



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

ERRATA SHEET

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: Sandra Kandell, City Clerk
MEETING DATE: August 1, 2018
SUBJECT: City Council Meeting Agenda- Errata Sheet

Attached is additional information for your consideration at the August 1, 2018 City Council Meeting:

Agenda Item	Information Provided/Corrected
5A	The CEQA status was noted incorrectly in the original staff agenda report and corrected via Errata dated July 18, 2018, but not referenced correctly in the minutes. (Please see attached revised minutes.)
6A	Resolution revised grammatically. (Please see attached revised resolution.)
8A	Council Policy 700-4 Sidewalk Policy for reference. (Please see attached.)
11A	Revised language included in the Resolution was inadvertently left out of the Agenda Report. (Please see attached revised agenda report.)

RESPECTFULLY SUBMITTED:

Sandra Kandell, City Clerk



DRAFT MEETING MINUTES
CITY OF PACIFIC GROVE
CITY COUNCIL
SPECIAL MEETING

Wednesday, July 18, 2018, 5:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

CALL TO ORDER

Mayor Kampe called the meeting to order at 5:00 p.m. Present: Mayor Kampe, Mayor Pro Tem Huitt, Councilmembers Cuneo, Fischer, Garfield, Peake, and Smith.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

No public comment was received.

- A. Public Employment, (Government Code § 54957)
Title: City Manager Performance Evaluation



DRAFT MEETING MINUTES
CITY OF PACIFIC GROVE
CITY COUNCIL
REGULAR MEETING

Wednesday, July 18, 2018, 6:00 P.M.

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

CALL TO ORDER

Mayor Kampe called the meeting to order at 6:00 p.m. Present: Mayor Kampe, Mayor Pro Tem Huitt, Councilmembers Cuneo, Fischer, Garfield, Peake, and Smith.

PLEDGE OF ALLEGIANCE

Councilmember Smith led the pledge of allegiance.

1. APPROVAL OF AGENDA

City Manager announced Tribal Chairwoman Louise J. Miranda Ramirez could not attend tonight and requested her presentation (2A) be postponed until the Council's August 1, 2018 regular meeting. Upon motion by Councilmember Cuneo and seconded by Councilmember Fischer, the City Council voted 7-0 to approve the agenda as amended.

2. PRESENTATIONS

- A. Ohlone-Costanoan Esselen Nation (OCEN) 2018 Tribal Gathering Event
Reference: Tribal Chairwoman Louise J. Miranda Ramirez **This matter was continued to the Council's August 1, 2018 regular meeting.**
- B. Mayor's Proclamation: Feast of Lanterns

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

- A. City Attorney Dave Laredo reported Council met with respect to Government Code Section 54957, City Manager Performance Evaluation. Council first met to discuss the status of the evaluation, and then invited City Manager Ben Harvey to join them for further discussion, but no specific reportable action was taken.
- B. Council and staff made general announcements.

4. GENERAL PUBLIC COMMENT

Public comment was received from Andrew Kubica.

CONSENT AGENDA

Action: Consent Agenda Item No. 9A was pulled and considered as Regular Agenda Item 12C.

Action: Upon motion of Councilmember Cuneo and seconded by Councilmember Fischer, the Council voted 7-0 to approve the remainder of the Consent Agenda.

5. APPROVAL OF CITY COUNCIL MEETING MINUTES

- A. Minutes of the July 11, 2018 City Council Special and Regular Meetings

Action: Approved minutes.

CEQA: Does not constitute a "Project" as defined by CEQA Guidelines Section 15378

6. RESOLUTIONS

None.

7. ORDINANCES

None.

8. REPORTS – INFORMATION ONLY

None.

9. REPORTS – REQUIRING ACTION

- A. Agreement with Monterey Peninsula Engineering for Sewer Main Improvements Through the Monarch Butterfly Sanctuary **This matter was pulled and considered as Regular Agenda 12C.**

Reference: Daniel Gho, Public Works Director

Recommended Action: Authorize the City Manager to enter into an agreement with the Monterey Peninsula Engineering for the Sewer Main Improvements through the Monarch Butterfly Sanctuary for a cost of \$181,250 plus a 15% contingency.

CEQA: This action is categorically exempt as defined under the California Environmental Quality Act (CEQA) under Class 1, Article 19, Section 15301(c). Existing facilities, this states that Class 1 includes maintenance of existing public facilities.

10. MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES

None.

REGULAR AGENDA

11. PUBLIC HEARINGS

None.

12. UNFINISHED AND ONGOING BUSINESS

- A. Agreement with Karin Payson Architecture and Design for the Interior Remodel of the Pacific Grove Library Project
Public comment was received from Mary Ann Whitten.

Action: Upon motion by Councilmember Garfield and seconded by Councilmember Huitt, the Council voted 7-0 to authorize the City Manager to enter into an agreement with Karin Payson Architecture and Design for the Interior Remodel of the Pacific Grove Library Project for a cost not to exceed \$249,704 plus a 10%

contingency.

CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 15378

- B. Local Coastal Program Council Subcommittee Update **This matter was continued from City Council's July 11, 2018 Regular Meeting.** Councilmember Smith recused himself from participation on this matter due to being employed by a law firm that represents a client whose interests may be affected in a significant manner by LCP policies and excused himself from Chamber.

Public comment was received from Dale Ellis, Anne Russell Rudolph, and Lisa Ciani.

Action: Council accepted as information.

CEQA: Does not Constitute a "Project" per California Environmental Quality Act (CEQA) Guidelines Section 15378

Councilmember Smith returned to Chamber at approximately 7:21 p.m. for participation in the agenda items below.

- C. Agreement with Monterey Peninsula Engineering for Sewer Main Improvements Through the Monarch Butterfly Sanctuary **This matter was pulled from the Consent Agenda.** Public comment was received from Lisa Ciani and Sally Moore.

Action: Upon motion by Councilmember Fischer and seconded by Councilmember Cuneo, the Council voted 7-0 to authorize the City Manager to enter into an agreement with the Monterey Peninsula Engineering for the Sewer Main Improvements through the Monarch Butterfly Sanctuary for a cost of \$181,250 plus a 15% contingency.

CEQA: ~~This action is categorically exempt as defined under the California Environmental Quality Act (CEQA) under Class 1, Article 19, Section 15301(c). Existing facilities, this states that Class 1 includes maintenance of existing public facilities.~~ Initial Study / Mitigated Negative Declaration Prepared

13. NEW BUSINESS

- A. Agreement with Monterey Peninsula Engineering for 14th Street Sanitary Sewer Main Replacement Project
No public comment was received.

Action: Upon motion by Councilmember Fischer and seconded by Councilmember Cuneo, the Council voted 7-0 to authorize the City Manager to enter into an agreement with the Monterey Peninsula Engineering for the 14th Street Sanitary Sewer Main Replacement Project between Lighthouse Avenue and Central Avenue for a cost not to exceed \$550,880 plus a 15% contingency.

CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 15378

- B. Proposed Charter Amendment Discussion to Reduce the Size of the City Council
This matter was continued from City Council's July 11, 2018 Regular Meeting
Public comment was received from Joy Colangelo, Michael Bekker, Sally Moore, Jeanne Byrne, Steve Thomas, and Alka Joshi.

Action: After discussion and no motion by Council, Councilmember Garfield withdrew the matter to place an item on the November 2018 ballot to reduce the number of City Council Members from 7 to 5.

CEQA: Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 15378

- C. Resolution to Add a Ballot Measure to Increase the Uniform Transient Occupancy Tax (Tot) on November 6, 2018
Public comment was received from Timothy McGill, Alka Joshi, Gary Cursio, Jeanne Byrne, Robert Row, Patrick Sheridan, Kathy Bonnici, Jeff Mitchell, Peter Munteer, Michael Becker, Steve Thomas and Moe Ammar.

Action: A motion was made by Councilmember Huitt and seconded by Councilmember Fischer adopt Resolution 18-025 to add one ballot measure to increase the Uniform Transient Occupancy Tax at the Municipal Election, which was consolidated with the General Election, set for November 6, 2018, with one amendment changing the effective date from January 1, 2019 to July 1, 2019.

Upon motion by Mayor Kampe for a friendly amendment changing the effective date from July 1, 2019 to April 1, 2019, and seconded by Councilmember Cuneo, the motion failed, 2-5, Councilmembers Huitt, Garfield, Fischer, Peake, and Smith dissenting.

Upon the original motion by Councilmember Huitt and seconded by Councilmember Fischer, the Council voted 7-0 to adopt Resolution 18-025 to add one ballot measure to increase the Uniform Transient Occupancy Tax at the Municipal Election, which was consolidated with the General Election, set for November 6, 2018, with one amendment changing the effective date from January 1, 2019 to July 1, 2019.

Upon motion by Councilmember Huitt, and seconded by Councilmember Fischer, the Council voted 7-0, to adopt the following:

The City Clerk shall be authorized to publish a copy of this Resolution in a newspaper of general circulation once within fifteen (15) days after the adoption of this Resolution, and provide services and supplies in connection with the election as required by law.

The Resolution clarifies that City Council shall, in accord with Elections Code Section 9282, exercise its right to author and sign ballot arguments and rebuttal arguments regarding the measure, and delegates that power to the Mayor.

The Resolution also directs the City Attorney to provide an abbreviated statement of the ballot measure, and on or before August 16, 2018, to submit an impartial analysis of no more than 500 words as to each ballot measure pursuant to section 9203 of the California Elections Code.

CEQA: Exempt from the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., as it can be seen with certainty that there is no possibility that the activity authorized may have a significant effect on the environment.

14. FULL PRESENTATIONS

None.

ADJOURNMENT

Council adjourned the regular meeting at 10:00 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____ Date _____

Attest by City Manager: _____ Date _____

AMENDED
RESOLUTION NO. 18-025

AMENDED
**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE
SUBMITTING TO THE ELECTORS A MEASURE
TO AMEND CHAPTER 6.09 OF THE MUNICIPAL CODE
TO INCREASE THE UNIFORM TRANSIENT OCCUPANCY TAX**

WHEREAS, the City Council determines and declares that financial circumstances of the City of Pacific Grove (City) require enactment of measures to increase tax revenue to the City to preserve the public peace, health and safety of the community, to avoid the work stoppage and/or service disruptions that shall result from additional staff cuts and reductions in force, and to avoid permanent impairment of community services provided by the police, museum, recreation and other cultural resources within the City; and

WHEREAS, the City currently imposes a uniform Transient Occupancy Tax (TOT) on visitors who stay overnight in City hotels, motels or short-term rentals for less than thirty days; and

WHEREAS, the City uniform TOT has been set at ten percent; and

WHEREAS, neighboring cities on the Monterey Peninsula and the County have transient occupancy tax rates that range from ten to twelve percent; and

WHEREAS, the City would like to clarify the TOT is calculated based upon the total rent paid by the guest, and not on a discounted rate that may be paid to a hotel operator by online travel companies or other third party booking agents; and

WHEREAS, the transient occupancy tax proposed for enactment by this resolution shall be enacted solely to raise revenue for any and all municipal purposes, and shall be placed into the City's General Fund, is not intended for regulation, and shall constitute a "general tax"; and

WHEREAS, the voters of the State of California amended the state constitution, adding Article XIII C, which requires that all new or increased special taxes be submitted to the voters prior to becoming effective, and

WHEREAS, the operative date for the increase to the Uniform Transient Occupancy Tax, if approved by a majority of the voters, shall be July 1, 2019; and

WHEREAS, this Ordinance is exempt from the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., as it can be seen with

certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment; and.

WHEREAS, the City Council requests consolidation of election precincts, polling places and voting booths be the same as for the General Statewide Election, and further that the form of a ballot used within the City of Pacific Grove specify this tax measure and/or measures that may hereafter qualify for the ballot; and

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WHEREAS, the City Council further requests the Monterey County Board of Supervisors order the County Registrar of Voters prepare and mail sample ballots with this tax measure on the ballot to the qualified electors of the City; obtain appropriate precincts locations and trained precinct workers; prepare and count the ballots on Election Night or thereafter; and certify the election results, in the manner provided by law; and

WHEREAS, pursuant to Elections Code Section 10002, the Registrar of Voters is authorized to bill the City, on a prorated basis, for costs associated with this General Election; and

WHEREAS, the City Clerk shall be authorized to publish a copy of this Resolution in a newspaper of general circulation once within fifteen (15) days after the adoption of this Resolution, and provide services and supplies in connection with the election as required by law; and

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WHEREAS, the City Council shall, in accord with Elections Code Section 9282, exercise its right to author and sign ballot arguments and rebuttal arguments regarding the measure, and delegates that power to the Mayor.

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

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. This resolution shall become effective immediately following passage and adoption thereof.

SECTION 3. The City Council requests the Board of Supervisors permit the Monterey County Elections Department provide any and all services necessary for conducting the election and agrees to pay for said services.

SECTION ~~3~~4. The ordinance submitted to voters as provided by this Resolution shall take effect if and only if it is approved by a majority of the electors casting ballots at the November 6, 2018 election, and if so, said ordinance shall immediately amend

Chapter 6.09 of the Pacific Grove Municipal Code, but the operative date for the increase to the Uniform Transient Occupancy Tax shall be July 1, 2019.

SECTION 5. The text of the ballot measure is referenced below between Sections 6 and 7 and symbol * as noted below. The text of the measure shall be printed in the ballot materials; a copy of the measure shall be available for public inspection in the City Clerk’s office at 300 Forest Avenue, Pacific Grove and on the City’s website at www.cityofpacificgrove.org/about-city/city-clerk. If not provided in the voter guide, upon request, copies will be sent at the expense of the City.

SECTION ~~4~~6. The City Council of the City of Pacific Grove does hereby submit to the voters at the next election, an ordinance, which reads as follows:

The text set forth in existing Section 6.09.010, Definitions, of Chapter 6.09 of the Pacific Grove Municipal Code shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

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6.09.010 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

“Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structures or portion thereof, except that no lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure shall be deemed a hotel, when less than 10 percent of the annual dollar value of the rentals it earns derives from transient occupancy, and when it does not by signs or other advertising invite transient occupancy.

“Occupancy” means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

“Online Travel Company” means any person, whether operating for profit or not for profit, which enables transients to purchase occupancy of space in a hotel via the Internet, or by similar electronic means.

“Operator” means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, ***including but not limited to an online travel company,*** the managing agent shall also be deemed an operator for the purpose of this chapter and

shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

“Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Rent” means the consideration charged to the transient (including but not limited to, room rates, service charges, retail markup, commissions, processing fees, cancellation charges, attrition fees or online booking fees), whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

“Tax administrator” means the city clerk.

“Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

The text set forth in existing Section 6.09.020 of Chapter 6.09 of the Pacific Grove Municipal Code shall be changed, effective July 1, 2019, by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

For the privilege of occupancy in any hotel ***on and after July 1, 2019,*** each transient is subject to and shall pay a tax in the amount of ~~10~~ ***twelve*** percent (***12%***) of the ***total*** rent ~~charged~~ ***paid by the transient*** by the operator. The tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient’s ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

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SECTION 57. All tax proceeds deriving from the provisions of Chapter 6.09 shall be a "general tax," the revenue from which shall be placed into the City's General Fund and be available for any and all municipal purposes.

SECTION 68. The ballot format for the proposal to authorize amendment of Chapter 6.09 of the Pacific Grove Municipal Code shall be substantially as follows:

CITY MEASURE ()

Shall the measure amending the Pacific Grove Municipal Code be adopted to increase the City of Pacific Grove's Transient Occupancy Tax (TOT), effective July 1, 2019, imposed on occupants of short-term rentals such as hotel rooms, from 10% to 12%, and apply TOT to total rent paid by a guest for the short-term rental, including online travel companies, which is anticipated to raise \$1,135,000 annually and will continue until repealed by City Council or City voters?

Yes (_____)

No (_____)

SECTION 79. If any provision, section, paragraph, sentence, clause, or phrase of this measure, 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 Resolution, or any part thereof, or its application to other persons or circumstances.

SECTION 10. The City Attorney shall provide an abbreviated statement of the ballot measure, and on or before August 16, 2018, shall submit an impartial analysis of no more than 500 words as to each ballot measure pursuant to section 9203 of the California Elections Code.

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SECTION 11. The last day to submit arguments (300 words) for or against the proposed measure shall be August 16, 2018. Submittals are to be delivered to the City Clerk on or before 5:00 p.m.

SECTION 12. The last day to submit rebuttal arguments (250 words) for the proposed measure shall be August 23, 2018. Submittals are to be delivered to the City Clerk on or before 5:00 p.m.

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PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this ___ day of August 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
COUNCIL POLICY**

SUBJECT	POLICY NO.	EFFECTIVE DATE	PAGE
Sidewalk development	700-4	March 21, 2018	1 of 3

PURPOSE AND BACKGROUND

This policy is intended to guide the City’s development of its pedestrian infrastructure in accordance with General Plan goals, policies and programs. It is meant to guide both public works and permitted private installations, whether required or voluntary.

General Plan

The Pacific Grove General Plan envisions a fully walkable community, while recognizing that the existing pedestrian infrastructure is incomplete and imperfect. Program FF of the Transportation Chapter says that the City should identify gaps and deficiencies in the pedestrian system and correct them by means of the City’s Capital Improvements Program. This Sidewalk Policy provides a basis for specifying what the gaps and deficiencies are and how they should be corrected.

Complete Streets

Sidewalks are a key component of “complete streets,” the principle that the public right-of-way should accommodate all modes of travel—driving, walking, cycling and transit. Sidewalks are essential on any street with a significant level of motor vehicle traffic. But it is possible to have complete streets without sidewalks. There are streets in Pacific Grove where traffic levels are low enough that pedestrians can safely share the roadway with motor vehicles and bicycles. In some cases, installing sidewalks, especially discontinuous segments of sidewalks, can actually be contrary to safe and accessible pedestrian travel. Central to this Policy is differentiating between streets where sidewalks are necessary and appropriate for reasons of public convenience, safety and accessibility, and streets where they are not.

SIDEWALK POLICY

1. Sidewalks should be installed and maintained on all Primary Pedestrian Routes

Those streets or street segments where sidewalks are deemed necessary for pedestrian safety and accessibility are designated as Primary Pedestrian Routes, comprising several overlapping categories: busy streets (arterials and some collectors), streets in commercial districts, major routes to schools, essential routes for seniors and people with disabilities, and key visitor walking routes (See Map 1). Installing new and maintaining existing sidewalks on these streets should be a priority

2. On local streets that are not Primary Pedestrian Routes, the suitability of sidewalks should be based on compatibility with existing conditions.

Where sidewalks are already in place, they should be kept and maintained in good repair, and extended where they are incomplete. In those neighborhoods where sidewalks are not standard and are not warranted (i.e., are not on a Primary Pedestrian Route), they should not be installed. This Policy will be used to determine whether to require sidewalk installation as a condition of development under M.C.18.04.055.

3. Wherever sidewalks are installed, they should be continuous for the whole block, from intersection to intersection, with ADA-compliant corner curb cuts at each end of the block.

On blocks where curb and gutter have been installed, but sidewalk installation is incomplete, existing gaps should be filled so that the sidewalk is continuous for the entire block, with ADA-compliant corner curb cuts at both ends. Filling gaps and installing ramps on otherwise complete sidewalk segments should be a priority.

4. The sidewalk space of the public right-of-way should be kept free of encroachments that obstruct pedestrian travel.

Encroachments and obstacles in the public right-of-way should not interfere with or prevent its use for pedestrian travel. The most common obstructions to pedestrian travel are plantings and construction in the sidewalk space¹, prohibited by local ordinance (M.C.15.16.040), and vehicles parked on or across the sidewalk, prohibited by State law (California Vehicle Code 22500). In its enforcement of codes and statutes regarding right-of-way obstructions and encroachments, the City will be guided by this Sidewalk Policy.

Adopted: March 21, 2018
Resolution No. 18-009

¹ Sidewalk space is the space between the property line and the curb. M.C. 15.16.010.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Mark Brodeur, Director of Community & Economic Development Department, and Wendy Lao, AICP, Associate Planner
MEETING DATE: August 1, 2018
ADDRESS: 522 (520) Lighthouse Ave. Pacific Grove, CA 93950
ADDRESS: APN: 006-178-009
SUBJECT: Appeal of Planning Commission’s approval of Architectural Permit (AP) and Use Permit (UP) #18-364 to demolish the existing 3,472 square foot building and to build a new 37,056 square foot mixed-use three-story structure consisting of ten (10) residential units on the upper floors, commercial uses on the first floor, and an underground parking structure.
APPLICANT: Phil Johnson, Architect, on behalf of Gerald Leigh Properties, owner
GENERAL PLAN LAND USE: Commercial Downtown
ZONING: C-D
CEQA: Categorical Exemption, California Environmental Quality Act (CEQA) Guidelines Section 15332, Class 32, In-Fill Development Projects

RECOMMENDATION

Conduct a de novo hearing and (1) adopt the CEQA Notice of Exemption (NOE) and (2) adopt the attached Resolution that affirms the Planning Commission’s approval and conditions for Architectural Permit & Use Permit #18-364 pursuant to Pacific Grove Municipal Code (PGMC) §§ 23.70.060(c)(1) and 23.70.080(a)(2).

DE NOVO HEARING & FINDINGS TO BE MADE

The City Council may affirm, affirm in part, or reverse the action of the Planning Commission that is the subject of this appeal, based upon findings of fact about the particular case. Council may also adopt additional conditions of approval that may address other issues or concerns than the subject of the appeal. (PGMC § 23.74.050)

The necessary findings are listed here for consideration by the Council in making their recommendation on this project appeal. The Council is reminded that its findings must be supported by substantial evidence, and the better practice is to refer to the evidence that supports each of the proposed findings.

- (A) In reviewing this action, the City followed guidelines adopted by the State of California as published in California Administrative Code, Title 14, §15000, et seq. The proposed project is found to be exempt under the CEQA Guidelines

Categorical Exemption, Section 15332, Class 32, In-fill Development Projects as it meets all of the following criteria:

- 1) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- 2) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- 3) The project site has no value as habitat for endangered, rare or threatened species.
- 4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- 5) The site can be adequately served by all required utilities and public services.

(B) None of the exceptions to the Categorical Exemptions found at CEQA Guidelines Section 15300.2 apply to the proposed project.

(C) The Council has reviewed the Notice of Exemption (NOE) and in its independent judgment and analysis finds that the NOE is adequate; the NOE has been completed in compliance with CEQA; the NOE was presented to the City Council, and the Council has reviewed and considered the information contained in the NOE prior to approving the project; and the custodian for these documents shall be the City Clerk at 300 Forest Avenue, Pacific Grove, California 93950.

(D) The Council may approve a use permit only after first making the following findings:

- 1) The proposed use is allowed with a use permit within the applicable zoning district and complies with all applicable provisions of these regulations;
- 2) The proposed use is consistent with the general plan and any applicable specific plan;
- 3) The establishment, maintenance, or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
- 4) The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city; and
- 5) The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

(E) The Council may approve an architectural permit only after first making the following findings:

- 1) The architecture and general appearance of the completed project are compatible with the neighborhood, and;
- 2) The completed project will neither be detrimental to the orderly and harmonious development of the city nor impair the desirability of investment or occupation in the neighborhood, and;
- 3) The commission has been guided by and has made reference to applicable provisions of the architectural review guidelines in making its determinations on the structure.

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PROJECT DESCRIPTION

The proposed project seeks to demolish the existing 3,472 square foot building, and build a new 37,056 square foot mixed-use three-story structure. The proposal consists of 10 residential units on the upper floors, commercial uses on the ground floor, and an underground garage with 20 parking spaces. Vehicular access into and out of the garage would be provided from 15th Street. A Use Permit is required for any new building or addition which adds more than 25,000 square feet of interior floor space pursuant to PGMC 23.31.030 End Note 3. An Architectural Permit is also required for any new construction pursuant to PGMC 23.70.060 (c)(1).

PROJECT LOCATION

The project site is a street-to-street parcel on the north side of Lighthouse Avenue, located between Fountain Avenue and 15th Street. The site is 15,146 square feet in area and irregular in shape. The site slopes 11 feet downward from the highest point at the southwest corner to the lowest point at the northeast corner, which is an approximately 7% grade.

The project site located in the City's commercial downtown (CD) zoning district and Area of Special Biological Significance overlay zone. The project site is not located in the City's Coastal Zone. The site was previously used as an automobile service station and currently consists of a sandwich shop and a retail store. The entire site is developed with a former gas station building and a large paved area.

SURROUNDING LAND USES AND SETTING

The immediate vicinity of the site is developed with many one-, two-, and four-story commercial structures. The project site is surrounded by the commercial-residential mixed-use Holman Building to the west, the Lighthouse Cinema to the south, and residential properties to the east. Commercial buildings are located on the northwest of the project site, and a two-story single-family residence is located on the northeast of the project site.

DISCUSSION

General Plan Goals and Policies

The City's General Plan provides a framework for future growth and development within the City. The Land Use Element includes goals and polices that call for the orderly, well-

planned, and balanced development consistent with the historic nature of Pacific Grove, the capacity of the City's infrastructure, and ability to assimilate new growth.

The City's General Plan Land Use Map designates the subject parcel as Commercial Downtown. This designation provides for ground floor commercial establishments and upper floor residential and professional uses. Specific General Plan goals and policies relevant to the proposed project include the following:

Chapter 3, Housing

- Goal 2: Provide diverse, high quality housing choices appropriate for residents at all income levels.
- Policy 2.1: Strive to accommodate the City's share of the region's housing needs.
- Goal 3: Reduce governmental and infrastructure constraints to the improvement and development of housing for people of all income levels.

Chapter 2, Land Use

- Policy 12: Promote and maintain a healthy local economy while preserving the local community character.
- Policy 14: Promote Pacific Grove businesses and industries.
- Policy 16: Attract and retain a variety of businesses and services in the community.
- Policy 23: Encourage new residential uses in the Downtown, but limited to the upper stories of new and existing buildings.

The proposed residences further the goal of the General Plan to provide housing units. The proposed restaurant and retail spaces add another key attraction to retain and draw visitors to Pacific Grove. This translates into additional business for local restaurants and stores, and overnight stays for motels and hotels. The project proposal supports the General Plan goals and policies.

Floor Area Ratio (FAR) and Building Intensity

The General Plan's Chapter 2, entitled *Land Use*, Section 2.15.3, provides the following for its Downtown land use designation: "*The combined floor area ratio for commercial and office uses should (emphasis added) not exceed 2.0. However, a bonus of up to 0.3 FAR may be granted for specific upper floor uses that further the goals of the General Plan. The maximum residential density will range from 20 to 30 units per net acre, and residential densities will not exceed the maximum density in the nearest residential designation unless a finding is made that a higher density will further the goals of the General Plan.*"

The project proposes a FAR of approximately 0.96 for the commercial ground floor, and therefore is in compliance with the General Plan's allowable maximum FAR of 2.0 for commercial use.

The PGMC § 23.31.040 and the General Plan allow a building intensity of 30 dwelling units per acre for residential uses, or 10.2 dwelling units for the specific project site. The project proposes a residential density of 10 dwelling units on a 0.34 acre site, or 10.2 dwelling units for the project site, and therefore is in compliance with this requirement.

The PGMC § 23.31.040 End Note 6 and the General Plan further states that the project site shall not exceed the nearest residential designation for its residential properties, unless if a finding is made that a higher density will further the goals of the General Plan. The nearest residential designation is a property in the R-3-PGR zoning district which allows for up to 29 DU/ac, or 9.86 dwelling units for the project site. The project proposes a residential density of 10 dwelling units on a 0.34 acre site, which equates to 10.2 dwelling units for the project site, and exceeds the nearest residential designation by 0.34. However, the higher density of an additional 0.34 dwelling unit furthers the Housing Goals 2 and 3 of the General Plan, so therefore was allowed under the discretion of the Planning Commission. In addition, the General Plan § 2.15.3 also allows a bonus of 0.3 FAR for upper floor uses, which furthers the goal the General Plan.

Altogether, the project proposes a FAR of approximately 2.44 for the project site. However, although the project is in compliance with the zoning code and General Plan for FAR and building intensity, it is worth noting that the FAR is a guideline and not mandatory. The use of the word "should" versus "shall" in the General Plan Section 2.15.3 allows the City leeway to determine what is an appropriate FAR for any given site given the site's context and supporting General Plan goals and policies. The project appears to further the General Plan's Chapter 2 Land Use Goals 12, 14, 16, 23, Chapter 3 Housing Goals 2 and 3, and the Transportation Chapter 4 Policy 11.

Zoning Code Regulations

The proposed project is in full compliance with the zoning regulations set forth in PGMC § 23.31.040, including End Note 6 with findings. This includes and is not limited to the 40 foot height limit, 0 foot minimum setback requirement, and allowable 100% site coverage, density requirements, and floor area ratio.

Concurrent Permit Processing

The proposed project is subject to both an Architectural Permit and Use Permit. Per PGMC § 23.72.020, the Zoning Code provides for concurrent permit processing to allow for a clear permitting and decision-making path. While this section of the Code permits the Chief Planner (Director) to determine that all applications be approved or disapproved by the highest-level review authority, the Planning Commission, the project was brought before a variety of boards and commissions, as discussed below, and the Architectural Review Board provided a recommendation to the Planning Commission in conformance with PGMC § 23.72.020.

Water

The project has been added onto the City's water waitlist after the Planning Commission approved the Use Permit on June 7, 2018.

PUBLIC MEETINGS AND HEARINGS

A variety of public hearings on the proposal have been heard to date and are listed and described below. Each public hearing was noticed in conformance with PGMC § 23.86 and conforms to the Council Policy for Staking and Story Poles. Item G of the Staking and Story Poles policy permits the Community & Economic Development Director (CEDD) Director to seek relief from the requirements where infeasible, and direct use of effective alternatives. In consultation with the Chief Building Official, the Director determined the use of story poles and netting in a downtown pedestrian-oriented urban location and zero lot lines would pose a safety hazard. The project applicant was directed instead to provide photomontages in addition to on-site posting, 300 foot mailing of notices, and a newspaper publication.

Site Plan Review Committee

A Site Plan Review Committee meeting was held on January 11, 2017 with the CEDD Director, the Public Works Director, the Building Official, the City Engineer and the Environmental Program Manager for their input and conditions on the project.

Architectural Review Board

The Architectural Review Board (ARB) was established by the City to review proposed structures to promote the orderly and harmonious development of the City, and to protect its architectural character. The proposed development meets the development standards for the Commercial-Downtown (C-D) zone. The City currently has no Commercial or Downtown Design Guidelines.

In its November 30, 2016 application, the architect originally proposed a 32,300 square foot, four-story building. The project consisted of ten residential units and office space on the upper floors, commercial uses on the ground floor, and an underground garage with 27 parking spaces. However, after a public hearing, the applicant submitted a revised design.

The revision still proposed a four-story building, but was enlarged to 43,912 square feet. The revision consisted of 14 market-rate residential units, two workforce housing units, commercial uses on the ground floor, and an underground parking structure with 32 parking spaces. This project was heard by ARB on January 23, 2018. Please see Attachment G for more information. The Board made numerous comments and recommendations to the Planning Commission, the approval body for the joint permit application. Below is a summary of the comments and recommendations from the ARB members:

- Two board members recommended approval of the project.
- The Chair expressed concerns about the design complementing the downtown character, and recommended a redesign that would "bring life" into the City.
- One board member also expressed concerns about the design complementing the neighborhood character, and did not support the design as proposed due to the lack of scale and lack of sidewalk engagement.

- Another board member also expressed concerns about the design complementing the character of Pacific Grove, but supported the idea of affordable housing and wanted the project to provide more than two workforce housing units.
- One board member recommended an alternative design to better engage pedestrians along Lighthouse Avenue that would help revitalize the downtown.

Multiple members of the public also expressed concerns about the project. After receiving comments from the ARB, the applicant revised the project and submitted another redesign on May 3, 2018 through Application #18-364.

Planning Commission

The Planning Commission reviewed the revision, Application #18-364, at its June 7, 2018 public hearing. The project was revised to reflect a smaller, three-story building with ten market-rate residential units and 20 underground parking spaces. Staff had recommended approval of the project, with architectural design changes to better suit the neighborhood character. The applicant explained why they did not follow staff's recommendation. For example, they cited the severe slope of the site as the reason to not achieve multiple, individual, street-facing storefront entrances, and they declined to provide awnings due to the maintenance required.

At that meeting, the Planning Commission voted 4-2-1 (Commissioners Aeschliman and Murphy dissenting; Chair Fredrickson absent) after determining the CEQA exemption applied, to approve the project's Architectural and Use permits as presented without staff's recommended design changes. The motion passed. Please see Attachment H for more information.

Appeal

On June 18, 2018, appellants filed an appeal of Planning Commission's approval of Architectural Permit & Use Permit #18-364 per PGMC § 23.74. Issues raised in the appeal include Floor Area Ratio, parking, historical resources, and CEQA. See Attachment A for more information.

ISSUES

Pursuant to PGMC § 23.74.050 (d), the Council may consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds identified in the appeal. Below are the predominant issues raised by the appellants.

Floor Area Ratio (FAR)

Appellants expressed concerns about the FAR calculations, as described in Attachment A. Staff's explanation regarding a FAR analysis is set forth above.

Parking

Appellants expressed concerns that parking requirements appear to have been omitted for the project's ground-floor commercial uses.

The project site is located in the Commercial Downtown Parking District established over 55 years ago by Ordinance No. 381 N.S. The Parking District

created several municipal parking lots to allow the downtown to remain an urban, pedestrian-friendly environment. Historically, the Planning Commission has not required buildings in the Parking District to provide off street parking for first floor uses. The Code does not specify parking requirements for commercial uses such as restaurants or retail in downtown; rather, the parking requirement for any commercial structure in downtown is subject to Planning Commission approval, pursuant to PGMC § 23.64.190(g). The City's General Plan also supports the Planning Commission's decision on parking. Policy 11 in the Transportation sections states, "*With the exception of properties in the former Downtown Parking District, require new development to provide adequate off-street parking.*" As such, no additional parking for the building's first-floor commercial uses were required by the Commission.

The project proposes 20 parking spaces for 10 residential units, which results in two parking spaces per unit. This not only exceeds the allowable 1.3 parking spaces per residential unit in a mixed-use project as set forth by the Planning Commission under PGMC § 23.64.190(g), but this also meets the requirement of two parking spaces per residential unit in a dwelling group, per PGMC § 23.64.190(b)(2). In addition, storage lockers for each residential unit are provided in the parking garage.

Bicycle parking is provided on Lighthouse Avenue and may be used by patrons, residents and employees. A bus stop served by MST Route #1 is also located in front of the project site.

California Environmental Quality Act (CEQA)

Appellants expressed concerns about the applicability of the CEQA Guidelines Categorical Exemption, Section 15332, Class 32, In-fill Development for this project. A memorandum detailing the applicability of the CEQA Exemption, including an analysis of the exceptions to the exemptions pursuant to CEQA Guidelines Section 15300.2, has been prepared by Denise Duffy & Associates, Inc., an environmental consulting firm. The memorandum concluded the project would not result in any significant environmental impacts, and the qualifies for a Categorical Exemption under CEQA as it meets the conditions described in Article 19, Section 15332. The memorandum also determined that none of the exceptions to the Categorical Exemptions found at CEQA Guidelines Section 15300.2 apply to the proposed project. Please see Attachment C for more information.

Traffic

Appellants expressed concerns about traffic. A technical memorandum with a project trip generation estimation analysis has been prepared by TJKM, a transportation consulting firm. The memorandum concluded that the "increase in traffic caused by this development is negligible and should not reduce the level of service on Lighthouse Avenue or nearby intersections." Please see Attachment D for more information.

Historic Resources

Appellants have also expressed concerns about the review process for determining historic resources. The property is not listed in the City’s Historic Resources Inventory. The subject site is associated with Everette “Red” Williams and the literature of author John Steinbeck. However, as noted in the memorandum prepared by Denise Duffy & Associates, Inc., the building was significantly modified as evidenced by City records and by the County of Monterey database. For example, the original structure, as indicated in this photograph from 1936 below, has since been removed and is now replaced with the current carport and a small building. This renders the property ineligible as a historic resource.



Pacific Grove, 1936. Gift of the Heritage Society of Pacific Grove.

Furthermore, PGMC § 23.70.080(c)(2) provides,

“The historic resources committee is the recommending authority for initial historic screening requests. The committee shall make a recommendation to the chief planner as to whether a determination of ineligibility can be made or if a Phase 1 historic assessment is needed to determine the historicity of a structure.”

The CEDD Director has final authority for determining buildings as ineligible as a historic resource per PGMC § 23.70.012-1. Given the extent of the modifications and changes to the property over time, the Director concluded the current structures do not meet the criteria of PGMC § 23.76.025. Please see Attachment E for more information. Note, PGMC § 23.70.070(c)(1) further provides, “The historic resources committee is the decision-making authority for historic determinations, which are additions to and deletions from the historic resources inventory.” However, the applicant has not applied for a historic determination permit to be added into the City’s Historic Resources Inventory, and has not requested to be

deleted from the Historic Resources Inventory because it currently is not a historical resource.

CEQA

The CEQA analysis has been described above. Please also see Attachment C for more information.

CONDITIONS

Staff recommends if UP AP 18-364 is approved, the permit must be subject to the recommended conditions. Please see the Draft Permit (Attachment K) for more information.

OPTIONS

- 1. Deny the project.
- 2. Uphold the action of the Planning Commission to approve the project;
- 3. Direct the applicant to revise the project subject to Council direction.

FISCAL IMPACT

The proposed project would generate additional property tax and revenue sources from commercial uses and help meet City’s Housing Element goals by adding additional units to the City’s housing stock.

GOAL ALIGNMENT

The project aligns with Goal 6 Revitalize Downtown. The subject site is developed with a single-story gas station building and an asphalt parking lot. The 1994 General Plan and approved Zoning District permit a 40 foot tall, mixed-use commercial-residential use building. The form and scale of the project are in conformance with the General Plan and zoning district. The project furthers many General Plan goals that are in alignment with Council Goal 6 Revitalize Downtown.

ATTACHMENTS

- A. Appellant’s Application
- B. Project Application
- C. CEQA Exemption and Supporting Documentation
- D. Trip Generation Analysis
- E. Historic Property Information
- F. Monterey-Salinas Transit (MST) Correspondence
- G. Architectural Review Board Meeting Minutes
- H. Planning Commission Meeting Minutes
- I. Water Credit Form
- J. Project Data Sheet
- K. Draft Permit
- L. Project Material Details
- M. Stormwater Control Plans
- N. Architectural Plans

RESPECTFULLY SUBMITTED:



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