

RESOLUTION NO. 20-002

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF
UNDERSTANDING WITH THE COUNTY OF MONTEREY FOR TOBACCO RETAIL
LICENSE ADMINISTRATIVE AND ENFORCEMENT SERVICES**

FINDINGS

1. The City of Pacific Grove (City) is a unique coastal community that prides itself in its community character;
2. The City has adopted a General Plan and the Pacific Grove Municipal Code (PGMC or Code) that strives to protect the residential character through clear policies and regulations; and
3. Upon the request of the County of Monterey (County), the City adopted Ordinance No. 20-002 on January 15, 2020 to add Tobacco Retail Licensing requirements to the City's Code; and
4. The administration and enforcement of the Tobacco Retail Licensing Ordinance is under the purview of the County, and the City and the County wish to execute a Memorandum of Understanding regarding this relationship as it pertains to Tobacco Retail Licensing.

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

1. The City Council determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.
2. The Council authorizes the City Manager to execute a Memorandum of Understanding with the County for Tobacco Retail License Administrative and Enforcement Services.
3. The Memorandum of Understanding is hereby approved as attached to this Resolution, which by this reference are incorporated as set forth in its entirety.
4. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 19th day of February, 2020, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Huitt, Councilmembers Amelio, Garfield, McAdams, and Smith.

NOES: None.

ABSENT: Councilmember Tomlinson.

APPROVED:

Bill Peake

BILL PEAKE, Mayor

ATTEST: *2/20/2020*
Dated: _____

Sandra Kandell

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

David C. Laredo

DAVID C. LAREDO, City Attorney

**AGREEMENT BETWEEN
CITY OF PACIFIC GROVE AND COUNTY OF MONTEREY
FOR TOBACCO RETAIL LICENSE ADMINISTRATIVE AND ENFORCEMENT
SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this February 19, 2020 (“Effective Date”), by and between the City of Pacific Grove, a municipal corporation of the State of California (“City”), and the County of Monterey, a political subdivision of the State of California (“County”).

RECITALS

WHEREAS, the City, by Ordinance No.20-002 (“Ordinance”), has adopted a tobacco retail license program; and

WHEREAS, the City enacted the Ordinance in order to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, particularly those which prohibit or discourage the sale or distribution of tobacco products to minors; and

WHEREAS, the County agrees to assist the City in enforcing the Ordinance by providing such administrative and enforcement services as are specified under the Ordinance, on the terms and condition specified in this Agreement; and

WHEREAS, any costs borne by the County to administer and enforce the Ordinance within the City limits shall be recovered by the fees approved by the City and received by the County from tobacco retailers within the City, pursuant to the Ordinance.

AGREEMENT

NOW, THEREFORE, the City and County agree as follows:

Section 1. Incorporation of Recitals.

The above recitals, including the paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

Section 2. Responsibilities under the Agreement.

a. County Responsibilities. County shall do the following:

1. Subject to the terms of this Agreement, and provided that the terms of Section 2(b) below have been satisfied, the County shall provide all of the administrative and enforcement services specified under the Ordinance, including but not limited to: receiving, reviewing, and processing the tobacco retail application and the information contained therein; issuing the license; administering the license program, retailer education, retailer inspection and compliance checks; documenting violations; issuing and collecting penalties; and hearing any appeals (“Services”).

2. Meet with the appropriate City personnel on a yearly basis, at a time and location to be chosen convenient for both parties, to assess the status of this Agreement and the Services to discuss any modifications thereto.
3. Communicate from time to time with the City, as needed or requested, regarding the administrative and enforcement services provided by the County under this Agreement.

b. City Responsibilities. City shall do the following:

1. Provide information regarding the Ordinance to any business applying for a business license under Chapter 11 of the Pacific Grove City Code.
2. Communicate from time to time, as needed, with Tobacco Retailers (as that term is defined in the Ordinance) regarding the Ordinance.
3. Not interfere with, or in any way hinder, County's, or any of County's employees, officers, agents, or designated representatives in the performance of their duties pursuant to this Agreement.
4. Assist the County so far as reasonably appropriate in carrying out the terms of this Agreement.
5. Communicate with reasonable notice, as needed or requested, regarding any proposed action by the City to amend, modify, or repeal the Ordinance.
6. Meet with the appropriate County personnel on a yearly basis, at the time and location chosen convenient for both parties, to assess the status of this Agreement and to discuss any modifications thereto.

c. County and City Responsibilities.

1. The responsibilities listed hereunder shall not be construed so as to preclude existing or future County or City rights and responsibilities.

Section 3. Compensation and Fees.

The parties agree that the City will not directly compensate the County for providing the Services specified herein. The County shall be fully reimbursed for its costs through the fees it will collect from Retailers pursuant to the Ordinance, including fees charged to obtain or renew a License (as that term is defined in the Ordinance). Such fees shall be established by the City, and collected by the County, and the City shall make no claim to any portion of such fees during the term of this Agreement.

Section 4. Term.

This Agreement shall commence on the Effective Date and shall remain in effect so long as not terminated by either party pursuant to Section 7.

Section 5. Mutual Indemnification.

a. County of Monterey (hereinafter “County”) shall indemnify, defend, and hold harmless the City of Pacific Grove (hereinafter “City”), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by County and/or its agents, employees or County’s sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the City. The County shall reimburse the City for all costs, attorneys’ fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless the City under this Agreement.

b. City of Pacific Grove (hereinafter “City”) shall indemnify, defend, and hold harmless the County of Monterey (hereinafter “County”), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by City and/or its agents, employees or City’s sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. The City shall reimburse the County for all costs, attorneys’ fees, expenses and liabilities incurred with respect to any litigation in which the City is obligated to indemnify, defend and hold harmless the County under this Agreement.

Section 6. Insurance.

Each party recognizes and accepts the other party is self-insured. Either party may purchase commercial insurance to cover its exposure hereunder, in whole or in part.

Section 7. Termination.

This Agreement may be terminated by either party for the following reasons:

- a. Upon the termination of the Ordinance or the County’s Tobacco Retail License Ordinance, or a substantial change in either one; or
- b. For any reason by either party at any time during the term of this Agreement, provided that written notice is given pursuant to Section 11 at least six (6) months prior to the effective date of termination.

Section 8. Conflict between Agreement and Ordinance.

Any conflict between the terms of this Agreement and the Ordinance shall be resolved in favor of the Ordinance.

Section 9. Applicable Laws/Venue.

In the performance of the Services required by this Agreement, both parties shall comply with all applicable Federal, State, County and City statutes, ordinances, regulations, directives, and laws. The interpretation and performance of this Agreement shall be governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed In the Superior Court of the County of Monterey.

Section 10. Ownership of Documents.

All reports, data, and other documents prepared by the County pursuant to this Agreement (“Reports and Other Documents”) are the property of the County. In accordance with statutes specifically exempting from disclosure certain records, the County shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any Reports and Other Documents prepared by the County pursuant to this Agreement.

Upon termination of this Agreement, the County shall transfer copies of such Reports and Other Documents necessary for the City, should it so choose, to provide the County Responsibilities enumerated in Section 2(a).

Section 11. Notice.

All notices, consents, demands, and other communications from one party to the other given pursuant to the terms of this Agreement or under the laws of the State of California, shall be deemed to have been delivered when deposited in the United States mail, certified or registered, postage prepaid, addressed to City or County at the respective addresses specified below or to such other place as City or County may from time to time designate in a written notice to the other:

Attn: City Manager
City of Pacific Grove: City of Pacific Grove
City Hall
300 Forest Ave
Pacific Grove, CA 93950

Attn: City Administrator
County of Monterey: County of Monterey
Health Department
Public Health Bureau
1270 Natividad Road
Salinas, CA 93906

Nothing herein shall prevent service of notice by other reliable means, except to the extent required by law, including but not limited to personal service, Express Mail, or other forms of reliable mail service other than the U.S. Postal Service.

Section 12. Complete Agreement.

There are no oral agreements between City and County affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between City and County with respect to the subject matter of this Agreement. There are no representations between City and County other than those contained in this Agreement, and all reliance with respect to any representation is based solely upon the terms of this Agreement.

Section 13. Amendment.

This Agreement may be amended by the City and County only by a written agreement signed by both parties.

Section 14. Assignment.

Neither the City nor the County shall assign its rights or obligations hereunder.

Section 15. Severability.

If any provisions of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect. In the event the entire Agreement is unenforceable, then this Agreement shall immediately terminate and the revocable license described herein shall be deemed revocable.

Section 16. Attorney's Fees.

In the event that any legal action or proceeding is commenced to enforce or interpret the provisions of this Agreement or any rights arising out of this Agreement, each party in such legal action shall bear attorney's fees, including expert fees and the costs of enforcing any judgment.

Section 17. Non-liability of Officials, Employees and Agents.

No governing board member, official, employee, agent, or volunteer of either party shall be personally liable for any damages related to any default or breach by the other party, or for any obligations under the terms of this Agreement. Nothing in this Agreement shall create, or be construed to create, the relationship of employer and employee between the County and the City, or as principal and agent; nor shall County's governing board members, officials, employees, agents, or volunteers be considered or construed to be the

employees of the City for any purpose whatsoever; nor shall the City's governing board members, officials, employees, agents, or volunteers be considered or construed to be the employees of the County for any purpose whatsoever.

Section 18. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and may be executed by the affixing of the signatures of each of the parties to any one of such counterpart signature pages; and all of such counterpart signature pages shall read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

Section 19. Authorization to Execute Agreements.

The County warrants that the execution of this Agreement been approved and authorized by County, and that the person who executes this Agreement has been authorized to perform said act. The City warrants that the execution of this Agreement been approved and authorized by City, and that the person who executes this Agreement has been authorized to perform said act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on June 30, 2020

COUNTY OF MONTEREY By: _____

Chair, Board of Supervisors

Date: _____

APPROVED AS TO FORM:

LESLIE J. GIRARD

COUNTY COUNSEL

By: _____

Deputy County Counsel

APPROVED:

ELSA MENDOZA JIMENEZ

DIRECTOR OF HEALTH

COUNTY HEALTH DEPARTMENT

By: _____

Director

APPROVED AS TO FINANCIAL TERMS:

MICHAEL J. MILLER C.P.A., C.I.S.A.

AUDITOR-CONTROLLER

By: _____

Chief Deputy

APPROVED AS TO RISK:

STEVEN MAUCK

RISK MANAGER

By: _____

Risk Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on June 30, 2020.

CITY OF PACIFIC GROVE

By _____
Ben Harvey, City Manager

APPROVED AS TO FORM:

By _____
David C. Laredo, City Attorney