,384	68%

Calculation of Percent Unlawful Diversion

(Acre Feet)

<u>Year</u>	Diversion from Carmel River for Customer Service	Carmel River Legal Right	Unlawful Diversion	Percent Unlawful Diversion
2013	7,713	3,376	4,337	56%
2014	7,744	3,376	4,368	56%
2015	7,013	3,376	3,637	52%
2016	6,869	3,376	3,493	51%
2017	<u>5,856</u>	3,376	<u>2,480</u>	<u>42%</u>
	7,039		3,663	52%

Calculation of Pacific Grove Entitlement Available

Amount saved by PG Local Water Project:	88.00	
68% Portion Supplied by Carmel River:	59.84	(0.68 x 88.00)
52% Illegal Portion Supplied by Carmel River:	31.12	(0.52 x 59.84)
Amount Suspended for Benefit of the River by Ordinance 168:	13.00	
Remaining Share of Illegal Diversions to Suspend:	18.12	(31.12 minus 13.00)
Pacific Grove Entitlement per Ordinance 168:	66.00	
Amount Available for PG Jurisdictional Use:	47.88	(66.00 minus 18.12)

Glossary of Water Terms

ACCESSORY DWELLING UNIT (ADU) - An Accessory Dwelling Unit is a habitable Dwelling Unit added to, created within, or detached from a primary Single-Family Dwelling, not intended for sale or use separate from the primary residence.

ACRE-FOOT (AF) – An amount of water equal to 325,851 gallons. One fixture unit has an annual Water Use Capacity equivalent to 0.01 Acre-Foot. AFA is an abbreviation for “Acre-Feet Annually”, a measurement of average annual water use in Acre-Feet. A related term water quantity term is “CCF” (or one-hundred cubic feet); this amounts to 748 gallons. When expressed as a yearly amount, this term is expressed as AFA (Acre Feet per Annum), or AFY (Acre Feet per Year).

AFFORDABLE HOUSING – Refers to housing affordable to Low or Moderate Income Households; this is housing that can be rented or purchased by persons in the following income ranges, utilizing not more than 30% of their total income for housing: Low Income – Individuals or families who earn up to 80% of the median income of individuals or families living in Monterey County. Moderate Income – Individuals or families who earn more than 80% and up to 120% of the median income of individuals or families living in Monterey County.

ALLOCATION – A discrete quantity of water dedicated through MPWMD for new or Intensified Water Use within the City

AQUIFER – A geologic formation that stores, transmits, and yields significant quantities to Wells or springs.

BENEFITED PROPERTY – Properties eligible to receive a portion of a Water Entitlement.

CALIFORNIA AMERICAN WATER COMPANY (CAL-AM) – The regulated public utility that delivers potable water supply, pursuant to an exclusive franchise, throughout the City of Pacific Grove.

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) – A statewide body created by the CA Constitution that regulates all public utilities (but not public agencies), sets utility rates and charges, and approves utility investment in infrastructure.

CARMEL VALLEY ALLUVIAL AQUIFER - The water bearing strata directly associated with the Carmel River as mapped by the U.S. Geological Survey and adopted as the area within the jurisdiction of the SWRCB in Order WR 95-10.

CARMEL AREA WASTEWATER DISTRICT (CAWD) – A public agency that collects and treats sewer water from areas of Carmel and Pebble Beach, and delivers non-potable water to the Pebble Beach Community Services District (PBCSD).

CEASE AND DESIST ORDER (CDO) – The CDO is the adjudicatory enforcement order issued by the SWRCB (ORDER 2009-060) in 2009 that imposed limits on Cal-Am’s continued use of water from the Carmel Valley exceeding its legal water rights, as limited by SWRCB Order 95-10.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (CPCN) – A document issued by the CPUC following an adjudicatory proceeding that authorizes a public utility to add infrastructure into its Rate Base.

CEQA – The California Environmental Quality Act, a statute found in the CA Public Resources Code.

CHANGE OF USE – This is a Non-Residential change from one water use Group to another, as categorized in Table No. 2 of MPWMD Rule 24.

CITY WATER ALLOCATION POLICY (600-4) – Policy enacted by the City of Pacific Grove

CITY WATER DISTRIBUTION REGULATIONS – PGM Chapter 11.68

COMMERCIAL USE – Water used by commercial premises such as offices, stores, markets, hotels, motels, and restaurants.

COMMUNITY PLANNING RESERVE – (Also see, “Water Planning Reserve”).

CONNECTION – The point of intersection where a User gains access to the Water Distribution System. Where a Water-Measuring Device is installed, the Water Distribution System includes the Water-Measuring Device and the Connection is the nearest point of User access beyond the Water-Measuring Device. Any Connection is categorized as either “Residential” or “Non-Residential.”

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 the Cal-Am water distribution system. Entitlements are evidenced by a vested contractual right in accord with rules promulgated by the MPWMD. See MPWMD Rule 23. 9 and MPWMD Ordinance 168.

FLOW RESTRICTOR – A device placed into the Water Distribution System by the distribution system Operator that restricts the volume of flow to the User.

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 forth in MPWMD Rule 24.

JURISDICTION – One of the following: (1) Carmel-by-the-Sea, (2) Del Rey Oaks, (3) Monterey City, (4) Monterey County, (5) Monterey Peninsula Airport District, (6) Pacific Grove, (7) Sand City, or (8) Seaside.

MALPASO WATER COMPANY – The SWRCB recognized Water Right 13868A as the basis for an entitlement to provide water from the Cal-Am water company.

METER SPLIT - Installation of MPWMD-authorized Water Meters maintained by the Water Distribution System Operator to separately meter multiple Users on a Site that was supplied by a single existing Connection.

MIXED USE – Where one or more Water Meter or Connections supply both Residential and Non-Residential uses, often within the same building.

MOBILE WATER DISTRIBUTION SYSTEM – Any Potable or Sub-potable Water delivery that originates at a location apart from the Site of use and is delivered via a truck or other movable container.

MONTEREY COUNTY WATER RESOURCES AGENCY (MCWRA) – A public agency appointed by the Monterey County Board of Supervisors primarily charged with management of waters in the Salinas Valley. This agency also has flood responsibilities extending throughout Monterey County.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (MPWMD) – A public agency created by the California Legislature in 1977 and approved by voters in 1978. (The enabling legislation is found at West’s California Water Code, Appendix Chapters 118-1 to 118-901.) MPWMD provides integrated management of ground and surface water supplies on the Monterey Peninsula; it regulates expansion or creation of water distribution systems, imposes water conservation or rationing requirements on water users. New water uses require a water permit from MPWMD, which are issued based upon a Water Allocation, a Water Credit, or a Water Entitlement.

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY (MRWPCA) – Also known as Monterey One Water, a public agency (joint powers district) primarily charged with collection and treatment of waste water. This powers agency gathers and treats most effluent flows from the Monterey Peninsula (but not Pebble Beach, Carmel or Carmel Valley) and from the City of Salinas. This agency is working cooperatively with MPWMD on a project to treat waste and inject these into the Seaside Basin, for later extraction of potable water for eventual use by Cal-Am and its customers.

MORATORIUM – A regulation imposed by the CPUC, MPWMD or SWRCB that limits the ability of a water distribution system such as Cal-Am to set new meters or to expand water service. The CPUC Moratorium issued in 2011 (D. 11-03-048) prohibits new Cal-Am connections if they violate the terms of Condition 2 of SWRCB Order 2009-060.

MPWMD RESOLUTION 2018-05 – A Resolution adopted by MPWMD in March 2018 to interpret Condition 2 of SWRCB Order 2009-060.

MRWPCA – See Monterey Regional Water Pollution Control Agency.

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.

PACIFIC GROVE WATER ENTITLEMENT – See “Entitlement”.

PEBBLE BEACH COMMUNITY SERVICES DISTRICT (PBCSD) – A public agency that receives treated wastewater from the Carmel Area Wastewater District (CAWD) and delivers it for non-potable use by golf courses and open spaces in the Del Monte Forest.

PEBBLE BEACH RECLAIMED WATER PROJECT – A reclamation plant intercepting and treating sewer water from the Carmel Area Wastewater District (CAWD) that delivers non-potable water to golf courses in the Del Monte Forest and provides the basis for the Pebble Beach Water Entitlement. This is also known as the CAWD/PBCSD Wastewater Reclamation Project.

RATE BASE – The aggregate amount of public utility investment authorized by the CPUC. This is a key factor used to determine the utility’s rate of return, and is part of the calculation used to set approved water rates.

SEASIDE BASIN ADJUDICATION – The March 27, 2006 court adjudication, as amended, determining water rights in the Seaside Groundwater Basin that restrict Cal-Am water production from the Coastal Subareas and Laguna Seca Subarea of the Seaside basin.

SEASIDE WATERMASTER – The court appointed Seaside Basin Watermaster Board as set by the Decision rendered for Monterey County Superior Court Case No. M66343 (*California American Water vs. City of Seaside, et al.*) dated March 22, 2006.

STATE REVOLVING FUND (SRF) – The funding source of \$7.7 million loan used by the City of Pacific Grove to finance its Local Water Project. Conditions that relate to this loan are set forth in SWRCB Resolution 2015-0070.

STATE WATER RESOURCE CONTROL BOARD (SWRCB) – The state-wide body that determines appropriate water rights, and determines legally approved water use by Cal-Am from the Carmel River Valley.

SWRCB ORDER 95-10 – The 1995 enforcement proceeding of the SWRCB that determined Cal-Am’s use of water from the Carmel Valley exceeded its legal water rights, which were quantified at 3,376 AFA. This Order required Cal-Am to reduce its former Carmel River diversions of 14,106 AFA in 1995 to 11,285 AFA in 1997.

SWRCB ORDER 2009-060 – The 2009 enforcement proceeding of the SWRCB imposed a Cease & Desist order on Cal-Am based upon continued use of water from the Carmel Valley in excess of legal water rights, as limited by SWRCB Order 95-10.

SWRCB ORDER 2016-016 – The 2016 enforcement proceeding amended and superseded the 2009 SWRCB Order (Order 2006-0060) to modify the milestones imposed upon Cal-Am. This Order comments on entitlements issued relating to the Pebble Beach Reclaimed Water Project, Malpas Water Company, and Sand City Desalination. The motion to adopt Order 2016-016 directed deletion of section 5.3.1.5 from the draft document, and directed SWRCB staff meet and confer with the parties within 90 days to resolve issues related to implementation of Condition 3 of Order 2009-060.

TRANCHE – Increments of potable water the City Council deems in its discretion to be available, from time to time, for immediate use from the Water Planning Reserve.

WATER CREDITS – A record allowing reuse of a specific quantity of water upon a specific location, based upon documented permanent abandonment of prior water use on that site.

WATER ENTITLEMENT– See “Entitlement”.

WATER PLANNING RESERVE – The Council Water Policy Subcommittee has recommended creation of a Water Planning Reserve. Under this recommendation, Council would transfer water increments it deems in its discretion to be available, from time to time. Water from the Water Planning Reserve would then be placed into one of three categories: the Commercial/Non-residential category; Residential category; and Civic Needs/Council Goals category. Mixed use projects would access the Residential allocation for residential water requirements of the project; the Commercial allocation would apply to all non-Residential water requirements of any project; the Civic Needs/Council Goals allocation would apply to governmental projects undertaken by the City or any other public agency that provides to the community or for the “affordable” portion of projects that include an affordable housing component.

WATER RESERVES – This term is proposed to be “retired”. It was formerly used in pre-existing PGMC 11.68 and called for water to be assigned to “allocation categories”: (1) residential; (2) commercial; (3) governmental; (4) city-administered community reserve. Residential Reserve projects range from new single-family dwellings on vacant lots, to interior remodels and renovations. As defined, Commercial Reserve projects were prioritized as follows:

1. Motel projects within the R-3-M zone.
2. Projects within the Downtown Commercial area.
3. Projects that generate sales tax revenue.
4. Diversification of business activities/types.
5. Expansion of existing uses.
6. Correction of existing problems.

Governmental Reserve projects were to include a new cemetery administration building and restrooms at the Monarch Sanctuary. Community Reserve is a city-administered increment of water assigned for meet general community needs. Use of the term “water reserves” is proposed to be discontinued.

WATER SUBSCRIPTION – A contract document through which a property owner acquired 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 in MPWMD Rule 24. The anticipated maximum annual water demand is expressed in Acre-Feet for a specific real property.

WATER WAIT LIST – A chronological list dated 2018 that quantifies unmet potable water requests for unserved end use water users. Prerequisite qualifying criteria must be met before a project can be placed on the Water Wait List. Wait-listed projects are subject to time limits to acquire and use water once it is determined to be available for use by each project.

WATER YEAR – The year period beginning October 1, and ending September 30 of the following year.

U:\GENERAL (NEW)\City of Pacific Grove\Water Policy Subcommittee\Glossary of Water Terms (11-7 Final).docx

RESOLUTION NO. 18-xxx

**RESCINDING FORMER COUNCIL POLICY 600-4
AND ADOPTING A REVISED POLICY 600-4
REGARDING WATER ALLOCATION,
WATER USE AND WATER ENTITLEMENTS**

FINDINGS

1. The current Council policy related to assignment and use of water supply allocations is not current and requires revision.
2. Previous water supply allocations are nearly exhausted, and a revised policy can better guide City actions related to new water supplies. New supplies may be developed by reason of future allocations of Cal-Am water through Monterey Peninsula Water Management (MPWMD) regulatory processes, or through distribution of new supplies developed by the City such as the Pacific Grove Local Water Project.
3. This action does not constitute a “Project” as that term is defined under the California Environmental Quality Act (CEQA) Guideline Section 15378, as it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

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

1. The foregoing Findings are adopted by the City Council as though set forth in full.
2. The prior version of Council Policy No. 600-4 is rescinded, and in its place revised Council Policy No. 600-4 is enacted, as attached hereto.
3. This Resolution shall take effect immediately following its adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE

this ___ day of October, 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

City of Pacific Grove, California

City Council Policy

Policy Governing	Policy No.	Effective Date	Page
Water Distribution, Water Use and Water Entitlements	600-4		1 of 3

PURPOSE

This Policy provides general guidance related to assignment, distribution and use of new water supplies. It reviews Water Distribution Objectives, and addresses processes related to Water Allocations and Water Entitlements. A key purpose of this Policy is to promote immediate use of available water supplies, and to inhibit water banking.

POLICY

1. Water Distribution Objectives

The City should be mindful of the following unprioritized list of objectives to evaluate decisions affecting the availability of water:

- Grow revenue to the City, i.e. preference to TOT & sales tax businesses;
- Maximize water entitlement sales revenue;
- Increase housing supply, to include meeting affordable housing objectives;
- Promote Downtown “District” Visitor Service Opportunities;
- Satisfy Water Wait list needs;
- Encourage Renovation.

2. Water Distribution Process

The City shall adhere to the following protocol to distribute available water:

- (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 a Water Planning Reserve;
- (3) Council should then transfer, by resolution, increments (tranches) it deems in its discretion to be available, from time to time, from the Water Planning Reserve to the following categories for immediate use. 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 designated by the council, by resolution, between the commercial/non-residential, residential and civic needs/council goals categories.
- (5) Mixed use projects should access the residential category for residential water requirements of any project;
- (6) The commercial category should apply to all non-residential water requirements of any project.
- (7) 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, or for the “affordable” portion of any project that includes an affordable housing component.
- (8) The city council in its discretion from time to time, by resolution, may move water from one category to another.

Projects placed on any Water Wait List after 1/1/2019 will be eligible for water, within their respective category, on priority date basis.

If a project on the Water Wait List is unable to use, or the applicant is unwilling to accept terms of purchase, the available water will be passed to the next buildable project and the delayed project shall retain its priority date.

3. Water Wait List

When water becomes available for use, or by purchase via entitlement, the City shall impose time limits for wait-listed properties within which applicants must claim and purchase water, or be removed from the Water Wait List. Those removed may choose to reapply to any successor Wait List (if one exists) under terms and conditions that may apply to the new Water Wait List.

Any applicant passed on the Water Wait List because the project 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. Applicants shall have 30 days from receipt of the Notification of Water Availability to notify the City in writing of their intent to either proceed with their project or to remain on the Water Wait List, retaining their priority date. This time shall run concurrently with the date by which applicants are required to apply for permit amendments or renewal, set forth below.

Applicants may be required to re-apply (if needed) for building permit amendment or renewal before available water may be used. If so, applications shall be submitted within 30 days of the date the Notice of Available Water is received by the applicant. Building permits shall be obtained 120 days thereafter, and full payment shall be tendered for any water entitlement within 180 days of the date the Notice of Available Water is received. Extensions for good cause to these time limits may be granted by the City Manager.

Full use of water, including purchased entitlement water (quantified by water use capacity as of the first date of occupancy), shall be encouraged. Any unused allocation or entitlement shall be subject to revocation by the City to enable reassignment or sale for other uses. The City should rebate the

pro-rata purchase price of any unused entitlement to the then-current property owner (less a reasonable processing fee) upon revocation of an increment of unused water, 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.

4. Water Entitlement

The City shall seek maximum benefit and reuse of potable water saved by operation of the Pacific Grove Local Water Project.

Sale of Entitlement Water shall be set at the prevailing market rate. Fees paid to the City by the applicant to maintain a priority date on the 12/31/2018 Water Wait List shall be applied as a credit toward the purchase of the Water Entitlement; however, refunds shall not be granted. The City Council may consider if it chooses to awarding grants to offset some or all Water Entitlement costs for projects that achieve Council Goals, such as affordable housing.

The City should rebate the pro-rata original purchase price to the then-current property owner (less administrative processing fees) upon City revocation of any increment of unused water. Payment of the rebate amount shall not be made by the City until sale of that water increment by the City has been completed and has been paid in full by another water user.

5. Additional Water Supplies

Should new water supplies become available for use within the City from any source of supply, or by allocation, the City Council shall convene a Council Water Policy Subcommittee to quantify the increment of available water, ascertain terms, conditions and limits that may apply to that increment of water, and recommend amendments as may be needed and appropriate to this Policy, and to Pacific Grove Municipal Code section 11.68.

Adopted _____ - Minute Motion

Amended _____ – Minute Motion

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 be 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

DRAFT